

(c) Notwithstanding paragraph (b) of this section, at his discretion, the Director may allocate funds for any other reclamation project which constitutes a danger to the environment or to the public health and safety.

[53 FR 16017, May 4, 1988, as amended at 54 FR 19342, May 4, 1989]

PART 846—INDIVIDUAL CIVIL PENALTIES

Sec.

846.1 Scope.

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846.18 Payment of penalty.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 53 FR 3675, Feb. 8, 1988, unless otherwise noted.

§ 846.1 Scope.

This part covers the assessment of individual civil penalties under section 518(f) of the Act.

§ 846.12 When an individual civil penalty may be assessed.

(a) Except as provided in paragraph (b) of this section, the Office may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

(b) The Office shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the Office to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

§ 846.14 Amount of individual civil penalty.

(a) In determining the amount of an individual civil penalty assessed under § 846.12, the Office shall consider the criteria specified in section 518(a) of the Act, including:

(1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the

particular surface coal mining operation;

(2) 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; and

(3) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(b) The penalty shall not exceed \$5,500 for each violation. Each day of a continuing violation may be deemed a separate violation and the Office 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 order incorporated in a final decision issued by the Secretary, until abatement or compliance is achieved.

[53 FR 3675, Feb. 8, 1988, as amended at 62 FR 63277, Nov. 28, 1997]

§ 846.17 Procedure for assessment of individual civil penalty.

(a) *Notice.* The Office shall serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

(b) *Final order and opportunity for review.* The notice of proposed individual civil penalty assessment shall become a final order of the Secretary 30 days after service upon the individual unless:

(1) The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203 (Phone: 703-235-3800), in accordance with 43 CFR 4.1300 *et seq.*; or

(2) The Office and the individual or responsible corporate permittee agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the

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abatement or correction of the violation, failure or refusal.

(c) *Service.* For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

[53 FR 3675, Feb. 8, 1988, as amended at 56 FR 28446, June 20, 1991; 67 FR 5204, Feb. 5, 2002]

§ 846.18 Payment of penalty.

(a) *No abatement or appeal.* If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

(b) *Appeal.* If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with 43 CFR 4.1300 *et seq.*, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

(c) *Abatement agreement.* Where the Office and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Office stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

(d) *Delinquent payment.* Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty shall be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6-8020.20. The Treasury current value of funds

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rate is published by the Fiscal Service in the notices section of the FEDERAL REGISTER. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties may result in one or more of the actions specified in §§870.15 (e)(1) through (e)(5) of this chapter. Delinquent penalties are subject to late payment penalties specified in §870.15(f) of this chapter and processing and handling charges specified in §870.15(g) of this chapter.

PART 847—ALTERNATIVE ENFORCEMENT

Sec.

- 847.1 Scope.
- 847.2 General provisions.
- 847.11 Criminal penalties.
- 847.16 Civil actions for relief.

AUTHORITY: 30 U.S.C. 1201 *et seq.*

SOURCE: 65 FR 79671, Dec. 19, 2000, unless otherwise noted.

§ 847.1 Scope.

This part governs the use of measures provided in sections 518(e), 518(g) and 521(c) of the Act for criminal penalties and civil actions to compel compliance with provisions of the Act.

§ 847.2 General provisions.

(a) Whenever a court of competent jurisdiction enters a judgment against or convicts a person under these provisions, we must update AVS to reflect the judgment or conviction.

(b) The existence of a performance bond or bond forfeiture cannot be used as the sole basis for determining that an alternative enforcement action is unwarranted.

(c) Each State regulatory program must include provisions for civil actions and criminal penalties that are no less stringent than those in this part and include the same or similar procedural requirements.

(d) Nothing in this part eliminates or limits any additional enforcement rights or procedures available under Federal or State law.

§ 847.11 Criminal penalties.

Under sections 518(e) and (g) of the Act, we, the regulatory authority, will request the Attorney General to pursue