
Rules of
Department of Natural Resources
Division 45—Metallic Minerals Waste Management
Chapter 3—Administrative Penalties

Title	Page
10 CSR 45-3.010 Administrative Penalty Assessment	3

**Title 10—DEPARTMENT OF
NATURAL RESOURCES**
**Division 45—Metallic Minerals Waste
Management**
Chapter 3—Administrative Penalties

**10 CSR 45-3.010 Administrative Penalty
Assessment**

PURPOSE: This rule establishes the procedures for assessment of administrative penalties under the Metallic Minerals Waste Management Act.

(1) General Provisions.

(A) Pursuant to section 444.376, RSMo, and in addition to any other remedy provided by law, upon determination by the department that a provision of sections 444.350–444.380, RSMo, or a standard, limitation, order or rule or regulation promulgated, or a term or condition of any permit has been violated, the department may issue an order assessing an administrative penalty upon the violator. The amount of the administrative penalty will be determined according to section (3) of this rule. In no event may the total penalty assessed per day of violation exceed the statutory maximum specified in section 444.375, RSMo.

(B) An administrative penalty shall not be imposed until the department has sought to resolve the violations through conference, conciliation and persuasion and shall not be imposed for minor violations. If the violation is resolved through conference, conciliation and persuasion, no administrative penalty shall be assessed unless the violation has caused, or has the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution, or was knowingly committed, or is not a minor violation.

(C) An order assessing an administrative penalty shall be served upon the operator, owner or appropriate representative through United States Postal Service certified mail, return receipt requested, a private courier or messenger service which provides verification of delivery or by hand delivery to the operator's or owner's residence or place of business. An order assessing an administrative penalty shall be considered as appropriately served if verified receipt is made by the operator's or owner's appropriate representative. A refusal to accept, or a rejection of certified mail, private courier or messenger service delivery or by hand delivery of an order assessing an administrative penalty constitutes service of the order.

(D) The department may at any time withdraw without prejudice any administrative penalty order.

(E) An order assessing an administrative penalty shall describe the nature of the violation(s), the amount of the administrative penalty being assessed and the basis of the penalty calculation.

(2) Definitions.

(A) Definitions for key words used in this rule may be found in 10 CSR 45-10.012.

(B) Additional definitions specific to this rule are as follows:

1. Conference, conciliation and persuasion—A process of verbal or written communications, consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;

2. Economic benefit—Any monetary gain which accrues to a violator as a result of noncompliance;

3. Gravity-based assessment—The degree of seriousness of a violation taking into consideration the risk to human health and the environment posed by the violation and considering the extent of deviation from sections 444.350–444.380, RSMo;

4. Minor violation—A violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency (U.S. EPA) as other than minor;

5. Multiple violation penalty—The sum of individual administrative penalties assessed when two (2) or more violations are included in the same complaint or enforcement action; and

6. Multi-day violation—A violation which has occurred on or continued for two (2) or more consecutive or nonconsecutive days.

(3) Determination of Penalties. The amount of an administrative penalty will involve the application of a gravity-based assessment under subsection (3)(A) and may involve additional factors for multiple violations under (3)(B), multi-day violations under (3)(C), and economic benefit resulting from noncompliance under (3)(D). The resulting

administrative penalty may be further adjusted as specified under (3)(E).

(A) Gravity-Based Assessment. The gravity-based assessment is determined by evaluating the potential for harm posed by the violation and the extent to which the violation deviates from the requirements of the law.

1. Potential for harm. The potential for harm posed by a violation is based on the risk to human health, safety or the environment or to the purposes of implementing the Metallic Minerals Waste Management Act (MMWMA) and associated rules and permits.

A. The risk of exposure is dependent on both the likelihood that humans or the environment may be exposed to contaminants and the degree of potential exposure. Penalties will reflect the probability the violation either did result in or could have resulted in a release of contaminants in the environment, and the harm which either did occur or would have occurred if the release had in fact occurred.

B. Violations which may or may not pose a potential threat to human health or the environment, but which have an adverse effect upon the purposes of or procedures for implementing the MMWMA and associated rules and/or permits may be assessed penalty.

C. The potential for harm shall be evaluated according to the following degrees of severity:

(I) Major. The violation poses or may pose a substantial risk to human health, safety or to the environment, or has or may have a substantial adverse effect on the purposes of or procedures for implementing the MMWMA and associated rules and/or permits;

(II) Moderate. The violation poses or may pose a significant risk to human health, safety or to the environment, or has or may have a significant adverse effect on the purposes of or procedures for implementing the MMWMA and associated rules and/or permits; and

(III) Minor. The violation does not pose significant or substantial risk to human health, safety or to the environment, was not knowingly committed, and is not a minor violation.

2. Extent of deviation. The extent of deviation may range from slight to total disregard of the requirements of the law, and associated rules and/or permits. The assessment will reflect this range and will be evaluated according to the following degrees of severity:

A. Major. The violator has deviated substantially from the requirements of the

MMWMA, associated rules or permits resulting in substantial noncompliance;

B. Moderate. The violator has deviated significantly from the requirements of the MMWMA, associated rules or permits resulting in significant noncompliance; and

C. Minor. The violator has deviated slightly from the requirements of the MMWMA, associated rules or permits that does not result in substantial or significant noncompliance; most provisions were implemented as intended; the violation was not knowingly committed and is not defined by the U.S. EPA as other than minor.

3. Gravity-based penalty assessment matrix. The matrix that follows will be used to determine the gravity-based assessment portion of the administrative penalty. Potential for harm and extent of deviation form the axes of the matrix. The penalty range selected may be adapted to the circumstances of a particular violation.

Gravity-Based Assessment Matrix

Potential for Harm	Extent of Deviation		
	Major	Moderate	Minor
Major	\$871 to \$1,000 \$935	\$751 to \$870 \$810	\$631 to \$750 \$690
Moderate	\$521 to \$630 \$575	\$411 to \$520 \$465	\$301 to \$410 \$355
Minor	\$201 to \$300 \$250	\$101 to \$200 \$150	\$0

(B) Multiple Violation Penalty. Penalties for multiple violations may be determined when a violation is independent of or substantially different from any other violation. The department may order a separate administrative penalty for that violation as set forth in this rule.

(C) Multi-Day Penalty. Penalties for multi-day violations may be determined when the department has concluded that a violation(s) has continued or occurred for more than one (1) day. Multi-day penalty assessments will be determined by using the Gravity-Based Assessment Matrix in paragraph (3)(A)3. The department may seek penalties for each day of noncompliance not to exceed the amount of the civil penalty specified in section 444.375, RSMo.

(D) Economic Benefit. Any economic benefits, including delayed and avoided costs that have accrued to the violator as a result of noncompliance will be added to the penalty amount. Determination will be made by the department using an economic benefit formula that provides a reasonable estimate of the

economic benefit of noncompliance. Economic benefit may be excluded from the administrative penalty if:

1. The economic benefit is an insignificant amount;

2. There are compelling public concerns that would not be served by taking a case to trial; or

3. It is unlikely that the department would be able to recover the economic benefit in litigation based on the particular case.

(E) Adjustments. The department may add to or subtract from the total amount of the penalty after consideration of the following adjustments:

1. Recalculation of penalty amount. After the issuance of an order by the department, if new information about a violation becomes available which indicates that the original penalty calculation may have been incorrect, the department may recalculate the penalty;

2. Good faith efforts to comply. The department may adjust a penalty amount downward if good faith efforts have been adequately documented by the violator. Good faith efforts include, but are not limited to, documentation that the violator has reported noncompliance or instituted measures to remedy the violation prior to detection by the department. However, good faith efforts to achieve compliance after agency detection are assumed and are not grounds for decreasing the penalty amount;

3. Culpability. In cases of heightened culpability which do not meet the standard of criminal activity, the penalty may be increased at the discretion of the department, within the ranges of the matrix. Likewise, in cases where there is a demonstrable absence of culpability, the department may decrease the penalty. Lack of knowledge of the MMWMA and any associated rule or permit shall not be a basis of decreased culpability. The following criteria will be used to determine culpability:

A. How much control the violator had over the events constituting the violation;

B. The foreseeability of the events constituting the violation;

C. Whether the violator took reasonable precautions against the events constituting the violation;

D. Whether the violator knew or should have known of the hazards associated with the conduct; and

E. Whether the violator knew or should have known of the legal requirement which was violated. This criteria shall be used only to increase a penalty, not to decrease it;

4. History of noncompliance. Where there has been a history of noncompliance with the MMWMA or any associated rule and/or permit, to a degree deemed significant due to frequency, similarity or seriousness of past violations, and considering the violator's response to previous enforcement actions, the department may increase the administrative penalty. No downward adjustment is allowed because of this factor;

5. Ability to pay. When a violator has adequately documented that payment of all or a portion of the administrative penalty will preclude the violator from achieving compliance or from carrying out important remedial measures, the department may—

A. Waive any of the administrative penalty; or

B. Negotiate a delayed payment schedule, installment plan or penalty reductions with stipulated penalties;

6. Other adjustment factors. This rule allows for other penalty adjustments based on fairness and equity not mentioned in this rule which may arise on a case-by-case basis.

(4) The proceeds from any administrative penalty assessed in accordance with this rule shall be paid to the county in which the violation(s) occurred for the use and benefit of the public county schools.

(5) Nothing in this rule shall be construed as satisfying any claim by the state for natural resource damages.

AUTHORITY: section 444.355, RSMo 1994. Original rule filed Dec. 31, 1991, effective June 25, 1992. Rescinded and readopted: Filed Jan. 19, 2000, effective Sept. 30, 2000.*

**Original rule: 444.335, RSMo 1996.*