**Section 1845.13 Factors to be Considered in Assessing Civil Penalties**

a) The Department shall take into account the factors contained in subsection (b) to determine the amount of the penalty, and except violations cited in a cessation order issued under 62 Ill. Adm. Code 1843, whether a penalty should be assessed as provided in Section 1845.12(b).

b) The factors to be considered are:

1) History of previous violations. The Department shall assign up to $1,000 based on the permittee's history of previous violations. $20 shall be assigned for each past violation contained in a notice of violation. $100 shall be assigned for each violation contained in a cessation order. The history of previous violations, for the purpose of assigning dollar amounts, shall be determined with respect to a particular coal exploration or surface coal mining operation. Amounts shall be assigned as follows:

A) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year;

B) No violation for which the notice or order has been vacated shall be counted; and

C) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

2) Seriousness. The Department shall assign up to $1,500 based on the seriousness of the violation, as follows:

A) Probability of occurrence. The Department shall assign up to $750 based on the probability of the occurrence of the event which a violated standard is designed to prevent. The amounts shall be assessed according to the following schedule:

Probability of Occurrence

None or Insignificant $ 0.00 to 100.00

B) Extent of potential or actual damage. The Department shall assign up to $750, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

i) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the Department shall assign from zero dollars ($0) to $300, depending on the duration and extent of the damage or impact.

ii) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the Department shall assign from $300 to $750, depending on the duration and extent of the damage or impact.

C) Alternative. In the case of a violation of an administrative requirement, such as a requirement to keep records, the Department shall, in lieu of subsection (b)(2)(A) and (B) above, assign up to $1,000 as follows:

i) First violation of an administrative requirement within twelve (12) month period: zero dollars ($0) to $250.

ii) Second violation of same or related administrative requirement within twelve (12) month period: zero dollars ($0) to $500.

iii) Third violation of same or related administrative requirement within (12) month period: zero dollars ($0) to $1,000.

3) Negligence:

A) The Department shall assign up to $2,500 based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. The sums shall be assessed as follows:

i) A violation which occurs through no negligence shall be assigned zero dollars ($0) for negligence.

ii) A violation which is caused by negligence shall be assigned up to $500.

iii) A violation which occurs through recklessness shall be assigned up to $1,000.

iv) A violation which occurs through knowing or intentional conduct shall be assigned up to $2,500.

B) In determining the degree of negligence involved in a violation and the sum to be assigned, the following definitions apply:

i) No negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care.

ii) Negligence means the failure of a permittee to prevent the occurrence of any violation of the permit or any requirement of the State Act or 62 Ill. Adm. Code 1700 through 1850 due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the State Act due to indifference, lack of diligence, or lack of reasonable care.

iii) Recklessness means disregard of a known or obvious high risk.

iv) Knowing or intentional conduct occurs when the permittee is aware that he is, or will be, in violation of the regulations and fails to correct or avoid the situation.

C) In calculating sums to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

4) Good faith in attempting to achieve compliance.

A) The Department shall reduce the proposed penalty amount by up to $500 based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation.

B) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and the abatement was achieved before the time set for abatement.

C) No reduction of the proposed penalty amount will be given for normal compliance. Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.

D) Good faith credit will not be given if the violation is administrative in nature.

(Source: Amended at 17 Ill. Reg. 10926, effective July 1, 1993)