



**U.S. Department of the Interior
Office of Inspector General**

SURVEY REPORT

**OFFSHORE CIVIL PENALTIES PROGRAM,
MINERALS MANAGEMENT SERVICE**

**REPORT NO. 99-I-374
MARCH 1999**



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL

Washington, DC. 20240

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SURVEY REPORT

Memorandum

To: Director, Minerals Management Service

From: Robert J. Williams *Robert J. Williams*
Assistant Inspector General for Audits

Subject: Survey Report on the Offshore Civil Penalties Program, Minerals Management Service (No. 99-I-374)

INTRODUCTION

This report presents the results of our survey of the Minerals Management Service's offshore civil penalties program. The objective of the survey was to determine whether (1) civil penalties were assessed in a fair and consistent manner, (2) documentation in the assessment files supported the reviewing officers decisions, and (3) civil penalty referrals were made as appropriate by inspectors. In addition, the Service requested that we review its procedures for referring criminal cases to the Office of Inspector General. In that regard, we plan to issue a separate report on the referral of criminal cases.

BACKGROUND

The Minerals Management Service comprises two specialized programs: the Royalty Management Program and the Offshore Minerals Management Program. All mineral revenue functions are centralized within the Royalty Management Program, which collects, accounts for, and distributes revenues generated from Federal and Indian lands and the Outer Continental Shelf. The Service's Offshore Minerals Management Program conducts leasing activities for and provides oversight of mineral operations on the Nation's Outer Continental Shelf. The headquarters for the Offshore Minerals Management Program is located in Herndon, Virginia, and regional offices are located in Anchorage, Alaska; Camarillo, California; and New Orleans, Louisiana. The Offshore Program is responsible for all phases of offshore oil and gas activity, including the regulation of all exploration, development, and production activities on more than 7,100 active leases.

The goal of the civil penalties program is to encourage operator compliance with applicable statutes and regulations to ensure safe and environmentally sound operations on the Outer Continental Shelf. For example, the Service's OCS (Outer Continental Shelf) Civil/Criminal

Penalties Program Guidebook dated December 1992 states: “The penalty assessed for spilling oil must be large enough to induce the spiller to take steps to prevent future spills. Thus the penalty should be substantial enough to encourage expenditures for compliance and to discourage further violations.” The 1978 Amendments to the Outer Continental Shelf Lands Act gave the Service the authority to assess civil penalties for violations of statutes and regulations that are designed to help ensure safe and environmentally sound offshore oil and gas operations. However, this authority was limited by a provision that required the Service to provide a period of time to a lessee to correct a violation before a penalty is imposed. The Oil Pollution Act of 1990 (Public Law 101-380) eliminated the requirement that a correction period should be provided before penalties could be assessed in cases where the failure to comply with applicable statutes and regulations “constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.” The Oil Pollution Act also increased the maximum amount of civil penalties assessable from \$10,000 per violation per day to \$20,000 per violation for each day of noncompliance and required the adjustment of the maximum penalty at least every 3 years to reflect any increases in the Consumer Price Index. Accordingly, the Service increased the maximum civil penalty to \$25,000 per day effective October 7, 1997.

As of September 30, 1997, the Service’s Gulf of Mexico Region had 50 inspectors in four district and two subdistrict offices in Louisiana and Texas (see Appendix 1). These inspectors conducted on-site inspections of more than 3,800 platforms and approximately 15,000 oil and gas wells in the Gulf of Mexico. These inspections included monitoring offshore production and drilling operations and testing safety and pollution prevention equipment, which prevents or minimizes the effects of well blowouts, fires, spillage, and other major accidents. When Service inspectors find violations of the regulations, they issue Incidents of Noncompliance to the operator of the facility. The Service has developed a list of potential Incidents of Noncompliance that identifies approximately 600 potential violations and has established written guidelines concerning the regulations, inspection procedures, and instructions to be used when noncompliance is noted. Depending on the severity of the violation, one of the following three enforcement orders is issued: (1) warning the operator of the violation and ordering corrective action, (2) shutting in specific component equipment until corrective action is taken, or (3) shutting in the entire facility until required corrective action is taken.

If an inspector believes that the violation warrants further review, the inspector is required by the Civil/Criminal Penalties Program Guidebook to discuss the violation with the supervisory inspector. If the supervisor agrees that a violation warrants a civil penalty, the potential civil action is discussed with the district supervisor. The district supervisor initiates the Compliance Review Form, a summary of investigation, and a recommendation for initiation of civil penalty proceedings and forwards these and all other pertinent documentation to the regional supervisor for approval. The regional supervisor reviews the

⁴To temporarily close down a producing well, platform, or other production equipment for repair or maintenance.

information, and if further action is warranted, he forwards all of the documentation to the Regional Director.

Civil penalty cases are formally established when the Regional Director determines that the evidence presented warrants a civil penalty and refers the Compliance Review Form, the Incident of Noncompliance, and other documents related to the case to the reviewing officers in the Gulf of Mexico Regional Office. The Regional Office has three reviewing officers, who are responsible for evaluating the merits of the referrals, determining whether civil penalties are warranted, and assessing any subsequent fines. The amount of a fine is determined in part through the use of the Service's Generalized Matrix (see Appendix 2). One axis of the matrix has three enforcement codes, one of which the inspector assigns when the Incident of Noncompliance is issued. The other axis has three categories, one of which is selected by the reviewing officer based on the seriousness of the threat or injury to personnel or the environment and the operator's prior compliance record. The amount of the daily fine determined from the matrix is then multiplied by the number of days the operator was in violation to arrive at the total amount of the civil penalty. The reviewing officers may also consider mitigating factors when assessing fines, such as whether the company cooperated in investigating the violation and whether it is able to pay the fine. The Service's Generalized Matrix is contained in the Service's OCS (Outer Continental Shelf) Civil/Criminal Penalties Program policy document dated January 1996. This policy amended the Matrix contained in the Service's Civil/Criminal Penalties Program Guidebook dated December 1992.

Since the enactment of the Oil Pollution Act of 1990 through fiscal year 1997 (September 30, 1997), 143 civil penalty case files have been referred to the reviewing officers in the Gulf of Mexico Regional Office. Of the 143 case files, 90 cases involving penalties have been closed, with fines of approximately \$1.2 million being collected; 17 cases have been dismissed; 32 cases have not been decided; and 4 cases have been appealed. Final assessments have ranged from less than \$1,000 to more than \$70,000. Our review disclosed that the most common types of violations approved for civil penalty assessments involved surface and/or subsurface safety valves that were bypassed or were inoperative, emergency shutdown systems that were malfunctioning, or other safety procedures that were not followed by the operator.

SCOPE OF SURVEY

Our review was conducted in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that we considered necessary under the circumstances. Audit survey work was performed at the Service's Offshore Minerals Management Headquarters Office; the Gulf of Mexico Regional Office in New Orleans, Louisiana; and district offices in Texas, Louisiana, and California. (the offices visited or contacted are in Appendix 3).

To accomplish our objective, we reviewed data related to Incidents of Noncompliance issued by inspectors as of the time of our review during August and September 1997. We prepared detailed questionnaires, which were used in our interviews and discussions with 27 of the 50 field inspectors and their supervisors at the three district offices and the one subdistrict office visited. The data obtained during these interviews were analyzed and summarized to support conclusions in the Results of Survey section of this report. In addition, of the 90 closed civil penalty case files as of September 30, 1997, we judgmentally selected and reviewed 26 case files in which reviewing officers' final decisions were made as follows: 1 in 1993, 1 in 1995, 12 in 1996, and 12 in 1997. These case files represented 24 different operators that had final assessments totaling more than \$500,000.

As part of our review, we evaluated the system of internal controls related to civil penalty case referrals and assessments. The internal control weaknesses we found are discussed in the Results of Survey section of this report. Our recommendations, if implemented, should improve the internal controls in this area.

We also reviewed the Departmental Report on Accountability for fiscal year 1996, which includes information required by the Federal Managers' Financial Integrity Act of 1982, and the Service's annual assurance statement for fiscal year 1996 to determine whether any reported weaknesses were related to the objective and scope of our survey. Neither the Accountability Report nor the Service's assurance statement addressed the Service's civil penalties program.

PRIOR AUDIT COVERAGE

Neither the Office of Inspector General nor the General Accounting Office has issued any audit reports during the past 5 years on the Service's civil penalties program.

RESULTS OF SURVEY

Since the enactment of the Oil Pollution Act of 1990, the Minerals Management Service's Gulf of Mexico Region has developed and implemented a civil penalties program. However, we identified areas where improvements in the program are needed. Specifically, reviewing officers were not adequately documenting their penalty assessment decisions, and case files were not reviewed by a supervisor to ensure that the substantial evidence requirements were met. The Service's Civil/Criminal Penalties Program Guidebook requires reviewing officers' conclusions for assessing civil penalties to be based upon "evidence in the record." Undocumented and unsupported assessment decisions can leave civil penalty decisions vulnerable to reversal under appeal and lead to inconsistent penalty assessments, which could also limit the effectiveness of the civil penalties program. In addition, our survey disclosed that inspectors did not always make referrals for civil penalties when appropriate or make referrals in a timely manner. The Minerals Management Service's Civil/Criminal Penalties Program Guidebook provides guidance for inspectors and their supervisors to use when they determine whether to refer a violation for possible civil penalty and when to make the referral. However, inspection supervisors did not ensure that inspectors were thoroughly

knowledgeable of the civil penalties program and made referrals when appropriate. When inspectors do not refer serious Incidents of Noncompliance for civil penalty or do not refer them in a timely manner, the program is applied inconsistently and the program's effectiveness in promoting safe and environmentally sound operations in the Gulf of Mexico is diminished. While the Service identified similar program weaknesses and initiated some corrective actions as a result of its internal reviews, we believe that additional improvements are needed.

Civil Penalty Assessments

The Service's reviewing officers did not adequately document case files for civil penalty assessments. We reviewed 26 of the 90 closed civil penalty case files that resulted in final assessments and found that support for the determinations of lines was not contained in 24 of the case files reviewed. These 24 case files contained one or more supporting documentation deficiencies, including case files that did not support the determination of the category of the violation (21 cases), the enforcement code (2 cases), or a difference between the assessed number of days and the number of days in the violation period (3 cases). In addition, mitigating factors, which the reviewing officers considered when determining the categories of violations in the Generalized Matrix (see Appendix 2) and when establishing proposed and final assessment amounts, were not documented in the case files. Finally, reviewing officers made assessments without properly considering the compliance history of the operators.

The Service's Civil/Criminal Penalties Guidebook states: "The Reviewing Officer's decision shall be in writing and shall include his/her conclusions and the basis for these conclusions. Any decision shall be based upon evidence in the record." (Emphasis added.) The Service's OCS Civil/Criminal Penalties Program policy document states that reviewing officers should consider an operator's compliance history when determining a violation category in the Generalized Matrix and when determining assessment amounts. District personnel are also required by the policy document to provide an operator's compliance history when making referrals for civil penalties.

Based on our review of 26 case files, we found that only 5 files contained evidence that the reviewing officer had considered an operator's compliance history when determining an assessment. Service personnel said that reviewing officers did not consider compliance histories because the districts were not always including this information with the referral or the information was incomplete. Of the 26 case files we reviewed, 6 did not contain any of the required compliance history, 12 had a partial history, and 8 had a complete history. We found that compliance histories were incomplete because inspectors preparing referrals relied on incomplete Incident of Noncompliance tiles rather than on the Service's more accurate Technical Information Management System, which contains operator compliance histories for all districts in the Gulf of Mexico.

We believe that the reviewing officers need to ensure that case files contain written support for (1) mitigating factors considered, (2) changes in data, and (3) selection of penalty assessment category. For example:

- In February 1995, the New Orleans District Office referred seven violations for bypassing safety equipment for civil penalties. The civil penalty case worksheet indicated that the operator had a poor compliance record, with at least 46 previous violations at this facility in the prior 3 years, including 2 for bypassing safety devices and 5 for polluting offshore waters. The District Office's referral stated that the operator had a "total disregard for the regulations" and noted that some of the violations "created a major threat to the environment." The reviewing officer classified six violations at the Category I level and one violation at the Category II level but assessed all fines at the Category I level (the categories are defined in Appendix 2). Category I is designated for violations that present the least severe potential threat to human safety and the environment and for operators who have an excellent or above average record of compliance. Neither the reviewing officer's final decision nor the case file identified any mitigating factors concerning the violations. Concerning the decision, the reviewing officer told us that the violations could have been classified more severely but were not because this was the operator's first civil penalty case. The reviewing officer assessed this operator a \$50,000 penalty (the maximum amount assessable for this category was \$75,000). If the reviewing officer had classified all seven of the violations at the Category II level and assessed Category II level fines based on the operator's poor compliance history, the maximum fine assessable would have totaled \$110,000.

- In August 1996, the Houma District Office referred a violation for civil penalty for an inoperative gas detector in the mud pit room² on a drilling rig. The District Office's referral identified this as a serious violation that could have resulted in a fire or an explosion with loss of well control and/or human life. The violation period totaled 8 days, which began the day drilling commenced, July 30, 1996, and ended when the violation was identified and the facility was shut in, August 6, 1996. The reviewing officer classified the violation at the Category I level with an assessed period of 7 days. The Service's criteria define a Category I violation in part as involving a threat of injury to humans, whereas a Category II violation involves a threat of "significant" injury to humans. The reviewing officer's final decision and case file did not identify any mitigating factors concerning this violation. The reviewing officer said, regarding this violation, that he recalled several undocumented mitigating factors, including his belief that the probability of an accident was very low because other gas detectors, which could have possibly detected a gas leak, were nearby and that a Category II level fine would therefore have been "excessive." Concerning the violation period of 8 days versus the assessed period of 7 days, the reviewing officer stated that the drilling may have actually commenced on July 31 rather than July 30, but he did not provide documentation to support this statement. The reviewing officer assessed this operator the

²A mud pit room is where the drilling fluid is stored for circulation into the drilling bit. The drilling fluid may contain poisonous or explosive gases when it comes up from the bottom of the drilling hole, so gas detectors are required in the mudpit room.

minimum penalty assessable of \$35,000 (the maximum amount assessable for this category was \$70,000). If the reviewing officer had classified this violation at the Category II level based on a threat of significant injury and assessed an 8-day period, the maximum fine assessable would have totaled \$120,000.

- In August 1996, the Houma District Office referred a violation for bypassing a surface safety valve over a 3-day period. The District's referral did not identify the operator's previous violations at this facility but noted that the operator had an "average" record of compliance. However, based on our review of the Service's files, we found that the operator had received 8 1 previous violations at this facility over the prior 10 years, which we concluded was a poor compliance history. The District Office's referral identified this as a "very serious" violation and said that "the threat of immediate danger to life and the environment existed since the surface safety valve could not close." The reviewing officer classified the violation at the Category I level. Neither the reviewing officer's final decision nor the case file identified any mitigating factors concerning the violation. The reviewing officer said that this violation was classified in the least severe category because the facility was unmanned and that the probability of an accident and threat to human safety were therefore low. However, the reviewing officer also acknowledged that if an accident had occurred, the threat to the environment would be higher at an unmanned facility. The reviewing officer assessed this operator a \$15,000 penalty (the maximum amount assessable for this category was \$30,000). If the reviewing officer had classified the violation at the Category II level based on the operator's poor compliance history and the threat of significant injury to personnel, the maximum fine assessable would have totaled \$45,000.

We found that civil penalty assessments were not adequately documented and supported because reviewing officers were not specifically required to document the basis for determining a violations category in the Generalized Matrix and were not required to document all mitigating factors considered when establishing civil penalty assessments. We also found that assessments were made without consideration of an operator's compliance history because referrals were made without a compliance history or with a compliance history that was incomplete. In addition, the Service did not require a peer or supervisory review of civil penalty assessment case files to ensure that all decisions were well documented and supported.

As a result of the documentation deficiencies cited, there was insufficient information for us to determine whether civil penalties were assessed in a fair and consistent manner. Specifically, we could not determine whether all mitigating factors were properly considered and whether fines were assessed at the appropriate level as indicated by the Generalized Matrix. Without complete documentation supporting the reviewing officers' decisions, there was no assurance that penalty assessment decisions were made in accordance with the Code of Federal Regulations (30 CFR 250.200-.206) or the requirements in the Service's OCS Civil/Criminal Penalties Program policy document.

Civil Penalty Referrals

Although not all Incidents of Noncompliance warrant referral for civil penalty, the number of referrals made by Service inspectors for serious violations has, in some cases, been insignificant when compared with the number of violations. For example, in the 8 years (1990-1997) since the civil penalties program was implemented, 358 Incidents of Noncompliance were issued for pollution but only 10 were referred for civil penalties; 4,274 Incidents of Noncompliance were issued for unsafe and unworkmanlike operations involving the threat of injury to humans or pollution but only 39 resulted in civil penalties; and 304 Incidents of Noncompliance were issued relating to surface or subsurface safety devices and emergency shut-down systems that were bypassed or blocked out of service without a valid reason but only 107 were referred for civil penalties. (The number of inspections reported by district, Incidents of Noncompliance issued, and civil penalty cases referred to the Region are in Appendix 1.)

In the original scope of our audit, we intended to perform a detailed review of Incidents of Noncompliance to determine which violations merited civil penalties that were not referred. However, based on our initial review, we found that Incidents of Noncompliance, including those issued for violation types which were most often referred, were not sufficiently documented to make this determination. As stated previously, our review disclosed that the most common types of violations approved for civil penalty assessment involved surface and/or subsurface safety valves that were bypassed or were inoperative, emergency shutdown systems that were malfunctioning, or other safety procedures that were not followed by the operator. We believe that the Service should require inspectors to document violations sufficiently, especially of the type that have been most often referred, to independently determine whether a referral is warranted and should provide inspectors necessary training to perform this duty.

We found, based on interviews with 27 inspectors and supervisory inspectors at the Houma, Lake Jackson, and New Orleans District Offices and the Corpus Christi Subdistrict Office, the following information regarding civil penalty referrals: 11 inspectors disagreed with program policy, stating that they believed that violations which were referred by other inspectors did not warrant civil penalty referral, that program penalties were too punitive, and that enforcement tools such as shut-ins were more preferable deterrents than civil penalties; 15 inspectors cited insufficient training in the areas of making civil penalty referrals and properly documenting Incidents of Noncompliance; 8 inspectors cited insufficient policies and procedures for identifying and referring violations that warranted civil penalty referrals; and 5 inspectors said that they had to prove that the violation was knowing and willful in order to refer a violation for civil penalty. Three of the 27 inspectors stated that they would not be willing to make a civil penalty referral, and an additional 7 inspectors, each of whom had at least 15 years of experience, had never initiated a civil penalty referral.

The Houma District Office had the most civil penalty referrals and was the only office visited in which the District Office engineers prepared Compliance Review Forms. Seven of the District Office's nine inspectors had issued Incidents of Noncompliance that were referred

for civil penalty assessments. These inspectors said that the Compliance Review Forms for these referrals were prepared by one of the District Office engineers so that preparation of the civil penalty assessment package did not detract from their inspection responsibilities or require much of their time. The inspector usually discussed the violation with the engineer and obtained any additional information relative to the violation that the engineer requested. In addition, we found the Houma District Office generally made referrals within 3 months of the issuance of the Incident of Noncompliance.

The Lake Jackson District, including its two subdistricts, made 20 referrals for civil penalty assessments (2 at the District Office, 4 at the Corpus Christi Subdistrict Office, and 14 at the Lake Charles Subdistrict Office). At the Lake Jackson District Office, we found that only one of six inspectors interviewed supported the civil penalties program. The other inspectors, none of whom made any referrals, indicated that the program either was an attempt by the Service to generate additional revenues or was too punitive and that shutting in facilities could achieve corrective actions and be more acceptable to industry. The supervisory inspector and the District Office supervisor stated that they did not review all Incidents of Noncompliance for initiation of civil penalty proceedings. The District Office had submitted only two civil penalty referrals in the past 8 years, and both of these were prepared by the same inspector. We found three operators that had significant Incidents of Noncompliance issued by the District Office which were of the type that often resulted in civil penalty referrals in other district offices. Because all three of the operators had poor records of compliance, we believe that these violations should have been submitted to the Regional Office for consideration of civil penalties. Both the District Office supervisor and the supervisory inspector said that these violations should have been considered for civil penalty referral. The two inspectors interviewed at the Corpus Christi Subdistrict Office supported the civil penalties program, and both inspectors had made civil penalty referrals. We did not interview inspectors at the Lake Charles Subdistrict Office.

The New Orleans District Office was not processing civil penalty referrals in a timely manner. The Service's Civil/Criminal Penalties Program Guidebook requires that a Compliance Review Form be initiated within 60 days of the date of the violation or issuance of the Incident of Noncompliance. The Gulf of Mexico Regional Director, in a June 6, 1997, memorandum, established a formal goal of completing the Compliance Review Form within 30 days of either issuing or receiving a reply to an Incident of Noncompliance. At the time of our visit to the New Orleans District Office in September 1997, the District's civil penalty log identified 12 referrals initiated during fiscal year 1997, none of which had been completed and sent to the Regional Supervisor for review and signature. Six of these referrals had been initiated more than 6 months prior to our visit, and the remaining six had been initiated more than 3 months prior to our visit. The District Office supervisor attributed the backlog to two inspector positions that had been vacant but that had been filled only recently and to inspectors who did not have the training necessary to adequately prepare and document civil penalty referrals.

As a result of not making all appropriate civil penalty referrals and not making referrals in a timely manner, the program was applied inconsistently and the program's effectiveness in promoting safe and environmentally sound operations in the Gulf of Mexico was diminished,

The Service was aware of the need to improve the civil penalties program. As of September 1998, the Service conducted three annual program reviews that identified needed improvements, including issuing penalties consistently, providing additional training, having reviewing officers' case files that were "complete," and modifying the Technical Information System to include information on civil penalty cases. To improve operations, the Service prepared a draft revision of the Civil/Criminal Penalties Guidebook, was modifying the Technical Information System to include civil penalty case information, and modified its Generalized Matrix to clarify the categories which reviewing officers should use when assessing civil penalties. In addition, our review of the criminal referrals process, which will be discussed in a separate report, disclosed that the number of civil penalties referrals increased by 78 during fiscal year 1998, with most (58 cases, or 74 percent) of the increased referrals occurring at the New Orleans District Office.

Recommendations

We recommend the Director, Minerals Management Service:

1. Ensure that reviewing officers document all conclusions and the bases for the conclusions in their case files, including the basis for determining the category of the violation in the Generalized Matrix, the reasons for any differences between the violation periods and the assessment periods, and all determinations regarding the operator's compliance history. Also, any mitigating factors that were considered in arriving at the assessed amounts should be identified and documented in detail.

2. Institute supervisory or peer reviews to ensure that civil penalty assessments are adequately documented.

3. Ensure that inspectors receive sufficient training in determining when violations should be referred for civil penalties and in sufficiently documenting the violation on the Incidents of Noncompliance.

4. Direct Service managers to provide sufficient supervision and support to inspectors to ensure that appropriate violations are referred for civil penalties. In that regard, the Service should consider the Houma District Office's procedure of having a District engineer prepare the Compliance Review Form.

Minerals Management Service Response and Office of Inspector General Reply

In the February 22, 1999, response (Appendix 4) to the draft report from the Acting Director, Minerals Management Service, the Service concurred with all four recommendations.

Subsequent to the Service's response, Bureau officials provided us with additional information. Based on the response and additional information provided, we consider Recommendations 1, 2, and 4 resolved but not implemented and Recommendation 3 resolved and implemented. Accordingly, the three unimplemented recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation (see Appendix 5).

Recommendation 1. Concurrence.

In its response, the Service stated that based on its prior internal reviews, it "revised the guidelines for assessing civil penalties, stressing the importance of documenting completely the rationale for determining the need for, and amount of, a civil penalty." In addition, the Service stated that it held training sessions and meetings with all reviewing officers, most recently in January 1999, "to discuss the need for detailed documentation" and was "in the process of developing a computerized information system to provide the Reviewing Officer with additional information to support civil penalty assessments." Subsequent to the response, Service officials told us that the computerized system would be fully implemented by May 1, 1999.

Recommendation 2. Concurrence.

In its response, the Service stated that its "new guidebook for processing civil penalties requires MMS [Minerals Management Service] Reviewing Officers to discuss civil penalties with other Reviewing Officers." The response further stated, "The new computerized information system will provide MMS civil penalty coordinators, supervisors, and managers online access to each of the civil penalty case tiles for review and comment." In addition, Service officials subsequently told us that the new "Guidebook" states that the rationale for determining the penalty amount "must be included in the case file" and that the "Guidebook" would be finalized by May 1, 1999.

Recommendation 3. Concurrence.

In its response, the Service stated that "a team consisting of representatives from the Solicitor's Office, MMS [Minerals Management Service] Headquarters, and both the Gulf of Mexico and Pacific Regions, conducted meetings/training sessions in every MMS District Office " during 1997 and 1998 "to provide information on when and how to forward violations for civil penalty review." The Service further stated that it "will conduct refresher training sessions on an annual basis." In addition, the Service stated that it had "formed a team," as a result of an internal review, to review the problem of documenting and issuing Incidences of Noncompliance and that a final team report would be issued. Subsequent to the response, Service officials told us that in lieu of a report, the Service incorporated the team's recommendations into a new National Potential Incidences of Noncompliance List and Guidelines, which was published and was posted on the Service's Internet Home Page.

Recommendation 4. Concurrence.

In its response, the Service stated that at its January 1999 annual review meeting, it “agreed that the Regional Supervisor and the District Supervisors must meet to decide which violations fall under the MMS [Minerals Management Service] policy outlined in both the MMS Manual Chapter and Guidebook” and that the supervisors will meet with the inspectors “to ensure that appropriate violations are referred for civil penalties.” In addition, the Service stated that it “will use the new computerized information system to monitor violations for civil penalty review.” Subsequent to the response, Service officials told us that the first meeting was held in January 1999 and the official established a quarterly meeting schedule to discuss violations which should be referred for civil penalties.

Additional Comments on Audit Report

The Service also provided comments on the audit report, which we considered and incorporated into our final report as appropriate. The main issues involved conduct of the audit survey, the survey’s time period, and lack of recognition of the Service’s internal reviews and subsequent improvements made. The specific comments and our replies are as follows:

Minerals Management Service Comment. The Service stated that it was “disappointed with . . . how the review was conducted.” The Service further stated that the review was conducted by two audit teams, “a Headquarters Team and a Regional Team,” but that “no information gathered by the Headquarters Team was included in the report.” Additionally, the Service stated: “In fact, the Headquarters OIG [Office of Inspector General] Team stated that since MMS [Minerals Management Service] was in the process of making significant changes to improve the civil penalties program, they would recommend that the audit focus on the criminal referral issue. The Headquarters OIG Team assured MMS that, at a minimum, the report would include a summary of the ongoing work MMS was conducting to improve the program.”

Office of Inspector General Reply. Our audit survey was accomplished under the direction of the Director of Performance Audits; performed by a Senior Auditor, an Auditor-in-Charge, and one staffmember from the Lakewood, Colorado, office; and assisted by two staff members from the Arlington, Virginia, office (not a Headquarters team) during the initial stages of the survey. The survey work performed by all staff was reviewed by the Senior Auditor. Based on the preliminary survey results, decisions were made regarding areas to pursue during the remaining portion of the audit survey. We decided to defer the criminal referral portion of the review until the civil penalty portion was completed. We are completing our review of the criminal referral process, and, as stated in the Introduction of this report, the results of that review will be addressed in a separate report.

Minerals Management Service Comment. The Service stated that it “would like stronger recognition of our efforts to identify and correct weaknesses in the [civil penalties] program.” The Service further stated that “the report does not clearly state, up front, the

period of time [case files through September 30, 1997] the review/investigation covered.” In addition, the Service stated that the survey report “does not adequately recognize any improvements made to the program during 1997 - 1998” as a result of a 1995 and subsequent reviews.

Office of Inspector General Reply. The Scope of Survey section of the report describes the period of time for our records review, and we have modified the section to clarify the scope of our review. Our selection of the 26 reviewing officers’ closed case files consisted of those with final decisions made as follows: 1 for 1993, 1 for 1995, 12 for 1996, and 12 for 1997. Thus, 24 of the 26 cases were closed after the Service’s 1995 internal review. Our review did not find significant improvements in documenting reviewing officers’ decisions, since we found one or more supporting documentation deficiencies in 22 of the 24 post-1995 cases. Regarding civil penalty referrals made by the field offices, we did not find a pattern of increases in the number of cases referred annually as of September 30, 1997. Specifically, there were 13 referrals in 1993, 41 in 1994, 13 in 1995, 48 in 1996, and 28 in 1997. In addition, as part of our review of the criminal referral process, we noted that the number of civil penalty referrals by the Gulf of Mexico Regional Office’s field offices increased by 78 referrals during fiscal year 1998. However, most (58 cases, or 74 percent) of the increased referrals occurred at the New Orleans District Office. Therefore, we believe that additional improvements to both documenting reviewing officers’ case files and referring violations for civil penalties are needed.

Since the report’s recommendations are considered resolved, no further response to the Office of Inspector General is required (see Appendix 4).

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken

We appreciate the, assistance of Service personnel in the conduct of our audit.

**GULF OF MEXICO REGIONAL OFFICE
INSPECTIONS CONDUCTED,
INCIDENTS OF NONCOMPLIANCE ISSUED,
AND CIVIL PENALTY CASES REFERRED
FOR FISCAL YEARS 1990 TO 1997**

Inspection Office	Number of Inspectors*	Inspections Conducted	Incidents of Noncompliance Issued	Civil Penalty Cases Referred
Houma District	11	21,777	11,464	58
Lafayette District	13	18,409	11,437	43
Lake Jackson District	6	5,036	1,596	2
Corpus Christi Subdistrict	3	4,727	539	4
Lake Charles Subdistrict	5	6,443	3,085	14
New Orleans District	<u>12</u>	<u>17,086</u>	<u>4,267</u>	2 2
Total	<u>50</u>	<u>73,478</u>	<u>32,388</u>	<u>143</u>

*Number of inspectors as of September 30, 1997.

**MINERALS MANAGEMENT SERVICE'S
GENERALIZED MATRIX FOR DETERMINING
CIVIL PENALTY ASSESSMENTS
JANUARY 1996***

Enforcement Code	Category I	Category II	Category III
W - Warning	\$1,000 - 10,000	\$3,000 - 15,000	\$ 5,000 - 20,000
C - Component Shut-in	\$3,000 - 10,000	\$5,000 - 15,000	\$10,000 - 20,000
S - Facility Shut-in	\$5,000 - 10,000	\$10,000 - 15,000	\$15,000 - 20,000
Category I Threat of injury to humans. Threat of harm or damage to the marine or coastal environment, including mammals, fish, and other aquatic life. Threat of pollution involving potential liquid hydrocarbon spillage of under 200 barrels over a period of 30 days. Threat, no damage to any mineral deposit. First time offense or second offense with lengthy interval since first offense. Excellent/above average record of compliance.	Category II Threat of significant injury to humans or actual injury involving incapacitation of less than 72 hours. Injury threat involved the potential for substantial impairment of a bodily function or unit (that is, lost time accident). Threat to aquatic life involving numerous individuals or endangered/threatened species. Actual pollution under 200 barrels or threat of pollution involving a potential liquid hydrocarbon spillage of over 200 barrels over a period of 30 days. Minor damage to any mineral deposit. Second/third offense for same violation. Average record of compliance.	Category III Serious injury to humans or loss of human life. Injury caused substantial impairment of a bodily function or incapacitation over 72 hours (that is, lost time accident). Harm or damage to the marine or coastal environment, including mammals, fish, and other aquatic life. Harm to aquatic life involved numerous individuals or endangered/threatened species, or pollution caused liquid hydrocarbon spillage of over 200 barrels during a period of 30 days. Damage to any mineral deposit. Substantial decrease in ultimate recovery. Multiple offender; multiple violations. Poor record of compliance.	

If it is determined that the case warrants the assessment of a civil penalty, the reviewing officer considers a variety of factors in establishing the proposed assessment, including the following:

- (1) A determination as to whether the case involved a threat or actual harm or damage.
- (2) Compliance history of the company.
- (3) Precedents set by similar cases.
- (4) Financial benefit derived by the company from the violation.
- (5) Severity of the violations.
- (6) Duration and number of violations.

Once the proposed penalty has been assessed, the reviewing officer may consider the following mitigating factors when determining the final assessment:

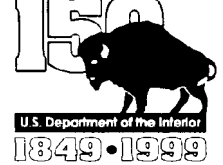
- (1) Company's ability to pay.
- (2) Company's willingness to cooperate during the incident/accident investigation.

*Matrix and narrative based on information contained in OCS (Outer Continental Shelf) Civil/Criminal Penalties Program policy document, dated January 1996.

**MINERALS MANAGEMENT SERVICE
OFFICES VISITED OR CONTACTED**

OFFICE	LOCATION
National Offices	
Offshore Headquarters Office	Herndon, Virginia
California	
Camarillo District Office*	Camarillo, California
Louisiana	
Gulf of Mexico Regional Office	New Orleans, Louisiana
Houma District Office	Bourg, Louisiana
Lafayette District Office*	Lafayette, Louisiana
New Orleans District Office	New Orleans, Louisiana
Texas	
Lake Jackson District Office	Lake Jackson, Texas
Corpus Christi Subdistrict Office	Corpus Christi, Texas

*Contacted only.



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240

FEB 22 1999

Memorandum

To: Assistant Inspector General for Audits

Through: Sylvia V. Baca *Sylvia V. Baca* FEB 22 1999
Acting Assistant Secretary for Land and Minerals Management

From: Thomas R. Kitsos *Thomas R. Kitsos*
Acting Director, Minerals Management Service

Subject: Office of Inspector General Draft Audit Report "Offshore Civil Penalties Program, Minerals Management Service" [C-IN-MOA-001-96(B)]

Thank you for the opportunity to respond to this draft report, Although we agree with the four recommendations and have already implemented them, we believe the report does not adequately reflect the work we have done in the past few years to improve the program. We're sending you our general comments on the audit findings and specific ones on the recommendations.

Please contact Bettine Montgomery at (202) 208-3976 if you have any further questions.

Attachment

MINERALS MANAGEMENT SERVICE RESPONSE TO DRAFT SURVEY REPORT
“OFFSHORE CIVIL PENALTIES PROGRAM, **MINERALS** MANAGEMENT
SERVICE”

Audit Agency: Office of the Inspector General (OIG)

Report Number: C-IN-MOA-00 1-96(B)

We appreciate this additional opportunity to comment on the report. Once again, MMS wants to restate that we are disappointed with both how the review was conducted, and the content of the report. We do not disagree with the report’s findings, but we would like stronger recognition of our own efforts to identify and correct weaknesses in the civil penalties program.

The audit was conducted by two teams of OIG auditors, a Headquarters Team and a Regional Team. However, no information gathered by the Headquarters Team was included in the report. In fact, the Headquarters OIG Team stated that since MMS was in the process of making significant changes to improve the civil penalties program, they would recommend that the audit focus only on the criminal referral issue. The Headquarters OIG Team assured MMS that, at a minimum, the report would include a summary of the ongoing work MMS was conducting to improve the program. However, the report had no such summary.

MMS worked closely with both teams, providing detailed information on how the civil penalties process works and making available all of the case files worked on to date. However, the Regional Team’s report only focused on the older case files. They did not mention the newer files, which were improving as a result of our 1995 internal review.

Further, the report does not clearly state, up front, the period of time the review/investigation covered. This causes a problem throughout, especially as it relates to the program changes that MMS has made through our own reviews of the program. The OIG used a database through 1997, yet they did not recognize the changes we made as a result of our internal reviews. With the publication date of December 1998, the report infers throughout that the problems uncovered by the OIG are continuing rather than noting that efforts to address these issues have been underway for over 3 years and, in fact, improvements are evident.

The report does not adequately recognize any improvements made to the program in 1997-1998, including: the development of new regulations streamlining the civil penalty process, published in the *Federal Register* on August 8, 1997; the 1997 Notice to Lessees and Operators increasing the amount of fines; the development of a computerized information system; and the publication in the *Federal Register* and on the Internet of civil penalties paid.

In the section on Recommendations, page 10, the report refers to the exit conference, noting that the OIG considered our comments and revised the report as appropriate. The revisions did not adequately reflect our comments at the exit conference. The report should refer to our

independent and ongoing review efforts up front or, at a minimum, where they identify the problems. The only effort to do so is at the end of the Results section, the last paragraph on page 9, which does not sufficiently address our extensive and continuing work to improve the program.

The report should recognize that MMS has aggressively reviewed the civil penalty program on an annual basis. Many, if not all, of the problems identified in this report were also, almost simultaneously, identified through these internal annual reviews. We have been working to address these issues. The draft Guidance in development, as well as annual meetings and training sessions with everyone from inspectors through the regional civil penalty coordinators and reviewing officers, attest to this fact. Again, we do not wish to refute the findings of the report. Rather, we would like stronger recognition of our efforts to identify and correct weaknesses in the program. We provide the following information for your consideration for inclusion in the report.

COMMENTS ON RECOMMENDATIONS

Recommendation 1: Ensure that Reviewing Officers document all conclusions and the basis for the conclusions in their case files, including the basis for determining the category of the violation in the Generalized Matrix, the reasons for any differences between the violation periods and the assessment periods, and all determinations regarding the operator's compliance history. Also, any mitigating factors that were considered in arriving at the assessed amounts should be identified and documented in detail.

AGREE - The 1995 and 1996 MMS internal reviews of the Civil Penalty Program identified this as an area for improvement. Based on the internal reviews, we revised the guidelines for assessing civil penalties, stressing the importance of documenting completely the rationale for determining the need for, and amount of, a civil penalty. We are in the process of developing a computerized information system to provide the Reviewing Officer with additional information to support civil penalty assessments. In addition, training sessions and meetings were held in 1996, 1997, and most recently, in January 1999, with the Department of the Interior's Solicitor's Office and all of the MMS Reviewing Officers to discuss the need for detailed documentation.

The new computerized tracking system will provide one method of feedback to all the individuals who forward a case for civil penalty consideration. This field will include an explanation when a case is not forwarded past a certain point (from Chief Inspector through the Reviewing Officer). In this way, the staff working on such cases will be provided the opportunity to learn what is and is not appropriate for review and hold the decisionmakers in the process accountable for thoughtful consideration of each referral.

Responsible Official: National Coordinator, OCS Civil Penalties Program

Target Date for Completion: Completed

Recommendation 2: Institute supervisory or peer reviews to ensure that civil penalty assessments are adequately documented.

AGREE - The new MMS guidebook for processing civil penalties requires MMS Reviewing Officers to discuss civil penalty cases with other Reviewing Officers. This practice is routinely conducted by all MMS Reviewing Officers. The Gulf of Mexico Region Reviewing Officers work within the same office and assist each other in the development of each civil penalty case file. The Pacific Region Reviewing Officer contacts the Reviewing Officers in the Gulf of Mexico Region each time a case file is assigned. The new computerized information system will provide MMS civil penalty coordinators, supervisors, and managers online access to each of the civil penalty case files for review and comment.

Responsible Official: National Coordinator, OCS Civil Penalties Program
Target Date for Completion: Completed

Recommendation 3: Ensure that inspectors receive sufficient training in determining when violations should be referred for civil penalties and in sufficiently documenting the violation on the Incidents of Noncompliance.

AGREE - The 1995 and 1996 MMS internal reviews identified this as an area for improvement. As a result, a team consisting of representatives from the Solicitor's Office, MMS Headquarters, and both the Gulf of Mexico and Pacific Regions, conducted meetings/training sessions in every MMS District Office to provide information on when and how to forward violations for civil penalty review. Over a 3-week period in 1997 and 1998, this team visited all eight MMS District offices, training over 95 percent of the appropriate staff. We will conduct refresher training sessions on an annual basis. In addition, as a result of the 1995 internal civil penalty review, the offshore inspection program formed a team to look into the problems associated with documenting and issuing Incidents of Noncompliance. A final report from this team is due out this Spring.

Responsible Official: National Coordinator, OCS Civil Penalties Program
Target Date for Completion: Completed and Ongoing

Recommendation 4: Direct Service managers to provide sufficient supervision and support to inspectors to ensure that appropriate violations are referred for civil penalties. In that regard, the Service should consider the Houma District Office's procedure of having a District engineer prepare the Compliance Review Form.

AGREE - The 1995 and 1996 MMS internal reviews identified this as an area for improvement. At our recent January 1999 annual review meeting, we agreed that the Regional Supervisor and the District Supervisors must meet to decide which violations fall under the MMS policy outlined in both the MMS Manual Chapter and Guidebook. Following the meeting, the District Supervisors will meet with all of the inspectors to "ensure that appropriate violations are referred

for civil penalties.” In addition, we will use the new computerized information system to monitor violations for civil penalty review. The new system requires MMS Inspectors, District Management, and Reviewing Officers to provide rationale for not forwarding/assessing penalties for violations that are identified by the Regional and District Supervisor for civil penalty review. In terms of the recommendation related to the Compliance Review Form, the new streamlined process for assessing civil penalties removed the requirement to complete a Compliance Review Form. The new process uses the computerized information system to develop the initial part of the civil penalty case file.

Responsible Official: National Coordinator, OCS Civil Penalties Program

Target Date for Completion: Completed

STATUS OF AUDIT REPORT RECOMMENDATIONS

<u>Finding/Recommendation Reference</u>	<u>Status</u>	<u>Action Required</u>
1, 2, and 4	Resolved; not implemented	No further response to the Office of Inspector General is required. The recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of information.
	Implemented.	No further action is required.

**ILLEGAL OR WASTEFUL ACTIVITIES
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Internet/E-Mail Address

www.oig.doi.gov

Within the Continental United States

U.S. Department of the Interior
Office of Inspector General
1849 C Street, N.W.
Mail Stop 5341
Washington, D. C . 20240

Our 24-hour
Telephone HOTLINE
1-800-424-508 1 or
(202) 208-5300

TDD for hearing impaired
(202) 208-2420 or
1-800-354-0996

Outside the Continental United States

Caribbean Region

U.S. Department of the Interior
Office of Inspector General
Eastern Division - Investigations
4040 Fairfax Drive
Suite 303
Arlington, Virginia 22203

(703) 235-9221

North Pacific Region

U.S. Department of the Interior
Office of Inspector General
North Pacific Region
415 Chalan San Antonio
Baltej Pavilion, Suite 306
Tamuning, Guam 96911

(67 1) 647-6060

Toll Free Numbers:

1-800-424-5081

TDD 1-800-354-0996

ITS/Commercial Numbers:

(202) 208-5300

TDD (202) 208-2420

HOTLINE

1849 C Street, N.W.

Mail stop 5341

Washington, D.C. 20240

