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

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

10 CSR 45-3.010 Administrative Penalties

PURPOSE: This rule establishes the conditions for issuance of administrative penalty orders and methods of calculation of administrative penalties by the director.

(1) Definitions. Terms and words used in 10 CSR 45-3.010 Administrative Penalties are as defined in section 444.352, RSMo and in 10 CSR 45-2.010 Definitions. Other words or terms used in this regulation have the following meanings:

(A) Conference, conciliation and persuasion. Verbal or written communications, including meetings, reports, correspondence or telephone conversations between authorized representatives of the department and the operator or owner which address violations and the need to eliminate them;

(B) Habitual violator. An operator or an owner whose metallic minerals facility or waste management areas fail to conform to or comply with the provisions of sections 444.350—444.380, RSMo or a corresponding standard, limitation, order or rule, or a term or condition of any permit issued thereunder, for a period of time exceeding twelve (12) consecutive months or whose facility or waste management areas demonstrate a recurring pattern of noncompliance followed by compliance during a period of at least eighteen (18) consecutive months, which nonconformance or noncompliance does not meet the definition of minor violation; and

(C) Minor violation. A failure to conform to or comply with the provisions of sections 444.350—444.380, RSMo or a corresponding standard, limitation, order or rule, or a term or condition of any permit, which failure does not pose a substantial or significant risk of causing pollution or of creating a health or safety hazard or public nuisance, does not have a substantial or significant adverse effect on the statutory or regulatory purposes or procedures for implementing the Metallic Minerals Waste Management program or does not represent substantial or significant noncompliance with the regulatory or statutory requirements. A minor violation is one which has a minor potential for harm and a minor extent of deviation from requirements as further described in section (8).

(2) Pursuant to section 444.376, RSMo, upon determination that any provision of sections 444.350—444.380, RSMo or a corresponding standard, limitation, order or rule, or that a term or condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator.

(3) An administrative penalty shall not be imposed for any minor violation as defined in this rule. An administrative penalty shall not be imposed until the director or an authorized department employee has sought to eliminate the violation through a process of conference, conciliation and persuasion consisting of at least two (2) communications separated by no fewer than ten (10) calendar days.

(4) An order assessing an administrative penalty shall describe the nature of the violations and the amount of the administrative penalty being assessed upon the violator.

(5) 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 registered agent. 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. An order assessing an administrative penalty shall be considered to be final upon service to the operator, owner or appropriate representative.

(6) Administrative penalties shall be assessed for each day that a specific violation exists, including all days between separate observations or reports which indicate that an operator or owner is not complying with a particular statutory or regulatory provision, if the director finds that, based on all relevant facts and circumstances, including that offered by the violator, the violation continued unabated during that time.

(7) Separate penalty assessments shall be made for each violation. The total penalty assessment specified in the order will be the sum of the individual, violation-specific assessments. The amount of administrative penalty assessed per day of violation for each violation shall not exceed the amount of the civil penalty specified in section 444.375, RSMo.

(8) Calculation of Penalties. The calculation of administrative penalties may include any of the following individual components: gravity-based measure, adjustments, economic benefit and case specific factors.

(A) The gravity-based component is a measure of the seriousness of a violation. It is determined by examining the potential for harm to humans or the environment and the extent of deviation from a requirement.

1. Assessment of potential for harm to human health or safety, or the environment, or to the integrity of the Metallic Minerals Waste Management Act, sections 444.350—444.380, RSMo or the corresponding regulations in 10 CSR 45.

A. The assessment of the potential for harm resulting from a violation will be based on the risk to humans or the environment of exposure to metallic mineral waste and its constituents as a result of a violator's noncompliance. The risk presented by a given violation depends on both the likelihood that humans or the environment may be exposed to the waste and the extent and effect of the potential exposure. The assessment will reflect the probability that the violation could have resulted in, or did result in, an unpermitted release of metallic mineral waste or waste constituents and the harm which would result if, or did result when, the waste was released to the environment.

B. Violations which may not pose an immediate or direct risk of environmental contamination or risk to human health or safety but which undermine the purposes of or procedures for implementing sections 444.350—444.380, RSMo or 10 CSR 45 may nonetheless have serious implications which could merit substantial penalties.

C. The potential for harm will be evaluated according to the following categories:

(I) Major. The violation poses or may pose a substantial risk of adverse effect upon humans or to the environment due to exposure to metallic mineral waste or waste constituents, or the violation has or may have a substantial adverse effect on the purposes of or procedures for implementing sections 444.350—444.380, RSMo or 10 CSR 45. Any contamination of, or risk of contamination of, groundwaters of the state shall be considered a major violation;

(II) Moderate. The violation poses or may pose a significant risk of adverse effect upon humans or the environment due to exposure to metallic mineral waste or waste constituents, or the violation has or may have a significant adverse effect on the purposes of or procedures for implementing sections 444.350—444.380, RSMo or 10 CSR 45; and

(III) Minor. The violation does not pose a substantial or significant risk of adverse effect upon humans or to the environment due to exposure to metallic minerals waste constituents, or the violation does not have a substantial or significant adverse effect on the purposes of or procedures for implementing sections 444.350—444.380, RSMo or 10 CSR 45.

2. Assessment of the extent of deviation from the Metallic Minerals Waste Management Act (the Act), sections 444.350—444.380, RSMo or its corresponding regulations in 10 CSR 45.

A. The assessment of the extent of deviation from the provisions of the Act or its regulations, rules, standards, limitations, orders or permits relates to the degree to which the



violation departs from the intended purpose of the specific statutory or regulatory requirements. A violator may be in compliance with most provisions of a requirement, may have totally disregarded the requirement or be at some point between the extremes. The assessment will reflect this range.

B. The following categories will be used when determining, for any violation, the extent of deviation from the requirements of sections 444.350—444.380, RSMo or 10 CSR 45:

(I) Major. The violation results in substantial noncompliance with the Act or regulations;

(II) Moderate. The violation results in significant noncompliance with the Act or regulations; and

(III) Minor. The violation does not represent substantial or significant noncompliance with the Act or regulations and most of the provisions of the requirements are met.

3. Gravity-based assessment matrix. Penalty assessment for an individual violation will be determined by using an assessment matrix. Potential for harm and extent of deviation from the two (2) axes of the matrix. The matrix is composed of nine (9) cells, each of which contains a monetary penalty range and midpoint except for the cell which relates to minor violations.

Extent of Deviation From Requirement

		Major	Moderate	Minor
Potential for Harm	Major	\$871 to \$1000 \$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	Zero (0)

4. The matrix cell appropriate for a specific violation will be determined by identifying the appropriate category (for example, major, moderate, minor) for both the potential for harm and the extent of deviation. This step results in the per violation penalty being set at the midpoint of the range in the selected matrix cell.

(B) Adjustments to the per violation penalty may be made to reflect good faith efforts on the part of the violator to comply, degree of culpability of the violator and the violator's previous history of noncompliance.

1. Good faith efforts to comply. The department may adjust a penalty amount downward if efforts in good faith have been 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. Efforts to return to compliance after

detection by the department are not grounds for decreasing the penalty.

2. Culpability. In cases of heightened culpability, the department may increase a penalty. In cases where there is a demonstrable absence of culpability, the department may decrease the penalty. In no case shall lack of knowledge of the Act and regulations be considered a basis for decreased culpability.

3. History of noncompliance. When a violator has been in noncompliance with sections 444.350—444.380, RSMo or 10 CSR 45 to a noteworthy degree due to frequency of recurrence or seriousness of past violations, the department may increase a penalty for a current violation. A previous enforcement action for the same or a similar violation or being identified as a habitual violator are clear indications that the operator or owner was not deterred by the past experiences and the penalty should be increased.

4. Each adjustment may result in a downward or upward modification of the per violation penalty amount within the range specified in the matrix cell. Each adjustment has equal weighting and is additive. Each may be used to increase or decrease the per violation penalty one-third (1/3) of the amount between the midpoint and either the greater or lesser extreme of the range within the matrix cell. It is possible for an adjustment to reduce the per violation amount and another to increase it.

5. The adjustments, if any, are applied to the penalty range in the selected matrix cell and an adjusted per violation penalty amount is determined.

(C) Days of violation are determined for each specific failure to comply with the applicable statutory or regulatory requirements. Each calendar day, or part of a day, shall be counted separately. Violations for each of the days between successive observations or reports indicating conditions have not changed will be assumed unless reliable information indicates that the noncompliance was not continuous.

(D) The total per violation penalty is determined by multiplying each adjusted per violation penalty amount by the number of days that each violation persisted.

(E) The total penalty that will be specified in an order assessing administrative penalties will be determined through addition of all the total per violation penalties calculated for a particular facility or waste management area as part of the order development process.

(F) Economic Benefit of Noncompliance. In the calculation of administrative penalties, the department will add to the total penalty assessment an amount which reflects the economic benefit which accrues to the violator as a result of noncompliance. The economic benefit determination will involve consideration of financial gains stemming from avoiding compliance actions, delaying compliance actions and actual income

from noncompliance. An increase of the penalty assessment due to economic benefit cannot cause the total penalty to exceed the maximum specified in section 444.375, RSMo.

(G) Case Specific Factors. In consideration of administrative penalties, the department may add to or subtract from the total amount of the penalty after consideration of any of the following circumstances:

1. Recalculation of penalty amount. After the issuance of an order assessing an administrative penalty, if new information about a violation becomes available which indicates that the original penalty calculation was incorrect, the department shall recalculate the penalty amount in light of that information;

2. Ability to pay. If the department assesses a penalty that is clearly beyond the means of the violator to pay, the department may waive any of that penalty; it is the responsibility of the violator to demonstrate inability to pay;

3. Environmental projects. The department may consider decreasing a penalty in return for an agreement by the violator to undertake an environmentally beneficial project; the project must involve activities which are in addition to all efforts to achieve compliance with the pending enforcement action or any other enforcement action; and

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

(9) The proceeds from any administrative penalty assessed in accordance with this rule shall be paid to the county treasurer of the county where the violations occurred for the use and benefit of the county schools.

(10) Appeals of final orders assessing administrative penalties shall be filed in the circuit court of the jurisdiction where the violation occurred not later than thirty (30) consecutive days of the date of service of the order. Appeals of final orders shall be in accord with sections 444.376.5. and 536.100—536.140, RSMo.

Auth: section 444.380, RSMo (Cum. Supp. 1990). Original rule filed Dec. 31, 1991, effective June 25, 1992.