

U.S. Department of Labor

Office of Inspector General—Office of Audit

**MINE SAFETY AND HEALTH
ADMINISTRATION**



MSHA NEEDS TO IMPROVE ITS CIVIL PENALTY COLLECTION PRACTICES

Date Issued: November 18, 2011
Report Number: 05-12-001-06-001

BRIEFLY...

Highlights of Report Number 05-12-001-06-001,
issued to the Assistant Secretary of Labor for Mine
Safety and Health.

WHY READ THE REPORT

The Federal Mine Safety and Health Act of 1977 requires Mine Safety and Health Administration (MSHA) personnel to inspect mines to determine compliance with prescribed health and safety standards. During calendar years 2009 and 2010, MSHA inspections resulted in the issuance of 174,354 and 172,035 violations, and it assessed monetary penalties of \$137.0 million and \$146.4 million, respectively.

The Civil Penalty Compliance Office within MSHA's Office of Assessments is responsible for collecting and accounting for delinquent penalties and referring delinquent penalties to the U.S. Department of Treasury. As of October 2010, for fiscal years 2001 through 2010, it had reported collecting 86 percent of the monetary penalties owed. In 2007, as part of its overall enforcement strategy, MSHA and the Solicitor of Labor began specific efforts to pursue violators that owed large amounts of delinquent civil penalties or ignored paying their civil penalties although they were financially capable of meeting their legal liabilities (i.e., scofflaws).

WHY OIG CONDUCTED THE AUDIT

We conducted this audit to determine whether MSHA properly collected and accounted for final civil penalties from violators. In addition, we obtained current information concerning a problem identified in 2008 related to violations for which civil penalties had not been assessed.

Our audit work covered MSHA's penalty collection activities and write-off of uncollectable debt during fiscal years (FY) 2009 and 2010. Additionally, we reviewed information provided by MSHA concerning its failure to assess civil penalties for several thousand violations issued between January 1995 and July 2006.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2012/05-12-001-06-001.pdf>

November 2011

MSHA NEEDS To IMPROVE ITS CIVIL PENALTY COLLECTION PRACTICES

WHAT OIG FOUND

The OIG found that MSHA did not have an accurate view of the amount and age of its uncollected civil penalties. As of October 2011, MSHA had collected and deposited \$124.8 million (85 percent) of \$147.1 million for civil penalties that became final orders in FYs 2009 and 2010. However, MSHA did not always (a) timely apply payments against outstanding debt of violators, and timely and consistently refer delinquent debt to Treasury; (b) identify potential scofflaw violators; and (c) ensure that penalties were uncollectable before writing off the debt.

In January 2008, MSHA reported that it had erroneously not assessed a civil penalty for more than 5,000 violations that it had issued between January 1995 and July 2006. MSHA primarily attributed the oversight to ineffective monitoring by management but also cited other contributing factors. MSHA could not assess a civil penalty for 97 percent of the violations because the 5-year statute of limitations had run out. MSHA reported it took corrective actions to ensure it timely assessed all penalties.

WHAT OIG RECOMMENDED

We recommended the Assistant Secretary for Mine Safety and Health require MSHA management to:

- Revise existing procedures to assure timely application of civil penalty payments, particularly when applying payments to the oldest debt if the violator does not identify how to apply the payment;
- Revise procedures to assure consistent referrals to Treasury;
- Finalize policies and procedures to identify all potential scofflaw violators; and
- Implement controls to assure appropriate and consistent write-off of uncollectable civil penalties.

The Assistant Secretary agreed with our recommendations and believed they would improve the Agency's civil penalty collection practices. However, he emphasized that some MSHA policies and procedures already exceed statutory requirements. While we agree that some MSHA policies and practices exceed statutory and government-wide requirements, to be effective, policies and procedures must be clearly defined and consistently implemented.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



November 18, 2011

Assistant Inspector General's Report

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The Federal Mine Safety and Health Act of 1977 (Mine Act) requires Mine Safety and Health Administration (MSHA) personnel to inspect mines to determine compliance with prescribed health and safety standards. Civil penalties are assessed for identified violations.¹ During calendar years (CY) 2009 and 2010, MSHA inspections resulted in the issuance of 174,354 and 172,035 violations, and assessed monetary penalties of \$137.0 million and \$146.4 million, respectively. As of October 2010, for fiscal years (FY) 2001 through 2010, MSHA had collected 86 percent of the monetary penalties owed.

The Civil Penalty Compliance Office (CPCO) within MSHA's Office of Assessments (OA) is responsible for (a) tracking civil penalty cases; (b) preparing contested cases for litigation; (c) processing and accounting for penalty payments; (d) collecting and accounting for delinquent penalties; and (e) referring delinquent penalties to the U.S. Department of Treasury (Treasury). In 2007, as part of its overall enforcement strategy, MSHA and the Solicitor of Labor (SOL) began specific efforts to pursue violators that owed large amounts of delinquent civil penalties or ignored paying their civil penalties although they were financially capable of meeting their legal liabilities (i.e., scofflaws). See Appendix A for more background information.

The Office of Inspector General (OIG) conducted a performance audit to determine whether MSHA properly collected and accounted for civil penalties from violators.² In addition, we obtained current information from MSHA concerning its January 2008 report that it had erroneously not assessed monetary penalties for several thousand violations issued in prior years.

Our audit work covered the penalty collection activities and write-off of uncollectable debt during FY 2009 and 2010. We reviewed and analyzed Standard Operating Procedures (SOP) and MSHA Standardized Information System (MSIS) business rules; interviewed key officials; reviewed case files; analyzed data; and reviewed and obtained

¹ Violation, as used in this report, refers to a citation or withdrawal order.

² Violator, as used in this report, refers to controllers, operators, or contractors.

an understanding of the Exclusion list (list of violators MSHA excluded from referral to Treasury for collection) and various other reports. We also reviewed information provided by MSHA officials concerning several thousand violations issued between January 1995 and July 2006 for which MSHA had not timely proposed civil penalties. Our objective, scope, methodology, and criteria are detailed in Appendix B.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS IN BRIEF

As of October 2011, \$124.8 million (85 percent) of the \$147.1 million for civil penalties that had become final orders³ in FYs 2009 and 2010 had been collected and deposited with the Treasury. However, MSHA did not always (a) timely apply payments against the outstanding debt of violators and timely and consistently refer delinquent debt to Treasury; (b) identify potential scofflaw violators; and (c) ensure that penalties were uncollectable before writing off the debt. In addition, MSHA reported that it had taken actions to correct problems that led to several thousand violations not being assessed a civil penalty between January 1995 and July 2006.

MSHA did not always apply all penalty payments against violator debts timely. Some payments went unapplied for several months or years. As of September 30, 2010, MSHA had a total of \$2.9 million in payments received from June 2003 through September 2010 that were not applied against debts owed by violators. This occurred because MSHA's policy is to match payments against specific violations. If payments did not include sufficient information to determine which penalty the payment was for, MSHA delayed payment application until it gathered the needed information. As a result, violator debt balances were not up-to-date and MSHA could not be certain of the delinquency status of individual violator debts.

To avoid erroneously identifying violator debts as delinquent and sending them to the Treasury for collection when payments had been received but not applied, MSHA automatically excluded selected violators from being referred (i.e., Exclusion List). As of September 30, 2010, MSHA had not referred more than \$8 million in potentially delinquent debt associated with 133 violators on the Exclusion List because of uncertainty caused by unapplied payments.

While MSHA's actions to pursue repeat, long term debtors as part of its overall enforcement effort were above the requirements of the Debt Collection Improvement

³ Civil penalties become final orders (a) 30 days after the violator receives the proposed penalty assessment or (b) if contested by the violator, 30 days after a decision by the Federal Mine Safety and Health Review Commission.

Act of 1996, its policies and procedures did not assure that all potential scofflaws were identified. MSHA did not identify all potential scofflaw violators because it did not finalize or follow its draft criteria. The audit sample contained three violators with poor payment histories and delinquent balances ranging from \$244,415 to \$327,739 which MSHA had not identified for legal action as potential scofflaw violators.

MSHA did not consistently ensure that civil penalties were uncollectable before writing them off. Contrary to its standard operating procedures, MSHA did not (a) document the reason why debt was written off (94 percent), (b) acquire proper supervisor (70 percent) or Deputy Director (17 percent) approval, (c) notify Treasury to issue a Cancellation of Debt, IRS form 1099-C (42 percent), (d) determine if violators were still in business before writing off uncollected debt (6 percent), and (e) prepare supporting worksheets (5 percent).

In January 2008, MSHA determined that it had erroneously not assessed a civil penalty for several thousand violations that had been issued between January 1995 and July 2006. MSHA primarily attributed the oversight to ineffective monitoring by management. Based on criteria established by U.S. Department of Labor's (DOL) SOL, MSHA subsequently determined that it could no longer assess a civil penalty for 97 percent of these violations, primarily because a 5-year statute of limitations had run out. For the remaining violations, MSHA reported proposed civil penalties totaling \$142,558. As of June 28, 2011, MSHA reported current assessments of \$101,544⁴ of which it had collected \$61,409. MSHA reported that it had taken corrective action by programming MSIS to mark violations as "assessment ready" no later than 182 days after issuance and regularly providing managers with a monitoring report that identifies and ages all violations not yet assessed.

MSHA RESPONSE

In response to the draft report (Report No. 05-11-003-06-001⁵), the Assistant Secretary stated that the report contains sound recommendations for improving the agency's civil penalty collection practices. However, he believed that additional or updated information was needed to understand some of the findings and recommendations in a proper context. He pointed out that the report does not cite any instance in which penalty payments received from mine operators were missing or not deposited with the Treasury. He also emphasized that several MSHA policies or procedures that the OIG cites for improvement already exceed what is required by federal law or debt collection requirements (e.g., scofflaw efforts, debt write-off restrictions).

The Assistant Secretary disagrees that MSHA's debt delinquency information is "unreliable;" and states that the Exclusion List has resulted in a significant savings in time and administrative costs for Treasury, MSHA and mine operators. MSHA also

⁴ The difference between Proposed Assessments and Current Assessments result from the judicial appeal process.

⁵ OIG changed the report number because we issued the final report during FY 2012.

disagrees that scofflaw mine operators have been able to ignore civil penalty obligations without consequence.

Finally, he stated that the citations for which MSHA did not propose civil penalties between 1995 and 2006 occurred outside of the period examined in this audit (2009-2010) and that the OIG did not find any unassessed penalties during the period of our review.

The Assistant Secretary's entire response is contained in Appendix D.

OIG CONCLUSION

We agree that penalty payments submitted by mine operators are automatically and timely deposited with the Treasury. However, accounting for payments involves more than assuring that the money gets to the bank. It must include reducing the related account receivable by applying the payment against the related debt. We also agree that some MSHA policies and practices exceed statutory and government-wide requirements for debt collection. However, to be effective, policies and procedures must be clearly defined and consistently implemented.

We continue to view MSHA's debt delinquency information as unreliable. MSHA acknowledged that it implemented the Exclusion List to avoid erroneously referring debt to Treasury that appeared delinquent, but was not. Thus, MSHA was not able to rely on its own information to make accurate debt referral decisions. While the Exclusion List may have saved time and effort by not incorrectly referring debt that was not delinquent, it is also possible (and inappropriate) that the Exclusion List prevented the referral of debt that was delinquent. We agree that a scofflaw mine operator's failure to pay civil penalties does result in specific actions (i.e., consequences) such as demand letters, referral to credit bureaus and collections agencies, and possible litigation by the Department of Justice. Therefore, we revised the report to clarify that some mine operators were able to avoid the enhanced enforcement actions of MSHA's scofflaw initiative (p. 7).

Finally, the time period related to the previously reported problem regarding violations without a proposed civil penalty is clearly stated in the report. Since this issue received considerable attention when it was first reported by MSHA and the topic was closely related to assessment collection, we thought it was appropriate to provide updated information on the resolution of the problem. We have added a sentence to state that a recent MSHA management report shows no violations older than 180 days without a proposed assessment (p. 10).

RESULTS AND FINDINGS

Objective — Did MSHA properly collect and account for final civil penalties from violators?

MSHA did not have an accurate view of the amount and age of its uncollected civil penalties.

As of October 2010, \$83.1 million (80 percent) of the \$104.4 million for civil penalties that had become final orders in FYs 2009 and 2010 had been collected and deposited with the Treasury. However, MSHA did not always (a) timely apply payments against the outstanding debt of violators and timely and consistently refer delinquent debt to Treasury; (b) identify potential scofflaw violators; and (c) ensure that penalties were uncollectable before writing off the debt.

Finding 1 — MSHA Did Not Always Apply Penalty Payments Timely

MSHA did not always timely apply penalty payments against violator debts. MSHA’s SOPs stated that penalty payments should be applied within three business days of receipt. However, MSHA’s policy of matching individual payments against specific violations and/or penalty case(s) sometimes resulted in delays in applying a payment. This caused MSHA’s uncollected civil penalty debt balances to be overstated by \$2.9 million of unapplied payments. As a result, MSHA was not certain of the delinquency status when identifying individual violator debts for possible referral to the Treasury for collection.

When submitting a penalty payment, if a violator provided instructions that it be applied against a specific violation case(s), MSHA complied. However, if no instructions were provided, MSHA personnel completed several steps to try to match the payment amount against specific violation case(s). These steps sometimes included researching all outstanding civil penalty cases for that violator and contacting the violator for additional information. Ultimately, if these efforts were unsuccessful, MSHA’s policy was to apply the payment to the oldest outstanding violation case(s).

Violators had submitted 259 payments, totaling \$1,443,719, related to our audit sample of 269 civil penalties. MSHA did not apply 56 of the 259 payments (21.6 percent), totaling \$348,976, within its stated 3 business day policy. The actual time to apply the payments for these 56 cases ranged from 4 to 777 business days.

Actual time to Apply Payment	# of Cases	Total \$ Amount
4 to 24 business days	31	\$259,720
25 to 99 business days	12	\$75,744
100 to 299 business days	9	\$6,669
More than 300 business days	4	\$6,843
Total	56	\$348,976

From June 2003 through September 2010, MSHA received payments totaling approximately \$286 million. However, as of September 30, 2010, it had accumulated unapplied penalty payments of \$2.9 million for this period. These unapplied penalty payments resulted in violators’ unpaid debt balances being overstated. Therefore, debts appeared to be delinquent, when they were not. This had resulted in MSHA incorrectly referring debts to the Treasury for collection activity. To avoid these referral errors and the resulting disputes with violators, MSHA inappropriately excluded selected violators from referral to Treasury.

Normally, when payment of a specific penalty became delinquent by more than 150 days,⁶ MSHA would refer it for Treasury collection efforts. However, in February 2008, MSHA created the Exclusion List.⁷ To avoid incorrectly referring penalties to Treasury caused by possible unapplied payments, MSHA exempted violators it placed on this list from referral to Treasury even if their penalties appeared to be delinquent by more than 150 days. According to MSHA officials, violators on the Exclusion List were those that “routinely paid their civil penalties timely.” Therefore, MSHA presumed that delinquent balances were the result of unapplied payments. However, since delays in applying payments made MSHA’s debt delinquency information unreliable, MSHA could not know whether these violators had penalties that should be referred to Treasury.

Although the accuracy of the information is uncertain, MSHA’s Debt by Age report as of September 2010 included penalty cases totaling more than \$8 million associated with 133 violators on the Exclusion List that appeared to be more than 180 days delinquent.

Delinquency of Debt	Amount
181 - 365 days	\$1,263,656
1 - 2 years	\$4,156,263
2 - 6 years	\$2,627,435
6 - 10 years	\$40,289
Total	\$8,087,643

MSHA’s use of the Exclusion List did nothing to address its problem of not applying payments timely. Instead, it created inconsistent and unfair practices by treating selected violators differently from other violators.

Finding 2 — MSHA Did Not Identify All Potential Scofflaw Mine Violators

MSHA’s pursuit of repeat, long term debtors as part of its overall enforcement effort did not identify all potential scofflaw violators. This occurred because MSHA had not finalized policies and procedures to categorize violators as potential scofflaws. As a

⁶ Although the Debt Collection Improvement Act requires non-tax debt that is more than 180 days delinquent to be referred to Treasury, MSHA used a standard of 150 days.

⁷ At the time of our audit, the Exclusion List contained 325 violators.

result, some violators were able to ignore their civil penalty obligations without being subject to MSHA's scofflaw actions.

In February 2006, MSHA filed an unprecedented lawsuit in U.S. District Court seeking an injunction against a mine company and its controlling owner who had chronically failed to pay assessed civil penalties. Since that time MSHA has occasionally, but irregularly initiated various actions against scofflaw violators. For example, in August 2008, MSHA informed three mine operators that failure to pay their delinquent civil penalties could result in the issuance of mine closure orders under Section 104(a) of the Mine Act. The three mines subsequently paid a total of more than \$225,000 in overdue fines. Similarly, in March 2008, MSHA issued a withdrawal order to a mine operator for failure to pay civil penalties. The mine has been shut down since that time. During FYs 2009 and 2010, MSHA and SOL pursued 24 scofflaw violators that owed a total of \$5,616,611 in delinquent civil penalties. MSHA collected over \$1.2 million (23 percent) from 10 of the 24 scofflaw violators.

While MSHA's actions to pursue scofflaw violators went above the requirements of the Debt Collection Improvement Act of 1996, its policies and procedures did not assure that all potential scofflaws were identified. In January, 2008, MSHA and the SOL developed draft procedures for identifying scofflaw violators. These draft procedures were revised in May, 2009, but to date have not been finalized or implemented. As a result, MSHA had identified only a limited number of potential scofflaw violators. The basis for selecting these violators was not clear or documented.

Using MSHA's draft criteria, we identified five scofflaw violators based on our audit sample of 269 civil penalties for FYs 2009 and 2010. MSHA had not identified three of these five as potential scofflaws or referred them to SOL for possible action. As of September 30, 2010, these three violators owed civil penalty balances of \$244,415, \$275,937, and \$327,739 respectively.⁸ Without clearly defined policies and procedures to identify all potential scofflaw violators, violators may continue to operate while ignoring the financial consequences and the deterrent that civil penalties are intended to provide.

Finding 3 — MSHA Did Not Consistently Ensure Penalties Were Uncollectable Before Write Off

MSHA did not consistently ensure civil penalties were uncollectable before stopping collection efforts and writing them off. This occurred because poor management oversight did not assure that CPCO personnel followed existing SOPs. As a result, MSHA may have written off civil penalties for violators that still had an ability to pay their debt.

⁸ Subsequent to our audit fieldwork, MSHA reported that it was recommending legal action against two of these violators.

MSHA's SOP required the justification and supervisory⁹ approval be documented on the Uncollectible Worksheet for every debt written off and that a notice be sent to Treasury to issue a Cancellation of Debt (IRS Form 1099-C) for every debt over \$600. MSHA's policy also stated that debt should not be written off if the violator was still in business and actively producing. A review of a sample of 150 violators for whom MSHA wrote off 406 cases in 155 separate write offs during FYs 2009 and 2010 disclosed that every case file contained one or more instances of non-compliance with MSHA's SOPs as summarized below:

Non Compliant Debt Write-offs						
Type of Non-Compliance	2009		2010		Total	
	# of Write Offs	% of Write Offs Reviewed	# of Write Offs	% of Write Offs Reviewed	# of Write Offs	% of Write Offs Reviewed
No Justification Documented For Debt Write-off	125	98	20	71	145	94
No 1 st Line Supervisory Approval	108	85	1	4	109	70
No Notice to IRS to Issue 1099-C Form (Over \$600)	62	49	3	11	65	42
No Deputy Director Approval (Over \$5,000)	26	20	0	0	26	17
Violators Were Still In Business ¹⁰	9	7	0	0	9	6
No Uncollectable Worksheet	4	3	3	11	7	5

MSHA officials attributed the failure to consistently follow its SOPs to a lack of management oversight. MSHA identified this problem in March 2010 and took action to address the problem. While the error rates in the preceding table do improve in FY 2010, problems still occurred. As a result, MSHA lacked assurance that it wrote off only debt that was truly uncollectable and that appropriate tax liabilities were recorded for forgiven debt.

In addition, an MSHA official stated that it did not place a high priority on writing off debts in FY 2010. As a result, MSHA only wrote off debts totaling \$350,441 in FY 2010 compared to \$1,609,125 in FY2009.

⁹ MSHA's debt write-off SOPs complied with legal debt write-off requirements.

¹⁰ As of May 18, 2011.

Other Matters

MSHA reported it took corrective actions to ensure it assessed all penalties

In January 2008, MSHA reported that it had erroneously not assessed a civil penalty for more than 5,000 violations that it had issued between January 1995 and July 2006. MSHA primarily attributed the oversight to ineffective monitoring by management, but also cited the following contributory issues:

- District personnel not clearly understanding the process or MSHA's policy, and lacking training; and
- A heavier workload generated by an increasing number of citations and orders, conferences, and contested cases

In essence, under the system in place at that time, individual violations were not assessed a civil penalty until MSHA personnel made an entry into MSIS to mark each violation as "assessment ready." If managers did not routinely review the system for violations that had not received this designation, they could, and did, go un-assessed for months or years.

Based on criteria established by SOL, MSHA subsequently determined that it could no longer assess a civil penalty for 97 percent of these violations, primarily because a 5-year statute of limitations had run out. Other criteria provided by the SOL and used by MSHA in determining whether a penalty could be assessed included:

- Availability of the inspector that issued the citation and the supporting inspection notes and other documents;
- Perceived negative impact on the violator's ability to defend themselves due to the passage of time; and
- Seriousness of the violation.

The following table summarizes the status of assessments for these violations based on data provided by MSHA on June 28, 2011.

Summary of Unassessed Violations

	1995 – 1999	2000	2001	2002	2003	2004	2005	2006	Total
# of un-assessed violations per MSHA ⁽¹⁾	836	506	473	469	807	1045	684	271	5,091
- # of violations included in error ⁽²⁾	0	6	42	62	8	0	0	0	118
Corrected # of un-assessed violations	836	500	431	407	799	1,045	684	271	4,973
Violations closed without assessment	836	500	431	407	793	1,015	637	220	4,839
Violations assessed	0	0	0	0	6	30	47	51	134
Proposed assessments	---	---	---	---	\$36,258	\$12,287	\$28,615	\$65,398	\$142,558
Current assessment ⁽³⁾	---	---	---	---	\$17,198	\$10,258	\$23,382	\$50,706	\$101,544
Amount collected	---	---	---	---	\$16,674	\$9,712	\$13,708	\$21,315	\$61,409

Notes:

- (1) The data in this table was compiled from a detailed inventory of un-assessed violations provided by MSHA. The un-assessed Violations reported by MSHA in its February 5, 2008 News Release for 2002 and 2005 were 470 and 685, respectively. A reason for the variance of 1 violation in each of these years could not be determined.
- (2) Detail data provided by MSHA showed that assessments for these violations had a "Billing Date" prior to February 2008; therefore, they should not have been included in MSHA's total of un-assessed violations.
- (3) Current assessments reflect reductions in the Proposed assessment resulting from the judicial appeal process.

MSHA reported that it took corrective action in 2008 by (a) programming MSIS to mark violations as "assessment ready" no later than 182 days after issuance; (b) providing managers with a weekly monitoring report that identifies and ages all violations not yet assessed; (c) implementing new policies and procedures; and (d) providing related training. As of June 28, 2011, MSHA's *Unassessed Violation Summary Report* did not contain violations older than 6 months (180 days) which MSHA had not already identified as "assessment ready."

RECOMMENDATIONS

We recommend that the Assistant Secretary for the Mine Safety and Health Administration require MSHA management to:

1. Revise existing procedures to assure timely application of civil penalty payments, particularly when applying payments to the oldest debt if the violator does not identify how to apply the payment;
2. Revise procedures to assure consistent referrals to Treasury;
3. Finalize policies and procedures to identify all potential scofflaw violators; and
4. Implement controls to assure appropriate and consistent write-off of uncollectable civil penalties.

We appreciate the cooperation and courtesies that MSHA personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix E.



Elliot P. Lewis
Assistant Inspector General for Audit

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Appendices

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Appendix A**Background**

The DOL MSHA's authority is derived from the Mine Act, as amended by the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). The Mine Act requires MSHA personnel to inspect mines to determine compliance with prescribed health and safety standards. If violations were found, inspectors issue citations/orders to the violators. MSHA may assess a civil penalty associated with each violation at a level that will encourage compliance and promote safe and healthy workplaces for miners. During CY 2009 and 2010, MSHA inspections resulted in the issuance of 174,354 and 172,035 citations/orders, and assessed civil penalties of \$137.0 million and \$146.4 million, respectively.

Congress passed the Debt Collection Improvement Act of 1996 (DCIA) in response to a steady increase in the amount of delinquent non-tax debt owed to the government, and concern that appropriate actions were not being taken to collect this delinquent debt. This law centralized the government wide collection of delinquent debt and gave the Treasury significant new responsibilities in this area. Moreover, Federal agencies are required to refer eligible delinquent (over 180 days) non-tax debts to Treasury for debt collection action, if they have not been successful at collecting those debts. The Financial Management Service within Treasury is responsible for the implementation of the debt collection provisions of the DCIA.

The OA administers the civil penalty provisions of the Mine Act. OA's CPCO was responsible for (a) tracking civil penalty cases; (b) preparing contested cases for litigation; (c) processing and accounting for penalty payments; (d) collecting and accounting for delinquent penalties; and (e) referring delinquent penalties to the Treasury.

In 2007, MSHA began actions to pursue repeat, long term debtors as part of its overall enforcement effort. These actions included pursuing violators that owed large amounts of delinquent civil penalties or ignored paying their civil penalties altogether although they were financially capable of meeting these legal obligations. OA worked with SOL to identify scofflaw violators, determine appropriate action, and attempt to collect delinquent civil penalties. During FYs 2009 and 2010, MSHA and SOL pursued 24 scofflaw violators that owed a total of \$5,616,611 in delinquent civil penalties. MSHA collected over \$1.2 million (23 percent) from 10 of the 24 scofflaw violators.

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Appendix B**Objective, Scope, Methodology, and Criteria**

Objective

The OIG conducted a performance audit to determine whether MSHA properly collected and accounted for final civil penalties from violators.

In addition, the OIG obtained current information from MSHA concerning a problem MSHA identified in 2008 concerning violations for which civil penalties had not been assessed.

Scope

The OIG audited MSHA's penalty collection activities and write-off of uncollectable debt during FYs 2009 and 2010. In addition, we reviewed information provided by MSHA officials concerning MSHA's failure to assess civil penalties for more than 5,000 violations issued between January 1995 and July 2006. We performed audit work at MSHA's National Office in Arlington, Virginia and MSHA's Data Center in Denver, Colorado.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Methodology

Our audit work covered MSHA's penalty collection activities and referral of penalties to Treasury for collection, scofflaw enforcement strategy, and write-off of uncollectable penalties from October 1, 2008 through September 30, 2010 (FYs 2009 and 2010). In addition, we obtained current information from MSHA concerning its January 2008 report that it had erroneously not assessed civil penalties for several thousand violations issued between January 1995 and July 2006.

To gain an understanding of MSHA's civil penalty collection, scofflaw enforcement strategy, and debt write-off processes, we reviewed MSHA's SOPs and determined if they complied with federal laws and regulations, reviewed applicable MSIS business rules; interviewed key OA and CPCO officials, and the Deputy Associate Solicitor for MSHA; flowcharted the key processes and identified decision points; and reviewed written responses to questions we provided to MSHA officials.

To determine if MSHA properly performed collection activities, we analyzed data; reviewed and obtained an understanding of MSHA's Top 20 List¹¹, Exclusion List and various reports; interviewed officials; and obtained written responses to questions we provided. Specifically, using data obtained from MSIS, we reviewed a statistical sample¹² of 143 Coal civil penalties totaling \$1,253,982 from a population of 174,224 Coal civil penalties totaling \$99,700,072 and a sample of 126 Metal Non-Metal civil penalties totaling \$1,001,234 from a population of 124,366 civil penalties totaling \$47,632,608 that became final and collectible during FY 2009 and FY 2010. For each final civil penalty we calculated the number of days of delinquency and based on a penalty's delinquency we determined whether collection activities were performed by MSIS and/or the MSHA employees. We also:

- obtained an understanding of a list of unapplied payments from violators or third parties as of September 30, 2010;
- compared the Top 20 List to debt aging data as of September 30, 2010, to determine whether the list was current and if violators had paid assessed penalties timely;
- compared the Exclusion List to the debt aging data as of September 30, 2010, to determine whether the violators had paid assessed penalties timely; and
- compared the Top 20 List to the Exclusion List to determine if the lists were the same.

To determine if MSHA properly pursued collection of assessed civil penalties from scofflaw violators as part of its enforcement strategy, we:

- interviewed MSHA and SOL officials;
- obtained written responses to questions we provided to MSHA officials;
- reviewed a list of scofflaw violators MSHA and SOL identified; and
- reviewed proposed assessment documentation for potential scofflaw violators.

In addition, we used the data obtained for the collection activities sample (described above) to identify potential scofflaw violators that were delinquent and demonstrated a history of poor civil penalty payments and compared the violators we identified to the MSHA and SOL list of scofflaw violators to determine if MSHA had identified all scofflaw violators.

To determine if MSHA properly wrote off uncollectable civil penalties, we interviewed MSHA and Treasury officials, and reviewed case files. Specifically, we reviewed a statistical sample¹³ of 120 violators with uncollected civil penalties totaling \$524,659

¹¹ MSHA assigned the violators on the Top 20 List to specific Civil Penalty Compliance Specialists who were responsible for monitoring payments, resolving issues and ensuring payment of delinquent penalties.

¹² We were unable to project the amount of payments MSHA applied late because violators made multiple payments for the same case.

¹³ We were unable to project the number of debt write-offs MSHA made that were not in compliance with its policy because MSHA wrote off debts more than once for the same violator.

from a universe of 791 violators totaling \$1,609,125 for FY 2009 and 30 violators with uncollected civil penalties totaling \$21,576 from a universe of 50 violators with uncollected civil penalties totaling \$350,441 for FY 2010. We determined if MSHA followed its policies and procedures when writing off uncollectable civil penalties. We also reviewed internet records contained on various Secretary of State web sites to determine whether MSHA wrote off civil penalties for violators still in business and analyzed the Debt by Age report as of September 30, 2010.

To determine if MSHA had taken corrective action to correct a problem it identified in 2008 with assessing civil penalties timely for all citations between January 1995 and July 2006, we reviewed emails, memorandums, MSIS business rules, and Excel workbooks. We also reviewed criteria the SOL provided to MSHA for deciding which violations could be assessed a civil penalty. In addition, we reviewed a listing of the 133 that were ultimately assessed from MSHA's identified violations, the assessed amount, the final order amount, and the amount paid.

Reliability Assessment

To determine the reliability of MSHA collection activity data, we used an approach consistent with the Government Accountability Office's *Assessing the Data Reliability of Computer-Processed Data* (GAO-09-680G, July 2009, External Version I). MSHA provided data for our testing consisting of 312,251 records for civil penalties that became final and collectable during FY 2009 and FY 2010, 22,424 records for civil penalties written off during FY 2009 and FY 2010, and 308,336 records for check deposited during FY 2009 and FY 2010.

To determine the reliability of the data, we (a) examined and tested MSHA's controls over the collection and processing of critical data elements, (b) tested key data elements for anomalies (e.g., values out of normal range, blank values, inappropriate relationships, etc.), and (c) traced statistical samples of records back to source documents.

Specifically, we randomly sampled 60 of 58,027 checks to determine if MSHA entered payment information correctly. Based on our assessment and tests, we concluded the data on check payments were sufficiently reliable to be used in meeting our objectives.

We also randomly sampled 30 of 19,782 U.S. Postal Service Certified Return Receipts (CRR) to determine if MSHA and the Assessment Office entered dates of operator penalty notifications correctly in the MSIS. Until May 2008, MSHA entered dates of operator penalty notifications in the MSIS. At that time, MSHA switched the responsibility to the Assessment Center in Wilkes-Barre, Pennsylvania, to improve the timeliness and accuracy of the data entered. Our sample of 30 CRRs included 14 entered by CPCO and 16 entered by the Assessment Center. All those entered by the Assessment Center were accurate. However, of the 14 entered by CPCO, 7 were incorrect and CPCO could not locate six CRR documents.

The inaccurate dates CPCO entered caused the MSIS to inaccurately calculate the final order date and the delinquent date fields for uncontested civil penalties. Both the MSIS and CPCO personnel relied on these dates to determine when to perform collection activities. Since CPCO relied on these dates, even though they were inaccurate, we determined the data was sufficiently reliable to meet our objective of determining if the MSIS and CPCO personnel performed collection activities timely.

Since MSHA recognized the problem and shifted the responsibility to the Assessment Center and our data assessment and testing detected no input errors, we did not recommend any further action to correct the data entry problems.

Internal Control

In planning and performing our audit, we considered the OA's internal control that was relevant to our audit objective by obtaining an understanding of that control, and assessing control risk for the purpose of achieving our objective. The objective of our audit was not to provide assurance of the internal controls; therefore, we did not express an opinion on the OA's internal control. Our consideration of internal control relevant to our audit objective would not necessarily disclose all matters that might be significant deficiencies. Because of the inherent limitations on internal control, noncompliance may nevertheless occur and not be detected.

Criteria

Federal Mine Safety and Health Act of 1977, as amended

Miner Improvement and New Emergency Response Act of 2006

Debt Collection Improvement Act of 1996

4 Code of Federal Regulations (CFR) Parts 101 through 105

29 CFR - Part 20

31 CFR Parts 285 & 900 through 904

OMB Circular A-129

U.S. Department of Labor Manual Series 6 – Financial Management

Appendix C

Acronyms and Abbreviations

CFR	Code of Federal Regulations
CPCO	Civil Penalty Compliance Office
CRR	Certified Return Receipts
CY	Calendar Year
DCIA	Debt Collection Improvement Act of 1996
DOL	U.S. Department of Labor
FY	Fiscal Year
Mine Act	Federal Mine Safety and Health Act of 1977
MINER Act	Mine Improvement and New Emergency Response Act of 2006
MSHA	Mine Safety and Health Administration
MSIS	MSHA Standardized Information System
OA	Office of Assessments
OIG	Office of Inspector General
SOL	Solicitor of Labor
SOP	Standard Operating Procedures
Treasury	U.S. Department of Treasury

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MSHA's Response to Draft Report

U.S. Department of Labor

Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, Virginia 22209-3939



OCT 17 2011

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: JOSEPH A. MAIN 
Assistant Secretary of Labor for
Mine Safety and Health

SUBJECT: Response to OIG Draft Audit Report No. 05-11-003-06-001

Thank you for the opportunity to review your draft audit report. The Mine Safety and Health Administration (MSHA) believes that the report contains sound recommendations for improving the Agency's civil penalty collection practices. However, I am providing additional information so that some of the audit findings and recommendations can be put in proper context. I also want to report on some relevant activities that occurred after the FY 2009-2010 period that was the subject of the OIG review.

The OIG stated that the objective of the audit was to determine if MSHA properly collected and accounted for final civil penalties. Although the OIG found that MSHA does not always apply penalty payments timely, I note that the audit report cites no instances where MSHA could not account for final civil penalties assessed or payments received. At the entrance conference for this audit, MSHA requested that, as a part of its review, OIG provide information on the effectiveness of the Agency's civil penalty collections compared to other federal collection efforts. The OIG report states that as of October 2010, 80 percent of the \$104.4 million of civil penalties that had become final orders in FYs 2009 and 2010 had been paid. The collections have increased since that time. As of October 6, 2011, there was a total of \$147.1M in final civil penalties for those two fiscal years, and \$124.8M (85 percent) had been paid. The OIG review team informed me they were unable to obtain statistics for other federal agencies, but I believe this is necessary in order to gauge the relative effectiveness of MSHA's civil penalty collection practices.

The report contains reference to citations for which MSHA did not propose civil penalties between 1995 and 2006. These are citations that should have been assessed 5-16 years ago. Given that the period the OIG reviewed was FY 2009-2010, the reference to unassessed citations that occurred some years prior to the review period is outside the scope of this review. During the review, the OIG did not find any unassessed citations.

The report focuses on three areas (a) the timely application of payments against outstanding debt and timely and consistent referral of delinquent debt to Treasury; (b) the identification of potential "scofflaws"; and (c) ensuring that penalties are uncollectable before writing off the debt. I note that the findings associated with these three areas do not identify MSHA noncompliance with federal statutes or requirements. Rather, the recommendations refer to modifications of, or adherence to, MSHA internal policies and procedures that in some cases exceed federal requirements. These and other issues noted below are not described in the proper context in the draft report. We would appreciate if you would revise the report to reflect changes in the context, as appropriate.

You can now file your MSHA forms online at www.MSHA.gov. It's easy, it's fast, and it saves you money!

OIG Recommendation No. 1: *Revise existing procedures to assure timely application of civil penalty payments, particularly when applying payments to the oldest debt if the violator does not identify how to apply the payment.*

MSHA agrees with this recommendation. Please note that mine operators send civil penalty payments directly to the Treasury Department lockbox bank designated to receive these payments and the bank immediately deposits the payments in the Federal Government's general fund. The timeliness standards to which the OIG compared the civil penalty payment applications are MSHA's internal timeliness standards. MSHA's standard operating procedures (SOPs), implemented in 2008, require payments to be applied within three days of notification from Treasury that payment has been received; that is the timeliness standard the OIG used as a benchmark. However, the SOPs also address how payment processors should handle checks that they cannot apply within three days, recognizing that many factors can cause delays in applying payments. Nevertheless, MSHA recognizes the need to apply payments as quickly as possible and agrees with the OIG recommendation that MSHA apply payments to the oldest debt when, for example, the operator does not identify how to apply the payment.

Specifically, the OIG recommends that when an operator furnishes insufficient information for MSHA to identify the specific civil penalties the operator intends to pay, MSHA should apply the payment to the oldest debt for that operator. MSHA has been applying payments to the oldest debt in cases where there is insufficient information to identify penalties the operator intends to pay. However, MSHA cannot do this in every case when information is lacking, for example when the mine operator cannot be identified.

In FY 2009, MSHA initiated a long-term, phased in project to: obtain more information from mine operators when they submit their payments; automate the payment application process; and ensure payments received for final orders of the Federal Mine Safety and Health Review Commission (FMSHRC) are reserved for FMSHRC decisions. MSHA deployed a new Proposed Assessment and Statement of Account in December, 2010. This document is sent to mine operators to inform them of the proposed assessment for each cited violation and replaced the former Notice of Proposed Assessment. The new Proposed Assessment provides a coupon for submission with payments. The Treasury Department lockbox bank that receives the civil penalty payments and deposits the funds in the Treasury enters the coupon information into its system and transmits this information to MSHA.

This new process resulted in fewer payments for which the penalties could not be identified and set the stage for the second phase of the project that was implemented in August, 2011. In this phase, MSHA deployed a computer system enhancement that replaced the manual payment application process. The automated process applies all payments for which the lockbox bank enters sufficient information (i.e. the coupon is returned). The system was also programmed to apply payments to the oldest available debt when the mine and the operator are identifiable and the operator does not identify a specific penalty to pay.

Phase three of this project, scheduled for December, 2011, is a system enhancement to reserve payments for pending FMSHRC decisions.

OIG Recommendation No. 2: *Revise procedures to assure consistent referrals to Treasury.*

MSHA agrees with this recommendation. As the OIG reports states, although the Debt Collection Improvement Act requires debt that is more than 180 days delinquent to be referred to Treasury for collection, MSHA uses a standard of 150 days delinquent. Each week, MSHA's system identifies debt that is 150 days delinquent. Office of Assessments staff research this debt and, if no payments are in suspense for the debtor, it is marked for referral to Treasury. Since 2006, the files have been transferred electronically to the Treasury Department's Financial Management Services system every week.

This recommendation refers to MSHA's current procedure of not referring to Treasury debt that appears to be delinquent for certain companies (the Exclusion List) who regularly pay their civil penalties. This procedure was implemented in 2008 to prevent non-delinquent debt from being referred to Treasury. MSHA takes issue with referring to its debt delinquency information as "unreliable". The information is reliable for identifying potentially delinquent debt. The Exclusion List has served the purpose of not referring debt to Treasury for which payments have been received but not yet applied, a significant savings in time and administrative costs for Treasury, MSHA, and, most importantly, the companies that have paid civil penalties that are pending payment application.

With the deployment of the system enhancements referenced in MSHA's response to OIG recommendation 1, MSHA is now able to eliminate companies from the Exclusion List as existing payments with balances are applied to the oldest debt for these companies. This will result in the systematic removal of companies from the Exclusion List and the elimination of the Exclusion List in its entirety during this fiscal year.

OIG Recommendation 3: *Finalize policies and procedures to identify all potential scofflaw operators.*

The Agency agrees that it should finalize policies and procedures to identify potential scofflaw operators. We also agree, as the report states "...MSHA's actions to pursue scofflaw violators went above the requirements of the Debt Collection Improvement Act of 1996..." In fact, I assigned staff to work with the Solicitor's Office to develop scofflaw definitions, and these criteria are nearing completion.

It is important to note that the MSHA scofflaw initiative is an enhanced enforcement initiative that is an important element in MSHA's enforcement program. It is not a collection effort. This is an evolving initiative and one that MSHA has no legal duty to implement. It is important to note also that there is no legal requirement for MSHA to collect delinquent debt after referring the debt to Treasury for collection.

MSHA strongly believes that the OIG mischaracterized the current situation when it stated that operators were "...able to ignore their civil penalty obligations without consequence" within the context of the scofflaw program. When mine operators ignore their civil penalty obligations, MSHA refers the delinquent debt to Treasury for collection as required under the Debt Collection Improvement Act. Treasury takes the following actions, as applicable:

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1. Treasury sends a demand letter within five business days of MSHA referral;
2. Debtors and FMS personnel enter repayment negotiations;
3. Debt is submitted to the Treasury Offset Program (TOP) within 20 days of referral;
4. Debt is referred to credit bureaus;
5. Debt is referred to at least one, and in most cases two, private collection agencies;
6. Administrative wage garnishment;
7. Referral to Justice Department for litigation; and
8. Unpaid debt is reported to the Internal Revenue Service as potential income to the debtor on Form 1099-C.

MSHA believes that this initiative is an important enhanced enforcement tool that will help to improve the safety and health of miners. I instructed staff to start finalizing the policies and procedures for the scofflaw initiative in October, 2010. MSHA and the Office of the Solicitor have employed several new strategies to pursue "scofflaw" operators with mixed results. MSHA is developing the policies and procedures for the scofflaw program within the context of the experience gained using these strategies.

OIG Recommendation 4: *Implement controls to assure appropriate and consistent write-off of uncollectable civil penalties.*

MSHA concurs with this recommendation. The report states that MSHA may have written off civil penalties for companies that still had an ability to pay their debt. As a point of clarification, MSHA's current procedures, implemented in 2007, prohibit writing off debt of companies still in business, although federal requirements do not contain this prohibition. A company's ability to pay does not factor into the federal write-off requirements. According to federal requirements, write-offs should occur when the agency determines that the likelihood of collection is less than 50%. According to federal requirements, write-offs are mandatory (unless documented and justified to the Office of Management and Budget in consultation with Treasury) for delinquent debt that has no value for accounting purposes or is older than two years. The Office of Assessments is currently reviewing and revising the write-off procedures and developing stronger internal controls to ensure compliance with the procedures.

In conclusion, I look forward to providing more specific details on the actions MSHA will take in response to each of the OIG recommendations. MSHA will provide the planned actions within 60 days.

If you have any questions concerning this response, please contact Jay Mattos, Director of Assessments, at 202-693-9702.

Appendix E

Acknowledgements

Key contributors to this report were Charles Allberry (Audit Director), Robert Swedberg, Donald Evans, Richard Bryan, Elizabeth Garcia, Norlean (Renee) Kelly, Wilma Perez, Cassie Galang, and Mary Lou Casazza.

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