

GENERAL GOVERNMENT CABINET

Department of Military Affairs

(Amended at ARRS Committee)

106 KAR 1:131. Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.

RELATES TO: KRS 39E.010, 39E.040, 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.200, 39E.210, 39E.220, 39E.990

STATUTORY AUTHORITY: KRS 39E.010(1), 39E.040(6), 39E.050(4), 39E.080(4), 39E.120, 39E.200(1), 39 E.210, 39E.990, 42 U.S.C. 11001 to 11050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39E.010(1), 39E.040(6), and 39E.080(4) requires the Kentucky Emergency Response Commission and the Division of Emergency Management to promulgate administrative regulations to implement KRS Chapter 39E and 42 U.S.C. 11001 to 11050 governing the reporting requirements and procedures for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances. KRS 39E.990 provides penalties for any person violating any provision of KRS Chapter 39E, and any administrative regulation promulgated, or order issued, pursuant to KRS Chapter 39E. This administrative regulation provides the procedure to assess, protest, and appeal penalties provided for in KRS 39E.990.

Section 1. Definitions.

(1) "Compliance Review Board" means any current five (5) members of the Kentucky Emergency Response Commission, selected by the commission chairman, to review and issue findings and recommendations regarding violations of KRS 39E.050, 39E.120, 39E.130, 39E.190, 39E.220, or any administrative regulation promulgated or order issued pursuant to KRS Chapter 39E, and issue penalties in accordance with 39E.990.

(2) "Notice of Non-Compliance" means the notice sent to a facility owner or operator to inform them of a violation, or violations, of KRS 39E or KAR Title 106 and the penalties due and owed pursuant to KRS 39E.990.

Section 2. Notice of Non-Compliance.

(1) The commission chairman, or designee, shall mail a notice of non-compliance when the commission has notice of the existence of a violation of any provision of KRS 39E.050, 39E.080, 39E.120, 39E.130, 39E.190, 39E.220, or any administrative regulation promulgated or order issued pursuant to KRS Chapter 39E.

(2) The notice of non-compliance shall contain the specific date, time, and place of the violation, if applicable, and a summary of the factual, legal, or other grounds upon which the notice is based, including the applicable provision of KRS Chapter 39E or KAR Title 106.

(3) Upon receiving a notice of non-compliance, the facility owner or operator shall:

(a) Agree to the violation cited in the notice of non-compliance and become compliant by remedying the violation, submitting payment for past due fees, and submitting payment of penalties within thirty (30) days of the date of the notice of non-compliance; or

(b) Disagree with the violation and penalty cited in the notice of non-compliance. If the facility owner or operator disagrees with the notice of non-compliance, they may file a protest in accordance with Section 3 of this administrative regulation.

(4) The commission may grant an extension of time for actions in subsection (3)(a) of this section, to extend beyond thirty (30) days, with the approval of the commission chairman or designee.

Section 3. Protesting a Notice of Non-Compliance.

- (1) If a facility owner or operator protests the notice of non-compliance, the protest shall:
 - (a) Be received by the commission within thirty (30) days from the date of the notice of non-compliance;
 - (b) Be in writing; and
 - (c) Contain a supporting statement setting forth the grounds upon which the protest is made.
- (2) Upon written request, the commission may grant an extension for filing the supporting statement if it determines the delay is necessary and unavoidable. The refusal of an extension may be reviewed in the same manner as a protested notice of non-compliance.
- (3) If a protest meets the requirements of subsection (1) of this section, the facility owner or operator may waive or request a conference with the compliance review board.
 - (a) If a conference is requested, the compliance review board shall give notice of the conference date, place, and time to all affected persons. This notice shall be provided to the facility owner or operator at least twenty (20) days before the date of the conference.
 - (b) The conference may be held in person, or virtually, and in accordance with the Open Meeting Act requirements contained in KRS 61.800 to 61.850. The compliance review board shall give the facility owner or operator, and other affected persons, an opportunity to present a statement or evidence challenging the notice of non-compliance. The facility owner or operator may appear in person or by a designated representative.
 - (c) Further conferences may be held by mutual agreement.

Section 4. Findings and Recommendations and Final Decision.

- (1) After considering the protest, including any matters presented at the final conference, the compliance review board shall issue findings and recommendations on any matter in controversy. These findings and recommendations shall be:
 - (a) In writing;
 - (b) Mailed to the facility owner or operator, and to all affected parties pursuant to Section 6 of this administrative regulation, within fourteen (14) days of issuance; and
 - (c) Mailed or transmitted to the chairman, or his designee, within fourteen (14) days of issuance.
- (2) The commission shall approve or disapprove the findings and recommendations of the compliance review board and issue a final decision at the first scheduled and available commission meeting in which there is a quorum.
- (3) The final decision shall be signed by the commission chairman, or a designee, stating that it is a final decision of the commission, generally state the issue in controversy, the commission's position, and set forth the procedure for an appeal.
- (4) The facility owner or operator shall have twenty (20) days after the final decision is signed, issued, and mailed by certified mail, to:
 - (a) Resolve the findings; or
 - (b) Appeal the commission's final decision pursuant to Section 5 of this administrative regulation by filing a request for an administrative hearing.

Section 5. Appeal of the Commission's Final Decision.

- (1) The facility owner or operator shall request an administrative hearing by mailing a request to the commission chairman, or designee, within the time set forth in Section 4(4) of this administrative regulation.
- (2) Upon receipt of the request, the commission chairman, or designee, shall request an administrative hearing officer for an administrative hearing. The administrative hearing shall be held according to the procedures in KRS 13B.050.

Section 6. Service and Mailing of Documents.

(1) Service of documents by the commission, commission chairman or designee, or the compliance review board, shall be mailed by certified mail to the facility owner or operator at the address shown on the annual inventory report or facility plan required by KRS Chapter 39E. If no facility plans or annual inventory report has been filed, then to the last known address.

(2) All documents filed with the commission, commission chairman or designee, or the compliance review board, by any party, shall be served by mail upon all other parties.

(18 Ky.R. 1721; Am. 2330; eff. 1-27-1992; 22 Ky.R. 609; 900; eff. 10-11-1995; 43 Ky.R. 1234, 1526; eff. 3-31-2017; 50 Ky.R. 1563, 2017; eff. 7-2-2024.)

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