**Section 240.1856 Determination of Penalty**

a) *In determining the amount of the penalty, the Department shall consider the standards set forth in 49 USC 60122(b).* (Section 30 of the Act) The Director shall determine whether to assess civil penalties based on the factors set forth in subsection (b).

b) In determining the amount of a civil penalty:

1) the Department shall consider:

A) the nature, circumstances and gravity of the violation, including adverse impact on the environment;

B) with respect to the violator, the degree of culpability, any history of prior violations, and any effect on ability to continue doing business; and

C) good faith in attempting to comply.

2) the Department may consider:

A) the economic benefit gained from the violation without any reduction because of subsequent damages; and

B) other matters that justice requires.

c) Penalty Range. All civil penalties issued under the Act shall not exceed the maximum penalties established by 49 USC 60122(a)(1) for each day of the violation.

d) All civil penalties assessed and paid to the Department shall be deposited in the Underground Resources Conservation Enforcement Fund.

e) Upon further investigation, the Department may enter into a compromise agreement.

1) A compromise agreement may be issued to:

A) extend the amount of time provided to complete remedial actions necessary to abate the violations set forth in the notice of probable violations;

B) reduce the civil penalty assessed in the notice of probable violation; or

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

2) An amended notice of probable violation shall be issued to:

A) extend the amount of time provided to complete remedial action necessary to abate the violation set forth in the notice of probable violation; or

B) reduce the civil penalty assessed in the notice of probable violation.

3) An amended notice of probable violation shall be issued to correct an administrative error contained in the notice of probable violation.

4) The permittee shall have no right to hearing associated with the issuance of an amended notice of probable violation, but shall have a right to hearing on the underlying violation that the amended notice of probable violation is seeking to enforce.

f) If the notice of probable violation includes the assessment of a civil penalty, and the person or permittee named in the notice of probable violation does not request a hearing in accordance with Section 240.1858 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 notice of probable violation.

g) All civil penalties or compromise agreements shall be submitted to the Director for approval, pursuant to Section 30 of the Act.

(Source: Added at 43 Ill. Reg. 11524, effective September 24, 2019)