



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

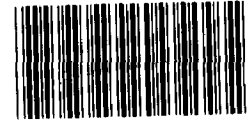
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ENERGY AND MINERALS
DIVISION

May 27, 1982

B-207451



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The Honorable James G. Watt
Secretary of the Interior

Dear Mr. Secretary:

Subject: The Proposed Colorado and Utah Cooperative
Agreements Should Be Modified to Reduce
State/Federal Duplication in Mine Plan
Review (GAO/EMD-82-87)

While reviewing the Department of the Interior's environmental analyses of coal mine plans, we identified a conflict in policy that warrants your immediate attention. Interior's Office of Surface Mining Reclamation and Enforcement (OSM) is simultaneously proposing two actions which are at cross-purposes: one would reduce State/Federal duplication during mine plan review; the other would allow it.

OSM is proposing to amend the Federal lands program regulations governing cooperative agreements with States (a means for reducing intergovernmental duplication) by requiring States to provide OSM with a combined technical and environmental analysis after mine plan review. At the same time OSM is proposing that Interior enter into cooperative agreements with the States of Colorado and Utah which do not require combined analyses. Under these proposed agreements, the State would prepare a technical analysis of each mine plan on Federal lands, and OSM would prepare an environmental analysis. To prepare the environmental analysis, OSM will have to review many of the same subjects the State had reviewed in preparing the technical analysis.

We support OSM's proposed amendments to the regulations to reduce State/Federal duplication. By requiring States to prepare combined analyses, OSM can

- reduce the mine plan review time and the corresponding costs,
- formalize a practice which it has included in the terms of cooperative agreements already approved involving two other States, and

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--support the Secretary's belief that States can and should be relied upon to assist with non-delegable responsibilities such as NEPA.

Since Interior pays its own review costs and, for States with cooperative agreements, also reimburses the review costs they incur, we estimate that requiring these two States to prepare combined analyses could save Interior over \$100,000 for mine plans now being reviewed. Additional cost savings could result from future mine plan reviews.

OBJECTIVE, SCOPE,
AND METHODOLOGY

Our objective was to determine if the environmental analysis of coal mine plans on Federal lands could be streamlined. We conducted our review at OSM headquarters in Washington, D.C., and at OSM's Western Technical Center in Denver, Colorado, (the office which oversees coal mining operations on almost all Federal lands). We interviewed officials from these offices and from two offices that would review mine plans under the proposed Colorado and Utah cooperative agreements: the Colorado Mined Land Reclamation Division and the Utah Division of Oil, Gas, and Mining.

We also examined the proposed Colorado and Utah cooperative agreements, the approved cooperative agreements with Wyoming and Montana, a draft of proposed amendments to the Federal lands program regulations, and various OSM instructions and budget documents. We obtained oral comments on a draft of this report from Department of the Interior officials and have incorporated their comments in the final report as appropriate.

We performed our review in accordance with the Comptroller General's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

REGULATIONS PROVIDE FOR COOPERATIVE
AGREEMENTS TO REDUCE DUPLICATION IN
REGULATING MINING

Before coal mining can take place on Federal lands, OSM must assure that mine plans comply with numerous laws, including the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the National Environmental Policy Act of 1969 (NEPA). These laws, their implementing regulations, and OSM guidelines allow the use of cooperative agreements to reduce State/Federal duplication in regulating mining on Federal lands.

SMCRA and its implementing regulations provide for cooperative agreements and set forth requirements for them. Through cooperative agreements, States can be delegated authority to regulate surface

coal mining and reclamation on Federal lands. Cooperative agreements are intended to reduce State/Federal duplication in regulating mining on Federal lands, but existing regulations do not specify how duplication will be reduced.

NEPA regulations allow agencies preparing environmental documents in compliance with NEPA to combine them with other agency documents to reduce duplication. Consequently, OSM has designed a combined technical and environmental analysis to reduce duplication during mine plan review. The technical analysis verifies compliance with SMCRA; the environmental analysis verifies compliance with NEPA. A combined analysis is advantageous because both SMCRA and NEPA require review of many of the same subjects (e.g., land, water quality, fish and wildlife, etc.).

PAST OSM POLICY CONFLICTS
WITH CURRENT POLICY AND
ALLOWS DUPLICATION TO OCCUR

Rather than requiring that all cooperative agreements contain the same terms, OSM has allowed Colorado and Utah to define the terms of their agreements. As a result, these States have opted to prepare only the technical analyses which allows duplication to occur during mine plan review. Such duplication should not occur in other States entering future agreements if OSM's proposed amendments to the Federal lands program regulations are implemented. In addition, such duplication is not envisioned under cooperative agreements already approved for two other States.

OSM officials told us that when Colorado and Utah proposed their agreements, OSM policy was to let the States decide whether to do both the technical and the environmental analyses. One OSM official felt that it would be illegal to require the States to prepare environmental analyses; however, he did not provide any specific basis for his opinion. We reviewed the legality of requiring States to prepare environmental analyses and found no apparent conflict with existing laws and regulations.

State officials in Colorado and Utah said they did not propose to prepare environmental analyses because States cannot make final decisions on NEPA compliance. However, even though Interior may not delegate final decisionmaking authority under NEPA, it may delegate preparation of environmental analyses.

Officials plan to develop a new technical analysis format that would include environmental analysis information as a part of the technical analysis document. However, under the terms of

the proposed Colorado and Utah cooperative agreements, those States would not have to follow the new format and prepare a combined analysis.

OSM policy has changed with regard to future cooperative agreements. OSM's proposed Federal lands program regulations would require that future cooperative agreements include terms obligating States to include environmental assessment information in their mine plan technical analysis. Thus, States would be preparing both analyses.

Montana and Wyoming, the only States that already have cooperative agreements, provide OSM with a combined technical and environmental analysis not required by the proposed Colorado and Utah agreements. Whereas Montana and Wyoming review the mine plan and prepare a combined technical and environmental analysis, Colorado and Utah plan to review the mine plan and prepare only a technical analysis. OSM would then prepare the environmental analysis, leading to duplicative review, i.e., OSM would not only review the State-prepared technical analysis, but also have to review the mine plan itself. OSM officials acknowledged that mine plan review would sometimes be necessary to supplement the information provided in the technical analysis.

DUPLICATIVE MINE PLAN
REVIEW IS TIME CONSUMING,
COSTLY, AND DELAYS APPROVAL

Under the proposed cooperative agreements with Colorado and Utah, the mine plan review could be more time consuming and costly than it is in other States. It also would likely delay approval.

Mine plan review takes longer when a State prepares the technical analysis and OSM prepares the environmental analysis than it does when a State prepares a combined analysis. Because both technical and environmental analyses require review of many of the same subjects, a State that has prepared a good technical analysis can complete the environmental analysis in only about 2 days, according to OSM officials. On the other hand, it can take OSM staff up to 2 weeks to prepare the environmental analysis.

The increased time required for two agencies to prepare separate analyses also increases the mine plan review cost. OSM generally pays States whatever it would have spent for mine plan review. If the proposed Colorado and Utah agreements are approved, Interior's mine plan review costs will increase. Based on the staff estimates discussed above, it could cost Interior an additional \$118,000 just for review of the Colorado and Utah mine plans already submitted. Thus, unless Interior reduces the review time (i.e., by requiring the States to prepare combined analyses), its future review costs could continue to be higher than necessary.

The proposed agreements would also likely delay mine plan approval. OSM officials said the length of delay would depend upon (1) whether OSM had to perform additional review to supplement the State-prepared technical analysis, (2) whether OSM had received a draft technical analysis early, and (3) whether OSM had staff available to immediately begin work on the environmental analysis when it received the technical analysis. The availability factor is especially important because of competing work priorities for OSM staff.

CONCLUSIONS AND RECOMMENDATIONS

OSM has been making a commendable effort to streamline regulations governing mine plan reviews as well as other aspects of coal development. Along this line, we believe further potential exists with respect to the proposed Colorado and Utah cooperative agreements. These agreements are inconsistent with those Interior already has with two other States, and they do not comply with OSM's proposed amendments to the regulations governing future agreements, both of which require States to provide OSM with a combined technical and environmental analysis of mine plans on Federal lands. By requiring States entering cooperative agreements to prepare combined analyses, Interior can reduce State/Federal duplication in mine plan review, decrease review costs, lessen delays in mine plan approval, and assure that States assume more responsibility for regulating mining on Federal lands.

The proposed cooperative agreements with Utah and Colorado create a significant potential for duplication. OSM officials agree, but argue that they will be able to reduce such duplication to an absolute minimum when the new regulations are in place. In addition, in commenting on a draft of our report, OSM officials also stated that they would introduce other guidance along with the regulations, which they felt would also help reduce duplication. However, we believe that OSM policy should be to avoid creation of situations which allow for duplication in the first place, rather than to knowingly enter into them and then argue that such duplication can be reduced at some unspecified future date. Therefore, we recommend that you require the Director, OSM, to

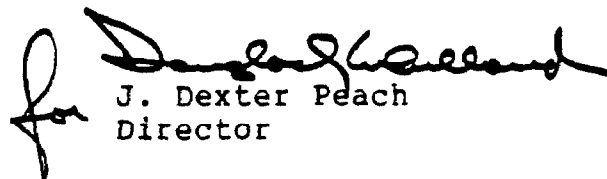
- modify the proposed cooperative agreements to require Colorado and Utah to prepare a combined technical and environmental analysis of each mine plan on Federal lands, or
- reduce payments to Colorado and Utah as well as to any other States that do not prepare combined technical and environmental analyses to cover OSM's increased costs.

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to the Chairmen of the four committees mentioned above; the Chairmen of the energy-related congressional committees; the Director, Office of Management and Budget; and the Director, OSM.

We appreciate the courtesy and cooperation extended to our staff during the review and would appreciate being informed of any actions taken as a result of our recommendations.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Dexter Peach". To the left of the signature is a small, stylized handwritten mark that looks like "for".
J. Dexter Peach
Director