

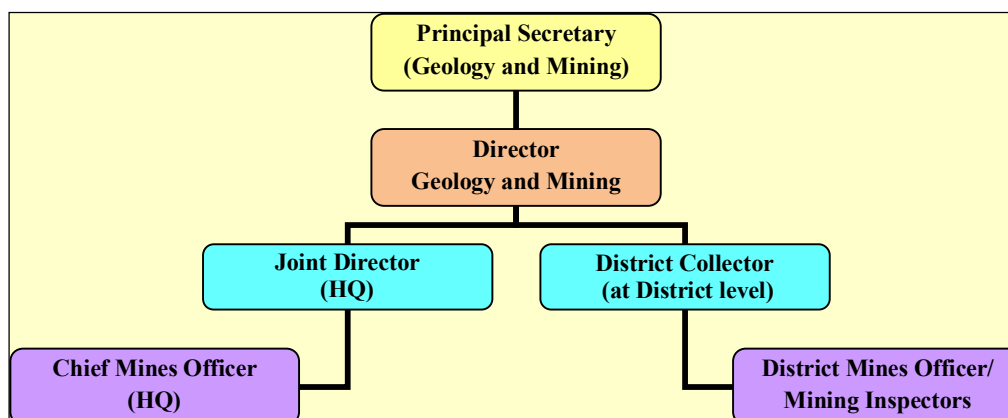
## CHAPTER-V: MINING RECEIPTS

### 5.1 Tax administration

The levy and collection of receipts from mining activities in the State is governed by the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957, the Mineral Concession Rules, 1960, and the Uttar Pradesh Minor Mineral Concession (UPMMC) Rules, 1963. The Principal Secretary, Geology and Mining, Uttar Pradesh, is the administrative head of the Department at the Government level. The overall control and direction of the Geology and Mining Department (Department) is vested with the Director, Geology and Mining, Uttar Pradesh, Lucknow. At the Headquarter the Director, Geology and Mining is assisted by Joint Director who is further assisted by Chief Mining Officer. At district level, the District Mines Officer is responsible for determining royalty, dead rent, and permit fee, etc. due and payable. Additional District Magistrate (Finance & Revenue) is in charge of collection and account of mining receipts under the overall administrative control of the District Collector.

The organisational setup is shown below:

Chart 5.1 Orgainsational setup



### 5.2 Results of Audit

During 2017-18, Audit test checked 363 leases (43 *per cent*) out of 849 total leases in 24<sup>1</sup> [out of 75 Auditable (32 *per cent*)] units of the Geology and Mining Department in the State. Out of the total test checked leases, irregularities amounting to ₹ 226.65 crore were found in 148 leases (41 *per cent*). Revenue collected by the Department during the year 2016-17 aggregated to ₹ 1,548.39 crore of which, the units covered in Audit collected ₹ 700.00 crore (45.21 *per cent*). Audit noticed irregularities amounting to ₹ 226.65 crore in 175 paragraphs on account of various deficiencies as detailed in **Table - 5.1**.

<sup>1</sup> Principal Secretary, Geology and Mining, Uttar Pradesh, Lucknow, Director, Geology and Mining Uttar Pradesh, Lucknow and DMO: Allahabad, Ambedkarnagar, Barabanki, Bijnore, Bulandshahar, Chitrakoot, Deoria, Fatehpur, Hamirpur, Hardoi, Jalaun, J.P. Nagar, Kanpur Nagar, Kushinagar, Mahoba, Mirzapur, Pilibhit, Saharanpur, Sitapur, Siddharthanagar, Sonbhadra and Sant Ravidas Nagar.

**Table - 5.1**

(₹ in crore)				
Sl. No.	Categories	Number of paragraphs	Amount	Share in per cent to the total objected amount
1.	Royalty non/short realised	47	15.10	6.66
2.	Interest/penalty not imposed	16	3.46	1.53
3.	Cost of minerals not recovered	34	71.24	31.43
4.	Other irregularities <sup>2</sup>	78	136.85	60.38
<b>Total</b>		<b>175</b>	<b>226.65</b>	

Source: Information available in the Audit office.

The Department accepted (between April 2017 and September 2019) 945 cases amounting to ₹ 33.92 crore pointed out in the year 2017-18. The Department reported (between April 2017 and September 2019) recovery of ₹ 8.99 crore in cases pertaining to the earlier years.

Irregularities involving 1,053 cases worth ₹ 45.21 crore have been illustrated in this chapter. The Department had accepted 945 out of total 1,053 findings in the Exit Conference (November 2018). However, no recoveries in the accepted cases have been reported to Audit till date (September 2019). Out of these, some irregularities have been repeatedly reported during the last five years as detailed in **Table - 5.2**. Most of the audit observations are of a nature that may reflect similar errors/omissions in other units of the concerned State Government department, but were not covered in the test check conducted during the year. The Department/Government may therefore like to internally examine all other units with a view to ensuring that they are functioning as per requirement and rules.

**Table - 5.2**

(₹ in crore)												
Nature of observation	2012-13		2013-14		2014-15		2015-16		2016-17		Total	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Cost of minerals not realised	15	0.37	221	13.92	311	13.98	3,491	476.06	1,181	193.97	5,219	698.30
Excavation of minerals without Environment Clearance (EC)	-	-	--	--	--	--	04	66.90	04	33.75	08	100.65
Excavation of brick earth without Environment clearance (EC)	--	--	--	--	--	--	2,909	66.80	1,131	62.27	4,040	129.07
Royalty and permit fees not realised from brick kiln owners	1,655	10.22	412	3.87	1,430	6.84	39	0.25	353	6.66	3,889	27.84
Non levy/Short deposit of dead rent	-	-	10	0.23	-	-	30	0.61	-	-	40	0.84

<sup>2</sup> No proper monitoring to realise the revenue.  
Non-compliance of e-tendering.  
Non-payment of dead rent by lease holders.  
Lapses regarding non verification of challan from the treasury.  
Non-recovery of recovery certificates.

**Recommendations:**

1. **The Department should initiate systemic measures to ensure that the shortcomings repeatedly reported by Audit do not recur.**
2. **The Department should introduce more effective measures to monitor and ensure recoveries of the large amounts of non/short realisations pointed out in the Audit Reports.**

### 5.3 Cost of minerals not realised from contractors for works executed without transit passes

**The Department did not recover cost of minerals amounting to ₹ 26.27 crore and due penalty in 334 cases from contractors undertaking civil works, for raising mineral without lawful authority.**

The UPMMC Rules, 1963 and the Uttar Pradesh Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2002 stipulate that no person shall transport any mineral without a valid transit pass (Form MM-11<sup>3</sup>/Form C<sup>4</sup>). The MMDR Act<sup>5</sup> stipulates that the price of minerals along with the royalty may be recovered for raising minerals without lawful authority. The Government, in its order dated 15 October 2015, reiterated that apart from royalty, the cost of minerals (ordinarily five times of royalty) be deducted from the contractor's bill and deposited into the treasury, if the contractors do not produce the requisite royalty receipt in the form MM-11 or Form C.

Previous Audit Reports of 2012-13 to 2016-17 had highlighted persistent loss of Government revenue amounting to ₹ 698.30 crore due to non-realisation of cost of minerals from 5,219 contractors.

To evaluate the corrective measures adopted by the Department in this regard, Audit test checked the records of 22 District Mines Offices (DMOs) during 2017-18. It was noticed in eight DMOs that the executing agencies got 68 civil works executed prior to 16 October 2015 (06/2014 to 07/2015) and 266 civil works on or after 16 October 2015 (04/2016 to 01/2018) through the contractors. In total 334 cases (out of 350 tests checked), the contractors did not submit the required MM-11 forms along with the bills for the minerals used in civil works. The executing agencies deducted royalty of ₹ 5.25 crore from the bills of the contractors and deposited the same into the treasury. The concerned DMOs, despite having the knowledge of deduction of royalty by the executing agency, did not raise the issue with the executing agencies for ensuring recovery of the cost of minerals from the works contractors and failed to initiate any action in the matter to recover the cost of minerals valued at ₹ 26.27 crore (₹ 1.51 crore prior to 16 October 2015 and ₹ 24.76 crore from 16 October 2015 and onwards) (**Appendix-XVI**).

Audit reported the matter to the Department in (July 2017 to May 2018). In the exit conference (November 2018), the Department accepted the Audit

<sup>3</sup> Transit pass (*Rawanna*) issued by the holder of the mining lease or crusher plant for transportation of minor minerals. It includes names and addresses of the lease holders, nature and quantity of minerals and vehicle registration number through which the minerals are transported.

<sup>4</sup> The holder of licence for storage of minerals shall issue the transit pass in 'Form-C' for lawful transportation of minerals from the Store.

<sup>5</sup> Section 21(5) of the MMDR Act.

observation and stated that the mineral price (five times of Royalty) will be recovered in cases that have been identified after the notification dated 15 October 2015. However, in cases prior to that notification, no recovery can be made as no instructions for the same existed. The reply of the Department is not acceptable as far as cases pertaining to the period prior to notification dated 15 October 2015 are concerned. Under Section 21(5) of MMDR Act, price of the mineral may be recovered if any person raises any mineral from any land without lawful authority. Transportation of minerals without a valid transit pass indicates possibility of illegal mining. Thus the matter needs to be investigated into and action taken where illegal mining and transportation of minerals are established as per the provisions of the MMDR Act.

**Recommendation:**

**The Mining Department should ensure coordination with the executing agencies undertaking civil works to ensure that the contractors have sourced minerals from legitimate lessees, and possess valid MM-11 for transporting such minerals.**

**5.4 Unauthorised extraction of minerals**

The MMDR Act stipulates that mining operations shall be undertaken in accordance with the terms and conditions of a mining lease granted under the Act and the rules made there under. It further stipulates that if any person raises without lawful authority, any mineral from any land, the State Government may recover from such person, the mineral so raised or where such mineral has already been disposed off, the price thereof along with royalty. Under UPMDC Rules, the total royalty has been fixed at the rate of not more than 20 *per cent* of the pit's mouth value<sup>6</sup> of minerals.

The Environment Protection Act (EPA), 1986 stipulates that whoever fails to comply with or contravenes any of the provisions of this Act, shall be punishable for each failure with imprisonment, which may extend to five years, or with fine which may extend to ₹ one lakh, or both.

**5.4.1 Excavation of minerals beyond the limit fixed in Environment Clearance (EC)**

**Cost of excess excavated minerals valuing to ₹ 1.66 crore was not recovered from two lessees for excavating excess than minor minerals permitted in Environmental Clearance (EC).**

The State Government ordered (May 2011 and March 2012) that mining lease holders shall get EC from the Ministry of Environment and Forest (MoEF). If any person excavates minerals beyond the quantity approved in the EC, the same is to be treated as illegal mining as it violates the essential conditions governing grant of the lease. The lease holder<sup>7</sup> is therefore liable to pay royalty, cost of minerals and fine under Section 21(5) of the MMDR Act.

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<sup>6</sup> "Pit's mouth value" means "the sale price of the minor minerals at the pit head or at the point of production."

<sup>7</sup> Persons authorised to undertake mining operations in areas specified in lease under and in accordance with the terms and conditions of a mining lease granted under MMDR Act and the rules made there under.

The previous Audit Reports of 2015-16 to 2016-17 had highlighted loss of Government revenue amounting to ₹ 100.65 crore due to excavation of minerals without Environment Clearance in eight cases.

To evaluate the corrective measures adopted by the Department in this regard, Audit test checked the records of two<sup>8</sup> DMOs out of 22 DMOs audited during 2017-18 and noticed that in two out of 30 test checked cases (total 92 cases), lessees had excavated 0.35 lakh cubic meters of minerals (*moram* and *gitti*) in excess of the quantities approved in their respective ECs between December 2013 and February 2018 and paid a royalty of ₹ 0.33 crore. The excavation of minerals in excess of that permitted in EC was not only illegal but could also affect the environment adversely. The concerned DMOs neither took any action to stop the business nor recovered the cost of illegally mined mineral amounting to ₹ 1.66 crore (five times of the applicable royalty). Further, a fine of ₹ one lakh was also not imposed upon each of the lessees for violation of Environment Rules.

## 5.4.2 Violation of Mining Plan

### 5.4.2.1 Excavation of minerals beyond the limit fixed in Mining Plan

**Cost of excavation of minerals valuing to ₹ 3.35 crore was not recovered from one lessee for excavating beyond the limit fixed in the Mining Plan.**

Under MMDR Act, mining operation shall in respect of in situ rock deposits and sand or *morrum* or *bajari* or *boulder* or any of these in mixed state exclusively found in river bed be undertaken in accordance with the mining plan, detailing yearly development schemes which is duly approved by the Director of Geology and Mining Department. The mining plan, once approved by the Director, shall be valid for entire duration of the lease. Mining operations shall be undertaken in accordance with the duly approved mining plan. Any modification of the approved mining plan during the operation of a mining lease also requires prior approval of the competent authority.

To evaluate the enforcement of the above by the Department, Audit test checked the records of DMO Mahoba during 2017-18, It was noticed that a (the sole case test checked) lessee had excavated 0.45 lakh cubic meters of minerals (*moram* and *gitti*) in excess of the quantity permitted in the Mining Plan between December 2016 and April 2017 and paid a royalty of ₹ 0.67 crore. The excess excavation of minerals was not only illegal but could also affect the environment adversely. The concerned DMO neither took any action to stop the business nor recovered the cost of mineral amounting to ₹ 3.35 crore (five times of the applicable royalty). Further, a fine of ₹ one lakh was also not imposed on the lessee for violation of Environment Rules

<sup>8</sup> Barabanki and Sonebhadra

#### **5.4.2.2 Excavation of minerals without Mining Plan**

**Cost of excavated minerals valuing to ₹ 3.00 crore was not recovered from one lessee for excavating minerals without Mining Plan.**

The Mining Plan should be prepared by technical experts scientifically in such a manner so that it could help in development of the area. If the mining activities are done without an approved mining plan, the Department will not have any control over the same and the lessee may extract more minerals in an unscientific manner which would adversely affect the mineral resources, protection of forest, water courses and would also abet air and water pollution.

To evaluate the enforcement by the Department in this regard, Audit test checked the records of DMO Hamirpur during 2017-18 and noticed that a (out of single case test checked) lessee had excavated 0.80 lakh cubic meters of minerals (*moram* and *gitti*) between March 2013 and February 2014 without any approved mining plan and had paid a royalty of ₹ 0.60 crore. The total quantity of mineral excavated by the lessee was unauthorised and amounted to illegal mining. The concerned DMO neither took any action to stop the business nor recovered cost of mineral amounting to ₹ 3.00 crore (five times of the applicable royalty). Further, a fine of ₹ one lakh was also not imposed on the lessee for violation of the extant rules.

#### **5.4.3 Excavation of brick earth without Environment Clearance (EC)**

**Cost of brick earth amounting to ₹ 1.77 crore was not recovered in 36 cases from brick kilns operating without Environmental Clearance (EC).**

MoEF, in OM dated 24 June 2013, had categorised mining of brick earth into B-2 category<sup>9</sup> wherein obtaining the EC from the State Environment Impact Assessment Authority (SEIAA<sup>10</sup>) is mandatory.

The previous Audit Reports of 2015-16 to 2016-17 had highlighted loss of the Government revenue amounting to ₹ 129.07 crore due to excavation of brick earth without EC in 4,040 cases by brick kilns.

To evaluate the assurances by the Department in this regard, Audit test checked the records of 22 DMOs during 2017-18. It was noticed that in two DMOs, that 36 out of 72 brick kilns test checked had operated during the period 2015-16 to 2016-17 without obtaining EC and paid a royalty of ₹ 0.35 crore. The excavation of brick earth without EC was not only illegal but could also affect the environment adversely. The concerned DMOs neither took any action to stop the business nor recovered the cost of mineral amounting to ₹ 1.77 crore. Further, a fine of ₹ one lakh was also not imposed upon each of the lessees for violation of Environment Rules shown in **Table 5.3**.

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<sup>9</sup> The activities of excavation of 'brick earth' and 'ordinary earth' up to an area less than five hectares have been categorised under B-2 category on the basis of spatial extent of potential impacts and potential impacts on human health.

<sup>10</sup> A State Level Environment Impact Assessment Authority (SEIAA) shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of three Members including a Chairman and a Member – Secretary to be nominated by the State Government or the Union territory Administration concerned.

Table 5.3

(Amount in ₹)							
Sl. No.	Name of Unit	Year	Total No. of Brick Kiln	No. of Brick Kiln checked	No of Bricks Kiln Objected	Royalty paid	Mineral Value
1	DMO Hamirpur	2015-16	24	24	13	1337370	6686850
		2016-17	27	27	14	1427631	7138155
2	DMO Jalaun	2015-16	12	12	7	570600	2853000
		2016-17	9	9	2	203800	1019000
<b>Total</b>			<b>72</b>	<b>72</b>	<b>36</b>	<b>3539401</b>	<b>17697005</b>

Audit reported the matter in 5.4.1, 5.4.2.1, 5.4.2.2 and 5.4.3 to the Department (between October 2017 and May 2018). In the exit conference (November 2018), the Department stated that with reference to previous Audit observations, the Government, through notification dated 14 August 2017, had amended Rule 59 of UPMMC Rules, 1963 vide which the penalty would be imposed in such cases after the date of this amendment. For cases prior to the notification, no action could be taken as no instruction had existed for the same. The reply of the Department for cases prior to amendment of Rule 59 is not acceptable. Since 2011-12, the State Government had insisted upon observance of EC conditions by the lease holders, any violation of conditions of mining rendered such excess excavation of minerals illegal and attracted recovery of cost of minerals under the MMDR Act. The Department had the omnibus powers under Rule 60<sup>11</sup> of the UPMMC Rules, 1963 to investigate all such cases where the lessees had flouted the conditions of mining lease, and act accordingly. There is no evidence of either any cognisance being taken or any punitive action being taken in any case. Excess excavation was an illegal mining action. It attracted recovery of cost of minerals under the MMDR Act.

#### **Recommendation:**

**The Department should ensure that minerals including brick earth are not excavated without the requisite environment clearance to curb illegal mining.**

#### **5.5 Royalty and permit application fees not realised from the brick kiln owners**

**Royalty of ₹ 6.94 crore and permit application fees of ₹ 13.14 lakh were not realised in 660 cases from brick kiln owners, though the same was specified in the OTS scheme.**

One Time Settlement Schemes (OTSS) for brick kilns, announced by the Government from time to time, provided for payment of a consolidated amount of royalty at the prescribed rates along with permit application fees. It also provided for charging of interest at the rate of 24 *per cent* on belated payment of royalty, fee or other sum due to the Government. In OTSS of

<sup>11</sup> Rule-60 of UPMMC Rules, 1963 already provides that in case of any breach or contravention by a lessee of any of these rules or conditions and covenants contained or deemed to be contained in the lease, lessee may be black listed by the District Officer for such period.

2015-16, an additional 20 *per cent* of royalty was to be levied for *palothan*<sup>12</sup> soil used in brick making.

Previous Audit Reports of 2012-13 to 2016-17 had highlighted persistent loss of Government revenue amounting to ₹ 27.84 crore due to non-realisation of royalty and permit application fees from 3,889 brick kilns. Audit Report for 2012-13 was only discussed in PAC where a recovery of ₹ 3.78 crore was reported by the Department.

To evaluate whether the Department had followed up on its assurances in this regard, Audit test checked the records of 22 DMOs during 2017-18. It was noticed that 660 out of 2,835 brick kilns test checked which were in operation during the period in 12 DMOs that the concerned brick kiln owners did not pay any royalty and permit application fees for the brick years<sup>13</sup> 2013-14 to 2016-17. The concerned DMOs neither initiated any action to stop the business nor made any efforts to realise the due royalty of ₹ 6.94 crore and permit application fees of ₹ 13.14 lakh (**Appendix-XVII**).

Audit reported the matter to the Department (October 2016 to April 2018). In the exit conference (November 2018), the Department accepted the Audit observations and stated that the action will be taken for the recovery.

**Recommendation:**

**The Department should ensure that all brick kiln owners in the State abide with the provisions of the OTSS as applicable in the given brick year. Efforts should also be made to recover the outstanding royalty from the defaulting brick kiln owners.**

**5.6 Non/Short deposit of dead rent**

**19 lessees deposited dead rent of ₹ 1.85 crore for the lease period against recoverable amount of ₹ 3.94 crore. Department did not make any effort to recover short deposit of dead rent of ₹ 2.09 crore.**

Under UPMMC Rules,<sup>14</sup> every lessee of mining lease shall pay every year, dead rent<sup>15</sup> in advance for the whole year at the rates prescribed in the Second Schedule for all areas included in the lease.

The previous Audit Report of 2013-14 and 2015-16 had highlighted persistent loss of Government revenue amounting to ₹ 0.84 crore due to non/short deposit of dead rent in 40 leases.

Audit test checked the records of 22 District Mines Offices (DMOs) during 2017-18. In six DMOs, Audit noticed that 19 lessees out of 283 lessees had deposited dead rent of ₹ 1.85 crore for the dead rent period between February 2012 to November 2017 against the due amount of ₹ 3.94 crore. Although the details of payment were available in the lease files, the Department did not

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<sup>12</sup> Sandy soil.

<sup>13</sup> October to September.

<sup>14</sup> Rule 72 of UPMMC

<sup>15</sup> Dead Rent: The holder of a mining lease shall, during the terms of the lease pay in advance instalments for every year of the lease, such amount as dead rent at the rates mentioned in the Second Schedule to these rules.



initiate any action for levy and recovery of dead rent. This resulted in short deposit of dead rent of ₹ 2.09 crore (**Appendix -XVIII**).

Audit reported the matter to the Department (November 2017 to April 2018). In the exit conference (November 2018), the Department accepted the Audit observations and stated that the action will be taken for the recovery (August 2019).

Lucknow

The 06 JANUARY 2020

(JAYANT SINHA)

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The 21<sup>st</sup> January, 2020

(RAJIV MEHRISHI)

Comptroller and Auditor General of India