**Section 1843.12 Notices of Violation**

a) An authorized representative of the Department shall issue a notice of violation if, on the basis of a State inspection carried out during the enforcement of a State program, he or she finds a violation of the Federal Act, the State Act, or 62 Ill. Adm. Code 1700 – 1850 which does not create an imminent danger or harm for which a cessation order must be issued under Section 1843.11.

b) A notice of violation issued under this Section shall be in writing, signed by the authorized representative who issued it, and shall set forth with reasonable specificity:

1) The nature of the violation;

2) The remedial action required, which may include interim steps;

3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and

4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

c) An authorized representative of the Department may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom it was issued. The total time for abatement under a notice of violation, including all extensions, shall not exceed ninety (90) days from the date of issuance, except upon a showing by the person to whom the notice was issued that, despite extraordinary efforts, it is not possible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances in subsection(f). An extended abatement date pursuant to this subsection shall not be granted when the failure or inability to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the person to whom the notice was issued in completing the remedial action required.

d) If the person to whom the notice was issued fails to meet any time set for abatement or for accomplishment of an interim step, the authorized representative shall issue a cessation order under Section 1843.11(b).

e) An authorized representative of the Department shall terminate a notice of violation by written notice to the person to whom it was issued, when he determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Department to assess civil penalties for those violations under 62 Ill. Adm. Code 1845.

f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than ninety (90) days are:

1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within ninety (90) days after a valid permit expires or is required, for reasons not within the control of the permittee;

2) Where there is a valid judicial or administrative order precluding abatement within ninety (90) days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

3) Where the permittee cannot abate within ninety (90) days due to a labor dispute;

4) Where climatic conditions preclude abatement within ninety (90) days; or where, due to climatic conditions, abatement within ninety (90) days clearly would cause more environmental harm than it would prevent;

5) Where abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 - 960); or

6) Where abatement of the violation within ninety (90) days would create an imminent danger to the health or safety of the public or would cause, or could reasonably be expected to cause, significant imminent environmental harm to land, air, or water resources.

g) Whenever an abatement time in excess of ninety (90) days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

h) If any of the conditions in subsection (f) above exists, the permittee may request the authorized representative to grant an abatement period exceeding ninety (90) days. The authorized representative shall not grant such an abatement period without the concurrence of the Division Supervisor or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of subsections (c) and (f) above. In determining whether or not to grant an abatement period exceeding ninety (90) days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The inspector's immediate supervisor shall review that document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

i) Any determination made by the Department under subsection (h) shall provide for a right of appeal in accordance with 62 Ill. Adm. Code 1847.4.

j) No extension granted under subsection (h) above may exceed ninety (90) days in length. Where the condition or circumstances which prevented abatement within ninety (90) days exists at the expiration of any such extension, the permittee may request a further extension, in accordance with the procedures of subsection (h) above.

(Source: Amended at 17 Ill. Reg. 11095, effective July 1, 1993)