

**CHAPTER 140****COAL MINING PENALTY PROCEDURES***H.F. 626*

**AN ACT** to revise the procedures for the assessment of penalties under the laws regulating coal mining.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 83.10, Code 1985, is amended by adding the following new subsection:

**NEW SUBSECTION. 6.** Notwithstanding sections 453.7, subsection 2, and 666.3, the interest or earnings on investments or time deposits of the proceeds of a performance bond forfeited to the department, cash deposited under subsection 2, any funds provided for the abandoned mine reclamation program under section 83.21 and any civil penalties collected pursuant to sections 83.14 and 83.15 shall be credited the payment of costs and administrative expenses associated with the reclamation, restoration or abatement activities of the department. The department may expend funds credited to it under this subsection to conduct reclamation activities on any areas disturbed by coal mining not subject to a presently valid permit to conduct surface mining.

Sec. 2. Section 83.14, Code 1985, is amended by adding the following new subsection:

**NEW SUBSECTION. 9.** When on the basis of an inspection, or other information available to the department, the director has reasonable cause to believe that the operator is unable to complete reclamation of all or a portion of the permit area as required by law, the director shall issue an order to the operator to show cause as to why all or a portion of the performance bond required by section 83.10 should not be revoked.

Sec. 3. Section 83.14, subsection 4, Code 1985, is amended by striking the subsection and inserting in lieu thereof the following:

4. A permittee may request in writing an appeal to the committee of a decision made in a hearing under subsection 3 within thirty days of the decision. The committee shall review the record made in the contested case hearing, and may hear additional evidence upon a showing of good cause for failure to present the evidence in the hearing, or if evidence concerning events occurring after the hearing is deemed relevant to the proceeding. However, the committee shall not review a decision in a proceeding if the department seeks to collect a civil penalty pursuant to section 83.15, and those decisions are final agency actions subject to direct judicial review as provided in chapter 17A.

The contested case hearing shall be scheduled within thirty days of receipt of the request by the department. If the decision in the contested case is to revoke the permit, the permittee shall be given a specific period to complete reclamation, or the attorney general shall be requested to institute bond forfeiture proceedings.

Sec. 4. Section 83.14, subsection 8, Code 1985, is amended to read as follows:

8. At the request of the department, the attorney general shall institute any legal proceedings, including an action for an injunction or a temporary injunction necessary to enforce the penalty provisions of this chapter or to obtain compliance with this chapter. Injunctive

relief may be requested to enforce a cessation order issued by the director pending a hearing pursuant to subsection 4.

Sec. 5. Section 83.15, subsections 1, 2, 3 and 4, Code 1985, are amended by striking the subsections and inserting in lieu thereof the following:

1. A person who violates a permit condition, a provision of this chapter, or a rule or order issued under this chapter is subject to a civil penalty not to exceed five thousand dollars per day for each day of violation. If a violation results in the issuance of a cessation order, a civil penalty shall be imposed. The penalty shall not exceed five thousand dollars for each day of violation.

In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular 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.

An operator who fails to correct a violation for which a notice or order has been issued within the period permitted for its correction shall be required to pay a civil penalty of not less than seven hundred fifty dollars for each day during which the failure or violations continue.

2. If a notice or order has been issued, the department may assess a recommended penalty in accordance with a schedule established by rule. The person to whom the notice or order was issued may submit written information within fifteen days of the notice or order to be considered by the department. The department shall serve the assessment by certified mail, return receipt requested, within thirty days of issuance of the notice or order. The department may reassess any penalty if necessary to consider facts not reasonably available on the date of issuance of the assessment. A person may consent to a penalty assessment by paying the penalty without resort to judicial proceedings.

If a violation results in the issuance of a cessation order pursuant to section 83.14 the department shall assess a penalty.

3. A contested case hearing may be requested pursuant to section 83.14, subsection 4, to review a notice, order, or penalty assessment. A person to whom a penalty assessment has been issued may request a contested case hearing solely for review of the amount of the penalty. A penalty assessment is final if a request for review is not made in a timely manner.

4. Judicial review of any action of the department shall be in accordance with chapter 17A. Judicial review of a penalty assessment shall not be permitted unless the petitioner has posted a bond equal to the amount of the assessed penalty in the district court or has placed the proposed amount in an interest bearing escrow fund approved by the department.

5. If a violation results in a cessation order pursuant to section 83.14, the attorney general, at the request of the department, shall institute a civil action in district court for injunctive relief.

Notwithstanding section 17A.20, an appeal bond shall be required for an appeal of a judgment assessing a civil penalty.

Approved May 16, 1985