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FAX



United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
530 Gay St., S. W., Suite 501
Knoxville, Tennessee 37902

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To: Pam Grubaugh-Littig
Organization: Utah
Phone:
Telefax: 801 359 3940

Hall
From: Gail Johnson, ACO
Phone: 865 545 4103, ext. 151
Telefax: 865 545 4111

Date: February 11, 2004

Subject: ICP NOPA, and excerpts of procedures

Comments: Following are the documents discussed in my recent e-mail.

If you need further assistance, please  me.

Thank you and have a great day.

RECEIVED

FEB 11 2004

DIV. OF OIL, GAS & MINING

(3) The Field Assessment Unit shall consider the following criteria when determining the amount of an ICP:

(a) The individual's history of authorizing, ordering, or carrying out previous violations, failures, or refusals at the particular surface coal mining operation where the unabated Cessation Order has been issued. For every Cessation Order previously issued on

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that particular surface coal mining operation, the Field Assessment Unit will assess the individual ~~\$500~~ if the individual was, at the time of issuance of such order, in a position of authorizing, ordering, or carrying out such violation. Conversely, if no prior cessation Orders were identified that met this criterion, there would be no penalty amount assessment for history.

The maximum amount the Field Assessment Unit may assess an individual per day based on history is \$2,000 (the equivalent of four prior Cessation Orders).
 \$3,700 ?

1925
x 4
3700

(b) The seriousness of the violation, failure, or refusal, as indicated by the extent of damage and/or the cost of reclamation, including any irreparable harm to the environment and any hazard to the health or safety of the public. The Field Assessment Unit shall determine from information supplied in the Field Office documentation (i) the degree of environmental harm, public health hazard, or safety hazard caused by the violation and (ii) whether the damage caused by the violation was confined to or extended beyond the permit area. Based upon this information the Field Assessment Unit will assess the individual the following amounts:

<u>Environmental Harm</u>	<u>Assessment Range (Dollars)</u>
None	0
Insignificant	0 - 500
Moderate	501 - 1,000
Significant	1,001 - 1,500

<u>Extent of Damage</u>	<u>Assessment Range (Dollars)</u>
Confined within Permit Area	0 - 700
Extending Outside Permit Area	701 - 1,500

The maximum the Field Assessment Unit may assess an individual per day based on seriousness of the violation is \$3,000.

(c) The demonstrated good faith of the individual in attempting to achieve rapid compliance after receiving notice of the Cessation Order. In applying good faith, the Field Assessment Unit will apply the criteria governing good faith found at 30 CFR 845.13(b) (4), and in the Civil Penalty Assessment Manual Directive (GMA-1) (Enclosed)?

(d) The amount of the penalty determined under section 4.d.(3)(a)-(c) above will be assessed for each day the violation, failure, or refusal continues from the date of service on the individual of the Cessation Order or other order incorporated in a final decision, until abatement or compliance is achieved.

(e) The total ICP penalty amount shall not exceed the estimated cost of abatement plus a 10 percent incentive amount.

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

Restricted Mail Delivery Required

Name of Individual
Individual Title
Corporation Name
0000 Street Address
City, State, Zip

Re: Corporation Name, Corporate Permittee
Individual Civil Penalty No. N00-009-000-001
Permit No.:

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 against a director, officer, or agent of a corporate permittee which has violated a condition of its permit or has failed or refused to comply with a cessation order. As (title of individual) of corporation name, you were previously notified on (date)¹ that unless the corporation complied with N00-111-444-001, served May 00, 2004, and CO0-111-444-001, served June 00, 2004, which are attached to this notice, you could be liable for an individual civil penalty assessment. The violations cited in such Notice of Violation and Cessation Order have not been abated; and OSM has determined that, as a director, official, or agent of a corporation, you have willfully and knowingly authorized, ordered, or carried out a violation, failure, or refusal to comply. OSM therefore proposed the assessment of the individual civil penalty against you in the amount of \$000,000.00. In assessing the penalty OSM has applied the criteria specified in the Federal rules at 30 CFR Part 846, which are:

- (1) Your history (if any) in authorizing, ordering, or carrying out previous violation, failures, or refusals to comply at the particular surface coal mining operation:
- (2) The seriousness of the violation, failure, or refusal to comply (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and
- (3) Your demonstrated good faith (if any) in attempting to achieve rapid compliance after notice of the violation, failure, or refusal to comply.

¹Date Notice of Potential Individual Civil Penalty was served on the corporate individual

Under the Federal rules at 30 CFR 724.14(b) and 846.14(b), the amount of the proposed penalty shall not exceed \$5,500 for each violation. However, each day of a continuing violation may be deemed a separate violation, and OSM may assess a separate individual civil penalty for each day of the violation, failure, or refusal continues, from the date of service of the underlying notice of violation, cessation order, or other order incorporated in a final decision issued by the secretary, until abatement or compliance is achieved.

If you wish to abate the outstanding violation(s) listed in the enclosed notice of violation and cessation order or wish to execute in writing a plan for abatement of the outstanding violation(s), please contact Steven C. Barclay, Attorney-Advisor, Pittsburgh Field Office at (412) 937-4036. Abatement of the outstanding violations would enable OSM to withdraw the proposed individual civil penalty under the criteria listed in 30 CFR 724.18(c) and 846.18(c).

In accordance with 43 CFR, Part 4, Section 4.1300 you have the right to appeal this decision within 30 days from the date of receipt of this notice. You may appeal by filing a written notice of appeal with me and at the same time sending a copy of the notice to:

Office of Hearings and Appeals
801 North Quincy Street
Arlington, VA 22203

The notice of appeal must indicate that an appeal is intended and must identify the individual civil penalty number listed above and the date on which you received this letter. The notice may include a statement of reason for the appeal and any arguments that you choose to make. If the notice of appeal does not include a statement of reason for appeal, a statement must be filed with the Office of Hearings and Appeals within 30 days after filing the notice of appeal.

This proposed penalty will become final and payable within 30 days from the date you receive letter, unless within that time you file an appeal or enter into an abatement agreement as explained above. Payments should be made by check or money order payable to "Assessment Office - OSM" and sent to:

Office of Surface Mining
Reclamation and Enforcement
P. O. Box 360292M
Pittsburgh, Pennsylvania 15251

To assure proper credit of your payment, you must note on the check or money order the individual civil penalty number for which payment is being made.

Please read this letter carefully. If you have any questions, you may call a Civil Penalty Assessment representative at (865) 545-4103, extension 151.

Sincerely,

, Supervisor
Inspection Group

Enclosures

**INDIVIDUAL CIVIL PENALTY
EXPLANATION WORKSHEET**

Assessor _____

ICP No. N04-009-000-001

Date 00/00/2004

Index No. 0000.52

Permit No. 00000006

Corporate Official/Corporate Permittee _____ / _____

Cessation Order C00-121-444-001 / served June 00, 2002

Underlying NOV N00-121-444-001 / served May 00, 2002

ICP Notice Served June 00, 2004

History None

_____ = \$ - 0 -

Environmental Harm

Significant impacts to public health and safety has occurred. Several families' water supply was destroyed by mining and has not been restored by the permittee.

_____ = \$ 1,500.00

Extent of Damage

Damage extends outside the permit and several homes are affected by mining activities of permittee(name of corporation)

_____ = \$ 701.00

Total ICP Assessed for Each Day \$ 2,201.00

Daily ICP \$ 2,201.00 X 483 Day(s) Total ICP Penalty A \$ 1,063,083.00

(Service Date Through 10/08/2003)

Total Estimated Abatement Cost of \$ 131,864.00 Plus 10% B \$ 145,050.40

Final Total ICP Penalty Amount \$ 145,050.40
(Line B Unless Line A is smaller)

Total ICP Penalty shall not exceed the estimated cost of abatement plus a ten percent incentive amount.