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Report to the Chairman, Subcommittee on Environment, Energy, and Natural Resources, Committee on Government Operations, House of Representatives

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SURFACE MINING

States Not Assessing and Collecting Monetary Penalties

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GAO

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Resources, Community, and
Economic Development Division

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June 5, 1987

The Honorable Mike Synar
Chairman, Subcommittee on Environment,
Energy, and Natural Resources
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This report is in response to your request that we review the states' penalty assessment and collection systems and related activities under the Surface Mining Control and Reclamation Act of 1977. The report focuses on whether penalties are being properly assessed and collected by state regulatory agencies.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time we will send copies to the Secretary of the Interior and the Director, Office of Management and Budget. Copies will also be made available to others upon request.

This work was performed under the direction of James Duffus III, Associate Director. Other major contributors are listed in appendix I.

Sincerely,

J. Dexter Peach

J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

Abusive coal mining practices can inflict serious environmental damage and endanger the health and safety of individuals living in mining regions. In response to this concern, the Congress passed the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to establish a nationwide program for regulating surface coal mining activities. Although the Secretary of the Interior, acting through the Office of Surface Mining Reclamation and Enforcement (OSMRE), has overall responsibility for carrying out the act's provisions, the Secretary has granted 24 states primary authority, subject to OSMRE oversight, to implement and enforce state regulatory programs.

The Chairman, Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, requested GAO to review state performance in assessing and collecting civil penalties against coal mining operators (permittees) who violate environmental standards. As agreed with the Chairman's office, GAO reviewed the penalty assessment and collection activities in Kentucky, Indiana, and Colorado. Kentucky is the largest coal mining state, in terms of the number of mining operations, with 7,014 mines, followed by Indiana with 613, and Colorado with 57. These states provided coverage of eastern, midwestern, and western coal-producing states.

Background

Under SMCRA, states desiring to regulate coal mining activities within their borders submit a state program plan to the Secretary of the Interior. The plan should demonstrate a state's capability to carry out the act's regulatory requirements and contain provisions at least as stringent as those outlined in the act.

Under these provisions, states issue mining permits and then periodically inspect the permittees' operations to ensure compliance with mining standards and permit requirements. If inspectors find a violation, they issue a Notice of Violation directing the permittee to correct the problem within a specified abatement period. If the permittee fails to take corrective action within the prescribed time period, SMCRA requires that a Failure to Abate Cessation Order be issued, which halts either the entire mining operation or that portion relevant to the violation.

In addition to requiring corrective action, SMCRA states that the permittee may be assessed a civil penalty of up to $5,000 for each violation. In determining the penalty amount, SMCRA requires the regulatory authority to consider the permittee's history of previous violations at

the particular coal mining operation, the seriousness of the violation, possible negligence on the part of the permittee, and the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation. While this initial penalty is discretionary, if the permittee fails to correct a violation within the time period allowed for its abatement, an additional civil penalty of at least $750 a day must be assessed for each day the violation remains unabated.

Results in Brief

The three states covered by GAO's review varied significantly in the number of violations assessed a penalty. Indiana assessed penalties on one-tenth of the sampled violations, and Kentucky assessed penalties on less than one-third; Colorado, on the other hand, assessed penalties on more than two-thirds of its sampled violations. For the remaining violations, the state either vacated the violation (that is, determined that no violation actually occurred), used its discretionary authority to waive the proposed penalty, or failed to examine the violation to determine a penalty. In addition to not assessing most discretionary penalties, Kentucky is also reducing or eliminating proposed penalties below the minimum $750 a day mandated by SMCRA for violations cited on Failure to Abate Cessation Orders.

Weaknesses in the states' penalty collection systems hamper the collection of penalties on the relatively few violations which are assessed penalties. During the period 1982 through 1985, Kentucky, Indiana, and Colorado collected about $5 million of the total $89.8 million assessed by the states. Indiana and Kentucky collected only 7 and 5 percent of their assessed penalties, respectively, whereas Colorado collected almost 55 percent of its assessed penalties.

Principal Findings

Penalty Assessment

GAO's review of 201 violations randomly selected for the period January through June 1985 showed that 18 violations were vacated by the states. Of the remaining 183 violations, the states assessed a monetary penalty on 40 percent, used their discretionary authority to waive the penalty on 50 percent, and made no penalty determination on 10 percent.

SMCRA states that penalties up to $5,000 may be assessed on each violation contained in a Notice of Violation. OSMRE's implementing regulations are more stringent and require that a penalty be assessed for serious violations, which are defined to include any violations assigned a penalty of $1,100 or more. Penalties below $1,100 remain discretionary, however, and may be waived. Because each state's policy for waiving penalties varies, GAO found that no penalties were waived in Colorado, whereas in Indiana and Kentucky penalties were waived for 88 and 63 percent of the violations for which penalties were proposed.

State files often did not show how penalty amounts were arrived at; therefore, GAO could not determine if states are correctly assessing penalties. However, in comparing the state programs with OSMRE's regulations, GAO noted that the state programs are more lenient with respect to the consideration given to the violator's demonstrated good faith in abating the cited violation and prior violation history. These factors could be contributing to reduced penalty levels. However, under SMCRA, the states need not exactly parallel OSMRE's system.

With respect to assessing penalties for violations contained in Failure to Abate Cessation Orders, Kentucky is inappropriately reducing proposed penalties below the minimum $750 a day level mandated by SMCRA. GAO found that Kentucky is not imposing the mandatory penalty for each violation and is reducing or eliminating penalties during negotiated settlements and hearings. For example, penalties totalling $43,500 were eliminated during negotiated settlements on 3 of the 8 violations GAO reviewed and reduced from $63,000 to $17,400 on 4 other violations. OSMRE's oversight of these adjustments is hampered because the negotiations are usually conducted in advance of a public hearing, are closed to the public, and are rarely documented.

Penalty Collection

About $84.8 million of the $89.8 million in assessed penalties from 1982 through 1985 has not been collected in Colorado, Kentucky, and Indiana. On a percentage basis, Colorado is collecting more than either Indiana or Kentucky. Of $426,135 in assessed penalties, Colorado collected $234,420, or 55 percent. Indiana, on the other hand, collected about $568,445, or 7 percent, of the $7,650,480 in assessed penalties. As with Indiana, Kentucky collected a small percentage of its assessed penalties. On the basis of figures and estimates provided by the state, Kentucky assessed about $81.7 million in penalties from fiscal years 1983 through 1986 and collected about $4.2 million, or 5 percent.

None of the states have implemented penalty collection systems that are consistent with debt collection principles established by organizations such as the Internal Revenue Service and others. Colorado lacks a system to track unpaid penalties. Indiana initiates its collection effort promptly but fails to take additional action if the penalty is not paid. Kentucky does not always initiate prompt action and uses few of the collection techniques it has available. Without formal systems and procedures on how and when to pursue collection of outstanding penalties, the states appear to rely heavily on voluntary payment.

Recommendations

GAO recommends that OSMRE

- take steps to ensure that Kentucky and other states with primary regulatory authority assess mandatory penalties when violations are not corrected within the specified abatement period.
- require the states to explain and document in the records of each violation the basis for the proposed penalty and any subsequent adjustments.
- require the states to establish debt collection systems which incorporate generally accepted debt collection practices. (See pp. 24 and 35.)

Agency Comments

GAO discussed the information obtained during the review with responsible federal and state officials and has included their comments where appropriate. As requested by the Chairman, GAO did not obtain official agency comments on a draft of this report.

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Abbreviations

GAO	General Accounting Office
IRS	Internal Revenue Service
OSMRE	Office of Surface Mining Reclamation and Enforcement
SMCRA	Surface Mining Control and Reclamation Act of 1977

Introduction

Mining activities, if unchecked, can cause substantial damage to the environment, including soil erosion, water pollution, and loss of productive land. Beginning in the late 1930s, a number of coal-producing states enacted legislation to control such damage, but these laws afforded widely varying degrees of protection. Finally, in 1977, the Congress enacted the Surface Mining Control and Reclamation Act (30 U.S.C. 1201, et seq.)(SMCRA), which established a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations. Besides prescribing proper mining practices, SMCRA provides for the imposition of civil penalties and other enforcement action against persons with surface coal mining permits (permittees).

Since coal mining takes place under different mining conditions and practices in each state, SMCRA encouraged the states to assume primary regulatory responsibility. States desiring this responsibility are required by SMCRA to submit to the Secretary of the Interior a state program plan demonstrating the ability to carry out the act's provisions. This plan must include provisions for civil and criminal penalties which are as stringent as SMCRA's. As of May 1987, 24 states have primary responsibility to regulate coal mining on all state and private lands within their borders. However, under SMCRA the states need not exactly parallel OSMRE's system.

SMCRA created the Office of Surface Mining Reclamation and Enforcement (OSMRE) within the Department of the Interior to administer the programs required by the act, oversee state regulatory program development and implementation, and make reviews as necessary to ensure compliance with the act. OSMRE carries out this responsibility through its headquarters office in Washington, D.C., and 13 field offices located throughout the country. The field offices are responsible for (1) overseeing one or more state regulatory programs and reporting on their compliance with the federal program requirements and (2) operating federal regulatory programs in Georgia and Washington, which chose not to adopt their own regulatory programs, and in Tennessee, which relinquished its regulatory authority on October 1, 1984. In addition to these three states, OSMRE also regulates coal mining operations on federal and Indian lands.

SMCRA Penalty Assessment Provisions

Under SMCRA, OSMRE and state regulators have been given broad enforcement powers to assure that permittees adhere to federally mandated performance and environmental standards. As stated in the act's legislative history, strong, equitable enforcement goes hand in hand with sound reclamation performance standards.[1] One such enforcement tool is the imposition of civil penalties against permittees who violate mining standards.

Individuals or corporations desiring to mine coal are required to first obtain a permit for each mining operation from the appropriate regulatory authority—either OSMRE or the state.[2] After approving a mining permit, the regulatory authority must periodically inspect the mine for compliance with the act's standards and any additional permit conditions. If inspectors find that a mine is not in compliance, they must issue either a Notice of Violation or an Imminent Harm Cessation Order. In a Notice of Violation, the regulatory authority notifies the operator of a practice or condition that does not comply with mining standards and directs abatement (correction) action within 90 days but allows mining to continue. When the regulatory authority identifies a violation that is especially serious and threatens the health and safety of either individuals or the environment, it issues an Imminent Harm Cessation Order which stops all or part of the operator's mining until the violation is abated. When violations are identified, in addition to taking corrective action, the permittee may be assessed a civil penalty of not more than $5,000 by the regulatory authority. SMCRA provides that:

"... any permittee who violates any permit condition or who violates any other provision of this title, may be assessed a civil penalty by the Secretary, except that if such violation leads to the issuance of a cessation order under section 521, the civil penalty shall be assessed. Such penalty shall not exceed $5,000 for each violation.... In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation...; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation." [Underscoring added.]

If the operator fails to correct a cited violation within the period allowed for its abatement, an additional penalty of not less than $750 must be assessed for each day the violation continues unabated. At the same

[1]Senate Report No. 95-128, pp. 57 and 58 (1977).

[2]Once a state is granted primary regulatory responsibility, OSMRE must periodically review the state program to assure that it is being implemented in accordance with SMCRA.

time, unless mining has already been halted by an Imminent Harm Cessation Order, the regulatory authority must issue a Failure to Abate Cessation Order to stop the entire mining or reclamation operation or that portion relevant to the violation.

OSMRE Oversight of State Performance

Once the Secretary approves a state's regulatory program, SMCRA requires OSMRE to make reviews as necessary to ensure compliance with the act. In evaluating the states' performance—commonly termed "oversight"—OSMRE relies on program data furnished by the states, data from other sources (individuals, citizen groups, industry), and annual program oversight reviews and mine inspections performed by OSMRE field office personnel. OSMRE submits annual oversight reports on each state with an approved regulatory program to interested congressional committees and prepares an annual report to the President and the Congress on the act's implementation.

Objectives, Scope, and Methodology

The Chairman, Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, requested that we assess state performance in assessing and collecting civil penalties from coal operators who violate SMCRA's mining standards. As agreed with the Chairman's office, to obtain coverage of eastern, midwestern, and western coal-producing states, we selected three states for our review—Kentucky, Indiana, and Colorado. In terms of the number of inspectable units, these states are all ranked among the most active nationally.[3]

Table 1.1: Mining Operations as of December 1985.

	Inspectable Units			
State	Active	Inactive	Total	National Rank
Kentucky	4,728	2,286	**7,014**	1
Indiana	103	510	**613**	6
Colorado	31	26	**57**	11

Source:Data on mining activities was obtained from the state regulatory agencies. The national ranking was derived from the United States Department of the Interior Budget Justifications, F.Y. 1988.

To understand the requirements placed on the states regarding penalty assessment and collection activities, we reviewed SMCRA and OSMRE rules and regulations and interviewed officials at OSMRE headquarters and

[3]An inspectable unit is the permitted mining area as well as facilities and areas in support of the mining and reclamation.

field offices responsible for this activity. Our interest, however, was limited to that portion of the enforcement process beginning with the state's assessment of the civil penalty for identified violations and concluding with the collection of any imposed penalty. We previously issued a report on state performance in identifying and citing violations.[4]

To understand the specific requirements established by the three states to implement their penalty assessment and collection programs, we reviewed each state's OSMRE-approved program requirements, laws, regulations, and procedures. We also discussed the states' penalty assessment and collection programs and activities with state surface mining officials located in Denver, Colorado; Indianapolis and Jasonville, Indiana; and Frankfort, Kentucky.

To determine whether the states were complying with SMCRA and OSMRE penalty assessment requirements, we randomly selected 40 Notices of Violations and 10 Failure to Abate Cessation Orders issued in Indiana and Kentucky during the first 6 months of 1985. Because there were only 56 Notices of Violations and 4 Failure to Abate Cessation Orders issued in Colorado during this time period, we reviewed all of them.

Table 1.2: Citation and Violation Statistics-January 1 to June 30, 1985

Notice of Violation	Kentucky	Indiana	Colorado	Total
Number issued	1,989	346	56	**2,391**
Violations cited	4,145	511	56	**4,712**
Sample notices	40	40	56	**136**
Sample violations	86	59	56	**201**
Failure to Abate Cessation Orders				
Number issued	478	55	4	**537**
Violations	[a]	82	4	[a]
Sample number	10	10	4	**24**
Sample violations	21	15	4	**40**

[a]The state did not track the individual violations and until January 1986 only assessed penalties on the Failure to Abate Cessation Order, not the individual violations.

In Kentucky, to determine whether the mandatory penalties associated with Failure to Abate Cessation Orders were being properly assessed and to assess the state's collection practices, we selected an additional 44 Notices of Violations issued during the period of August 1984 through June 1985. This additional sample coupled with the initial

[4]Surface Mining: Interior Department and States Could Improve Inspection Programs, (GAO/RCED-87-40, Dec. 29, 1986).

sample yielded a total of 41 Failure to Abate Cessation Orders for the review of Kentucky's mandatory penalty assessments and 56 cases for the review of Kentucky's collection practices.

While our sample sizes are small in Kentucky and Indiana and as such do not provide projectable results, we believe they provide a meaningful indicator of state experiences with their penalty assessment and collection systems.

We reviewed in detail each of the selected violations to determine whether state penalty assessment and collection practices were being carried out in accordance with federal and state requirements. Our specific activities included reviewing state records, documents, files, and reports; attending hearings held by the state regulatory agencies to consider violations and penalties; and interviewing state agency penalty assessment and collection officials. In addition, we reviewed OSMRE oversight reports and related data for each of the three states and interviewed OSMRE field office officials in Albuquerque, New Mexico; Indianapolis, Indiana; and Lexington, Kentucky.

We discussed our findings with officials at OSMRE headquarters and field offices as well as state agency program offices and have included their comments where appropriate. However, as the Chairman requested, we did not obtain the views of responsible officials on our conclusions and recommendations, nor did we obtain official agency comments on a draft of this report. With these exceptions, our work was performed in accordance with generally accepted government auditing standards.

Problems With State Penalty Assessment Systems Need Attention

As a deterrent to those mine operators who violate established standards in conducting their mining operations, SMCRA established an enforcement program that includes the imposition of monetary penalties. We sampled violations cited by state mine inspectors in the first 6 months of 1985 and found that Kentucky and Indiana together assessed penalties on less than one-fourth of their violations while Colorado assessed penalties on 73 percent of its violations. Overall, of the 201 violations sampled, only 74, or 37 percent, were assessed a penalty. For the remaining violations, the state either vacated the violation (that is, the state determined that no violation actually occurred), used its discretionary authority to waive the penalty, or failed to review the violations to assess a penalty. In addition to assessing relatively few penalties overall, we found that Kentucky is reducing or eliminating many penalties associated with Failure to Abate Cessation Orders that under SMCRA must be assessed at a minimum of $750 a day.

While OSMRE annual oversight reviews have identified problems in the states' penalty assessment programs and worked with them to correct deficiencies, it is apparent that some problems remain.

Few Violations Are Assessed Monetary Penalties

We found that few sampled violations in Kentucky (31 percent) and Indiana (10 percent) were assessed monetary penalties, whereas 73 percent were assessed penalties in Colorado as shown in table 2.1. The low assessment rates in Kentucky and Indiana resulted primarily from the widespread use of the states' discretionary authority to waive penalties in accordance with SMCRA and OSMRE regulations.

Table 2.1: Disposition of Violations—GAO Sample, January - June 1985

	Number of Violations			
	Kentucky	**Indiana**	**Colorado**	**Total**
GAO sample	86	59	56	**201**
Violation vacated (dropped)	−1	−7	−10	**−18**
Total violations	**85**	**52**	**46**	**183**
Disposition:				
Proposed penalty waived	45	46	0	**91**
No penalty determination made on violation	13	0	5	**18**
Assessed a monetary penalty	27	6	41	**74**

Source: State records.

The three states reviewed vacated 18 of the 201 violations contained in our sample—Kentucky (1), Indiana (7), and Colorado (10). A violation is vacated if information obtained after the Notice of Violation was prepared indicates that the violation was issued in error (that is, no violation in fact existed). Our review of the documentation associated with these violations indicates that, except for one case, the states properly vacated the violations in our sample. The lone exception was a violation vacated in Indiana. In this case the state accepted a company-proposed offer in which the company would withdraw its request for review of one violation if the state would vacate another violation under review. (The company believed the state had a weak case on the latter violation.)

The following sections discuss the disposition of the remaining 183 violations issued by state inspectors.

Most Penalties Are Waived in Indiana and Kentucky

Indiana and Kentucky waive most penalties with assessed values of less than $1,100 while Colorado does not waive penalties of any amount.1 While this practice resulted in most violations not receiving penalties in our Indiana and Kentucky samples, it is permitted under SMCRA and OSMRE regulations. SMCRA states that penalties up to $5,000 may be assessed on each violation contained in a Notice of Violation but, unless the permittee fails to take corrective action, the act does not require any penalty to be assessed. OSMRE's implementing regulations are more stringent but still require that penalties be assessed only on those violations which, after application of a point system, are found to be subject to a penalty of $1,100 or more. In arriving at the penalty to be assessed, SMCRA and OSMRE regulations merely require that states consider the permittee's prior history of violations, the negligence involved, the seriousness of the violation, and the permittee's demonstrated good faith in abating the problem. Each of the states we examined met this requirement.

With only these broad assessment guidelines to govern their actions, each state we reviewed had a different policy for waiving penalties. As a result, depending on what state was involved, the violator may or may not be assessed a monetary penalty below $1,100. Our review of violations issued in the first 6 months of 1985 and assessed a penalty shows that no penalties were waived in Colorado; whereas, in Indiana and Kentucky the penalty was waived for 88 and 63 percent of the violations, respectively, as shown in table 2.2.

Table 2.2: Mining Violations for Which the Penalty Was Waived by the State.

	Indiana		Kentucky	
Mining violation	**Number**	**Waived**	**Number**	**Waived**
1Prior to July 1985, Indiana waived penalties of less than $800 but then raised the waiver threshold for consistency with OSMRE regulations.				
Mining outside the permit boundary or mining without a permit	1	1	•	•
Water quality discharge	3	3	2	•
Water quality monitoring	1	0	5	3
No sediment control structures or improperly maintained structures	9	7	18	16
Prime farmland	7	7	1	•
Blasting and/or blasting records	8	7	2	•
Revegetation	7	7	2	2
Toxic spoil handling	1	1	•	•
Topsoil handling	9	8	2	1
Other (includes backfill and grading, signs and markers, access roads, disposal of waste, etc.)	6	5	40	23
Totals	**52**	**46**	**72**	**45**

Source: State records.

Colorado does not have a dollar waiver threshold, and none of the penalties assessed for our sample violations were waived. Indiana, on the other hand, automatically waives all penalties below $1,100. Overall, from primacy through 1985, state records show that Indiana waived penalties on 1,766 of the 2,402 violations reviewed for penalty assessment. Violations included in our sample for the first 6 months of 1985 exhibited similar results. For 46 of the 52 violations in our sample on which penalties were initially proposed, the penalty was waived. Even if the initial proposed penalty exceeded the $1,100 threshold, the penalty was waived if it was later reduced below the waiver threshold as a result of a hearing or conference. This occurred in five violations in our sample. For example, at one mine the inspector noted that water discharging from a sedimentation pond significantly exceeded the effluent standards. Further, the discharge entered and polluted a stream. The penalty assessor proposed a $1,600 penalty for this violation. During the assessment conference, the company argued that the stream's water was already of poor quality and that it had simply forgotten to shut off the discharge. The conference officer reduced the penalty for both the seriousness of the violation and the negligence of the company, resulting

in a penalty of $1,000. This penalty was then automatically waived by the state.

In Kentucky, penalties below $1,100, even if they are initially set above this level, are frequently but not automatically waived. Under state guidelines, penalties should not be waived if the penalty associated with the history, seriousness, or negligence rating factors exceed specified subthresholds. For example, according to the guidelines, if $360 or more in penalties was derived from the negligence rating factor, the operator should be assessed a penalty even if the total penalty assigned to the violation is below the $1,100 threshold. However, the state maintains that it has the discretionary authority to waive all penalties below $1,100 even if they exceed a subthreshold level. In our 1985 sample the penalty was waived on 45 of the 72 violations reviewed for penalty assessment, including 2 violations which exceeded the subthreshold limits.

We did not attempt to independently evaluate whether the penalty amounts initially established were proper and therefore justifiably below the waiver threshold because the assessment process, particularly with respect to evaluating seriousness and negligence, is largely subjective. In addition, the documentation needed to adequately make such a review was not always available in the assessment files. For example, in Kentucky none of the case files for the 45 violations that were waived contained the required Assessment Officer's Statement describing how he arrived at the proposed penalty amount. A senior Kentucky official told us that, while required, these forms are not filled out because assessors do not have time to fill out forms that will not be used. Since the penalty is being waived, the only issue an appeal would deal with is the "facts" of the violation and not the assessment amount. Further, he said that it would be extremely difficult for an independent reviewer to evaluate an assessor's decision on seriousness and negligence because the criteria spelled out in the assessment manual are not precise. Also, documentation is not complete in assessor's files.

While we were unable to determine whether all assessments were proper, we noted that the state programs are more lenient than OSMRE's with respect to the consideration given to the violator's demonstrated good faith in abating the cited violation and prior violation history. However, under SMCRA the states need not exactly parallel OSMRE's system.

Kentucky Awards Good Faith Penalty Reductions for Normal Compliance

Under SMCRA, the proposed penalty amount can be reduced if the violator demonstrates good faith in attempting to achieve rapid compliance after notification of the violation. As defined by OSMRE regulation, rapid compliance is the taking of extraordinary measures to abate the violation in the shortest possible time. To qualify for a good faith penalty reduction, abatement must also be achieved before the allowed completion time elapses. Normal compliance, for which no penalty reduction is allowed, is defined by OSMRE as abatement within the time given.

In Kentucky, penalties are reduced for normal as well as rapid compliance. In addition, Kentucky's penalty assessment manual provides that reductions can also be given for partial compliance. Penalty reductions of as much as $1,500 can be made for rapid compliance, up to $500 for normal compliance, and up to $200 for partial compliance. Our review of the 72 assessed or waived sample violations showed that good faith penalty reductions totalling $5,580 were given on 41 violations for normal compliance. Five of the 41 penalties were initially more than the $1,100 level and would otherwise have normally been assessed a penalty. The good faith credit reduced one of these five below $1,100, and it was waived altogether. Reductions totaled $2,000 in the proposed penalties for the other 4 violations. For the remaining 36 of the 41 violations, the proposed penalty was already below the $1,100 waiver threshold. Although 1 of the 36 violations exceeded the seriousness subthreshold and therefore could have been assessed a penalty, we were unable to determine why the penalty was waived because the penalty assessor did not document the reasons. While permitted by Kentucky policy, we found no instances where good faith penalty reductions were awarded for partial compliance.

In response to concerns raised by the OSMRE Lexington Field Office in 1985 in relation to Kentucky's liberal policy of reducing penalties for partial compliance, Kentucky stated that its main goal is to get remedial work completed. By awarding good faith points for extraordinary, rapid, normal, slow, and partial compliance, operators are given an incentive for completing remedial work. The state said that it is well worth the usual $100 to $300 penalty reduction if some or all of the remedial work is completed. However, in January 1986 the state agreed to discontinue the practice of awarding penalty reductions for partial compliance. To determine whether this practice had in fact been discontinued, we reviewed the penalties assessed by state personnel on 16 violations in May 1986. We found that none of the penalties were reduced for partial compliance. However, the proposed penalties on 10 of the 16 violations were reduced for normal compliance.

Colorado and Indiana Do Not Consider All Violations in Permittee's Prior Violation History

Under OSMRE's regulations, a permittee's prior violations at that mining operation are to be included in the permittee's history for 1 year after all administrative or judicial reviews and appeals have expired. In Indiana and Colorado, violations may be considered as part of the violator's history for less than a year, if at all. In these states, the period during which a violation can be included in the permittee's history commences with the date the violation notice or order is issued and concludes 1 year later. However, if the operator appeals the violation, the states do not actually include the violation in the history until the appeal is resolved, thereby reducing the amount of time during which the violation can be included. If, for example, the appeal is not decided within 12 months, the violation would never be considered in determining a permittee's violation history. In this connection, Indiana records showed that 144 Notices of Violations and Failure to Abate Cessation Orders involving 194 violations from 1982 through 1985 were still awaiting a decision.

All Violations Are Not Reviewed for Penalty Assessment in Colorado and Kentucky

Although the approved state programs require all violations to be reviewed for possible penalty assessment, such reviews were not always done in Colorado and Kentucky. As shown in table 2.1, for 13 of the 85 violations in Kentucky and 5 of the 46 violations in Colorado, no penalty determination was made by the state.

In Colorado, the mine inspector chose not to submit five violations written against one company to the penalty assessor. He did this because he believed the company would not correct the problems by the abatement date and would therefore subsequently receive Failure to Abate Cessation Orders on which penalties would be assessed. Even though this in fact occurred, under SMCRA and state regulations each violation contained in a Notice of Violation is also subject to a separate penalty. Similarly, in Kentucky, three violations were submitted to, but not evaluated by the assessor. Kentucky officials stated that these violations were simply overlooked by the penalty assessors.

The other 10 Kentucky violations were not assessed separate penalties because they were combined with other violations. Kentucky combined the violations because they essentially involved the same act and resulted in the same damage. For example, if a company fails to maintain a sediment pond and allows suspended solids to enter a stream, only one violation would be assessed a penalty because the same environmental damage would have occurred even though the inspector may

have cited the company for violating as many as three standards—sediment control, hydrologic protection, and water quality. The Director, OSMRE Lexington Field Office, told us that he believed this practice was reasonable.

Kentucky Not Properly Assessing Mandatory Penalties

SMCRA requires that whenever a cited violation is not corrected within the specified abatement period, a civil penalty of not less than $750 must be assessed for each day it remains unabated beyond the designated abatement date. By regulation, OSMRE in 1980 imposed a 30-day cap on this penalty. These provisions have been incorporated in the state programs we reviewed. In practice, however, Kentucky sometimes did not propose the mandatory penalty and improperly reduced or eliminated the penalty during negotiations and hearings prior to issuing the final order fixing the penalty. We found no similar instances in Colorado or Indiana.

Prior to January 1986, Kentucky did not assess the mandatory $750 per day penalty for each violation cited in a Failure to Abate Cessation Order. Instead, the state assessed the penalty on the cessation order as a whole rather than on each violation included in the order. For example, a cessation order may contain several violations, each requiring a separate assessment, but Kentucky would only assess one $750 per day penalty. OSMRE's 1985 oversight review detected this problem, and the state was directed to assess separate penalties for each violation. As a result, the state officially changed this policy on January 24, 1986. We randomly selected and reviewed 23 cessation order violations assessed by the state in May 1986 to determine whether each violation was being assessed a penalty. We found that 19 of the 23 violations were assessed the mandatory minimum $750 per day penalty. The remaining 4 violations were combined with other violations that resulted from the same act and resulted in the same damage—a practice which is considered reasonable by the OSMRE Lexington Field Office.

We also found that Kentucky is eliminating or reducing the penalty to less than the $750 a day minimum in negotiating sessions generally before a public hearing is held—Kentucky automatically schedules a public hearing on each violation. These negotiations are between the state and the person charged with a violation, are closed to the public, and are rarely documented. The negotiations result in a settlement agreement in which the permittee admits the violation occurred and that the proposed penalty is fair and accurate and, in turn, is usually assessed a much smaller penalty and allowed additional time to correct

the violation. According to a state official, the penalty is reduced as an incentive to the violator to correct the violation. If the violation is not corrected, the signed agreement is used to assess the initially proposed penalty amount. A state official said that the amount of the penalty negotiated is largely based upon how much the permittee is willing and able to pay.

The state and the permittee reached a negotiated settlement prior to the assessment of the final penalty on 8 of the 41 cessation orders in our sample. The proposed penalty for each of the violations was originally set at $750 for each day the violation remained unabated—the minimum penalty that can be assessed under SMCRA. In three cases, penalties totalling $43,500 were eliminated in the negotiation process. In four cases, proposed penalties totalling $63,000 were reduced to $17,400. In the last case, the proposed penalty of $22,500 was unchanged. Thus, violations with mandatory minimum penalties totalling $129,000 were actually assessed only $39,900, a 69-percent penalty reduction.

During the appeal process, Kentucky also reduces proposed penalties below SMCRA's mandatory minimum amount. Public hearings were held on 36 of the 41 cessation orders in our sample. As a result of the hearings, the hearing officers recommended reducing the total initial penalty of $766,500 at the minimum $750 per day to $440,100, or a 43-percent reduction. Documentation was not always adequate to determine whether (1) the state agency failed to seek the penalty, (2) the hearing officer failed to properly incorporate the penalty in the decision, or (3) the penalty was rightfully reduced because the number of days the violation remained unabated was overstated.

Kentucky officials told us they were justified in eliminating or reducing cessation order penalties. They saw no distinction between adjusting the discretionary penalty or the mandatory minimum cessation order penalty. OSMRE Lexington Field Office officials also had no problems with this procedure, pointing out that OSMRE regulations also provide for settlement agreements. However, on March 27, 1986, Interior's Assistant Solicitor, Enforcement and Collections, Division of Surface Mining, in response to a request for a legal opinion addressing a situation similar to that in Kentucky stated that

"Under [SMCRA] Section 518(h) a penalty of less than $750 per day cannot be assessed. [A penalty] of at least $750 per day must be proposed, and it cannot be reduced to an amount less than $750 per day without violating Section 518(h). Thus a conference officer may reduce a Section 518(h) penalty of more than $750 per day

to as low as $750 per day but may not reduce any Section 518(h) penalty below $750 per day. Once the final order assessing the penalty is issued, however, the penalty amount can be compromised."

We believe the Assistant Solicitor's position is consistent with the intent of the Congress with respect to requiring the assessment of a penalty of not less than $750 a day for each day the violation remains unabated. Once the penalty is assessed, however, the state is within its rights to accept less than the full penalty amount if the violator is unable to pay or for other good reasons. This practice is no different than that which would be followed by the state in collecting any outstanding debt.

Previous OSMRE Evaluations of State Penalty Assessment Practices

The OSMRE Albuquerque, Indianapolis, and Lexington Field Offices responsible for oversight of the Colorado, Indiana, and Kentucky programs, respectively, have identified a number of deficiencies in the states' penalty assessment efforts and have worked with the states to resolve them. One finding common to all three states we reviewed was that documentation of penalty assessment activities needs improvement.

In addition to performing annual oversight evaluations, the OSMRE Albuquerque Field Office performed two special studies of the Colorado penalty assessment procedures. Over the years, the reviews have identified several problems in the state, including inconsistent assessment of penalties and large penalty reductions when the penalty is appealed, often without adequately documented justification. Although the state has taken steps to address these deficiencies, OSMRE's latest annual report points out that some penalty adjustments are still not adequately documented, mainly with respect to good faith reductions.

OSMRE's fiscal year 1983 report on the Indiana program also reported inconsistent penalty assessments in the state. The following year OSMRE reported that the problem was corrected. Although no other penalty assessment problems were reported in OSMRE's annual reports, the OSMRE field office director initiated a limited special study of Indiana's penalty assessment and collection process. In March 1986, this special study concluded that Indiana's entire process was largely undefined, with few written policies, procedures, or guidelines. In May 1986, the state agency provided OSMRE written procedures. The OSMRE field office director believes these formal procedures are an important step in improving the state's penalty assessment process and listed penalty assessment as a priority issue for continued work with state agency officials.

OSMRE has reported several problems with the Kentucky penalty assessment program, including two already mentioned—not assessing the mandatory $750 per day penalty for each violation and awarding good faith points for partially abating violations. In addition, OSMRE reported other problems, including inadequate documentation to support the points assigned in initial penalty determinations and inadequate documentation of case files. According to officials at the OSMRE field office, their latest enforcement review of the Kentucky program shows that the state must still improve the documentation of hearings and issue hearing officer decisions and final orders assessing the penalties in a more timely manner. OSMRE also noted in their review that Kentucky continued to follow a rather liberal good faith policy. Kentucky gave good faith penalty reductions for abating the violation even on the last day of the abatement period, thus rewarding the permittee for doing no more than required. These findings will be included in OSMRE's final annual report at which time the state will be requested to comment on actions it plans to take.

Conclusions

The states reviewed are following their approved programs with respect to assessing penalties for violations contained in Notices of Violations. However, frequent use of the states' discretionary authority to waive penalties which fall below $1,100 results in few violations actually being assessed a monetary penalty. We did not independently determine whether penalties were being properly assessed and therefore justifiably waived, because the assessment process is subjective and the documentation needed to perform such an evaluation was not always available. However, we found that provisions in the state programs related to the operator's history of violations and good faith in correcting cited violations may be contributing to lowering the amount of penalties assessed. These provisions are more liberal than the federal program but do not conflict with the broad guidelines spelled out in SMCRA.

With respect to assessing mandatory penalties associated with Failure to Abate Cessation Orders, however, we believe that Kentucky is not complying with SMCRA when it reduces penalties below the required $750 a day minimum. In addition, Kentucky's settlement agreement procedures raise serious concerns because, unlike other hearings or conferences involving the assessment of penalties, they are not open to the public and no record is made of the proceedings. We believe that to carry out its oversight responsibilities and ensure that penalty assessment activities are conducted properly, OSMRE must require the states to

fully document all activities associated with determining the penalty to be imposed.

Recommendations

We recommend that the Secretary of the Interior require the Director, OSMRE, to

- take steps to ensure that Kentucky and other states with primary regulatory authority assess mandatory penalties when violations are not corrected within the specified abatement period, and
- require the states to fully explain and document in the records of each violation the basis for the proposed penalty and any subsequent adjustments.

Improvements Needed in State Penalty Collection Systems

The deterrent value of a monetary penalty can be lost if the violator believes that paying the penalty can be avoided. Consequently, effective debt collection practices are vital to the establishment of a credible enforcement presence. Two of those states we visited, however, do not collect most of the penalties they assess. Kentucky, Indiana, and Colorado collected about $5 million of the total $89.8 million in penalties assessed against violations issued from 1982 through 1985. Indiana and Kentucky collected only 7 and 5 percent of their assessed penalties, respectively, while Colorado collected 55 percent. In addition, OSMRE has not performed in-depth evaluations of state collection activities as part of its oversight reviews, citing higher priorities and, in one case, staffing shortages. We believe that state penalty collection efforts can be improved by aggressively pursuing collections through a systematic approach applied in a timely manner. In addition, OSMRE should place greater emphasis on state penalty collection activities in conducting its oversight.

Millions in Assessed Penalties Not Collected

As of June 30, 1986, about $84.8 million of the $89.8 million in penalties assessed by Colorado, Indiana, and Kentucky had not been collected. Of the three states, Colorado has by far the highest collection rate—Indiana and Kentucky collected almost none of the penalties they assessed. Each state's collection performance is discussed below.

On the basis of our review of individual mine files and collection records, Colorado is collecting more than half of the penalties it assesses. Of the $426,135 in penalties Colorado assessed between January 1, 1982, and December 31, 1985, it collected $234,420, or 55 percent, as of June 30, 1986. About 91 percent of the uncollected penalties, or $173,800, is owed by two companies. One company ceased mining operations in 1984 and in February 1986, subsequent to penalty assessment, filed for bankruptcy. The second company also ceased mining in 1984. The state has been unable to collect penalties assessed against the company because, according to a state official, the company has no assets and the principal known investor can not be located.

Compared with Colorado's 55 percent collection rate, Indiana collected only 7 percent of its assessed penalties. Our review of Indiana assessment and collection records showed that of the $7,650,480 in penalties assessed between July 26, 1982—the date Indiana received primary regulatory authority—and December 31, 1985, $7,082,035 (or 93 percent)

was still outstanding as of June 30, 1986. About 79 percent of the outstanding penalties are owed by persons with expired pre-primacy permits and inactive mines. The state's authority to assess and collect penalties in such cases is being challenged in court. Indiana officials said that the state does not maintain financial status information on companies which owe penalties and has no system for identifying companies going into bankruptcy. However, based on word of mouth information, these officials told us that they believe the companies have filed, or are in the process of filing, for bankruptcy.

Like Indiana, Kentucky has collected only a fraction of the penalties it has assessed. While we could establish that the collection rate was low, with available documentation we could not readily determine the exact amount of assessed and collected penalties in the state. State officials said that summary reports they submit to OSMRE were the best source of information on assessments and collections short of manually researching each violation issued. In examining these reports, however, we found that they contained inaccuracies and included assessed penalties and collections relating to non-mining violations such as air and water pollution cases. The inaccuracies included double counting of assessed penalties and instances where monthly figures did not total reported quarterly figures, quarterly figures did not total reported annual figures, and beginning year figures did not agree with the reported ending balance of the preceding year. Kentucky officials estimated that about 95 percent of the assessment and collection information was attributable to SMCRA mining violations. In lieu of a detailed search of the individual violation records, the state regulatory agency's Office of General Counsel—the office responsible for collecting surface mining penalties—provided assessment and collection information for fiscal years 1983 through 1986. This information indicated that during this period, the state assessed $81.7 million in surface mining penalties and collected $4.2 million—a 5-percent collection rate. This collection rate was similar to the rate we calculated for the period January 1, 1982, through December 31, 1985, after adjusting for errors. According to state officials, $34 million of the uncollected penalties was for violations cited against one company.

Internal Revenue Service Debt Collection Procedures

In order to improve OSMRE's penalty assessment and collection system, the Department of the Interior solicited the assistance of the Internal Revenue Service (IRS) to make recommendations for improvement. In its February 1985 report, IRS stated that the most fundamental debt collection principal is that prompt action must be taken to collect outstanding

debt. Over time, assets are used up, disposed of, or become worthless; small corporations (especially in transient enterprises like coal mining) have a relatively short life; and persons who owe the debt move, die, or for various reasons can not be located. Beyond emphasizing this general principal, the report also contained several recommendations which emphasized the necessity of establishing a collection policy, developing a formalized written procedures manual, and organizing staff resources to maximize the collection effort.[1]

With respect to collection policies, the report stated that to be effective policies must be clearly stated, disseminated to all agency personnel in written form, and made available to all affected parties to the extent possible. The collection policy should include, but not be limited to: writing off uncollectible debt, collecting late payment penalties, assessing administrative charges and interest, granting installment payments, taking alternative enforcement actions, and securing judgments against debtors.

The report stated that another critical step in devising an effective collection program is to develop a formalized, written procedures manual. Each step of the collection process should be discussed in full, taking the user from the time a proposed assessment becomes a final agency decision to the time the civil penalty is referred for judgment. Most importantly, this manual must set the tone for collection; that is, establish the basis for collection efforts. For example, the procedures manual should answer such questions as "How will writeoff procedures be implemented and who will make the determination?", "What procedures will be undertaken when an operation is in bankruptcy?", and "What specific collection efforts will be taken within the agency prior to referral for judgment?"

In addition to establishing proper internal controls over files and collected funds, the manual should address collection practices such as recording all collection actions on a history sheet for each case; sending demand letters; making direct personal contact with debtors; obtaining and analyzing debtor financial statements; maintaining copies of all collection documents, memorandums, and correspondence in each case file; and, as a last resort, referring the case for legal action. According to the IRS report, a well-defined agency procedures manual will provide both a

[1]Report to the Department of Interior Office of Surface Mining—Final Report, Department of the Treasury, Internal Revenue Service (Feb. 1985)

step-by-step process specifically geared to agency needs and an ongoing training manual for newly hired collection personnel.

Once a procedures manual and policy statement have been developed, the IRS report stated that the collection agency should organize itself in a fashion to maximize its collection effort. Compatible functions should be consolidated so that all collection-related activities can be coordinated, monitored, and reviewed by a single supervisor. According to the IRS, the establishment of a collections unit whose sole responsibility is to collect outstanding debt is a prerequisite to an effective collection program.

Weaknesses in State Collection Systems

None of the three states have established penalty collection systems as envisioned by the IRS. Each state has weaknesses which hamper the collection of assessed penalties. Colorado lacks a system to track unpaid penalties. Indiana initiates its collection effort promptly but fails to take additional action if the penalty is not paid. Kentucky does not always initiate prompt action, uses few of the collection techniques it has available, and, when they are used, they are not used in the proper sequence. Overall, the states' collection processes rely heavily on voluntary payment. Each state's system is discussed below.

Kentucky

Kentucky has developed a procedures manual, dated August 1985, which presents various practices which may be employed to collect assessed penalties. This manual is supplemented by material prepared for a January 1986 collection seminar. However, neither the manual nor the seminar material provides collection personnel guidance on deciding whether it is appropriate to use various available practices or the proper sequence in which they should be applied.

Primary responsibility for collecting mining penalties rests with the state regulatory agency's Office of General Counsel. Twenty-seven of the attorneys assigned to this office are responsible for collecting penalties as well as for representing the state agency in all legal matters involving such areas as mining and air and water pollution cases. The attorneys reported that about 12.5 percent of their time is devoted to collection activities.

After examining Kentucky's stated procedures, we examined 56 collection cases that were assessed penalties between December 1984 and September 1986 to determine what actions the Office of General Counsel takes in practice to collect assessed penalties. The 56 cases had total

assessed penalties of $642,917 and consisted of 55 Notices of Violation containing 119 violations and 22 Failure to Abate Cessation Orders subsequently issued on the 119 violations. The Notices of Violation were issued between August 1984 and June 1985. In 11 cases, the penalty had been fully paid and in 4 additional cases payment of the penalty was not considered delinquent.

In most of the 52 delinquent cases, we were unable to determine what collection action, if any, had been taken as little documentation was available in the attorney case files. History sheets that provide a record of all actions taken to collect unpaid penalties were available for 4 cases but only 1 of the 4 indicated that some form of collection action had been taken. Instead of providing documented records, the responsible attorneys verbally described the collection activity that had been taken. The following table shows the collection activity that we were told had occurred on the 52 delinquent penalties.

Table 3.1: Activity Taken to Collect Penalties Assessed Kentucky Sample Cases

Collection activity	Collected	Uncollected	Total
None	5	21	**26**
Judgment filed	2	12	**14**
Demand letter sent	1	3	**4**
Contact	2	2	**4**
Asset search	•	1	**1**
Judgment filed/contact	1	•	**1**
Social security number check	•	1	**1**
Judgment filed/social security number check	•	1	**1**
	11	41	**52**

As shown, the state took no action to collect penalties on over half of the outstanding penalties. However, when action was taken, the most frequent collection activity used was to seek a legal judgment. Contacts with the debtor seldom occurred, demand letters were seldom used, and financial statements were never obtained. In several instances, higher priority work was cited as the reason for not taking any or only limited collection action. We also noted that some cases were transferred between attorneys and in a few cases confusion resulted as to who was responsible for the case.

Officials at OSMRE's Lexington Field Office did not have detailed knowledge of Kentucky's collection practices. According to these officials, detailed reviews of the state penalty collection activities have not been

done because of an agreement with the state not to review collection case files. However, based on overall observations, officials at the OSMRE field office believe that the state's collection rate was not better because state agency attorneys were not aggressively pursuing collections. They further believed that additional attorneys, specifically assigned to collections, might increase the state's collection rate.

Kentucky officials told us that in mid-November 1986 the state regulatory agency's Office of General Counsel was reorganized and a separate group consisting of eight attorneys was established with responsibility for all collection activity. These officials believe that such a group with no other duties would greatly improve penalty collection in Kentucky. While this action represents a step in the right direction, the full potential for collecting penalties will not be achieved until the state more aggressively applies established collection techniques.

Indiana

Prior to April 1986, Indiana had no written penalty collection procedures. If the penalty was not paid voluntarily, the state agency official who was also responsible for assessing penalties initiated the collection action. Indiana's procedure for collecting penalties consisted of sending one or more demand letters to obtain payment from the violator beginning 30 days after the notice of penalty had been issued. The number of demand letters sent was left to the official's discretion. If the penalty was not paid and he concluded that there was a strong probability the penalty could be collected, the official referred the case to a deputy attorney general. The deputy attorney general's responsibility was to send another demand letter threatening legal action and taking whatever additional legal action was necessary. If the collection officer thought that the penalty would not be paid, no further action was taken.

In March 1986 the OSMRE Indianapolis Field Office completed a special study of Indiana's penalty collection activities. The study concluded that the state's entire penalty assessment and collection process was largely undefined with few written guidelines, procedures, or policies to follow. In response to this finding, the state in April 1986 developed written collection procedures that essentially paralleled the informal procedures previously used. However, instead of both the collections officer and the deputy attorney general sending demand letters, the new procedures require only one demand letter to be sent. The new procedure further states that if payment is not received within 30 days of the demand letter, the case is to be submitted to a state deputy attorney general for legal action. The written procedures were not implemented until August

1986 because the official responsible for preparing the demand letter had not been designated. From January 1986 when the state was developing its new procedures until August 1986 when the procedures were implemented, no collection actions were taken by the state.

To determine actions Indiana takes in practice to collect assessed penalties, we reviewed the 16 Notice of Violation and Failure to Abate Cessation Order violations included in our sample that resulted in assessed penalties. Of the $172,100 in penalties assessed on these violations, the state collected $5,200 on 5 of the violations—a 3-percent collection rate. History sheets documenting collection actions had not been prepared on any of the 16 violations. Through a search of the violation files, we found that initial demand letters, and in two cases a second demand letter, had been sent on 13 of the 16 violations. On 4 of these violations the penalty was remitted. In one case, the penalty was paid before a demand letter was sent and in the remaining two cases there was no indication that any collection action had been taken. We found no evidence to show that more than two of the violations were submitted to the deputy attorney general for additional action. Also, we found no evidence to show that the deputy attorney general had taken any action other than sending second demand letters. The deputy attorney general told us that no legal action has ever been taken by the state even though many penalties have not been paid.

Colorado

Under Colorado's collection system, the collection process begins with the reclamation specialists (mine inspectors) who pursue unpaid penalties for those mines they inspect. If the reclamation specialist is unable to collect the penalty, the case is to be referred to a state central collection service. However, the state has no written procedures to guide the reclamation specialist on how to pursue collections or determine when to submit a delinquent account to the state collection agency. In addition, although the state maintains records of collected penalties, there is no system for monitoring unpaid penalties.

Again, to determine actual penalty collection steps, we reviewed the 44 Notice of Violation and Failure to Abate Cessation Order violations included in our sample that resulted in assessed penalties. These violations had total assessed penalties of $75,069. We found that 33 violations with penalties of $23,969 had been collected—a collection rate of 32 percent. Of the $51,100 in uncollected penalties, $45,000 was associated with two Failure to Abate Cessation Orders at one mine. In March 1986 the attorney general was directed to pursue civil action. However,

the company filed for bankruptcy, and the Attorney General's Office was informed by the bankruptcy court not to expect to recover claims because there are no assets. The remaining $6,100 in overdue penalties had been referred to the state central collection service for collection. However, $5,350 of this $6,100 was not referred to the state collection service until July 1986, when we notified the state agency that the penalties did not appear on collection reports. In the state records, we also identified a $580 penalty assessed in 1984 which was uncollected. When this uncollected penalty was brought to the attention of the state agency, the permittee was contacted. The permittee was aware of the penalty and said a check for the penalty amount was prepared in 1984 but never sent. The $580 penalty was paid in July 1986.

OSMRE Oversight of State Penalty Collection Activities Varies

In addition to performing annual oversight reviews of the states' penalty assessment and collection systems, the OSMRE Albuquerque and Indianapolis Field Offices have conducted special studies of the Colorado and Indiana programs. Officials at OSMRE's Lexington Field Office told us that the Kentucky collection system had not been thoroughly reviewed because the collection area has been assigned a low priority and an agreement with the state precludes OSMRE's review of the state regulatory agency's Office of General Counsel files—the state office responsible for collections. In addition, these officials said that, using OSMRE's own collection rate for comparison, they were generally satisfied with the state's collection results.

In 1986, in response to concerns about low collection rates, the OSMRE Indianapolis Field Office conducted what it termed a special study of Indiana's penalty assessment and collection system. While not an in-depth analysis, the study represented the first review focused exclusively on this aspect of the regulatory process. It has resulted in the state documenting its existing procedures and the OSMRE field office including civil penalty assessment and collection as one of several issues to be discussed in monthly meetings with state officials. Officials at OSMRE's Indianapolis Field Office told us that prior to this special study no detailed evaluation of Indiana's collection system had been performed because of higher priorities and staffing shortages.

The OSMRE Albuquerque Field Office, responsible for oversight of Colorado, has reported few, if any, problems with Colorado's penalty collection system. The field office's oversight reports and a 1984 special study of the Colorado program consistently commend the state on its good collection record. An OSMRE field office official said that the analysis for the

1986 annual report indicates that Colorado is collecting penalties in a timely manner and is maintaining a high collection rate.

The OSMRE Lexington Field Office monitors Kentucky's penalty collection system by analyzing reports submitted by the state and reviewing sample cases during its annual review at the state agency. OSMRE officials, however, were unaware that the collection information provided by the state contained inaccuracies and included information on penalties assessed and collected for non-SMCRA violations. As discussed previously, at least 5 percent of the collections reported pertained to non-SMCRA mining violations. OSMRE does not review the state's collection case files because an agreement between OSMRE and the state agency prohibits OSMRE access to this information. The Lexington Field Office Director told us that the field office has not had problems with the lack of access because its reviews have been oriented to the broad issues on which they have sufficient information. Because of its orientation toward broad issues rather than reviewing collection performance on individual cases, OSMRE merely reports overall collection performance without verifying the information submitted by the state. Relatedly, it does not examine collection practices which could have been used, their results, and consistency in taking collection actions.

The OSMRE Lexington Field Office's annual evaluation reports have identified few problems with Kentucky's collection activities. For the 1983-1984 reporting period, OSMRE concluded that the effectiveness of Kentucky's Collections and Bond Forfeiture Branch suffered because branch staff attorneys must perform their own investigations and searches to locate coal company assets before a judgment can be executed. This branch was subsequently abolished and its responsibilities assigned to state agency attorneys as part of their normal case load. The latest OSMRE evaluation, conducted during the period January 27, 1986, to February 6, 1986, noted that the state's overall collection rate was down from previous years and that the state agency will have to emphasize collection activities against operators who elect not to voluntarily pay the civil penalty assessment.

Conclusions

Indiana and Kentucky are not collecting most penalties which they have assessed against violators. Colorado has a better collection record, but it also may not be collecting all possible penalties. Without a serious debt collection effort, the credibility of state surface mining regulatory

enforcement is open to question. We believe that the major factor inhibiting the collection of penalties is the absence of a well-structured collection system which incorporates provisions similar to those recommended to OSMRE by the IRS. These include developing collection policies, a detailed procedures manual, and the organizational capability to carry out an effective collections program.

OSMRE has not performed in-depth evaluations of state collection activities as part of its oversight reviews. In addition, OSMRE has agreed to a restriction imposed by Kentucky on its review of the state's debt collection efforts. The agreement prohibits OSMRE from examining the records of the state collection agents. We believe that OSMRE field offices should place greater emphasis on state penalty collection activities during their oversight reviews. To adequately perform this review, we believe the field offices should have complete access to all files and records pertinent to the collection of outstanding penalties.

Recommendations

We recommend that the Secretary of the Interior require the Director, OSMRE, to review state penalty collection systems as part of their annual oversight evaluations. In performing this review, OSMRE should require states to make available all records, files, and documents relating to all aspects of the penalty collection system or activity. The states should be required to develop and implement written procedures that provide detailed instructions to facilitate debt collection using generally accepted debt collection practices such as those followed by the IRS.

Major Contributors to This Report

Resources, Community, and Economic Development Division, Washington, D.C.	James Duffus III, Associate Director, (202) 275-7756 Bob Robinson, Group Director Edward E. Young, Jr., Assignment Manager
Cincinnati Regional Office	Don Heller, Regional Assignment Manager Homer N. Carrington, Evaluator-in-Charge Harry C. Sanford, Evaluator Thomas J. Haas, Evaluator Matthew B. Lea, Evaluator
Denver Regional Office	Douglas H. West, Regional Assignment Manager Donald T. Beltz, Site Senior Martin G. Giossi, Evaluator

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