



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

Subject Number:

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Date: FEB 5 1993

Subject:

Notice of Potential Liability for an Individual Civil Penalty

Approval:

Title:

Director

Directive INE-4, dated March 1, 1990, contained Appendix 1, which is a form letter entitled Notice of Potential Liability for an Individual Civil Penalty Assessment. This Change Notice revises and supersedes Appendix 1, replacing it with Appendices 1A and 1B, each respectively referencing failure to abate orders and imminent danger/harm cessation orders. The substantive change reflected in the new appendices consists of clarified language informing the corporate official to whom the notice is being sent that unless documentation is provided concerning his or her personal attempts to cause abatement of the condition, practice, or violation cited in the cessation order, "plain indifference" may be attributed to that person in considering whether an individual civil penalty should be assessed against her or him. Minor revisions in format have also been made for clarity.

CHANGE NOTICE



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

Permit Number

As [Corporate Title] of the above-referenced corporate permittee, you are hereby notified that the corporation has been issued Cessation Order (CO) No. _____, a copy of which is attached. The CO was issued for failure to abate violation(s) No. ___ of Notice of Violation No. _____ issued on _____.

The Office of Surface Mining Reclamation and Enforcement (OSM), 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 (ICP) 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)]

You will be subject to assessment of an Individual Civil Penalty if you willfully and knowingly fail or refuse to take all reasonable steps within your authority to bring about abatement of the violation(s) contained in the cessation order within 30 days after the issuance of the cessation order.

This notice is being sent to you because, in your position as [Corporate Title] of the corporate permittee, OSM considers you to possess the legal authority to bring about abatement of the violation(s) described in this cessation order. For any violation cited in the cessation order that is not abated within the time prescribed above, you may submit, for OSM's consideration, written documentation that describes with specificity all reasonable steps you took in your corporate capacity to bring about abatement. Such documentation should be submitted to [enter assessment office and address], within 45 days after the issuance of the cessation order.

Unless OSM is made aware that you personally attempted to resolve the violation(s), it may conclude that you failed to act out of "plain indifference" to the legal requirements of

the cessation order. OSM would then consider that factor in determining whether your failure or refusal to abate the violation(s) is willful and knowing, and hence subjects you to assessment of an Individual Civil Penalty.

Assessment of an Individual Civil Penalty does not affect OSM's authority to assess civil penalties or take other enforcement actions against the corporate permittee or other directors, officers, or agents as well.

This notice does not constitute an assessment, but rather advises you 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 notice of violation nor a cessation order under section 521 of SMCRA, 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. However, in the event that a Notice of Proposed Assessment for an Individual Civil Penalty is issued, you may then appeal under the provisions of 30 CFR 846.17, 30 CFR 846.18, and 43 CFR 4.1200 et seq.

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

OSM ID Number

Authorized Representative

Telephone Number

CERTIFICATION OF SERVICE OF ICP NOTIFICATION

FOR CO # _____

Signature of Individual Served

Date Served

I certify that a copy of ICP notice was served upon _____.

Print Name of Server

Signature of Server

If not personally served, enter certified mail receipt number: _____.

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

Permit Number

As [Corporate Title] of the above-referenced corporate permittee, you are hereby notified that the corporation has been issued Cessation Order (CO) No. _____, a copy of which is attached. As indicated on the cessation order continuation page, the CO was issued because either a condition, practice, or violation is creating an imminent danger to the health and safety of the public or a condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

The Office of Surface Mining Reclamation and Enforcement (OSM), 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 (ICP) 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)]

You will be subject to assessment of an Individual Civil Penalty if you willfully and knowingly fail or refuse to take all reasonable steps within your authority to bring about abatement of the violation(s) contained in the cessation order within 30 days after the abatement date set forth in the cessation order.

This notice is being sent to you because, in your position as [Corporate Title] of the corporate permittee, OSM considers you to possess the legal authority to bring about abatement of the violation(s) described in this cessation order. For any violation cited in the cessation order that is not abated within the time prescribed above, you may submit, for OSM's consideration, written documentation that describes with specificity all reasonable steps you took in your corporate capacity to bring about abatement. Such documentation should be submitted to [enter assessment office and address], within 45 days after the abatement date set forth in the cessation order.

Unless OSM is made aware that you personally attempted to resolve the violation(s), it may conclude that you failed to act out of "plain indifference" to the legal requirements of the cessation order. OSM would then consider that factor in determining whether your failure or refusal to abate the violation(s) is willful and knowing, and hence subjects you to assessment of an Individual Civil Penalty.

Assessment of an Individual Civil Penalty does not affect OSM's authority to assess civil penalties or take other enforcement actions against the corporate permittee or other directors, officers, or agents as well.

This notice does not constitute an assessment, but rather advises you 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 notice of violation nor a cessation order under section 521 of SMCRA, 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. However, in the event that a Notice of Proposed Assessment for an Individual Civil Penalty is issued, you may then appeal under the provisions of 30 CFR 846.17, 30 CFR 846.18, and 43 CFR 4.1200 et seq.

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

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CERTIFICATION OF SERVICE OF ICP NOTIFICATION

FOR CO # _____

Signature of Individual Served

Date Served

I certify that a copy of ICP notice was served upon _____.

Print Name of Server

Signature of Server

If not personally served, enter certified mail receipt number: _____.