

**PART 846—INDIVIDUAL CIVIL
PENALTIES**

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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.

§ 846.5 Definitions.

For purposes of this part:

Knowingly means that an individual knew or had reason to know in authorizing, ordering or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure or refusal.

Violation, failure or refusal means—

(1) A violation of a condition of a permit issued pursuant to a Federal program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act; or

(2) A failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under section 518(b) or section 703 of the Act.

Willfully means that an individual acted

(1) Either intentionally, voluntarily or consciously, and

(2) With intentional disregard or plain indifference to legal requirements in authorizing, ordering or carrying out a corporate permittee's action or omission that constituted a violation, failure or refusal.

§ 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.

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