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BY THE COMPTROLLER GENERAL RELEASED

Report To The Chairman, Subcommittee On Environment, Energy, And Natural Resources Committee On Government Operations House Of Representatives

OF THE UNITED STATES

The Department Of The Interior's Office of Surface Mining Should More Fully Recover Or Eliminate Its Costs Of Regulating Coal Mining

The Department of the Interior's Office of Surface Mining Reclamation and Enforcement (OSM) is spending about $65 million annually to implement regulatory program requirements of the Surface Mining Control and Reclamation Act of 1977. The act requires the regulatory authority, whether OSM or that of a state with an OSM-approved program, to charge fees to mining operators for reviewing, enforcing, and administering coal mine operating permits and authorizes that the amount of such fees can fully recover costs.

The OSM and states assess certain fees, but the fees recover only a small portion of their program costs. GAO found that if OSM and states fully recovered their regulatory costs, OSM could save over $50 million a year and the impact on coal demand and production would be minimal.

GAO recommends that the Secretary of the Interior collect fees that fully recover OSM's regulatory costs, phase out or substantially reduce financial assistance to states, and encourage states to fully recover their own costs.

UNITED STATES GENERAL ACCOUNTING OFFICE

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

B-213291

The Honorable Mike Synar
Chairman, Subcommittee on Environment,
Energy, and Natural Resources
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This report discusses the costs that the Department of the Interior's Office of Surface Mining incurs for regulating coal mining, measures which the office could use to recover or eliminate much of these costs, and the impact that recovering these costs by the office and states would have on coal production and demand.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Charles A. Bowsher
Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT TO THE CHAIRMAN, SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL RESOURCES, COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

THE DEPARTMENT OF THE INTERIOR'S OFFICE OF SURFACE MINING SHOULD MORE FULLY RECOVER OR ELIMINATE ITS COSTS OF REGULATING COAL MINING

DIGEST

To control the environmental damage caused by coal mining, the Congress enacted the Surface Mining Control and Reclamation Act of 1977. The act sets standards for coal mining operations, requires continuous land reclamation, and calls for regulations and enforcement procedures to see that the standards are met. The standards control the surface effects of both underground and surface mining.

Recognizing that mining practices and conditions vary widely among the coal-producing states, the act encourages the states to assume primary responsibility for regulating coal mining on state and private lands. The Office of Surface Mining Reclamation and Enforcement (OSM) was established within the Department of the Interior to oversee the development of the states' programs. In addition, where states decline to assume authority or do not adequately carry out their responsibilities, the act directs OSM to regulate coal mining.

Twenty-four states now have primary authority to regulate coal mining within their borders.[1] In three other states, OSM is the regulatory authority because these states either chose not to develop their own programs or have relinquished them. OSM also regulates coal mining activities on federal and Indian lands, in some cases sharing the authority on federal lands with state governments. Altogether, some 10,400 mines, producing an estimated 800 million tons of coal, required regulatory permits from either a state agency or OSM in order to operate in fiscal year 1984. (See pp. 1-3.)

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[1]At the time of GAO's review, 25 states had primary regulatory authority. On October 1, 1984, one of these states relinquished its authority to OSM while it revised its own program.

The Surface Mining Act requires the regulatory authority--either the state or OSM--to charge coal mine operators a fee that can cover less, but not more than, the agency's full costs to review, administer, and enforce coal mining permits. Interior Department and presidential policy require federal agencies to recover as much of their regulatory costs as possible through user fees. Likewise, GAO has long held that federal agencies should recover their costs as fully as possible whenever they provide goods, services, or privileges that benefit identifiable recipients. This position has also been upheld in a series of court decisions that have found that costs may be recovered from regulated industries when the services provided are necessary to a company's operation. (See p. 5.)

In this report, GAO's objectives were to estimate OSM's costs to regulate coal mining and assess how OSM could more fully recover its costs through permit fees and other means available under the Surface Mining Act. OSM's costs include those incurred directly for its own regulatory programs, as well as those incurred indirectly in the form of grants to states,[2] and research and oversight in support of state and federal regulatory programs. Because savings to the government would come from the transfer of costs to coal operators, GAO analyzed the effects on coal production of OSM recovering or eliminating these costs. (See pp. 4-6.)

OSM COULD SAVE OVER $51 MILLION A YEAR IN REGULATORY COSTS

GAO found that OSM spent close to $65.4 million in fiscal year 1984 to regulate coal mining operations. A total of about $51.5 million was allocated as follows: to administer its own

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[2]As authorized by the Surface Mining Act, OSM provides grants to those states willing to assume responsibility for regulating coal mining on state and private lands within their borders. Under a separate grant program, OSM also awards funds to states that elect to regulate coal operators on federal lands within their borders.

regulatory programs ($9.3 million), and to provide states with grants for regulating mining on federal lands ($5 million) and state and private lands ($37.2 million). The agency spent another $13.9 million for research, oversight, and other activities in support of both its own and state regulatory programs. About $29,000 was recovered through permit fees. (See pp. 9, 17, and 22.)

OSM should use existing authorities to recover or eliminate over $51 million of these costs by assessing permit fees to fully recover its own regulatory costs, and phasing out or substantially reducing grants to states. Recovery of support costs for research, oversight, and other activities ($13.9 million), however, would require enactment of a special tax. GAO's analysis indicates that recovery of all of these costs would have little effect on coal demand or production. (See pp. 15-16, 20-23, and 25.)

<u>OSM should seek full recovery of its own regulatory costs</u>

In those programs it administers directly--on federal lands, Indian lands, and in the three states without their own regulatory programs--OSM should assess operators the actual costs OSM incurs to review, administer, and enforce permits. GAO estimates that about $9.3 million could be recovered annually in this way. (See pp. 9-11.)

Currently, OSM collects permit fees, but only from operators on federal lands that are regulated solely by OSM. Moreover, OSM set these fees to be consistent with those charged by the state in which the mines are operating. The states' fees, however, are generally well below OSM's costs. (See pp. 11-12.)

OSM has proposed regulations to increase its fees and extend them to all mine operators it regulates. However, while these anticipated fees will be based on the actual costs of processing permits, they may not include OSM's costs for routine inspections of mine operations or other enforcement activities. OSM is concerned that recovering the costs of inspection and other enforcement activities will impose an additional economic burden on mine operators. The Surface Mining Act provides, however, that small coal operators can get financial assistance from OSM or state regulatory authorities.

GAO believes that OSM can take steps to reduce fees for small operators, while still collecting costs of enforcement activities from others. (See pp. 12-13.)

OSM should phase out or substantially reduce grants to states

Under the Surface Mining Act, OSM provides grants to assist states in the development, administration, and enforcement of their programs to regulate mining on state and private lands. States can also receive grants to regulate mining on federal lands if they have approved programs and cooperative agreements with Interior.

Although the states could fully recover their costs directly from operators, the grants have not given them a reason to do so. However, GAO believes that it is inequitable for permit-related costs to be borne by taxpayers in general, in the form of federal grants, rather than the beneficiaries, in this case, coal operators. If OSM were to phase out its grant programs, the states would have greater incentive to raise their permit fees or otherwise support their regulatory programs. If this were done, OSM could save up to $42.2 million annually--$5 million to regulate mines on federal lands and $37.2 million for ones on state and private lands. (See pp. 13-14 and 17-18.)

State regulatory officials in six of the eight states GAO contacted (the largest coal-producing states within the major coal-producing regions) believe that their states would be able to substitute other sources of funds--either permit fees, general revenues, or some other tax revenues--for the grants. They are concerned, however, that the states be given sufficient time to secure adequate funds and personnel before the grants are terminated or reduced. On the other hand, some states, when faced with the loss of grants, may turn over coal mining regulation to the federal government. Two of the state officials GAO talked with thought that this might happen, as did officials of five other states commenting on the draft report. (See pp. 20 and 35.)

Regulatory officials are also concerned that OSM continue to provide grants to states to help support small operators who might be forced out of business by increased charges. In four states, small operators are a sizable portion of those regulated. The Surface Mining Act allows OSM to provide financial aid to small coal operators, and GAO recognizes that some assistance with permit fees may be necessary for small operators. (See p. 19.)

Recovery of support costs would require legislation

In overseeing the implementation of the Surface Mining Act, OSM, along with Interior's Office of the Solicitor, spends $13.9 million on activities that support both state and federal regulatory programs. These include mining-related research, technical assistance, development of regulations, and mine inspections and reviews of state-issued permits to check for compliance with federal law. Court decisions of recent years have held that federal agencies may charge fees only for activities that benefit an identifiable recipient. Since OSM's support activities do not benefit any single permit holder, OSM could recover costs for these activities only if the Congress were to levy a special tax on coal mine operators for that purpose.

Although the Surface Mining Act does not authorize such a tax, coal mine operators as a group are the beneficiaries of OSM oversight activities, rather than the general public. Since the Surface Mining Act now imposes a tax, called a fee, on operators to pay for reclamation of abandoned mine lands, OSM already has the capability to collect an additional tax if the Congress wants to recover support costs. (See pp. 22-24.)

FULL COST RECOVERY WOULD HAVE LITTLE IMPACT ON COAL DEMAND AND PRODUCTION

Fully recovering both state and federal government regulatory costs, including OSM support costs, would not affect nationwide demand for coal and would cause little change in where coal is produced. Production cost increases would vary among states from 3.8 cents to 38.8 cents a ton, with 11.7 cents the national average. If these increases were fully reflected in price, demand for coal would be unaffected because coal would still be considerably cheaper than other fuels for electricity generation, its principal use. (See p. 25.)

GAO used the Department of Energy's Coal Supply and Transportation Model to determine whether these cost increases might affect the distribution of coal production in the U.S., and found that by 1990, these cost increases could shift about 1.5 million tons of coal production from Pennsylvania to West Virginia.[3] No other significant changes in distribution or production were projected. Subsequent to GAO's analysis, Interior performed its own analysis of impacts by coal mining regions if regulatory costs were passed on to coal operators, and reached similar conclusions. (See pp. 26-28.)

Because of the difficulty in obtaining the necessary financial data, GAO did not attempt to analyze the effect of cost recovery on a representative sample of companies or segments of the coal industry. To obtain an overview of how cost recovery might affect the coal industry, GAO interviewed officials of three major coal associations and eight firms operating in 16 states. Officials of three companies said that even a small production cost increase would be significant, either because they were not able to pass through any increase to their customers or because their companies were not operating at a profit. (See pp. 7 and 28-29.)

While admitting that additional costs would not be welcome, officials of five other companies confirmed that an increase of from 10 to 12 cents a ton would have only a minimal effect on their overall costs because the per ton increase is small and these costs can usually be passed through to their customers. These officials, as well as coal association officials, said that the increase in costs would be a burden to small operators. As noted earlier, this could be mitigated by some continued level of support for small operators. (See p. 29.)

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[3]The Coal Supply and Transportation Model was developed to assess the effect of various government policies on the coal industry and to project coal production and distribution. The model's input comes from reports filed by each coal mine and major consumer in the U.S. As a result, it is considered comprehensive in scope and its data highly reliable.

RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

In adhering to presidential and Interior Department policy, OSM is planning to increase its permit fees to recover more fully its cost of regulating coal mining operations. This is consistent with both the Surface Mining Act and recent actions taken by other regulatory agencies.

Most OSM costs, however, will not or may not be recovered through increased permit fees. These include (1) enforcement costs, because of OSM's concerns about economic hardship to operators, (2) OSM grants, which partially reimburse the states for the cost of their regulatory programs, and (3) support costs, which GAO believes cannot be recovered without the Congress enacting a special tax for this purpose.

To recover regulatory costs more fully, GAO recommends that the Secretary of the Interior require the Director of the Office of Surface Mining to calculate and assess permit fees that are based on OSM's actual costs to review, administer, and enforce coal mining permits on federal and Indian lands and in states with OSM programs. In addition, GAO recommends that the Interior Secretary phase out or reduce grants to states, giving them time to accommodate this loss of funding, and, if needed, continue states' grants to assist only small operators. (See pp. 16-17, and 20-21.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

While OSM has the authority necessary to recover or eliminate most of its regulatory costs, it cannot now recover the costs of activities in support of federal and state regulatory programs. If the Congress believes these support costs should be recovered, it may wish to consider enacting a special tax on coal operators. The tax would be based on a formula calculated to recover the costs incurred by Interior in overseeing state programs, providing technical assistance, and for its other support activities. (See pp. 23-24.)

AGENCY, STATE, AND INTEREST GROUP COMMENTS

Because of potential effects of its recommendations, GAO asked the governors of 27 states where coal is or will be mined to comment on a draft of this report. Officials of three organizations representing many of these states, three coal industry associations, and six environmental and citizen groups, as well as Interior, were also asked to comment. In addition to Interior, 19 of the 27 states replied, as did about half the other groups. Chapter 6 and appendix V summarize the comments received and provide GAO responses. The full text of the comments received is in appendix IV.

Interior found the report to contain a number of interesting ideas that it planned to examine in more detail. It was concerned, as were a number of states and industry groups, that GAO's conclusions had not adequately considered the local and regional differences in the costs of mining regulation and the inter-regional effects of cost recovery. As explained in the draft report, GAO's analysis does take these differences into account and examines the impact of cost recovery on a state-by-state basis. These statewide data are now included in appendix II. Other Interior comments are discussed in the report. (See pp. 30 and 41-42.)

All of the states who commented, along with the coal industry associations, objected strenuously to some or all of GAO's recommendations for greater cost recovery. Only environmental and citizen groups specifically favored the concept of recovering costs under the Surface Mining Act.

Many of those who raised objections were against cost recovery in principle, arguing that since the public benefits from surface mining regulation, it should continue to bear these costs rather than transfer them to coal operators. Many states were opposed to GAO's proposals because they feared the adverse effects of increased costs on coal operators, especially small operators. All of the states objected to the elimination of OSM grants, either for administration and enforcement or for cooperative agreements. (See pp. 32-33 and 35-37.)

Six states said that they could not or would not replace grant funds with other revenues or fees assessed against coal operators, and might therefore have to relinquish coal mining regulation to the federal government. A number of reviewers also found fault with GAO's impact analysis, claiming that certain factors such as lost jobs, salaries, and tax revenues had been omitted; these comments are addressed in the report. (See pp. 35 and 41-42.)

GAO disagrees with some of these criticisms or concerns. As mentioned earlier, sufficient policy and legal precedent exist to justify the full recovery of OSM's regulatory costs. GAO acknowledges that full cost recovery could lead some states to give up their regulatory programs and that some coal companies, especially small ones, might find any production cost increase, no matter how small, a significant burden. As the report points out, however, surface mining regulation will still continue under federal auspices if state programs end. And if OSM wishes to, it may continue to provide some level of support to cover the costs of small operators who cannot afford to pay their full share. (See pp. 37-40.)

C o n t e n t s

ILLUSTRATIONS

ABBREVIATIONS

AMC	American Mining Congress
Btu	British thermal unit
DOE	Department of Energy

ABBREVIATIONS

EIA	Energy Information Administration
EPI	Environmental Policy Institute
FCC	Federal Communications Commission
FERC	Federal Energy Regulatory Commission
GAO	General Accounting Office
IMCC	Interstate Mining Compact Commission
IOAA	Independent Offices Appropriations Act
MARC	Mining and Reclamation Council of America
NCA	National Coal Association
NCA/AMC	Joint National Coal Association/American Mining Congress Committee on Surface Mining Regulations
NRC	Nuclear Regulatory Commission
NPRC	Northern Plains Resource Council
OSM	Office of Surface Mining Reclamation and Enforcement
PLI	Public Lands Institute

CHAPTER 1

INTRODUCTION

Coal mining affected roughly 1.3 million acres of land in the United States in 1983. If unchecked, mining activities can cause substantial damage to the environment, including soil erosion and water pollution, as well as permanent loss of productive land. Beginning in the late 1930's and 1940's, a number of coal-producing states enacted legislation to control these effects, but these laws afforded widely varying degrees of protection. Finally, in 1977, the Congress enacted the Surface Mining Control and Reclamation Act (30 U.S.C. 1201) to provide uniform, minimum standards of environmental protection and land reclamation to control the surface effects of both underground and surface mining operations. Besides prescribing future mining practices, the act contained provisions for reclaiming abandoned mine lands.

Since coal mining takes place in 27 states, under different mining conditions and practices, the Surface Mining Act encouraged the states, rather than the federal government, to assume primary responsibility for regulating coal mining on state and private lands.[1] The Office of Surface Mining Reclamation and Enforcement (OSM) was created within the Department of the Interior to oversee the development of these state regulatory programs. OSM has established regulations for carrying out the act, reviewing and approving or disapproving the state programs, and providing various forms of assistance to the states. In addition, where states decline to assume authority or do not adequately carry out their responsibilities, OSM is directed to take over coal mining regulation to ensure that the standards of the act and regulations are upheld.

STATE AND FEDERAL REGULATORY PROGRAMS

Altogether, some 10,400 mines, producing an estimated 800 million tons of coal, required regulatory permits from either a state agency or OSM in order to operate in fiscal year 1984. At the time of this review, 25 states had primary authority to regulate coal mining on all state and private lands within their borders.[2] These so-called primacy states have each enacted laws that parallel the federal Surface Mining Act and have promulgated regulatory programs that are consistent with federal law and regulation and have been approved by the Secretary of the

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[1]One other state (Mississippi) is considered a coal mining state, but has no coal production at present.

[2]As of October 1, 1984, Tennessee had relinquished regulatory authority to OSM while it revised its own program. OSM has been carrying out the inspection and enforcement portions of state programs in both Tennessee and Oklahoma since April 1984.

Interior. Two other coal states chose not to adopt their own regulatory programs, and in these cases, OSM programs are in place.

In addition to these two states, OSM also regulates coal mine operators on federal and Indian lands, although the Congress expected that the Indian tribes would eventually take over regulatory responsibilities on their lands. While regulation on federal lands remains OSM's responsibility, the law permits the agency to delegate certain of its authorities to states with approved programs. Under this arrangement, the Secretary of the Interior and a state enter into a contract, called a cooperative agreement, that empowers the state to regulate certain activities on federal lands within its boundaries.

When OSM is the regulatory authority, it is supposed to process applications for permits to mine coal, annually perform eight partial and four complete inspections of each mine, issue citations for identified violations, and assess and collect civil penalties. When states have primary regulatory authority, OSM monitors and assists their performance by, for example, conducting its own occasional inspections and reviewing a sample of permits for consistency with the act and approved state programs. In addition, OSM--as authorized by the Surface Mining Act--can award annual grants that partially reimburse the states for the cost of their regulatory programs on state and private lands. If the state also elects to enter into a cooperative agreement to regulate operators on federal lands, OSM can increase the grants up to the amount the federal government would otherwise have spent.

In all, surface mining activities are regulated under five different programs administered by the states, OSM, or both. The table that follows describes and summarizes these programs.

Table 1

Summary of Regulatory Programs

Program	Regulatory activity or function: Permit processing and issuance	Mine inspections and other enforcement activities	Oversight and other program monitoring	Mining plan review[a]
State/private lands in primacy states	state	state	OSM	N/A[b]
State/private lands in nonprimacy states	OSM	OSM	N/A	N/A
Federal lands in states with cooperative agreements	state	state	OSM	state and OSM[c]
Federal lands in states without cooperative agreements	OSM	OSM	N/A	OSM
Indian lands	OSM	OSM	N/A	N/A

[a]All applications to mine on federal lands must be accompanied by a plan of operations, called a mining plan.

[b]N/A means not applicable.

[c]Although a state may review mining plans in order to enforce state law, only the Secretary of the Interior has the authority to approve such plans under federal law.

REGULATORY PROGRAM COSTS AND FEES

Since fiscal year 1978, OSM has spent $446 million for its own and state regulatory programs. In fiscal year 1984, these expenditures totaled $65.4 million (see table 2). About $9.3 million went toward those programs that OSM administers directly on federal and Indian lands and in the nonprimacy states. In addition, OSM funded about $5 million in the form of assistance grants to states with which the agency has cooperative agreements for regulating federal lands.

By far the largest single expense was OSM's administration and enforcement grants to partially reimburse the states for their regulatory programs on state and private lands, for which OSM spent about $37.2 million in fiscal year 1984. Finally, OSM spent close to $13.9 million for activities that generally support both its own and state regulatory programs, without being related to any single permit, such as mining-related research, development of regulations, and overall monitoring of state and federal regulatory programs. The states' share of expenditures for surface mining regulation in fiscal year 1984 was about $28.5 million, bringing the total cost of coal mining regulation--to both state and federal governments--to $93.9 million.[3]

Table 2

Costs of State and Federal Regulation of Surface Mining[a] (FY 1984)

	Costs (millions)
Federal	
Federal and Indian lands, and nonprimacy states	$ 9.3
Cooperative agreement grants	5.0
Administration and enforcement grants	37.2
Support costs	13.9
Total federal	$65.4
State	
States' share of regulatory program costs	28.5
Total state and federal	$93.9

[a]Based on OSM's estimate contained in its fiscal year 1984 budget request.

Under section 507(a) of the Surface Mining Act, many of these costs can be recovered by the regulatory authority--either the state or OSM--through permit fees assessed against coal mine operators. The law states:

> "Each application for a surface coal mining and reclamation permit pursuant to an approved State program or a Federal program under the provisions of this Act shall be accompanied by a fee as determined by the regulatory authority. Such fee may be less than but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing such permit issued pursuant to a State or Federal program."

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[3]In this report, "coal mining regulation" and "surface mining regulation" both mean only regulations under the Surface Mining Act and do not include health and safety regulations that apply to coal mining.

OSM has been collecting fees since October 1983, but only from coal operators on the federal lands it regulates solely. OSM has not been assessing coal operators on Indian lands, federal lands under cooperative agreements, and the two nonprimacy states, but is changing its regulations to do so. Each of the states with an approved program also assesses a permit fee in an amount set by state law or regulation ranging from $5 to $2,500 plus $25 per acre. Generally, however, OSM and state fees are not intended to recover costs and, in most cases, are less than $500.

COST RECOVERY GOALS

We have long held that federal agencies, in general, should recover their costs as fully as possible whenever they provide goods, services, or privileges that benefit identifiable recipients.[4] For regulated industries, these costs should be treated as part of the expense of doing business and borne by consumers rather than the general public. We also believe that when federal funds are used indirectly to subsidize identifiable beneficiaries, as in the case of grants to state and local governments, federal agencies should encourage the recovery of their expenditures by requiring reimbursement or eliminating grants altogether. It continues to be our view that assessing costs against beneficiaries rather than taxpayers in general promotes efficiency and economy in government operations. Even when the goods, services or privileges provide benefits to the public--assuring its safety, for example--the courts have held that the federal government may recover its costs from regulated industries when the services are necessary to a company's operation and public benefit is incidental.[5]

For OSM, full cost recovery is a goal set by both Interior Department and presidential policy. According to Interior's Financial Management Manual (May 1982), all bureaus and offices are required to establish charges that recover the organization's costs, direct and indirect, as long as these charges do not conflict with any statutory authority. Interior's policy, in turn, is based on the Independent Offices Appropriations Act (IOAA) of 1952,[6] which authorizes federal agencies to impose user fees for certain goods and services.

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[4]See, for example, The Congress Should Consider Exploring Opportunities To Expand and Improve the Application of User Charges by Federal Agencies, (PAD-80-25, Mar. 28, 1980).

[5]Mississippi Power and Light Co. v. Nuclear Regulatory Commission, 601 F. 2d 223 (5th Cir. 1979). See ch. 6 for a further description of this case.

[6]31 U.S.C. 9701.

In addition, a 1981 statement by the President declared an administration policy to recover allocable federal costs through user fees. In proposing to eliminate what he termed unnecessary or unwarranted subsidies, the President called for recovering federal costs wherever any beneficiaries--that is, persons who receive special services, goods, or licenses--besides the general public could be identified.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of our review was to identify how OSM could most fully recover its regulatory costs using permit fees and other means available under the Surface Mining Act. During the review, our work came to the attention of the Chairman, Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations. At the Chairman's request, we are addressing our findings to him. (See app. I.)

Our first task was to determine OSM's overall regulatory costs by program. Although we had originally hoped to determine these costs from OSM's financial records, we found that their records are kept by operating group, rather than program. We therefore used estimates of OSM's costs, as reflected in its fiscal year 1984 budget, and allocated them to the different programs. When necessary, we interviewed OSM budget officials at headquarters to determine how to make these allocations.

In addition to the costs of each program, we wanted to determine a range of costs associated with processing and enforcing OSM-issued permits. To do so, we visited the OSM technical centers in Denver, Colorado, and Pittsburgh, Pennsylvania, where permit applications are processed. At each center, we reviewed all records pertaining to those permit applications for which enough information was available to allow us to determine processing costs. In all, we were able to obtain data for 51 permit applications then on file. Through interviews with OSM personnel and a review of pertinent records, we developed estimates of staff time spent on processing each permit, as well as travel and contract expenses. Overhead was also included at a rate we developed in conjunction with OSM.

Routine enforcement costs were derived from OSM's budget. Since the Surface Mining Act requires 12 inspections per mine per year, we simply took OSM's fiscal year 1984 budget allocation for inspections and divided it by the number of OSM-regulated mines. This produced an average inspection cost per mine. We verified this cost through our own analysis of OSM costs, based on a review of OSM records and staff interviews.

We then discussed our calculations of permit processing and enforcement costs with OSM's budget director and his staff, as well as with the technical services staff whose office had also estimated average permit processing costs. We found a reasonable similarity between their estimates and ours.

Having determined the extent of OSM's costs, we next wanted to assess the effects of transferring both state and federal regulatory costs to coal operators. Because the states submit estimates of their costs to OSM, we used these estimates rather than attempting to calculate them ourselves or obtain them directly from the states. Our analysis used the Department of Energy's Coal Supply and Transportation Model to test the sensitivity of coal production to increases in regulatory costs among 27 coal-producing states. The model was developed to analyze the effect of various government policies on the coal industry and to project coal production and distribution. Analyses have been conducted for the Army Corps of Engineers and the Interstate Commerce Commission, among others. (See ch. 5 for further details.) We discussed our analysis with staff of the Energy Information Administration's Coal Division and with two consulting economists who are familiar with the use of simulation techniques to predict changes in energy supplies and demand.

Our analysis did not take into account the effect of cost recovery and production cost increases on representative companies or segments of the coal industry. Such an analysis would have required an examination of the financial records of a large sample of coal companies in the United States. Because of the difficulty and expense involved in obtaining these data, we decided instead to interview officials of three major coal associations--the National Coal Association, the Mining and Reclamation Council of America, and the American Mining Congress--as well as coal company officials to determine, generally, how production cost increases in the range of 10 to 12 cents a ton might affect the coal industry. These amounts were suggested by our preliminary analyses of average costs nationwide.

Although we had hoped to interview more, officials of only eight companies agreed to talk with us, and then on condition that we not reveal their firms' names. These eight companies were identified for us by the Mining and Reclamation Council of America who polled its membership to find coal companies willing to be included in our survey. These companies represent a fairly broad cross-section of the coal industry, however, ranging in size from middle-sized companies producing 200,000 tons a year to large companies, one of which produces 40 to 50 million tons annually. Operating in 16 states, these companies span all the major coal-producing regions in the United States.

Finally, we talked to responsible officials of surface mining regulatory agencies in eight states to determine whether they would be able to continue their programs if federal grants were eliminated or reduced. The states we selected were chosen because they are the largest coal producers within the three major coal regions of the country: Kentucky, Pennsylvania, and West Virginia in the East; Ohio and Illinois in the Midwest; and Wyoming, Montana, and Colorado in the West. Because coal mining in these states differs considerably, we expected that this sample would enable us to identify the most significant problems that states generally might face; we did not attempt to forecast what would happen in each coal state. On the whole, we believe that the views we obtained are likely to reflect the concerns of other coal-producing states as well.

We conducted our review between May 1983 and October 1984 in accordance with generally accepted government auditing standards.

Comments by Interior, states, and interest groups

Because of the broad scope of this report and the potential effects of its recommendations, we sought, with Congressman Synar's concurrence, the views of coal-producing states, the coal industry, and the environmental community on a draft version of this report. We also asked the Department of the Interior to review and comment on the draft. Copies were sent to the governors of 27 states with actual or anticipated coal production, 3 organizations representing state governments, 3 coal industry associations, and 6 environmental and citizen groups. (See app. III.) The comments of those who responded are included in appendix IV. Most of these comments are reported and discussed in chapter 6, along with those of Interior. Additional comments are summarized in appendix V and are followed by our response.

CHAPTER 2

OSM SHOULD RECOVER OR ELIMINATE MUCH OF THE COST OF ITS OWN AND COOPERATIVE AGREEMENT PROGRAMS

Among the several surface mining regulatory programs, those OSM administers directly cost the agency about $9.3 million in fiscal year 1984. In addition, OSM budgeted slightly over $5 million in grants to 12 states for cooperative agreements to regulate coal mining on federal lands. Thus, the total costs for processing and enforcing permits on federal and Indian lands and the states with OSM programs were about $14.4 million in fiscal year 1984. However, during this same period, OSM assessed only about $29,000 in permit fees to recover the costs of the programs it administers.

We believe that OSM should recover or eliminate far more of the costs associated with its regulation of surface mining. It should do so by collecting fees from all of the coal operators it regulates, and by setting the fees to reflect the actual costs incurred in reviewing, administering, and enforcing permits. OSM should also phase out its cooperative agreement grants to states. Since the states already charge permit fees, they can replace the grants by recovering their costs through increased fees to coal operators or by substituting other state revenues.

OSM RECOVERS ONLY A SMALL PORTION OF ITS OWN REGULATORY COSTS

Based on OSM budget data for fiscal year 1984, we calculated that OSM spent close to $14.4 million (including budgeted overhead) for those programs it administers or delegates to the states to run. (See table 3.) Of this, close to $5.6 million was spent on processing permit applications and $3.8 million on inspecting coal operations and other activities to enforce permit provisions on other than federal lands. OSM budgeted another $5 million in the form of grants to the states with which it has cooperative agreements to pay for state regulatory activities on federal coal lands. According to OSM's Planning and Budget Chief, these costs will probably remain fairly stable in future years.

Table 3

Costs of OSM-administered and Cooperative Agreement Programs (FY 1984)

Program activity	Costs (millions)
Permit application processing:	
Federal lands program (in states without cooperative agreements)	$ 0.42
OSM-administered state programs	.32
Indian lands program	.30
Mine plan reviews and other environmental assessments on federal lands	4.54
	5.58
Program inspection and enforcement (not including federal lands)	3.75
Total OSM-administered programs	$ 9.33
Cooperative agreement grants	5.04
Total	$14.37

Because OSM does not attempt to recover its costs, it does not monitor the costs associated with reviewing, administering, and enforcing individual permits. Therefore, to estimate these costs, we reviewed OSM's records for 51 permit applications for which enough information was available for us to determine processing costs.

According to OSM's budget and our own review, a permit application costs from $7,000 to about $170,000 to process, depending on the size and location of the mine. In addition, enforcement costs associated with a permit are about $13,000 a year on average, the cost to perform the 12 annual inspections required by law. Since a mine permit typically lasts for 5 years, total permit enforcement costs are about $65,000 nationwide. Thus, we found that a mine permit costs OSM from about $72,000 to $235,000 to process and enforce.

Permit processing costs, we found, vary considerably. A western mine permit application generally costs OSM at least $70,000 to process, while most eastern mine permit applications we examined cost OSM about $15,000 to $20,000 to process. Because western mines are usually much larger than those in the East, environmental data for a more extensive area must be collected and assessed, thereby increasing the time and expense of review. In addition, western mines are more likely to involve federal coal and, therefore, must meet additional requirements, such as the preparation of a mining plan.[1] (See table 4.)

Table 4

Estimated Permit Costs

West

Est. permit processing costs	Est. enforcement costs[a]	Total permit costs	Number of applications
Below $70,000	$65,000	$135,000	5
$70,000 to $90,000	$65,000	$135,000 to $155,000	8
$100,000 to $120,000	$65,000	$165,000 to $185,000	6
$150,000 to $170,000	$65,000	$215,000 to $235,000	4

East

Est. permit processing costs	Est. enfocement costs[a]	Total permit costs	Number of applications
Below $14,000	$65,000	$72,000	5
$15,000 to $20,000	$65,000	$80,000 to $85,000	20
$20,500 to $27,000	$65,000	$85,500 to $92,000	3

[a]Estimates of enforcement costs are for a typical 5-year permit at $13,000 national average per year.

For budget estimation and other purposes, OSM's Directorate of Technical Services and Research has also calculated permit processing costs, and its estimates are roughly similar. Based on fiscal year 1983 costs, OSM figured that under ideal conditions--that is, with an experienced, in-house staff devoting its full attention--it costs the agency about $50,000 to process a permit application for a western mine that does not require an environmental impact statement. Under less favorable conditions, the same application might cost as much as $100,000 to process. For eastern mines, OSM has estimated the costs of permit processing to average about $12,000, excluding overhead and personnel benefits.

Permit fees set at considerably less than cost

In contrast to the costs it incurs, OSM's permit fees range from $55 to $2,925. During fiscal year 1984, fees were assessed against 46 applicants for about $29,000. However, by our calculations, OSM's costs for processing just 20 of these applications were about $320,000, while OSM charged these applicants only about $10,000 in fees. Although the regulations under which operators are assessed fees went into effect in March 1983, OSM did not

[1]The Mineral Leasing Act of 1920 (30 U.S.C. 181) requires all operators on federal lands to submit, for Interior approval, detailed plans of operation, called mining plans.

begin to collect fees until October 1983, more than 6 years after the passage of the Surface Mining Act.

OSM officials in charge of program operations and inspection explained that they do not base their fees on costs, but on the fees charged by the states in which the federal lands are located. This was done, they said, because the Surface Mining Act encourages federal officials to use state environmental protection performance standards in their regulation of federal lands, in recognition of the differences among states in physical and other conditions. OSM's regulations extend this consistency provision to include fees as well as performance standards.

These same officials acknowledged, however, that OSM is not required to charge the states' fees and is free to set its own fees. Under proposed regulations issued for public comment on February 22, 1985, OSM plans to change its policy and increase its permit fees to cover its full costs to review and administer permit applications and mining plans.

Fees charged against few operators

OSM's fees are not only far below its costs, but are currently assessed against only one group of coal operators it regulates, those with mines on federal lands in states that do not have cooperative agreements. Although the agency plans to extend its fees to others, at present no fees are assessed against operators on federal lands in cooperative agreement states, on Indian lands, and in the two states that have OSM-administered programs.

In states with whom OSM has cooperative agreements, OSM still retains certain permit processing responsibilities for which it incurs costs. For one thing, OSM must review and approve the mining plans required by the Mineral Leasing Act. The actual costs to OSM to process permit applications in these states vary, depending in part on the cooperative agreement provisions. Nevertheless, these so-called joint processing costs, although fully recoverable, are not being assessed at present. However, under its proposed regulations, OSM plans to collect fees from all operators that come under OSM regulation, including those in cooperative agreement states.

Prospective fees may not recover enforcement costs

Despite the planned change in regulations, the fees to be charged may still not recover all of OSM's costs. OSM plans to recover its permit review and administration costs, but it may not seek to recover the $3.8 million of inspection and enforcement costs, even though section 507(a) of the Surface Mining Act specifically allows most of these costs to be included in the permit fee.

OSM recognizes that the law permits recovery of inspection and enforcement costs, and it also acknowledges a court holding that federal agencies are allowed to include these costs in their user fees even if the public also benefits from inspection and enforcement activities. However, the agency is concerned about imposing economic burdens on operators in addition to the permit application fees and other charges authorized by the Surface Mining Act. OSM also believes that its inspection and enforcement staff may do a less than complete job because of an inadvertent concern for imposing additional costs on coal operators. For these reasons, OSM decided not to propose regulations to recover inspection and enforcement costs, but only to seek comments on such a provision.[2]

While OSM is concerned about the economic welfare of all operators, the Surface Mining Act singles out only small operators for special treatment, reflecting the Congress' intent to protect these operators from what might otherwise be onerous requirements. Under Section 507(c) of the act, small operators, defined by the law as producing less than 100,000 tons a year, can get assistance from OSM or state regulatory authorities in meeting certain permit requirements. The state and OSM have Small Operator Assistance Programs, under which funds are available to pay for laboratory studies required for permit applications, and for other forms of technical assistance.

Under its proposed regulations, OSM plans to provide additional assistance to small operators the agency regulates by charging them a permit fee of $500, a sum that is considerably below OSM's cost to process and enforce a permit. In this way, OSM could lessen any economic burden to small operators while still recovering the costs of enforcement activities from others.

COOPERATIVE AGREEMENT GRANTS PAY STATES FOR COSTS THAT COULD BE RECOVERED FROM OPERATORS

Section 523 of the Surface Mining Act allows states with approved regulatory programs to enter into cooperative agreements with the Secretary of the Interior to regulate certain aspects of surface mining operations on federal lands. The Secretary is authorized to pay the states for these services through grants in amounts approximately equal to what it would have cost the federal government to carry out certain functions had the state not chosen to enter into the agreement.

In fiscal year 1984, OSM budgeted $5 million in cooperative agreement grants to 12 states. This amount represents the states' estimates of their costs to process permit applications and enforce permit provisions on federal lands. As joint regulatory authorities, sharing responsibilities with OSM under cooperative

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[2]Comments were sought as a part of the proposed regulations to recover costs for permit application and mining plan processing--dated February 22, 1985.

agreements, only the states can recover their own costs through permit fees. In fact, all of the cooperative agreement states already charge permit fees to operators on federal lands, but they are well below the states' actual costs. If the grants were eliminated and the states were to increase these fees, their regulatory activities could be paid for by coal operators rather than by the federal government. Alternatively, if a state wanted to retain its cooperative agreement without raising its permit fee, it could fund its regulatory program from general revenues.

According to regulatory officials in two cooperative agreement states, it may be difficult to obtain agreement from state legislatures to raise permit fees. But whether moneys come from permit fees or general revenues, state officials are mostly concerned that their legislatures provide funds and personnel adequate to regulate mining on federal lands before termination of the cooperative agreement grants. Two state officials thought it could take at least 5 years to make the necessary legal and administrative changes. Before phasing out the grants, therefore, OSM would have to allow a reasonable amount of time for the states to enact legislation.

It is also possible that some states might prefer simply to terminate their cooperative agreements in the absence of grant funds. In these cases, OSM would have to put its own programs in place. One of the three cooperative agreement state officials we talked to suggested this might occur.

OTHER FEDERAL AGENCIES RECOVER FULL COSTS THROUGH USER FEES

Throughout the federal government, regulatory agencies are authorized under various statutes to collect fees that recover most, if not all, of their costs. Some agencies are now moving toward even greater cost recovery.

The Nuclear Regulatory Commission, for example, charges applicant fees for licenses to operate nuclear power plants and low-level radioactive waste disposal sites. The fees include, among other things, the agency's costs to conduct routine public hearings and inspections, and environmental reviews required by the National Environmental Policy Act. The Federal Energy Regulatory Commission (FERC) also collects fees for filings and license applications from those it regulates, owners of power-generating facilities and oil and gas pipelines. FERC now plans to raise its fees, resulting in increased collections of more than 50 percent.

Within Interior, the Bureau of Land Management has developed a fee schedule based on its costs to monitor permits it grants for right-of-way across public lands. Where relatively little monitoring is required, a permit applicant pays a standard fee. If monitoring is expected to cost the agency more than $240, the applicant pays an amount equal to actual monitoring costs, including allocated indirect costs.

CONCLUSIONS AND RECOMMENDATIONS

If OSM were to exercise its authority to charge fees that cover its costs of processing permits, the federal government could save about $5.6 million a year. At present, the agency is not charging all its applicants a permit fee, although it plans to do so. Even under its prospective fee schedule, however, OSM may not recover any of its inspection and enforcement costs because of its concerns about the additional financial burden on operators. If it did include these costs in its permit fees, OSM could recover close to $3.8 million.

By awarding cooperative agreement grants, OSM gives the states no incentive to recover their permit-related costs directly from operators. If OSM were to phase out these grants, the states would have to seek other means of paying for regulatory costs. Because the states are all collecting permit fees, they already have the necessary administrative mechanisms in place to recover costs through increased fees. Moreover, because OSM grants are based on the states' expected costs, the states already have methods of estimating their actual permitting costs. If the states prefer not to raise fees, they can finance their regulatory activities using general revenues. Before the grants are terminated, however, the states should be allowed some time to amend legislation or regulations so that they can assess cost-based fees, or replace federal funds with other revenues. It is also possible that some states may choose to end their cooperative agreements and turn over federal land regulation to OSM.

In not attempting to recover its costs in full, or to eliminate grant costs when it can, OSM places the financial burden of regulation on federal taxpayers. However, since OSM permits grant coal operators a special privilege--permission to mine--we believe operators should pay in full for OSM's costs to review, administer, and enforce their permits. Presidential and Interior policies also call for beneficiaries of federal services to pay their costs in full.

Although OSM has estimated the costs of permit processing, it does not have a system to accumulate the actual costs associated with each permit. Such a system is essential, however, if OSM is to determine how much each permit holder is to be charged in order to recover as much of its costs as is permissible.

We, therefore, recommend that the Secretary of the Interior exercise his authority under the Surface Mining Act to recover more fully the costs of processing and enforcing surface mining permits. Specifically, the Secretary should require the Director of the Office of Surface Mining to

--monitor the actual costs of reviewing, administering, and enforcing individual permits and

--assess these costs against mine operators through permit fees.

In addition, the Secretary should work with the states on how to phase out cooperative agreement grants. Sufficient time should be given to the states to adopt legislation or regulations necessary to raise their permit fees or to appropriate revenues that will provide adequate program resources and personnel.

CHAPTER 3

OSM SHOULD PHASE OUT OR SUBSTANTIALLY REDUCE GRANTS TO STATES FOR ADMINISTRATION AND ENFORCEMENT

The Surface Mining Act authorizes the Secretary of the Interior to provide the states with grants for developing, administering, and enforcing programs for regulating coal mining on state and private lands. More than $37 million was spent on these administration and enforcement grants in fiscal year 1984, making the program by far the largest component of OSM's costs for coal mining regulation. Most of these costs could be eliminated, however, if the states recovered their program costs directly from coal mine operators through increased permit fees. But as is the case with the cooperative agreement grants, awarding administration and enforcement grants gives the states little incentive to raise fees.

OSM should encourage greater cost recovery by phasing out or reducing its administration and enforcement grants. If OSM decided to help the states pay for the permitting costs of small operators, those for whom permit fee increases could prove burdensome, it would still realize significant savings. In any event, OSM should reduce the level of grant support over a reasonable period, so that the states have enough time to enact legislation necessary to provide the funding that will replace the grants.

OSM GRANTS PAY STATES FOR COSTS THAT CAN BE RECOVERED FROM OPERATORS

Under Section 705(a) of the Surface Mining Act, the Secretary of the Interior, at his discretion, is authorized:

> ". . . to make annual grants to any State for the purpose of assisting such State in developing, administering, and enforcing State programs under this Act . . . (S)uch grants shall not exceed 80 per centum of the total costs incurred during the first year, 60 per centum of total costs incurred during the second year, and 50 per centum of the total costs incurred during each year thereafter."

Based on OSM's estimates for fiscal year 1984, all but 1 of the 25 states with approved regulatory programs received a grant under this section.[1] The grants range in size from about $10,000 to roughly $9.5 million, with the average amount $1.45 million. Altogether OSM expected to award some $33 million at the time of

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[1]Although Mississippi has an approved program, it did not receive a grant this year because it did not, as originally expected, have any coal production.

our review; with budgeted overhead included, grant program costs totaled about $37 million. According to OSM's Planning and Budget Chief, this level of funding should remain relatively the same in future years, barring any change in policy.

For all the states, these grants provide at least half the funds spent on the regulation of coal mining on state and private lands. The states' share of program funds comes from general tax revenues or coal severance taxes, or from income derived through permit application fees and other activities related to coal mining regulation, called program income. Program income in most states is low, however, usually covering less than the states' share of regulatory program costs.

Program income is low because most state permit fees, from which most income is derived, are set at levels well below costs. States charge fees ranging from $5 for a permit to $2,500 plus $25 an acre. Yet, as noted in the previous chapter, OSM costs for processing and enforcing a permit range from about $72,000 to $235,000, depending on the size and location of the mine and other factors. Even if the states' costs are much lower than OSM's, their fees would still not approach program costs.

Under the Surface Mining Act, the states can recover their regulatory program costs through permit fees. But, as is the case with cooperative agreement grants, the states have no reason to recover their costs through fees as long as administration and enforcement grants are available.

STATES ALREADY ASSESS USER FEES

Recovering regulatory costs from industries is not a new concept for state government. The Wyoming Industrial Siting Administration serves as an example. Established in 1975, the Siting Administration is responsible for evaluating the environmental and socioeconomic impact of large industrial projects, such as mines, refineries, and electric generating projects. At the time of our review, the agency had reviewed 15 permit applications, including 6 for large mines, and had recovered review costs from the applicants. In general, the fees ranged from $30,000 to $70,000. The agency charges these fees before it begins its review, based on its projection of costs. The money is then placed in an interest-bearing escrow account. When the agency has completed its review, it receives an amount equal to its costs; any balance is returned to the applicant. Other permit-related activities, such as environmental review, are not covered by fees, but through agency appropriations.

In addition, the states with coal mining regulatory programs now support their public utilities commissions, to some extent, through user fees. These include general fees on utilities as well as fees for specific transactions or investigations. Twenty of the 25 primacy states recover all their costs for utility regulation, while 3 recover nearly all or most.

OSM MAY WANT TO CONTINUE GRANTS TO HELP SMALL COAL OPERATORS

In interviews with regulatory officials in eight states, all of them in charge of their state's mining regulation, three said that it may not be feasible to recover all of their permit costs because many of the mine operators in their states are small. For these small operators, a large increase in permit fees could pose a substantial hardship, forcing them out of business. In Kentucky, approximately 70 percent of the operators fall into this category.

As noted in chapter 2, the Surface Mining Act reflects a concern for the welfare of the small operator, and it was clearly the Congress' intent to afford them special treatment. For this reason, OSM plans to charge small operators it regulates a permit fee that is considerably below OSM's processing and enforcement costs. If OSM chose to extend this policy to support small operators on state and private lands, it could continue to provide some level of grant support to the states, depending on the number of small operators and the permit fees these operators are assessed.

Even if OSM were to continue to provide assistance to states with small operators, however, it could still substantially reduce its administration and enforcement grant program. Approximately 82 percent of small coal mines in the United States are concentrated in four states--Kentucky, West Virginia, Virginia, and Pennsylvania. In Pennsylvania, about 56 percent of those regulated are small operators, in Virginia, roughly 27 percent are small operators, in West Virginia, about 25 percent, and in Kentucky, as noted above, about 70 percent. These four states also are awarded over $20 million of the over $37 million in administration and enforcement grants.

The states' permit processing and enforcement costs may vary considerably from one operator to another, and average costs for small operators may not be the same as the average for others; frequently, small operators' permit processing and enforcement costs are lower. Assuming, however, that small operator permitting costs are roughly similar to those incurred for all other operators, grants limited to small operator assistance would be considerably smaller than they are now. Pennsylvania's grant, for example, if reduced by 44 percent of fiscal year 1984 levels (the proportion of larger operators in the state), would drop from $7.8 million to about $4.4 million. If Virginia's 1984 grant of $2.3 million was reduced by 73 percent, it would drop to about $613,000. With a 30-percent decrease, Kentucky's grant of $6.8 million would be reduced to about $4.8 million. And West Virginia's grant of $3.4 million, if cut by three-quarters, would be about $857,000. Thus, even with small operator assistance of $10.6 million, OSM could save more than $9.7 million in these four states alone.

STATES MAY NEED TIME TO REPLACE GRANT FUNDS

State regulatory officials in six of the eight states that we talked to believed that with sufficient time, their states would be able to substitute other sources of funds--for example permit fees--for federal administration and enforcement grants. Agency heads in the other two states, on the other hand, were alarmed at the prospect of having the grants terminated. They said that without such a major incentive, they would recommend giving up their state programs. If this were to happen, OSM would assume responsibility for regulating coal operators in those states.

In any event, if the grants are terminated, state officials told us that states will need time to secure other sources of funds. Permit fees, as noted earlier, are set by state law or regulation. If a state decides to finance its program through an increase in permit fees, new legislation or regulations might be required. If a state chooses to finance its program through general revenues, in whole or in part, it may need some time to enact the necessary spending authority and appropriations. All the states, however, have most of the necessary administrative mechanisms in place, since they are already estimating their regulatory costs in order to receive their grants, and they are assessing and collecting permit fees. In some cases, states may need time to develop more refined systems to track actual permit costs.

The amount of time a state may need depends, to some extent, on its current policy on permit fees. One official, for example, told us that in his state, the permit fee would most likely not be raised and some other source of revenue would have to be found, because the state legislature felt strongly about keeping permit fees low. If the size of fees is politically controversial, then a state might require more time before agreement can be reached on a substitute for grant funds. Moreover, in some states, legislatures convene infrequently--biannually, in some cases--and legislative sessions are short. For these reasons, according to a couple of officials, it could take 5, or as many as 10, years to make a transition to a state-supported regulatory program.

CONCLUSIONS AND RECOMMENDATIONS

In our view, coal operators who benefit from permit-related activities should bear their costs, rather than federal taxpayers. Even though the Surface Mining Act authorizes the states to recover their regulatory costs from mine operators, they have no reason to do so as long as the federal government supports these activities with administration and enforcement grants. If OSM were to eliminate these grants, the states that choose to retain their own programs could continue to finance them, and the federal government could save the $37 million it now spends for these purposes. With continued grants for small operator assistance, savings would still be substantial. All of the states that now receive these grants have some experience in recovering the costs of regulation through user fees, and at least one of them has established a system for recovering the costs of reviewing mining and other industrial projects through fees roughly similar to those that might be charged to operators for coal mining regulation.

Some states, on the other hand, may decide to give up their programs and turn over coal mining regulation to the federal government if their grants are terminated. Since this decision is by nature a political one, we have no way to anticipate the likelihood that this will occur; two of the eight state officials we talked to mentioned it as a possibility. In comments on the draft report, officials of another five states suggested they too might give up their programs in the absence of federal grants. (See ch. 6.)

Some level of continued funding may be necessary if OSM chooses to help the states pay for the costs of regulating small mine operators, for whom permit fees may be onerous. The states will also need a reasonable amount of time to secure alternative sources of support for their regulatory programs. Nevertheless, over the next few years, OSM could begin to realize large savings by eliminating or substantially reducing its grants to the states.

We, therefore, recommend that the Secretary of the Interior work with the states on how to phase out grants for administration and enforcement of state regulatory programs. At the end of this transition period, if the Secretary chooses to continue support for small operators on state and private lands, the grants should be limited to this purpose.

CHAPTER 4

RECOVERY OF COSTS OF SUPPORT ACTIVITIES WOULD

REQUIRE A SPECIAL TAX ON COAL MINE OPERATORS

In fiscal year 1984, OSM and the Interior Department's Office of the Solicitor spent about $13.9 million on activities that support both federal and state regulatory programs. Because these activities are not directly related to any single permit, their costs cannot be included in permit fees even though they benefit coal operators as a class. OSM and the Solicitor's Office can therefore recover their support costs from operators only through a special tax. If the Congress wished to enact such a tax, the federal government could gain additional revenues to offset these support costs.

COSTS OF SUPPORT ACTIVITIES

The Surface Mining Act assigns OSM responsibility for overseeing state programs and assisting the states in implementing the act. More specifically:

- --OSM monitors and evaluates the 25 approved state programs, for which the agency spent $5.6 million in fiscal year 1984. This sum was for conducting more than 4,500 oversight, follow-up, and citizen-initiated inspections, and for evaluating a sample of state permits to check that they are issued in accordance with state and federal laws.

- --OSM provides technical and legal assistance, including engineering assessments and evaluations of new mining practices and techniques. These activities cost $6.9 million in fiscal year 1984.

In addition, we calculate that the Interior Solicitor's Office, Division of Surface Mining spent about $1.4 million of its fiscal year 1984 budget in support of the overall OSM regulatory program. This money went toward reviewing state programs for conformance with the Surface Mining Act, preparing regulations, and advising OSM officials, as well as for trial work.

SUPPORT COSTS CAN ONLY BE RECOVERED THROUGH A SPECIAL TAX

A series of court decisions in the 1970's established that federal agencies may not recover the costs of such support activities through user fees. In one of these cases, the court held that a fee may be charged only to specific identifiable recipients of a special government benefit. An agency cannot assess all members of an industry when all do not share in benefits, merely to recoup its costs of regulating that industry. Further, in this and subsequent decisions, courts found that an agency may not include in its fee expenses incurred beyond those direct and indirect costs in conferring a special benefit on the recipient. To do so would be an unlawful attempt to levy a tax rather than charge a fee.[1]

Thus, since coal operators benefit from support activities as a group, the only way Interior can recover its support costs from operators is through a tax. This tax would have to be established by the Congress because only it can impose taxes and only taxes can be imposed without regard to whether a benefit is conferred on the taxpayer. A similar taxing provision is already contained in the Surface Mining Act to pay for the costs of reclaiming abandoned mine lands. Coal operators are assessed a fee of 35 cents per ton for coal produced by surface mining, 15 cents per ton for underground mining, and 10 cents per ton for lignite (or 10 percent of the coal's value at the mine and 2 percent of the lignite's value at the mine, whichever is lower). These moneys are collected and deposited into a special fund by OSM, and appropriated by the Congress for reclamation projects, small operator assistance, research and technical assistance, and other purposes, mostly to do with abandoned mine lands.

Since a tax to pay for support activities is not authorized by the Surface Mining Act, the act would have to be amended. In addition an appropriate formula, one based on the ordinary and reasonable costs of these activities, would have to be devised for calculating the tax to be assessed against operators. The support tax revenues would then go into either the general fund of the U.S. Treasury or a special fund created specifically for this purpose, similar to the Abandoned Mine Reclamation Fund. In either case, the Congress would continue to authorize and appropriate funds for support activities. If deposited in a special fund, however, the taxes collected are less likely to be used for any other purpose.

MATTERS FOR CONSIDERATION BY THE CONGRESS

Coal mine operators, as a group, benefit from OSM oversight, research, and other activities in support of coal mine regulation. But, because OSM's support costs are not attributable to any single permit holder, they cannot be recovered through the permit fees established by the act; a special tax would have to be enacted. Since OSM now collects a tax from operators to pay for reclaiming abandoned mine lands, it already has the administrative capability to collect additional taxes. With the authorization of

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[1] National Cable Television Association v. United States, 415 U.S. 336 (1974); Federal Power Commission v. New England Power Company, 415 U.S. 345 (1974). See also National Cable Television Association v. Federal Communications Commission, 554 F. 2d 1094 (D.C. Cir. 1976), and Electronic Industries Association, Consumer Electronics Group v. Federal Communications Commission, 554 F. 2d 1109 (D.C. Cir. 1976).

a tax to pay for support costs, the Interior Department could offset costs of close to $14 million a year.

If the Congress believes these support costs should be recovered, it may wish to consider enacting a special tax on coal operators. The tax would be based on a formula calculated to recover the costs incurred by Interior in overseeing state programs, providing technical assistance, and for its other support activities.

CHAPTER 5

FULL COST RECOVERY WOULD HAVE LITTLE IMPACT ON COAL DEMAND AND PRODUCTION

The recovery of both state and federal regulation costs (including OSM support costs) from coal mine operators would add about 11.7 cents to the cost of a ton of coal on a nationwide average, and would not affect coal demand or production overall. If the increase in cost were fully reflected in price, coal would still be cheaper than other fuels for electricity generation, its predominant use. The principal effect of cost recovery might be to shift production slightly from one state to another. Small operators also might be hurt by full cost recovery if no steps are taken to reduce their permit fees.

NO SIGNIFICANT IMPACT ON COAL DEMAND AND PRODUCTION NATIONWIDE

Using the states' estimates of their program costs, as supplied to OSM, and our own estimates of OSM's costs, we calculated the regulatory costs in each of the coal-producing states for fiscal year 1984. (See app. II for a further description of our analysis.) Our estimates did not include OSM's costs for non-routine enforcement and support activities, among others, because, as with certain other items in OSM's budget, the costs of these activities are not readily allocable by state. We therefore excluded these costs from our analysis, assuming that they would be charged equally across the country and thus have no effect on the distribution of coal production.

In this way, we estimated that cost recovery by the states and OSM could increase annual production costs by about $66 million. (See table 6 in app. II.) Assuming that coal production is 800 million tons (based on actual 1982 production), the cost of a ton of coal would increase by 8.2 cents a ton on a nationwide average. Recovery of support costs and other expenses in OSM's budget that were not included in our statewide totals could increase production costs by another $28 million, and add another 3.5 cents to the cost of a ton of coal nationally. Thus, full cost recovery could increase annual coal production costs by $94 million in total and add 11.7 cents to the cost of a ton of coal on a national average. State by state, cost recovery could add from 0.3 cents per ton to 35.3 cents per ton of coal produced, excluding costs of certain enforcement and support activities; with an average 3.5 cents a ton included for these activities, production costs would increase in a range from 3.8 cents to 38.8 cents.

To determine the effect of these additional costs on coal production and demand, we consulted with staff of the Department of Energy's Energy Information Administration (EIA). According to EIA's Coal Division staff, increases in this range--that is, up to 40 cents a ton--would not affect coal demand or production overall. They explained that about 80 percent of the coal produced in the United States is used for electricity generation. Because of coal's considerable price advantage over other fuels, costs might have to rise by $5 a ton, they said, before any change in demand for coal might occur. In 1984, for example, the price of coal per million British thermal units (Btu)--that is, in terms of its heating value--was $1.81 for electricity generation. By contrast, natural gas and petroleum products, the other fuels used for electricity generation, cost $3.47 and $4.75 per million Btu. Moreover, the highest production cost increase of 38.8 cents a ton was less than 1 percent of the delivered price of coal per ton to consumers in 1984. EIA staff also believed that a price increase in the range of 3 to 40 cents a ton would have only a negligible effect on the costs of electricity to consumers.

Finally, EIA staff said that exports of U.S. coal would also be unaffected because the price increases are such a small portion of the delivered price of coal--hardly more than 0.5 percent per ton in some cases. The price of U.S. steam coal delivered to Japan, for instance, was about $60 a ton in 1983. In addition, U.S. coal historically has been more expensive than coal from other countries--$10 to $20 more a ton--indicating that factors such as security of supply are more significant than price competitiveness. Cost increases of less than 40 cents a ton, therefore, would be unlikely to affect exports of U.S. coal.

MINIMAL EFFECT ON PRODUCTION WITHIN STATES

Although we did not expect any changes in overall demand or production, the variation in regulatory costs among states suggested that there might be changes in production among states due to full cost recovery. To assess the extent to which any such changes might occur, we used the Department of Energy's (DOE) Coal Supply and Transportation Model. The DOE model was developed to assess the effect of various government policies on the coal industry and to project coal production and distribution when no changes in demand are anticipated. The model simulates the selection of supply sources and transportation modes and routes that can meet regional demands for different types of coal at least cost, matching the types of coal consumed in 48 demand regions with coal available from 31 supply regions which correspond to states or substate regions. Thirty types of coal are included, defined by 5 Btu and 6 sulfur ranges. For our simulation, DOE used 1982 costs of coal at the mine and for rail and water transportation.

First developed in 1982, the Coal Supply and Transportation Model has been used by EIA for a number of government agencies. For the Army Corps of Engineers, DOE analyzed the effects on coal production of waterway and port projects under consideration. The model was also used to examine the effects of alternative freight rate increases being considered by the Interstate Commerce Commission. Because the model's input comes from reports filed by each coal mine and major consumer in the United States, it is comprehensive in scope, and its data highly reliable.

For our analysis, the model used as input the production cost increases we calculated for each state (table 6) if OSM and the states were to recover fully their regulatory costs from operators. The model assumed that operators would pass along their costs in the delivered price of coal. In this way, we found that by 1990, Pennsylvania, where regulatory costs are estimated to be about 16.8 cents (or 20.3 cents with support and other costs included) per ton, could lose about 1.5 million tons of production to West Virginia, where regulatory costs are 5.8 cents per ton, or 9.3 cents with support and other costs. No other significant changes in production or distribution were projected. (See table 5.) The loss represents only about 1 percent of Pennsylvania's production, however, and a shift of only 0.1 percent of the nation's production.

Although we did not verify its information, the Mining and Reclamation Council of America claims that this loss of production could mean a loss of 300 coal jobs, other service and supply jobs, and millions of dollars in lost salaries, sales, and tax revenues in Pennsylvania. If federal aid were to continue to support the many small operators in Pennsylvania, however, we believe that any secondary impacts would be reduced. In addition, any loss of jobs and revenues in Pennsylvania would be accompanied by similar gains in West Virginia, which is expected to experience an increase in coal production.

Subsequent to our analysis, Interior conducted its own impact analysis and reached similar conclusions. (See app. VI for Interior's description of its analysis.) Using a different model, which examines U.S. coal production in 100 coal mining regions rather than by states, Interior found that the recovery of regulatory costs, as calculated by OSM, would have no effect on coal production. Interior found that the increase in costs was not large enough to change the relative cost advantage of even a few coal supply regions. Using our estimates of costs, which were somewhat higher, Interior found small shifts in coal production: In the Midwest, one region was expected to lose about 1 million tons to another, while in the West, three regions were projected to lose a combined total of roughly 800,000 tons to another region.

Table 5

Effect of Regulatory Cost Increases on Coal Production, 1990

State	Coal production, without cost recovery	Coal production, with cost recovery	Tonnage difference[a]
	(million tons)		
Alabama	41.14	40.98	-0.16
Alaska	3.61	3.59	-.02
Arizona	13.34	13.34	.00
Arkansas	.50	.50	.00
Colorado	30.13	30.17	+.04
Illinois	76.86	77.54	+.68
Indiana	28.15	28.19	+.04
Iowa	1.83	1.76	-.07
Kansas	.86	.84	-.02
Kentucky	154.44	153.60	-.84
Louisiana	7.50	7.50	.00
Maryland	6.32	6.32	.00
Missouri	3.78	3.85	+.07
Montana	52.69	52.00	-.69
New Mexico	41.58	41.52	-.06
North Dakota	26.53	26.53	.00
Ohio	30.87	31.39	+.52
Oklahoma	7.61	7.58	-.03
Pennsylvania	107.44	105.96	-1.48
Tennessee	8.00	7.92	-.08
Texas	71.03	71.03	0.00
Utah	25.39	25.18	-.21
Virginia	42.47	42.32	-.15
Washington	4.15	4.18	+.03
West Virginia	159.57	161.07	+1.50
Wyoming	128.94	129.86	+.92

[a]Differences in tonnage of less than 1 million tons are considered by EIA to be statistically insignificant.

COAL INDUSTRY OFFICIALS SEE MAIN IMPACT ON SMALLER OPERATORS

While our analysis assumed that regulatory costs would be fully passed on to consumers, we recognized that coal companies might not always choose to, or be able to, increase their prices. To gain their views on full cost recovery, we talked to officials of three coal industry associations--the National Coal Association, the American Mining Congress, and the Mining and Reclamation Council of America--and eight coal companies.

Operating in 16 states, these companies annually produce from 200,000 to well over 40 million tons of coal and represent a broad range of geographic regions, mine sizes, and company sizes.

Although no one welcomed additional costs, officials of five companies agreed that an increase of from 10 to 12 cents a ton resulting from regulatory cost recovery would not be significant. For one thing, these companies generally had contracts that allowed them to pass through any increase in their costs. The biggest problem they now face is the depressed state of the coal market, although a number of officials said that they expected normal profitability to return within roughly 2 years.

The increase in costs would be a burden primarily to small operators, officials said. The numbers of small operators and small mines are already decreasing, they claimed, as a result of the combined effects of reclamation costs and a depressed market. Officials of three of the four smallest companies we interviewed said that even a small production cost increase would be significant to them because the companies cannot pass through cost increases to their customers. Also, these three companies have not operated profitably for 3 years. As we pointed out earlier, however, the added effect of cost recovery on small operators could be mitigated by some continued level of federal support.

Officials of the National Coal Association and the Mining and Reclamation Council of America were also concerned about the possible effects on small operators, noting the many costs already imposed on these operators by the Surface Mining Act. They said, however, that while the costs of compliance with the Surface Mining Act were burdensome, the permit processing, enforcement, and related costs are relatively small when compared with the costs of required land reclamation. The Mining and Reclamation Council added that although relatively small, the permit fee nevertheless represented an additional cost that, together with the others, would have a significant cumulative effect.

CHAPTER 6

SUMMARY OF AGENCY, STATE, AND INTEREST GROUP

COMMENTS AND OUR RESPONSE

In response to our request for comments, 19 states with actual or anticipated coal production, an organization representing many of these states and others, 3 coal industry associations, and 3 environmental and citizen groups offered their views on a draft of this report, as did the Department of the Interior. While most comments are summarized below, followed by our response, others that are more narrow or technical are contained in appendix V. The full text of comments we received is included as appendix IV.

Interior had few comments to make on the report, noting that it contained some interesting ideas but was concerned that the report had not sufficiently considered regional differences in regulatory costs. The most controversial of the report's recommendations was its proposal to eliminate state grants. All the states and industry groups were opposed to it, with many objecting to recovering regulatory costs from coal operators. Environmental and citizen groups, however, generally favored cost recovery.

INTERIOR COMMENTS

Interior found the report to contain a number of interesting ideas that it planned to examine in the near future. It was concerned, however, that our conclusions had not adequately considered the large variations in the costs of running surface mining programs depending on local or regional conditions. Interior said that it is important to understand the inter-regional effects of cost recovery before proceeding with such policies. Interior also suggested that we contact representatives of its Solicitor's Office to discuss apparent differences in interpretation of the Surface Mining Act and OSM regulations.

Our response:

We agree with Interior that regulatory program costs can vary by region or locality. It was for this reason that our draft report examined the impacts of cost recovery on a state-by-state basis. We have added a table to appendix II that makes our methodology clearer. The table lists the costs of running each state program and the program costs per ton of coal produced in each state. These latter costs, which were adjusted in a few cases, were used as input to the DOE model. As noted in chapter 5, the range of costs, including enforcement, is broad, going from 3.8 cents a ton in Arizona to 38.8 cents a ton in Tennessee.

As also explained in chapter 5, subsequent to its comments on this report, Interior conducted its own analysis of the effects of cost recovery on coal production, using both OSM and our estimates of regulatory costs. Its analysis, described in appendix VI, considered effects on production within smaller geographical areas--coal mining regions rather than states. Nevertheless, its findings did not differ markedly from ours. Using OSM estimates of regulatory costs per ton of coal, the Interior analysis found no change in production in 1990. With our cost estimates, small shifts were predicted, with production moving from one region to another in a few cases.

We met with representatives of Interior's Solicitor's Office, and they had no major disagreement with our interpretation of the Surface Mining Act, suggesting minor editorial changes that have been made to the report where appropriate. They differed with us on one point, however. Although the Solicitor's Office agrees that the costs of mining plan reviews are recoverable (see p. 12), it asserts that the authority for recovering those costs is the Independent Offices Appropriations Act (31 U.S.C. 9701), rather than the Surface Mining Act. The Solicitor's Office said that because a mining plan review is required by the Mineral Leasing Act, its costs are not recoverable under Section 507(a) of the Surface Mining Act, which authorizes recovery only of those costs incurred in carrying out certain of the act's provisions.

We believe that section 507(a) is not so limited. It authorizes recovery of costs incurred in reviewing permit applications, and while the mining plan is required by the Mineral Leasing Act, it is nevertheless part of the permit application.[1] Since a permit cannot take effect unless the mining plan portion of the application is approved, its review is part of the entire permit application review. Regardless of which statute's authority is used to recover the costs, however, the results are the same.

STATE AND INTEREST GROUP COMMENTS

All the states and industry groups raised strenuous objections to some or all of the report's recommendations. Many objected in principle to recovering costs from operators. All of the states opposed the elimination of state grants, some suggesting that they might give up their programs if this were to happen. The size and variability of permit fees was also an issue, with commenters expressing concerns about maintaining adequate and stable regulatory programs that are supported by fees. Several state and industry groups were critical of our analysis of cost recovery impacts, questioning the methodology and conclusions. Finally, several commenters took issue with a proposal in our draft report for a support activities tax. Environmental and citizen groups, however, generally support the concept of recovering permitting costs.

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[1]See In Re: Permanent Surface Mining Regulation Litigation, No. 79-1144, slip op. at 9,10 (D.D.C. July 6, 1984).

Principle of cost recovery

While environmental and citizen groups generally agreed with us, a number of states and industry groups objected strongly to our conclusion that OSM should achieve significant cost savings by transferring its regulatory costs to coal operators. Some of these states and industry groups argued that the public rightfully ought to bear these costs, while others asserted that OSM could more properly save money by reducing certain unnecessary reporting requirements. Commenters were concerned that cost recovery would eliminate or diminish program oversight or lead to program abuses of the sort that occurred in the past.

Many of those commenting on the draft report took issue with our premise that coal mine operators should be charged many of the costs of regulation. They argued that since it is the intent of the Surface Mining Act to protect public health and safety and the environment, it is the public that benefits from mining regulation; coal companies should, therefore, not have to bear the costs. Because the benefits are to the public, they said, mining permit fees are not comparable to other types of user fees, such as fees for right-of-way permits. Those registering this objection included the Mining and Reclamation Council of America (MARC), the Joint National Coal Association/American Mining Congress Committee on Surface Mining Regulations (NCA/AMC), the state of Alabama, and six western states responding jointly: Wyoming, Utah, Colorado, New Mexico, Montana, and North Dakota.

The joint response of six western states also criticized the report for having applied the principle of cost recovery selectively, leaving out other activities required or authorized by the Surface Mining Act, such as petitioning the Secretary of the Interior to declare lands unsuitable for mining. If cost recovery were applied to such activities, these states alleged, it could have a chilling effect and reduce the effectiveness and run contrary to the intent of the law.

The Interstate Mining Compact Commission (IMCC), which represents 17 states, claimed that a significant portion of states' regulatory program costs are attributable to unnecessary federal requirements imposed on the states, rather than to the mining industry. These include costs to meet necessary data collection, record-keeping, and report preparation requirements. IMCC recommended reducing federal funding for activities that duplicate state regulatory activities as a more proper means of cutting federal government costs. Pennsylvania, Texas, and Missouri made similar observations.

Both MARC and Missouri believed that a full cost recovery system would eliminate or diminish congressional oversight of the regulatory authority. MARC claimed this would encourage a burgeoning bureaucracy, with neither OSM nor the states under pressure to process permit applications diligently and without administrative excess. Pennsylvania expressed its concern that funding a regulatory program by those being regulated could create a real or perceived conflict of interest.

Several commenters mentioned that prior to the Surface Mining Act, state efforts to recover mining regulation costs had ended in failure. According to MARC, Kentucky terminated its cost recovery program because questions were raised about the state regulatory agency granting permits too quickly in order to keep up its operating budget. The six western states responding jointly said that cost recovery by states had caused the deterioration of some state programs, leading to the enactment of the Surface Mining Act.

According to the state of Oklahoma, all three parties--coal operators, the states, as well as the federal government--should share in support of surface mining regulation. The state claimed that because of OSM's oversight, Oklahoma incurs extra costs to operate its program--for reports, reviews, and meetings with OSM staff--that it would not have if it operated a program of similar stringency. "If there is a national need and benefit," Oklahoma's Governor Nigh said, "then also, some of the costs of the program should be provided from national sources and not placed only on the coal industry or the state."

Two environmental and citizen groups, on the other hand--the Public Lands Institute (PLI) and the Environmental Policy Institute (EPI)--specifically supported the concept of recovering permitting costs from operators through fees. PLI said that the purpose of the Surface Mining Act was to relieve the general public of a burden for which the coal industry, rather than the public, was responsible.

Our response:

As we point out in chapter 1 and elsewhere in this report, we believe that those who benefit from special services and privileges provided by the federal government--in this case, coal operators granted permission to mine--should bear their costs, rather than assigning them to federal taxpayers. Section 507(a) of the Surface Mining Act allows full recovery of permitting and enforcement costs from coal operators, and administration and Interior Department policy encourages it. Our proposal would simply treat these regulatory costs in the same way other costs of complying with the Surface Mining Act are treated, that is, as part of the expense of producing coal.

We agree that the Surface Mining Act's intent is to protect the public, but all federal regulation is meant to serve the public interest. In a series of decisions, the courts have found that public benefit does not argue against the recovery of costs from members of regulated industries when the services provided are necessary to a company's operation and public benefit is incidental. In 1979, for example, in an analogous case, a U.S. appeals court found that the Nuclear Regulatory Commission (NRC) could fully recover certain of its costs through fees assessed against companies applying for licenses to operate nuclear power facilities.[2] As here, the companies had argued that the work of the NRC benefited the general public alone, since public safety is the main consideration in the decision to issue a permit or license. The appeals court pointed out, however, that the Supreme Court had earlier recognized the authority of the Federal Communications Commission (FCC) to assess a license fee even though the FCC's main function was to safeguard the public interest. Further, the appeals court found, a license from NRC is an absolute prerequisite to operating a nuclear facility and as such, is not a benefit in which the public shares. To accept the petitioners' argument, the court concluded, would mean that no federal agency could assess any fees since all public agencies are constituted in the public interest.

While the six western states responding jointly claim that the recovery of costs for other activities under the Surface Mining Act might run counter to the intent of the law, our review focused only on activities associated with permitting and enforcement, and in support of state and federal regulatory programs. We did not propose recovering all possible costs.

We recognize, as the IMCC, Texas, Missouri, and Pennsylvania have suggested, that OSM could reduce its costs by eliminating certain programs or activities. However, in this review, we were concerned only with how OSM could recover or eliminate the costs of activities that are required by law or regulation. We did not evaluate the activities themselves.

As to the implicit warning against cost recovery by states because of poor experiences in the past, we note that these experiences preceded the passage of the Surface Mining Act. In requiring federal oversight of state programs, the law safeguards against the sort of abusive practices that were alleged to have occurred before.

As we see it, the potential for conflict of interest that concerns Pennsylvania could occur if the regulators were directly accountable to those being regulated. However, cost recovery does not, by itself, create such a relationship. Nor does it, as MARC and the state of Missouri claim, lead to a loss of program accountability and congressional oversight. If OSM were to recover its costs through fees and taxes, the revenues would go into the Treasury and still have to be appropriated by the Congress. Thus, the present process of congressional and public oversight of both regulators and regulated would continue; states could administer their regulatory programs in the same way. Regardless of what method they choose, however, in our opinion states could take the steps necessary to prevent real or perceived conflicts of interest in their surface mining programs.

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[2] Mississippi Power and Light Company v. United States Nuclear Regulatory Commission, 601 F. 2d 223-233 (5th Cir. 1979).

Elimination of state grants

Clearly the most controversial of our recommendations was to eliminate OSM grants to states. All 19 of the states commenting on our draft report raised strong objections. Several claimed they could not or would not raise permit fees or appropriate additional funds to cover their permitting and enforcement costs and might therefore have to give up their programs. Some states said that they had assumed primacy with the understanding that they would always receive at least 50 percent of their program funding from the federal government. Other objections were directed specifically at our proposal to eliminate cooperative agreement grants, with commenters arguing that this would make cooperative agreement states less competitive and would lead these states to give up their agreements.

Six states--Arkansas, Indiana, Alabama, Pennsylvania, Ohio and Alaska--suggested that the loss of OSM funds might lead them to relinquish their programs. Ohio claimed that a regulatory program that gives the federal government control over policy while giving the states responsibility for program costs would prove unworkable. It would also be cheaper, Ohio said, for coal operators to work only with OSM since it is funded through existing severance taxes. The Congress should therefore be made aware of how much it would cost the federal government in the long term to take over regulation in most of the states that now have primacy. Alaska made a similar point and added that federal regulation there would lack the advantage of the state's understanding of the unique conditions there. According to Pennsylvania, if states gave up their programs and OSM had to rescind their primacy, the states could legally challenge OSM's actions by arguing that the agency had not provided adequate federal funding as the Surface Mining Act suggests.

West Virginia, Arkansas, Pennsylvania, Ohio, and Missouri each contended that increases in permit fees would impose a significant hardship on operators in their states, causing several companies to go out of business, particularly in West Virginia, Arkansas, and Pennsylvania. Higher fees might also force some companies out of business in the West, according to the six western states, such as those that mine low-grade coals or have high-cost underground mining operations. Ohio also claimed that unemployment would increase among the state's coal miners. Virginia was concerned that an increase in production costs of 11.7 cents a ton would weaken its coal industry's competitiveness in both domestic and foreign markets; for the state, the loss of federal grants would mean an additional burden of $2.5 million a year.

Alaska and Louisiana, where coal development is in early stages, each have only one operator at present; Louisiana said that it may permit only two other operations in the next 5 years. Both states believe that it would be unreasonable or unfair to charge so few operators the total costs of their programs, which in Alaska amounts to $500,000 a year at present. Alaska also believes that higher permit fees would impede the development of a coal industry in the state, which it hopes will ultimately help to offset declining state oil revenues.

Alaska, Arkansas, Indiana, and Pennsylvania claimed that their states sought and obtained primacy with the understanding that the federal government would provide at least 50 percent of their programs' funding, and all but Alaska added that states had been led to believe that support would be ongoing. Pennsylvania claimed that it was the Congress' intent to provide continued federal funding, since the Surface Mining Act sets no time limit on the award of state grants.

While opposed to the elimination of federal grants, Indiana suggested that some consideration be given to the use of the federal share of the abandoned mine lands reclamation tax, which amounts to 17.5 cents per ton, to continue state program support.

The three industry groups also objected to the elimination of state grants. MARC believes that even if just one state relinquished its program to the federal government, it would obviate a basic intent of the Surface Mining Act. It also believes that state recovery of costs through permit fees will exaggerate the differences in regulatory programs that already affect states' competitiveness.

Despite their general support for our recommendation, EPI and PLI had a number of concerns about the consequences of eliminating state grants. EPI said that even though states have other reasons for retaining primacy, some states may nevertheless choose to turn over to OSM the politically sensitive task of increasing costs to the coal industry. OSM, according to EPI and PLI, is currently poorly equipped to act as primary regulatory authority, as evidenced by its inadequate oversight of state programs and its poor performance in Tennessee and Oklahoma, where it has taken over enforcement of surface mining regulation. PLI believes that the federal hand needs to be strengthened, not weakened, because if states are totally responsible for supporting their regulatory agencies, some will drastically weaken them. The states are already struggling with inadequate funds and personnel, PLI said, even with federal grants.

According to the Northern Plains Resource Council (NPRC), our recommendation that sufficient time be allowed to phase out state grants should include a provision for some continued OSM payment for enforcement of existing permits. Such a "grandfather" feature might be necessary in states where little or no new mining activity is expected in the next few years, NPRC said.

Like Oklahoma and other states, EPI expressed concern about the effect of increased permit fees on small coal operators. It suggested that OSM promulgate regulations for both state and federal permit fees that establish a lower fee for small operators. EPI added that the regulations should be designed so as to benefit only the truly small operator. Pennsylvania, on the other hand, wondered if a different fee for small operators was discriminatory.

On this same subject, MARC believed that significant relief would not be provided to small operators under the current statutory definition of a small operator as one who produces not more than 100,000 tons of coal a year. According to MARC, coal operators must generally be producing at least 200,000 tons a year to remain solvent.

Cooperative agreement grants

Although most comments were directed at the recommendation to end state administration and enforcement grants, several commenters raised objections to the termination of cooperative agreement grants to states. Wyoming, commenting for six western states, claimed that states were likely to drop their cooperative agreements to avoid double charging of operators on federal lands--that is, charging them for both OSM and state permitting costs. According to the NCA/AMC, this double levy would make federal coal less competitive and decrease its fair market value. It would also deter operators from mining in cooperative agreement states, NCA/AMC claimed, a situation that could result in states choosing not to enter into cooperative agreements.

Our response:

We recognize that some states may prefer to give up their programs rather than appropriate additional revenues or charge coal operators higher permit fees. Altogether seven states--in written comments and interviews during our review--have mentioned this as a likelihood. MARC believes that even if just one state were to give up its program, the intent of the Surface Mining Act --that states have primary authority to regulate mining--would be obviated.

While we agree that this is one of its principal goals, the law nevertheless provides for situations in which states do not, or choose not to, have regulatory programs that meet the Surface Mining Act's standards. As we have said before, were states to give up their regulatory authority, surface mining regulation would continue under federal auspices. A federal program would also be put into place if a state was not adequately supporting its program, a concern of PLI's. Whether the OSM program would be the same or better, or worse as EPI and Alaska contend, is difficult to predict, especially considering the variations in state programs. Regarding the possibility, suggested by Pennsylvania, that states could challenge federal takeover of their programs by arguing that OSM had not met its responsibilities to the states, we have no comment on the merits of such an argument.

While some states may have been led to believe that administration and enforcement grants would always be available to support at least half their regulatory program costs, the law nevertheless leaves the Secretary of the Interior free to terminate or reduce the grants to states. For this reason, we disagree with Pennsylvania's contention that the Congress intended the grants to be perpetually awarded since it set no time limit on their award. Regardless of what one might infer about the Congress' intent, the law does not compel the Secretary to make the awards; it simply authorizes the Secretary to do so if he or she chooses.

Contrary to Ohio's belief, the institution of a federal program does not necessarily mean that coal operators will be spared an increase in permit fees, since OSM could have a higher fee than the state. (The agency's regulatory program is not, as Ohio indicated, supported by severance taxes, but by general revenues.) In our opinion those states that are concerned about increased costs to their operators would have to consider this possibility in choosing whether to give up their programs. If OSM recovers its costs through permit fees, its assumption of regulation from the states should not impose noticeable extra costs on the federal government, as Ohio also seems to expect.

Similarly, those objecting to the elimination of cooperative agreement grants contend that states are likely to drop their cooperative agreements so that operators will not have to pay a double charge. But these operators would not necessarily be paying less in fees if they had only one permit with OSM. While it is true that operators would have to pay two fees in cooperative agreement states, their fees support two different activities: review of the permit application for compliance with the state's surface mining law and regulations and review of the mining plan portion of the application for compliance with the federal Mineral Leasing Act. Even if OSM were to act as a single regulatory authority, it would have to perform both these activities and charge a fee reflecting the costs of both.

In any event, according to our analysis (see p. 27), charging operators for the costs of regulation in cooperative agreement states would have no effect on production, contrary to NCA/AMC's contention that operators would be discouraged from mining in cooperative agreement states. Similarly, the results of our analysis do not support NCA/AMC's claims that federal coal would become less competitive. Although NCA/AMC asserts that the fair market value of federal coal would decline, fair market value is independent of the costs of production and would not be affected. Despite MARC's concern, we found only one instance in which the difference in regulatory costs would affect a state's competitiveness. Interior's analysis also found few changes in the location of production. (See p. 28 and pp. 106-109.)

Virginia's concern that production cost increases would weaken the competitiveness of its coal industry in the domestic and foreign market is also not borne out by our analysis. We found no change in coal production in the state because there was no discernable difference in U.S. demand for Virginia coal. And as we point out on page 26, we do not anticipate any change in exports resulting from these price increases because these increases are such a small portion of the delivered price of coal. Our analysis also does not support Ohio's contention that unemployment would rise, since we found no significant change in mine output in that state.

Louisiana and Alaska, each with a very small coal industry, claim it is unfair to ask one or two operators to support their programs at current levels. We disagree. Regardless of how many operators there are in a state, each one's permit fee, according to the Surface Mining Act, can reflect only that operator's permitting and enforcement costs. If, as in Alaska's case, program costs (per ton of coal) are high with only one mine, we must assume that for various reasons, it is expensive for the state to review the permit application and administer and enforce that permit. Even if these costs per ton are high, we believe that they should be recovered from the operator rather than subsidized by federal taxpayers. On the other hand, if a state wishes to actively promote its industry, as Alaska has indicated, it may choose to support its regulatory program with other revenues.

Regarding Indiana's suggestion that Interior consider continuing state program support with the federal share of abandoned mine lands reclamation tax revenues, we note that section 401 of the act stipulates that the moneys in the fund be spent solely on abandoned mine lands reclamation. Therefore, we did not examine the merits of using any of these funds in place of the grants.

We agree with those who believe that increased permit fees could present a substantial financial burden for small operators. As we pointed out on page 21, some level of continued funding may be necessary if OSM chooses to help the states pay for the costs of regulating small mine operators. A special fee for small operators would indeed be discriminatory, as Pennsylvania suggested, but as we point out in chapter 3, the Surface Mining Act leaves the amount of the permit fee up to the Interior Secretary and also supports special treatment of small operators. Since the permit fee is not an excise tax, it does not have to be uniform throughout the country, as excise taxes are required to be under the U.S. Constitution.

Although MARC is concerned about the statutory limits on production of 100,000 tons for small operators, this definition applies only to the Small Operator Assistance Program and not to permit fees or grants. Any assistance to coal mine operators in the form of reduced fees is at the discretion of the Interior Secretary, who can provide assistance to whomever he chooses.

We agree also with the Northern Plains Resource Council that some continued OSM funding will be necessary during the period in which state grants are phased out, to allow the states a reasonable amount of time to secure alternative sources of support. For this reason, our draft report recommended that the Interior Secretary work with each state on how to phase out the grants. (See p. 21.)

Size and variability of permit fees

EPI and PLI were concerned that both state and OSM permit fees be set at levels high enough to support adequate regulatory programs. EPI was concerned that programs might be cut back to avoid having to raise fees. PLI believed that current state and OSM enforcement efforts were grossly inadequate and that fees would have to be two or three times higher than current expenses in order to finance an effective program.

A number of states were concerned about how to maintain stable regulatory programs when mining activity drops and states are dependent on permit fees for revenues. This was a question raised by the states of West Virginia, Wyoming, Utah, Colorado, New Mexico, Montana, and North Dakota. West Virginia claimed that the cost of permits would have to increase if the number of permits declined and added that the state cannot operate a regulatory program without more accurate projections for budgetary purposes. The western states also noted that declining mining activity would unfairly place the cost of regulation on fewer operators.

MARC noted that smaller operators would carry a relatively larger cost burden under permit fees since the cost of permit review is substantially fixed. Thus, fees for smaller operations would be the same as for larger ones, but would represent a larger percentage of the smaller firm's revenue base.

A similar situation faces states with a preponderance of small mines, according to Pennsylvania. In that state, mineral holdings are distributed among many small, non-contiguous parcels, requiring operators there to obtain many permits, in contrast to operators in other states with large tracts. Pennsylvania said that if permit fees were raised to recover costs, states with few mines and high production rates would have an economic advantage over states with many small mines, each with low production rates.

Our response:

We agree with EPI and PLI that if OSM and the states choose to finance their programs entirely through permit fees, they should be set high enough to cover the full costs of reviewing, administering and enforcing the permits. However, states may choose to use other revenues to supplement permit fees, as most now do.

Like West Virginia and the six western states, we too believe that maintaining stable regulatory programs is an important consideration. We do not agree, however, that reliance on permit fees for program revenues necessarily precludes stability. The Surface Mining Act allows the regulatory authority to collect the fee over the term of the permit, thus providing the agency with revenues for as long as a mine is under permit. This provision also allows the agency to anticipate at least some portion of future revenues. In any event, regulatory program costs are related to the amount of mining activity, so that if the number of mines declines, program costs should likewise fall.

MARC's contention that permit review costs are fixed and do not vary by mine size is not supported by our review. We found considerable differences in OSM's costs to review permits in the East and the West, due in large part to the much larger size of mines in the West. Within the East, we also found differences in permit review costs that were attributable to mine size. (See p. 10-11 and 18.) It may be that within a certain narrow range of mine sizes, permit review costs would remain more or less fixed, but generally we found mine size to be a major determinant of permit costs. Since we have recommended that permit fees be based on actual costs of reviewing, administering, and enforcing individual mine permits (p. 15), we would expect that a small mine operator's fee would be less than a large mine operator's fee.

Likewise, our analysis does not support Pennsylvania's charge that increased permit fees would give states with few large mines an economic advantage over states with numerous small mines. The operator of a large mine may have fewer permit fees to pay, but that fee may be larger than the sum of fees paid by the operator of several small mines. Even if a state with predominantly larger mines did have lower permitting costs overall, the difference in cost would not be significant enough to give the state an economic advantage, according to our sensitivity analysis, since we found virtually no shifts in production across the country as a result of production cost increases stemming from regulatory cost recovery.

Analysis of cost recovery impacts

Methodology and presentation of data

A number of commenters were critical of our analysis of the effects of cost recovery. According to MARC and Washington and Oklahoma, the draft report did not include enough of the data underlying our conclusions about impacts, and they suggested that we include data on program costs in each state.

MARC and NCA/AMC also criticized the size and composition of the samples of state and coal company officials we interviewed during our review. They said that seven coal companies could not be considered representative of the more than 3,000 companies in the United States. NCA/AMC claimed that our samples were biased toward the largest coal producers and coal-producing states, where any indication of impacts should be recognized as more significant than usual. MARC believed that state legislators should also have been interviewed since they would play an important part in state program budget decisions. The state of Oklahoma suggested surveying all coal-producing states.

The industry groups, along with Washington and the joint response from six western states, contended that we had not considered several important factors in our analysis, among them the regional differences and variations in mining conditions and regulatory costs, and secondary effects, such as lost jobs, salaries, and tax revenues. Washington State said that higher fees would discourage coal production on federal lands and thus decrease royalties to the government. NCA/AMC also claimed that we had not accounted for fuel-switching that would result from higher coal costs, or for increases in other production costs, such as transportation, state taxes, and compliance with the Surface Mining Act.

The Northern Plains Resource Council noted that since some western states with severance taxes provide for deducting federal fees before the tax is calculated, a full cost permit fee might lower state revenues rather than recover regulatory costs from operators.

Pass-through of costs

NCA/AMC noted that not all coal companies can pass through cost increases to their customers, and that even where such pass-through provisions exist, customers might create an "administrative nightmare" by requiring an audit of the regulatory authority as well as the coal producer. MARC said that because spot market producers must operate with a small profit margin to remain competitive, they cannot pass on any regulatory cost increases. MARC and Washington State also criticized the analysis for failing to consider the effect of transferring costs to electric utilities, the main customers of coal companies. According to MARC, while the cost to electricity consumers will go up by millions of dollars, federal taxpayers are unlikely to see an equivalent reduction in their taxes.

Our response:

We agree that additional information should be included in the report, and we have consequently added to chapter 5 a table displaying the results of our impact analysis. In appendix II, we included a table enumerating program costs by state, both actual costs and those adjusted for input to DOE's model. By displaying the broad range and variability of costs by state, this latter table should help to make clear that regional differences in costs were accounted for in our analysis.

Based on the results of our analysis, we saw no need to examine secondary impacts of cost recovery, a suggestion made by some states. Nationally, we found no change in overall coal demand or production, and between states, we found only a slight change in distribution, with Pennsylvania losing about 1 percent of its production to West Virginia. We therefore had no reason to expect any major impacts on jobs, revenues, federal royalties, etc. We have, however, added to chapter 5 (p. 27) information supplied by MARC on possible secondary impacts resulting from the projected production losses in Pennsylvania, although we did not evaluate the reliability of the information.

Contrary to NCA/AMC's assertions, DOE analysts believe that fuel switching would not occur with cost increases in the range projected (p. 27). Any increase in coal production costs that took place recently, such as those associated with meeting the requirements of the Surface Mining Act, were accounted for in our analysis. As noted on page 26, the DOE model used 1982 costs of coal at the mine and transportation costs.

It may be, as the Northern Plains Resource Council claims, that in those states that allow federal fees to be deducted from the tax base, severance tax revenues could decrease. However, this does not affect either the federal or state government's ability to recover its permit-related costs.

Regarding sample sizes and composition, we agree that our sample of coal companies is not representative of the coal industry. It was not meant to be, however, and changes made in chapter 1 make this clearer. As explained on page 7, we decided not to undertake the expense of collecting detailed technical data from a representative sample of coal companies, choosing instead, to interview coal association and company officials. We would have preferred to interview officials of more companies, but the Mining and Reclamation Council, in a poll of its membership, could find no more that would agree to be interviewed. We disagree with NCA/AMC that our sample of coal companies was biased towards large producers. As noted on page 29, the companies in our survey produce from 200,000 to well over 40 million tons of coal a year. Regardless of their size or number, however, all of the companies were aware of the plight of small operators.

With regard to the sample of states, having now received comments from other states besides those we included in our sample, we continue to believe that these eight states provided a reasonable overview of the general concerns and possible problems in coal-producing states. Since the purpose of our interviews was to assess the technical, rather than political, feasibility of cost recovery, we did not feel it necessary to interview state legislators.

As NCA/AMC and MARC point out, and as we had already noted in our draft report, some coal producers will not be able to pass through to their customers increases in their costs. Some of these companies may be able to do so in the future by negotiating "pass-through" provisions in their contracts. Other companies that are small enough may be eligible for reduced permit fees. Although NCA/AMC believes that passing through permit costs could lead to "administrative nightmares," we are not aware of any situations in which such customers have required an audit of an agency charging permit fees.

MARC and Washington State said that we should have considered effects on electricity costs in our review. Although our draft report did not discuss electricity costs, our consultants, as well as DOE staff, told us that the projected cost increases discussed in our report were too small to have more than a negligible effect on electricity costs. This subject is now included in chapter 5, page 26.

Support activities tax

Our draft report proposed that Interior seek legislation to charge operators a tax on production to cover the costs of OSM's support activities--research, oversight, and promulgation of regulations. While they objected to cost recovery generally, several commenters raised specific objections to this proposal. MARC and NCA/AMC again argued that these activities were meant to benefit the public as a whole. MARC said that we had ignored the Surface Mining Act, which states OSM-funded research be made available to everyone. NCA/AMC objected to a tax to pay for the promulgation of regulations, saying that anyone who wished to harass the coal industry would simply file a petition for rule changes. The groups also said that such a tax would support a bureaucracy that would have no reason to be fiscally responsible.

The six western states responding jointly claimed that a uniform national tax on production would not take sufficient account of the higher regulatory costs in the West resulting from larger mine sizes, frequency of revisions in mining plans, etc. These states also implied that OSM's support activities might not be of sufficient benefit to industry to justify paying for them.

EPI also objected strongly to a support tax because of its fear that any attempts to amend the Surface Mining Act would invite "legislative assaults to other essential regulatory provisions of the law. . . ." EPI believes that the small amount of money that could be recovered is not worth the risk. If, however, these costs could be recovered without legislative amendment, EPI would support such proposals. PLI, on the other hand, endorsed our recommendation for a support tax.

Our response:

We continue to believe that coal operators are the primary beneficiaries of OSM support activities. While it is true that others may also derive some benefit from them, these activities are only made necessary because of the existence of a coal mining industry. However, after weighing the comments and reflecting on the proposal further, we decided, because of its government-wide implications, to present it as a matter for the Congress to consider. Enactment of such a tax could be applicable for other regulatory agencies and appropriately should be decided by the Congress.

Nevertheless, some of the commenters' concerns appear to be without foundation. The coal industry associations and the six jointly responding western states are concerned that companies would be taxed to support programs that could grow unchecked, with no accountability for quality, purpose, or benefit. However, as explained in chapter 4, the tax formula would be based on the ordinary and reasonable costs of support activities. Funds for support activities would still be appropriated in the usual manner, subject to the same scrutiny by the Congress and the public.

We agree with the six jointly responding western states that a uniform national tax on production does not consider regional differences in regulatory costs, but as we have defined them, support activities are those that are not directly related to any single permit or mine operation, but are instead in support of mining regulation in general. Since the costs of these activities are largely independent of where the mines are located, a uniform tax based only on production is equitable.

We acknowledge EPI's concern about proposing amendments to the Surface Mining Act, but we have no comment on it.

MAJORITY—225-6427
MINORITY—225-2730

NINETY-EIGHTH CONGRESS

Congress of the United States

House of Representatives

ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-371-B-C
WASHINGTON, D.C. 20515

February 10, 1984

Honorable Charles A. Bowsher
Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

It has come to my attention that the General Accounting Office is completing its work on a review of the implementation of §507(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). That section authorizes recovery of the costs of administering and enforcing SMCRA permits from those who receive such permits.

This Subcommittee has undertaken an indepth review of the implementation of certain provisions of SMCRA, particularly those relating to the collection of fees and penalties. Because GAO's §507(a) inquiry corresponds with the overall theme of the Subcommittee's ongoing work, I request that the results of GAO's work be provided to this Subcommittee, and that GAO be available to testify at a Subcommittee hearing regarding its findings and recommendations in July of this year.

If you have any questions, please feel free to have your office contact Kathryn Seddon of the Subcommittee staff at 225-6427. Thank you for your assistance in this matter.

Sincerely,

Mike Synar

MIKE SYNAR
Chairman

MS/ks

GAO's ANALYSIS OF REGULATORY COST INCREASES AND COAL PRODUCTION COSTS

To determine the effects of full cost recovery on coal production, we calculated permit processing and enforcement costs per ton of coal produced in each state and used these as input to the DOE model. As shown in table 6, we began with a compilation of fiscal year 1984 costs, both state and federal, in 26 coal-producing states;[1] totals appear in column 4. Data on state program costs were obtained from OSM's fiscal year 1984 budget request. We derived the costs of OSM programs in each state by looking at the number of mines under OSM regulation as of November 1983 and calculating the costs of processing and enforcing that number of permits in a single year. We based our calculations of costs on estimates of staff time and contract and travel expenses, including overhead, obtained from interviews with OSM staff and review of agency records.

We then divided the total OSM and state costs in each state by its coal production in 1982, the latest year for which data were available (column 5). The regulatory costs per ton of coal appear in column 6.

After evaluating the derived costs, we made certain adjustments before entering the data into the model; these are shown in column 7. In Alaska, Arkansas, and Louisiana, DOE projects coal production in 1990 to expand substantially. For Louisiana, which had no coal production in 1982, we used the cost calculated for Oklahoma, because the types of coal and mining conditions, as well as the amount produced, are expected by DOE to be similar in the two states. For the same reasons--increased production and geographical proximity--we used Oklahoma cost data for Arkansas. In Alaska, where production is also anticipated to grow significantly, we used data for Tennessee, which had the highest permitting cost per ton of coal produced. DOE staff agreed that the adjusted figures seemed reasonable.

When combined to give a nationwide total, the costs we derived for the states are less than those reflected in OSM's fiscal year 1984 budget request. For this analysis, we came up with a total of $65.9 million in state and federal regulatory costs; as noted in chapter 1, OSM's budget estimates show a total of $94 million. The discrepancy comes from our omission of the costs of nonroutine enforcement, support, and other activities that could not be allocated by state. In some cases, we simply could not

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[1]Georgia was omitted because coal output is too low (1,000 tons per year) to affect regional or national production, according to DOE staff. Mississippi was also omitted because production in the state had not yet begun.

determine the cost by state for support activities--the costs would be borne equally by operators across the country. For these costs, which totaled $28 million, we calculated increases separately. Thus, the $65.9 million in regulatory costs would increase the cost of a ton of coal by 8.2 cents on average. Recovering the costs of support and other activities, which amount to $28 million, would add another 3.5 cents to the cost of a ton of coal, bringing the total increase to 11.7 cents a ton on average nationwide.

Table 6

State Regulatory Costs by Tons of Coal Produced

State	(1) FY 1984 State Regulatory Costs[a] (000)	(2) FY 1984 OSM Costs for Cooperative Agreement Grants (000)	(3) Other OSM Costs[b] (000)	(4) Total Costs (000)	(5) Tons Produced, 1982[c] (000)	(6) Regulatory costs/ton (cents)	(7) Regulatory costs used in model (cents)
Alabama	3,320			3,320	27,486	12.4	12.4
Alaska	531	110		641	813	78.7	35.3[d]
Arizona			33	33	11,100	0.3	0.3
Arkansas	376			376	210	179.0	22.3[e]
Colorado	150	525		675	18,600	3.6	3.6
Illinois	3,300			3,300	62,383	5.3	5.3
Indiana	1,996			1,996	30,670	6.5	6.5
Iowa	100			100	598	16.7	16.7
Kansas	256			256	1,410	18.2	18.2
Kentucky	13,600		266	13,866	149,068	9.3	9.3
Louisiana							22.3[f]
Maryland	807			807	3,638	22.2	22.2
Missouri	604			604	5,015	12.0	12.0
Montana	479	755		1,234	27,727	4.5	4.5
New Mexico	282	450	523	1,255	18,184	6.9	6.9
North Dakota	740	140		880	18,052	4.9	4.9
Ohio	2,775		16	2,791	39,404	7.1	7.1
Oklahoma	801		105	906	4,052	22.3	22.3
Pennsylvania	13,550			13,550	80,800	16.8	16.8
Tennessee	3,117			3,117	8,835	35.3	35.3
Texas	920			920	33,577	2.7	2.7
Utah	400	600	523	1,523	15,685	9.7	9.7
Virginia	4,540		20	4,560	45,500	10.0	10.0
Washington	150[g]		105	255	4,691	4.8	4.8
West Virginia	6,855	100	39	6,994	120,000	5.8	5.8
Wyoming	800	1,200		2,000	102,715	1.9	1.9
Total	60,449	3,880	1,630	65,959	830,213		

aCosts that the states will incur to regulate state and private lands under OSM-approved state programs. Includes OSM grants that generally cover 50 percent of these costs. All costs were adjusted for inflation and converted to 1980 dollars before they were entered into DOE model.

bOSM regulatory costs for state and private lands in states without approved state programs, federal lands in states without cooperative agreements, Indian lands, and mining plan review for federal lands in states with cooperative agreements. See below for additional explanation of how costs were derived.

cProduction data from 1983 Keystone Coal Industry Manual.

dAdjusted Alaska's costs because 1990 production is expected to be much higher. Substituted the highest cost per ton of other coal-producing states.

eAdjusted Arkansas' costs because 1990 production is expected to be much higher. Used Oklahoma's costs because of similar mining conditions and coal type.

fAlthough Louisiana has a state program, production had not yet begun in 1982. However, by 1990, DOE assumes substantial production, comparable to Oklahoma. Therefore, substituted Oklahoma's costs.

gGrant for developing state program which Washington has not adopted.

Additional Information On "Other OSM Costs" (Column 3)

Arizona: Annualized actual costs of permitting and inspection for the Black Mesa mine, derived from OSM records at the Western, Technical Center.

Kentucky: Annualized actual costs of permitting 17 mines and inspecting 85 mines, based on average cost of $203 for an OSM inspection in the East.

New Mexico: Based on actual permitting costs for 5 mines, extrapolated to 19 and annualized; inspection costs for 2 mines (McKinley and Navajo) based on average of $585 for OSM inspection in the West.

Ohio: Annualized actual costs of permitting for 4 mines, and inspecting the 4 mines, based on average $203 for OSM inspection in the East.

Oklahoma: Annualized actual costs for permitting 7 mines, and inspecting the 7 mines, based on average $203 for OSM inspection in the East.

Utah: Annualized actual costs of permitting for 21 mines and inspecting the 21 mines, based on average $585 for OSM inspection in the West.

Virginia: Actual cost of permitting one mine, based on mine life of one year, and inspection, based on average $203 for OSM inspection in the East.

Washington: Annualized actual permitting costs for mines, extrapolated to 3 mines, and inspection costs for 3 mines based on average $585 for OSM inspection in the West.

West Virginia: Annualized actual permitting costs for 6 mines and inspection costs for 6 mines, based on average $203 for OSM inspection in the East.

LIST OF AGENCY, STATES AND INTEREST GROUPS ASKED BY GAO TO COMMENT ON DRAFT REPORT

Agency	Response received
Department of The Interior	Yes
States	
Alabama	Yes
Alaska	Yes
Arkansas	Yes
Colorado	Yes
Georgia	No
Illinois	No
Indiana	Yes
Iowa	No
Kansas	No
Kentucky	No
Louisiana	Yes
Maryland	No
Mississippi	No
Missouri	Yes
Montana	Yes
New Mexico	Yes
North Dakota	Yes
Ohio	Yes
Oklahoma	Yes
Pennsylvania	Yes
Tennessee	No
Texas	Yes
Utah	Yes
Virginia	Yes
Washington	Yes
West Virginia	Yes
Wyoming[a]	Yes

Interest groups	Response received
Interstate Mining Compact Commission[b]	Yes
Southern States Energy Board	No
Western Interstate Energy Board	No
American Mining Congress[c]	Yes
National Coal Association	Yes
Mining and Reclamation Council of America	Yes
Western Organization of Resource Councils	No
National Wildlife Federation	No
Environmental Policy Institute	Yes
Northern Plains Resource Council	Yes
Public Lands Institute	Yes
Save Our Cumberland Mountains	No

[a]Governor of Wyoming responded to our draft report on behalf of Wyoming, Utah, Colorado, New Mexico, Montana, and North Dakota.

[b]Interstate Mining Compact Commission provided comments for the 17 states it represents, including Illinois, Kentucky, Maryland, and Tennessee. Several other states provided individual responses.

[c]AMC and NCA provided a joint response.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 6 1984

Mr. J. Dexter Peach
Director, Resources, Community
and Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

Thank you for the opportunity to comment on your draft report entitled "The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulating Coal Mining." The report contains a number of interesting ideas which we will examine in more detail in the near future. However, the report's assessment of the overall economic impact of full cost recovery and certain references to the legal interpretation of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) concern us.

The report looks at a wide number of opportunities to recover the costs of operating the surface mining program and suggests several means of substantially increasing receipts. However, the report's conclusions do not adequately consider the local and regional differences which can significantly affect the costs of running surface mining programs. Our experience suggests that in some locations there could be large differences, especially among different sizes of operators and operations. It is important to understand the inter-regional effects that full cost recovery could have before proceeding with such policies.

There appear to be differences in your staff's interpretation and our legal staff's interpretation of SMCRA and Office of Surface Mining's (OSM) regulations. We would like to suggest that your staff contact Chris Cannon, Associate Solicitor for Surface Mining (343-4671) to discuss this in more detail.

As the report notes, we are planning to propose regulations on permit fees. We have not yet made any final decision on the content of these proposed regulations. OSM needs to explore further the overall impacts of cost recovery on the industry and the States as well as the overall economic ramifications on inter-regional production of coal.

We appreciate having your views in this important area and would be pleased to meet with your staff to discuss your draft report.

Sincerely,

Garrey E. Carruthers
Assistant Secretary for
Land and Minerals Management

GEORGE C. WALLACE
GOVERNOR

STATE OF ALABAMA

GOVERNOR'S OFFICE

MONTGOMERY 36130

November 21, 1984

Mr. J. Dexter Peach
Director
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

I appreciate the opportunity to review the General Accounting Office's Draft Report under date of November 5, 1984.

As you are well aware, Alabama is one of the twenty-five states which currently has primacy under Public Law 95-87. Although it is impractical to fully comment and/or debate the issues of this report in detail, it would seem significant that Alabama's permit fee of $2500 plus $25 per acre is in fact the highest charges enumerated in GAO's findings. Specifically, I question the reasoning propounded by GAO for a "user" tax to accomplish total cost-recovery. A primary purpose of the Act was to "establish a nationwide program to protect society and the environment from the adverse affects of surface coal mining operations"; and it is ludicrous to suggest that coal mine operators rather that the public and/or environment are beneficiaries of the Act.

Through the 1984-85 fiscal year, our Regulatory Authority (Alabama Surface Mining Commission) has managed to be self-sustaining with the help of the OSM grant. We are concerned however that financial projections indicate a substantial short fall beginning 1985-86 for the state's portion of cost at the fifty percent level. To date, the industry has willingly cooperated through current permit and acreage fees; however, there is every indication that they will adamently resist further increases sufficient to fully cover the deficit as they feel that the public should appropriately bear much of the cost. This is without consideration of GAO's recommendation to discontinue the current fifty percent funding through the Office of Surface Mining.

I am of the considered opinion that there is no way to expect funding through the state's General Fund on a sustainable basis and therefore it would appear necessary that if these funds were deleted the state of Alabama would be compelled to relinquish this function to the Office of Surface Mining.

With kind personal regards, I am

Sincerely yours,

George C. Wallace

George C. Wallace

GCW:adj

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

December 13, 1984

Mr. Charles A. Bowsher
Office of the Comptroller General
General Accounting Office Building
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

I am writing in regard to a draft General Accounting Office (GAO) report, which suggests that the Office of Surface Mining (OSM) recover its direct regulatory costs from coal operators, and that grants to states be phased out or substantially reduced.

Methods which OSM may choose to utilize in recovering its own direct costs would have little effect on the State of Alaska. However, I am gravely concerned by the proposal to phase out grants to states; it is this proposal I wish to address.

The GAO report suggests that states replace funding currently obtained through federal grants with other sources of state revenue or through increased permit fees. My staff and I have reviewed these proposals and found them to be unworkable in Alaska.

The Alaska Legislature enacted a law authorizing state takeover of the funding for its implementation with the understanding that the federal government would provide a major proportion of the funding. Fifty percent of the program's funding has to date been obtained through the federal share of our OSM matching grant. If grant assistance were terminated, substantial increases in appropriations would be necessary to support the program. Any such increases would need to be carefully considered, in light of the goals and priorities of my administration. Faced with the choice, there is a strong possibility that we would opt to return to the federal government the responsibility for administering what is fundamentally a federal regulatory program.

GAO's second suggestion, that states replace current federal funding through increased permit fees, is equally unworkable in Alaska. The Alaska Surface Mining Program has a current annual operating budget of approximately $500,000. With one operating mine in the state, requiring this sole operator to provide a major proportion of this funding would be an unreasonable burden. It should be noted that Alaska already imposes fees of up to $20,000 for a surface mining permit, which is substantially higher than fees charged by most other states cited in the GAO report. Further increases in fees could impede the development of Alaska's infant coal industry, an industry which it is hoped will eventually help offset declining state oil revenues.

Although Alaska's Surface Mining Program has been in effect for scarcely more than eighteen months, we are proud of the progress we have made to date in implementing the program, and take our regulatory responsibilities very seriously. For the reasons I have described, loss of federal matching funds would probably result in Alaska's relinquishing its program. Loss of our program would represent a serious setback to environmental regulation in Alaska, and to the state's coal industry. Conditions in Alaska are, in many respects, different from those encountered in other states, as was recognized by Congress in Section 708 of P.L. 95-87. Federal regulation of Alaskan coal mining would lack the advantage of the state's firsthand understanding of these unique conditions.

I am aware that you have recently received a letter from Governor Herschler of Wyoming, also expressing concern over the proposals contained in the draft GAO report. Although my name was not on that letter, I would like to express my concurrence with the points raised by Governor Herschler at this time. It is my sincere hope that the GAO will consider the concerns raised by Alaska and the other western states before the proposals are finalized. It is imperative that the full negative impacts of the suggested funding reductions be considered, including the cost of federal implementation of a surface mining program in Alaska.

Sincerely,

Bill Sheffield
Governor

cc: The Honorable William Clark
Secretary of the Interior

The Honorable John Ward
Director, Office of Surface Mining

STATE OF ARKANSAS
OFFICE OF THE GOVERNOR
State Capitol
Little Rock 72201

Bill Clinton
Governor

November 30, 1984

Mr. J. Dexter Peach, Director
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Peach:

Thank you for a copy of the draft of a proposed report entitled "The Interior Department's Office of Surface Mining Should More Fully Recover Or Eliminate Costs of Regulating Coal Mining" for our review and comment.

A careful review of the draft report reveals some very disturbing proposals and conclusions that would drastically affect the coal mining industry in Arkansas. There are many recommendations in the draft report which could pose problems to the states, but several of them cause me grave concern. The report indicates that the Office of Surface Mining (OSM) should consider levying additional federal fees or taxes on the coal mining industry, reduce or discontinue federal assistance to state regulatory programs, and the states should increase permit fees to recover the full cost of operating its mining program.

Any one or all of the above recommendations, if implemented by OSM, would be tantamount to shutting down coal production in Arkansas. Although Arkansas is not considered a major coal producer, I consider the coal industry an important segment of our economy which provides jobs and opportunities for many small business enterprises. The coal mining industry in Arkansas, as in other midwestern states, is comprised of extremely small operations which simply cannot bear additional federal fees or taxes.

I was instrumental in Arkansas seeking and obtaining primacy pursuant to the Federal Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) because I believe we should regulate our coal industry. When primacy was being sought, we were led to believe there would always be at least 50% federal assistance to administer and enforce this federal law. Furthermore, P.L. 95-87 provides that OSM will support a State Regulatory Program up to 50% of the cost. I believe it is very important for Arkansas to have primacy in regulating its mining industry as provided for in P.L. 95-87, and I will do everything possible to maintain this status.

Mr. Peach, Director
Page two

It is unlikely that the Arkansas General Assembly would appropriate the necessary funds to operate the mining program in the absence of federal assistance. And, as aforementioned, the mining industry simply could not bear the cost of permit fees sufficient to generate ample revenue for Arkansas to operate a coal regulatory program to the standards required by law without federal assistance. Therefore, the impact of receiving any amount less than 50% federal assistance would greatly affect Arkansas' Regulatory Program, and would probably result in the state reluctantly giving up primacy.

It is for these reasons that I strongly urge you to consider the detrimental effect your proposals would have on Arkansas' primacy and the mining industry in our state if the final report is issued in its present form.

I would appreciate your keeping me apprised of any changes to the draft report.

Sincerely,

Bill Clinton
Governor

OFFICE OF THE GOVERNOR

INDIANAPOLIS, INDIANA 46204-2797

ROBERT D. ORR
GOVERNOR

November 21, 1984

Mr. J. Dexter Peach, Director
Resources, Community, and Economic
Development Division
United States General Accounting Offices
Washington, D.C. 20548

Dear Mr. Peach:

Reference is made to the proposed report entitled "The Interior Department's Office of Surface Mining Should Fully Recover or Eliminate Costs of Regulating Coal Mining", which was sent to us for review.

From the beginning, when state governments were encouraged to take the lead in regulating the coal industry, the states were led to believe that the federal government would assist by supplementing the necessary increased state budgets at a rate of 50 percent each year after the second year of a state program.

When Indiana made the decision to take primacy of this program, we anticipated a continued 50 percent level of assistance. The reality of the financial situation is that program expenditures are presently higher than expected and we may need to adjust our existing fees in the future even with 50 percent support. In Indiana, our share of the enforcement costs are currently obtained from fees that come from the coal industry.

It is our desire that the federal government financial support for the enforcement program not be reduced or eliminated. There is currently a 35 cents per ton severance tax used for Abandoned Mine Lands Program. Half of that tax is returned to the states and half is retained by the federal government for other disbursement, mainly relating to Abandoned Mine Land Programs. We would suggest that consideration be given to investigating the possibility of the Office of Surface Mining using the 17.5 cents per ton for enforcement program support.

If in fact no federal grants are available to support Indiana's enforcement program under Title IV of Public Law 95-87, this state must seriously reconsider its participation in continuing this program.

We appreciate this opportunity for comment and strongly urge that federal grant assistance under this program not be curtailed.

Sincerely,

Robert D. Orr

ROBERT D. ORR
Governor

RDO:jm

State of Louisiana

EDWIN W. EDWARDS
GOVERNOR
B. JIM PORTER
SECRETARY

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF CONSERVATION

HERBERT W. THOMPSON
ASSISTANT SECRETARY
AND
COMMISSIONER

December 20, 1984

Mr. Ned Smith
U.S. General Accounting Office
RCED
Room 4905
441 G Street, NW
Washington, D.C. 20458

Re: Draft Report: "The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulatory Coal Mining"

Dear Mr. Smith:

Thank you for providing the Louisiana Office of Conservation (State Regulatory Authority) an opportunity to comment on the subject GAO Report.

Louisiana currently has only one permitted lignite surface mining operation. Within the next five years, this State may permit only two additional operations. Passing regulatory costs to three (potential) operators would be unreasonable.

Louisiana feels that surface coal mining regulation can best be accomplished by each State.

Louisiana feels that it was the intent of the SMCRA to fund each approved State Program at 50%, and that any withdrawal/reduction of A&E grant funds will seriously jeopardize the current approved regulatory program in this State.

Yours very truly,

HERBERT W. THOMPSON, COMMISSIONER
Office of Conservation

By James H. Welsh
James H. Welsh, Director
Injection & Mining Division

HWT:JHW:mk

NATURAL RESOURCES BUILDING . P.O. BOX 44275 . BATON ROUGE, LOUISIANA 70804 . 504/342-5540

MISSOURI DEPARTMENT OF NATURAL RESOURCES
Land Reclamation Commission
P.O. Box 1368 117 East Dunklin St. Jefferson City, Missouri 65102 (314) 751-4041

November 20, 1984

Mr. J. Dexter Peach, Director
Resources, Community & Economic
Development Division
U.S. Government Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

I have reviewed the proposed report entitled The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulating Coal Mining and would like to make some comments and observations.

It was clearly the intent of Congress to support the state regulatory programs through a federal grant process as outlined and authorized in Section 705 of the Surface Mining Control and Reclamation Act of 1977. Eliminating this grant process seems to circumvent an option of the federal law which to date has enabled Missouri to build a strong regulatory program.

The present Office of Surface Mining oversight role in Missouri provides what I perceive in several instances as an unnecessary duplication of tasks already performed by the Land Reclamation Commission staff. Such duplication is in itself a waste of money and would even be less desirable if this burden was borne exclusively by the Missouri coal industry.

If a direct fee structure was implemented to recoup federal expenditures (thus eliminating the need of general funds) it would likely follow that there would be less congressional oversight of the federal agency's performance, thus, reducing or eliminating an important step in our system of check and balances.

Since 1972 the Missouri coal industry has supported the Land Reclamation Commission budget through permit fees and have been willing to carry their fair share of this financial burden. If this burden is drastically increased, it would be likely that several of Missouri's operators would be forced out of the coal business. This would be a highly undesirable situation.

Mr. J. Dexter Peach
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November 20, 1984

I appreciate your consideration of my comments, and if you have additional questions or need additional information, please contact Mr. John A. Young, Staff Director, Missouri Land Reclamation Commission, P. O. Box 1368, Jefferson City, Missouri 65102, or by telephone at (314) 751-4041.

Sincerely,

LAND RECLAMATION COMMISSION

for John A. Young

Louis M. Steele
Chairman

LMS/mjb

CC: Mr. Fred A. Lafser, Director, Dept. of Natural Resources
Mr. Alden Shields, Assistant for Government Operations, Governor's Office

STATE OF NEW MEXICO
OFFICE OF THE GOVERNOR
SANTA FE
87503

TONEY ANAYA
GOVERNOR

November 20, 1984 RN 1010

Mr. J. Dexter Peach
Director
U. S. General Accounting Office
Resources, Community and Economic
Development Division
Washington, D.C. 20548

Dear Mr. Peach:

Thank you for the opportunity to comment upon the General Accounting Office's proposed report entitled "The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulating Coal Mining." The State of New Mexico recently joined Wyoming and the other Western coal-producing states in commenting upon the draft report. By this letter I would renew the previous comments offered in Governor Herschler's letter and offer some additional comments which are specific to New Mexico's program.

My major concern is that the program to regulate surface coal mining in New Mexico would be weakened by funding constraints. The Surface Mining Control and Reclamation Act of 1977 (SMCRA) recognizes that there will be differences in regulatory programs which are made necessary by diverse geology, climate and land status. It necessarily follows that regulatory programs will vary in their costs. Imposing full cost recovery through a uniform funding mechanism is not feasible. The danger in this proposal is that the requirement of SMCRA will be sacrificed to attain full cost recovery.

Land ownership problems in states like New Mexico will pose problems which the draft report has not addressed. The federal government, Indian tribes, state and private interests are all likely to own portions of coal mines in New Mexico. The problem is further exacerbated by the split of fee title into various mineral and surface estates. This complex ownership pattern is translated into a correspondingly complex regulatory framework. The federal government, November 20, 1984 - Page 2

Indian tribes and the state may all have legitimate regulatory interests in the totality of several mines in the state. The draft does not address the issue of mines having several regulatory masters, each requiring funding.

Finally, it should be pointed out that the scope of the regulatory programs throughout the country is not uniform. For instance, many states do not monitor exploration on federal lands in the manner New Mexico does. On the other hand, New Mexico has not expended the effort that many states have on the small operator assistance program. Finding a funding mechanism which will meet the funding requirements of the different regulatory programs will be extremely difficult.

Again, thank you for the oportunity to comment on GAO's draft report. I would urge that both this letter and Governor Herschler's letter on behalf of the Western coal-producing states be carefully considered and that the draft report be revised to reflect the significant problems with attempting to fully recover the cost of regulatory programs.

Sincerely,

TONEY ANAYA
Governor

RICHARD F. CELESTE
GOVERNOR

STATE OF OHIO
OFFICE OF THE GOVERNOR
COLUMBUS 43215

January 16, 1985

Mr. Ned Smith
U. S. General Accounting Office
Resources, Community, and Economic
Development Division
Washington, D. C. 20548

Dear Mr. Smith:

Thank you for the opportunity to review and comment on the GAO draft report on full-cost recovery for the Office of Surface Mining.

I take issue with none of the cost recovery estimates developed in the draft report. I do take issue with the key assumption underlying much of the analysis, however, which is that OSM has the option of achieving full-cost recovery by shifting most if not all of the cost of state regulatory programs to the states themselves. In 1977, when Congress recognized that surface mining control and reclamation was a problem of national significance requiring national solutions, we passed from an era of individual state programs, where policies concerning enforcement levels and effort were decided at the state level, to a national program setting out national goals and severely limiting the states' ability to develop regulatory policy. To adopt a cost-recovery plan now that would require states to absorb most if not all of the regulatory costs in order to retain primacy would effectively nullify the existing federal-state partnership and would seriously undermine our shared goal of preserving the land and protecting the public interest. Although the draft report indicates that most states probably would not relinquish primacy under these circumstances, I suspect that, with time, many states would choose to return primacy to the federal government.

A look at the effect of OSM's full-cost recovery on Ohio's program illustrates the problem such a policy would create. In 1977 when the Surface Mining Control and Reclamation Act was enacted, Ohio already had a small but viable surface mining program in place. With a staff of 30 and a total annual budget of approximately $710,000, the program provided only minimal inspection and enforcement. With the stimulus provided by the enactment of the Surface Mining Control and Reclamation Act of 1977, Ohio's program grew and quadrupled in size and became far more sophisticated. Last year, with 133 employees and a total coal regulatory budget of $4.7 million, Ohio's surface mining regulatory program provided the level of inspection and enforcement essential for effective regulation.

Mr. Ned Smith
January 16, 1985
Page 2

The current level of enforcement must be maintained and improved upon if Ohio is to retain primacy and provide effective regulation. A 50% reduction in funding resulting from the cut-off of the federal regulatory grant would make this level of enforcement virtually impossible to maintain. Doubling the fees and severance taxes paid by Ohio coal operators who are already battling the economic setbacks affecting the entire coal industry would probably drive many of them out of business altogether and would certainly produce an even higher level of unemployment among Ohio's coal miners. The economics of regulation would also shift. It would be cheaper for Ohio coal operators to work only with OSM, which is already funded through existing severance taxes, than to support the cost of a fully state-funded program as well. In this way, OSM's achievement of full-cost recovery might easily result in its assumption of the full financial burden of regulating strip mining in Ohio.

I strongly recommend that the General Accounting Office, in preparing its final report to the Congress, take into account the clear implications of full-cost recovery for the longer term. Regardless of the preliminary indications that some states might have given concerning a continuation of their programs solely with state revenues, a regulatory program that gives the federal government control over policy while giving the state responsibility for program costs would be unworkable. Before it adopts the kinds of changes discussed in your draft report, Congress should be made aware of how much it would have to pay to take over surface mine regulation in most of the states currently having primacy.

Please keep me informed of any further developments in the GAO report. If Ohio can provide any assistance as the report develops, please do not hesitate to contact my office.

Best regards,

Richard F. Celeste

Richard F. Celeste
Governor

RFC/Sz

cc: Joe Sommer, Chief of Staff, Governor's Office
Ray Sawyer, Legal Counsel, Governor's Office
Sara Sibley, Director, Governor's Washington Office
Kyle Zimmer, Governor's Washington Office
Myrl Shoemaker, Director, ODNR
William Denihan, Assistant Director, ODNR
Sally Van Meter, Deputy Director, ODNR

STATE OF OKLAHOMA
OFFICE OF THE GOVERNOR
OKLAHOMA CITY

GEORGE NIGH
GOVERNOR

December 26, 1984

Mr. J. Dexter Peach
Director
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

I appreciate the opportunity to review your draft report which explores the issues surrounding the proposal that the Interior Department's Office of Surface Mining should more fully recover or eliminate the costs of regulating coal mining. The central thesis of recovering, through permit application fees, the cost of reviewing surface coal mining permit applications and carrying out inspections to insure conformance has been widely debated since the inception of the federal surface mining program.

We in Oklahoma believe that the coal mining industry should pay a fair share of the costs of operating a regulatory program. We also believe that the costs of the programs be borne by other benefactors, the states and the federal government. I believe that the public benefits beyond the protection afforded by the regulatory program and that costs of the program should be covered in part from general revenues. As importantly, I believe that the federal government must continue to carry some of the financial burden of the state's regulatory program. OSM's program places a significant burden on the state as well as the coal industry; a burden that results in regulatory program costs that are in excess of costs that would be incurred if the state were to operate a regulatory program of similar stringency.

The costs, to the state, of doing business with the Office of Surface Mining are substantial. Call it oversight, justify it on the grounds of a nationwide standard; it amounts to a significant amount of overhead for the operating agency. Overhead in the form of reports, reviews, conversations, and meetings upon meetings with headquarters, field, and technical center officials and staff. An overhead that exists solely for the fact that the federal program exists. If there is a national need and benefit, then also, some of the costs of the program should be provided from national sources and not placed only on the coal industry or the state.

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Mr. J.D. Peach

The Oklahoma Mining regulatory programs are supported by the coal industry, through permit fees and a coal tax of $.05/ton; by general revenues to the Department of Mines; and through federal grants, including the Office of Surface Mining A&E grants. We have attempted to balance the costs of the regulatory program among the three revenue sources and could object to the federal government withdrawing its financial support on the grounds that industry alone should finance the regulatory program.

This view is not inconsistent with your findings that the OSM should structure its permit fees to recover a greater percentage of the cost of federal permitting on federal lands.

Of equal importance is the recognized need to protect small operators from disproportionate costs of permitting within the context of scale and size of the operations, income potential, and the impact of the operations on the environment.

I believe that the report could be technically improved by providing additional detail on the economic analysis undertaken which demonstrated little significant impact on the industry by increased fees, details on the states interviewed, and by expanding the survey to include all coal producing states.

Please keep my office informed as you continue your studies. You may contact Ms. Gayle Townley, Deputy Chief Mine Inspector, Oklahoma Division of Mines, 4040 North Lincoln, Oklahoma City, Oklahoma 73105. Telephone 405-521-3859, should you need additional information on the Oklahoma regulatory program.

Sincerely,

George Nigh

George Nigh

cc: Gayle Townley
Deputy Chief Mine Inspector

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
P.O. Box 2063
Harrisburg, PA 17120

Office of the Deputy Secretary
Environmental Protection
787-2814

JAN 25 1985

Mr. J. Dexter Peach, Director
Resources, Community, and Economic
Development Division
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Peach:

Governor Thornburgh has requested that I respond to your letter dated November 5, 1984. A review of the report entitled "The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulating Coal Mining" has been completed.

The Federal Surface Mining Control and Reclamation Act encourages the States to obtain delegation of primary jurisdiction for regulating coal mining. Several incentives were set forth in the Act to encourage the State to seek primacy. In order to receive Title 4 abandoned mine reclamation funds, the States were required to obtain primacy. In addition, Section 705(a) of the Act authorizes the Secretary of the Interior to provide funding to the States for developing, administering and enforcing its delegated program. The Act authorized up to 50% funding for the third year and every year thereafter. This differs from other Federally funded programs as a time limit is usually established in the enabling legislation for providing state funding. We believe this language shows a Congressional intent different than the report recommends.

With the above incentives plus the desire to maintain primary jurisdiction for coal mining activities, Pennsylvania went forward to obtain primacy. Pennsylvania recognized that limited State monies were available and that our ability to implement the program was predicated on receiving adequate Federal monies.

Pennsylvania cannot support the General Accounting Office report recommendations. If OSM were to reduce or eliminate state grants for administration and enforcement and to require "full cost recovery permit fees", Pennsylvania would be faced with a problem. Any change to the existing funding level would require a detailed analysis as to whether Pennsylvania could obtain the additional funding. The ability to obtain the required funding would determine whether Pennsylvania would maintain primary jurisdiction of coal mining or relinquish it. At this time, our preliminary analysis indicates that we will have difficulty in obtaining adequate funding.

Mr. J. Dexter Peach - 2 -

As indicated in the report, 56% of Pennsylvania's industry is composed of small surface mine operators. Any full cost recovery permit fees could cause a significant financial burden to these operators. In Pennsylvania, the problem is further compounded because of the distribution of mineral holdings (small non-contiguous parcels). Because of the mineral holdings problem, the operator is required to obtain numerous permits to assure that coal production levels can be maintained, whereas operators on large tracts in other states do not have as severe a problem. In addition, Judge Flannery's recent ruling concerning incremental bonding could have potentially greater impacts as even more permits may be required. States that have a small number of mines with high production rates have an economic advantage over states that have a large number of mines with low production rates. The economic advantage is based on the difference when comparing permit fees to coal production between the states.

The GAO report indicates that a different permit fee structure could be developed for small operators and large operators. The question as to whether or not this represents a discriminatory practice must be addressed.

In order to change our permit fee structure, we would be required to modify our regulations. We may not be able to modify the fee structure to require "full cost recovery permit fees". Based on the GAO Report, a permit fee of approximately $80,000 (permit processing costs would be approximately $20,000 and inspection costs would be approximately $12,000 per year for the mandated 12 inspections for a five year life of permit) is a possibility. In addition the operator would be required to pay a renewal fee (every 5 years) for a similar dollar amount. Any Departmental action to increase the permit fee to the required level as determined by the Department could result in a potential backlash from the legislature, industry and others. If this occurs, the proposed regulation to increase the fee may not be approved.

A reduced level of OSM funding and the inability of the states to obtain additional funds would result in the State being unable to meet its mandated responsibilities. If this occurs, OSM would be required to withdraw primacy and implement a federal program. Any litigation concerning OSM action to rescind primacy would allow the states to argue that OSM did not provide adequate Federal funding of the program as the Act suggests.

In addition, we are concerned that a regulatory program that is fully funded by those being regulated could create a perceived and perhaps real conflict of interest.

There is one inaccuracy in the report concerning Pennsylvania that must be clarified. It was mistakenly reported that Pennsylvania's program income for 1983 was approximately $2 million. Pennsylvania's bonding program has a state reclamation fee to help subsidize the $100 million for cleanup of abandoned sites in Pennsylvania which are not eligible under the OSM Title IV funds. The reclamation fee ($2 million) is dedicated to the reclamation of state bond forfeiture sites and cannot be used for the administrative costs of the program. Thus, the $2 million in reclamation fees is not program income.

Mr. J. Dexter Peach - 3 -

Another way to reduce program costs is to evaluate how OSM can reduce excessive reporting, filing, and other related costs that the states are presently required to incur by the Office of Surface Mining.

We strongly urge that the GAO report recommendations not be implemented. The 50% funding of a state program administration and enforcement by OSM should continue. Any evaluation of different funding mechanisms must insure that the mechanism selected does not provide the coal industry of one state with an economic competitive advantage over another state.

If you have any questions, please contact me.

Sincerely,

Nicholas DeBenedictis
Secretary

RAILROAD COMMISSION OF TEXAS
P.O. DRAWER 12967
AUSTIN, TEXAS 78711

MACK WALLACE
CHAIRMAN

December 19, 1984

RE: GAO Draft Report
Termination of Federal Funding
for State Coal Programs

J. Dexter Peach, Director
U.S. Accounting Office
Washington, D.C. 20548

Attention: Ned Smith

Dear Mr. Peach:

We have reviewed the General Accounting Office draft report and appreciate the opportunity to comment on it.

The position of the Railroad Commission of Texas has been and remains that the regulation of surface coal mining operations is best accomplished by the states. The proper means of reducing federal expenditure in this area is more appropriately a reduction or elimination of the functions of the Federal Office of Surface Mining. The elimination of the 50 percent federal matching money for the regulation of this activity as the draft report suggests, would jeopardize the ability of the state to continue administering this regulatory program.

Sincerely,

Mack Wallace

Mack Wallace

MW/cc

COMMONWEALTH of VIRGINIA

Office of the Governor
Richmond 23219

Betty J. Diener
Secretary of Commerce and Resources

November 16, 1984

Mr. J. Dexter Peach, Director
United States General Accounting Office
Washington, DC 20548

Dear Mr. Dexter:

Governor Robb has asked me to respond to your request for comments on the report entitled The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Cost of Regulating Coal Mining.

The Commonwealth of Virginia is very strongly opposed to the draft report's recommendations. The recommendations would shift nearly the entire cost of this regulatory program to the regulated industry and the states. It calls for a special tax that could increase the cost of coal production by as much as 11.7¢ per ton on a national average. Such a tax would weaken our coal industry's competitive standing in both domestic and foreign markets.

In addition, the report proposes to phase out OSM's grants to states for 50% of the costs of administration and enforcement. Such grant reduction would place an additional financial burden on Virginia of approximately $2,500,000 per year.

Again, we are strongly opposed to the recommendations of this draft report. While purporting to save money, it merely hides the burden to the general public in the form of higher consumer costs and higher state taxes.

Cordially,

Betty J. Diener

BJD/mmw

cc: The Honorable Charles S. Robb
Fred W. Walker
Danny R. Brown
Stewart Gamage

Department of Natural Resources

OLYMPIA, WASHINGTON
98504

BRIAN BOYLE
Commissioner of Public Lands

December 14, 1984

Mr. J. Dexter Peach, Director
Resource, Community and Economic
Development Division
U.S. General Accounting Office
Room 4915 - GAO Building
441 G Street NW
Washington, D. C. 20548

RE: "Draft of a Proposed Report - The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulating Coal Mining."

Dear Mr. Peach:

Your letter and enclosed draft report to Honorable John Spellman, Governor of the State of Washington, was given to me for comment. As State Geologist, I am responsible for enforcing the State's Surface Mined Land Reclamation Act. Washington State is one of the two states where OSM has implemented a federal regulatory program pertaining to coal mining.

Washington State's coal production can be attributed to one operator — namely WIDCO, who produces coal for a power plant near Centralia, Washington. This power plant supplies electricity to eight different utilities. Coal production for 1984 is estimated at 3,817,000 tons. We also have one small operator supplying coal for local markets.

I find your recommendations based on a very cursory analysis of the coal mining business. The report contains some erroneous conclusions that support your recommendations. Your statement that a regulatory cost of 11.7¢/ton "would have little effect on coal production" and your statement further that "production would be unaffected even if costs rose $1.00/ton" is not supported by the facts.

Having spent 21 years in the private sector, I can categorically state that any increase in the cost of operation has an effect. To our major coal operator, the cost, at your lower figure, would be $446,589 during 1984. This has a major impact that has several possible ramifications:

1. Cost is passed on to the utility and eventually to the public.

Equal Opportunity/Affirmative Action Employer

Letter to Mr. J. Dexter Peach
December 14, 1984
Page 2

2. Cost only partially passed on to the public requiring lay-offs at the Centralia Mine and plant.

3. Increased operating costs directly impacting coal reserves in a negative way, shortening the life of the mine.

Speaking in general terms, increasing the cost of producing coal is contrary to the National Policy of Decreasing Energy Dependence on Foreign Sources. Already, WIDCO pays a 35¢/ton levy to OSM (approximately $1,335,950 in 1984). Additional tonnage fees would add an unwarranted burden. Certainly if fees were increased to an additional $1.00/ton, many operators would close down nationwide. Just think of the negative impact in terms of royalties collected from federally-leased coal. This is not discussed in your report.

In your report, you assume that when financial support from OSM to the state regulatory agencies is withdrawn, the states will pick up the tab. A number of states are not enjoying economic recovery. Therefore, despite the wishes of regulatory officials, the legislators may not be inclined to provide funding for what is essentially a federal program.

In conclusion, because of a paucity of data, your report makes recommendations that are not substantiated. The study should be re-done with a detailed analysis of the effects nationwide and by state of the impacts your proposed fees would have on the industry, cost of electricity, etc.

Respectfully yours,

Raymond Lasmanis

Raymond Lasmanis
State Geologist
Division of Geology and Earth Resources

APPENDIX IV

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

December 3, 1984

Dear Mr. Peach,

Your proposed report entitled The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulating Coal Mining has been reviewed by this office.

I must express concern for the welfare of the coal industry in West Virginia should the Interior Department's Office of Surface Mining decide to eliminate funding of regulating coal mining.

The state would require an increase in permitting fees that would constitute a devastating effect on our small coal operators. These permitting fees would increase by an amount that could force small coal operators in our state to close their operations.

Financing the regulatory program through permit fees would require the coal market to remain at a fixed level. If the number of permits decline, then the cost of permits will need to increase. The state cannot operate a regulatory program without more accurate projections for budgetary purposes.

This matter requires further study before a final decision is made by the Department of the Interior, Office of Surface Mining, regarding discontinuing funding to states for the costs of regulating coal mining.

Sincerely,

John D. Rockefeller IV

Mr. J. Dexter Peach
Director
Resources Community and Economic
Development Division
United States General Accounting Office
Washington, D. C. 20548

STATE OF WYOMING
OFFICE OF THE GOVERNOR
CHEYENNE 82002

ED HERSCHLER
GOVERNOR

November 30, 1984

Comptroller C. T. Conover
Comptroller of the Currency
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20219

Dear Mr. Conover:

A draft report by the General Accounting Office has come to my attention. The report, "The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulating Coal Mining," makes recommendations that could cause havoc in western state reclamation programs and lower the quality of environmental regulation under the Surface Mining Act.

The General Accounting Office's report recommends that the Office of Surface Mining seek full recovery of its direct regulatory costs from operators and that the grants to states should be phased out or substantially reduced.

On behalf of Wyoming and the Governors of Utah, Colorado, New Mexico, and Montana, and the Public Service Commission of North Dakota, we find the GAO proposal seriously flawed. It should be rejected. While the principle of recovering government costs from the beneficiaries of government action has many valid applications, GAO's application of this principle to mine regulation is inappropriate.

First, the GAO report misunderstands who is the beneficiary of mine regulation. The recovery of cost for government regulation of mining is not comparable to the recovery of cost for other types of government services, such as Coast Guard rescue or navigation aids for yacht owners. GAO also ignores the externalities of mine regulation. There are clearly numerous beneficiaries of mine regulation. Good reclamation often results in improved wildlife habitat and better agricultural land; new cultural resource discoveries are made pursuant to the National Historic Preservation Act; new impoundments or solid waste disposal facilities are created for others' benefit; mining and reclamation research expands the knowledge of handling toxic materials and the management of many types of disturbed lands, etc. GAO does not account for any of these externalities.

Second, GAO has selectively applied the cost recovery principle to SMCRA activities. GAO did not propose that persons petitioning for

Comptroller C. T. Conover
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the designation of lands unsuitable for mining pay the cost of processing the petition. Who should be charged for pre-determinations on alluvial valley floors? How should costs for cumulative hydrologic assessments which extend beyond the permit boundaries and benefit other operators be assessed? What about OSM's policy to pay attorney's fees? Should the cost of investigating alleged violations be borne by the persons making the allegations? In each of these instances, the imposition of a fee would have a chilling effect and substantially reduce the effectiveness and intent of the law.

Third, GAO's analysis is flawed in some cases and imcomplete in others. The report's reference to the cost recovery for the operation of the Wyoming Industrial Siting Administration (not Commission as GAO reports), inaccurately describes that agency's limited cost recovery program. In fact, the Administration receives a general fund appropriation. Fees charged permit applicants are deposited into a special account for partial reconciliation purposes; however, the general fund never achieves full cost recovery. Post-siting monitoring and EIS review costs, for example, are covered by the general fund.

GAO's analysis of the impact of its proposal on coal production is incomplete and inadequate to support such a major policy recommendation. The discussion of potential regional shifts in coal production caused by cost recovery needs to be expanded. As an introduction to the degree of detail needed, GAO should consult the extensive analyses of coal production impacts of acid rain control proposals. In some regions of the West, such as Utah with high-cost underground mining and a severely depressed coal industry, permit fees may not be passed along by the operator. Instead, the operator would absorb those costs and in some cases be forced out of business. Similarly, companies mining only low-grade coals such as lignite, which have a slender profit margin at best, would be hard hit. In either case, regional production patterns would be shifted.

GAO has wrongly assumed uniform nationwide applicabilityof the Surface Mining Act and has failed to account for the higher regulatory costs imposed by mines on federal lands, such as coordination with various federal agencies (e.g. wildlife), NEPA compliance, etc. The suggestion of a uniform cents per ton figure sufficient to support the government's reclamation program may be severely misleading since it does not account for variations such as the larger mine sizes in the west, the frequency of mine plan revisions, etc. The suggestion also presupposes that OSM's support activities are of sufficient benefit to industry to justify industry paying for their cost. A homogenizing, broad brush analysis of this important issue is clearly inadequate.

Finally, the GAO report fails to consider the impact of its proposal on the operation of state programs. For example, what would be the impact of irregularity of the timing of the submission of permit

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November 30, 1984

applications on the stability of state regulatory programs and the state budgetary process? What would be the impact of a state dropping its cooperative agreement for regulation of mining on federal lands but maintaining the other parts of the program? This may be a likely occurrence to avoid double charging of operators on federal lands--especially in light of the recent decision by Judge Flannery. What would be the impact on a state agency where one of the minerals being regulated is subject to full cost recovery but others are not? In some cases, cost recovery might drive some mines out of business. With some companies being forced out of business in a state, the entire burden of financing an adequate state reclamation program will fall on the remaining firms, further straining their stability. Would not full cost recovery by the federal government force, for equity's sake, full cost recovery by states? This would make this environmental protection program totally dependent on revenues from the regulated parties. The historical precedent for having coal operators pay for their regulation resulted in the deterioration of state programs in some regions of the country. This destructive linkage was one of the reasons why a nationwide reclamation law was needed to assure adequate reclamation across the country.

For these reasons we oppose the recommendations in the draft GAO report. They represent an inappropriate application of the cost recovery principle. Adoption and implementation of the GAO recommendations will: 1) undermine the sound environmental principles embodied in the Surface Mining Act; 2) place an even greater burden on industry than industry already bears; and 3) force the coal-mining states and their citizens to assume an inequitable share of the cost of a federal regulatory program from which everyone should benefit.

Thank you for your attention to this troublesome matter. Please feel free to contact me if you have any questions or concerns.

Sincerely,

EH:np

cc: Secretary William P. Clark
Director John Ward
Honorable Sidney R. Yates
Honorable Morris K. Udall
Honorable James A. McClure
Honorable Mike Synar
Governor Scott M. Matheson
Governor Richard D. Lamm
Governor Ted Schwinden
Governor Toney Anaya
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GOV. CHARLES S. ROBB
Virginia

January 15, 1985

Mr. J. Dexter Peach
Director
Unites States General Accounting Office
Washington, DC 20548

Dear Mr. Peach:

In November of last year the states received a copy of the General Accounting Office report entitled "The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulatory Coal Mining." Many member states of the Interstate Mining Compact Commission (IMCC) have already commented directly on the report. However the IMCC member states have authorized the submission of this summation. The IMCC is composed of seventeen states, fifteen of which are considered major coal producers. In fact, the Compact states produce approximately 85% of the coal mined in these United States.

None of the member states of the IMCC favor the full cost recovery approach to financing the cost of regulating coal mining as recommended in the General Accounting Office report. The IMCC member states believe there is valid rationale for continuing, if not expanding, the current level of federal funding of state coal mining regulatory programs. A significant portion of state costs of administering regulatory programs under the Federal Surface Mining Control and Reclamation Act (PL 95-87) is not directly attributable to the mining industry; but is attributable to federal requirements imposed on the states. Many such costly requirements do not directly contribute to the goals of the Federal Surface Mining Act — protection or promotion of public health, safety, property, and the environment. Rather, federally imposed costs include unnecessary requirements for data collection, record keeping, report preparation and submission.

Mr. J. Dexter Peach
January 15, 1985
Page 2

On May 2, 1983, the IMCC transmitted, to the appropriate Committees of Congress and the Secretary of Interior, recommended amendments to PL 95-87 that would "allow states to effectively and efficiently carry out the mandates that Congress had anticipated." One of the Commission's recommendations was to amend Section 703(a) of PL 95-87 to increase the authorized level of grants to states from 50% to 80%. If federal funding of state regulatory programs is not maintained or expanded, the Compact states recommend that federal support be reduced only following commensurate cost reductions by elimination of inefficient and burdensome federal requirements on state regulatory authorities.

The proper means of reducing federal expenditure is more appropriately a reduction of funding for those federal activities which unnecessarily duplicate state regulatory activities. A reduction in federal funding to the state will only jeopardize the ability of the state to continue administering its regulatory program.

In 1977, the Congress recognized that surface mining control and reclamation was an issue of national significance requiring national solutions. Those solutions involve a federal-state regulatory partnership and shared responsibility to pay for that partnership. To adopt a policy now, which would require states to absorb most or all costs if they are to retain primacy, would nullify the existing partnership and would ultimately be counterproductive to our national goal of effectively preserving the land and protecting the public interest.

We wish to thank you for your time in reading this summation. We sincerely hope that you will give it the weight and consideration that seventeen governors deserve.

Sincerely,

Kenes C. Bowling
Executive Director

/mkr

cc: Secretary William Clark
United States Department of the Interior
Representative Morris K. Udall

Subcommittee Members:
Environment, Energy, and Natural Resources
Energy and Mineral Resources
House Interior Appropriations

ENVIRONMENTAL POLICY INSTITUTE

November 27, 1984

J. Dexter Peach, Director
U.S. General Accounting Office
Washington, DC 20548

Re: Comments to GAO/RCED-85-33

Dear Mr. Peach:

Thank you for the opportunity to review and comment on GAO's proposed report, The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulating Coal Mining. What follows is our comments regarding several issues of concern.

We generally support the concept of OSM and/or the states assessing the coal mining permit applicant with a permit fee which recovers the costs of permit application review, annual state inspection and enforcement activities, and OSM oversight activities. We believe that such practices are clearly permitted under SMCRA.

Despite our general support, we are, however, concerned about the political ramifications that may develop from such actions. It is possible that certain state legislatures may choose to return its regulatory authority (primacy) back to OSM rather than raising the permit fees of coal industry in its state. If the states are no longer eligible to receive state program implementation grants from OSM, and instead must obtain funding for the operation of its regulatory program directly from the operators by increasing permit fees, there may be little incentive for certain states to continue retaining primacy. In other words, certain states, rather than "face the heat" of being the agent to assess the coal industry with increased costs, might seek to pass the burden on to OSM. States choose to obtain primacy for a variety of reasons, two of which undoubtedly are the ability to receive Abandoned Mine Land Funds, and the opportunity to receive federal grants to fund its state program operations, and its employees. To remove one of these incentives (state program grants), and to replace it with the unsavory option of recovering the costs from industry, may prove too politically sensitive to some states.

There is a provision in the law which requires OSM to administer a federal program in any coal state which seeks not to obtain, or chooses to return primacy to the federal government. In reality, however, OSM is currently poorly equipped to act as the primary regulatory authority in the states. Examples of OSM's shortcomings in this area are evident in its performance, thus far, in Tennessee and Oklahoma, two states which OSM previously assumed regulatory control.

Secondly, we are concerned about the impact that increased permit

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fees might bring to small coal operators. It was the intent of Congress in drafting the law, that the regulatory requirements of the Act be not a financial burden to the small coal operator. In establishing the Small Operator Assistance Program (SOAP), small operators are eligible to receive grants to subsidize the costs of meeting the technical requirements of the permit application process. To our reading of the law, SOAP may not be used to subsidize the permit fees themselves. Instead, we suggest that OSM promulgate federal regulations that apply to state and federal permit fees, which establishes a lower fee level for small operators. Such regulations must be written clearly so as only benefit the truly small operator, and not provide larger companies, who control, contract, or own smaller companies, a loophole to evade such costs.

We are also concerned that the states, and OSM set permit fees at sufficient levels which ensure that state programs, and federal oversight are adequately funded. We are concerned that the political pressures associated with assessing the industry with the costs of the regulatory program might act to undercut either the states or OSM's ability to implement a fully staffed program adequate in fullfilling its legal responsibilities. Rather than raising permit fees to levels needed to adequately fund program activities, the regulatory agencies might opt to cutting back on essential services and staff. Furthermore, when additional activities, or enforcement actions (requiring additional staff or resources) are mandated in a state to correct a program deficiency, the process may be complicated and jeapodized if the implementation of such activities hinge on an additional permit fee increase. Just as for reasons previously discussed, political opposition in the state might prove too strong to overcome.

Finally, we strongly oppose the concept in the report which recommends that Interior seek to amend SMCRA to allow that permit fees recover the cost of technical services to the states. The federal costs incurred by OSM for providing technical services to the states is a rather small amount. We believe that it is unwise to reopen the law at this time for there is no way that the public can be assured that such an amendment process would be limited only to the permit fee issue. Rather, we fear, for good reason, that any attempts to presently amend this law would bring legislative assaults to other essential regulatory provisions of the law in addition to the permit fee question. We strongly believe that the rather small technical service budget to be recovered by such action is not worth the risk to exposing this law to challenge. If there is a way to recover the costs of technical services, within the framework of the existing law, through permit fees, then we support such proposals.

We apologize for not providing you with these comments sooner, however, we felt that your 15 day comment period from the date of your letter was unworkable since we did not receive your package in the mail until a week after your letter was dated. Furthermore, it is our information that certain parties were given this draft report for review way in advance to ourselves. While we appreciate the opportunity to comment on the report, we hope that in the future, more members of the public will be given the same opportunity within an adequate and equal timeframe for sufficient review. Thank you.

Respectfully,

James S. Lyon
Assistant Director
Citizens Mining Project

cc: Congressman Mike Synar

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November 20, 1984

J. Dexter Peach
Director
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

Thank you for the opportunity to review and comment on GAO's proposed report, The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulating Coal Mining.

I have only a few observations, but I hope they help as you finalize this report. First, the report suggests the possibility of a special fee, to be implemented by amending the Strip Mine Act to provide for its collection. The fee would be collected to pay for some of the support services, such as regulation promulgation, which OSM provides.

Some Western state coal severance taxes, such as Montana's, provide for deducting federal fees before the tax is calculated. Thus, the proposed fee might have the effect of lowering state severance taxes, rather than recovering costs of surface mine regulation from "users". I would suggest that GAO discuss this possibility with the states, to make sure that there are no unintended consequences from this proposal.

Second, Table 1-1 lists permit processing and issuance on federal lands in states with cooperative agreements as being accomplished only by the states. While there is some uncertainty as to the authority of the federal government in such instances, I believe that a recent decision by Judge Flannery in Federal District Court (Washington, D.C.) in In Re: Surface Mining Part I established that such processing and permit issuance must be accomplished jointly by the State and OSM.

Finally, it appears to me that there may be a "lag" problem with GAO's suggestion to phase out grants to the states for permit enforcement, and phasing in permit fees. It seems to me that such a proposal should include grandfathering some payment to states to pay for enforcement and regulation of existing permits, where a fee was paid under the old, lower state fee permit schedule, but enforcement costs must still be borne in later years. The GAO report implicitly assumes that the number of permit applications in all states is steady from year to year, and thus receipts from higher permit application fees (should the states institute them) could cover enforcement costs at existing mines, should OSM cut off grants to the states. In a state like Montana, where several mines have already been permitted but are not operating, and opening of major new mines is unlikely, GAO's proposal could lead to a funding problem for the state-- even if the state raised permit fees to cover the full cost of processing new applications. This could increase the lag time GAO has acknowledged would be required by Western states (due to biennial legislatures, the

J. Dexter Peach
Nov. 20, 1984
Page Two

time needed to promulgate regulations for the new fee schedules, etc.) by another five years (the period of time covered by most stripmine permits).

Please do not hesitate to contact me if you or any members of your staff have any questions about these comments. Again, I appreciate the opportunity to review and comment on GAO's report, and I look forward to the final report.

Sincerely,

John D. Smillie

John D. Smillie
NPRC Research Coordinator

Public Lands Institute

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NOVEMBER 13, 1984

Mr. J. Dexter Peach, Director
Resources, Community and Economic Development Div.
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

The Public Lands Institute, a division of the Natural Resources Defense Council (NRDC), supports the principle that the Office of Surface Mining and the state regulatory agencies should charge and collect fees sufficient to cover all costs related to the permitting process.

We also endorse the recommendation that the Surface Mining Control and Reclamation Act be amended by increasing the tonnage tax on coal production to an amount sufficient to reimburse the federal treasury (i.e., the taxpayers) for all of OSM's oversight and technical assistance activities and other services related to permitting and enforcement of the Act. Basing your studies on the expenditures of OSM in fiscal years 1983 and 1984, you have calculated that full recovery of OSM costs would require an added fee or tax of 11.7 cents per ton. We would caution that since OSM in recent years has been doing a grossly inadequate job of inspection and enforcement where the Federal government retains primacy, and an equally, grossly inadequate job of oversight of state performance, it may require two or three times 11.7 cents per ton to fund an effective program.

It would also be dangerous and irresponsible to assume that present program expenditures by the states are adequate. The Administration, the Congress and the concerned public should do nothing to lock-in the State programs at their present level or to encourage the States to lock in at that level. We offer as evidence a study done by the Public Lands Institute of the enforcement performance in the six major coal-mining states in the West: Colorado, Montana, New Mexico, North Dakota, Utah and Wyoming. Three of these states were among those examined in the GAO study: Colorado, Montana, and Wyoming.

Reflecting a lackadaisical or deliberately permissive attitude, the Western state inspectors took enforcement actions in only 14 percent of the violations they observed and noted in their written reports. OSM blinked at nearly one-half of the violations it saw in its oversight inspections. "Overlook" would be a better word then "oversight" to describe the OSM performance.

Letter to J. Dexter Peach, 2

A copy of the NRDC/PLI report, Still Stripping the Law on Coal, is enclosed.

There is no reason to believe the federal and state-agency record has been much better in the midwestern and eastern coal states. As you know, the Secretary is now under court order to collect fines and/or enforce jail sentences in nearly 2,000 instances of violations of the Surface Mining Act. It is, of course, not the purpose of GAO to ascribe political motivation in the record of OSM; nevertheless, the Public Lands Institute is free to assert, and can prove, that the coal industry rather than the public has been served by the agency since 1981.

We question the wisdom of phasing out OSM grants to the state regulatory agencies on the assumption that the states will take steps to recover their costs from the regulated industry. In many states the legislatures are held more in thralldom by the coal lobby than the Congress of the United States. That is why the federal law was passed in the first place. The federal hand needs to be strengthened, not weakened. And if left to the mercies of their legislatures, some state regulatory agencies will be eviserated. They are struggling now with inadequate funds and personnel despite the federal grants.

On page 7 of your draft, you indicated that you arrived at the average inspection cost per mine by dividing OSM's inspection budget by the number of OSM-regulated mines. You assumed that 12 inspections of each mine were carried out as required by law. It would be instructive to find out just how many inspections were actually performed. (The full number of required inspections has never been carried out in the Western states quite apart from the failure to take action against violations found during inspections.)This would be another indication of the inadequate enforcement of the Surface Mining Act.

You have concluded, and coal companies concurred if reluctantly, that an added tax of up to $1 per ton would not affect national coal production.

Therefore, we stress that an added tax imposed by Congress should be sufficient to relieve the public of a cost that should be borne by the coal producers and consumers. The consumers, of course, will ultimately pay. We don't believe it will take $1.00 per ton, but it could very well take 30 cents to 50 cents per tonto finance an adequate program.

As to the argument that a major share of the permitting, research, inspection and enforcement costs should be borne by the taxpayer because the general public benefits, this naturally is the attitude of the industry which previously dumped its external costs on the public through permanent destruction of the land, through pollution of streams and aquifers, and through destruction of fish and wildlife, scenic beauty and other amenities. The Surface

Letter to J. Dexter Peach, 3

Mining Control and Reclamation Act was passed to relieve the general public of a burden for which, as the public, it was not responsible for, but for which the coal industry was responsible. At best, the reclamation required by the Act only partially compensates the public for the environmental damage.

Thank you for the opportunity to comment.

Sincerely yours,

Charles H. Callison
Director

CHC/
enclosure

 APPENDIX IV

DISPUTE ON ACCORD IN STRIP-MINE SUIT

Settlement Admitting Agency Failed to Enforce Key Law Stalls in Justice Dept.

By BEN A. FRANKLIN

Special to The New York Times

WASHINGTON, Oct. 6 — A dispute within the Reagan Administration is delaying the settlement of a long-contested strip-mining lawsuit that would roll back a number of deregulatory policies.

The Secretary of the Interior, William P. Clark, was to have signed the sweeping out-of-court settlement Wednesday, according to lawyers familiar with the case. But officials in the Justice Department have so far blocked the agreement, which involves a detailed admission of the Government's failure to enforce one of the major environmental laws.

Negotiations were continuing this weekend at the Justice Department, where opposition to the settlement was reportedly being led by Roger Marzulla, an acting deputy assistant attorney general in the lands and natural resources division. Mr. Marzulla was once a legal associate of Mr. Clark's predecessor as Interior Secretary, James G. Watt.

The proposed settlement of the five-year-old environmentalists' lawsuit is viewed in the Interior Department as a sharp recision of many Watt policies. Mr. Clark was reportedly willing — some officials said he was eager — to agree to the settlement as "necessary catchup ball," beginning under its terms a belated effort to collect millions of dollars in unpaid and ignored fines levied against violators of a 1977 law requiring strip mine operators to reclaim damaged land.

Possibly $150 Million in Fines

Sensitive to the impression that Mr. Clark was being blocked by what one departmental offical called "a clone of Watt," an aide to the Secretary said today, "Anybody who knows Judge Clark knows that when he has made up his mind to do something, it generally gets done — if there is a notion that he is not running this and is being rolled over, it will be evident next week that that is not the case."

Mr. Marzulla did not respond to a request for comment on his reported role in blocking the strip-mine settlement. Instead, he instructed the Justice Department press office to say that he would have no comment.

In a review this year of what they called a "snafu" within the Interior Department, Congressional auditors estimated that the uncollected penalties against strip-mine violators might total $150 million.

The magnitude of the never-paid fines, uncovered originally in the course of the lawsuit, has given the litigation the working name of "the megabucks case." Its settlement would rescind key parts of Mr. Watt's deregulation of the strip-mining industry. Under Mr. Watt's 1982 "reorganization" of the Office of Surface Mining, for example, its office of penalty assessments was simply abolished.

The nonpayment of fines was a continuing problem since the strip-mining agency's creation in 1977, but under Secretary Watt's staff and program reductions in the early 1980's the inaction came increasingly under court and Congressional criticism.

Settlement 'Long Overdue'

Mindful of this, Secretary Clark was said to have "reminded all concerned in the department that he believes there is urgency in this settlement because it is long overdue."

Should the proposed settlement fail to win approval, one result is likely to be a stern final order from Federal District Judge Barrington D. Parker, who has been presiding over the five-year trial, and possibly a request by the plaintiffs for a contempt-of-court citation against Secretary Clark.

Judge Parker's rulings so far have unmistakably favored the plaintiffs and have included harsh judgments of the department's previous position in court that it had "absolute discretion" to collect the fines or not collect them.

Allegations against the Office of Surface Mining have included charges of mismanagement and incompetency. At a Congressional hearing last June, officials said that the agency, hoping to replace old-fashioned file cards, had spent millions of dollars on various computer systems that never worked and on contracts with private collection agencies that yielded virtually no returns.

The lawsuit's settlement would be the second court-imposed reform this month at the beleaguered strip-mining agency. Monday, in a separate lawsuit, another Federal judge ordered the office to reverse scores of other Watt-era regulatory decisions challenged as too weak by the National Wildlife Federation and six other environmental groups, and held by the court to be "an abdication of authority" to control the effects of strip mining.

Search for Offenders

In the legal settlement being considered now, the Interior Department would agree to begin enforcement of some 1,700 never-prosecuted "cease and desist" orders against repeated violators of the reclamation law.

The department would search out elusive "ruin and run" offenders, many of whom have retired in wealth, determine their net worth and then seek to seize their personal assets to cover the unpaid fines and interest, plus collection costs.

Under the settlement, the agency would also deny strip-mine permits to individual reclamation scofflaws, regardless of their corporate cover, as required but admittedly never done under the 1977 Surface Mining Control and Reclamation Act. The hidden violators were to be identified by personal name, or by aliases, in a new, computerized name file which was to be closely monitored on terminals of the environmental plaintiffs, Save Our Cumberland Mountains and the Council of the Southern Mountains.

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November 20, 1984

Mr. J. Dexter Peach, Director
Resource, Community and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

The following comments are submitted by the Joint National Coal Association/American Mining Congress Committee on Surface Mining Regulations on the draft report of the General Accounting Office entitled: "The Interior Department's Office of Surface Mining Should More Fully Recover or Eliminate Costs of Regulating Coal Mining." The opportunity to submit these comments is appreciated and we urge GAO to give them serious consideration in this matter which is of critical importance to the coal industry.

The Joint Committee is comprised of over 180 industry experts representing the coal company members of both the American Mining Congress and the National Coal Association, as well as representatives from many of the state coal associations and other coal companies. Thus, the Joint Committee membership represents every type of coal mining operation, as well as every coal mining region in the nation. Industry personnel on the Joint Committee are experts in their own right in the various disciplines that impact coal mining operations.

In view of the thrust and scope of GAO's draft report, it is quite clear that the major impact of its recommendations will fall directly on the coal industry, primarily in the form of increased permit application fees. It should be kept in mind, however, that the ultimate impact will fall upon the consumer in the form of higher prices, not simply as a pass-through but in the form of higher alternative energy sources as the competitiveness of the coal industry is eroded and a switch to higher priced fuels become necessary.

The conclusions and recommendations of the GAO draft report are unsupportable and the analysis is so superficial that it brings into question whether there is any merit at all to the document. GAO attempts to justify the recovery of costs through permit fees by erroneously comparing them to "user fees" and assuming that the coal industry is the primary beneficiary of the regulatory program imposed on them. A fee for the use of a public waterway or federal reclamation project for government controlled facilities is simply inappropriate to a regulatory program. Furthermore, there can be no question at all that the primary beneficiary of the program is the public. An examination of the Surface Mining Control and Reclamation Act (SMCRA) and its legislative history leave no doubt of that. The report also demonstrates a disturbing naivete concerning the practical effects of implementing the GAO recommendations for full cost recovery in terms of the coal industry, the public and the states which have approved SMCRA programs.

From a procedural perspective, the fact that GAO visited with officials from seven (7) coal companies and representatives from eight (8) states is hardly a representative sampling of effected parties. There are thousands of coal operators in the United States and over 28 states with coal operations. The "sample" becomes even more questionable when considering the fact that both the coal operators and the state representatives queried by GAO are among the largest coal producers in each instance. Any indications from these respondents that increased permit fees might result in undue impacts or hardships should be recognized as more significant than usual, given the respective position of these respondents among all others. In particular, the fact that two out of the eight Coal-producing states questioned by GAO might terminate their programs, in view of the extent of GAO's recommendations concerning state grants, should be a clear signal to GAO that there are significant problems ahead regardless of statements to the contrary.

From the coal industry's perspective, we are particularly disturbed by GAO's cryptic and superficial analysis of the economic impact of GAO's recommendations on the industry as a whole. We believe a much more detailed analysis is warranted. Furthermore, we believe such an analysis would reveal major impacts on at least some portions of the industry with important impacts on all segments of the industry and the public. We urge GAO to redo this critical aspect of its report before final issuance.

Detailed comments on these concerns and several other important aspects of the report are as follows:

PHASE-OUT THE STATE GRANTS PROGRAM

Phasing out the State Grant Program authorized by Section 705 of SMCRA eliminates one of the major incentives which states have to administer and enforce state programs. GAO maintains that this funding can be made up from state general revenue funds or from operator permit fees. Since few, if any, states would absorb this Federally created expense and remain solvent, the former option is not really an option at all.

The other alternative appears to be viable at first glance; however, the concept of recovering program costs through permit fees cannot survive closer scrutiny. The Government Accounting Office report attempts to justify increasing operator permit fees by comparing them to user fees. This analogy is inappropriate. User fees are imposed for the temporary use of a privilege under the control of the government, such as fees paid by a transporter for the use of a public waterway or fees paid by a camper for the use of a national park. As a practical matter, these fees pay, in part, the cost of maintaining the facility, but do not cover the entire cost of developing and maintaining it.

On the other hand, the operator permit fees being contemplated by the GAO would have much more far-reaching ramifications, regardless of whether these fees would be imposed by a state regulatory authority or the Federal government pursuant to a Federal surface mining program. These permit fees would be a mandatory levy which must be paid before an operator could have access to a regulatory program from which the general public, not just the operator or consumer, benefits. Further, GAO proposes that these fees would be sufficient to recoup the entire cost of the program, not just supplement appropriations from a general revenue fund.

Specifically, the recommendation that OSM recoup the cost of enforcing the program (including the government's attorneys' fees in "appropriate" situations for "non-routine" enforcement activities) would have a serious chilling effect on coal operators who would otherwise challenge in good faith the issuance of a violation or the amount of a penalty. Not only are the terms "appropriate" and "non-routine" vague and subject to over-broad definition, but the concept is contrary to the spirit of the APA and the United States Constitution.

The combined costs of pre-paying the penalty and the entire expense of administrative and judicial proceedings would make pursuing any appeal, no matter how justifiable, financially impossible for many operators. The most serious enforcement problems are presented by wildcatters who pay no fees and habitual offenders who pay no fines, change their names and continue to mine. To penalize bona fide operators who have attempted to follow the law is inequitable and counterproductive public policy.

PHASE OUT COOPERATIVE AGREEMENT GRANTS

If the GAO recommendations which provide for the imposition of a Federal surface mining permit fee and the phase-out of cooperative agreement grants were accepted, they would produce results that were never contemplated by the Congress. In states that have entered into cooperative agreements with the Federal government, an operator under the GAO proposal would pay two permit fees: one to the state and one to the Federal government. This double levy would make Federal coal less competitive and decrease the fair market value of Federal leases. Both of these results are contrary to the objectives of Congress and the Administration.

The phase-out of cooperative agreement grants would eliminate an important incentive for a state to enter into a cooperative agreement. The state portion of the royalties, state tax revenues and increased local employment are all benefits a Western state derives from the development of Federal coal within its borders. However, a double permit fee would cause an operator to pursue opportunities in another state where the double fee is not imposed (i.e., where there is no cooperative agreement) and the cooperative agreement state would not get those benefits. Given the alternatives of entering into a cooperative agreement or maximizing its economic benefits, a state would probably choose the latter.

SPECIAL COAL OPERATORS' TAX

The proposed tax to cover the costs of support activities in the areas of research, oversite and promulgation of regulations once again ignores the fact that it is the public as a whole which receives any benefits that may be derived from such activities. The proposed tax would make the coal industry the benefactor of a bureaucracy which would have no reason to be fiscally responsible. The government would only need to increase the tax on coal producers to finance its needs as well as its whims.

To force the coal industry to fund the promulgation of regulations (apparently without regard for whether the process is initiated in good faith or whether the process produces regulations which can survive technical or legal review) has no comparable precedent. Any group that desires to harass the coal industry could simply file unreasonable petitions for rule changes under Section 201(g) of SMCRA.

PRECEDENTS FOR USER FEES

The GAO attempts to justify its findings by citing examples of agency and state activities which "recover full costs through user fees". None of the examples are analogous to the subject GAO proposal. While FERC collects fees, these fees do not nor are they intended to recover the cost of enforcing environmental laws and regulations to which utilities may be subject. To equate user fees charged for monitoring right-of-ways on public lands to permit fees charged for the administration of all state and Federal surface mining programs is inappropriate and is discussed earlier in this document. Finally, most states recovered <u>all</u> of their costs for surface mining regulations prior to the passage of SMCRA, just as State Public Utility Commissions recover "<u>some</u>" of their costs now.

-5-

PASSING ON OF COAL INDUSTRY COSTS TO ITS CUSTOMERS

GAO naively assumes that all coal operators, as a matter of course, will simply pass on the costs of increased user fees to their customers. This is an unsupportable generalization and is glossed over with little, if any, analysis. Some operators do not have contracts with their customers that allow them to pass on such costs. Some operators do not have the type of customers that utilize such contracts or provide for the inclusion of "pass on" contract provisions. Finally, even where such "pass on" provisions exist, GAO could be fostering an administrative nightmare in that such customers would require an audit of not only the coal company's books and charges, but those of the regulatory authority as well.

Furthermore, the coal industry is extremely competitive with other energy sources, so that even "pass through" clauses do not insure protection against adverse impacts. Fuel switching is quite common and in recent history the industry has been severely hurt by this. The industry is in the process of going through a period of increasing costs as a result of SMCRA, the reclamation fees, increased transportation costs and state taxes--none of which is given much recognition in the GAO report. Cut backs on coal and switching to another source results in increased production costs and those are not "pass through" costs. Fuel switching is relatively easy today with all major power grids interconnected and surplus power available. The simplistic assumption that the cost increases can be passed on without a critical economic analysis of the industry, renders the report so seriously flawed as to be without any merit.

This report could have far-reaching effect on the coal industry and our ability to compete. The issues presented are critical to us and, consequently, deserve a more indepth analysis and discussion than is contained in the GAO report. We urge you to reconsider issuance of this report and recommend that it be sent back to be redone completely with appropriate analysis and supporting data. If we can be of any further assistance, please contact us.

Sincerely,

Robert W. Long
Vice President
American Mining Congress

William E. Hynan
Senior Vice President
National Coal Association

Mining and Reclamation Council of America

Suite 525 • 1575 Eye Street, N.W. • Washington, D.C. 20005 • (202) 789-0220

WILLIAM W. LYONS
Chairman of the Board

DANIEL R. GERKIN
President

November 20, 1984

Mr. Dexter Peach
Director
Resources, Community and Economic Development Div.
General Accounting Office, Room 4915
441 "G" Street, N.W.
Washington, D.C. 20548

Dear Mr. Peach:

Thank you very much for providing the members of the Mining and Reclamation Council (MARC) an opportunity to review the draft General Accounting Office Report entitled The Interior Department's Office of Surface Mining should More Fully Recover or Eliminate Costs of Regulating Coal Mining.

As you are probably aware, MARC has taken great interest in this GAO effort from its inception, and provided the study team with input through its member companies many months ago. MARC looks forward to your careful consideration of this new information based on its members review of the draft document.

If you or members of the study team have questions regarding the enclosed information, please feel free to contact me.

Sincerely,

Daniel R. Gerkin
President

DRG/saf
Enclosure

MINING AND RECLAMATION COUNCIL COMMENTS ON:
THE INTERIOR DEPARTMENT'S OFFICE OF SURFACE MINING
SHOULD MORE FULLY RECOVER OR ELIMINATE COSTS OF REGULATING COAL MINING

THE DATA BASE RELIED UPON BY GAO APPEARS INSUFFICIENT

(a) GAO provides no raw data for the reader's review thereby making its assumptions difficult to adequately test and analyze. To correct this deficiency GAO should at a minimum incorporate data on the costs of each state regulatory program.

(b) The sampling of seven coal companies used by GAO to support the notion that any increases resulting from regulatory cost recovery would not be significant cannot be substantially relied upon. Clearly, one cannot consider an interview group of seven out of a total U.S. coal company population of some 3,200 to be a valid sample.

(c) GAO stated that interviews with state regulatory authorities (SRAs) revealed that these officials believed, with sufficient time their states would be able to substitute other sources of funds should state grants be substantially reduced or eliminated. GAO also reported that the state legislature would play an important role in this process. Unfortunately, GAO stopped short of developing truly reliable information, since the SRAs are not the decisionmakers on such budgetary issues, rather it is the legislators who must decide the fate of the regulatory program. Thus, GAO neglected an important study population by not interviewing a sample of state legislators.

GAO's IMPACT ANALYSIS IS FLAWED

(a) According to GAO, MARC officials stated that permit processing and enforcement costs were relatively small compared to permit application preparation, reclamation and payment of AML fees. MARC does not dispute this, however this statement is misleading to the reader by suggesting MARC's concurrence with GAO's impact analysis. The issue of relativity does not minimize the potential financial burden, particularly for small to mid-sized producers. Rather, it is the proposed additional increment above and beyond substantial operational costs, AML fee payments, permit fee payments, black lung taxes, etc. that will cause a cumulative impact of significance. Should GAO choose to quote MARC, it would be advised to more accurately represent its position.

(b) As GAO pointed out, not all producers have the ability to pass through cost increases in their coal contracts, although GAO staff have indicated that in their opinion a regulatory cost increase would only have a short-term effect on spot market producers, until such costs were absorbed on a fairly uniform basis within a given market area.

This is simply not true. Spot market producers cannot pass on any regulatory cost increases, particularly in a soft market because these producers are always operating close to the margin to maintain their competitive edge. Additionally, these operators will likely be the first to be affected by varying permit fees amongst states with competing markets.

Even for companies with long-term contracts and pass-through provisions, negotiations will be affected by cost increases, reflected in lesser amounts of coal purchased. Despite GAO's assessment that pass-throughs will minimize any impacts, it obviously failed to analyze the effect of transferring these costs to the American consumer through higher utility bills. The cost to the electric consumer will be millions of dollars if this program is adopted. In return, it is unlikely that the federal taxpayer will see an equivalent reduction in its taxes. This approach then becomes a hidden tax hike.

(c) GAO estimates that recovery of both state and federal regulation costs from coal operators would add about 11.7 cents to the cost of a ton of coal. From the limited material provided however, it does not appear that GAO considered the impact of economies of scale on permit reviews. Whether a 50-acre or 500-acre permit is under review by the RA, substantially the same base level of work must be performed. Given the economies of scale, the smaller permit holder will bear the largest cost burden, since these fixed costs will remain essentially the same, but will constitute a larger percentage of the small firm's revenue base. Thus, it is probable that some companies will pay much more than the estimated 11.7 cents/ton, depending on the formula used for cost recovery.

(d) GAO neglected to consider the stripping ratio - the basic cost factor for a surface coal mine - in its impact analysis. Coal mining in Missouri, for example, is many times more costly than mining in the Powder River Basin. The impact of such a fee per ton would thus be a much more serious problem for a Missouri miner, especially one who is selling in the spot market.

(e) GAO's sensitivity analysis predicts a 1.5 million ton loss of coal in Pennsylvania by 1990. Through discussions and materials provided by several MARC members in that state, it is clear that the impact was substantially understated by GAO. According to Keystone Bituminous Coal Operators Association (1984) figures, one million tons of coal lost in PA. equates to a loss of:

> 300 coal jobs, 285 supply and service jobs, $10 million in salaries, $33 million in sales, $2 million to the state in sales taxes, plus substantial reductions in capital stock tax, corporate in income tax, etc.

Thus, it is clear that GAO neglected to consider the impacts of even a one million ton loss on the community, the state, and the federal government.

(f) GAO suggests continuing grants to states to provide small operator relief. Unfortunately, the statutory definition (100,000 tons or less annual production) will not provide significant relief to this portion of the industry. In today's coal market, the small operator must generally be producing a minimum of 200,000 tons annually to remain solvent. Thus, GAO should undertake an analysis of how much real relief would be provided to the continuously hardest hit segment of the industry.

GAO SEEMINGLY IGNORES SEVERAL CRITICAL STATUTORY MANDATES IN ITS ANALYSIS

(a) Congress clearly delineated their purposes is establisning the Surface Mining Act, the very first of which was to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations" (emphasis added). This clearly reflects that the primary beneficiaries of the regulatory program implementing the Act are members of the public, whose health and safety are protected. Thus, GAO's far reaching suggestion that the coal industry stands to benefit the most, and should therefore assume financial responsibility for the program, flies in the face of the very foundation of the statute.

(b) GAO points out that "the Surface Mining Act envisioned that the states, rather than the federal government, would assume primary responsibility for developing and enforcing coal mining regulations" (p.1). At the same time the report indicates that two state agency heads would recommend giving up their state programs if state grants were eliminated or substantially reduced. GAO treated this response only by saying OSM would have to assume responsibility for regulating coal operators in those states. Certainly, even if just one state chose to relinquish its program responsibilities to the federal government, the basic intent of SMCRA would be obviated. Therefore, this cannot be ignored by GAO if it is to justly present the impacts of its proposed recommendations.

(c) One of the statutory findings concludes that mining and reclamation standards are essential to insure that competition in interstate commerce among sellers of coal produced indifferent states will not be used to undermine the states' ability to maintain adequate standards on coal operations. If full cost recovery through permit fees was adopted, state regulatory authority attitudes, capabilities, and budgets become critical factors in assessing interstate competitiveness. Each of these elements will likely lead to a further exaggeration of the competitiveness of permit review that is already widely divergent between states.

(d) GAO suggests a special tax be instituted to allow OSM to recover its costs of regulatory oversight and technical assistance (support costs). GAO acknowledges that Congress "apparently did not contemplate that [these costs] would be borne by coal mine operators." However, the report states that GAO believes the Surface Mining Act should contain such a provision. GAO's analysis totally ignores, once again, the statute. GAO only need look to sections 201(c)(7) and (c)(8) to realize why Congress never contemplated such costs be borne by the industry. These sections state that OSM <u>shall</u> (emphasis added) set up research centers not only for regulatory purposes, but to make the data available to everyone. A plain reading of the statute indicates Congress clearly understood that research was valuable to everyone, and the cost should thus be shared by everyone.

<u>A FULL COST RECOVERY SYSTEM WILL ENCOURAGE A BURGEONING BUREAUCRACY</u>

The establishment of a full cost recovery system will very likely encourage a burgeoning bureaucracy, on the state and federal level. Moving away from the Congressional budget process removes any pressure on OSM or the state regulatory authority to be diligent in processing permit applications. This approach is dangerous, and a prescription for a totally open-ended regulatory process which is clearly contradictory to the current Administration's policies. If such a program were adopted, there would have to be a discernable effort on the part of OSM and states to reduce excesses built into the program before transfering the cost to industry.

<u>AWARD OF ENFORCEMENT COSTS SHOULD APPLY EQUALLY</u>

If OSM choses to adopt GAO's recommendation that it seek award of enforcement costs associated with administrative or judicial proceedings, it should apply equally to the industry. If a court rules that the government's case is without merit or is not proven, the industry defendant should be able to receive an award for expenses incurred in contesting the case.

Similarly, if an environmental group sues OSM for improper oversight, or a state for improper enforcement, and the OSM or state successfully defends itself, OSM or the state should recover costs from these parties as well.

<u>REVIEW OF OTHER COST-RECOVERING AGENCIES</u>

(a) GAO cited several organizations currently recovering most costs associated with regulated activities. However, none of the agencies identified can be considered analagous to the mining industry, since they are all service industry regulators. In fact, the other regulatory agencies the coal industry interracts with do not charge cost-based fees for obtaining such permits as that required for the NPDES program, and the Corps of Engineers. Each of these permits are accompanied by a flat fee.

(b) GAO neglected to cite a pointed example of how well a full cost recovery program for the coal industry worked numerous years ago. According to several MARC member companies, sometime in the late 1960's or early '70's Kentucky was fully funding their surface mine regulatory program through permit fee assessments on coal operators. After some period of time had elapsed, questions were raised by the environmental community and other branches of the state government that permits may have been granted too quickly because the agency was interested in maintaining their sizeable operating budget. Subsequently, this fee-based system was discontinued and replaced by a general fund. If such a program were reinstituted, there would certainly be a possibility for similar controversy.

ADDITIONAL STATE AND INTEREST GROUP

COMMENTS AND GAO RESPONSE

NORTHERN PLAINS RESOURCE COUNCIL (NPRC)

NPRC said that table 1 (p. 3), which summarizes state and federal regulatory responsibilities, was incorrect in listing permit processing and issuance on federal lands in cooperative agreement states as solely the responsibility of states. NPRC believed that a court decision had established this as a joint responsibility.

Our response:

No change has been made to table 1. We agree that permit processing involves a dual system of review; not only must the state review the permit application, but OSM must review the mining plan portion. However, upon OSM's approval of the mining plan, issuance of the permit becomes the state's responsibility. While the court decided that the federal government could not delegate its responsibility to approve mining plans, it said that if OSM approves the mining plan, states with cooperative agreements are still free to approve or reject the permit application.[1]

MINING AND RECLAMATION COUNCIL OF AMERICA (MARC)

In the draft report, MARC officials were reported to have said that permit processing and enforcement costs were relatively small compared to costs of preparing permit applications, reclamation, and abandoned mine land reclamation taxes. In commenting on the draft, MARC did not dispute its statement, but found it misleading as reported. MARC wished to make clear that the issue of relativity did not minimize the potential financial burden and that the proposed incremental addition to other regulatory costs would cause a significant cumulative impact.

Our response:

MARC's additional statements were inserted in chapter 5.

GOVERNORS OF WYOMING, UTAH, COLORADO, NEW MEXICO, MONTANA, AND THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

These states claimed in a joint letter that the draft report had inaccurately named and described the cost recovery program of

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[1]In Re: Permanent Surface Mining Regulation Litigation, No. 79-1144, slip op. at 9, 10 (D.D.C. July 6, 1984).

the Wyoming Industrial Siting Administration. They said that the agency recovered only part of its costs through permit fees, with the rest covered by appropriations from the general fund.

Our response:

We have noted the agency's correct name in the text. Contrary to the impression conveyed by the comments, however, we did not intend to claim that the agency recovered all its costs through permit fees. We have added a sentence on page 18 to make this clear.

PUBLIC LANDS INSTITUTE (PLI)

PLI noted that we had based our estimate of OSM's average inspection costs on OSM's inspection budget, divided by the number of OSM-regulated mines and the 12 required annual inspections per mine. PLI wondered whether OSM had actually carried out the required number of inspections, apparently questioning the reliability of our estimate of inspection costs.

Our response:

We do not know how many inspections OSM actually conducted, but its budget documents clearly indicate that the amount was intended for the required 12 inspections per mine. We also verified OSM's estimates of inspection costs through our own analyses and have noted this on page of the report.

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

As an example of low program income, our draft report noted that Pennsylvania's program income for 1983 was about $2 million. In its comments, the state said that we had mistakenly reported these moneys as program income. The moneys were collected as fees to help subsidize the reclamation of those abandoned mine lands in Pennsylvania not eligible for federal funds and cannot be used to support the administration of the regulatory program, the state claimed.

Our response:

Whether the $2 million collected by Pennsylvania should be counted as program income is a question that has yet to be resolved between OSM and the state. OSM maintains that the moneys are program income; the state says they are not. In view of the dispute, we deleted the example.

RECOVERY OF COSTS FOR ADMINISTRATIVE AND JUDICIAL PROCEEDINGS

Our draft report included a recommendation that OSM revise its regulations to permit recovery of costs for administrative and judicial proceedings arising from enforcement actions. NCA/AMC and the jointly responding six western states raised objections to the proposal, arguing that recovery of these costs could have a chilling effect on operators challenging a violation notice or penalty amount in good faith. MARC suggested that all parties, including industry, be able to recover their costs if their cases were upheld; similarly, MARC said, that environmental groups should be assessed costs if they are unsuccessful in suits against OSM.

Our response:

This recommendation, and discussion of the issue, were deleted from the report. After additional review, we concluded that there was little legal precedent for government recovery of its costs for administrative and judicial proceedings arising from enforcement actions, other than in cases where suits were initiated in bad faith.

United States Department of the Interior

GEOLOGICAL SURVEY
RESTON, VA. 22092

In Reply Refer To:
Mail Stop 911

JAN 22 1985

Memorandum

To: Director, Office of Surface Mining

From: Director, Geological Survey

Subject: Aggregate Revenues and Coal Industry Shifts from Cost Recovery Proposals to Cover Office of Surface Mining Mine Permitting Costs

In response to your request, we have completed an analysis of alternative tax schemes that could be imposed on the coal industry by the Office of Surface Mining (OSM) to achieve full cost recovery for mine permitting costs. Three alternative cases for expected 1990 coal utilization have been analyzed: (1) base case (a zero permit tax); (2) flat tax case ($0.115 per ton tax levied in all States); and (3) two variable tax cases (variable cents per ton tax across all States, as listed in attached table).

The following set of assumptions was used in all three cases:

Coal Supply

Coal reserve estimates for 100 supply regions are provided from the Bureau of Mines Reserve Base and the U.S. Geological Survey (USGS) National Coal Resources Data System.

Coal Demand

A mid-level coal demand scenario for 1990 is provided for 243 demand regions from projections contained in the National Energy Plan IV as compiled by the Department of Energy.

Environmental Controls

Scrubbing and low sulfur coal options are included to meet Federal Air Quality Regulations.

Each of the tax cases (flat and variable) was compared with the base case to determine the changes, if any, in coal production and distribution patterns and to calculate the aggregate potential revenues from the mine permit taxes.

APPENDIX VI

Director, Office of Surface Mining 2

Flat Tax Case vs. Base Case

Using projected 1990 demand for utility, industrial, steam, metallurgical, and export coals, it is estimated that the mine permit flat tax would provide aggregate national revenues of approximately $109 million. The flat tax is based on annual coal production in each coal mining State. This tax could result in some small shifts in the locations and levels of coal mining activity as shown by the following comparisons (comprehensive set of differences between the two model runs).

Supply Region	Base Case (000 tons of Coal Mined in 1990)	Flat Tax Case (000 Tons of Coal Mined in 1990)	Difference in Tons (000)	Percent Difference
Pleasantville, OH	7,367	7,343	- 24	-0.3%
Sweetwater, WY	39,709	39,662	- 47	-0.1
Powder River, MT	6,028	5,719	-309	-5.1
Powder River, WY	9,987	9,355	-632	-6.3
Denver-Raton, CO	7,244	7,926	+682	+9.4

The modest changes result because tax-induced changes in the relative costs of coal by supply region are small. Relative to the base case, the flat tax case shifts supply to regions with lower cost coals. But the tax is levied across all regions equally, so the relative costs change very little and, accordingly, the model's choices for production/shipment patterns change very little. This phenomenon would occur, in general, even for very large taxes per ton as long as the tax burden is distributed about equally across all supply regions. Such outcomes reflect the fact that a least cost solution depends upon differences in relative costs and not upon differences in absolute costs.

In the flat tax case, the constant tax per ton levied in all supply regions tends to provide a relative cost advantage to supply regions endowed with high BTU coal. In other words, when a constant tax per ton is levied, the model minimizes costs of meeting demands (which are BTU demand) by rearranging shipment patterns to favor higher BTU coal. The following comparison of the change in the flat tax case, as compared to the base case, demonstrates the shift toward higher BTU coal.

Region	Shipment Change, Flat Tax Case vs. Base Case (000 Tons)	Average BTU per pound
Pleasantville, OH	- 24	11,665
Sweetwater, WY	- 47	9,500
Powder River, MT	-309	8,855
Powder River, WY	-632	8,194
Denver-Raton, CO	+682	11,674

Variable Tax Case vs. Base Case

The variable tax intended to recover OSM mine permitting costs is a per ton fee levied on coal producers based on the level of Federal costs divided by 1984 production in each State. The variable tax case is divided into two

Director, Office of Surface Mining 3

scenarios based on separate derivations of cents per ton projections provided by the OSM and the General Accounting Office (GAO). The attached table contains the variable tax applied to individual States for the two model runs used in comparison with the base case. Similar to the flat tax case, projected 1990 demand was used for utility, industrial, steam, metallurgical, and export coals. It is estimated that the variable tax would raise aggregate national revenues by about $48 million in 1990 for the OSM supplied variable tax option and by about $72 million in 1990 for the GAO supplied variable tax option. The coal production levels and locations and distribution patterns in the OSM variable tax option are identical to those in the base case. Evidently, the increase in costs due to variable taxes is not large enough to change the relative cost advantage of even a few coal supply regions. Alternatively, for the GAO variable tax option a modest redistribution of shipments does occur and national aggregate revenues increase over the OSM option, but, revenues do not reach the level attainable under the flat tax case. The GAO variable tax case option could result in small shifts in the locations and levels of coal mining activity as shown by the following comparison.

Supply Region	Base Case (000 Tons Mined in 1990)	Variable Tax Case GAO option (000 Tons mined in 1990)	Tons Difference (000 Tons)	Percent Difference
Pikesville, KY	231,507	230,351	-1156	-0.5%
Pleasantville, OH	7,367	7,245	- 122	-1.7
Harrisburg, IL	13,825	15,182	+1357	+9.8
San Juan, NM	40,226	39,945	- 281	-0.7
Sweetwater, WY	39,709	40,490	+ 781	+2.0
Powder River, MT	6,028	5,718	- 310	-5.1
Denver-Raton, CO	7,244	7,116	- 128	-1.8

Relative to the base case and the OSM option, the GAO variable tax option shifts supply to regions with relatively lower cents per ton tax rates. If these relative tax changes among States become more pronounced, production/shipment patterns changes could become more noticeable.

In summary, the analysis shows that imposition of a cents per ton tax to recover OSM mine permitting costs relative to a base case could have a modest effect on coal production and distribution patterns. This effect is the direct outcome of the way in which the tax is designed for implementation. Further analysis of the type of tax to be imposed by OSM should be considered in designing an equitable tax prior to implementation. If you have any questions about this study, please call Richard Bernknopf at 860-6595 or William Watson at 860-6717.

Attachment

Mine Permit Taxes by State,
Variable Tax Case

State	Tax ($/Ton) OSM Option	Tax ($/Ton) GAO Option	Percent Change Between OSM and GAO Options
Alabama	$0.060	$0.121	+1.02%
Arizona	0.038	0.003	-0.92
Arkansas	0.697	0.223	-0.68
Colorado	0.054	0.036	-0.33
Georgia	0.420	0.420	0.0
Illinois	0.042	0.053	+0.26
Indiana	0.031	0.065	+1.10
Iowa	0.210	0.167	-0.20
Kansas	0.242	0.182	-0.25
Kentucky	0.044	0.093	+1.11
Maryland	0.097	0.222	+1.29
Missouri	0.057	0.120	+1.11
Montana	0.037	0.045	+0.22
New Mexico	0.028	0.069	+1.46
North Dakota	0.025	0.049	+0.96
Ohio	0.066	0.071	+0.08
Oklahoma	0.134	0.223	+0.66
Pennsylvania	0.115	0.168	+0.46
Tennessee	0.472	0.353	-0.25
Texas	0.014	0.027	+0.93
Utah	0.082	0.097	+0.18
Virginia	0.058	0.100	+0.72
Washington	0.159	0.048	-0.70
West Virginia	0.016	0.058	+2.63
Wyoming	0.011	0.019	+0.73

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