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is not received by the Office within 30 days after the date of signing, the Office may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At formal review proceedings under sections 518, 521(a)(4), and 525 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

[47 FR 35640, Aug. 16, 1982, as amended at 53 FR 3675, Feb. 8, 1988; 56 FR 10063, Mar. 8, 1991]

§ 845.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under 30 CFR 843.16.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to the Office, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 30 CFR 845.20.

[47 FR 35640, Aug. 16, 1982, as amended at 56 FR 10063, Mar. 8, 1991]

§ 845.20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in § 845.19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to the Office in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this part, the Office shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Office within 15 days after the order is mailed to such person.

§ 845.21 Use of civil penalties for reclamation.

(a) To the extent authorized in the applicable annual appropriations act or other relevant statute, the Director of OSMRE may utilize money collected by the United States pursuant to the assessment of civil penalties under section 518 of the Act for reclamation of lands adversely affected by coal mining practices after August 3, 1977, until such funds are expended.

(b) The Director may allocate funds at his discretion for reclamation projects on lands within any State or on Federal lands or Indian lands based on the following priorities:

(1) Emergency projects as defined in § 870.5 of this chapter;

(2) Reclamation projects which qualify as priority 1 under section 403 of the Act;

(3) Reclamation Projects which qualify as priority 2 under section 403 of the Act; and

(4) Reclamation of Federal bond forfeiture sites.

(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.
846.12 When an individual civil penalty may be assessed.
846.14 Amount of individual civil penalty.
846.17 Procedure for assessment of individual civil penalty.
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