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**OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT**
DIRECTIVES SYSTEM

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Subject: Directive for Determining Uncollectibility in Civil Penalty Cases

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1. Purpose. This directive provides guidance to the Office of Surface Mining (OSM) Branch of Inspection for determining the uncollectibility of civil penalty assessment cases.

2. Definitions. None.

3. Policy and Procedures.

A. Background. The Departmental Manual in Part 344, Collection of Debts, places responsibility upon the Office of Surface Mining for the "development of an internal collection program and procedures prescribing an orderly process of collection effort" (344 DM 1.3 B.). This responsibility includes "determining administrative uncollectibility of debt and terminating or suspending collection effort, pursuant to 344 DM 4" (344 DM 1.3 B. (5)). Five standards for suspending or terminating collection action are contained in 344 DM 4; these include:

- inability to collect any substantial amount
- inability to locate debtor
- cost will exceed recovery
- claim legally without merit
- claim cannot be substantiated by evidence.

B. Authority. The authority to terminate claims is delegated to the Office of Surface Mining in 216 DM 2.1. The limitations on this authority are:

(1) The advice of the Solicitor must be sought prior to the termination of any claim in excess of \$600 (344 DM 4.1).

(2) Any claim of \$20,000 or more must be referred to the Department of Justice.

B.(2)

C. Responsibilities.

(1) OSM may determine uncollectible those debts meeting the standards of 344 DM 4 contained in part A, above, and explained in part D, below, and involving civil penalty amounts of \$600 or less per violation. OSM may seek the advice of the Solicitor before determining any of the debts uncollectible. However, if the reason for determining the debt uncollectible is because it is legally without merit, OSM shall seek the advice of the Solicitor.

(2) OSM may determine uncollectible those debts meeting the standards of 344 DM 4 contained in part A, above, and explained in part D, below, and involving civil penalty amounts greater than \$600 but not exceeding \$20,000 per violation. OSM shall seek the advice of the Solicitor on all such cases and shall show great deference to the Solicitor's recommendation. OSM shall not make a determination on the uncollectibility of any case involved in active litigation until the recommendation is received from the Solicitor.

(3) OSM shall refer to the Solicitor for referral to the Department of Justice each case where the penalty amount is \$20,000 or greater per violation.

(4) OSM may refrain from making a determination of uncollectibility and pursue collection on any case, regardless of amount, which because of seriousness of the violation, history of the debtor, willfulness or negligence of the violator, or other such factor, warrants continued collection action. OSM will refer any such case to the Solicitor, as appropriate, in accordance with accepted procedures for collection.

(5) OSM shall provide appropriate and available documentation on an expedited basis to the Solicitor on any case where the debtor has filed a petition of bankruptcy under Chapter Seven or Chapter Eleven of the Federal Bankruptcy Act. A determination of bankruptcy does not, of itself, justify a determination that a debt is uncollectible; hence, OSM will not make a determination of uncollectibility on bankruptcy status alone. Furthermore, OSM shall seek the advice of the Solicitor on any case involving bankruptcy proceedings and will show great deference to the Solicitor's recommendation.

D. Standards for Determining Uncollectibility. The standards for suspending or terminating collection action are contained in 344 DM 4.3.

(1) Inability to Collect any Substantial Amount. OSM may determine uncollectible any case not exceeding \$20,000, and with the advice of the Solicitor if the case exceeds \$600, when it becomes clear that OSM cannot collect any significant sum from the debtor. In determining the debtor's inability to pay, the following factors shall be considered: age and health of the debtor (such as when a debtor is prevented from earning a living due to old age or severe physical disability), present and potential income, lack of major assets (such as real property, vehicles, bank account, etc.), inheritance prospects, the possibility that assets have been concealed or improperly transferred by the debtor, or the availability of assets or income which may be realized upon judicial proceedings.

D.(1)

The fact that an individual or business entity has been declared bankrupt is not, in itself, justification for an uncollectible determination. If OSM believes, or has reason to believe, a business entity is legally dissolved or is insolvent, OSM will specifically request the advice of the Solicitor on the question of whether an individual may be liable for the business debts.

(2) Inability to Locate Debtor. OSM may determine uncollectible any case not exceeding \$20,000 and with the advice of the Solicitor if the case exceeds \$600, when the debtor cannot be located after diligent efforts to locate the debtor have been unsuccessful. OSM will insure a proper determination is made that there is no security remaining to be liquidated, or the applicable statute of limitations has run, and that the prospect of collecting is too remote to justify retention of the claim.

(3) Cost will Exceed Recovery. OSM will not ordinarily determine a case as being uncollectible for this reason unless the estimated cost of recovery including the estimated cost of litigation so greatly exceeds the penalty amount that an uncollectibility determination is the only reasonable option. Prior to determining a case uncollectible for this reason, OSM will seek from the Solicitor an estimate of the cost of litigation.

(4) Claim Legally without Merit. OSM may determine uncollectible any case not exceeding \$20,000 per violation when the claim is legally without merit. If there is reason to believe a claim contains legal improprieties, OSM shall seek the advice of the Solicitor.

(5) Claim cannot be Substantiated by Evidence. OSM may determine uncollectible any case not exceeding \$20,000 per violation when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable. If there is reason to believe a claim cannot be substantiated by evidence, OSM shall seek the advice of the Solicitor.

E. Procedures.

(1) For cases not requiring the advice of the Solicitor, the uncollectibility determination shall be made in accordance with the following procedures:

(a) The Chief, Branch of Inspection, or his designee shall place a signed memorandum in the case file explaining the facts of the case, the standard under which the uncollectibility determination was made, a statement as to why efforts to collect have been unsuccessful or were not pursued and a justification for the case's being closed. No debt may be written off without his memorandum.

E.(1)(a)

(b) The Chief, Branch of Inspection, or his designee shall notify the OSM Field Office for the State where the Notice of Violation or Cessation Order originated that the penalty has been determined uncollectible and the case closed.

(2) For cases requiring the advice of the Solicitor, the uncollectibility determination shall be made in accordance with the following procedures:

(a) The Chief, Branch of Inspection, or his designee shall request the Solicitor to provide a recommendation on uncollectibility. This request shall include:

(i) A memorandum in draft form explaining the facts of the case, the prospective standard under which the determination may be made and the reason why OSM's efforts to collect have been unsuccessful. Upon making the uncollectibility determination the Chief, Branch of Inspection, or his designee can convert this memorandum to final form as justification for the uncollectibility determination. No debt may be written off without this memorandum.

(ii) A copy of the Notice of Violation or Cessation Order and certified mail receipts.

(iii) The assessment history including the Notice of Proposed Assessment, Assessment Worksheet, Conference Report, Final Order, Final Demand and certified mail receipts for same.

(iv) Inspector's documentation including the Inspection Report, Inspector's Statement and Inspector's documentation, if applicable, in situations where the Notice of Violation or Cessation Order was served by posting at the minesite.

(v) All available information regarding the individual's or business entity's assets and their location.

(b) The Chief, Branch of Inspection, or his designee shall take into immediate consideration the recommendation of the Solicitor or the result of any compromise on the claim reached by the Solicitor including the settlement amount, and the payment schedule or, where appropriate, the outcome of litigation. In reaching his determination on the uncollectibility of any claim, the Chief, Branch of Inspection, shall show great deference to the Solicitor's recommendation and, if the debt is determined to be uncollectible, shall put in final form and shall sign the memorandum in 3.E.(2)(a)(1), above. No debt may be written off without this memorandum.

(c) For any case in which a petition in bankruptcy has been filed, the Chief, Branch of Inspection, or his designee shall provide on an expedited basis all appropriate and available documentation concerning the case(s) to the Solicitor including:

(1) A copy of the Notice of Violation or Cessation Order and certified mail receipts.

E. (5)(c)(1)

(ii) The assessment history including the Notice of Proposed Assessment, Assessment Worksheet, Conference Report, Final Order, Final Demand and certified mail receipts for same.

(iii) If available, the date the petition for bankruptcy was filed, case number, district in which the petition was filed and documentation that the Notice of Proposed Assessment has an identifiable service date.

(iv) All available information regarding the individual's or business entity's assets and their location.

F. Write-Off of Debt Determined to be Uncollectible. When a debt has been determined to be uncollectible, it shall be written off and the Chief, Branch of Inspection, or his designee shall:

(1) Notify the Division of Planning and Budget and the Office of the Solicitor, as required, on a periodic basis, of the write-off;

(2) Insure that the Branch records are a correct reflection of the debt's status and insure that statistical data on collections are updated and reflect the write-off;

(3) Maintain the integrity of the file and insure that all required documentation is contained in the file; and,

(4) Keep and maintain a list of all debts written off as uncollectible which will include the debtor's name, address, Notice of Violation or Cessation Order number, the date of the uncollectibility determination and the standard under which the uncollectibility determination was made.

4. Reporting Requirements. None.

5. References. None.

6. Effect on Other Documents. None.

7. Effective Date. Upon Issuance.

8. Contact. Chief, Branch of Inspection. FTS 343-5384.