COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-148623

Dear Mr. Chairman:

At your request we have evaluated the Department of the Interior's comments to you, dated October 11, 1972, on our report entitled "Administration of Regulations for Surface Exploration, Mining, and Reclamation of Public and Indian Coal Lands, Department of the Interior" (B-148623, Aug. 10, 1972).

This letter comments on the Department's views that:

--The Bureau of Land Management's (BLM's) procedures for preparing environmental impact statements were developed through formal and informal consultation with the Council on Environmental Quality (CEQ) and fully comply with the CEQ guidelines.

--Our report was not in all cases factual and accurate.

--Reclamation regulations (43 CFR 23 and 25 CFR 177) were fully implemented, and further clarification of BLM's regulations or the manual instructions and other implementing guidelines of the Geological Survey is unnecessary.

In considering the Department's views, we interviewed again those Department officials who had initially provided input into our report as well as other Department officials who were willing and able to provide information. Also we examined new evidence and documented files provided by the Department, and we met with CEQ officials.

BLM's procedures for preparing environmental impact statements

The Department stated that BLM's procedures--updated on May 4, 1972--fully comply with the CEQ guidelines.

After carefully reevaluating the procedures and discussing the matter with CEQ officials, we remain of the opinion

that the procedures do not provide adequate criteria to determine when and under what circumstances BLM should prepare individual environmental impact statements.

The BLM Manual 1792 transmittal sheet for the procedures, dated May 4, 1972, states:

> "Bureau actions requiring statements are not defined in absolute terms. Guidance should be sought in accordance with this Manual Section before an environmental statement is prepared."

Section 1.12B of the BLM procedures provides that BLM prepare a number of environmental statements which analyze BLM-wide programs, including policies, systems, and practices within those programs. The section provides further that BLM may prepare a statement for an individual action (such as a lease for mining coal) if the action deviates substantially from actions described in the appropriate BLM-wide statement, if the action is highly controversial, or if the appropriate BLM-wide statement does not provide sufficient detail to fully analyze significant environmental impacts of the action under consideration.

Although BLM has not yet issued a statement on its coal-leasing program, we have been advised that it is developing such a statement. We believe that, after BLM has issued this statement, criteria will be necessary to identify those actions which qualify as exceptions to the program and which justify individual statements.

On October 26, 1972, the Chairman of CEQ wrote to the Secretary of the Interior and expressed concern over the adequacy of the present regulations for managing and protecting the surface resources associated with coal mining on public lands. The Chairman said:

> "*** We recommend that the Department give serious consideration to the adoption of regulations that

would strengthen its ability to more effectively manage the coal resources on public lands. We feel that regulations patterned along the lines of those adopted this past June dealing with leasable minerals other than coal (Federal Register, June 1, 1972) could be promulgated now and serve as interim regulations, pending the completion of your environmental analysis of the coal leasing program. In light of the GAO report [B-148623, Aug. 10, 1972], and widespread concern over implementation of the proposed legislation mentioned above, we urge you to accelerate completion of that analysis and preparation of an environmental impact statement on your overall coal leasing program. The analysis and impact statement should serve as the basis for determining the need for additional changes to coal leasing regulations."

On October 27, 1972, CEQ officials advised us that, although the Department's procedures are capable of complying with the National Environmental Policy Act, BLM's performance to date--the failure to prepare statements--indicates that the procedures have not been very effective.

Statement regarding factual accuracy

The Department questioned the number of permits and leases cited in our report as lacking

--technical examinations to determine the effects that the proposed exploration or mining would have on the environment;

--approved exploration or mining plans, which are essential elements of control in protecting the environment; and

--adequate compliance and performance bonds covering the requirements, including reclamation requirements of permits and leases.

To resolve these differences, we examined files and related documentation for the 53 cases involving public lands. Our comments follow.

1. Technical examinations

Of the 65 BLM and Bureau of Indian Affairs (BIA) leases and permits cited in our previous report, the Department commented only on the 53 BLM cases.

The Department stated that 10, rather than the 23 cited in our report, did not have technical examinations before issuance, extension, or adjustment. The Department provided supporting documentation for two of the 13 cases in question. BLM officials informed us that they assumed technical examinations had been made for the remaining 11 cases because environmental stipulations had been included in the permits and leases and/or because correspondence between BLM and the Forest Service indicated that technical examinations might have been made. The officials had no evidence to support their assumption.

2. Approved exploration of mining plans

The Department stated that two of the seven permittees cited in our report as operating without approved plans had plans, and BLM provided us with copies of such plans. The Department stated that the Geological Survey had discovered during its routine examinations that the remaining five permittees were operating without approved plans. We believe that this indicates a need to strengthen procedures to insure that exploration and mining plans are submitted and approved before operations begin, as required by the Department's regulations.

Our report stated that one lessee was operating without an approved plan. The Survey showed us evidence that the lessee now has an approved plan but that the Geological Survey approved the plan after the lessee had begun operations.

3. Compliance and performance bonds

Our report cited two BLM cases and one BIA case in which compliance or performance bonds were not adequate to satisfy the requirements of the regulations.

The Department stated that one BLM case--NM 8745--involved an assignment of a 51-percent undivided interest that was covered by a $75,000 nationwide bond and that a compliance bond covered the entire operation. We pointed out to BLM officials--and they agreed--that BLM had not obtained a performance bond for the remaining 49-percent interest.

The Department stated that the second BLM case--W 9035--involved privately owned surface rights and that BLM had approved the permit before the manual guidelines clarified the application of the regulations to privately owned surface lands. Our review had shown that the surface was partially public lands, and BLM did not provide any documentation to show otherwise. Therefore, we believe that BLM should have obtained a performance bond.

For the BIA case in question, the Department--subsequent to the issuance of our report--provided us with a copy of a second bond that the operator had submitted. This bond meets the requirements of the regulations.

Reclamation regulations and instructions

The Department disagreed with our recommendation that guidance be provided to clarify the requirements of the reclamation regulations and concluded that:

> "*** further clarification of 43 CFR 23.5(a), 23.7, and 23.8 and BLM Manual Section 3509 and other implementing guidelines of the Geological Survey is unnecessary."

We continue to believe that, although the Department has made significant progress in the past 4 years in issuing and implementing its reclamation regulations, further clarification and guidance is necessary.

The regulations require that BLM make a technical examination for every application for a permit or lease under the

Mineral Leasing Act, as amended (30 U.S.C. 181). BLM manuals state that a technical examination should be based on data available in the field office and should be supplemented by a field examination of the proposed operation, when necessary.

We found that many required technical examinations had not been made. The Department has taken the position that technical examinations based on field examinations are not necessary for all permits or leases. The Department's letter to you notes that:

> "Field personnel of the surface managing agencies are quite familiar with lands under their jurisdiction. Good environmental stipulations can be developed without site examination."

This comment appears somewhat inconsistent with another comment in the same letter, in which the Department notes:

> "However, with 3,200 mineral leases, licenses, and permits under supervision embracing nearly six million scattered acres of Federal and Indian lands, and with limited personnel available to accomplish the work, it has become necessary to handle work on a priority basis."

If the Department's policy is to be that site examinations are not required in all cases, it should issue instructions on the specific circumstances under which site examinations would not be required and on the documentation required to support such determinations.

We discussed this matter with CEQ officials who generally agreed that adequate technical examinations and meaningful environmental stipulations could not be developed without site examinations of proposed operations.

The Department acknowledged in its letter to you that, in some instances, technical examinations had not been made and approved mining plans had not been required because of a misunderstanding on the part of field personnel. The Department contended, however, that the manual guidelines dated

November 9, 1970, eliminated such misunderstandings. Our review showed that in calendar year 1971, after the guidelines were issued, these problems were still occurring. Accordingly, we concluded that further clarification was necessary to insure effective implementation of the regulations.

Notwithstanding the Department's earlier position that further clarification of the reclamation regulations is unnecessary, officials of BLM and the Geological Survey subsequently informed us that they had begun to revise the implementing instructions as well as the regulations themselves.

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As discussed with your office, we did not obtain the Department's comments on this letter in order to expedite its issuance.

As required by section 236 of the Legislative Reorganization Act of 1970, the Department distributed copies of its response to you to the House and Senate Committees on Government Operations and Appropriations. We believe that this letter would be of interest to these Committees. However, we will release this letter only if you agree or publicly announce its contents.

Sincerely yours,

Comptroller General
of the United States

The Honorable Henry S. Reuss
Chairman, Conservation and Natural
Resources Subcommittee
Committee on Government Operations
House of Representatives