

27—60.90(208) Administrative orders and assessment of penalties. The division may issue an administrative order directing an operator to desist in an activity or practice which constitutes a violation of these rules or to take corrective action to abate the violation.

60.90(1) Issuance of administrative order. Any administrative order issued by the division shall be signed by the division administrator and shall include:

- a. A description of the violation or violations being addressed, including a citation to each rule or provision being violated, a summary of the facts and legal requirements, and a general rationale for the prescribed penalty.
- b. A description of corrective measures or actions required to abate the violation or violations.
- c. A time period for commencing and completing corrective actions called for in the administrative order.
- d. A proposed penalty assessment.
- e. The time allowed for filing an appeal to contest the order.

60.90(2) Assessment of penalty. An administrative order issued by the division shall include a proposed penalty assessment for the violation or violations being cited. The proposed penalty called for in the order shall not exceed \$5,000 for each violation.

a. A point system will be used in assessing each violation. Criteria for assigning points shall be as follows:

- (1) For history, up to 20 points may be assigned based on the history of previous violations.
- (2) For seriousness,
 - 1. Up to 20 points may be assigned based on the seriousness of the violation in terms of its potential or actual damage, or
 - 2. Up to 15 points may be assigned for a violation of the administrative requirements of these rules. Administrative requirements would include items such as license and registration, payment of fees, posting of signs, and submittal of reports.
 - (3) For negligence, up to 10 points may be assigned on the basis of negligence on the part of the operator to whom the order is issued for failing to correct the cause of the violation. Up to 25 points may be assigned for a violation that occurs through a greater degree of fault than negligence, which means reckless, knowing, or intentional conduct. The division may also consider the degree to which the operator gained an economic benefit as a result of failing to comply with these regulations.

A reduction of the assigned points by up to 20 points may be allowed for good-faith efforts by the operator to achieve better than normal compliance.

b. The dollar value for points assigned shall be \$20 for each point from 1 to 25 and \$100 for each point thereafter to a maximum of 70 points. An abridged table summarizing dollar values for point assessments is as follows:

Points	\$		Points	\$
5	100		40	2,000
10	200		45	2,500
15	300		50	3,000
20	400		55	3,500
25	500		60	4,000
30	1,000		70 and above	5,000
35	1,500			

- c. When a penalty will be assessed.
 - (1) The division may assess a penalty for a proposed order that becomes a final order when 30 or fewer points are assigned to the administrative order.
 - (2) The division shall assess a penalty for a proposed assessment that becomes a final order when 31 or more points are assigned to the administrative order.
- d. A proposed assessment worksheet shall accompany each administrative order issued by the division.

60.90(3) *Waiver of point system.* Upon the division administrator's own initiative or upon written request from an operator within 15 days of receipt of an administrative order, the division may waive the use of the point system as a means of determining a proposed penalty. In so doing, the administrator must determine that the penalty is demonstrably unjust based upon factors present in the particular case.

When the division has waived the use of the point system in determining a penalty, the division administrator shall document the basis for the waiver in the case record and shall also provide a written explanation of the basis for the assessment made to the operator to whom the administrative order was issued.

60.90(4) *Submittal of information.* Within 15 days of receipt of an administrative order, an operator may provide the division information about the violation or violations addressed in the order. The division will consider any such information in determining the facts of the violation or violations and the amount of the final penalty.

60.90(5) *Final assessment and payment of penalty.*

a. Unless an appeal contesting the administrative order has been received, the proposed assessment shall become a final order within 30 days following service of the administrative order and the penalty assessed shall become due and payable. If the administrative order is appealed, the proposed assessment shall become a final order and the penalty assessed due and payable within 30 days following service of a final decision on the appeal.

b. All penalties shall be paid within 30 days of the date that the order assessing the penalty becomes final. An operator who fails to pay an administrative penalty assessed by a final order of the division shall pay, in addition, interest at the rate of 1½ percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid.

(1) Failure to pay all penalties within 30 days of the date that the order assessing the penalty becomes final shall constitute a violation of these rules.

(2) The division may request the attorney general to institute proceedings to recover all penalties assessed in the event of failure of the operator to make payment.

60.90(6) *Deposit of penalty moneys.* Penalties collected under the provisions of these rules shall be deposited in an interest-bearing account and may be used for the cost and administrative expenses of reclamation or rehabilitation activities for any mine site as deemed necessary and appropriate by the division.