

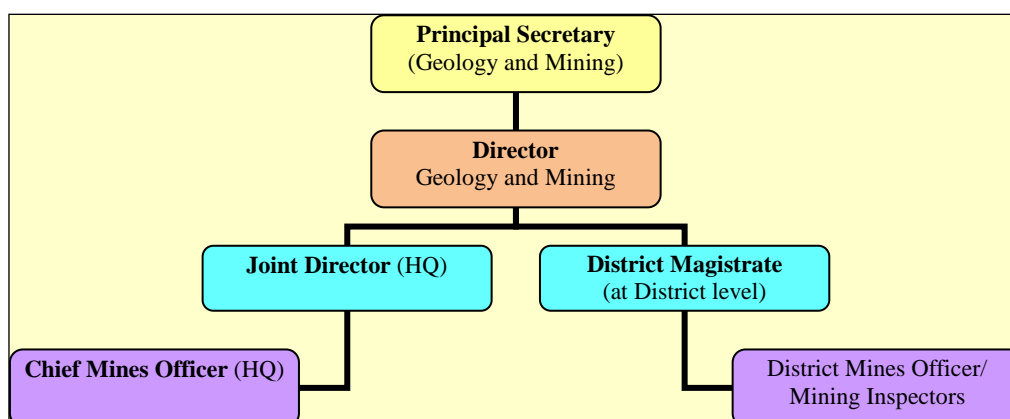
CHAPTER-II

MINING RECEIPTS

2.1 Tax administration

The levy and collection of receipts from Mining in the State is governed by the Mines and Minerals (Development and Regulation) Act, 1957, the Mineral Concession Rules, 1960 and the Uttar Pradesh Minor Mineral Concession Rules, 1963. The Principal Secretary Geology and Mining, Uttar Pradesh, is the administrative head at Government level. The overall control and direction of Geology and Mining Department (Department) is vested with the Director, Geology and Mining, Uttar Pradesh, Lucknow.

Chart 2.1 Orgainsational setup



2.2 Internal audit

Internal Audit of an organisation is a vital component of the internal control mechanism and is generally defined as the control of all controls. It enables the organisation to assure itself that the prescribed systems are functioning reasonably well.

Details of organisational setup of the internal audit wing of the Department and staff posted for the same were not provided by the Department. Year in which Internal Audit Wing was established in the Department was also not provided by the Department.

The details of Internal Audit (IA) planning such as number of units planned for audit, number of units audited and shortfall are shown in **Table 2.1**.

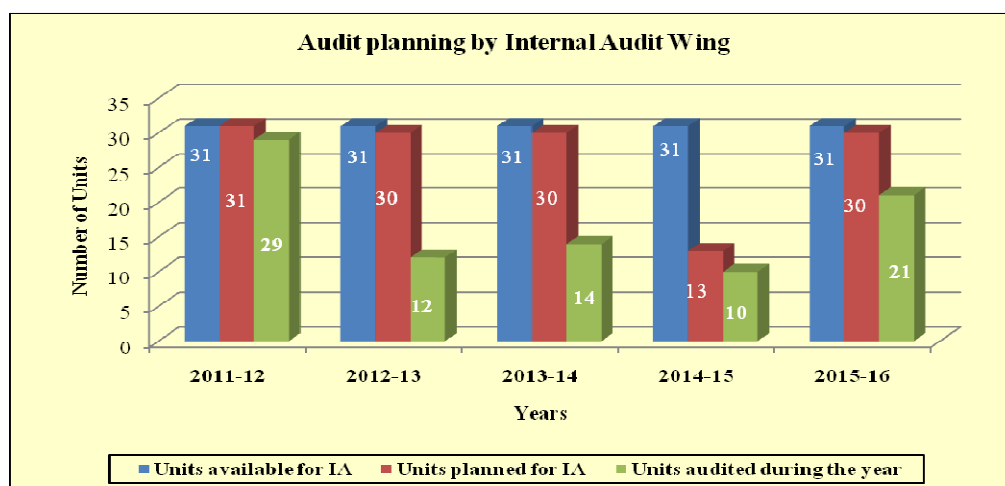
Table 2.1

Audit planning by internal audit wing

Year	Total number of units available for IA	Number of units planned for IA	Number of units audited during the year	Shortfall	Percentage of shortfall
2011-12	31	31	29	2	6.45
2012-13	31	30	12	18	60.00
2013-14	31	30	14	16	53.33
2014-15	31	13	10	3	23.08
2015-16	31	30	21	09	30.00

Source: Information provided by the Department.

Chart: 2.2



This shows that the audit planning of the IAW is not realistic as shortfall ranged from 6.45 per cent to 60 per cent during the years 2011-12 to 2015-16. Reasons for shortfall as stated were that audit was not conducted under orders of Director Geology and Mining for three years and in 2015-16 it was not done due to Panchayat elections. We do not agree with the reply of the Department because in some districts internal audit were conducted and Panchayat elections were not held throughout the year.

The internal audit conducted by the IAW and number and amount of objection raised and settled during the year is mentioned in **Table 2.2**.

Table 2.2

Details of outstanding paras and amount

Year	(₹ in crore)							
	Opening balance		Addition during the year		Clearance during the year		Closing balance	
	No. of cases	Amount involved	No. of cases	Amount involved	No. of cases	Amount involved	No. of cases	Amount involved
2011-12	1,216	55.43	82	10.87	5	2.55	1,293	63.75
2012-13	1,293	63.75	41	4.44	8	3.16	1,326	65.03
2013-14	1,326	65.03	38	7.39	0	0.62	1,364	71.80
2014-15	1,364	71.80	21	5.72	0	0	1,385	77.52
2015-16	1,385	77.52	37	9.09	24	2.40	1,398	84.21

Source: Information provided by the Department.

It is clear from the above table that compliance made by the Department against the cases raised by the IAW is very low as well as pendency is increasing year to year.

2.3 Results of audit

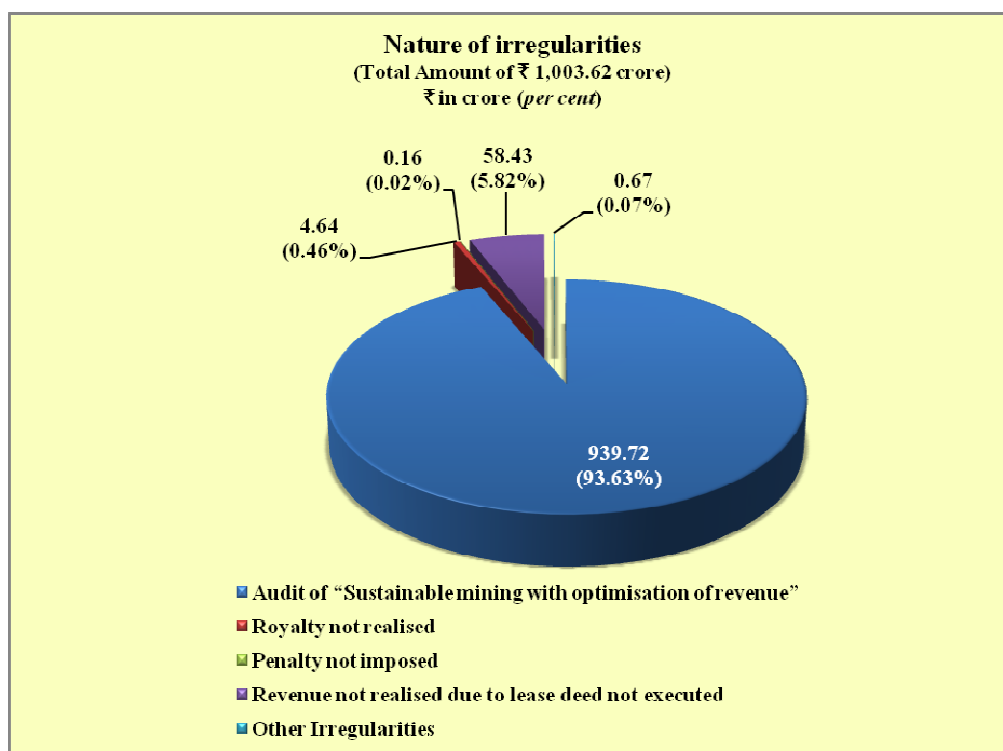
In 2015-16, the Department realised revenue of ₹ 1,222.17 crore. We planned nine annual units, three biennial units and eight triennial units out of the total 75 units of Geology and Mining Department during 2015-16 and test checked all the above planned units which showed irregularities of royalty, penalty, revenue due to not execution of lease deed etc. amounting to ₹ 1,003.62 crore in 61 cases, which fall under the following categories as mentioned in **Table 2.3**.

Table 2.3
Results of audit

(₹ in crore)			
Sl. No.	Category	Number of cases	Amount
1.	Audit of “Sustainable mining with optimisation of revenue in Geology and Mining Department”	1	939.72
2.	Royalty not realised	22	4.64
3.	Penalty not imposed	10	0.16
4.	Revenue not realised due to lease deed not executed	18	58.43
5.	Other Irregularities	10	0.67
Total		61	1,003.62

Source: Information available in the Audit office.

Chart 2.3



During the course of the year, the Department accepted deficiencies of ₹ 70.39 crore in six cases which were pointed out in 2015-16.

Audit of “Sustainable mining with optimization of revenue in Geology and Mining Department” involving ₹ 939.72 crore and a few illustrative cases of compliance deficiency involving ₹ 7.27 crore are discussed in the following paragraphs.

2.4 Audit of “Sustainable mining with optimisation of revenue in Geology and Mining Department”

2.4.1 Introduction

The Mines and Minerals (Development and Regulation) (MMDR) Act 1957 as amended in 2015 enacted by the Central Government, lays down the legal framework for regulation of mines and development of minerals. The Mineral Concession Rules, 1960 have been framed for conservation and systematic development of minerals and for regulating grant of permits, licences and leases. Legislations for exploration of minor minerals have been delegated to the states. Accordingly, the Uttar Pradesh Minor Mineral Concession Rules, 1963 and the Uttar Pradesh Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2002 were framed by the State Government. The Environment (Protection) Act, 1986 and Rules provides the necessary powers to the Government to take suitable actions for preventing, controlling and abetting environment pollution.

2.4.2 Audit objectives

The audit has been conducted with a view to ascertain whether:

- mining leases are granted as per prescribed procedure/ system and penal provisions have been invoked whenever necessary;
- fixing and collection of rent, royalty, fees, dead rent, fines or other charges was done as per MMDR Act 1957 and Rules made thereunder; and
- environment clearances were obtained under Environment Impact Assessment notification 2006.

2.4.3 Audit scope and methodology

Out of 75 districts of Uttar Pradesh 18 districts¹ were selected for detailed audit scrutiny. We segregated the units into high, medium and low risk on the basis of revenue realised by the District Mines Offices (DMOs). We examined the records of all the 14 DMOs identified as high risk, two DMOs identified as medium risk and two DMOs identified as low risk. We conducted the audit between January 2016 and May 2016. The records of office of the Director, Geology and Mining Department, Lucknow and 18 DMOs were examined for the period from April 2011 to March 2016. The objectives of the audit were discussed in the entry conference held on 22 January 2016 with the Principal Secretary cum Director, Geology and Mining Department. We held an exit conference with the Government and Department on 27 July 2016 in which the audit findings were discussed with the Principal Secretary. All the recommendations discussed in exit conference were accepted by the Department. The views of the Government/Department have been incorporated in the report.

¹ Agra, Allahabad, Ambedkarnagar, Bahraich, Banda, Bulandshahar, Chitrakoot, Faizabad, Fatehpur, G B Nagar, Hamirpur, Jalaun, Jhansi, Lalitpur, Mahoba, Mirzapur, Saharanpur and Sonbhadra.

2.4.4 Audit findings

We test checked 681 (587 of stone leases and 94 of sand leases) out of 1,216 leases (1,122 of stone lease and 94 of sand leases) in operation and our findings of 7,067 cases involving ₹ 939.72 crore are mentioned in following paragraphs:

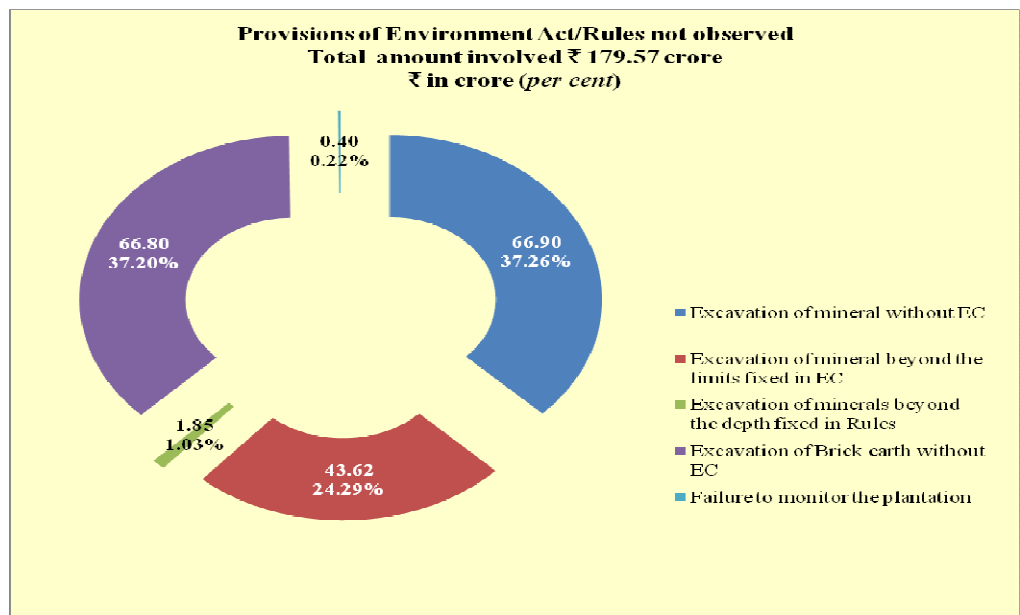
Provisions of Environment Act/Rules not observed



Section 15 of the Environment Protection Act, 1986 provides that whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall in respect of each such failure or contraventions be punishable with imprisonment for a term which may extend to five years or with fine, which

may extend to one lakh rupees or with both and in case of failure or contravention continues with an additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the fresh such failure or contravention. We examined whether the provisions of Environment Act/Rules were complied with by the Department. Our observations on these issues involving ₹ 179.57 crore are mentioned in following paragraphs:

Chart 2.4



2.4.5 Excavation of mineral without Environment Clearance (EC)

To protect the environment, the Government issued orders in May 2011 and March 2012 for addition of the EC clause in mining lease. According to this clause, mining lease holder shall get EC from the Ministry of Environment and Forest (MoEF) at their own cost. The quantity to be excavated during the year is mentioned in EC. If any person excavates the minerals beyond the quantity approved in EC it is treated as illegal and attracts royalty, cost of minerals and penalty under section 21(5) of the MMDR Act.

Under Section 21(5) of the MMDR Act, whenever 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. Further under Rule 21 (2) of UPMMC Rules, the total royalty is fixed at the rate of not more than 20 *per cent* of the pit's mouth value of minerals.

2.4.5.1 Stone lease

The minimum fine of ₹ one lakh and cost of excavated mineral amounting to ₹ 20.57 crore were not recovered from three lessees for excavating 4.16 lakh cubic meters of minor minerals without EC.

We examined (between January 2016 and May 2016) files of lease holders of sampled DMOs and observed that in two DMOs² in three cases, the lessees had excavated 4.16 lakh cubic meters of minor minerals without EC (May 2011 and January 2016) on which lessees paid royalty of ₹ 4.11 crore. The DMOs took no steps to ensure that lease holders had obtained EC. The mineral excavated by the lessees were unauthorised. They neither stopped these mining activities nor imposed the required penalty. The minimum fine of ₹ one lakh each to be imposed on lessees for the violation of environment rules and the cost of excavated minerals which was five times of royalty amounting to ₹ 20.57 crore were recoverable from the lessees.

During exit conference the Department stated that mining leases were running prior to period for which the EC was compulsory. The reply of the Department is not acceptable because all these cases pertain to the period between May 2011 and January 2016 for which the EC was compulsory.

2.4.5.2 Sand lease

The minimum fine of ₹ one lakh and cost of excavated mineral amounting to ₹ 46.33 crore were not recovered from one lessee for excavating 18.73 lakh cubic meters of minor minerals without EC.

We examined (between January 2016 and May 2016) files of sand lease holders of sampled DMOs and observed that in DMO Jhansi, the lessee had excavated 18.73 lakh cubic meters of sand/*morrum* during the period between May 2012 and August 2013 without EC for which lessee paid ₹ 9.27 crore as royalty. The mineral excavated by the lessee was unauthorised. The DMO took no steps to ensure that lease holder had obtained EC. He neither stopped

² Jhansi and Mirzapur.

these mining activities nor imposed the penalty. The minimum fine of ₹ one lakh to be imposed on lessee for the violation of environment rules and the cost of excavated mineral which was five times of royalty amounting to ₹ 46.33 crore was recoverable.



During exit conference the Department stated that mining leases were running prior to period for which the EC was compulsory. The reply of the Department is not acceptable because all these cases pertain to the period between May 2012 and August 2013 for which the EC was

compulsory.

2.4.6 Excavation of minerals beyond the limits fixed in Environment Clearance

Environment clearance has sufficient safeguards build into their provisions to ensure protection of the environment. Further the Government also issued directions vide order dated 10 April 2014 for issuance of MM-11 not more than quantity approved in EC.

2.4.6.1 Stone lease

The minimum fine of ₹ one lakh and the cost of mineral amounting to ₹ 2.12 crore was not recovered from three lessees for excavating 58,389 cubic meters of Gitti/pattiya/boulder in excess of the EC.

We examined (between January 2016 and May 2016) files of stone lease holders of sampled DMOs and observed that in two DMOs³, three lessees had excavated 58,389 cubic meters of *Gitti/pattiya*/boulder (April 2015 and February 2016) in three cases in excess of the quantity fixed in EC. Thus, the mineral excavated by the lessees was unauthorised and the cost of the excavated mineral amounting to ₹ 2.12 crore was recoverable from the lessees. Despite records being available which showed regular excess excavation in this period, the DMOs neither initiated any action against the lessees for excess excavation nor took any action for recovery of the cost of excavated mineral which was five times of royalty amounting to ₹ 2.12 crore and minimum fine of ₹ one lakh each for the violation of environment rules (**Appendix-III**).

During exit conference the Department stated that since there is no provision for recovery of cost of minerals and penalty in UPMCM Rule 1963 for excavation by the lessees beyond the quantity mentioned in EC, therefore recovery was not required. The reply of the Department is not tenable as EC is

³ Allahabad and Mirzapur.

a necessary condition for any lease, the recovery of cost of mineral is also a condition under section 21(5) of MMDR Act.

2.4.6.2 Sand lease

The minimum fine of ₹ one lakh and cost of the mineral amounting to ₹ 41.50 crore was not recovered from 27 lessees for excavating 14.94 lakh cubic meters of Sand/ *morrum* in excess of quantity fixed in EC.

Mining, especially mining of sand, can cause severe environmental degradation if not done scientifically. Sand is a very important medium for ground water recharge and in the absence of sand, rainfall would result in runoff. Illegal excavation by way of over exploitation of sand has a negative impact on environment which not only results in reduced recharging of groundwater bodies but also affects the quality of groundwater.

We examined (between January 2016 and May 2016) mining lease case files and mining plans of sampled DMOs and observed that in 10 DMOs⁴, the lessees had excess excavated 14.94 lakh cubic meters of sand/*morrum* in 27 cases during the period between November 2012 and January 2016 against 16.93 lakh cubic meters permitted in EC on which lessees paid royalty of ₹ 8.30 crore. DMOs allowed the excess excavation of mineral by issuing MM-11 forms to these lease holders. Thus, the mineral excavated by the lessees was unauthorised and the cost of the excavated mineral which was five times of royalty amounting to ₹ 41.50 crore was not recovered along with minimum fine of ₹ one lakh each (**Appendix-IV**).

During exit conference the Department stated that since there is no provision for recovery of cost of minerals and penalty in UPMMC Rule 1963 for excavation by the lessees beyond the quantity mentioned in EC, therefore recovery was not required. The reply of the Department is not tenable as EC is a necessary condition for any lease, the recovery of cost of minerals is also a condition under section 21(5) of MMDR Act.

Government may ensure that the excavation/ extraction of minor minerals is allowed only after receipt of the Environment Clearance Certificate.

2.4.7 Excavation of minerals beyond the depth fixed in rules

The lessee excavated 49,360 cubic meters of sand beyond the depth of three meter, which was unauthorised but the cost of the excavated mineral amounting to ₹ 1.85 crore was not recovered.

Under Rule 41(h) of UPMMC 1963, the lessee shall not do any mining operations beyond the depth of three meters or water level whichever is less in the river bed and no mining shall be carried out in the safety zone so worked out by the District Officer. Further, Sections 21 (1) and (5) of MMDR Act prescribes that the penalty for any illegal mining includes recovery of the price

⁴ Agra, Allahabad, Banda, Chitrakoot, Fatehpur, Faizabad, Hamirpur, Jalaun, Saharanpur and Sonbhadra.

of the mineral, rent, royalty or taxes as the case may be, for the period during which the land was occupied by such person without any lawful authority.

We examined (between January 2016 and May 2016) mining lease case files of sampled DMOs and observed that in DMO Sonebhadra, a sand lease area for 5.60 acre for the period from March 2010 to March 2013 was granted. As per MM-11 issue register lessee excavated 1,17,350 cubic meters against authorised quantity of 67,990 cubic meters sand, the lease area⁵ of 22,663 sq. metres excavated upto depth of three metres between 04 March 2013 to 14 March 2013. Thus, the DMO allowed the lessee to excavate 49,360 cubic meters of sand beyond the depth of three meter which was unauthorised and the cost of the excavated mineral which was five times of royalty amounting to ₹ 1.85 crore was not recovered.

During exit conference the Department stated that mineral had been extracted after payment of royalty in advance by the lessee. Therefore recovery of cost of mineral from lessee was not required. The reply of the Department is not tenable because the cases of contravention of Rule 41(h) are treated as illegal mining and the condition of section 21(5) of MMDR Act will be applicable on them.

2.4.8 Excavation of brick earth without environment clearance

The minimum fine of ₹ one lakh each and cost of mineral amounting to ₹ 66.80 crore was not recovered from 2,909 brick kilns which operated during the period 2013-14 to 2014-15 without EC.



Ministry of Environment and Forests (MOEF) issued a notification under sub-rule (3) of rule 5 of the Environment (Protection) Rules 1986, dated 14 September 2006 for imposing certain restrictions and prohibitions on mining projects. Further, MOEF issued an OM on dated 24th June 2013 clarifying the ambit of

notification dated 14 September 2006 in its application to the activities of excavation/borrowing of brick earth in connection with the operation of brick kilns. Such type of excavation of ordinary earth was categorised in B-2 category. Therefore, consent for operation of brick kiln to the brick kiln owners could not be granted without obtaining EC.

As per provision of rule 34 of UPMMCR 1963 the lessee shall start the mining operation after obtaining EC if required under the provisions of EIA notification.

⁵ 1 acre= 4046.8564 square metres

Under Section 21(5) of the MMDR Act, whenever 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.

We examined (between January 2016 and May 2016) permit registers, bhatta registers and challans registers of sampled DMOs and observed that in 14 DMOs⁶, 2,909 brick kilns owners operated their kilns during the period 2013-14 to 2014-15 and paid due royalty without obtaining EC. Thus, the excavation of brick earth without EC was not only illegal but could also affect the environment and so was unauthorised. Despite the fact that the mining activities were being carried out, the Department did not take any action to stop the business or levy penalty as per Rules. The minimum fine of ₹ one lakh was to be imposed on each kiln owners for the violation of environment rules. The cost of excavated mineral which was five times of royalty amounting to ₹ 66.80 crore was also not recovered (**Appendix-V**).

During exit conference the Department stated that requirement of EC for excavation of brick clay is a new provision and it will take some time to be executed completely. It is evident from the reply of the Department, that the provision of EC and recovery of cost of mineral remains to be implemented.

2.4.9 Failure to monitor the plantation

For violation the provisions of plantation in lease deed the minimum fine of ₹ 40 lakh was not levied on 40 lease holders.

The Government issued direction dated 4 June 2008 for addition of the clause of plantation in the mining leases. As per this clause, any mining lease holder undertaking mining on one acre or more area shall plant 200 trees per acre at their own cost.

We examined (between January 2016 and May 2016) files of lease holders of sampled DMOs and observed that in five⁷ DMOs, between 2011-12 and 2015-16 the mining of stone ballast/boulder/grit/granite/sand etc. was carried out by 40 lease holders in 191.77 acres of land. As per condition of lease, plantation was required to be done. In all the cases of 40 lease holders nothing was found on record regarding plantation work and as per section 15 of Environment Act the DMOs took no steps to ensure these lease holders carried out the plantation work. They neither stopped these mining activities nor imposed the required penalty. For this violation a minimum fine of ₹ one lakh on each lessee amounting to ₹ 40 lakh was also not imposed. Apart from this, there was also a provision that an additional fine which may extend to ₹ 5,000 per day during such contravention was leviable under section 15 of Environment Protection Act 1986.

During exit conference the Department stated that building stone and sand/morrum are found either in stony area or in riverbed where plantation is

⁶ Agra, Allahabad, Ambedkar Nagar, Bahraich, Balandshahar, Chitrakoot, Faizabad, Fatehpur, G B Nagar, Hamirpur, Jalaun, Mirzapur, Saharanpur and Sonebhadra.

⁷ Ambedkar Nagar, Agra, Hamirpur, Lalitpur and Mirzapur

not practically possible. The reply of the Department is not acceptable because for plantation the mining Department should have requested the Forest Department to carry out plantation after obtaining of requisite amount from the lessees.

2.4.10 Annual environment statement not filed

Lessees had not submitted the environment statement (Form V) during the period of lease.

Rule 14 of the Environment (Protection) Rules, 1986, stipulates that every person carrying on an industry requiring consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 or under Section 21 of the Air (Prevention and control of Pollution) Act, 1981, shall submit an environment statement (Form V) for the financial year ending on 31 March to the concerned State Pollution Control Board (SPCB) of every year. Further, as per Section 15 of the Environment (Protection) Act, 1986, penalty up to ₹ one lakh shall be levied for contravention of these Acts/Rules and in case of repeated failures an additional fine which may extend to ₹ 5000 per day shall be levied.

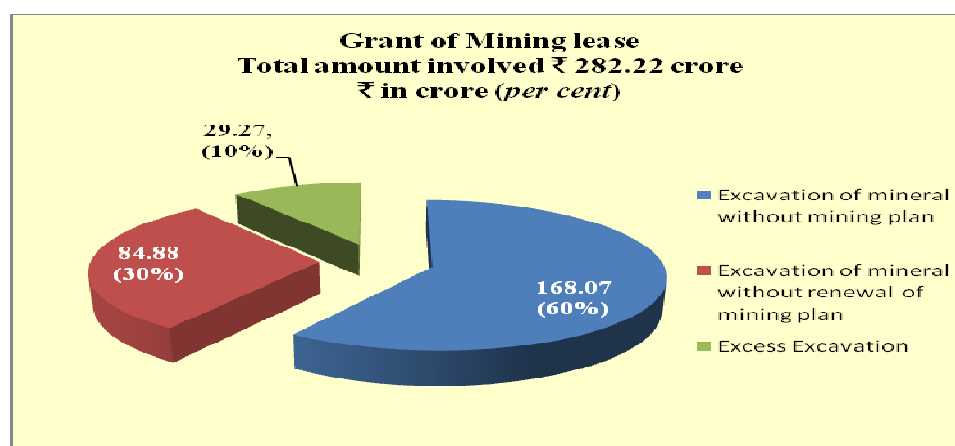
We examined (between January 2016 and May 2016) files of lease holders of sampled DMOs and observed that in six DMOs, lessees had not submitted the environment statement during the period of lease. In the absence of the environment statement, the Board could not keep a watch over issues like discharge of pollutants, management of solid waste etc. which required attention on a periodical basis.

During exit conference the Department stated that reply was required from SPCB, but no environment statement in form V was available in SPCB records.

Grant of mining lease

We examined whether mining leases were granted as per prescribed procedure/ system and penal provisions have been invoked wherever necessary. Our observations on these issues involving amount ₹ 282.22 crore are mentioned in following paragraphs:

Chart 2.5



2.4.11 Unauthorised extraction

Under Rule 34 (2) of 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 which is duly approved by the Director of Geology and Mining Department.

As per Rule 34(5) of UPMMC Rules as amended on dated 23 December 2012, the mining plan once approved by the Director shall be valid for entire duration of the lease.

Rule 22A of Mineral Concession Rules, 1960 provides that mining operations shall be undertaken in accordance with duly approved mining plan and modification of the approved mining plan during the operation of a mining lease also requires prior approval of competent authority.

Under Section 21(5) of the MMDR Act, whenever 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. Further under Rule 21 (2) of UPMMC Rules, the total royalty is fixed at the rate of not more than 20 *per cent* of the pits mouth value of minerals.

2.4.11.1 Excavation of mineral 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 area. If the mining activities are done without approved mining plan, the Department will not have any control over it and lessee may extract more minerals in an unscientific manner which would adversely affect the mineral resources, protection of forest, water courses, and would abet air and water pollution.

- **Stone leases**

The lessees had excavated 3.26 lakh cubic meters of *Gitti*/boulder without mining plan for which ₹ 15.64 crore was recoverable from them.

We examined (between January 2016 and May 2016) mining lease case files and mining plans of sampled DMOs and observed that in seven DMOs in 15 out of 587 cases, the lessees had excavated 3.26 lakh cubic meter of minor minerals without approved mining plan (January 2013 to March 2016), for which lessees paid ₹ 3.13 crore as royalty. Thus, the mineral excavated by the lessees was unauthorised and the cost of the excavated mineral as assessed by us, which was five times of royalty, amounting to ₹ 15.64 crore, was recoverable from the lessees. Thus, in contravention of the provisions of the Rule 34 (2) of UPMMC Rules and Rules 22 A of the MCR, the lessees were excavating minor minerals without mining plans. The DMO allowed the excavation of minor mineral by issuing MM-11 forms to these lease holders. For this violation an amount of ₹ 15.64 crore was recoverable from the errant mine owner.

- Sand leases

The lessees had excavated 43.03 lakh cubic meters of sand/morrum without mining plan for which ₹ 152.43 crore was recoverable from them.



We examined (between January 2016 and May 2016) mining lease case files and mining plans of sampled DMOs and observed that in 10 DMOs in 43 out of 94 cases, the lessees had excavated 43.03 lakh cubic meter of sand/morrum during the period between December 2012 to January 2016, without mining plan for

which lessees paid ₹ 30.49 crore as royalty. Thus, the mineral excavated by the lessees was unauthorised and the cost of the excavated mineral which was five times of royalty amounting to ₹ 152.43 crore was recoverable from the lessees. The DMOs allowed the excavation of minor mineral by issuing MM-11 forms to these lease holders in contravention of the provisions of the Rule 34 (2) of UPMMC Rules and Rules 22 A of the MCR. As a result, the cost of mineral of ₹ 152.43 crore was not recovered (**Appendix-VI**).

During exit conference the Department stated that these are not the matter of illegal mining as they are legal permit holder and excavating the minerals with lawful authority. The Department categorised such excavation as irregular mining and it was assured that provision of penalty regarding such irregularities would be introduced shortly.

Reply of the Department is not based on the facts because mining operation beyond the quantity mentioned in the approved mining plan is without lawful authority and hence attracts recovery of cost of minerals excavated under Section 21 (5) of MMDR Act.

2.4.11.2 Excavation of mineral without renewal of mining plan

The lessees had excavated 17.08 lakh cubic meters of Gitti/ boulder without renewal of mining plan for which ₹ 84.88 crore was recoverable from them.

We examined (between January 2016 and May 2016) mining lease case files and mining plans of sampled DMOs and observed that in five DMOs in 15 out of 587 cases, the lessees had excavated 17.08 lakh cubic meter of Gitti/boulder during the period between April 2013 and March 2016, without renewal of mining plan for which lessees paid ₹ 16.98 crore as royalty. Thus, the mineral excavated by the lessees was unauthorised and the cost of the excavated mineral which was five times of royalty amounting to ₹ 84.88 crore was recoverable from the lessees. The DMO allowed the excavation of minor

mineral by issuing MM-11 forms to these lease holders in contravention of the provisions of the Rule 34 (2) of UPMMC Rules and Rules 22 A of the MCR. As a result, the cost of mineral of ₹ 84.88 crore was not levied (**Appendix-VII**).

We further observed that the Department renewed the mining plans only for five years, whereas it was required to be renewed for entire period of lease as per provisions of UPMMC Rules.

During exit conference the Department stated that these are not the matter of illegal mining as they are legal permit holder and excavating the minerals with lawful authority. The Department categorised such excavation as irregular mining and it was assured that provision of penalty regarding such irregularities would be introduced shortly.

Reply of the Department is not based on the facts because mining operation beyond the quantity mentioned in the approved mining plan is without lawful authority and hence attracts recovery of cost of minerals excavated under Section 21 (5) of MMDR Act.

2.4.11.3 Excess excavation

The lessees had excavated 6.40 lakh cubic meters of stone ballast/boulder/Gitti/khanda/patiya in excess of the mining plan for which ₹ 29.27 crore was recoverable from them.

We examined (between January 2016 and May 2016) mining lease case files and mining plans of sampled DMOs and observed that in five DMOs in 12 out of 587 cases, lessees had excavated 6.40 lakh cubic meter of stone ballast/ boulder/ granite blocks/ granite *khanda/ patiya* in excess of the approved mining plan during the period between November 2011 to January 2016. Thus, the mineral excavated by the lessees was unauthorised and the cost of the excavated mineral which was five times of royalty amounting to ₹ 29.27 crore was recoverable from the lessees. Despite records being available showing regular excess excavation in this period, the DMOs neither initiated any action against the lessees even after lapses of five years for excavation of the excess mineral of the mining plan nor took any action for recovery of the cost of excavated mineral of ₹ 29.27 crore (**Appendix-VIII**).

During exit conference the Department stated that these are not the matter of illegal mining as they are legal permit holder and excavating the minerals with lawful authority. The Department categorised such excavation as irregular mining and it was assured that provision of penalty regarding such irregularities would be introduced shortly.

Reply of the Department is not based on the facts because mining operation beyond the quantity mentioned in the approved mining plan is without lawful authority and hence attracts recovery of cost of minerals excavated under Section 21 (5) of MMDR Act.

Government may ensure that the excavation of minor mineral is allowed only after approval of the mining plan and extraction of minerals is allowed only in accordance with approved mining plan. In case of

negligence and/or connivance, the Director Geology and Mining should initiate disciplinary proceedings against the officials.

Deficiencies related to Rent, royalty and fines

We examined whether the fixing and collection of rent, royalty, fees, dead rent, fines and other charges were being levied and collected as per provisions of MMDR Act/Rules and our observations on these issues are mentioned in following paragraphs.

2.4.12 Quarterly return not submitted (MM-12)

The 71 lessees had not submitted 538 quarterly returns, for which lessees were liable to pay penalty amounting to ₹ 10.76 lakh.

Under Rules 73 (1) of UPMMCR, 1963, lessees shall submit quarterly returns for the preceding quarter in Form MM-12 to the District Mines Officer in the second week of July, October, January and April. This is the main tool of control to compare the quantity excavated against the admissible quantity indicated in the mining plan. Rule 73(2) provides that whenever any holder of mineral concession fails to submit the return within the time specified in Sub-Rule (1) he shall be liable to pay penalty of ₹ 2,000.

We examined (between January 2016 and May 2016) files of lease holders of sampled DMOs and observed that in 10 DMOs⁸, 71 lease holders out of 681 lease holders had not submitted 538 quarterly returns (MM-12) during January 2012 to December 2015. The Department did not take any penal action against these defaulters and did not realise the penalty of ₹ 10.76 lakh.

During exit conference the Department accepted our observation and stated that the penalty would be realised from the lease holders.

2.4.13 Short deposit of dead rent

Dead rent of ₹ 36.32 lakh was deposited by 30 lessees for the period 2011-12 to 2015-16 instead of ₹ 97.42 lakh which resulted in short levy of ₹ 61.10 lakh.

Under Rule 72 of UPMMC Rules, mining area can be notified for mining lease. According to Rule 22 of UPMMC Rules, every lessee of mining lease shall pay every year, dead rent in advance for the whole year at the rates prescribed in second Schedule for all areas included in the lease. The rate of dead rent for sand/*Gitti*/Boulder was revised with effect from 2 November 2012.

We examined (between January 2016 and May 2016) lease files and concerned files of sampled DMOs and observed that in eight DMOs⁹, 30 lessees deposited dead rent of ₹ 36.32 lakh for the period 2011-12 to 2015-16 instead of ₹ 97.42 lakh. Although the details of payment were available on lease files, the Department did not initiate any action for levy and recovery of

⁸ Allahabad, Bahraich, Banda, Chittrakoot, Faizabad, Hamirpur, Mahoba, Mirzapur, Saharanpur and Sonebhadra.

⁹ Banda, Chittrakoot, Faizabad, Jalaun, Lalitpur, Mahoba, Mirzapur and Sonebhadra.

dead rent even after lapses of five years. Thus, the dead rent of ₹ 61.10 lakh was short levied.

During exit conference the Department accepted our observation and stated that the balance dead rent would be recovered from the lease holders.

2.4.14 Interest on belated payment was not charged

Interest of ₹ 15.07 lakh was not charged on 11 lessees who deposited royalty of ₹ 40.51 lakh with delays ranging from four months to 26 years and 11 months.

Rule 58(2) of UPMMC Rules provides that interest at the rate of 24 per cent per annum will be charged for the delay in payment of any rent, royalty, demarcation fee and any other dues to the State Government after the expiry of 30 days notice period.

We examined (between January 2016 and May 2016) lease files and concerned files of sampled DMOs and observed that in four DMOs, 11 lessees deposited royalty of ₹ 40.51 lakh for the period May 1986 to August 2015 with delay ranging from four months to 26 years and 11 months. Though the details of delay in payment were available in records, the Department did not initiate any action for charging of interest on these belated payments. As a result, interest of ₹ 15.07 lakh was not charged as shown below in **Table 2.4**.

Table 2.4

Interest on belated payment was not charged

(Amount in ₹)						
Sl. No	Name of Office	Period	No. of cases	Period of delay in days	Amount due and deposited	Interest chargeable
1	DMO Banda	01.02.13 to 16.05.14	1	470	32,67,000	10,09,637
2	DMO Chitrakoot	20.07.13 to 20.03.15	4	112 to 564	2,97,796	66,104
3	DMO Jhansi	11.12.08 to 24.08.15	1	283 to 2,385	3,627,50	2,19,322
4	DMO Sonebhadra	03.05.86 to 29.11.14	5	935 to 9,840	1,23,831	2,12,243
TOTAL			11		40,51,377	15,07,306

Source: Information available on the basis of audit findings.

During exit conference the Department accepted our observation and stated that the interest would be recovered from the lease holders.

2.4.15 Short levy of royalty due to revision of rates

Eighty one lessees deposited royalty of ₹ 1.32 crore at pre-revised rates instead of ₹ 2.32 crore at revised rates which resulted in short realisation of royalty of ₹ one crore.

Rule 21 of UPMMC Rules provides that the royalty shall be payable on the basis of rate revised from time to time. The rate of royalty and dead rent was revised from 19 January 2016 by the State Government.

We examined (between January 2016 and May 2016) lease files, permit files and MM 11 issue register of sampled DMOs and observed that in 11 DMOs¹⁰ in 81 cases, the Department issued Form MM 11 for 3,33,354 cubic meter of minor minerals to different lessees and permit holders from January 2016 to March 2016 and levied the royalty of ₹ 1.32 crore at pre-revised rates instead of ₹ 2.32 crore at revised rates. This resulted in short realisation of the royalty of ₹ one crore (**Appendix-IX**).

During exit conference the Department accepted our observation and stated that the balance royalty would be recovered from the lease holders.

2.4.16 Cost of minor mineral not recovered

The Department did not recover the cost of minerals amounting to ₹ 469.07 crore from 3,379 civil works contractors for not submitting the MM-11 form.

As per Section 4(1-A) and Section 21(1) to (5) of the MMDR Act read with Rule 70(1) of the UPMMC Rules, 1963 provides that the holder of a mining lease or permit or a person authorised by him in this behalf may issue a pass in form MM-11 to every person carrying, consignment of minor mineral by a vehicle, animal or any other mode of transport. Rule 70(2) provides that no person shall carry, within the State a minor mineral by a vehicle, animal or any other mode of transport, excepting railway, without carrying a pass in Form MM-11 issued under sub rule (1). Further, Rule 3 of Uttar Pradesh Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2002 provides that no person shall transport, carry or cause to be transported, carried any mineral by any means from its raising place to any other place without valid transit pass issued by the holder of mining lease. Under the provisions of Section 21(5) and 21(1) of the MMDR Act, the recovery of price thereof is mandatory. If contractors do not produce royalty receipt in form MM-11 or Form C, the DDO will deduct the royalty and price of minerals from the contractor's bill and deposit the same into the Treasury. This was reiterated by the Government in its order dated 15 October 2015, wherein it was stated 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.

We examined (between January 2016 and May 2016) returns and Treasury scroll pertaining to period 2014-15 and 2015-16 of sampled DMOs and observed that in all DMOs, 3,379 civil works contractors did not submit the MM-11 forms along with the bills. The executive agencies deducted the royalty of ₹ 93.81 crore from the bills and deposited into the treasury. The Department did not recover the cost of minor minerals which was five times of royalty amounting to ₹ 469.07 crore (**Appendix-X**).

During the exit conference the Government/Department stated that the execution of Government order dated 15 October 2015 had been stayed by Hon'ble High Court by order dated 31 March 2016. The reply was not tenable as the stay has been vacated by Hon'ble High Court while disposing of the Writ Petition on 1 August 2016. Hon'ble High Court held that the Government

¹⁰ Ambedkar Nagar, Banda, Bulandshahar, Faizabad, Fatehpur, G B Nagar, Hamirpur, Mahoba, Mirzapur, Saharanpur and Sonbhadra.

order dated 15 October 2015 was just and valid and had been issued in public interest. Therefore recoveries as per the provisions of the Act may be affected.

2.4.17 Illegal mining/transportation

Under Rule 3 and 57 of UPMMC Rules, no person shall undertake any mining operation in any area, except under and in accordance with the terms and conditions of a quarrying permit or a mining lease granted under these Rules. Sections 21 (1) and (5) of MMDR Act prescribes that the penalty for any illegal mining includes recovery of the price of the mineral, rent, royalty or taxes as the case may be, for the period during which the land was occupied by such person without any lawful authority. Further, Rule 57 of the UPMMC Rules prescribes initiation of criminal proceedings attracting punishment of simple imprisonment that may extend to six months or with fine which may extend to ₹ 25,000 or both. We observed the following;

2.4.17.1 Illegal transportation

Royalty, cost of minerals and penalty amounting to ₹ 1.30 crore was not recovered from the lessees for illegal transportation of 8,871 cubic meters of minerals.

We examined (between January 2016 and May 2016) MM-11 issue registers



and files of verification of MM-11 of sampled DMOs and final payment bills in PWD and RED divisions and observed that in two DMOs, the contractors submitted 393 MM-11 forms covering the transportation of 8,871 cubic meters of minerals (March 2014 to February 2016), whereas, as per records

of the DMOs the MM-11 forms were issued for transportation of 1,627 cubic meters of minerals only. Thus, the contractors made irregular claim of royalty of 7,244 cubic meters of minerals, which was not covered by form MM-11. The Department should have been aware of the discrepancy because executing agencies had sent forms to DMOs for verification but concerned DMOs neither verified the fact from their lessees records nor initiated any action to recover royalty and also the cost of mineral which was five times of royalty along with penalty amounting to ₹ 1.30 crore from them as shown below in **Table 2.5.**

Table 2.5
Illegal transportation

Sl no.	Name of unit	No. of MM-11	Transported Qty in cum	Royalty paid for Qty.in cum	Excess Qty.in cum	Due Royalty in ₹	Cost of Mineral in ₹	Penalty in ₹	Total amount due in ₹
1	DMO Saharanpur	377	8,605	1,514	7,091	5,16,516	25,82,580	94,25,000	1,25,24,096
2	DMO Sonebhadra	16	265.59	112.75	152.84	11,463	57,315	4,00,000	4,68,778
	Total	393	8,870.59	1626.75	7,243.84	5,27,979	26,39,895	98,25,000	1,29,92,874

Source: Information available on the basis of audit findings.

During exit conference the Department accepted our observation and stated that process of recovery would be initiated with working agencies as per rules and request for the same would be made to working agencies.

2.4.17.2 Illegal excavation

Price of minerals of ₹ 5.63 crore was not recovered from 14 illegal miners for 2,15,816 cubic meters of minor minerals.

We examined (between January 2016 and May 2016) files and registers of illegal mining in sampled DMOs and observed that DMO Saharanpur detected 14 cases of illegal extraction and storage of 2,15,816 cubic meters of minor minerals (September 2015 and December 2015) and also issued notices to them. As per Rule 57 of UPMMC Rule, Department compounded the above cases and issued MM-11 to them on payment of royalty of ₹ 1.15 crore and penalty of ₹ 7.75 lakh but did not recover the cost of minerals which was five times of royalty amounting to ₹ 5.63 crore.

During exit conference the Department stated that rule 57 of UPMMCR 1963 provides maximum penalty of ₹ 25,000. The reply is not tenable as extraction through illegal mining attracts recovery of cost of minerals excavated which is five times of royalty under Section 21 (5) of MMDR Act.

2.4.17.3 Transit pass (MM-11) not issued by the Department

Fake 19 MM-11 forms were found in use in the Rural Engineering Department, Jhansi on which royalty, cost of minerals and penalty amounting to ₹ 5.88 lakh was not levied.

Minor minerals (sand, stone and stone ballast) were shown as utilised in construction works by contractors, who produced MM-11 forms in support of transportation and utilisation of minerals in construction works with their bills. As MM-11 forms were furnished by contractors, full payment was released to the contractors.

We examined (between January 2016 and May 2016) MM-11 issue register of sampled DMOs and observed that 19 MM-11 forms purported to be issued by the DMO Jalaun (September 2015 and January 2016) were fake as the DMO subsequently denied having issued the said MM-11 forms. The fake MM-11 forms were found in use in the Rural Engineering Department (RED) Jhansi. As the MM-11 forms were not authentic, it is obvious that no royalty has been paid on the minerals. There was no system to obtain details of MM-11 directly/electronically from the DMOs. The Department did not take any

action to levy the royalty at the specified rate and the cost of minerals which was five times of royalty along with the penalty in accordance with UPMMC Rules. As a result, the royalty, cost of minerals and penalty amounting to ₹ 5.88 lakh was not levied.

During exit conference the Government/Department accepted our observation and stated that process of recovery was to be initiated by RED as per rules and a request for the same would be sent to RED Jhansi. Further, it was stated that the computerisation of MM-11 forms is in progress for online verification.

2.4.18 Conclusion

We conclude that:

- Extraction of minor minerals were done without Environment Clearance (EC) as evident from the facts that five lessees and 2,909 brick kiln owners were allowed to extract minerals without any EC, 30 lessees were allowed to extract minerals in excess of quantity approved in EC and plantation work was not done by 40 lease holders in 191.77 acres of leased land. Further, the Government did not recover the cost of minerals amounting to ₹ 179.57 crore for these violations.
- The necessity for the filing and approval of a mining plan was ignored in the cases of 58 lessees. In addition, 15 lessees were allowed to extract minerals without renewal of mining plan and 12 lessees were allowed to extract mineral much above the quantity approved in the mining plan. Thus the mining regulators had no control over the environmentally sensitive activity of mining and allowed exploitation of scarce resources unchallenged. It did not even make good this violation by recovering ₹ 282.22 crore as penalty.
- Department did not monitor the submission of mandatory quarterly returns, realisation of difference of royalty on revision of rate, assess the price of minerals and interest on belated payment of royalty/dead rent etc. The DMO concerned did not cross check the facts which led to unauthorised excavation and transportation. Thus, the Government was deprived of revenue of ₹ 477.93 crore.

2.4.19 Summary of recommendations

We recommend the following:

- **Excavation of minor minerals should be allowed only after approval of the mining plan/Environment Clearance.**
- **In case of negligence and/or connivance, the Director, Geology and Mining should initiate disciplinary proceedings against officials concerned.**

2.5 Audit observations

Our scrutiny of records in the offices of the Geology and Mining showed cases of not realising cost of minerals, royalties, permit fee and cases where penalty was not imposed which are mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. We point out such omissions each year, but not only do the irregularities persist; these remain undetected till we conduct an audit. There is need for the Government to improve the internal control system so that recurrence of such lapses in future can be avoided.

2.6 Cost of minerals not realised

The Department did not recover the cost of minerals amounting to ₹ 6.71 crore besides penalty of ₹ 28.00 lakh from 112 civil works contractors for not submitting the MM-11 form.

As per Section 4(1-A) and Section 21(1) to (5) of the MMDR Act read with Rule 70(1) of the UPMDC Rules, 1963 provides that the holder of a mining lease or permit or a person authorised by him in this behalf may issue a pass in form MM-11 to every person carrying, consignment of minor mineral by a vehicle, animal or any other mode of transport. Rule 70(2) provides that no person shall carry, within the State a minor mineral by a vehicle, animal or any other mode of transport, excepting railway, without carrying a pass in Form MM-11 issued under sub rule (1). Further, Rule 3 of Uttar Pradesh Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2002 provides that no person shall transport, carry or cause to be transported, carried any mineral by any means from its raising place to any other place without valid transit pass issued by the holder of mining lease. Under the provisions of Section 21(5) and 21(1) of the MMDR Act, the recovery of price thereof is mandatory. If contractors do not produce royalty receipt in form MM-11 or Form C, the DDO will deduct the royalty and price of minerals from the contractor's bill and deposit the same into the Treasury. This was reiterated by the Government in its order dated 15 October 2015, wherein it was stated 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.

We examined (between June 2014 and March 2016) returns and treasury scroll of four¹¹ DMOs, and observed that executing agencies got 112 civil works done through contractors. In all these cases the contractors did not submit the MM-11 forms along with the bills. The executing agencies deducted the royalty of ₹ 1.34 crore from the bills and deposited the amount into treasury. The Department did not recover the cost of minerals valued at ₹ 6.71 crore and penalty of ₹ 28.00 lakh.

During the exit conference the Government/Department stated that the execution of Government order dated 15 October 2015 had been stayed by Hon'ble High Court by order dated 31 March 2016. The reply was not tenable as the stay has been vacated by Hon'ble High Court while disposing of the Writ Petition on 1 August 2016. Hon'ble High Court held that the Government order dated 15 October 2015 was just and valid and had been issued in public

¹¹ Amethi, Kannauj, Pratapgarh and Sant Kabir Nagar

interest and therefore, recoveries as per the provisions of the Act may be affected.

2.7 Royalty and permit fees not realised from brick kiln owners

Royalty and permit fees for the period 2013-14 and 2014-15 by 39 brick kiln owners was not paid, though it was specified in the scheme. As a result, royalty of ₹ 17.48 lakh, interest of ₹ 6.72 lakh and permit fees of ₹ 78,000 were not realised.

Under the One Time Settlement Scheme (OTSS) announced by the Government time to time, brick kiln owners are required to pay consolidated amount of royalty at the prescribed rates based on category of the brick kiln areas, after paying an application fee of ₹ 2000 per brick kiln. Further, the OTSS provides that if the brick kiln owner fails to make payment of consolidated amount of royalty, the competent officer shall stop such business and initiate certificate proceedings for realisation of outstanding royalty/penalty. Besides, interest at the prescribed rate may also be charged on the rent, royalty, fee or other sum due to the Government as per the OTSS. New rate of royalty as per notification of 2 November 2012 is ₹ twenty seven per thousand bricks.

We examined (between June 2015 and July 2015) the brick kiln register and other relevant records maintained in the individual files of the brick kiln owners in three¹² DMOs and observed that 39 brick kilns were in operation during the period October 2013 to March 2015. However, these brick kiln owners did not pay any royalty and permit fees for the period 2013-14 and 2014-15, as was specified in the scheme. The concerned District Mines Officers (DMOs) neither initiated action to stop their business nor made efforts to realise the royalty due of ₹ 17.48 lakh, interest of ₹ 6.72 lakh and permit fees of ₹ 78,000.

We reported the matter to the Government and the Department (July 2015 to September 2015). During exit conference the Government/Department accepted our observation and stated that action would be taken as per rules.

2.8 Short realisation of royalty on clay used for brick making

Royalty of ₹ 22.60 lakh was deposited by 61 brick kiln owners at pre-revised rate instead of ₹ 33.90 lakh leviable at revised rate. This resulted in short levy of royalty of ₹ 11.30 lakh on clay used for brick making.

Rule 21 of UPMMC Rules provides that the royalty shall be payable on the basis of revised rate from time to time. The rate of royalty and dead rent was revised with effect from 2 November 2012 by the State Government vide GO No. 2974/86- 2012-200/77 T C II Lucknow dated 2 November 2012. The rate of royalty for clay used for brick making was revised from ₹ eighteen per thousand to ₹ twenty seven per thousand with effect from 2 November 2012.

¹² Basti, Kannauj and Pratapgarh

We examined (June 2015) the brick kiln files in DMOs Kannauj and Pratapgarh and observed that the Department did not levy the royalty at revised rate in 61 cases out of 69 cases test checked during the period from August 2012 to May 2015. The brick kiln owners deposited royalty of ₹ 22.60 lakh at pre-revised rate instead of ₹ 33.90 lakh at revised rate. This resulted in short levy of royalty of ₹ 11.30 lakh.

We reported the matter to the Government and the Department (July 2015). During exit conference the Government/Department accepted our observation and stated that action would be taken as per rules.

