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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY  
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WEDNESDAY, OCTOBER 31, 1973

SUMMARY STATEMENT OF  
HENRY ESCHWEGE, DIRECTOR  
RESOURCES AND ECONOMIC DEVELOPMENT DIVISION  
UNITED STATES GENERAL ACCOUNTING OFFICE  
BEFORE THE  
CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE  
OF THE  
COMMITTEE ON GOVERNMENT OPERATIONS  
HOUSE OF REPRESENTATIVES  
ON  
DEPARTMENT OF THE INTERIOR ACTIVITIES  
UNDER THE  
FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

WE ARE PLEASED TO APPEAR TODAY AT YOUR REQUEST TO DISCUSS THE IMPLEMENTATION OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969 BY THE DEPARTMENT OF THE INTERIOR, ESPECIALLY THE ASSESSMENT AND COLLECTION OF CIVIL PENALTIES BY THE DEPARTMENT.

THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969 AND ITS IMPLEMENTING REGULATIONS REQUIRE HEALTH AND SAFETY INSPECTIONS OF UNDERGROUND COAL MINES AND DUST SAMPLING BY BOTH THE DEPARTMENT OF THE INTERIOR AND COAL MINE OPERATORS, THE APPROVAL AND REVIEW OF OPERATING PLANS BY THE DEPARTMENT, AND PROVIDE CERTAIN PROCEDURES FOR THE ASSESSMENT AND COLLECTION OF PENALTIES FOR VIOLATIONS OF THE MANDATORY HEALTH AND SAFETY STANDARDS, INCLUDING CONSIDERATION BY THE DEPARTMENT OF SIX STATUTORY FACTORS AND A MINE OPERATOR'S RIGHT TO A PUBLIC HEARING.

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PRIOR TO JULY 16, 1973, THE RESPONSIBILITY WITHIN THE DEPARTMENT FOR ENFORCING THE ACT WAS IN THE BUREAU OF MINES. EFFECTIVE JULY 16, 1973, THESE RESPONSIBILITIES WERE TRANSFERRED TO THE NEWLY ESTABLISHED MINING ENFORCEMENT AND SAFETY ADMINISTRATION (MESA).

ASSESSMENT AND COLLECTION  
OF COAL MINE PENALTIES

IN JULY 1972, THE COMPTROLLER GENERAL ISSUED A REPORT TO THIS SUB-COMMITTEE ON IMPROVEMENTS NEEDED IN THE ASSESSMENT AND COLLECTION OF PENALTIES UNDER THE ACT (B-170686, JULY 5, 1972).

OUR REVIEW SHOWED THAT ALTHOUGH BUREAU OFFICIALS STATED THAT THE SIX FACTORS SPECIFIED BY LAW WERE BEING CONSIDERED IN MAKING ASSESSMENTS, WRITTEN GUIDELINES HAD NOT BEEN DEVELOPED TO AID THE ASSESSORS IN CONSIDERING THE FACTORS, THE CONSIDERATION GIVEN TO EACH OF THE FACTORS BY THE ASSESSORS WAS NOT DOCUMENTED, AND NO SUCH DOCUMENTATION WAS REQUIRED. WE ALSO NOTED DELAYS IN (1) MAKING ASSESSMENTS, (2) REFERRING CASES FOR HEARINGS, AND (3) CONDUCTING HEARINGS ON CASES DISPUTED BY MINE OPERATORS. FURTHERMORE, DELAYS IN ESTABLISHING COLLECTION PROCEDURES AND IN INITIATING COLLECTION ACTIONS RESULTED IN SLOW COLLECTION OF PENALTIES.

CONSIDERATION OF FACTORS REQUIRED BY LAW

IN OUR REPORT WE STATED THAT WE BELIEVED THAT WRITTEN GUIDELINES DEFINING THE FACTORS AND THE CONSIDERATION AND WEIGHT THAT SHOULD BE GIVEN TO EACH FACTOR WERE NEEDED TO (1) ASSIST THE ASSESSORS IN CONSIDERING THE FACTORS, (2) HELP PROVIDE UNIFORM CONSIDERATION OF THE SIX FACTORS, AND (3) FACILITATE EVALUATION OF ASSESSOR PERFORMANCE. WE STATED ALSO THAT ASSESSORS SHOULD BE REQUIRED TO DOCUMENT IN THE BUREAU'S FILES THE CONSIDERATION GIVEN EACH FACTOR IN ASSESSING A PENALTY.

IN MARCH 1973 THE U.S. DISTRICT COURT FOR THE DISTRICT OF COULMBIA RESTRAINED THE DEPARTMENT FROM CONTINUING TO USE THE PENALTY ASSESSMENT PROCEDURES IN EFFECT AT THAT TIME BECAUSE THE COURT DETERMINED THEM TO BE UNLAWFUL. AS A RESULT THE DEPARTMENT ADOPTED NEW PROCEDURES IN APRIL 1973 PENDING THE OUTCOME OF AN APPEAL OF THE COURT DECISION. THE BUREAU ISSUED AN ASSESSMENT MANUAL WHICH PROVIDED GUIDELINES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR VIOLATIONS BY COAL MINE OPERATORS AND REQUIRED DOCUMENTATION OF EACH ASSESSMENT. TO DETERMINE THE AMOUNT OF THE PENALTY, ASSESSORS MUST APPLY A FORMULA WHICH DEFINES AND WEIGHS THE SIX STATUTORY FACTORS.

IN OUR OPINION, THE 1973 GUIDELINES SHOULD RESULT IN AN IMPROVEMENT IN THE PENALTY ASSESSMENT PROCESS SINCE THEY ENABLE THE ASSESSORS TO BE MORE SYSTEMATIC AND OBJECTIVE IN THEIR CONSIDERATION OF THE SIX STATUTORY FACTORS AND REQUIRE THE DOCUMENTATION OF THAT CONSIDERATION.

#### ASSESSMENT AND HEARING DELAYS

##### ASSESSMENTS

IN OUR REPORT, WE STATED THAT WE SAMPLED ASSESSMENTS AND FOUND THAT (1) ABOUT 4 MONTHS ELAPSED FROM CITATION OF A VIOLATION BY A MINE INSPECTOR TO ASSESSMENT OF A PENALTY AND (2) ABOUT 10 WEEKS ELAPSED FROM THE REQUEST FOR A HEARING BY A MINE OPERATOR TO THE REFERRAL TO THE SOLICITOR'S OFFICE FOR INITIATION OF THE HEARINGS PROCESS WITH THE DEPARTMENT'S OFFICE OF HEARINGS AND APPEALS. IN COMMENTING ON OUR FINDINGS, THE CHIEF OF THE ASSESSMENT OFFICE STATED THAT AFTER JANUARY 1972, ALL VIOLATIONS WERE ASSESSED WITHIN 30 DAYS OF RECEIPT BY THE ASSESSMENT OFFICE.

AS OF SEPTEMBER 28, 1973, HOWEVER, THE BACKLOG OF UNASSESSED VIOLATIONS AMOUNTED TO ABOUT 64,000. IN OCTOBER 1973, AN ASSESSMENT OFFICE OFFICIAL

STATED THAT PENALTY ASSESSMENTS WERE MADE ON A CURRENT BASIS UNTIL THE DEPARTMENT'S ASSESSMENT PROCEDURES WERE DECLARED UNLAWFUL BY THE COURT IN MARCH 1973. AFTER THE COURT DECISION, NO VIOLATIONS WERE ASSESSED UNTIL NEW ASSESSMENT PROCEDURES WERE DEVELOPED. WHEN ASSESSING WAS RESUMED IN THE FIRST WEEK OF MAY 1973, A BACKLOG OF ABOUT 44,000 VIOLATIONS EXISTED.

MOREOVER, FROM MAY THROUGH SEPTEMBER 1973, VIOLATIONS WERE RECEIVED IN THE ASSESSMENT OFFICE AT THE RATE OF ABOUT 1,400 A WEEK, WHILE VIOLATIONS WERE ASSESSED AT THE RATE OF ABOUT 500 A WEEK. MESA OFFICIALS STATED THAT THE INCREASED DOCUMENTATION AND SYSTEMATIC APPROACH TO ASSESSMENTS CALLED FOR IN THE NEW ASSESSMENT MANUAL, INVOLVES MORE TIME FOR EACH ASSESSMENT THAN THE TOTALLY UNDOCUMENTED METHOD USED AT THE TIME OF OUR REPORT.

THE ADMINISTRATOR OF MESA INFORMED US THAT A REQUEST FOR A SUPPLEMENTAL APPROPRIATION IS BEING SUBMITTED WHICH WILL AUTHORIZE FUNDS FOR 23 ADDITIONAL ASSESSORS. IN ADDITION, HE SAID THAT PRESENTLY ABOUT 30 MINE INSPECTORS HAVE BEEN TEMPORARILY DETAILED TO ASSESSMENT WORK.

HE ALSO INFORMED US THAT HE EXPECTED TO HAVE THE BACKLOG CLEARED UP IN 6 TO 7 MONTHS. IT WILL BE SOME TIME BEFORE THE ADDITIONAL ASSESSOR POSITIONS CAN BE APPROVED AND THE ASSESSORS CAN BE HIRED. WE BELIEVE, THEREFORE, IT IS UNLIKELY THAT MESA CAN CLEAR UP THE LARGE BACKLOG IN 6 TO 7 MONTHS AND ALSO REMAIN CURRENT WITH NEW VIOLATIONS IF THE VIOLATIONS CONTINUE AT THE PRESENT RATE, UNLESS ADDITIONAL INSPECTORS ARE TEMPORARILY ASSIGNED AS ASSESSORS. THE ASSIGNMENT OF A SIGNIFICANT NUMBER OF INSPECTORS, HOWEVER, COULD HAVE AN ADVERSE EFFECT ON MESA'S ABILITY TO CARRY OUT ITS INSPECTION RESPONSIBILITIES.

HEARINGS

WE PREVIOUSLY REPORTED THAT SIGNIFICANT DELAYS IN REFERRING CASES FOR HEARINGS AND IN CONDUCTING HEARINGS ON CASES DISPUTED BY MINE OPERATORS RESULTED IN A BACKLOG OF 1,062 CASES AWAITING HEARINGS BY DECEMBER 31, 1971. SINCE OUR REPORT, THE STAFF OF ADMINISTRATIVE LAW JUDGES INVOLVED IN HEARING PENALTY CASES INCREASED FROM FOUR TO THE EQUIVALENT OF ABOUT 17 AS OF SEPTEMBER 30, 1973. THE BACKLOG OF CASES AWAITING HEARINGS, HOWEVER, HAD NEARLY TRIPLED TO ABOUT 2,850 CASES.

FROM JULY THROUGH SEPTEMBER 1973, THE HEARINGS OFFICE RESOLVED CASES AT THE AVERAGE RATE OF 74 PER MONTH. AT THIS RATE, IT WOULD TAKE OVER 3 YEARS TO ELIMINATE THIS BACKLOG WITHOUT CONSIDERING THE CASES THAT WOULD BE RECEIVED DURING THE PERIOD.

THE ACTING DIRECTOR, OFFICE OF HEARINGS AND APPEALS, STATED THAT THE FISCAL <sup>Year</sup> 1975 BUDGET REQUEST, AS SUBMITTED BY THE OFFICE, CONTAINS A REQUEST FOR ABOUT SIX ADDITIONAL ADMINISTRATIVE LAW JUDGES. HE ALSO STATED THAT THE EFFECT OF THE JUDGES ADDED IN 1973 WAS NOT YET FULLY REFLECTED IN THE STATISTICS ON DECISIONS RENDERED BECAUSE THERE IS A LAG OF SEVERAL MONTHS BETWEEN THE DATE OF A HEARING AND THE DATE OF A DECISION. THEREFORE, WE BELIEVE THAT IT WAS TOO EARLY FOR US TO EVALUATE THE STAFFING NEEDS OF THE HEARINGS OFFICE AT THIS TIME.

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WE BELIEVE THAT THE DEPARTMENT SHOULD GIVE THE DIRECTOR, OFFICE OF SURVEY AND REVIEW, THE RESPONSIBILITY FOR DETERMINING WHETHER THE STAFF OF JUDGES IN THE HEARINGS OFFICE AND THE STAFF OF ASSESSORS IN THE ASSESSMENT OFFICE ARE ADEQUATE TO PROVIDE EXPEDITIOUS PROCESSING OF ASSESSMENTS AND HEARINGS AND THAT SUCH DETERMINATION SHOULD BE MADE BY THE OFFICE WITHIN A REASONABLE TIME AFTER THE PROPOSED INCREASE IN STAFFING HAS BEEN ACCOMPLISHED  
ADDED

### LIMITED COLLECTION RESULTS

IN OUR REPORT, WE HAD ESTIMATED THAT THERE WERE 1,785 ASSESSMENT CASES ON WHICH COLLECTION ACTION SHOULD HAVE BEEN TAKEN. AS OF DECEMBER 31, 1971, NO COLLECTION ACTION HAD BEEN TAKEN ON ABOUT 60 PERCENT OF THESE CASES AND ACTION ON THE REMAINING 40 PERCENT HAD NOT BEEN TIMELY.

WE ALSO REPORTED THAT THE BUREAU'S MANAGEMENT CONTROL SYSTEM WAS NOT ADEQUATE TO READILY IDENTIFY THE STATUS OF CASES AND TO PROVIDE DATA NEEDED TO IDENTIFY AND CORRECT THE CAUSES OF COLLECTION PROCESSING DELAYS. THE BUREAU WAS REVISING ITS MANAGEMENT SYSTEM AT THE COMPLETION OF OUR REVIEW AND WE WERE NOT ABLE TO EVALUATE HOW WELL THE REVISED SYSTEM WOULD MEET MANAGEMENT'S NEEDS.

UNDER THE PROCEDURES IN USE SINCE THE MARCH 1973 COURT DECISION, THE RESPONSIBILITY FOR ENFORCING THE COLLECTION OF CIVIL PENALTIES AFTER THE HEARINGS DECISION IS RENDERED WAS TRANSFERRED FROM THE BUREAU'S ASSESSMENT OFFICE TO THE DEPARTMENT'S SOLICITOR'S OFFICE. MESA RECEIVES AND RECORDS THE COLLECTIONS.

THE DEPARTMENT ESTIMATES THAT UNPAID ASSESSMENTS TOTALED ABOUT \$20.7 MILLION AS OF OCTOBER 18, 1973. HOWEVER, THIS AMOUNT IS OVERSTATED BECAUSE IT INCLUDES ABOUT 31,000 VIOLATIONS WHICH HAVE TO BE REASSESSED BECAUSE OF THE COURT DECISION.

THE DEPARTMENT DOES NOT HAVE ACCURATE DATA ON TOTAL PENALTIES ASSESSED AND UNPAID, AND THERE IS NO MANAGEMENT CONTROL SYSTEM FOR IDENTIFYING THE COLLECTION ACTIONS REQUIRED OF THE SOLICITOR'S OFFICE.

### OFFSET PROCEDURES

WE ADVISED THE SUBCOMMITTEE IN A LETTER DATED FEBRUARY 16, 1973, THAT OFFSET SHOULD BE USED IN THE COLLECTION OF CIVIL PENALTIES. THE FEDERAL

CLAIMS COLLECTION STANDARDS (4 C.F.R. 102.3) SPECIFICALLY PROVIDE FOR THE SUBMISSION OF DEBTORS' NAMES AND AMOUNTS OWED THE GOVERNMENT TO THE ARMY FINANCE OFFICE FOR INCLUSION IN THE ARMY HOLDUP LIST. THE LIST IS DISTRIBUTED TO GOVERNMENT AGENCIES FOR EFFECTING COLLECTION BY OFFSET. WE WERE ADVISED BY AN ASSESSMENT OFFICE OFFICIAL <sup>THAT THE OFFICE HAD</sup> ~~THEY DID~~ <sup>TELE</sup> NOT SUBMIT THE REQUIRED INFORMATION TO THE ARMY FINANCE OFFICE.

HOWEVER, MESA DID CONTACT SEVERAL AGENCIES INCLUDING THE INTERNAL REVENUE SERVICE (IRS) CONCERNING THE OFFSET OF PENALTIES. WE WERE ADVISED BY A MESA OFFICIAL THAT IRS INFORMED HIM THAT IT WOULD ONLY ACCEPT REQUESTS FOR OFFSET FROM MESA IN CASES WHERE MESA HAS SPECIFIC KNOWLEDGE THAT THE COAL MINE OPERATOR HAS A PENDING TAX REFUND. WE CONFIRMED THIS INFORMATION.

AS ASSESSMENT OFFICE OFFICIAL INFORMED US THAT AS OF OCTOBER 3, 1973, NO OFFSETS HAD BEEN MADE.

#### CASES REFERRED TO JUSTICE DEPARTMENT

AN ASSESSMENT OFFICE OFFICIAL STATED THAT AS OF SEPTEMBER 12, 1973, ABOUT 2,600 PENALTY CASES TOTALING ABOUT \$4 MILLION IN ASSESSMENTS HAD BEEN SENT TO THE JUSTICE DEPARTMENT FOR ENFORCEMENT ACTION AND THAT ABOUT \$150,000 ON 300 CASES HAD BEEN COLLECTED.

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THE ADMINISTRATOR, MESA, INFORMED US THAT A MANAGEMENT CONTROL SYSTEM FOR ASSESSMENTS AND COLLECTIONS WAS BEING DEVELOPED BY HIS OFFICE. WE BELIEVE THAT THE CONTROL SYSTEM SHOULD AMONG OTHER THINGS, PROVIDE DATA TO ENABLE THE DEPARTMENT TO PERIODICALLY FOLLOW UP ON HEARINGS AND TO ENSURE THAT AFTER A HEARING THE NECESSARY COLLECTION ACTIONS ARE TAKEN, INCLUDING APPLICATION OF THE OFFSET PROCEDURES AND REFERRAL TO THE JUSTICE DEPARTMENT.

FOLLOWUP ON IMPLEMENTATION OF  
THE FEDERAL COAL MINE HEALTH  
AND SAFETY ACT OF 1969

IN JULY 1973, THE COMPTROLLER GENERAL ISSUED A REPORT ON FOLLOWUP ON IMPLEMENTATION OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969 (B-170686, JULY 5, 1973). THE REPORT RESULTED FROM A REQUEST OF REPRESENTATIVE KEN HECHLER THAT WE UPDATE INFORMATION AND STATISTICS PRESENTED IN OUR REPORT (B-170686, MAY 13, 1971) TO THE SUBCOMMITTEE ON LABOR, SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, ENTITLED "PROBLEMS IN IMPLEMENTATION OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969."

IN THIS FOLLOWUP REVIEW, WE FOUND THAT THE BUREAU MADE PROGRESS IN 1971 AND 1972 IN CARRYING OUT THE HEALTH AND SAFETY INSPECTIONS OF MINES, AND <sup>IN</sup> ACTIVITIES REQUIRED UNDER THE ACT OTHER THAN PENALTY ASSESSMENTS AND COLLECTION. TO OBTAIN FULL COMPLIANCE WITH THE STATUTORY PROVISIONS, HOWEVER, WE CONCLUDED THAT CONTINUING EFFORTS WERE NEEDED. FOR EXAMPLE, ALTHOUGH IMPROVEMENT WAS NOTED IN THE NUMBER OF HEALTH AND SAFETY INSPECTIONS MADE, THE BUREAU HAD NOT MADE ALL OF THE REQUIRED INSPECTIONS, ESPECIALLY HEALTH INSPECTIONS. THE BUREAU ADVISED US THAT IT HAD NOT MADE GREATER PROGRESS IN HEALTH INSPECTIONS BECAUSE OF THE SPECIAL EMPHASIS PLACED ON MINE SAFETY.

ALSO, ALTHOUGH IMPROVEMENTS WERE NOTED BUREAU INSPECTORS CONTINUED TO FIND NON-COMPLIANCE WITH THE REQUIREMENTS FOR DAILY AND WEEKLY INSPECTIONS BY MINE OPERATORS.

CONCLUSION

MR. CHAIRMAN, THE DEPARTMENT IS TAKING SOME CORRECTIVE ACTION CONCERNING THE MATTERS WE HAVE DISCUSSED. WE BELIEVE THAT FULL IMPLEMENTATION



OF OUR SUGGESTIONS WOULD ASSIST THE DEPARTMENT IN IMPROVING THE ADMINISTRATION OF THE PENALTY PROGRAM. IN ACCORDANCE WITH YOUR REQUEST, A MORE DETAILED STATEMENT OF THESE MATTERS HAS BEEN PREPARED FOR THE RECORD. WE HOPE THAT THE INFORMATION WHICH WE HAVE PROVIDED WILL ASSIST YOUR SUBCOMMITTEE IN ITS CURRENT DELIBERATIONS.

THIS CONCLUDES MY STATEMENT; WE WILL BE HAPPY TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.