

(3) the authorized representatives of the regulatory authority, without advance notice and upon presentation of appropriate credentials (A) shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are located; and (B) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this chapter.

**(c) Inspection intervals**

The inspections by the regulatory authority shall (1) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit; (2) occur without prior notice to the permittee or his agents or employees except for necessary onsite meetings with the permittee; and (3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

**(d) Maintenance of sign**

Each permittee shall conspicuously maintain at the entrances to the surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operations.

**(e) Violations**

Each inspector, upon detection of each violation of any requirement of any State or Federal program or of this chapter, shall forthwith inform the operator in writing, and shall report in writing any such violation to the regulatory authority.

**(f) Availability of information to public**

Copies of any records, reports, inspection materials, or information obtained under this subchapter by the regulatory authority shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and State area of mining so that they are conveniently available to residents in the areas of mining.

**(g) Conflict of interest; penalty; publication of regulations; report to Congress**

No employee of the State regulatory authority performing any function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or by both. The Secretary shall (1) within sixty days after August 3, 1977, publish in the Federal Register, in accordance with section 553 of title 5, regulations to establish methods by which the provisions of this subsection will be monitored and enforced by the Secretary and such State regulatory authority, including appropriate provisions for the filing by such employees and the review of statements and sup-

plements thereto concerning any financial interest which may be affected by this subsection, and (2) report to the Congress as part of the Annual Report (section 1296 of this title) on actions taken and not taken during the preceding year under this subsection.

**(h) Review; procedures for inspections**

(1) Any person who is or may be adversely affected by a surface mining operation may notify the Secretary or any representative of the Secretary responsible for conducting the inspection, in writing, of any violation of this chapter which he has reason to believe exists at the surface mining site. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation. The Secretary shall furnish such persons requesting the review a written statement of the reasons for the Secretary's final disposition of the case.

(2) The Secretary shall also, by regulation, establish procedures to insure that adequate and complete inspections are made. Any such person may notify the Secretary of any failure to make such inspections, after which the Secretary shall determine whether adequate and complete inspections have been made. The Secretary shall furnish such persons a written statement of the reasons for the Secretary's determination that adequate and complete inspections have or have not been conducted.

(Pub. L. 95-87, title V, §517, Aug. 3, 1977, 91 Stat. 498.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (g) of this section relating to requirement to report to Congress on actions taken and not taken under subsec. (g), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 109 of House Document No. 103-7.

**§ 1268. Penalties**

**(a) Civil penalties for violations of permit conditions and provisions of this subchapter**

In the enforcement of a Federal program or Federal lands program, or during Federal enforcement pursuant to section 1252 of this title or during Federal enforcement of a State program pursuant to section 1271 of this title, any permittee who violates any permit condition or who violates any other provision of this subchapter, may be assessed a civil penalty by the Secretary, except that if such violation leads to the issuance of a cessation order under section 1271 of this title, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permit-

tee charged in attempting to achieve rapid compliance after notification of the violation.

**(b) Hearing**

A civil penalty shall be assessed by the Secretary only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing. Where such a public hearing has been held, the Secretary shall make findings of fact, and he shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Secretary shall consolidate such hearings with other proceedings under section 1271 of this title. Any hearing under this section shall be of record and shall be subject to section 554 of title 5. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Secretary after the Secretary has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

**(c) Notice of violation; action required of violator; waiver of legal rights**

Upon the issuance of a notice or order charging that a violation of this chapter has occurred, the Secretary shall inform the operator within thirty days of the proposed amount of said penalty. The person charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Secretary for placement in an escrow account. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the Secretary shall within thirty days remit the appropriate amount to the person, with interest at the rate of 6 percent, or at the prevailing Department of the Treasury rate, whichever is greater. Failure to forward the money to the Secretary within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

**(d) Civil action to recover civil penalties**

Civil penalties owed under this chapter, may be recovered in a civil action brought by the Attorney General at the request of the Secretary in any appropriate district court of the United States.

**(e) Willful violations**

Any person who willfully and knowingly violates a condition of a permit issued pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to section 1252 of this title or during Federal enforcement of a State program pursuant to section 1271 of this title or fails or refuses to comply with any order issued under section 1271 or section 1276 of this title, or any order incorporated in a final decision issued by the Secretary under this chapter, except an order incorporated in a decision issued under subsection (b) of this section or section

1294 of this title, shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.

**(f) Corporate violations**

Whenever a corporate permittee violates a condition of a permit issued pursuant to a Federal program, a Federal lands program or Federal enforcement pursuant to section 1252 of this title or Federal enforcement of a State program pursuant to section 1271 of this title or fails or refuses to comply with any order issued under section 1271 of this title, or any order incorporated in a final decision issued by the Secretary under this chapter except an order incorporated in a decision issued under subsection (b) of this section or section 1293 of this title, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section.

**(g) False statements, representations, or certifications**

Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to a Federal program or a Federal lands program or any order of decision issued by the Secretary under this chapter, shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.

**(h) Failure to correct violation**

Any operator who fails to correct a violation for which a citation has been issued under section 1271(a) of this title within the period permitted for its correction (which period shall not end until the entry of a final order by the Secretary, in the case of any review proceedings under section 1275 of this title initiated by the operator wherein the Secretary orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings under section 1276 of this title initiated by the operator wherein the court orders the suspension of the abatement requirements of the citation), shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation continues.

**(i) Effect on additional enforcement right or procedure available under State law**

As a condition of approval of any State program submitted pursuant to section 1253 of this title, the civil and criminal penalty provisions thereof shall, at a minimum, incorporate penalties no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to elimi-

nate any additional enforcement right or procedures which are available under State law to a State regulatory authority but which are not specifically enumerated herein.

(Pub. L. 95-87, title V, §518, Aug. 3, 1977, 91 Stat. 499.)

**§ 1269. Release of performance bonds or deposits**

**(a) Filing of request; submittal of copy of advertisement; notification by letter of intent to seek release**

The permittee may file a request with the regulatory authority for the release of all or part of a performance bond or deposit. Within thirty days after any application for bond or deposit release has been filed with the regulatory authority, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, and the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the operator's approved reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities, or water companies in the locality in which the surface coal mining and reclamation activities took place, notifying them of his intention to seek release from the bond.

**(b) Inspection and evaluation; notification of decision**

Upon receipt of the notification and request, the regulatory authority shall within thirty days conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of such pollution, and the estimated cost of abating such pollution. The regulatory authority shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond or deposit within sixty days from the filing of the request, if no public hearing is held pursuant to subsection (f), and if there has been a public hearing held pursuant to subsection (f), within thirty days thereafter.

**(c) Requirements for release**

The regulatory authority may release in whole or in part said bond or deposit if the authority is satisfied the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this chapter according to the following schedule:

(1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with his approved

reclamation plan, the release of 60 per centum of the bond or collateral for the applicable permit area.

(2) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the regulatory authority shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in section 1265 of this title of reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 1265(b)(10) of this title or until soil productivity for prime farm lands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 1257(b)(16) of this title. Where a silt dam is to be retained as a permanent impoundment pursuant to section 1265(b)(8) of this title, the portion of bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.

(3) When the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in section 1265 of this title: *Provided, however,* That no bond shall be fully released until all reclamation requirements of this chapter are fully met.

**(d) Notice of disapproval**

If the regulatory authority disapproves the application for release of the bond or portion thereof, the authority shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.

**(e) Notice to municipality**

When any application for total or partial bond release is filed with the regulatory authority, the regulatory authority shall notify the municipality in which a surface coal mining operation is located by certified mail at least thirty days prior to the release of all or a portion of the bond.

**(f) Objections to release; hearing**

Any person with a valid legal interest which might be adversely affected by release of the bond or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such oper-