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	U. S. DEPARTMENT OF THE INTERIOR OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT DIRECTIVES SYSTEM	Subject Number: CAA-1-1 Transmittal Number: 624 Date: JUL 1 1990

Subject: Civil Penalty Assessment Manual

Approval: Title: Director

This change notice is a result of the recent issuance of a change to the Abandoned Mine Land (AML) Fee Citation Directive (AML-15-1) which references the Civil Penalty Assessment Manual (CAA-1) for all assessment information.

To clarify the mechanics of assessment for the notice of violation (NOV) and failure to abate cessation order (FTACO) processes for AML fee non-payment, non-respondency, and/or failure to provide access to books and/or records, changes are made to Directive CAA-1, Transmittal Number 410, dated January 6, 1988, as follows:

a. On the cover page of the Civil Penalty Assessment Manual, the date is revised from "December 1987" to April 1990.

b. On page ii, "CONTENTS," Chapter 5, "MISCELLANEOUS INFORMATION," is revised to add the section titled, "Notices of Violation for AML Fee Non-payment, Non-respondency, and/or Failure to Provide Access to Books and/or Records," page 17, and the section titled, "Civil Penalty Formula Waiver" is moved to page 18.

c. In Chapter 4, ASSESSMENT MECHANICS, page 11, the first paragraph of the section entitled "NOTICE OF VIOLATION AND IMMINENT HARM CESSATION ORDERS" is revised to read as follows:

The NOV violations are assessed in two categories: environmental harm violations or administrative violations. An NOV will be assessed as an administrative violation for non-payment of AML fees, non-respondency, or failure to provide access to books and/or records.

d. In Chapter 4, ASSESSMENT MECHANICS, the section entitled "ADMINISTRATIVE AND OBSTRUCTION VIOLATIONS" is revised by adding the following text after the last paragraph in the section titled "4. Good Faith" on page 15:

Point assessment for NOVs issued for non-payment of AML fees, non-respondency, or failure to provide access to books and/or records will be the same as in any other administrative violation.

1. History. History points will be assigned in accordance with existing regulations. Every effort shall be made to relate all the citations issued for a company within the appropriate time frame, regardless of whether for a Title IV or Title V violation, in order to assess the proper amount of history points. However, there may be some difficulty in matching the permit numbers and this should be handled by the assessor on a case-by-case basis.

CHANGE NOTICE

2. Seriousness. The seriousness criteria of probability of occurrence and extent of potential or actual damage will not be a consideration in assessing for non-payment, non-respondency, or failure to provide access to books and/or records because there is no environmental effect or public safety hazard. The administrative alternative for this criteria, extent of obstruction, will be substituted.

3. Negligence. Negligence will be a consideration for citations issued for failure to file for or pay AML fees or failure to provide access to books and/or records. A permittee is responsible for all that occurs on the site, including failure to submit required reports or pay AML fees.

4. Good Faith. Good-faith points are assigned in the same manner described for environmental harm violations.

e. In Chapter 4, ASSESSMENT MECHANICS, the section entitled "FAILURE TO ABATE CESSATION ORDERS," page 16, is revised by adding the following as the second paragraph in the section as follows:

If the operator is served an NOV for AML fee non-payment, non-respondency, or failure to provide access to books and/or records and fails to abate the violation, an FTACO will be issued and a penalty of $750 per day will be levied for no more than 30 days. Procedures described in Chapter 5, MISCELLANEOUS INFORMATION, "Notices of Violation for AML Fee Non-payment, Non-respondency, and/or Failure to Provide Access to Books and/or Records," should be followed.

f. In Chapter 5, MISCELLANEOUS INFORMATION, page 17, the following is added as the first section in that chapter following the chapter's introductory sentence:

NOTICES OF VIOLATION FOR AML FEE NON-PAYMENT, NON-RESPONDENCY, AND/OR FAILURE TO PROVIDE ACCESS TO BOOKS AND/OR RECORDS

Since the majority of Notices of Proposed Assessments (NOPA's) for these types of violations will not carry a dollar amount, there will generally be no money deposited in escrow when the petition for review is filed. Obvious exceptions are for violations with enough points to assess a penalty and for FTACOs which carry the mandatory $750 per day penalty. The Assessment personnel in Knoxville and Denver will be responsible for receiving and tracking appeal requests from the Office of Hearing and Appeals.

The revised pages for the Civil Penalty Assessment Manual are attached.

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

CIVIL PENALTY ASSESSMENT MANUAL

APRIL 1990

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CHAPTER 4

ASSESSMENT MECHANICS

The mechanics for assessing penalties for NOVs, IHCOs, and FTACOs are presented in this chapter. A penalty must be assessed for all NOVs receiving 31 points or more and for all cessation orders. A penalty may be assessed for NOVs receiving 30 points or less.

NOTICE OF VIOLATION AND IMMINENT HARM CESSATION ORDERS

* NOV violations are assessed in two categories: environmental harm violations or administrative violations. An NOV will be assessed as an administrative violation for non-payment of AML fees, non-respondency, or failure to provide access to books and/or records.

When the inspector has determined that a violation poses an imminent danger to the health or safety of the public or there is significant imminent environmental harm, an IHCO is issued. The probability of occurrence (seriousness and extent of damage) for IHCOs may result in assignment of more points than for an NOV.

Assessment procedures for an IHCO are the same as for an environmental harm NOV, except that an IHCO will always result in a penalty regardless of the number of total points assigned.

If a violation contained in an IHCO has not been abated within the prescribed abatement period, an FTACO would not be issued; however, a minimum $750 daily fine (for a period not to exceed 30 days) is levied against the violator until abatement is complete.

Environmental Harm Violations

Penalty points can be assigned based on the number of past violations (history of previous violations), and the seriousness and negligence associated with the violation. Points may also be awarded for good-faith abatement

violation, and negligence. Points can also be awarded for good-faith abatement efforts.

1. History. History points are assigned in the same manner described for environmental violations.

2. Seriousness. OSMRE can assign up to 15 points for seriousness based on the extent that enforcement of the Act and regulations was obstructed by the violation. Extent of damage and probability of occurrence are not assessed for administrative violations.

Situation	Points
Slight Obstruction	0-4
Moderate Obstruction	5-11
Significant Obstruction	12-15

3. Negligence. Negligence is the failure of a permittee to exercise the degree of care normally expected of a reasonable person. Negligent acts include committing a violation, failing to do something that is required, or not exercising reasonable care in attempting to do that which is required.

Ignorance of the law is not a no-negligence situation; permittees are required to know the regulations.

A permittee is also responsible for all that occurs on the permittee's site, including negligent acts or omissions by an employee or subcontractor working at the site if reasonable care was not exercised.

4. Good Faith. Good faith points are assigned in the same manner described for environmental harm violations.

* Point assessment for NOVs issued for non-payment of AML fees, non-respondency, or failure to provide access to books and/or records will be the same as in any other administrative violation.

* 1. History. History points will be assigned in accordance with existing regulations. Every effort shall be made to relate all the citations issued for a company within the appropriate time frame, regardless of whether for a Title IV or V violation, in order to assess the proper amount of history points. However, there may be some difficulty in matching the permit numbers and this should be handled by the assessor on a case-by-case basis.

* 2. Seriousness. The seriousness criteria of probability of occurrence and extent of potential or actual damage will not be a consideration in assessing NOVs for non-payment, non-respondency, or failure to provide access to books and/or records because there is no environmental effect or public or safety hazard. The administrative alternative for this criteria, extent of obstruction, will be substituted.

* 3. Negligence. Negligence will be a consideration for citations issued for failure to file for or pay AML fees or failure to provide access to books and/or records. A permittee is responsible for all that occurs on the site, including failure to submit required reports or pay AML fees.

* 4. Good-Faith. Good faith points are assigned in the same manner described for environmental harm violations.

FAILURE TO ABATE CESSATION ORDER

If an operator is served a written citation and fails to abate the violation within the prescribed time, an FTACO penalty of $750 per day is levied (beginning on the date of reinspection) for no more than 30 days. If the violation is abated, the day of abatement is not counted in the computation of the penalty amount.

* If the operator is served an NOV for AML fee non-payment, non-respondency, or failure to provide access to books and/or records and fails to abate the violation, an FTACO will be issued and a penalty of $750 per day will be levied for no more than 30 days. Procedures described in Chapter 5, MISCELLANEOUS INFORMATION, "Notices of Violation for AML Fee Non-payment, Non-respondency, and/or Failure to Provide Access to Books and/or Records," should be followed.

CHAPTER 5

MISCELLANEOUS INFORMATION

This chapter discusses miscellaneous information related to the penalty assessment process.

* NOTICES OF VIOLATION FOR AML FEE NON-PAYMENT, NON-RESPONDENCY, AND/OR FAILURE TO PROVIDE ACCESS TO BOOKS AND/OR RECORDS

* Since the majority of Notices of Proposed Assessments (NOPAs) for these types of violation will not carry a dollar amount, there will generally be no money deposited in escrow when the petition for review is filed. Obvious exceptions are for violations with enough points to assess a penalty and for FTACOs which carry the mandatory $750 per day penalty. The Assessment personnel in Knoxville and Denver will be responsible for receiving and tracking appeal requests from the Office of Hearing and Appeals.

CONTINUING VIOLATIONS

Procedures for assessing a civil penalty for each day that a NOV or IHCO goes unabated are found in 30 CFR 845.15. The factors listed in 30 CFR 845.13 must be considered in making an assessment. The assessor may consider any economic benefit gained by the operator as a result of the failure to comply. If the violation continues for 2 or more days and is assigned more than 70 points, OSMRE must assess a penalty for a minimum of 2 separate days.

The per-day penalty is computed by applying the amount of the original one-time assessment (determined by assessing history, seriousness, negligence, and good faith) multiplied by the number of days that the violation continues unabated; the maximum penalty to be assessed for continuing violations is $5,000 per violation per day.

PENALTY AMOUNT DETERMINATIONS

The amount of the civil penalty per violation is determined by converting the number of points assigned for the violation to a dollar amount based on the schedule shown in Appendix D.

CIVIL PENALTY FORMULA WAIVER

The OSMRE Director may waive the use of the formula set forth in 30 CFR 845.13 in computing the penalty if, upon considering exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver must be fully documented in the case record. If the director waives the use of the formula, the criteria set forth in 30 CFR 845.13(b) are used to determine the appropriate penalty.

OPERATOR SUBMISSION OF ADDITIONAL INFORMATION

An operator has the option of submitting additional information concerning a violation up to 15 days after service of the NOV or CO (30 CFR 845.17), which will be considered in the penalty assessment process.

SERVICE OF NOTICE OF PROPOSED ASSESSMENT (NOPA)

Both a copy of the NOPA and the assessment worksheet are sent to the operator or permittee by certified mail within 30 days of the issuance of the notice or order.

TEN-DAY NOTICES

Where there is an OSMRE-approved State program and a violation of the State program or any condition of an exploration approval or permit imposed under a State program is observed, OSMRE issues Ten-Day Notices to the appropriate State regulatory authority (RA) and to the permittee notifying them of the violation. The RA has 10 days after notification in which to take appropriate action to cause the violation to be corrected or to show good cause for such failure.

If the RA does not take appropriate action or show good cause for such failure, the site will be reinspected. If the violation continues to exist, an NOV will be issued. If the violation is not abated within the prescribed time, an FTACO will be issued unless an IHCO is required at the time of reinspection. The citation will list the State regulations violated. The assessor then assesses the violation in the same manner as any other citation would be assessed.

SERVICE OF DOCUMENTS

Before sending the NOPA, the assessor must be certain that an NOV was received by an operator. The NOV is served either in person to the operator

U. S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
DIRECTIVES SYSTEM

Subject Number: CAA-1-1
Transmittal Number: 624
Date: 7/11/96

Subject: Civil Penalty Assessment Manual

Approval: H Snyder Title: Director

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OFFICIAL FILE COPY

OFFICE	SURNAME	DATE
B1+E	RMP	5/2/90
AML BOC	[illegible]	5/2/90
[illegible]	[illegible]	5/2/90
[illegible]	[illegible]	5/2/90
[illegible]	[illegible]	5/2/90
[illegible]	[illegible]	5/10/90
[illegible]	[illegible]	5/10/90
[illegible]	[illegible]	5/18

CHANGE NOTICE

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7.10.90

77
[illegible]
7-10-90

ROUTING AND TRANSMITTAL SLIP Date 5/17/90

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. F. Ragonese - P&E	7R	5/18
2. D. Hinderliter - DMS		
3. B. Fagin - DD/A+F		6/6/90
4. H. Tipton - DD/OTS		7.10.90
5. Director -		

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	As Requested		For Correction		Prepare Reply
	Circulate		For Your Information		See Me
	Comment		Investigate	X	Signature
	Coordination		Justify		

REMARKS

CAA-1-1.

"Civil Penalty Assessment Manual"

To Print 7/12/90

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FROM: (Name, org. symbol, Agency/Post)

Jean Pigford

Room No.—Bldg. 5131 L

Phone No. 343-6641

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PROGRAM POLICY
ROUTING SLIP

Date: 5/2/90

	Director
6	Deputy Director, Operations and Technical Services
	RDIM
~~4~~	Assistant Director, Program Policy
~~5~~	~~Division of Regulatory Programs~~
	Branch of State Programs
	Branch of Federal and Indian Programs
~~2~~	~~Branch of Inspection and Enforcement~~
	Division of Abandoned Mine Land Reclamation
	Branch of Program Policy
	Branch of Technical Support
	Division of Technical Services
	Branch of Research and Technical Standards
	Branch of Environmental and Economic Analysis
	Branch of Training and Technical Information
~~1~~	~~Staff~~ Kathleen Parry
5	SOL/DSM - Jean Pigford

___ Action	___ File	___ Note and Return
___ Approval	___ For Clearance	___ Per Conversation
___ As Requested	___ For Correction	___ Prepare Reply
___ Circulate	___ FYI	___ See Me
___ Comment	___ Investigate	✓ Signature
___ Coordination	___ Justify	✓ Surname

REMARKS Subject: Directive Change Notice
CAA-1-1 Civil Penalty Assessment Manual

Final Change Notice.

FROM: (Name, Division/Branch)

Kathleen Parry

Room No. - Bldg. 31B-110

Phone No. 208-2550

Rec'd AO/PO
5-16-90
(03)