**Section 240.160 Director's Decision**

a) Upon receipt of a notice of violation, the Director shall conduct an investigation and may affirm, vacate or modify the notice of violation. In determining whether to take action in addition to remedial action necessary to abate a violation, the Director shall consider:

1) *the person's or permittee's history of previous violations, including violations at other locations and under other permits.*

A) A violation for which no penalty has been assessed shall not be counted if the Director's Decision associated with the violation is the subject of pending administrative review by the Department under Section 240.180 or if the time to request a review has not expired, and thereafter it shall be counted for only two years after the date of the Department's final administrative order or a final judicial decision affirming the Department's order, if administrative review of the Department's final administrative order is sought.

B) A violation for which a penalty has been assessed shall not be counted if the Director's Decision associated with the violation is the subject of pending administrative review by the Department under Section 240.180 or if the time to request a review has not expired, and thereafter it shall be counted for only three years after the date of the Department's final administrative order or a final judicial decision affirming the Department's order, if administrative review of the Department's final administrative order is sought.

C) No violation for which the notice of violation has been vacated shall be counted;

2) *the seriousness of the violation, including any irreparable harm to the environment or damage to property*;

3) *the degree of culpability of the person or permittee*; *and*

4) *the existence of any additional conditions or factors in aggravation or mitigation* of the violation, *including information provided by the person or permittee.* (Section 8a of the Act).

b) *Modification of the notice of violation may include:*

1) *any different or additional remedial actions required to abate the violation*, not listed in the original notice of violation, *and the time within which the violation must be abated;*

2) *the assessment of civil penalties not to exceed $5,000 for each and every falsification or material misrepresentation and $1,000* *a day,* from the date the permittee knew or should have known of the existence of facts or conditions that resulted in the violations and for as long as the violation continues, *for each and every act of violation* not subject to the separate $5,000 penalty for falsification and material misrepresentation*;*

3) *probationary or permanent modification or conditions on the permit, which may include special monitoring or reporting requirements; and*

4) *revocation of the permit.* (Section 8a of the Act)

c) The Director shall determine whether or not to assess civil penalties based on the factors set forth in subsection (a). Except for violations listed in subsection (d), the Director may not assess a civil penalty if the violation is abated within the time frame originally set by the Department or any extensions granted by the Department. If a violation is not abated within that timeframe, or if the violation is listed in subsection (d) and the Department assesses a penalty, the penalty shall not exceed *$5,000 for each and every falsification or material misrepresentation and* $1,000 per day, from the date the permittee knew or should have known of the existence of facts or conditions that resulted in the violations and for as long as the violation continues, for each and every act of violation not subject to the $5,000 penalty for falsification and material misrepresentation (Section 8a of the Act).

d) The Department shall have the discretion to assess a civil penalty for the following violations, even if the violation is abated within the timeframe granted by the Department:

1) drilling, deepening, converting or operating, without a permit or completed permit transfer from the Department, a well required to be permitted under the Act;

2) failure to prohibit waste as defined in the Act;

3) operating an annular or casing injection/disposal well or a well with pressure on the annulus;

4) failure to maintain the required performance bond for wells under permit or operating wells without paying annual well fees;

5) failure to repay all expended funds from the Plugging and Restoration Fund prior to operating any other existing wells under permit;

6) failure to secure approved Temporary Abandonment status or plug a well following a denial of Temporary Abandonment status;

7) failure to establish mechanical integrity on a Class II UIC well or to plug or repair a Class II UIC well following failure of mechanical integrity;

8) failure to shut in a Class II UIC well that fails an internal mechanical integrity test or on which an internal mechanical integrity test has not been performed;

9) operating a Class II injection or disposal well in excess of the permitted maximum injection pressure or rate;

10) failure to confine injection fluid to the permitted formation;

11) failure to abate a notice of noncompliance, issued under Section 240.140 within the time granted by the Department;

12) operating a well that has been placed in the Plugging and Restoration Program;

13) failure to notify the Department of a reportable crude oil or produced water spill;

14) failure to notify the Department of a natural gas release or natural gas incident at an underground natural gas storage field;

15) failure to provide emergency response for a crude oil or produced water spill;

16) failure to provide emergency response for a natural gas release or natural gas incident at an underground natural gas storage field;

17) failure to provide notice of a natural gas incident as required by Section 7.5 of the Act;

18) failure to remediate a crude oil or saltwater spill;

19) improper discharge or disposal of produced fluids or liquid oilfield wastes;

20) operating a liquid oilfield waste transportation system or vehicle without a permit;

21) knowingly using the services of an unpermitted liquid oilfield waste transporter;

22) failure to contain gas to a permitted storage formation;

23) operating a well in violation of spacing requirements or permit conditions;

24) failure to plug an uncased well;

25) failure to restore a well site after plugging;

26) failure to maintain a well, flowline or other equipment in a leak-free condition;

27) falsification or material misrepresentation in violation of Section 240.135; and

28) any willful or knowing violation.

e) *Any person who willfully or knowingly authorized, ordered, or carried out any violation cited in the Director's decision shall be subject, after notice, to the same actions, including civil penalties, which may be imposed on the person or permittee under this Section.* (Section 8a of the Act)

f) The Director shall serve the person or permittee with his or her decision at the conclusion of the investigation. The Director's decision shall provide that the person or permittee has the right to request a hearing in accordance with Section 240.180. The Director's decision affirming, vacating or modifying the notice of violation shall be *considered served when mailed by first class mail to the person or permittee at his or her last known address.* (Section 8a of the Act)

g) A Director's decision not appealed in accordance with Section 240.180 within 30 days after service shall serve as the Department's final administrative order, pursuant to Section 8a and become a final administrative decision of the Department, pursuant to Section 10 of the Act. *The filing of a request for hearing* under Section 240.180 *shall not operate as a stay of the Director's decision.* (Section 8a of the Act)

h) The permittee or person subject to the Director's decision may, within 30 days from the date of service of the Director's decision, submit to the Department, in writing, any mitigating factors that permittee believes to be relevant to the violation cited in the Director's decision. Within 30 days from the date of service of the Director's decision, the permittee or person subject to the Director's decision may also request to enter into a settlement agreement with the Department.

i) Upon further investigation, or after receiving additional information from the permittee or person as allowed for under subjection (h), the Director may enter into a settlement agreement, issue an amended Director's decision, or issue a replacement Director's decision.

1) The Department may enter into a settlement agreement with the permittee or person subject to the Director's decision in order to:

A) extend the amount of time provided to complete remedial actions necessary to abate the violations set forth in the Director's decision; or

B) reduce the civil penalty assessed in the Director's decision;

C) allow new permits or the transfer of existing permits to be issued during the term of the settlement agreement; or

D) modify any probationary or permanent modifications or conditions on the permit ordered in the Director's decision.

2) An amended Director's decision shall be issued to:

A) modify the amount of time provided to complete remedial action necessary to abate the violation set forth in the Director's decision; or

B) modify the civil penalty assessed in the Director's decision.

3) A replacement Director's decision shall be issued to correct an administrative error contained in the Director's decision.

4) The permittee shall have no right to hearing associated with the issuance of an amended or replacement Director's decision unless the period to appeal the original Director's decision has not expired or the amended or replacement Director's decision alleges new facts, violations, or additional or modified civil penalties, not contained in the original Director's decision.

j) If the Director's decision includes the assessment of a civil penalty, and the person or permittee named in the Director's decision does not request a hearing in accordance with Section 240.180 to contest the amount of the penalty, the amount assessed shall be paid to the Department in full within 30 days after service of the Director's decision.

k) *All civil penalties assessed and paid to the Department shall be deposited in the Underground Resources Conservation Enforcement Fund.* (Section 8a of the Act)

(Source: Amended at 43 Ill. Reg. 10459, effective September 6, 2019)