



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

Subject Number:

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Date:

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Subject: Civil Penalty Assessments for Unabated Imminent Harm Cessation Orders

Approval: *[Signature]*

Title: Director

1. PURPOSE. This directive sets forth procedures for imposing daily civil penalty assessments for imminent harm and imminent danger cessation orders (hereafter IHCO) which remain unabated after the scheduled abatement date. This directive is applicable to all unabated IHCOs except where agency agreements require issuance of a Failure to Abate Cessation Order (FTACO) for an unabated IHCO violation.

2. SUMMARY OF CHANGES. This directive provides for unabated IHCOs to be assessed a penalty except in situations where the Office of Surface Mining Reclamation and Enforcement (OSMRE) is obligated to issue a FTACO, such as when required by a court order or settlement agreement.

3. DEFINITIONS. None.

4. POLICY/PROCEDURES.

a. BACKGROUND. In addition to any penalty imposed under Section 518(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Section 518(h) of SMCRA and section 30 CFR 845.15(b) of the Federal regulations require that whenever a violation has not been abated within the abatement period set in the notice or order, a civil penalty of not less than \$750 shall be assessed for each day during which such failure to abate continues beyond the abatement date for a maximum of thirty (30) days. This directive specifies that the assessment of a daily civil penalty applies to unabated IHCOs and ensures that the civil penalty assessment requirements and related procedures specified in paragraphs B.1.(c) and B.2.(c) of the Two Acre Settlement Agreement (SOCM v. Hodel, et al., C.A. No. 81-2238) will be met. For cases covered by the Two Acre Settlement Agreement in Kentucky, FTACOs will continue to be issued whenever an IHCO remains unabated beyond the abatement date and 518(h) civil penalties will be assessed on those FTACOs.

b. PROCEDURES. In order to accomplish the purpose of this directive the following procedures are established:

(1) Field Office Directors shall:

(a) ensure proper service of IHCOs. Where service is delayed, Field Office Directors shall ensure that the citation is modified to prescribe an appropriate abatement date. In cases where two or more persons are cited as the violator and service is not obtained on all of the persons cited, Field Office Directors should proceed with reinspections to allow assessment of the daily penalty on the persons served; as service is obtained on the remaining persons, Field Office Directors shall modify the citation to specify an abatement date for the party newly served;

(b) promptly conduct abatement inspections of IHCOS on the scheduled abatement date or when notified by the violator that the violation has been allegedly abated, whichever is earlier, and forward a copy of the inspection report findings to the appropriate Field Assessment Unit;

(c) promptly conduct subsequent reinspections of IHCOS when notified by the violator that the violation has been allegedly abated, or 30 days after the scheduled abatement date, whichever is earlier, and forward a copy of the inspection report findings to the Field Assessment Unit;

(d) initiate appropriate alternative enforcement action on IHCOS which remain unabated 30 days after the scheduled abatement date, in accordance with applicable directives; and

(e) promptly conduct additional reinspections of IHCOS when notified by the Field Assessment Unit that additional or updated information is necessary to complete assessments of outstanding IHCOS, and forward a copy of the inspection report findings to the Field Assessment Unit.

(2) Field Assessment Units shall:

(a) on receipt of an inspection report confirming that an IHCOS remains unabated after the abatement date, commence assessing a civil penalty of \$750 for each day the violation remains unabated. Such penalty shall not be assessed for more than 30 days for each violation. Penalty assessment shall begin on the first reinspection after the abatement date at which the violator's failure-to-abate is confirmed;

(b) on receipt of an inspection report that the IHCOS violation remains unabated 30 days after the abatement date, or such lesser time if abated, and determining that temporary relief has not been granted for the IHCOS by the Office of Hearings and Appeals or a Federal Court, issue the Notice of Proposed Assessment (NOPA);

(c) conduct an inventory of unabated IHCOS using data contained in the Collection Management Information System (CMIS) and ensure that all identified unabated IHCOS are properly assessed;

(d) follow the existing follow up procedures contained in the Civil Penalty Assessment Manual, Directive CAA-1, applicable to issuing final orders and case referrals to the Division of Debt Management for collection action; and

(e) assign daily civil penalty number which is similar to a citation number, and ensure that all IHCOS assessments are entered into CMIS for purposes of permit blocking by the Applicant Violator System.

5. REPORTING REQUIREMENTS. None.

6. EFFECT ON OTHER DOCUMENTS. None.

7. REFERENCES.

a. Directive CAA-1, Civil Penalty Assessment Manual, issued January 6, 1988.

b. Two Acre Settlement Agreement (SOCM v. Hodel, et al., C.A. No. 81-2238).

8. EFFECTIVE DATE. Upon issuance.

9. CONTACT. For further information on this directive, contact the Chief, Branch of Inspection and Enforcement at (202) 343-4550.

10. KEY WORDS. Imminent harm, Imminent danger, cassation order, civil penalty, assessments.

11. APPENDICES.

a. Appendix 1. NOTICE OF PROPOSED ASSESSMENT LETTER

b. Appendix 2. PAYMENT AND APPEAL INFORMATION

APPENDIX 1

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
530 GAY ST., S.W., SUITE 500
KNOXVILLE, TENNESSEE 37902

RE: NOTICE OF PROPOSED ASSESSMENT (NOPA)
DAILY CIVIL PENALTY NO.

PERMIT NO.

Dear :

Under the authority of the Surface Mining Control and Reclamation Act of 1977, Section 521(a)(2), you were issued Imminent Harm Cessation Order No. (IHCO No.), which required you to abate the violation(s), condition(s), or practice(s) cited therein by (abatement date).

An reinspection on (date), revealed that the requirements of the Imminent Harm Cessation Order had not been complied with for a (NTE 30) day period after the reinspection date. Therefore in accordance with 30 CFR Section 845.15(b)(2), the Office of Surface Mining Reclamation and Enforcement does hereby issue you a proposed assessment in the amount of (n days X \$750.00).

Carefully read the following information which contains information concerning the requirements for payment of civil penalty assessments. Information regarding the requirements for obtaining informal and formal review of the proposed penalty is also enclosed.

If you have questions regarding this matter, you may call a Civil Penalty Assessment representative at (615) 673-4506.

Sincerely,

_____, Chief
Branch of Enforcement

Enclosures

PAYMENT AND APPEAL INFORMATION

PAYMENT OF PENALTY

Unless you request an assessment conference or an administrative hearing in accordance with the instructions set forth below, the proposed civil penalty assessment will become a Final Order within 30 days of receipt of this letter. Payment must be received by the Office of Surface Mining Reclamation and Enforcement (OSMRE), Branch of Collections, within 30 days after the assessment becomes a Final Order or the debt will be considered delinquent and the following sequence of charges will be applied to your account:

- A. Interest calculated at the current Treasury rate will be assessed from the day when payment of the civil penalty was first due.
- B. Administrative costs will be incurred in the processing and handling of the delinquent debt, such as the cost of referring the account to a debt collection company.
- C. If any portion of the civil penalty remains unpaid 90 days after the assessment is first due, you will be subject to a 6 percent penalty per year upon the balance due calculated from the first day of delinquency. This penalty will accrue at the rate of one-half of one percent for each month that the balance remains unpaid.

Payment should be made by check or money order, payable to the Office of Surface Mining Reclamation and Enforcement and mailed to:

U.S. Department of Interior
Office of Surface Mining Reclamation and Enforcement
P.O. Box 360292 M
Pittsburgh, PA 15251

To assure proper credit for your payment, please note on your check or money order the citation number for which payment is being made. If payment of the civil penalty in a lump sum will result in severe financial hardship, please contact the Branch of Collections immediately at (202) 343-4031 to discuss installment terms.

REQUEST FOR INFORMAL CONFERENCE

If you wish a conference with a representative of Office of Surface Mining Reclamation and Enforcement to review the amount of this proposed assessment, you must submit a written request within 30 days after you receive this letter as provided at 30 CFR 723.18(a) or 30 CFR 845.18(a). (A copy of 30 C.F.R. Part 845 is enclosed for your convenience.) You may use the enclosed form to request a conference. Send your request to:
(insert as appropriate)

Beverly C. Brock, Chief
Branch of Enforcement
U.S. Department of the Interior
Office of Surface Mining Reclamation and Enforcement
Knoxville Field Office
530 Gay St., SW, Suite 400
Knoxville, Tennessee 37902

Floyd Johnson, Chief
Branch of Inspection and Enforcement
U.S. Department of the Interior
Office of Surface Mining Reclamation and Enforcement
Brooks Tower
1020 15th Street
Denver, Colorado 80202

REQUEST FOR FORMAL HEARING

If you wish a formal hearing before an Administrative Law Judge under Section 518 of SMCRA to contest the proposed penalty assessment or the fact of the violation you must file a Petition for Review together with payment for the full amount of the civil penalty assessed. Your payment will be deposited in an escrow account until there is a final decision on the amount, if any, that is due. Your escrow payment may be made by check or money order to the "Office of Surface Mining Reclamation and Enforcement." IN ORDER TO ASSURE PROPER CREDIT FOR YOUR PAYMENT, PLEASE WRITE ON THE FRONT OF THE CHECK OR DRAFT THE NUMBER OF THE NOTICE OF VIOLATION OR CESSATION ORDER AND THE PERTINENT VIOLATION(S). ATTACH THE DRAFT OR CHECK TO THE PETITION AND SEND TO:

Office of Hearings and Appeals
U.S. Department of Interior
4015 Wilson Boulevard
Arlington, Virginia 22203
(703) 235-3800

The dates for filing the Petition for Review are:

1. If you are not requesting an assessment conference, you have 30 days from receipt of this letter to file the Petition for Review.
2. If an assessment conference has been held, you have 15 days from receipt of the notice of the conclusion of the conference to file a Petition for Review.

The requirements for the contents of the Petition for Review are set forth at 43 CFR 4.1152. (A copy of the regulation is enclosed for your convenience.) If it is determined through administrative review of the proposed penalty that no violation occurred, or that the amount of the penalty should be reduced, OSMRE will refund the amount with appropriate interest. However, all refunds are subject to administrative offset for any other outstanding civil penalty debts and/or delinquent reclamation fees you may owe. Please be advised that failure to forward the amount of the proposed assessment along with the Petition for Review under Section 518 of SMCRA will result in a dismissal of your Petition. Since you are requesting a formal hearing, you may want to have an attorney assist you in the presentation of your case. However, you are entitled to represent yourself.