

U.S. fails to collect billions in fines

Not surprising – one bureaucrat imposes fines and another collects. They probably don't talk to each other.

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When a gasoline spill and explosion killed three young people in Washington state, officials announced a record penalty against a gas pipeline company: \$3 million to send the message that such tragedies "must never happen again."

When nuclear labs around the country were found exposing workers to radiation and breaking other safety rules, assessments totaling \$2.5 million were quickly ordered.

When coal firms' violations were blamed for deaths, injuries and risks to miners from Alabama to West Virginia, the companies were slapped with more than \$1.3 million in penalties.

What happened next with these no-nonsense enforcement measures? Not much. The pipeline tab eventually was reduced 92 percent, the labs' assessments were waived as soon as they were issued and the mine penalties largely went unpaid.

The amount of unpaid federal fines has risen sharply in the past decade. Individuals and corporations regularly avoid large penalties for wrongdoing – sometimes through negotiations, sometimes because companies go bankrupt, sometimes because of officials' failure to keep close track of who owes what under a decentralized collection system.

These are conclusions of an Associated Press examination of federal financial penalty enforcement across the nation, which also found:

- • The government is currently owed more than \$35 billion in fines and other payments from criminals and in civil cases, according to Justice Department figures. This is almost five times the amount uncollected 10 years ago – and enough to cover the annual budget of the Department of Homeland Security. A decade ago, Congress mandated that fines be imposed regardless of defendants' ability to pay, which has added tremendously to outstanding debt.
- • In 2004, federal authorities ordered \$7.8 billion in 98,985 fines, penalties and restitution demands in criminal and civil cases, but collected less than half of that.
- • White-collar crime cases account for the largest amount of uncollected debt. In a study, Government Accountability Office investigators found that just 7 percent of restitution in such cases is paid.

"Fines and orders to pay restitution are an important part of how we punish convicted criminals. When so little effort is made to collect that money, we allow convicted criminals to avoid punishment for their crimes, weaken our criminal justice system and ultimately deny justice to the victims of crimes," said Sen. Byron Dorgan, D-N.D., who has pressed for closer scrutiny for years.

The mechanisms of financial penalty enforcement are complex. To glimpse them, the AP filed Freedom of Information Act requests with a dozen federal agencies, seeking records on why and how they issue and collect administrative penalties and other assessments.

The AP reviewed the responses, which ranged across the spectrum of regulation – from penalties for an Illinois company's shoddy bike handlebars that resulted in knocked-out teeth to fines for selling tainted meat in Tennessee.

The AP also reviewed congressional and Justice Department reports on uncollected debt, and interviewed agency officials, prosecutors and individuals who were fined.

Although the government does collect billions each year in fines, penalties and restitution, success rates vary from agency to agency, region to region, case to case.

In many high-profile cases, fines are touted by authorities as proof that they are cracking down. Yet, frequently those orders are quietly negotiated to just a small fraction of their original amounts.

Documents provided to the AP by the Labor Department's Employment Benefits Security Administration, whose job is to protect pension and welfare benefits, showed that \$2,000 was the maximum amount paid on nearly a dozen penalties ranging from \$86,500 to \$180,000; these were for various violations, from failure to file reports to self-dealing by pension fund managers.

Why the reductions? Officials explained that compliance is the agency's goal, and that the law allows penalties to be reduced when companies make amends. Violators who don't comply risk being referred to the Treasury Department, which can collect by seizing federal benefits.

The Occupational Safety and Health Administration's written policy explains to inspectors that they can reduce penalties by as much as 95 percent, "depending upon the employer's 'good faith' (25 percent), 'size of business' (60 percent) and 'history of previous violations' (10 percent)."

Internal documents from U.S. Customs show that dramatically large fines may be cut sharply.

Agency files released under the AP's FOIA request listed, for example, a \$60,911,316 "commercial fraud" assessment for one company – but the case ended with a \$15,000 collection by Customs. The company explained that some paperwork was simply not in order: "no major problem."

Federal law exempts the national nuclear laboratories from most financial liability, but the Energy Department has issued \$2.5 million in fines against Los Alamos, Livermore and Argonne national laboratories since 2000. The fines – issued and waived in the same sentence – involved 31 workers who inhaled or touched radioactive or toxic materials.

"This is kind of an exercise in absurdity," said Greg Mello, who heads the Los Alamos Study Group, a nuclear disarmament activist organization in Albuquerque.

Even so, the Energy Department includes the fines in its annual reports to Congress and often announces them in press releases.

Last year, Congress tightened the rules so that as nuclear laboratory contracts are renewed, the fine waivers are eliminated. Eventually, DOE spokesman Jeff Sherwood said, nuclear labs will have to pay imposed fines.

The reason the DOE issued fines it could not collect was to show what the problems were and how bad, he said: "A \$1 million fine says something different than a \$10,000 fine."

Nearly seven years ago, a pipeline ruptured, spilling 230,000 gallons of gasoline into a creek near Bellingham, Wash. The fuel exploded into a fireball that ravaged the surrounding woods. And it killed two 10-year-olds playing in the woods and an 18-year-old who had gone to the stream to fish.

Authorities vowed to punish those at fault, and indeed, some company officials eventually served prison time.

But on June 2, 2000, the Transportation Department issued a forceful press release, announcing a \$3.05 million administrative penalty against the pipeline owner, Olympic Pipe Line Co.

This, it said, was the largest in the history of the federal pipeline safety program.

"Tragic events like this pipeline failure must never happen again," then-Transportation Secretary Rodney Slater said. But last year, the penalty was quietly reduced to \$250,000.

"They let them off with a slap," said Carl Weiner, who heads the Bellingham-based Pipeline Safety Trust.

Olympic Pipe Line officials disagree, saying they already paid \$11 million in state and Justice Department assessments and \$15 million in restoration and improvements.

The recent West Virginia coal mine deaths focused new criticism on enforcement tradeoffs made by mine safety inspectors.

During hearings in January, Sen. Arlen Specter, R-Pa., voiced outrage at how coal operators can whittle down fines.

He cited assessments by the Mine Safety and Health Administration against a company in an Alabama mine where 13 people were killed in 2001 – penalties reduced from \$435,000 to \$3,000 in what he called "a decision that harms workers and erodes MSHA's authority."

The Labor Department later announced plans to raise fine amounts, and in a case it called "precedent-setting" sought an injunction against a Kentucky mine operator and two companies he owns, which paid nothing on \$200,000 in penalties.

AP's Freedom of Information filing turned up numerous cases in which administrative penalties were ordered against mining companies for dangerous laxness in following rules – and yet records showed many went unpaid. Sometimes the violator escaped paying by declaring bankruptcy or ceasing operations.

When agencies can't get debtors to pay, the Justice Department may get the task of collecting a penalty. But the process is decentralized. The collection legwork falls to the 93 U.S. attorney offices around the country.

Although the backlog of uncollected debt has drastically increased, from \$6 billion in 1995 to more than \$35 billion in 2004, the number of financial litigation unit lawyers has remained steady, usually just one or two per prosecutor's office, supplemented by paralegals.

Reviewing the adequacy of staffing was one of 14 recommendations made by the GAO in 2001 to improve collection. A follow-up report two years ago still found "fragmented processes and lack of coordination."

The Justice Department office overseeing U.S. attorneys said it has made strides toward better coordination.

The 1996 Victims Mandatory Restitution Act requires judges to order payments regardless of a defendant's ability to pay. It's no coincidence, says Natalie Collins of the U.S. attorney's office in Las Vegas, Nev., that the uncollected debts have increased steeply since the law was passed.

Many people leave prison with a large debt they can't pay, she said. "We can't squeeze blood out of a turnip."