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	U· S· DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVES SYSTEM**	**Subject Number:** INE-4 **Transmittal Number:** 424 **Date:** 2/16/88

Subject: Notice of Potential Liability for an Individual Civil Penalty

Approval: Jed D. Christensen **Title:** Director

1. Purpose. This directive provides guidance to Field Offices for implementing an initial step of section 518(f) of the Surface Mining Control and Reclamation Act (SMCRA). Under the procedures set forth below, the Office of Surface Mining Reclamation and Enforcement (OSMRE) will inform a corporate official that he/she may be liable under certain circumstances for an individual civil penalty.

2. Definitions.

a. Individual Civil Penalty. A penalty as provided under section 518(f) of SMCRA which states that: Whenever a corporate permittee violates a condition of a permit...or fails or refuses to comply with any order issued under section 521 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act...any director, officer or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section.

b. Corporate Official. Any director, officer, or agent of a corporation authorized to act on behalf of that corporation or who has demonstrated control over the daily conduct of mining operations.

3. Policy/Procedures.

a. Policy.

It is agency policy to ensure: (1) that those corporate officials who may be subject to an individual civil penalty are informed that the corporation with which they are affiliated has committed a violation of SMCRA and has been ordered by OSMRE to correct it; and (2) if the corporation fails or refuses to correct the violation as ordered, an individual civil penalty may be assessed against that person pursuant to section 518(f) of SMCRA should OSMRE establish that the individual knowingly authorized, ordered or carried out such failure or refusal.

b. Procedures.

(1) Whenever an inspector issues a failure-to-abate cessation order (FTA-CO), or imminent harm cessation order (IHCO) to a corporate permittee, a copy of the FTA-CO or IHCO together with a completed Notice of Potential Liability for an Individual Civil Penalty (see attachment), shall be served concurrently upon the president, or upon any officer, director, or agent who has demonstrated control over the daily conduct of the mining operation. The issuance of a Notice of Potential Liability for an Individual Civil Penalty concurrently with an FTA-CO or IHCO shall be used to notify the designated corporate official that an FTA-CO or IHCO which remains unabated for more than 30 days could subject the corporate official to an individual civil penalty.

(2) Whenever an FTA-CO or IHCO issued to a corporation is forwarded by a Field Office for assessment of a civil penalty or for alternative enforcement pursuant to 30 CFR 845.15(b)(2), copies of documentation provided to the corporate officials under paragraph 3.b.(1) and related service information shall be included.

(3) If no one is present at the mine site, the Notice of Potential Liability for an Individual Civil Penalty must be sent by certified mail or delivered by hand to the person to whom the enforcement action is issued. Service of the documents shall be performed in accordance with Directive INE-8, "Service of Notices of Violation and Cessation Orders."

4. Reporting Requirements. Copies of the Notice of Potential Liability for an Individual Civil Penalty shall be included with the FTA-CO or IHCO referral packages assigned for assessment and alternative enforcement.

5. References.

a. Section 518(f) of SMCRA.
b. 30 CFR 845.15(b)(2).
c. Directive, INE-8.

6. Effects on Other Documents.

a. Supersedes OSMRE directive INE-4, "Individual Civil Penalty Assessment", approved October 11, 1983.

b. Supersedes two memoranda from Assistant Director, Program Operations and Inspection to Field Office Directors entitled, "Individual Civil Penalty Assessments (section 518(f))" dated September 16, 1985 and February 8, 1985.

7. Effective Date. Upon Issuance.

8. Contact. Chief, Branch of Inspection and Enforcement (202) 343-4550.

NOTICE OF POTENTIAL LIABILITY FOR AN INDIVIDUAL CIVIL PENALTY ASSESSMENT UNDER SECTION 518(f) OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, 30 U.S.C. 1268(f)

Name of Corporate Official	Title of Corporate Official
Name of Corporate Permittee	Citation Number(s)
Permit Number	

The Office of Surface Mining Reclamation and Enforcement (OSMRE), pursuant to Section 518(f) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1268(f), may assess an individual civil penalty against a director, officer, or agent of a corporate permittee which has violated a condition of its permit or fails or refuses to comply with a cessation order. Section 518(f), in pertinent part, provides that:

> [A]ny director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties that may be imposed upon a person under [Section 518(a)]....

As [insert individual's title] of the above-referenced corporate permittee, you are hereby notified that the corporation has been issued a cessation order(s) #_____, a copy of which is attached. You may be subject to an assessment of an individual civil penalty unless you cause the corporate permittee to comply with the requirements of the attached citation(s). Assessment of an individual civil penalty does not affect OSMRE's authority to assess civil penalties or take other enforcement actions against the corporate permittee as well.

This notice does not constitute an assessment, but rather advises that you are potentially liable for an Individual Civil Penalty. Because a Notice of Potential Liability for an Individual Civil Penalty Assessment is neither a section 521 notice of violation nor an order of cessation, nor a modification, vacation or termination of such notice or order, no administrative review by the Office of Hearings and Appeals is provided for under the provisions of 43 CFR 4.1160.

If you have any questions concerning this matter, you may contact:

OSMRE ID Number	Authorized Representative	Telephone Number

(Detach along perforated line and retain for OSMRE records)

Signature of Individual Served

Date Served

I certify that a copy of this Notice was served upon [insert individual's name] or his/her authorized agent.

Print name of server

Signature of Server

Attachment(s)