

49-405c. Civil penalty for violation of permit condition or provision of act; determination of amount of penalty; hearing; criminal penalty for violations; civil penalty for failure to correct a violation for which a citation has been issued; right to seek other relief not restricted. (a) Any operator who violates any permit condition or who violates any other provision of this act, may be assessed a civil penalty by the secretary, except that if such violation leads to the issuance of a cessation order under this act, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the operator was negligent; and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

(b) A civil penalty shall be assessed by the secretary only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing. Where such a public hearing has been held, the hearing officer appointed by the secretary shall make findings of fact, and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the secretary or hearing officer shall consolidate such hearings with other proceedings under this act. Any hearing under this section shall be of record. Where the person charged with such a violation fails to take advantage of the opportunity for a public hearing, the assessment of the civil penalty shall become final.

(c) Upon the issuance of a notice or order charging that a violation of the act has occurred, the secretary shall inform the operator within 30 days of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the secretary for placement in an interest-bearing escrow account. Each such escrow account shall be outside the state treasury and shall be in a bank, as defined by subsection (d) of K.S.A. 75-4201, and amendments thereto, designated by the pooled-money investment board. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the secretary shall remit within 30 days the appropriate amount to the person, with interest at the rate earned thereon. Failure to forward the money to the secretary within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) Civil penalties owed under this act may be recovered in a civil action brought by the attorney general at the request of the secretary in the district court of Shawnee county.

(e) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this act or fails or refuses to comply with any order issued under this act, or any order incorporated in a final decision issued by the secretary under this act, except an order incorporated in a decision issued under subsection (b), upon conviction, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.

(f) Whenever an operator violates a condition of a permit issued pursuant to this act or fails or refuses to comply with any order issued under this act, or any order incorporated in a final decision issued by the secretary under this act, except an order incorporated in a decision issued under subsection (b), any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e).

(g) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this act, upon conviction, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.

(h) Any operator who fails to correct a violation for which a citation has been issued within the period permitted for its correction shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation continues.

(i) Any action pursuant to this section shall not be a bar to enforcement of this act, rules and regulations in force pursuant thereto, and any orders made pursuant to this act, by injunction or other appropriate remedy, and the secretary shall have power to institute and maintain in the name of this state any and all such enforcement proceedings.

(j) Nothing in this act shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceedings therefor.

History: L. 1979, ch. 169, § 13; L. 1981, ch. 213, § 2; L. 1988, ch. 192, § 12; July 1.