

August 6, 2002

Memorandum

To: All Employees

From: Jeffrey Jarrett /S/
Director

Subject: Small Business Non-Retaliation Policy

Our mission demands that we deal on a regular and frequent basis with the business community. As public servants, we have a duty to treat everyone in a fair, honest, and responsible manner.

In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act (SBREFA). SBREFA requires that small business concerns that are subject to an audit, on-site inspection, or other enforcement activity by Office of Surface Mining (OSM) personnel are provided with a means to comment on that enforcement activity. The Small Business Administration (SBA) is the agency charged with enforcing that provision and protecting the rights of small businesses. SBA has established an Ombudsman and 10 Regional Fairness Boards to accept comments from small businesses regarding agency enforcement actions and regulatory requirements. To reassure small businesses that there will be no retaliation for their comments, the SBA has asked each Federal agency to develop a Non-Retaliation Policy and notify agency employees and the small businesses they work with of its existence.

I am sending you OSM's Non-Retaliation Policy for your information and guidance. As you know, OSM has always had an unwritten policy of non-retaliation, but we are now formalizing it in response to the SBA's request. We have been notifying small businesses of their right to comment to SBA since January 1998. As a testimony to the good work you are all doing, the SBA has never received a negative comment from a small business regarding our compliance or regulatory activities. Each of us must continue to act in a professional and fair manner, consistent with this policy, in dealing with small businesses in our daily activities.

Attachment

Office of Surface Mining

Non-retaliation Policy Pertaining to Industry Comments to the Small Business Administration and the Department of the Interior

- (a) Small businesses may comment to the Department or the Small Business Administration (SBA) without fear of retaliation regarding any audit, on site inspection, compliance assistance effort; or other enforcement related communication or contact by an Office of Surface Mining employee.
- (b) Any employee who interferes with the ability of a small business to comment under paragraph (a) is subject to disciplinary action. Disciplinary action may include suspension or termination from employment with the Department.
- (c) As used in this policy, "retaliation" means any action that:
 - (1) Is taken after an affected small business has made comments to the Department or SBA about inspection or enforcement activities;
 - (2) Is taken in an effort to reciprocate or get revenge as a result of comments made under paragraph (a); and
 - (3) Includes one or more of the following:
 - (i) Imposing a fine where none was imposed previously;
 - (ii) Increasing the amount of a previously imposed fine;
 - (iii) Changing standards for inspection or approval to make them more difficult to attain than they were previously; or
 - (iv) Any similar action that is designed to impose more rigorous compliance standards and that is not the result of a change in law or regulation.