

SUBCHAPTER 05F - CIVIL PENALTIES

15A NCAC 05F .0101 PURPOSE AND SCOPE

These Rules set forth the procedures and standards to be followed by the director in assessing civil penalties and by the Mining and Energy Commission in hearing appeals from the assessment of such penalties.

History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d)); November 1, 1984.

15A NCAC 05F .0102 DEFINITIONS

History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d));
Expired Eff. March 1, 2024 pursuant to G.S. 150B-21.3A.

15A NCAC 05F .0103 WHO MAY ASSESS

Civil penalties may be assessed by the director.

History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982.

15A NCAC 05F .0104 WHEN ASSESSABLE

History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982;
Repealed Eff. November 1, 1984.

15A NCAC 05F .0105 CIVIL PENALTY FOR MINING WITHOUT A PERMIT

(a) Prior to the assessment of any civil penalty for mining without a permit, the alleged violator shall be given notice by registered or certified mail, return receipt requested, signed by the regional engineer in the region in which the violation occurred. The notice shall describe the violation with reasonable particularity, order the violator immediately to cease mining until a valid operating permit has been obtained, and specify a time period reasonably calculated to permit the restoration of any disturbed area as deemed necessary by the regional engineer. The notice shall also state that a civil penalty may be assessed for any violation.

(b) In determining whether to assess a civil penalty for any violation committed prior or subsequent to receipt of the notice of violation, the director shall consider whether the violator ceased mining, restored the affected area, or otherwise complied with the requirements of the notice of violation and shall also consider the various criteria in Rule 5F .0007. The civil penalty assessment shall specify with reasonable particularity the violation(s) for which the penalty has been assessed and shall be transmitted to the violator by certified or registered mail, return receipt requested.

History Note: Authority G.S. 74-60; 74-61; 74-63; 74-64; 143B-10;
Eff. May 1, 1982;
Amended Eff. December 1, 1988; November 1, 1984.

15A NCAC 05F .0106 CIVIL PENALTY FOR VIOLATING OPERATING PERMIT

(a) Prior to the assessment of a civil penalty against a permitted operator for violating any provisions of the Mining Act of 1971, or any rules promulgated thereunder, or any conditions of his mining permit, the alleged violator or his agent shall be given notice by registered or certified mail, return receipt requested, signed by the director. The notice shall describe the violation with reasonable particularity and specify a time period reasonably calculated to permit the violator to correct the violation. The notice shall also state that civil penalties may be assessed against the alleged violator if he fails to correct the violation within the specified time.

(b) If the violator does not comply with the requirements of the notice of violation within the time period specified in the notice, the director may assess a civil penalty for any violation(s) committed after the date of receipt of the notice of violation.

The civil penalty assessment shall specify with reasonable particularity the violation(s) for which the penalty has been assessed and shall be transmitted to the violator by certified or registered mail, return receipt requested.

History Note: Authority G.S. 74-60; 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982;
Amended Eff. November 1, 1984.

15A NCAC 05F .0107 CRITERIA FOR DETERMINING AMOUNT OF PENALTY

History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982;
Expired Eff. March 1, 2024 pursuant to G.S. 150B-21.3A.

15A NCAC 05F .0108 ADMINISTRATIVE REMEDIES

Within 60 days after receipt of notification of any civil penalty assessment, the person against whom the civil penalty is assessed may contest the decision of the department by filing a petition as described in G.S. 74-61 and G.S. 150B-23.

History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982;
Amended Eff. August 1, 1988.

15A NCAC 05F .0109 HEARING PROCEDURES

History Note: Authority G.S. 74-61; 74-62; 74-63; 143B-10; 150B-23;
Eff. May 1, 1982;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1. (d)); August 1, 1988;
Expired Eff. March 1, 2024 pursuant to G.S. 150B-21.3A.

15A NCAC 05F .0110 TENDERS OF PAYMENT

History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982;
Expired Eff. March 1, 2024 pursuant to G.S. 150B-21.3A.

15A NCAC 05F .0111 REFERRAL TO ATTORNEY GENERAL

(a) If the person against whom a civil penalty is assessed, fails to respond within 60 days as provided in Rule .0008, the director shall refer the matter to the Attorney General to recover the amount of the civil penalty.

(b) If payment of any civil penalty assessed pursuant to the rules of this Subchapter is not received by the director within 30 days following denial of any appeal pursuant to G. S. 74-61 and G. S. 74-62, the director shall refer the matter to the Attorney General to recover the amount of the civil penalty.

History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982.

15A NCAC 05F .0112 FURTHER REMEDIES

No provision of this Subchapter shall be construed to restrict or impair the right of the director or the Mining and Energy Commission to pursue any other remedy provided by law for violations of the Mining Act of 1971 or the rules of this Chapter.

History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1. (d)).