

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 Headquarters 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 (DMO) 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 accountal of mining receipts under the overall administrative control of the District Collector.

5.2 Results of audit

During 2018-19, test-check of records in 20 units¹ out of 76 auditable units of the Geology and Mining Department revealed non/short realisation of royalty and other irregularities involving ₹ 239.91 crore in 2,169 cases as detailed in **Table-5.1**.

Table - 5.1

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
1	Royalty non/short realised	589	22.49
2	Short levy of stamp duty on lease deeds	61	5.24
3	Non-imposition of penalty	71	1.73
4	Cost of minerals not recovered	979	168.96
5	Other irregularities ²	469	41.49
Total		2,169	239.91

The Department accepted (between April 2018 and August 2020) one case amounting to ₹ 4.44 lakh pointed out in the year 2018-19 and reported recovery of ₹ 4.44 lakh.

Irregularities involving 1,806 cases worth ₹ 135.21 crore have been illustrated in this Chapter. Out of these, some irregularities have been repeatedly reported during the last five years as detailed in **Table-5.2**:

¹ Principal Secretary and Director, Geology and Mining, Uttar Pradesh, Lucknow, and DMO: Agra, Aligarh, Allahabad, Bagpat, Banda, Bareilly, Etawah, Firozabad, G B Nagar, Ghaziabad, Jhansi, Kannauj, Lalitpur, Lucknow, Mahoba, Mainpuri, Mirzapur, Sonbhadra and Unnao.

² Non-recovery of contribution to DMFT from licenses/lease holders, non-charging of interest on belated payment of royalty from lessees, non-charging of interest on belated payment of royalty by the brick kiln owners etc.

Table - 5.2

(₹ in crore)												
Nature of observation	2013-14		2014-15		2015-16		2016-17		2017-18		Total	
	Cases	Amount	Cases	Amount								
Cost of minerals not realised	221	13.92	311	13.98	3,491	476.06	1,181	193.97	334	26.27	5538	724.20
Excavation of minerals without Environment Clearance (EC)	--	--	--	--	04	66.90	04	33.75	--	--	08	100.65
Royalty and permit application fees not realised from the brick kiln owners	412	3.87	1,430	6.84	39	0.25	353	6.66	660	7.07	2894	24.69

The errors/omissions pointed out are on the basis of a test audit. **The Government/Department may, therefore, undertake a thorough review of all units to check whether similar errors/omissions have taken place elsewhere and if so, to rectify them and put in place a system that would prevent such errors/omissions.**

5.3 Non-adherence of the Constitutional provisions in connection with the creation of the District Mineral Foundation Trust (DMFT)

The State Government, in violation of Articles 266 (1) and 204 (3) of the Constitution, formed DMFTs, maintained the Trust funds in the scheduled commercial banks and allowed the Governing Councils and the Management Committees to incur expenditure therefrom without prior legislative authorisation.

Article 266 (1) of the Constitution envisages *inter alia* that all revenues received by the Government of a State shall form part of the Consolidated Fund of the State. Article 204 (3) provides that no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this Article.

Under the provisions of Section 9B of the Mines and Minerals (Development and Regulation) Act, 1957, the Government of India (GoI) issued (16 September 2015) guidelines (i) directing the State Governments to set up a District Mineral Foundation in every district affected by mining related operations and (ii) directing District Mineral Foundation to implement a development programme for the mining affected areas. Ministry of Mines, GoI, vide notification dated 17 September 2015, fixed the rate of contribution to the Foundation in respect of mining lease at the rate of 30 *per cent* of the royalty in respect of mining lease granted before 12 January 2015 and 10 *per cent* of the royalty in respect of mining lease granted on or after 12 January 2015. This rate was applicable for mining minerals other than coal etc. Similarly, Ministry of Coal issued (20 October 2015), a notification vide which rate of contribution to be made to the Foundation in respect of mining of Coal, Lignite and sand for stowing was fixed at 30 *per cent* of the royalty in respect of mining lease granted before 12 January 2015 and 10 *per cent* of the royalty in respect of mining lease granted on or after 12 January 2015.

The DMFTs were established by the State Government through notification dated 25 April 2017. Government of Uttar Pradesh (GoUP) in May 2017

made the Uttar Pradesh District Mineral Foundation Trust Rules, 2017 to regulate the composition and functions of the DMFTs and the manner of carrying out development activities in the areas affected by mining activities. Further, as per Rule-4 of the said Rules, a Governing Council and a Managing Committee of the Trust have been entrusted with the task of laying down the broad policy framework for the functioning of the Trust and to incur expenditure in accordance with the aforesaid policy framework.

Audit observed (November 2019) that as per Rule 15 of the said Rules, the Trust Fund was to be kept in a scheduled commercial nationalised bank in the name of the Trust in individual districts. A sum of ₹ 432.37 crore levied and collected between 2017-18 and 2018-19 was deposited in various banks in the DMFTs of different districts of Uttar Pradesh. During the course of audit, it was observed that expenditure of ₹ 117.35 crore was incurred for various purposes (**Appendix-XIII**) in 45 out of 75 districts from the respective Trust Funds created in the districts. Audit further, noticed that in two districts³, an amount of ₹ 3.80 crore was incurred for the construction which did not conform to the guidelines⁴ issued by the GoI.

With respect to the creation of the DMFTs, audit observed the following:

- (i) The provision regarding maintaining the Trust Fund in the scheduled commercial nationalised bank is in contravention to Article 266 (1) of the Constitution which stipulates that all revenues received by the Government of the State should form part of the Consolidated Fund of the State. The creation of a Trust Fund with amount to be held in scheduled commercial bank outside the Government Account and specifically the Consolidated Fund of the State is therefore in breach of Constitutional provisions.
- (ii) The Governing Council and the Managing Committee have been entrusted to incur expenditure from the Trust Fund for purposes brought out in Rule 9 (vi) of the DMFT Rules 2017. The authorisation of expenditure by a Government Department should have prior legislative authorisation, through an appropriation made by law.

Audit further noticed that in similar case of National Mineral Exploration Trust (NMET), the Government of India, Ministry of Mines which earlier permitted the Trust to open and operate bank accounts in the scheduled bank has through notification dated 7 March 2018 amended the National Mineral Exploration Trust Rules, 2015 in the following manner.

- (i) The bank account of the Trust shall be closed as soon as possible after publication of the notification.
- (ii) Annual Budget provision shall also be made in the Demands for Grants of Central Government under the appropriate Head for incurring expenditure under the Fund.

³ Lalitpur and Sonebhadra.

⁴ GoI circulated (September 2015) the *Pradhan Mantri Khanij Kshetra Kalyan Yojana* (PMKKKY) which prescribed activities to be covered under the scheme from the DMFT funds.

- (iii) The expenditure under the Fund shall be incurred from the relevant sub-major or minor heads and on the basis of sanction issued by the Central Government.

In effect the Government of India has, through this notification, ensured compliance with the constitutional provisions, both with regard to treatment of receipts and authorisation of expenditure in so far as NMET is concerned.

In view of the forgoing, the entire arrangement of setting up of a District Mineral Foundation Trust Fund in respect of mining lease/permit and maintaining the trust in a scheduled commercial bank together with allowing the Governing Council and the Managing Committee to incur expenditure therefrom needs to be revisited.

Audit reported the matter to the Department (November 2019). In reply (May 2020), the Department stated that the amount of royalty received from the minerals is the amount of revenue, whereas the amount received towards the DMF on royalty is cess, which is not the amount of revenue of the State Government. It was further stated that the provisions in the DMFT Rules, 2017, have been made as per the guidelines received from the Government of India and it is not pertinent to comment on the provisions of the MMDR Act, 1957 by the State Government.

The reply of the Department is not acceptable as:

- (i) The collection made by the Government towards the Foundation are in the nature of revenue of the State Government being a levy made under the provision of the DMFT Rules, 2017, framed under the authority of the State. Therefore, as per the Article 266(1) of the Constitution, such proceeds should be part of the Consolidated Fund of the State.
- (ii) It is notable that the cesses levied by the State Government are being credited into the Consolidated Fund of the State. Rates and Cesses on Land (under Major Head-0029-Land Revenue-103-Rates and Cesses on Land) and receipts from cesses under other Acts (under Major Head-Service Tax-112- Receipts from cesses under other Acts) for example is levied, collected and deposited in the Consolidated Fund of the State.
- (iii) The manner in which accounting of cess receipt is undertaken in both the Union and the State Government stems from a common approach. In case of the Government of India cesses of varying nature e.g. cess on Coal and Coke, cess on Iron ore, cess on Mica and cess on Limestone and Dolomite etc. are all credited into the relevant receipt revenue head in the Consolidated Fund of India.
- (iv) As has been elaborated in the para, in the case of NMET, contribution made to this Trust is also a cess. Government of India through notification dated 7 March 2018, has ensured compliance with the constitutional provisions under the Article 266 (1) of the Constitution and contributions towards the trust were made part of the Consolidated Fund of India. Therefore, the State Government may take up the matter with the GoI to ensure compliance with the constitutional provisions under the Article 266 (1) of the Constitution.

Recommendations:

1. **The amount of royalty being contributed to the Trust should form part of Government Accounts of the State. The Government may create DMFT fund in the Public Accounts to enable incurrence of expenditure in accordance with the codal provisions. The Government may take steps to ensure that the DMFT fund maintained in the Public Accounts are transferred and used for the intended purposes only.**
2. **The Government may provide for audit by the CAG of India of the District Mineral Foundation Trust fund on the lines of the National Mineral Exploration Trust where the Union Government had effected amendment in the relevant rules in this respect.**

5.4 Failure of the State Government to amend Rules in respect of penalties for illegal mining

Failure of the State Government to amend penal provisions with respect to grant of mining lease through auction led to a peculiar situation where the leaseholder has to pay lower penalty for illegal extraction as against the amount payable for legal extraction.

Section 21(5) of the MMDR Act, 1957 stipulates that whenever any person raises, without any 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 of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

The Government, in its order dated 15 October 2015, clarified that the price of minerals is ordinarily five times of the royalty.

Rule 57 of UPMMC Rules, 1963 stipulates that whoever contravenes the provision of Rule 3⁵ shall on conviction be punishable with imprisonment of either description for a term which may extend up to six months or with fine which may extend to ₹ 25,000, or with both. Government vide order dated 18 May 2017 revised the penalty provisions of the said Rule to imprisonment of either description for a term which may extend up to five years or with fine which shall not be less than of ₹ two lakh per hectare and which may extend to ₹ five lakh per hectare of the area, or with both.

Rule 23(1) of the UPMMC Rules, 1963 stipulates that the State Government may by general or special order declare the area or areas which may be leased out by auction or by e-tender or by auction-cum tender or e-auction. Further, Rule 23(3), stipulates that on such declaration, Chapter III⁶ of the said Rules shall not apply to the area in respect of which the declaration has been issued.

Audit analysed the penal provisions in respect of notified areas settled through auction under two scenarios: Illegal mining in (a) auctioned areas and (b) areas contiguous to the auctioned areas. The results of the analysis are given below.

⁵ Mining operations shall be undertaken in accordance with the terms and conditions of a mining lease or mining permit granted under these Rules.

⁶ Provision relating to payment of royalty and dead rent.

(a) Analysis of amount of penalty imposed for illegal mining in auctioned areas:

Audit noted that the maximum amount of penalty payable for illegal mining had been raised by the Government to ₹ five lakh per hectare from ₹ 25,000 vide notification dated 18 May 2017.

In this connection 14 mining leases granted by the Department in two districts⁷ through e-auction were analysed. It was noticed that there was no mention in the lease agreements that the maximum amount of penalty payable for illegal mining was ₹ five lakh per hectare. Further, as Rule 23(3) of the UPMMC Rules, 1963 stipulates that for auctioned areas, royalty prescribed under Chapter III shall not be applicable, there is ambiguity as to the manner in which the price of minerals in case of illegal mining shall be determined in such cases.

It was further observed that the auction amount payable by the leaseholders during the lease period (five years) ranged between ₹ 27.31 crore and ₹ 189.28 crore (**Appendix XIV**).

In light of this, the levy of penalty, which is intended to serve as a deterrent to prevent illegal mining, should be of an appropriate amount. Even the revised amount of penalty of ₹ five lakh is a mere 0.18 *per cent* of the lowest auction amount (₹ 27.31 crore) paid by the leaseholder. Accordingly, a review of the penalty amount in respect of areas leased out through auction is warranted.

(b) Analysis of amount of penalty imposed for illegal mining in areas contiguous to auctioned areas:

Audit test-checked the records of four lessees in District Mines Office (DMO), Sonebhadra and noticed that in two cases where leases had been granted through e-auction, the investigation team from the O/o The Director, Geology and Mining had reported (19 June 2018) illegal excavation of 70,504.75 cu.m. of minor minerals (sand/morrum) by two lessees from areas adjacent to their sanctioned lease area. The details are given in **Table - 5.3** below.

Table - 5.3
Details of illegal excavation

Sl. No.	Name of the lessee	Lease area	Period of lease	Quantity to be excavated each year (in cu.m.)	Rate of royalty per cu.m. (in ₹)	Quantity of sand/morrum illegally excavated (in cu.m.)
1	Sri Akhilesh Paul S/o Sri Yash Paul	Gata No.246, Area-12.146 hectare, vill-Khebandha, Tehsil-Robertsganj, Sonebhadra.	23.03.2018 to 22.03.2023	2.43 lakh	1,068	36,750.00
2	Sri Praveen Kumar S/o Sri Rajendra Prasad	Arazi no. 385, khand-A, area-12.146 hectare, vill-Barhmori, Tehsil-Robertsganj, Sonebhadra	02.04.2018 to 01.04.2023	2.43 lakh	1,067	33,754.75

In light of the illegal mining which came to notice of the authorities, the District Magistrate (DM) had issued demand notices on 29 August 2018 to

⁷ Jhansi and Sonebhadra.

both the lessees to pay ₹ 23.59 crore and ₹ 21.65 crore respectively as the amount of penalty for illegal excavation of sand/morrum based on his interpretation of the applicable penal provisions i.e. based on the rate of royalty fixed for the leaseholders as determined through e-auction. The lease holders appealed⁸ to the Principal Secretary to U.P. Government, Department of Geology and Mining (on 17 October 2018) to stay the operation and implementation of the order of DM dated 29 August 2018. The Special Secretary (vide orders dated 11 December 2018) revised the extant orders of the DM to the extent that the royalty shall be charged from the leaseholders at the rate of ₹ 150 per cu.m. as prescribed under Schedule I of the UPMMC Rules and accordingly the price of mineral shall also be calculated and charged.

Audit analysed the amount of penalty imposed by the DM and Special Secretary, Geology and Mining. The details are given in **Table - 5.4** below.

Table - 5.4
Analysis of the levy of the amount of penalty

Case	As per orders of Collector (DM) dated 29 August 2018	As per orders of Special Secretary dated 11 December 2018
I	Quantity illegally mined = 36,750 cu.m.	Quantity illegally mined = 36,750 cu.m.
	→ Royalty=36,750*1068 = ₹ 3.92 crore	→ Royalty=36,750*150 = ₹ 55.13 lakh
	→ Price of minerals = ₹ 19.62 crore	→ Price of minerals = ₹ 2.76 crore
	→ Penalty = ₹ 5.00 lakh	→ Penalty = ₹ 5.00 lakh
	Total = ₹ 23.59 crore	Total = ₹ 3.36 crore
	Amount of penalty per cu.m. of illegally mined mineral ₹ 6,422.	Amount of penalty per cu.m. of illegally mined mineral ₹ 914.
II	Quantity illegally mined = 33,754.75 cu.m.	Quantity illegally mined = 33,754.75 cu.m.
	→ Royalty=33,754.75*1067 = ₹ 3.60 crore	→ Royalty=33,754.75*150 = ₹ 50.63 lakh
	→ Price of minerals = ₹ 18.00 crore	→ Price of minerals = ₹ 2.53 crore
	→ Penalty = ₹ 5.00 lakh	→ Penalty = ₹ 5.00 lakh
	Total = ₹ 21.65 crore	Total = ₹ 3.09 crore
	Amount of penalty per cu.m. of illegally mined mineral ₹ 6,417.	Amount of penalty per cu.m. of illegally mined mineral ₹ 915.

An analysis of the orders of the DM and Special Secretary, Geology and Mining reveals the following:

- (i) The DM applied penalty based on the rate of royalty fixed for leaseholder as determined through e-auction. On the other hand, the Special Secretary applied penalty based on Schedule I of Chapter III of the UPMMC Rules as the illegal mining had been done in an area adjacent to the auctioned area, i.e. outside the notified area.
- (ii) The result of the two decisions, in terms of penalty applicable, is very wide. In the case of orders of DM the two lessees had to pay ₹ 23.59 crore and ₹ 21.65 crore respectively. On the other hand, based on the decision of the Special Secretary, Geology and Mining the two lessees had to pay penalty of ₹ 3.36 crore and ₹ 3.09 crore respectively.
- (iii) When the amounts are translated in terms of levy per cu.m. of sand/morrum extracted the results are even more stark. In the case of order of DM the amount payable works out to ₹ 6,422/₹ 6,417 per cu.m., while in case of the orders of Special Secretary, Geology and Mining, the rate works out to ₹ 914/₹ 915 per cu.m. Notably the amount of penalty

⁸ Under Rule 78 of UPMMC Rules, 1963.

payable for illegal mining in adjoining area in case of order of Special Secretary, Geology and Mining, at ₹ 914/₹ 915 per cu.m., is lower than the amount that the leaseholder is expected to pay for the legal extraction of sand/morrum which was fixed through e-auction at ₹ 1,067 and ₹ 1,068 respectively per cu.m.

(iv) What the above implies is that for illegal mining immediately outside the auctioned area, the leaseholder is required to pay lower penalty at ₹ 914/₹ 915 per cu.m. for illegal mining of sand/morrum as against the amount of ₹ 1,067/₹ 1,068 per cu.m. for legally extracting sand/morrum in terms of the lease conditions.

The above analysis of the penal provisions for mining in auctioned areas and other than auctioned areas indicates the following gaps:

- (a) Insofar as illegal mining in non-auctioned areas is concerned, the State Government, in its order dated 15 October 2015, clarified that the price of minerals is ordinarily five times of the royalty prescribed in Chapter III of UPMMC Rules, 1963. It may be mentioned that in the State of Rajasthan, the cost of mineral is computed as 10 times of the prevailing royalty which is recovered along with royalty from the person who raises and despatches minor minerals illegally while in the State of Madhya Pradesh, minimum penalty of 30 times of the royalty of illegally extracted/transported minerals is leviable which shall not be less than ₹ 10,000.
- (b) As penalty is defined in terms of royalty, these are not applicable in areas notified through auction as stipulated in Rule 23(3) of the UPMMC Rules, 1963.
- (c) In absence of clarity in provisions relating to levy of penalty in terms of Section 21(5) of the MMDR Act and due to non-rationalising the rate of royalty of sand/morrum prescribed in Schedule-I *vis-a-vis* the rate obtained in the auction, individual officers and their controlling officers are left to making their own interpretations, which may not be in the interest of revenue.

Audit reported the matter to the Department (May 2019). In reply (May 2020), the Government stated that the provisions have been made in the MMDR Act, 1957 for grant of concession of minerals through tender cum e-auction. The concession available for the minor minerals in the State is being granted through e-tender cum e-auction as stated in the Mining Policy 2017 of the State Government by adopting the above provision. Whenever cases of illegal mining come to notice, action is taken against them under the provisions of Section 21 of the MMDR Act, 1957 and Rule 57 of the UPMMC, 1963. Settlement of such cases of illegal mining on the basis of bidding price is not as per the Rule.

The reply of the Department does not address the issue raised by Audit. The illegal extraction of sand/morrum by leaseholder in areas contiguous to the leased area is required to be addressed through suitable levy of penalties. By not doing so, as pointed out by audit, the lease holder based on the existing provisions of the Act and UPMMC Rules in respect of minor minerals, is able to extract minerals illegally by paying a penalty amount which is lower than legal extraction through auction mode. Further, the rate of penalty leviable for illegal mining in auctioned areas is also ambiguous. There is a clear need to

disincentive illegal mining by putting in place appropriate penalties both for leases settled through auction as well as revising penalties for other than auctioned area.

Recommendations:

1. **The Government should clearly define/redefine what constitutes ‘price of mineral’ and royalty in terms of Section 21(5) of the MMDR Act in areas leased out through auction.**
2. **The Government may review and revise the amount of penalty payable as provided for in the UPMDC Rules, 1963 for illegal mining to serve as a deterrent.**

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

The Department did not recover cost of minerals amounting to ₹ 116.85 crore and due penalty in 904 cases from contractors undertaking civil works, for raising mineral without lawful authority.

The UPMDC 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-11⁹/Form C¹⁰). The MMDR Act¹¹, 1957, 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.

Audit test-checked the records¹² of 18 DMOs and noticed (between September 2018 and March 2019) that the executing agencies got 1,304 civil works executed through the contractors. In 904 cases (out of 1,242 tests-checked cases), the contractors did not submit the required MM-11 along with the bills for the minerals used in civil works. The executing agencies deducted royalty of ₹ 23.37 crore from the bills of the contractors and either deposited the same into the treasury or gave cheques to the concerned DMOs between October 2015 and January 2019. The concerned DMOs, despite having knowledge of deduction of royalty by the executing agency, did not raise the issue with them for ensuring recovery of the cost of minerals from the works contractors and failed to initiate any action to recover the cost of minerals valued at ₹ 116.85 crore as shown in **Appendix-XV**.

Audit reported the matter to the Department (between October 2018 and April 2019). Their reply was awaited (September 2020).

⁹ 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.

¹⁰ The holder of licence for storage of minerals shall issue the transit pass in ‘Form-C’ for lawful transportation of minerals from the store.

¹¹ Section 21(5) of the MMDR Act.

¹² Treasury sheet, challan and statement of royalty provided by the executing agencies.

Recommendation:

The Department should ensure co-ordination with the executing agencies undertaking civil works to ensure that the contractors have sourced minerals from legitimate licensees, and possess valid MM-11/Form C for transporting such minerals.

5.6 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 thereunder. 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 of, the price thereof along with the royalty. Under the UPMMC Rules, the total royalty has been fixed at the rate of not more than 20 *per cent* of the pit's mouth value¹³ 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.

5.6.1 Excavation of minerals without Environment Clearance (EC)

Cost of excavated minerals valuing ₹ 2.99 crore was not recovered from four lessees for excavating 35,319 cu.m. of minor minerals without 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 lease holder¹⁴ excavates minerals without EC, the same is to be treated as illegal mining and is therefore liable to pay royalty, cost of minerals and fine under the MMDR Act¹⁵.

Audit test-checked the records¹⁶ of 28 lessees in two¹⁷ DMOs and noticed (between November 2018 and March 2019) that in four cases the lessees had excavated 35,319 cubic meters of minor minerals between January 2017 and December 2017 without obtaining EC and paid royalty of ₹ 59.87 lakh. The excavation of minerals without EC was illegal. The concerned DMOs did not take steps to ensure that the lessees had obtained EC. They neither stopped the mining activities of these lessees nor stopped the issuance of MM-11. Thus, the concerned DMOs failed to recover the cost of mineral amounting to ₹ 2.99 crore (five times of the applicable royalty). Further, fine of ₹ one lakh each was also not imposed on the lessees for violation of environment rules.

Audit reported the matter to the Department (between December 2018 and April 2019). Their reply was awaited (September 2020).

¹³ "Pit's mouth value" means "the sale price of the minor minerals at the pit head or at the point of production."

¹⁴ 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 the MMDR Act and the Rules made there under.

¹⁵ Section 21(5) of the MMDR Act.

¹⁶ Individual lessee file, MM-11 issue register and challan.

¹⁷ Jhansi and Lalitpur.

5.6.2 Excavation of minerals beyond the limit fixed in mining plan

Cost of minerals amounting to ₹ 79.20 lakh was not recovered from a lessee for excavating minerals beyond the limit fixed in the mining plan.

Under UPMMC Rules, 1963, 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 duly approved by the Director of Geology and Mining Department. The mining plan, once approved shall be valid for the duration of the lease. Mining operations shall be undertaken in accordance with the 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.

Audit test-checked the records¹⁸ of 20 lessees in DMO Lalitpur and noticed (March 2019) that a lessee had excavated 10,517 cu.m. of minor minerals in excess of the quantity permitted in the mining plan between January 2017 and June 2017 and paid royalty of ₹ 15.84 lakh. The excess excavation of minerals was not only illegal but could also adversely affect the environment. The DMO neither took any action to stop the business nor recovered the cost of mineral amounting to ₹ 79.20 lakh (five times of the applicable royalty).

Audit reported the matter to the Department (April 2019). Their reply was awaited (September 2020).

5.6.3 Excavation of minerals without mining plan

Cost of minerals amounting to ₹ 1.44 crore was not recovered from four lessees 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 and environment.

Audit test-checked the records¹⁹ of 32 lessees in two²⁰ DMOs and noticed (October 2018 and March 2019) that four lessees had excavated 19,847 cubic meters of minor minerals between October 2016 and August 2017 without any approved mining plan and paid royalty of ₹ 28.87 lakh. The total quantity of mineral excavated by the lessees was unauthorised and amounted to illegal mining. The DMOs neither stopped the mining activities nor stopped the issuance of MM-11. They also failed to recover the cost of mineral amounting to ₹ 1.44 crore (five times of the applicable royalty).

Audit reported the matter to the Department (between November 2018 and April 2019). Their reply was awaited (September 2020).

¹⁸ Individual lessee file, MM-11 issue register and challan.

¹⁹ Individual lessee file, MM-11 issue register and challan.

²⁰ Agra and Lalitpur.

5.7 Non-forfeiture of pre-bid earnest money for delay in deposit of Security amount and installment of royalty

The Department failed to forfeit pre-bid earnest money of ₹ 1.05 crore for delayed deposit of royalty and security deposit of ₹ 12.96 crore.

Government of Uttar Pradesh order²¹ (dated 14 August 2017) stipulates that every successful bidder of lease for minor minerals, after receiving letter of intent shall deposit 50 *per cent* of the first year's royalty due (25 *per cent* as security deposit and 25 *per cent* as first installment) on the e-payment gateway of Metal Scrap Trade Corporation (MSTC)²² through RTGS/NEFT within two working days from the date of issue of letter of intent. The pre-bid earnest money, deposited by the successful bidder, shall be adjusted before depositing this amount. Further, if the successful bidder fails to deposit the above amount, pre-bid earnest money deposited by him shall be forfeited and any complaint or application in this regard shall not be entertained.

Audit test-checked the records²³ of the Director, Geology and Mining, Uttar Pradesh and noticed (December 2018) that DM, Banda issued a letter of intent (on 27 May 2018) in favor of a successful bidder²⁴ for mining lease of 2.80 lakh cu. m sand/morrum (at the rate of ₹ 1,001 per cu.m) in a bid of e-tender cum e-auction in the district. The bidder was required to deposit ₹ 12.96 crore (50 *per cent* of first year's royalty due) within two working days from the date of issue of letter of intent. The bidder deposited the amount on 14 June 2018 with a delay of 15 days. The Department failed to forfeit pre-bid earnest money of ₹ 1.05 crore.

Audit reported the matter to the Department (January 2019). Their reply was awaited (September 2020).

5.8 Royalty and permit application fees not realised from the brick kiln owners

Royalty of ₹ 7.38 crore, permit application fees of ₹ 9.32 lakh and DMFT amount of ₹ 94.06 lakh was not realised in 570 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 for the years 2015-16 to 2017-18, an additional 10 *per cent*²⁵ of royalty was to be levied for *palothan*²⁶ soil used in brick making. DMFT Rules 2017, stipulates that the holder of every mineral permit shall, in addition to royalty, pay to the Trust of the district in which mining operations are carried on, an amount equivalent to 10 *per cent* of royalty, which is leviable from 2015-16.

²¹ Para 19(2).

²² Service provider of the Geology and Mining Department for e-auction.

²³ Mining Plan Register, letter of intent etc.

²⁴ M/s Basudev Amar Ujala.

²⁵ 20 *per cent* for the year 2015-16.

²⁶ Sandy soil.

Audit test-checked the records²⁷ of 1,533 brick kilns in 12 DMOs and noticed (between September 2018 and March 2019) that 570 brick kiln owners did not pay any royalty, permit application fees and contribution of DMFT for the brick years²⁸ 2015-16 to 2017-18. The concerned DMOs neither initiated any action to stop the business nor made any efforts to realise the due amount of ₹ 8.41 crore (royalty of ₹ 7.38 crore, permit application fees of ₹ 9.32 lakh and DMFT amount of ₹ 94.06 lakh) as shown in **Appendix-XVI**.

Audit reported the matter to the Department (between October 2018 and March 2019). Their reply was awaited (September 2020).

Recommendation:

The Department should ensure that all brick kiln owners in the State abide by 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.

5.9 Interest on belated payment was not charged

Interest of ₹ 2.78 crore was not charged on 38 lessees and interest of ₹ 90.13 lakh was not charged on 281 brick kiln owners for delay in deposit of royalty/dead rent.

UPMMC Rules²⁹, 1963, stipulates that interest at the rate of 24 *per cent* per annum (revised to 18 *per cent* from May 2017) will be charged for the delay in deposit of any rent, royalty, demarcation fee and any other dues to the State Government after the expiry of 30 days notice period.

In the course of test-check of records of lessees and brick kilns, failure to charge interest amounting to ₹ 3.68 crore was observed. The details of the cases are discussed below:

- Audit test-checked the records of 84 lessees in 11 DMOs and noticed (between November 2017 and March 2019) that 38 lessees deposited royalty/dead rent of ₹ 78.03 crore for the period from May 2011 to January 2019 with delays ranging from 15 days to 1,621 days. Though the details of delay in payment were available on record, the Department charged and realised interest of ₹ 27,588 against ₹ 2.78 crore leviable. As a result, interest of ₹ 2.78 crore was not charged by the Department as shown in **Appendix-XVII**.
- Audit test-checked the records of 710 brick kilns in seven DMOs and noticed (between September 2018 and February 2019) that 281 brick kiln owners deposited royalty of ₹ 4.13 crore for the period 2013-14 and 2015-16 to 2017-18 with delays ranging between 184 days and 1,897 days. Though the details of delay in deposits were available on record, the Department charged and realised interest of ₹ 6.41 lakh against ₹ 96.54

²⁷ Brick Register and challan.

²⁸ October to September.

²⁹ Rule 58(2).

lakh leviable. As a result, interest of ₹ 90.13 lakh was not charged by the Department as shown in **Appendix-XVIII**.

Audit reported the matter to the Department (between July 2017 and April 2019). Their reply was awaited (September 2020).