



# United States Department of the Interior

## OFFICE OF SURFACE MINING

Reclamation and Enforcement  
1999 Broadway, Suite 3320  
Denver, Colorado 80202-5733

December 14, 1994

### NOTICE OF PROPOSED ASSESSMENT of an INDIVIDUAL CIVIL PENALTY under 30 U.S.C. 1268(f)

Darrel D. Auch  
Consolidation Coal Company  
1800 Washington Rd.  
Pittsburgh, PA 15241-1421

94-12

By Certified Mail, Restricted Delivery

Individual Civil Penalty No. N94-015-000-1

Operation/Permit: Burnham mine (NM) / NM-0005

OPTIONAL FORM 98 (7-90)

FAX TRANSMITTAL

		# of pages ▶ 6
To: Pam Grubbs - Liffy	From: Randy Fair - 0504	
Dept./Agency: UT DOG-M	Phone #: 303.844.1400 x 1446	
Fax #: 901-359-3910	Fax #: 303.844.1545	
NSN 7540-01-317-7388		5088-101
		GENERAL SERVICES ADMINISTRATION

Dear Sir:

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 Senior Vice President and/or Director of Consolidation Coal Co., you were previously notified on September 27, 1994, that, unless the corporation complied with Cessation Order C94-020-352-2 (served 9/21/94, a copy of which is attached to this notice), you could be liable for an individual civil penalty assessment.

The violations cited in this Cessation Order have not been abated; and OSM has determined that, as a director, officer, or agent of a corporation, you have willfully and knowingly authorized, ordered, or carried out a violation, failure, or refusal to comply. OSM therefore proposes an assessment of individual civil penalty against you in the amount of:

**\$198,900.00**

In assessing this penalty OSM has applied the criteria specified in the Federal regulations at 30 CFR Part 724, which are:

- (1) Your history (if any) of authorizing, ordering, or carrying

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DIV. OF OIL, GAS & MINING

out previous violations, failures, or refusals to comply at this 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 notification of the violation, failure, or refusal to comply.

Under the Federal regulations at 30 CFR 724.14(b), the amount of a proposed penalty shall not exceed \$5,000 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 the violation, failure, or refusal continues, from the date of service of the underlying Notice of Violation, Cessation Order, or other applicable order, until abatement or compliance is achieved.

If you wish to abate the outstanding violation(s) listed in the enclosed Notice of Violation or Cessation Order, or wish to execute in writing plan for the abatement of the outstanding violations, please contact me at (303) 672-5540. 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).

In accordance with 43 CFR 4.1300 et seq. [copy enclosed] you have the right to appeal this proposed assessment within 30 days from receipt of this notice. You may appeal by filing the materials required by those regulations with:

Office of Hearings and Appeals  
Hearings Division  
4015 Wilson Boulevard  
Arlington, VA 22203

This proposed penalty will become final and payable 30 days from the date you receive this letter, unless within that time you either file an appeal or enter into an abatement agreement as explained above.

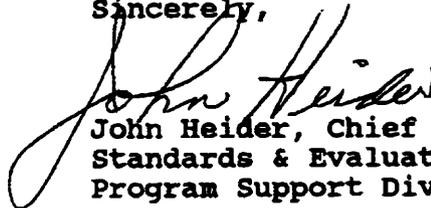
Payments should be made by check or money order payable to the "Office of Surface Mining" and sent to:

Office of Surface Mining  
P.O. Box 360292 M  
Pittsburg, PA 15251

To assure proper credit of your payment, please note on the check or money order the individual civil penalty number (at the top of this letter) for which payment is being made.

Please read this letter carefully. If you have any questions which are not answered by this letter or the regulations cited above, please contact me at 303-672-5540.

Sincerely,

A handwritten signature in cursive script that reads "John Heider". The signature is written in black ink and is positioned above the typed name and title.

John Heider, Chief  
Standards & Evaluation Branch  
Program Support Division

Enclosures

## ASSESSMENT WORKSHEET

Individual Civil Penalty # N94-015-000-1

Individual Name / Office:

Darrel D. Auch / Senior Vice President and/or DirectorFailure to abate violation(s) 1 of 1 in Cessation Order C94-020-352-2 (served 9/21/94)Date of service on individual of CO and Notice of Potential Liability for Individual Civil Penalty: 9/27/94

	Dollars (per day)
1. History of Previous Knowing & Willful Violations:	<u>\$ 0</u>
2. Seriousness	
(1) Environmental Harm:	<u>\$1500</u>
(2) Extent of Damage:	<u>\$1050</u>
TOTAL Seriousness:	<u>\$2550</u>
3. Good Faith:	<u>\$ 0</u>
TOTAL DAILY ASSESSMENT:	<u>\$ 2,550</u>

## ASSESSED PENALTY IS THE LESSER OF:

	<u>Days in Violation<sup>1</sup></u>		<u>Daily Penalty Amount</u>		<u>Proposed Assessment</u>
A.	<u>78</u>	x	<u>\$ 2,550</u>	=	<u>\$198,900</u>

OR:

B.	110% of Estimated Cost of abatement		
	<u>\$1.33 million</u> x 1.1	=	<u>\$1.46 million</u>

PROPOSED ASSESSMENT: \$ 198,900


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<sup>1</sup> Days from service of Notice of Potential Liability for Individual Civil Penalty to assessment of Individual Civil Penalty or to date of abatement (whichever is earlier).



## ASSESSMENT EXPLANATION

(2) **Extent of Damage:**\$1050

Loss of years of land productivity is limited to the permit area. Actual degradation of visual aesthetics, and potential for ground water degradation, surface water degradation, and deposition of excess fugitive dust, would all affect land off the permit area. These off-permit effects are initially small in extent, but the extent increases with time; so, due to the long time period in violation, the mid-point of the range (\$700-1500) is assigned.

**TOTAL Seriousness:**\$2550**Good Faith:**\$ NONE

Neither the corporation nor the individual has made any substantial efforts to abate the violation in a timely fashion.