

GAO

Report to the Ranking Minority Member,
Permanent Subcommittee on
Investigations, Committee on
Governmental Affairs, U.S. Senate

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CIVIL FINES AND PENALTIES DEBT

Review of OSM's Management and Collection Processes



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United States General Accounting Office
Washington, D.C. 20548

December 31, 2001

The Honorable Susan M. Collins
Ranking Minority Member
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate

Dear Senator Collins:

On December 14, 2001, we briefed your office on our review of selected federal agencies' management and collection of civil fines and penalties (CFP) debt.¹ As agreed to with your staff, this work focused on the debt collection processes and procedures used by the Department of the Treasury's U.S. Customs Service, the Department of the Interior's Office of Surface Mining (OSM), and the Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS).²

This report summarizes the information presented in our December 14, 2001, briefing on OSM's collection of CFP debt. The briefing slides are in appendix I. We will report separately on our work on Customs and CMS. As discussed with your staff, our objectives were to determine (1) the primary reasons for the low collection rates and significant write-offs of OSM's CFP debt, (2) whether adequate processes exist at OSM to collect CFP debt, and (3) what role, if any, the Office of Management and Budget (OMB) and Treasury play in overseeing OSM's collection of CFP debt.

¹This work was part of a broad review that also looked at the management and collection of criminal fines and penalties at the Department of Justice and the U.S. Courts. See *Criminal Debt: Oversight and Actions Needed to Address Deficiencies in the Collection Processes* (GAO-01-664, July 16, 2001).

²Formerly the Health Care Financing Administration.

Results in Brief

The primary reason for low collection rates and significant write-offs of OSM's CFP debt is the poor financial condition of certain CFP debtors. We reported in 1989 that the majority of OSM's CFP receivables were related to inactive mine sites or to mining operators who were either bankrupt or no longer mining.³ According to OSM, most uncollected CFP receivables continue to be associated with mining companies that are not financially viable. Viable companies generally correct violations before they are assessed large-dollar civil penalties that accrue when violations go unabated. Companies in poor financial condition, however, are typically unable to correct violations and therefore incur large CFP debts. OSM's annual collection rates for CFP receivables have remained low since 1996 and are similar to the rates we found for fiscal years 1986 through 1988, the period covered in our 1989 report.

A lack of documentation for about 65 percent of the 184 CFP case files selected for testing prevented us from determining the overall adequacy of OSM's past and present CFP debt collection processes. However, we did note several areas where OSM's CFP debt collection policies and procedures can be strengthened. Specifically, for the 64 CFP case files (35 percent) that were available for our review, we found that OSM did not always follow its procedures for (1) writing off debt as currently not collectible that was delinquent for over 2 years and had been referred to either the Interior's Office of the Solicitor or to Treasury, (2) documenting the determination that a debtor is unable to immediately pay a debt in full for cases involving installment agreements, and (3) obtaining the required approval from the Department of Justice before writing off delinquent debt greater than or equal to \$100,000. We also found that limitations on OSM's legal authority to deny mining permits to applicants whose owners or controllers have uncorrected violations or unpaid CFP may reduce the agency's ability to achieve its program objective of maximizing compliance with surface mining laws.

OMB and Treasury are provided with information helpful in performing their oversight roles. However, OMB stated that it had broad oversight responsibility in monitoring and evaluating governmentwide debt collection activities. OMB further stated that it is the specific responsibility of the agency to monitor, manage, and collect CFP debt and the

³*Department of the Interior: Collection of Civil Penalty Fees* (GAO/AFMD-89-73, August 16, 1989).

responsibility of the agency's Office of the Inspector General to provide oversight through the audit of the agency's debt collection activities. In addition, Treasury officials stated that they rely on the agencies to determine what debt should be referred to Treasury for collection and offsets, as required by the Debt Collection Improvement Act of 1996, and accordingly, OSM does refer delinquent CFP debts to Treasury.

Our recommendations are designed to enable OSM to determine if changes in surface mining laws are needed and to strengthen its CFP debt collection policies and procedures. In commenting on a draft of the briefing slides, OSM agreed with our recommendations and stated that it will continue to explore all policy, regulatory, and legislative options that could improve its ability to keep applicants responsible for uncorrected violations and unpaid debts from receiving permits to mine coal. OSM also provided, and we evaluated, general comments that related to specific detailed information that OSM thought was important aspects of its surface mining program.

Scope and Methodology

To determine the primary reason for the low collection rates and significant write-offs of CFP debt, we obtained and reviewed OSM's audited financial statements, annual reports, and other financial information related to its CFP collection activities, and we analyzed OSM's CFP receivables and related accounts and information for fiscal years 1997 through 2000. We interviewed OSM officials for their perspective on the results of our review and analysis of this information.

To determine whether adequate processes exist to collect CFP debt, we acquired an understanding of OSM's CFP debt collection policies and procedures, as well as applicable federal laws and regulations. We were provided access to OSM's Civil Penalty Accounting Control System database. The database contained a universe of 490 cases that had CFP receivables balances reduced to zero by collection or write-off (closed cases) during fiscal years 1999 and 2000 or were outstanding (open cases) CFP receivables balances as of September 30, 2000. We further stratified the database into cases representing debts greater than or equal to \$100,000 (high-dollar cases) and those representing debts less than \$100,000. We selected for review all nine high-dollar cases and a random statistical sample of 175 cases with initial receivable amounts less than \$100,000. We did not independently verify the completeness or accuracy of financial data or test information security controls over the systems used to compile

these data because such verification was not necessary for the purposes of this request.

OSM was unable to provide documentation of collection specialists' actions for 120 of the 184 CFP cases selected.⁴ As a result of this scope limitation, we could not project our findings to the entire universe of cases nor conclude on the overall adequacy of OSM's past and present debt collection processes. Our findings therefore relate only to the applicable attributes in the 64 cases for which OSM had documentation of collection specialists' actions. We interviewed OSM officials to obtain explanations for significant trends we observed and for findings and instances of noncompliance with its policies and procedures we identified during our review of the available cases.

To determine what role, if any, OMB and Treasury play in overseeing and monitoring the government's collection of civil debt, we interviewed OMB and Treasury officials. We performed our review primarily in Denver, Colorado, from January 2001 through August 2001 in accordance with U.S. generally accepted government auditing standards. Prior to our December 14, 2001, briefing to your office on the results of our work, we provided Interior, OSM, Treasury, and OMB with a draft of our detailed briefing slides for review and comments, which contained recommendations to the Acting Director of OSM. The comments received are discussed in the "Agency Comments and Our Evaluation" section of this report, on the "Agency Comments" slide, and are incorporated in the report as applicable. OSM's letter is reprinted in appendix II.

Background

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) established OSM to administer and enforce a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations and to promote the reclamation of unreclaimed mining areas. Under Titles IV and V of SMCRA, OSM administers and enforces nationwide surface mining laws.

Title IV of SMCRA authorizes OSM to collect quarterly Abandoned Mine Land (AML) reclamation fees. SMCRA also requires that coal mine operators obtain permits from OSM or the responsible state regulatory

⁴We are 95-percent confident that the actual proportion of cases for which OSM has no documentation of collection specialist actions is 64.4 percent (plus or minus 5.6 percent).

authority before undertaking any mining activity. These permits identify parties that actively mine coal and become the basis for OSM to generate Coal Reclamation Fee Reports (Form OSM-1), which are used to collect AML fees. Title V of SMCRA authorizes OSM to enforce environmental and reclamation standards for coal mining. Violations of these standards, referred to as “on the ground” (mine site) violations, typically involve harm to the environment. Section 518 of SMCRA authorizes OSM to assess CFP for violations of Titles IV and V.

OSM is to issue a Notice of Violation to (1) Title IV violators for unpaid reclamation fees or for not filing a Form OSM-1 and (2) Title V violators for noncompliance with environmental and reclamation standards. If the violation is not corrected within a specified time, OSM is to issue a Failure to Abate Cessation Order, which requires that mining operations cease and the violation be abated immediately.

OSM’s assessment unit is to review each violation cited to determine the appropriate CFP amount to assess for a violation and bases its determination on a point system directly related to the cited mine operator’s history of previous violations, including the seriousness of such violations, damage caused, negligence involved, and good faith in attempting to achieve compliance. Once the assessment amount is determined, OSM is to issue a Notice of Proposed Assessment (NOPA) to the mining operator. The assessment amount in the NOPA becomes the official CFP assessment when OSM issues a Final Order. The Final Order is to be issued within 30 days of the operator’s receipt of the NOPA, unless the operator appeals. Under SMCRA, CFP can be assessed only after the cited mine operator has had an opportunity to have a public hearing, which may include a potentially lengthy appeals process.

Since 1995, OSM has recorded proposed assessments as CFP receivables when (1) payment is made for the full amount of the assessment when the NOPA is issued, (2) a Final Order (First Demand Letter) is issued, (3) a payment plan is entered into, or (4) a final appeal decision has been made. The occurrence of any one of these events is to result in the establishment of an account receivable.

If a payment is not made in 15 days after OSM mails the Final Order, OSM is to issue a Second Demand Letter. The Second Demand Letter is to be followed 15 days later by a Final Demand Letter. Thus, all three demand letters are to be sent within 30 days. OSM is to classify CFP debt as delinquent if payment is not received within 30 days of the Final Order.

Once a CFP receivable is established, OSM is to enter the CFP debt into the Civil Penalty Accounting and Control System, and a collection specialist begins collection activity. Upon receipt of the Citation File, the collection specialist is to create a Collection Specialist Case File (CS File), or an Entity File if the violator has multiple CFP debts, to document collection actions taken on the CFP debt. The collection specialist then is to perform (1) a full compliance check on the entity to identify all outstanding debt or (2) skip tracing activity to locate the debtor and obtain the mailing address and telephone numbers of the entity involved. The collection specialist also is supposed to call the debtor and document each attempt at contact with the debtor.

If a debtor is unable to pay the debt in full, the collection specialist may offer an installment agreement or, under certain conditions, a compromise settlement. For either an installment agreement or a compromise settlement, the collection specialist is supposed to research the debtor's ability to pay, document his or her determination of the debtor's ability to pay, and have that determination reviewed and approved by other OSM staff.

If the debt remains unpaid, the collection specialist can refer the debt to the Solicitor if, for example, (1) the debt needs to be consolidated with debts previously referred to Solicitor, (2) the debtor files for bankruptcy, or (3) the debtor strongly disputes responsibility for the debt or raises a legal challenge that will likely result in litigation. The collection specialist can also refer the CFP debt to Treasury for collection and offset if (1) the debtor does not respond to direct collection efforts by paying in full, (2) the debtor cannot be located, (3) the debtor defaults on a payment agreement and does not correct the default, or (4) the debt has been delinquent for 180 days or more.

If CFP debt remains uncollected after referrals to the Solicitor and Treasury, the Solicitor or Treasury can recommend that the debt be written off. The collection specialist would then terminate collection activity on the debt and write off the receivable. Reasons for the termination of collection activity and write-off of the CFP debt include (1) substantial amounts are uncollected, (2) the debtor cannot be located, (3) the cost of collection will exceed the amount recoverable, (4) the statute of limitations has expired, or (5) the case is without merit or there is insufficient evidence. The Department of Justice must approve the write-off of any CFP debt that is greater than or equal to \$100,000. During fiscal year 2000, OSM began writing off CFP debt referred to the Solicitor that was delinquent more than 2 years and classifying it as currently not collectible (CNC).⁵ In January 2000, OSM established formal guidance to write off such debts. In March 2001, OSM established formal guidance to write off other active debt that is referred to Treasury and has been delinquent more than 2 years.⁶ OSM also is to include all unpaid CFP debt in its Applicant Violation System to track the debt's status once the debt becomes delinquent.

OSM has a history of low collection rates for its CFP debt. In 1987, we reported that the financial quality of OSM's CFP debts made them difficult to collect.⁷ We noted that for fiscal year 1986, OSM reported about \$158 million in CFP receivables, of which \$155 million was reported as delinquent. OSM also designated about 52 percent of the CFP receivables as uncollectible at that time.

In 1989, we reported that OSM had \$38 million in CFP receivables as of September 30, 1988, after removing about \$136 million of CFP receivables from fiscal years 1986 through 1988 that were deemed uncollectible and for which collection activities were terminated.⁸ Of this CFP receivables

⁵CNC debts are debts the agency has written off for accounting purposes but has not discharged. Collection action can still be taken on such debts.

⁶In November 2000, OMB revised Circular A-129 to make it mandatory that agencies write off debts over 2 years old unless documented and justified to OMB in consultation with Treasury.

⁷*Debt Collection: Interior's Efforts to Collect Delinquent Royalties, Fines, and Assessments* (GAO/AFMD-87-21BR, June 18, 1987).

⁸ GAO/AFMD-89-73, August 16, 1989.

balance, OSM reported approximately 99 percent as delinquent and designated about 90 percent as uncollectible.

After writing off about \$10.8 million of CFP debts during fiscal year 2000, including about \$9.3 million, about 86 percent of the \$10.8 million, of debts more than 10 years old, OSM reported a CFP receivables balance of approximately \$1.3 million as of September 30, 2000. Of this year-end receivable balance, OSM reported more than 92 percent as delinquent and designated about 88 percent as uncollectible.

Poor Financial Condition of CFP Debtors Is the Primary Reason for Low Collection Rates and Significant Write-Offs

Our review of OSM's CFP receivables information revealed that the poor financial condition of CFP debtors is the primary reason for low collection rates and significant write-offs. In 1989, we reported on the poor financial quality of OSM's CFP debt and the difficulties the agency faces in collecting CFP receivables from mining companies that are not financially viable. Specifically, we reported that OSM might never experience a high rate of collection for CFP debt because the majority of its CFP receivables were associated with inactive mine sites or mining operators who were either bankrupt or no longer mining and the debt had to be written off. We also reported that OSM's overall annual collection rates combined for both Titles IV and V CFP receivables were approximately 1 percent for the 3 years from fiscal year 1986 through fiscal year 1988,⁹ which were about the same as those for the 4 years from fiscal year 1997 through fiscal year 2000.

⁹The original annual collection rates, based on the method used in our 1989 report, were calculated by dividing the reported collections for each fiscal year by the sum of the beginning receivables balances from each fiscal year and net assessments recorded each fiscal year, including principal and interest.

During our fieldwork, OSM officials stated that the collection rates should not be calculated using the beginning receivables balances because such balances included a significant amount of old CFP receivables, including principal assessments and interest, that remained uncollected from prior years and which OSM eventually wrote off. Even though we recalculated OSM's combined annual collection rates without the beginning balances, the modified annual collection rates remained low at approximately 5 percent¹⁰ for the 4 years from fiscal year 1997 through fiscal year 2000. After we recalculated OSM's collection rates using its modified method for the 3 years ended in fiscal year 1988, we found that the annual collection rates were similar to the rates calculated for the 4 years ended in fiscal year 2000.

We also previously reported in 1987 that most of OSM's CFP delinquencies were several years old and therefore difficult to collect.¹¹ As industry statistics show, the likelihood of recovering amounts owed decreases dramatically as the age of the delinquency increases. During our review of the high-dollar debts, for example, we observed that eight out of the nine high-dollar debts averaged approximately 19 years in total processing time—from the issuance of the citation to the point at which the debt was eventually written off.

Our current analysis of OSM's information clearly shows that the conditions we reported in 1987, regarding low collection rates, and in 1989, regarding older debt not being collected, still exist. Our analysis also showed that 77 percent and 95 percent of all CFP debt that was available to be collected¹² were written off for the 3 years ended in fiscal year 1988 and the 4 years ended in fiscal year 2000, respectively. OSM officials stated that viable companies correct violations before they incur large civil penalties. Companies that are in weak financial condition often fail to correct the initial violation and therefore receive cessation orders and incur large

¹⁰The modified annual collection rates, based on OSM's methodology, were calculated by dividing the reported collections for each fiscal year by the net assessments recorded for each fiscal year.

¹¹GAO/AFMD-87-21BR, June 18, 1987.

¹²All CFP debts that were available for collection during the 3 years from fiscal years 1986 through 1988 and the 4 years from fiscal years 1997 through 2000, consisted of the CFP receivables balances as of October 1, 1985, and October 1, 1996, plus all net assessments recorded during the 3 years ended in fiscal year 1988 and the 4 years ended in fiscal year 2000, respectively.

penalties. As a result, these CFP debts are often deemed uncollectible and eventually are written off.

Over the 4 years covering fiscal years 1997 through 2000, OSM:

- wrote off about \$37.1 million in CFP receivables (plus another \$12.6 million in fiscal year 1996);
- annually estimated between 88 and 99 percent of its reported CFP receivables as uncollectible;
- recorded fewer CFP assessments each year, dropping from about \$2.8 million in fiscal year 1997 to about \$591,000 in fiscal year 2000, of which the principal portion of new CFP assessments went from \$680,320 for 111 new debts in fiscal year 1997 to \$180,370 for 22 new debts in fiscal year 2000; and
- collected about \$616,000 in CFP receivables.

As a result of the significant amounts written off, collections received, and fewer recorded number and dollar value of assessments over the 4 years, OSM's reported CFP receivables balance decreased from about \$27 million as of October 1, 1996, to about \$1.3 million as of September 30, 2000. According to OSM's records for the 4 years from fiscal year 1997 through fiscal year 2000, approximately \$35 million, 94 percent of the \$37.1 million of CFP debt, for which collection activity was terminated and the receivables were written off, was delinquent more than 2 years. OSM records indicated the following reasons that most CFP debts were written off.

- \$22.8 million was written off after the Solicitor's or Treasury's recommendation because they were unable to collect, including debt from companies that had filed for bankruptcy, were bankrupt, or were no longer mining;
- \$4.6 million was written off after OSM classified the CFP debt as currently not collectible after being delinquent more than 2 years;
- \$3.7 million was written off after compromise settlements were reached and companies defaulted on the CFP debts; and
- \$3.4 million was written off after the statute of limitations for the violation had expired, for which OSM stated that the CFP debt was over 5 years old, a suit was not filed, and the government can no longer file a suit for collection.

OSM believes that low CFP collection rates do not fairly indicate the effectiveness of the CFP program. OSM's Strategic Plan states that the

purpose of the CFP program is to maximize compliance with mining laws. OSM officials said that, although collecting CFP is an important objective, maximizing revenue from CFP collections is less important to management than achieving compliance with mining laws. OSM routinely writes off or accepts an offer-in-compromise for large dollar amounts of Title IV CFP debt when the agency has met its enforcement objectives. For example, even though its records continue to reflect low collection rates, OSM officials stated that 72 percent of notices of violations from fiscal years 1997 through 2000 were abated and 99 percent of Title IV reclamation fees were collected during fiscal year 2000.

OSM officials also stated that with the decline in the numbers and amounts of new Title IV and V CFP debts in fiscal year 2000, they expect the number and amount of new CFP assessments to remain low for the following reasons.

- OSM now actively works with companies to prevent problems from occurring.
- Changes in the mining industry have resulted in better mining practices and fewer violations.
- OSM's oversight of state regulatory programs now focuses on results rather than activities, such as issuing citations.
- OSM compliance auditors work with companies to resolve Title IV SMCRA violations before issuing a citation.

Overall Adequacy of CFP Debt Collection Processes Cannot Be Determined, But Such Processes Can Be Strengthened

While the lack of documentation of collection specialist actions prevented us from determining the overall adequacy of OSM's past and present CFP debt collection processes, we did, however, find instances in which OSM did not follow certain of its debt collection policies and procedures. Thus, we believe these CFP debt collection processes can be strengthened in those areas. We also found that limitations in OSM's legal authority to deny permits to certain applicants with unabated violations reduce the agency's ability to achieve its program objective of maximizing compliance with surface mining laws.

Lack of Documentation

Of the 184 CFP cases selected to test the extent to which OSM followed its debt collection policies and procedures, documentation of OSM collection specialists' activity for 120—almost two-thirds—was unavailable. During fiscal years 1994 and 1995, OSM scanned into an optical imaging system the

collection specialists' case files for which they had completed their collection actions. The original documentation was destroyed after OSM used the scanned documents to archive these records. In 1998, the read/write feature of the imaging system broke, and the vendor went out of business. OSM officials stated that the system could not be repaired or replaced and the contents of the scanned documents were no longer available.

An OSM official stated that almost all original documentation of collection specialists' activities has been maintained since fiscal year 1997 and that OSM is working on guidance that calls for archiving documents for 5 years and imaging only key documents. The testing of the 64 of the 184 CFP debts with available documentation provided evidence that OSM has maintained the collection specialists' documentation for the debts where collection activity is still ongoing since the imaging problem in 1998.

In addition to preventing us from determining the extent to which OSM did or did not follow its CFP debt collection policies and procedures, the lack of documentation prevented us from appropriately projecting findings to the universe of CFP debt from the selected cases for which adequate documentation was available. Consequently, we were unable to determine the overall adequacy of OSM's CFP debt collection process.¹³

Lack of Compliance with Debt Collection Policies and Procedures

Although the lack of documentation precluded us from determining the overall adequacy of OSM's past and present CFP debt collection processes, we did identify instances in which OSM did not comply with its own debt collection policies and procedures,¹⁴ including the following:

- Of the 24 CFP debts that were delinquent more than 2 years and referred to the Solicitor or Treasury, 17 had not been written off as currently not collectible. Of these 17 CFP debts, 15 were referred to the Treasury and were not written off as currently not collectible until we brought them to OSM's attention in April 2001.¹⁵ OSM subsequently established

¹³We are 95-percent confident that the actual proportion of cases for which OSM has no documentation of collection specialist activity is 64.4 percent (plus or minus 5.6 percent).

¹⁴Because of the scope limitation, we were not able to project our findings to the entire universe of cases. However, we are presenting the results of the 64 cases we did review. These results should not be used as a basis for concluding about the adequacy of OSM's debt collection process.

specific formal guidance for writing off such debts that are more than 2 years old and had been referred to the Treasury.

- Of the 32 CFP debts that were delinquent less than 2 years, 4 were incorrectly written off as currently not collectible. In response, OSM stated that the debts were prematurely written off in error even though the collection actions being pursued by the Solicitor were not affected for three of the debts and the fourth debt was subsequently recommended to be written off by the Solicitor since the company was defunct and the owner was deceased.
- All five CFP debts with installment agreements issued between fiscal years 1994 and 1997 lacked the required documentation to support OSM's determination that the debtor was unable to immediately pay in full. However, in August 2000, OSM began requiring management approval of payment agreements and developed an installment agreement worksheet to be used by the collection specialist. The worksheet requires that such supporting documentation be maintained.
- Of the nine high-dollar delinquent debts, two were written off and the cases terminated without the required approval of the Department of Justice. After we informed OSM officials, they reclassified the debts as currently not collectible because the debts were more than 2 years old.

Limited Regulatory Authority Under SMCRA

Section 510(c) of SMCRA prohibits the issuance of mining permits to applicants who are responsible for unabated violations: "Where . . . information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this Act . . . the permit shall not be issued." An unpaid CFP debt is considered an unabated violation. One purpose of this provision is to induce violators to correct violations and pay CFP.

In 1997, the U.S. Court of Appeals for the D.C. Circuit invalidated an OSM regulation that blocked the issuance of a permit to any surface coal mining operation owned or controlled by either the applicant or a person who owns or controls the applicant that is currently in violation of SMCRA (upstream owners or controllers). The court ruled that the regulation was inconsistent with the authority conferred on OSM by section 510(c) of

¹⁵In November 2000, OMB revised Circular A-129 to make it mandatory that agencies write-off debts over 2 years old unless documented and justified to OMB in consultation with Treasury.

SMCRA. This ruling limits OSM's ability to deny permits to certain applicants associated with SMCRA violations.

OSM officials stated that since the court decision, OSM and the states have issued permits to three applicants who would have been denied permits under the regulation the court invalidated. OSM further stated that the denials would have been based on an upstream owner or controller violation, when at the time of the applications for new permits, the upstream owners or controllers were linked to unabated violations. These unabated violations included unpaid principal portions of CFP receivables balances totaling approximately \$31,600 and another \$122,697 of unpaid abandoned mine land fees and reclamation costs.¹⁶

For example, OSM stated that its Knoxville office issued a new surface mining permit in December 2000 to an applicant that consisted of three 30-percent shareholders and one 10-percent shareholder. The shareholders were also managers of the limited liability company. Three of the shareholders had unabated SMCRA violations.

- One of the 30-percent shareholders was issued two cessation orders in 1984 and was also convicted by a Tennessee jury of a criminal offense of continuing to conduct mining operations without a permit and failing to stop after notification by authorities. The shareholder's federal violations were corrected, but the principal portion of the CFP, approximately \$7,800, remained unpaid.
- Another of the 30-percent shareholders and the 10-percent shareholder are principals (shareholders/officers) in a company that owns 33.3 percent of another company that was an operator for a third company that was issued a notice of violation in 1994 and a cessation order in 1995. The violations were corrected, but the principal portion of the CFP, approximately \$23,800, remained unpaid.

This limitation on OSM's authority to deny the issuance of permits to applicants whose upstream owners or controllers have unabated SMCRA violations may reduce OSM's ability to achieve compliance with SMCRA, including correction of violations and collection of unpaid CFP.

¹⁶OSM provided only the amount of the principal portion of the CFP receivable. Officials stated that the interest, administrative costs, penalties, and postjudgment portions were not readily available and that total CFP receivable amounts were generally equal to double the principal portion.

OMB's and Treasury's Roles in the Oversight and Monitoring of CFP Debt

OMB and Treasury are provided with information useful in performing their debt oversight roles through OSM's reporting of CFP receivables and referral of CFP debt to Treasury for collection. With respect to reporting of CFP receivables, OSM reports total receivable amounts in its audited financial statements that include its CFP receivables. In addition, OSM reports annual CFP collections and the year-end CFP receivable balance in the financial management section of its annual report, which it submits to OMB and Treasury. In accordance with the requirements of the Debt Collection Improvement Act of 1996, OSM annually reports CFP receivables information, including annual collection activity, delinquent debt, and estimated amounts deemed uncollectible, to Treasury as part of the Report of Receivables Due from the Public.

In discussions with OMB officials, they emphasized that OMB's oversight is broad and consists of monitoring and evaluating governmentwide credit management, debt collection activities, and federal agency performance. OMB also stated that it is the specific responsibility of the agency Chief Financial Officer and program managers to manage and be accountable for the debt collection of their agency's credit portfolios in accordance with applicable federal debt statutes, regulations, and guidance. OMB added that it is the (1) role of each agency to specifically monitor and collect its civil penalty debt regardless of dollar magnitude and (2) responsibility of each agency's Office of the Inspector General to provide oversight through audit of the agency's debt collection activities.

Regarding the referral of CFP debt to Treasury, the Debt Collection Improvement Act of 1996 also requires that federal agencies transfer eligible nontax debt or claims¹⁷ delinquent more than 180 days to Treasury for collection actions. Treasury officials stated that they rely on agencies to determine what debt should be referred to Treasury for collection and offsets, as required by the act, and OSM does refer delinquent CFP debts to Treasury for collection action.

Conclusion

The poor financial condition of CFP debtors is the primary reason that a significant amount of OSM's CFP receivables continue to be delinquent and, in most cases, are deemed uncollectible and eventually written off.

¹⁷Claims include debts owed to the United States or debts being collected by the United States on behalf of others.

While a lack of documentation of its collection specialists' activities precluded us from determining the overall adequacy of OSM's past and present debt collection processes and the poor financial condition of CFP debtors makes substantial improvements in collection rates problematic, OSM could strengthen its debt collection process by better adhering to certain of its own CFP debt collection policies and procedures. We also found that OSM's inability to prevent upstream owners and controllers of companies with unabated SMCRA violations from obtaining new mining permits could reduce the effectiveness of OSM's CFP program.

Recommendations for Executive Action

We recommend that the Secretary of the Interior direct the Acting Director of the Office of Surface Mining to take the following actions:

- Evaluate the potential significance of the court decision to limit OSM's ability to deny new permits to applicants whose upstream owners and controllers have unabated SMCRA violations. If a change in SMCRA is needed to expand OSM's authority to deny new permits to applicants whose upstream owners and controllers have uncorrected violations or unpaid CFP, work with the Congress to determine the appropriate legislative action to take.
- Monitor to ensure effective implementation of OSM's new guidance on the
 - write-off of CFP debt that is referred to either the Solicitor or Treasury and delinquent more than 2 years by classifying the debt as currently not collectible and
 - maintenance, in cases involving installment agreements, of documentation used to determine a debtor's inability to immediately pay CFP debt in full.
- Reinforce to its CFP collection and management personnel the need to fully adhere to CFP debt collection policies and procedures for obtaining the required approval from the Department of Justice to terminate collection efforts and write-off delinquent CFP debt greater than or equal to \$100,000.

Agency Comments and Our Evaluation

In commenting on a draft of our detailed briefing slides, OSM agreed with our recommendations and stated that it will continue to explore all policy, regulatory, and legislative options with the potential to improve its ability to keep applicants responsible for uncorrected violations and unpaid debt from receiving permits to mine coal. OSM, OMB, and Treasury also

provided additional technical comments and suggestions that were incorporated as appropriate.

We are sending copies of this report and briefing slides to the Chairman of your Subcommittee as well as to the Chairman and Ranking Minority Member of the Senate Committee on Governmental Affairs. We will also provide copies to the Secretary of the Interior, the Acting Director of the Office of Surface Mining, the Secretary of the Treasury, and the Director of the Office of Management and Budget. Copies will also be made available to others upon request.

If you have any questions about this report, please contact me at (202) 512-3406 or Steven Haughton, Assistant Director, at (202) 512-5999. Additional key contributors to this assignment were John Lord, William Wright, David Grindstaff, Richard Cambosos, Mike LaForge, Miguel Lujuan, and Robin Hodge.

Sincerely yours,



Gary T. Engel
Director
Financial Management and Assurance

Briefing to the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs



Financial Management and Assurance Team

Review of Office of Surface Mining's Management and Collection of Civil Fines and Penalties

Briefing to the Permanent Subcommittee on Investigations,
Senate Committee on Governmental Affairs

December 14, 2001

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Objectives

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- You expressed concern over low collection rates for and significant write-offs of civil fines and penalties (CFP) debt at the Department of Interior's (Interior) Office of Surface Mining (OSM).
 - You requested that we determine
 - the primary reason for the low collection rates and significant write-offs of OSM's CFP debt,
 - whether adequate processes exist at OSM to collect CFP debt, and
 - what role, if any, the Office of Management and Budget (OMB) or the Department of Treasury play in overseeing OSM's collection of CFP debt.
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Overview

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- We found the following.
 - The primary reason for the low collection rates for and significant write-offs of CFP debt is the poor financial condition of certain CFP debtors.
 - A lack of certain documentation prevented us from determining the overall adequacy of OSM's past and present CFP debt collection process, but such processes can be strengthened. In addition, the extent of OSM's legislative authority could reduce the effectiveness of OSM's ability to achieve its program objective of maximizing compliance with surface mining laws.



Overview (cont'd)

- OMB and Treasury are provided with information useful in performing CFP debt oversight roles. However, OMB stated that it has broad oversight responsibility and that each agency has specific responsibility to monitor, manage, and collect CFP debt while it is the responsibility of the agency's Office of the Inspector General to provide oversight through the audit of the agency's debt collection activities. Treasury stated that it relies on agencies to determine what debt should be referred to Treasury for collection actions, as required by the Debt Collection Improvement Act of 1996 (DCIA) and OSM does refer delinquent CFP debts to Treasury.



Background

- The Surface Mining Control and Reclamation Act of 1977 (SMCRA) established OSM to administer and enforce a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations and to promote the reclamation of unreclaimed mining areas.
- Title IV of SMCRA authorizes OSM to collect quarterly abandoned mine land (AML) reclamation fees. SMCRA also requires coal mine operators to obtain permits from OSM, or the responsible state regulatory authority, prior to any mining activity. These permits identify parties actively mining coal and become the basis for OSM to generate Coal Reclamation Fee Reports (Form OSM-1), that are used to collect AML fees.



Background (cont'd)

-
- Title V of SMCRA authorizes OSM to enforce environmental and reclamation standards for coal mining. Failure by coal mine operators to comply with these standards are referred to as “on the ground” (mine site) violations and typically involve harm to the environment.
 - Section 518 authorizes OSM to assess CFP for violations of Title IV and V of SMCRA.
 - OSM is to issue a Notice of Violation (NOV) to violators for (1) Title IV unpaid reclamation fees or for not filing an OSM-1 report and (2) Title V noncompliance with SMCRA from inspections of mining operations.



Background (cont'd)

-
- OSM then is to issue a Failure to Abate Cessation Order (CO), which requires that mining operations cease and the violation be abated immediately, if the violation is not corrected within a specified time period.
 - OSM's assessment unit is to review each citation to determine the appropriate penalty amount to be assessed for a violation based on a point system directly related to the history of previous violations, including the seriousness of such violations, extent of damage, negligence and good faith in attempting to achieve compliance.
 - After OSM determines the amount of the assessment, it is to issue a Notice of Proposed Assessment (NOPA) that becomes the official civil penalty debt in a "Final Order" that is to be issued within 30 days of receipt of the NOPA, unless appealed.
-



Background (cont'd)

-
- Under SMCRA, CFP can only be assessed after the cited mine operator has been given an opportunity for a public hearing, which may include a potentially lengthy appeals process.
 - Since 1995, OSM records a proposed assessment as a CFP receivable when any one of the following events occur that establish an amount owed to OSM:
 - payments are made for the full amount of the assessment when a NOPA is issued,
 - a Final Order (First Demand Letter) is issued,
 - a payment plan is entered into, or
 - the final appeal decision has been made.
-



Background (cont'd)

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- OSM is to issue a Second Demand Letter 15 days after it mails the Final Order which is to be followed by a Final Demand Letter in 15 more days. Thus, all 3 demand letters are required to be sent in a 30-day period.
 - OSM is to classify CFP debt as delinquent if the payment is not received within 30 days of the Final Order.
 - Once a CFP receivable is established, OSM is to input the CFP debt into the Civil Penalty Accounting and Control System (CPACS) and a Collection Specialist (CS) begins collection activity.



Background (cont'd)

- Upon receipt of the Citation File, the CS is to create a “Collection Specialist Case File” (CS File) or an “Entity File” if the violator has multiple CFP debts, to document collection actions taken on the CFP debt. Then the CS is to perform a “full compliance check” to identify all outstanding debt or “skip tracing” to locate a debtor. The CS also is to call the debtor and document each time there is an attempt or actual contact with the debtor.
 - If the debtor is unable to pay the debt in full, the CS may offer an installment agreement or under certain conditions, a compromise settlement. Both are to be researched to determine the debtors ability to pay, documented as to the decision rendered, and reviewed and approved by other OSM staff.
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Background (cont'd)

- If the debt is unpaid, the CS can take one of the following possible actions
 - refer the CFP debt to the Interior Office of the Solicitor (Solicitor) if, for example
 - (1) the debt needs to be consolidated with debts previously referred to the Solicitor,
 - (2) the debtor files for bankruptcy, or
 - (3) the debtor strongly disputes responsibility for the debt or raises a legal challenge showing a high likelihood for litigation.



Background (cont'd)

- refer the CFP debt to Treasury for collection and offset if
 - (1) the debtor does not respond to direct collection efforts by paying in full,
 - (2) the debtor cannot be located,
 - (3) the debtor defaults in a payment agreement and does not correct the default, or
 - (4) the debt has been delinquent for 180 days.

 - If CFP debt remains uncollected after referrals to the Solicitor and Treasury, the Solicitor or Treasury can recommend that the debt be written off. The CS would then terminate collection activity on the CFP debt and write-off the CFP receivable for reasons that include
-



Background (cont'd)

-
- (1) substantial amounts are not collected,
 - (2) the debtor can not be located,
 - (3) the cost of collection will exceed the amount recoverable,
 - (4) the statute of limitations have expired, or
 - (5) the case is without merit or there was insufficient evidence.
- The Department of Justice must approve the write off of all CFP debts greater than or equal to \$100,000.
 - During fiscal year (FY) 2000, OSM began writing off CFP debt referred to the Solicitor for collection action that was delinquent over 2 years and classifying it as currently not collectible (CNC). In January 2000, OSM established formal guidance to write off such debts as CNC. In March 2001, OSM established formal guidance to write off debt referred to Treasury for collection action that is delinquent over 2 years as CNC.¹

¹In November 2000, OMB Revised Circular A-129 to make it mandatory that agencies write off debts over two years old unless documented and justified to OMB in consultation with Treasury. 4



Background (cont'd)

- OSM is to include unpaid CFP debt in its Applicant Violator System to track the debts status once the debt becomes delinquent.
- OSM has a history of low collection rates for its CFP debt. In 1987, we reported² that the financial quality of OSM's CFP debts make them difficult to collect. We noted that for FY 1986, OSM reported about \$158 million in CFP receivables, of which \$155 million was reported as delinquent. OSM designated about 52 percent of these CFP receivables as uncollectible at that time.
- In 1989, we reported³ that OSM had \$38 million in CFP receivables, as of September 30, 1988, after terminating collection activities from FY 1986 to FY 1988 on CFP debts totaling about \$136 million that it considered uncollectible. Of this CFP receivable balance, OSM reported about 99 percent as delinquent and designated about 90 percent as uncollectible.

²*Debt Collection: Interior's Efforts to Collect Delinquent Royalties, Fines, and Assessments* (GAO/AFMD-87-21BR, June 1987). 15

³*Department of Interior: Collection of Civil Penalty Fees* (GAO/AFMD-89-73, August 1989).



Background (cont'd)

-
- After writing off about \$10.8 million of CFP debts during FY 2000, including about \$9.3 million, or about 86 percent of the \$10.8 million, of debts more than 10 years old, OSM reported a CFP receivable balance of approximately \$1.3 million as of September 30, 2000. Of this year-end receivable balance, OSM reported more than 92 percent as delinquent and designated about 88 percent as uncollectible.



Scope and Methodology

-
- To accomplish our objectives we
 - Obtained and reviewed OSM's audited financial statements, annual reports, and other financial information that relate to its CFP collection activities.
 - Analyzed OSM's CFP receivables and related accounts and information for FY 1997 through FY 2000.
 - Obtained an understanding of OSM's CFP debt collection policies and procedures, and applicable federal rules and regulations.



Scope and Methodology (cont'd)

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- Obtained access to OSM's CPACS database of 490 cases for which the CFP receivable balances were reduced to zero by collection or write-off (closed) during FYs 1999 and 2000 or that had outstanding (open) CFP receivable balances as of September 30, 2000.
 - Stratified the database into cases equal to or greater than \$100,000 (high dollar debts) and less than \$100,000.
 - In order to review OSM's CFP debt collection process we selected the following 184 open or closed cases
 - all 9 high-dollar debts and
 - a random statistical sample of 175 CFP cases with initial receivable amounts less than \$100,000.
-



Scope and Methodology (cont'd)

-
- OSM was not able to provide documentation of collection specialist actions for 120 of the 184 cases we selected for our review.⁴
 - Due to the lack of documentation for a significant portion of our sample, we were not able to project our findings to the entire universe of cases (discussed later).
 - As a result of this scope limitation, we were unable to conclude on the overall adequacy of OSM's past and present CFP debt collection processes and have thus presented our findings as they relate to the applicable attributes in the 64 cases for which OSM had documentation.

⁴ We are 95 percent confident that the actual proportion of cases for which OSM has no documentation of collection specialist actions is 64.4 percent (plus or minus 5.6 percent).



Scope and Methodology (cont'd)

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- Interviewed OSM officials to obtain explanations for observed trends, and identified findings and exceptions to policies and procedures.
 - Interviewed OMB and Treasury officials to determine what role, if any, OMB and Treasury play in overseeing and monitoring the government's collection of civil debts.
 - We did not independently verify the completeness or accuracy of financial data or test information security controls over the systems used to compile these data because that verification was not necessary for the purposes of this request.



Scope and Methodology (cont'd)

-
- Provided Interior, OSM, OMB, and Treasury with a draft of our detailed briefing slides, which contained recommendations to the Acting Director of OSM for review and comment. The comments received are discussed on the “Agency Comments” slides or incorporated into the slides as applicable.
 - Performed our work primarily in Denver, CO between January 2001 and August 2001 in accordance with U.S. generally accepted government auditing standards.



Poor Financial Condition of CFP Debtors is the Primary Reason for Low Collection Rates and Significant Write-offs

- We previously reported on the poor financial quality of OSM's CFP debt and the difficulties the agency faces in collecting CFP receivables from mining companies that are not financially viable.
- In 1989, we reported that OSM may never experience a high rate of collection because the majority of its CFP receivables related to inactive mine sites or mining operators who were either bankrupt or no longer mining. We also reported that OSM's overall annual collection rates combined for both Title IV and V CFP receivables was approximately one percent for the 3-year period for FY 1986 through 1988,⁵ which is about the same rate collected for the 4-year period for FY 1997 through FY 2000.

⁵The annual collection rates, as per the method used in our 1989 report, were calculated by dividing reported collections made each year by the sum of the beginning receivable balance from each year and net assessments for each year, including principal and interest.



Poor Financial Condition of CFP Debtors is the Primary Reason for Low Collection Rates and Significant Write-offs (cont'd)

- During our fieldwork, OSM officials stated that the collection rates should not be calculated using the beginning receivable balances because such balances included the significant amount of old CFP receivables, including principal assessments and interest, that remained uncollected from prior years of which OSM eventually wrote off. Even though we recalculated OSM's combined annual collection rates without the beginning receivable balances, the revised annual collection rates remained low at approximately 5 percent⁶ for the 4-year period ended in 2000. After we recalculated OSM's collection rates using its modified method for the 3-year period ended in 1988, we found that the annual collection rates were similar to the rates calculated for the 4-year period ended in 2000.

⁶The modified annual collection rates, based on OSM's methodology, were calculated by dividing the reported collections made each year by the net assessments for each year.



Poor Financial Condition of CFP Debtors is the Primary Reason for Low Collection Rates and Significant Write-offs (cont'd)

- In 1987, we reported that most of OSM's CFP delinquencies were several years old and therefore, were difficult to collect. As industry statistics have shown, the likelihood of recovering amounts owed decreases dramatically with the age of delinquency.
- During our limited review, we observed that 8 of the 9 high-dollar debts averaged approximately 19 years for the total processing time from the issuance of the citation to the point at which the debt was eventually terminated (written off).
- Based on our analysis of information provided to us by OSM, collection rates remain low and older debts are still not collected. Our analysis also showed that 77 and 95 percent of all CFP debt that was available to be collected⁷ were written off for the 3-year period ended in FY 1988 and the 4-year period ended in FY 2000, respectively.

⁷All available CFP debts consisted of the CFP receivable balances for the beginning of FY 1986 and FY 1997 plus all net assessments recorded during the 3-year period ended in FY 1988 and the 4-year period ended in FY 2000, respectively.



Poor Financial Condition of CFP Debtors is the Primary Reason for Low Collection Rates and Significant Write-offs (cont'd)

- OSM officials stated that viable companies correct violations before they incur large civil penalties and that companies that are typically not in good financial condition often do not correct the initial violation and therefore receive cessation orders and incur large civil penalties. This has led to these CFP debts being deemed uncollectible and eventually written off.
- Over the 4-year period covering from FY 1997 through FY 2000, OSM has
 - written-off about \$37.1 million in CFP receivables (plus another \$12.6 million in FY 1996),
 - annually estimated between 88 and 99 percent of its reported CFP receivables as uncollectible,
 - recorded less CFP assessments each year, going from about \$2.8 million in FY 1997 to \$591,000 in FY 2000,⁸ and
 - collected about \$616,000 in CFP receivables.

⁸The principal portion of new CFP assessments went from \$680,320 for 111 new debts in FY 1997 to \$180,370 for 22 new debts in FY 2000. 25



Poor Financial Condition of CFP Debtors is the Primary Reason for Low Collection Rates and Significant Write-offs (cont'd)

- As a result of the significant write offs, collections, and fewer recorded numbers and dollars of assessments over the 4 year period, OSM's reported CFP receivables balance has decreased from about \$27.3 million as of October 1, 1996, to about \$1.3 million as of September 30, 2000.
- According to OSM data, from FY 1997 through FY 2000, about \$35 million or 94 percent of the \$37.1 million of CFP debt that collection activity was terminated and receivables were written off was delinquent more than 2 years. OSM wrote off most of the CFP debts for the following reasons
 - \$22.8 million for inability to collect, including companies that have filed for bankruptcy, are bankrupt, or are no longer mining.
 - \$4.6 million that was classified as currently not collectible after being delinquent for more than 2 years,
 - \$3.7 million after a compromise was reached, and
 - \$3.4 million due to expiration of statute of limitations.



Poor Financial Condition of CFP Debtors is the Primary Reason for Low Collection Rates and Significant Write-offs (cont'd)

- OSM does not believe that low collection rates and significant write-offs are a fair indication of the effectiveness of the CFP program. The agency's Strategic Plan states that the purpose of its CFP program is to maximize compliance with mining laws.
- OSM officials stated that, while collecting CFP is an important objective for OSM, maximizing revenues from the collection of CFP is not as important to management as achieving compliance with mining laws. OSM routinely writes off or accepts an offer-in-compromise of large dollar amounts on Title IV CFP debt when its enforcement objectives have been met. For example, even though collection rates on CFP debts remained low, OSM officials stated that 72 percent of notices of violations between FY 1997 and 2000 were abated and 99 percent of Title IV reclamation fees were collected during FY 2000.



Poor Financial Condition of CFP Debtors is the Primary Reason for Low Collection Rates and Significant Write-offs (cont'd)

- OSM officials also stated that with the decline in the number and amount of new Title IV and V CFP debts in FY 2000, they expect the number and amount of new CFP assessments to remain low in the future because
 - OSM is now actively working with companies to prevent problems from occurring,
 - The mining industry has undergone change resulting in better mining practices and fewer violations,
 - OSM has changed the way it oversees state regulatory programs to focus on results instead of activities such as issuing citations, and
 - OSM compliance auditors work with companies to resolve Title IV SMCRA violations before issuing a citation.



Overall Adequacy of CFP Debt Collection Processes Can Not Be Determined, But Such Processes Can Be Strengthened

- The scope limitation prevented us from determining the overall adequacy of OSM's past and present CFP debt collection processes. However, such CFP debt collection processes can be strengthened in certain areas where we found several instances that OSM did not follow various internal debt collection policies and procedures.
- In addition, the extent of OSM's legislative authority could reduce the effectiveness of OSM's ability to achieve its program objective of maximizing compliance with surface mining laws.



Overall Adequacy of CFP Debt Collection Processes Can Not Be Determined, But Such Processes Can Be Strengthened - Scope Limitation

- OSM did not retain documentation of certain CFP collection files for 120 out of the 184 cases that we selected for testing.
 - During FYs 1994 and 1995, OSM scanned CS files, for cases that CS had completed its collection process, into an optical imaging system and destroyed the original documentation. OSM destroyed the original documentation after it used the scanned documents to archive these files. However, the read/write feature of the imaging system broke in 1998 and the vendor went out of business. OSM officials stated that the system's feature could not be repaired or replaced; thus, those documents were no longer available.
 - An OSM official stated that since the imaging problem, they have maintained most original documentation and are working on guidance for archiving documents for 5 years and only imaging key documents.



Overall Adequacy of CFP Debt Collection Processes Can Not Be Determined, But Such Processes Can Be Strengthened - Scope Limitation (cont'd)

- The testing of the 64 CFP debts with available documentation provided evidence that OSM has maintained CS documentation for the debts with collection activity since the imaging problem.
- As a result of the lack of documentation, we were unable to test about 2/3 of the sampled cases we selected for review to determine the extent to which OSM did or did not follow its CFP debt collection policies and procedures. Additionally, this scope limitation precluded our ability to appropriately project findings for those cases for which we had sufficient documentation for our review to the universe of CFP debts. Consequently, we are unable to conclude on the overall adequacy of OSM's CFP debt collection processes.⁹

⁹We are 95 percent confident that the actual proportion of cases for which OSM has no documentation of collection specialist actions is 64.4 percent (plus or minus 5.6 percent).



Overall Adequacy of CFP Debt Collection Processes Can Not Be Determined, But Such Processes Can Be Strengthened - Noncompliance

- Although we could not determine the overall adequacy of OSM's CFP past and present debt collection processes, we identified several instances where OSM did not comply with its own debt collection policies and procedures,¹⁰ including the following
 - 17 out of 24 CFP debts that were delinquent more than 2 years and referred to the Solicitor or Treasury were not written off as CNC. Fifteen of the CFP debts were referred to Treasury and due to oversight, were not written off as CNC until we brought it to OSM's attention, wherein, OSM subsequently established specific formal guidance for the write-off of such types of debts.
 - 4 out of 32 CFP debts that were delinquent less than 2 years were incorrectly written off as CNC.

¹⁰Because of the scope limitation discussed earlier, we were not able to project our findings to the entire universe of cases. However, we are presenting the results of the cases we did review. These results should not be used as a basis for concluding about the adequacy of OSM's debt collection process.



Overall Adequacy of CFP Debt Collection Processes Can Not Be Determined, But Such Processes Can Be Strengthened - Noncompliance (cont'd)

- 5 of 5 CFP debts involving installment agreements issued between 1994 and 1997 did not have documentation supporting the debtor's inability to immediately pay in full. However, in August 2000, OSM began requiring management approval of installment agreements and developed an installment agreement worksheet to be used by CS that requires that such documentation be maintained.
- 2 out of the 9 high-dollar delinquent debts were written off and the cases terminated without the required approval from the Department of Justice. After we informed OSM officials of this situation, they subsequently reclassified the debts as CNC since the debts were over 2 years old.



Overall Adequacy of CFP Debt Collection Processes Can Not Be Determined, But Such Processes Can Be Strengthened - OSM's Legislative Authority

- Section 510(c) of SMCRA prohibits the issuance of mining permits to applicants who are responsible for unabated violations. An unpaid CFP debt is treated as an unabated violation. One of the purposes of a denial of a new permit is to induce violators to correct violations and pay CFP.
- Section 510(c) reads: *Where....information available to the regulatory authority indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this Act....the permit shall not be issued.*



Overall Adequacy of CFP Debt Collection Processes Can Not Be Determined, But Such Processes Can Be Strengthened-OSM's Legislative Authority(cont'd)

- In 1997, the U.S. Court of Appeals for the D.C. Circuit invalidated an OSM regulation that blocked the issuance of a permit to any surface coal mining operation owned or controlled by either the applicant or by a person who owns or controls the applicant that is currently in violation of the SMCRA (upstream owner or controller). The court ruled that the regulation was inconsistent with the authority conferred on OSM by section 510(c) of SMCRA.
- As a result, Section 510(c) of SMCRA limits OSM's ability to deny permits to certain applicants associated with SMCRA violations.



Overall Adequacy of CFP Debt Collection Processes Can Not Be Determined, But Such Processes Can Be Strengthened-OSM's Legislative Authority(cont'd)

- Since this court decision, OSM stated it and the States have issued permits to three applicants where “they would have been denied” under the regulations the court invalidated. OSM further stated that the denials would have been based on an upstream owner or controller violation, where at the time of the applications for new permits, the upstream owners or controllers were linked to unabated violations, including the unpaid principal portion¹¹ of the CFP receivable balances totaling approximately \$31,600, plus another \$122,697 of unpaid AML fees and reclamation costs.
 - For example, OSM stated that its Knoxville office issued an applicant a new surface mining permit in December 2000. The applicant was comprised of three 30 percent and one 10 percent shareholders, who were also managers of the limited liability company. Three of the shareholders had unabated violations.

¹¹OSM provided only the principal portion of the CFP receivable and stated that the interest, administrative costs, penalties, and post judgements portions were not readily available and that generally, the total CFP receivable amounts were equal to double the principal portion. 36



Overall Adequacy of CFP Debt Collection Processes Can Not Be Determined, But Such Processes Can Be Strengthened-OSM's Legislative Authority (cont'd)

- One of the 30 percent shareholders was issued 2 COs in 1984, and was convicted by a Tennessee jury of a criminal offense of continuing to conduct surface coal mining operations without a permit and failing to stop after being notified by the authorities. The federal violations have been corrected, but the principal portion of CFP totaling approximately \$7,800 remains unpaid, and
- One of the other 30 percent shareholders and the 10 percent shareholder are principals (shareholders/officers) in a company that owns 33.3 percent of another company that was an operator for a third company that was issued a NOV and CO in 1994 and 1995, respectively. The violations have been corrected, but the principal portion of CFP totaling approximately \$23,800 remains unpaid.



Overall Adequacy of CFP Debt Collection Processes Can Not Be Determined, But Such Processes Can Be Strengthened-OSM's Legislative Authority (cont'd)

- This limitation in OSM's ability to deny the issuance of permits to applicants whose upstream owners or controllers have unabated SMCRA violations may reduce OSM's ability to achieve compliance with SMCRA, including the correction of violations and the collection of unpaid CFP.



OMB's and Treasury's Roles in the Oversight and Monitoring of CFP Debt

- Reporting of CFP Receivables
 - OSM reports total receivable amounts in its audited financial statements, which includes CFP receivable amounts. In addition, OSM reports annual CFP collections and the year-end receivables balance in the financial management section of its annual report, which is submitted to OMB and Treasury.
 - In accordance with requirements of the Debt Collection Improvement Act of 1996 (DCIA), OSM annually reports CFP receivables information, including annual collection activity, delinquent debt, and estimated uncollectibles, to Treasury as part of the Report of Receivables Due from the Public.
 - OMB and Treasury are provided with information useful in performing CFP debt oversight roles.
-



OMB's and Treasury's Roles in the Oversight and Monitoring of CFP Debt (cont'd)

- However, in discussions with OMB officials, they emphasized that OMB's oversight is broad and consists of monitoring and evaluating government-wide credit management, debt collection activities, and federal agency performance. OMB also stated that it is the specific responsibility of the agency Chief Financial Officer and program managers to manage and be accountable for the debt collection of their agency's credit portfolios in accordance with applicable federal debt statutes, regulations, and guidance. OMB further added that it is the role of each agency to specifically monitor and collect their civil penalty debt regardless of dollar magnitude and the responsibility of each agency's Office of the Inspector General to provide oversight through audit of agency's debt collection activities.



OMB's and Treasury's Roles in the Oversight and Monitoring of CFP Debt (cont'd)

Referral of CFP Debt to Treasury

- DCIA requires federal agencies to transfer eligible non-tax debt or claims over 180 days delinquent to Treasury for collection action.
- Treasury officials stated that they rely on the agencies to determine what debt should be referred to Treasury for collection action, as required by DCIA.
- OSM's policy is to refer CFP debt to Treasury for collection action.



Conclusion

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- The poor financial condition of CFP debtors is the primary reason that OSM continues to experience significantly delinquent, and in most cases, uncollectible CFP receivables that are eventually written off. While a lack of documentation of certain collection specialist actions prevented us from determining the adequacy of OSM's past and present debt collection processes and the poor financial condition of CFP debtors makes substantial improvement in collection rates problematic, opportunities exist for OSM to strengthen its debt collection processes through better adherence to certain of its own debt collection policies and procedures. Additionally, OSM's inability to prevent owners and controllers of companies with unabated violations from obtaining new mining permits could reduce the effectiveness of its CFP program.



Recommendations

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- We recommend that the Secretary of Interior direct the Acting Director of OSM to take the following actions
 - Evaluate the potential significance of the court decision on OSM's ability to limit new permits to applicants with upstream owners and controllers with unabated SMCRA violations. If a change in SMCRA is needed that would expand OSM's authority to deny a new permit to applicants whose upstream owners and controllers have uncorrected violations and/or unpaid CFP, work with the Congress to determine the appropriate legislative action to take.
 - Monitor to ensure the effective implementation of its new guidance on:
 - writing off CFP debt referred to either SOL or Treasury and over 2 years delinquent by classifying the debt as CNC and
-



Recommendations (cont'd)

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- maintaining documentation used to determine debtor's inability to immediately pay CPF debt in full for cases involving installment agreements.

 - reinforce to its CFP collection and management personnel the need to fully adhere to CFP debt collection policies and procedures for obtaining the required approval from the Department of Justice to terminate collection efforts and write off delinquent CFP debt greater than or equal to \$100,000.



Agency Comments

- In commenting on a draft of these briefing slides, OSM agreed with our recommendations and stated that it will continue to explore all policy, regulatory, and legislative options with the potential to improve its ability to keep applicants responsible for uncorrected violations and unpaid debt from receiving permits to mine coal.
- OSM stated that during our May 17, 2001, exit conference, we acknowledged that the instances of non-compliance with debt collection policies and procedures we found did not have a material impact on collections. In addition, OSM also stated that there is ample evidence that OSM's current procedures are effective and controls are sound, which it stated, was based on 64 cases out of only 81 cases with outstanding CFP receivables as of the end of FY 2000.



Agency Comments (cont'd)

- As we stated in our Scope and Methodology section, we selected a total of 184 open and closed CFP cases from a total of 490 cases. Although we did state at the exit conference that the instances of non-compliance may not have affected OSM's ability to collect the CFP debts, the fact remains that these instances have resulted in misstatements in OSM's reported CFP receivables. Further and more importantly, because of the lack of documentation of the collection specialists' actions for the majority of the sampled cases, we are unable to assess whether there were material instances of non-compliance with OSM's past and present debt collection policies and procedures.



Agency Comments (cont'd)

- OSM then stated that the primary reason for the low collection rates was the poor financial condition of CFP debtors, not the poor quality of CFP debt. We agree that the primary reason for the low collection rates was the poor financial condition of certain CFP debtors instead of poor financial quality of CFP debts. Poor financial quality of CFP debts is typically caused by the poor financial condition of the related debtors. As a result, we revised our report and slides except where we refer to our 1987 report that described this issue as poor financial quality.
- OSM stated that our high level summarized report obscures important aspects of the program, by not including the number of debts collected, differentiating between Title IV and V debts, measuring collection rates by age of debt, and focusing on the current process. In particular, OSM stated that collection rates should be calculated only on the principal portion of the net assessments recorded as CFP receivables.



Agency Comments (cont'd)

- As such, OSM again modified its method and recalculated its combined annual collection rates at approximately 11 percent – 4 percent for Title IV and 17 percent for Title V – based on only the principal portion of the net assessments from the CFP receivables for the 4-year period ended in fiscal year 2000. Both modified calculation methods used by OSM inappropriately overstate its annual collection rates. Each method uses only the new CFP net assessments or just the principal portion of new CFP debts and inappropriately excludes current CFP debts that are a part of the beginning receivable balances and earned interest and late charges on the current debts that were recorded during the 4-year period ended in fiscal year 2000. Regardless of the method used to calculate collection rates, the main point remains that each collection rate is low and when the same method was applied for both the 3-year period ended in FY 1988 and the 4-year period ended in FY 2000, the collection rates were similar and did not show any significant increase from one period to the other.¹²

¹² A comparison of the collection rates for the 3-year period ended in FY 1988, based on the second modified calculation method, could not be made since the principal portions of net assessments recorded during the 3-year period were not available. 48



Agency Comments (cont'd)

-
- While we incorporated some of the suggested CFP detail that OSM provided in its response, the other suggestions were not incorporated because they did not agree with the detailed information provided to us during our review. In addition, the suggestions focused primarily on the principal portion of CFP debts, which as we stated, overstates collection rates. Furthermore, it does not change our conclusion as to the primary reason for OSM's low collection rates and its significant amount of CFP debts that were written off, which continued to represent a significant amount of the CFP receivables available for collection from the 3-year period ended in FY 1988 and the 4-year period ended in FY 2000.

Comments From the Office of Surface Mining of the Department of the Interior



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240

OCT - 1 2001

Mr. Gary T. Engel, Director
Financial Management and Assurance
U.S. General Accounting Office
441 G. Street, NW
Washington, DC 20548

Dear Mr. Engel:

Thank you for the opportunity to review the General Accounting Office's (GAO) draft briefing entitled "Review of Office of Surface Mining's Management and Collection of Civil Fines and Penalties." We appreciate GAO's thoroughness and willingness to address the root causes of the low collection rate in the civil penalty collection program. Our general comments are provided below. Page-by-page comments and technical corrections by the Office of Surface Mining (OSM) are enclosed.

See comment 1.

The report cites several examples of non-compliance with collection policies and procedures, but does not comment on the materiality of these findings. During the May 17, 2001, exit conference, GAO acknowledged that these instances of non-compliance did not have a material impact on collections. We agree with that assessment and ask that you state it in the briefing materials. Also, OSM had already addressed several of these issues, either prior to or during the review period. Please acknowledge these in the report. Specific examples are provided in comment 17 in the enclosure.

See comment 2.

See comment 3.

The report states that the primary reason for the low collection rate of civil penalty debt continues to be the "poor quality" of the debt. However, the specific reason for the low collection rate is the poor financial condition of the debtors. GAO should state this at the beginning of the report. Eighty-five percent of the uncollected civil penalties issued from 1997 through 2000 for Title V (on-the-ground) violations are owed by out of business or bankrupt companies.

See comment 4.

The report summarizes data at a high level. This obscures important aspects of the program. Specifically, the report should:

Show numbers of debts, not just the dollar amounts. The average collected Title V civil penalty is \$2,288 and the average uncollected civil penalty is \$18,644. This is because there is a strong correlation between the financial condition of the debtor and the amount of debt that they incur. Companies that are in good financial condition fix violations and incur relatively small penalties. Companies that are in poor financial condition do not fix violations, and incur large dollar cessation orders. By only measuring dollars, each uncollected civil penalty is counted eight times as much as each

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of the Department of the Interior

collected civil penalty (\$18,644 vs. \$2,288). This skews the analysis. The number of cases should be included in the report to add perspective. This would reveal that, although OSM only collected 17% of the Title V dollar amounts due, it collected 62.9% of the number of debts.¹

See comment 4.

Differentiate between Title IV and Title V debts. There are important differences in the collection policies and the debtor populations for Title IV and V violations. As a group, companies that receive Title IV civil penalties, which are issued for failure to report or pay reclamation fees, are usually in poor financial condition. As explained in the enclosure, OSM readily compromises most of the amount assessed on a cessation order issued for a Title IV violation, if the debtor pays the reclamation fees. This is because collection of the civil penalty can jeopardize a company's ability to pay future reclamation fees. Civil penalties issued for mining violations are not routinely compromised, but can be if the debtor does not have the financial ability to correct both the violation and pay the civil penalty. The differences between the two programs produce significantly different results that are masked when the results are combined at a high level. It is OSM's policy to maximize both the collection of civil penalties and enforcement when possible.

See comment 5.

Measure the collection rate based on the age of the accounts receivable. The four percent collection rate cited in the report is based on the total amounts collected and the total amounts outstanding. Until FY 2000, the outstanding accounts receivable balances included substantial amounts of old debt, including large amounts of accrued late charges. However, most collections are on new debts. The report is comparing collections on new debt against mostly old debt. To accurately reflect the collection rate, GAO should calculate the collection rate on current receivables. The collection rate on recent Title IV civil penalties is 4% and 17% on Title V.

See comment 4.

Focus on current processing. The average age of nine high dollar cases is cited as an indication that the situation reported in GAO's 1987 report has not changed. However, the situation has changed significantly since 1987. Eight of the nine high dollar cases that GAO cited were from the same time period as the cases reviewed in GAO's 1987 report. (All but one of the eight citations were issued between 1979 and 1981). Therefore, it is not surprising that these cases may exhibit some of the same characteristics found in GAO's 1987 report. But these cases do not represent current processes at OSM. Only one of the high dollar cases in GAO's sample reflected current processing. It was issued in 1998. The case was referred to the Solicitor's Office and terminated in less than a year, far less than the 19 year average cited in the current report. The current situation is reflected in the fact that the average debt in the ending FY 2000 accounts receivable balance was 2.3 years old. The median age was 1.9 years. This is significantly different from the situation reported on by GAO in 1987.

¹ Title V statistics are based on new civil penalties issued between FY 1997 and 2000.

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See comment 6.

Other areas of the report should also emphasize OSM's current situation. The figures that are provided to show the declining trend in new receivables include late charge accruals on old debt. For example, the report cites new civil penalty assessments of \$519,000 in FY 2000. However, only 22 new civil penalties were assessed in FY 2000 totaling \$180,370. Similarly, figures are provided on the millions of dollars in write-offs, but information needs to be provided that these were largely old debts. (See comment 15 in the enclosure).

See comment 7.

See comment 7.

The same issue of old vs. current processes is also present in the scope limitation. Eighty-four percent of the 120 cases where GAO could not review the collection specialist history notes were over 9 years delinquent at the time the documentation was requested. (Over half the cases were 14 years delinquent). While we understand that you cannot express an opinion on the collection action taken on these old cases, we believe that there is ample evidence that OSM's current procedures are effective and controls are sound. The auditors were able to review sixty-four cases. There were only 81 cases in OSM's ending FY 2000 accounts receivable balance.

See comment 6.

Several points in the report refer to information provided by OSM or statements made by OSM. We appreciate these being included but would also like to see some of the information that OSM provided to support these statements, either in the text or as a footnote. These are addressed in comments number 10 and 14 in the enclosure.

See comment 8.

We agree with GAO's recommendations concerning debt collection. Regarding the legislative recommendation, OSM has worked extensively with our State regulatory partners in evaluating the effects of the 1997 appeals court decision invalidating the "upstream" reach of OSM's regulations. Our December 2000 final ownership and control regulation is the culmination of a thorough analysis, in consultation with all affected parties, designed to develop rules that comport to the 1997 appeals court decision. The new regulations are in litigation, and we are in settlement discussions with the plaintiffs (National Mining Association). OSM will continue to explore all policy, regulatory and legislative options with the potential to improve our ability to keep applicants responsible for uncorrected violations and unpaid debt from receiving permits to mine coal.

We appreciate the opportunity to review and comment on the draft GAO briefing materials.

Sincerely,


Assistant Secretary
Land and Minerals Management

Enclosure

GAO's Comments

The following are our comments on the Office of Surface Mining's letter dated October 1, 2001.

1. Although we did state at the exit conference that the instances of noncompliance may not have affected OSM's ability to collect the CFP debts, the fact remains that these instances have resulted in misstatements of OSM's reported CFP receivables. Further and more importantly, because of the lack of documentation of the collection specialists' actions for two-thirds of the sampled cases, we are unable to assess whether there were material instances of noncompliance with OSM's past and present debt collection policies and procedures.
2. The draft briefing slides already discussed the policies and procedures established by OSM to write-off cases over 2 years old as currently not collectible and we included OSM's management approval of payment agreements and development of an installment agreement worksheet in the briefing slides. The steps taken by OSM to address the identified areas of noncompliance are also discussed in the report.
3. We agree that the primary reason for the low collection rates was the poor financial condition of certain CFP debtors. Poor financial quality of CFP debts is typically caused by the poor financial condition of the related debtors. As a result, we revised our report and slides except where we refer to our 1987 report that described this issue as poor financial quality.
4. We incorporated several of OSM's suggested CFP detail related to the number of debts collected, differentiating between Title IV and V debts, measuring collection rates by age of debt, and focusing on the current process into our briefing slides and reports. However, the other suggestions were not incorporated because they did not agree with the detailed information provided to us during our review. In addition, the suggestions focused primarily on the principal portion of CFP debts, which as we stated at the May 17, 2001, exit conference, overstates OSM's overall collection rates. Further, it does not change our conclusion as to the primary reason for OSM's low collection rates and the significant amount of CFP debts that were written off during both the 3 years ended in fiscal year 1988 and the 4 years ended in fiscal year 2000.

5. OSM modified its calculation method from the one discussed in the briefing slides. OSM recalculated its combined annual collection rates at approximately 11 percent—4 percent for Title IV and 17 percent for Title V—based on only the principal portion of the net assessments from the CFP receivables for the 4 years ended in fiscal year 2000. Both modified calculation methods used by OSM inappropriately overstate its annual collection rates. Each method uses only the new CFP net assessments or just the principal portion of new CFP debts and inappropriately excludes current CFP debts that are a part of the beginning receivable balances and earned interest and late charges on the current debts that were recorded during the 4 years ended in fiscal year 2000. Regardless of the method used to calculate collection rates, the main point remains that each collection rate is low and when the same method was applied for both the 3 years ended in fiscal year 1988 and the 4 years ended in fiscal year 2000, the collection rates were similar and did not show any significant increase from one period to the other.¹⁸
6. The “Primary Reason” section of the briefing slides and report were revised and include the changes in the number and amount of the new CFP principal assessments from fiscal year 1997 to fiscal year 2000.
7. As stated in the “Scope and Methodology” section, we selected a total of 184 open and closed CFP cases from a total of 490 cases. And as stated in GAO Comment no. 1, the lack of documentation of the collection specialists’ actions for two-thirds of the sampled cases prevented us from determining whether there were material instances of noncompliance with OSM’s past and present debt collection policies and procedures.
8. See “Agency Comments and Our Evaluation” section.

¹⁸A comparison of the collection rates for the 3 years ended in fiscal year 1988, based on the second modified calculation method, could not be made since the principal portions of net assessments recorded during the 3 years were not available.

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