

May 27, 2003

The Honorable David M. Walker
Comptroller General
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Walker:

Three Department of the Interior (DOI) agencies – Bureau of Land Management (BLM), Office of Surface Mining, and the Minerals Management Service – all require financial guarantees in the form of surety bonds, cash or cash equivalents to insure reclamation of land and appropriate restoration after a company's mining and oil and gas operations cease. Last year, the Department of the Interior established a Bonding Task Force to address concerns that companies engaged in the production of mineral resources on the public lands would encounter difficulties in obtaining the required bonds. Companies feared that surety companies might impose stricter underwriting criteria and set higher premiums for the variety of bonds required for exploration, mining, and oil and gas production activities, apparently due to losses in the surety industry resulting from the attacks of September 11, 2001. Accordingly, some have advocated that DOI accept "corporate guarantees" as an alternative to bonds or cash equivalents.

The DOI has experience with corporate guarantees. In many instances, corporate guarantees have been inadequate to insure that restoration and reclamation occurs, particularly in instances in which companies declared bankruptcy or shifted their assets. In fact, it was concerns about the adequacy of such protections that led, in part, to the adoption of changes in the BLM's so-called "3809 regulations" regulating hard-rock mining. Although the extent of the problems resulting from inadequate reclamation efforts and the costs to the taxpayer of cleanup are unknown, there clearly are serious adverse environmental effects. For example, a 2000 U.S. Environmental Protection Agency report concluded that mining in the western United States had contaminated stream reaches in the headwaters of more than 40 percent of the watersheds in the West. Continuing acid mine drainage is an important component of such contamination.

Accordingly, this is to request that the General Accounting Office conduct a study to determine how corporate guarantees have worked in the past for hardrock and coal mining and oil and gas operations. At a minimum, this study should examine the following questions:

1) What uses have been made of corporate guarantees?

2) What were the amounts of the guarantees? How often and to what extent did the companies fail to fulfill such guarantees? In the instances in which companies failed to “make good” on such guarantees, what were the reasons?

3) What are the costs to taxpayers of cleanup, reclamation and restoration at sites partially or completely covered by corporate guarantees?

In addition, I am interested in learning about the results of the work of the Bonding Task Force. What is its current status? What recommendations has the Task Force made, particularly with regard to corporate guarantees? Is further work to be undertaken on the issues addressed by the Task Force? If so, who will do the work?

Upon completion of this study, I am requesting that GAO complete a second study of the availability and effectiveness of bonds for hardrock and coal mining and oil and gas operations. This study should, at a minimum, address the following questions:

1) What is the availability of bonds and other forms of financial assurance? What are their costs?

2) What are the reasons that companies have difficulties in obtaining such bonds? For example, is it due to an assessment that the company is a poor risk, or are there other factors?

3) Are the bond amounts being required adequate to insure full reclamation and resource protection?

4) In a situation involving split-estates (for example, publicly owned minerals and privately owned surface), are landowners and land resource values adequately protected by the amounts of the bonds which are required?

I would appreciate your staff working with Kathy Seddon, Minority Counsel, Governmental Affairs Committee staff, in the development of further questions to be examined during the course of these studies. Thank you for your assistance in this matter.

Sincerely yours,

Joseph I. Lieberman
Ranking Member

JIL:kjs