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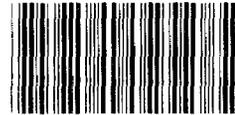
GAO

Report to the Chairman, Environment,
Energy, and Natural Resources
Subcommittee, Committee on Government
Operations, House of Representatives

June 1988

SURFACE MINING

Transferring Interior's Surface Mining Regulatory Function



136283

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**Resources, Community, and
Economic Development Division**

B-231390

June 9, 1988

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

Dear Mr. Chairman:

Your July 24, 1987, letter requested that we review the impacts, consequences, alternatives, and other considerations associated with a transfer of the Department of the Interior's surface mining regulatory function to another agency. This function is currently being performed by Interior's Office of Surface Mining Reclamation and Enforcement (OSMRE). Specifically, you asked that we determine (1) the cost of the transfer, (2) the length of time necessary to complete a transfer, (3) which agencies might be most capable of carrying out and improving the surface mining regulatory function, and (4) the source of knowledgeable and capable staff for performing the function if it was transferred.

In summary we found the following:

- The cost of transferring the regulatory function to another federal agency would probably range between \$2 million and \$3.3 million. This transfer cost includes \$0.7 million to \$0.9 million to physically move about 380 OSMRE and Interior employees and \$1.3 million to \$2.4 million in associated administrative costs. If OSMRE's existing leased office space is retained by the receiving agency, the moving costs would be correspondingly lower.
- The physical movement of employees and their associated office equipment could be accomplished in a matter of weeks. However, past reorganization experience indicates that transferring a regulatory function to another agency could disrupt and destabilize the program for 2 or more years.
- In terms of mission compatibility and technical and regulatory expertise, the Environmental Protection Agency (EPA) seems to be the most logical agency to carry out the surface mining regulatory function if it was moved from Interior. However, determining with certainty whether this relocation would improve regulation of surface mining given the problems EPA has experienced and continues to experience in carrying out its own program initiatives is difficult. Many third-party groups recognized problems with Interior's regulatory performance but did not believe

moving the function would, by itself, improve that performance. Accordingly, they generally believed the function should remain at Interior at this time. One of the respondents said the function should be placed under a new assistant secretary position that would be responsible for all of Interior's regulatory activities.

- If the regulatory function was transferred, the new office would most likely be staffed by present OSMRE career employees. Unless specifically exempted by the Congress, federal personnel law protects the rights of employees when their work is transferred. The law states that employees currently holding positions within an agency must be transferred to the replacing agency before that agency can hire other employees for such positions. Noncareer (political) appointees are not afforded similar employment protection and could be replaced if the surface mining regulatory function was transferred.

Background

In 1977, the Congress enacted the Surface Mining Control and Reclamation Act (SMCRA). One of the purposes of the act is to

"assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy."

Under SMCRA, Title II, OSMRE was established, within the Department of the Interior, to administer the act.

Since February 1984, the Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, has initiated and reported on three investigations regarding the implementation of SMCRA by Interior. As stated in the most recent report,¹

"The First Report found serious problems in the administration of the law. The Committee concluded in a Second Report that the Department had failed in large part to implement the Committee's previous recommendations and that it would allow 6 to 9 months for the Department to show demonstrable evidence of improvement. The Committee stated that if no such improvement were shown, Congress should consider transferring administration of the law to another appropriate agency. On the basis of the facts collected during the course of the Committee's most recent [third] investigation, it is concluded that the transfer of the administration of the law to another appropriate agency should be seriously evaluated to determine the likely improvement in administration that would result from such transfer."

¹Surface Mining Law: A Promise Yet to Be Fulfilled, H.R. Rept. No. 100-183, 100th Congress, 1st Session (1987).

Estimated Transfer Cost

If the surface mining regulatory function was transferred from Interior to another existing federal agency, we estimate that the total moving and associated administrative costs would range between \$2 million and \$3.3 million. Part of this cost would arise from preparing new work space for and moving approximately 380 OSMRE and other Interior headquarters employees, along with the associated equipment, furniture, and work materials. In making our projections, we assumed that the extent of day-to-day regulatory activity and hence the number of regulatory personnel needed to perform the work would remain the same after the reorganization. Because current OSMRE field offices are located near coal mining areas, we also assumed that a reorganized structure would maintain these same field locations. If substantial numbers of employees were added, eliminated, or moved from the existing field structure, cost estimates would change accordingly.

On the basis of information provided by the General Services Administration (GSA), OSMRE, the Congressional Budget Office, and GAO's Property Management staff, we estimate that it would cost between \$0.7 million and \$0.9 million to physically move the approximately 380 headquarters employees to new quarters at another agency. (See app. I for detailed cost estimates and assumptions used.) However, not all OSMRE employees would have to be transferred if the receiving agency continued OSMRE's current lease arrangements. In this situation only about 177 OSMRE employees and 27 Office of the Solicitor employees (currently located in Interior Department buildings) would probably be physically relocated. In addition, costs are likely to be incurred for various administrative activities associated with the transfer, including planning, coordination of accounting and information management systems, personnel processing, and printing.

On the basis of discussions with EPA officials, we estimate that the administrative costs could range from \$1.3 million to \$2.4 million. Although this estimate could change when detailed cost analyses are performed, the estimate is in line with administrative cost estimates provided by the Congressional Budget Office for transferring 500 Department of Energy (DOE) employees (\$1 million) and reorganizing the Department of Commerce (\$3 million).

We discussed with EPA officials the possibility of moving the surface mining regulatory function to EPA. According to the Acting Director, Management and Organization Division, and the Chief, Program Management Analysis Branch, EPA currently leases three buildings in the Washington, D.C., area. Because EPA does not have enough space to meet

the needs of its current staff and the leases are due to expire in 1992, GSA indicated that EPA should consider moving into its own building at that time. As a result, in March 1988 GSA sent a prospectus to the Congress that outlines the agency's needs in terms of size, number of employees, and technical requirements. According to EPA's Space Management Coordinator, the prospectus is based on the agency's fiscal year 1988 headquarters personnel ceiling of about 8,000 employees. Because the prospectus does not project growth in the size of the agency and GSA anticipates issuing a Solicitation for Bids to provide the needed office space in the fall of 1988, EPA needs to know as soon as possible whether it will be given the surface mining regulatory responsibility so that plans can be made to accommodate the additional staff.

Because EPA's current office space is limited, EPA officials told us that, if the regulatory function was transferred to EPA, the OSMRE staff would probably not be moved from existing office space until the new EPA building was completed. Instead, they said that EPA would work out arrangements whereby EPA would reimburse Interior for use of Interior's office space and assume OSMRE's current leases. However, approximately 27 Interior Office of the Solicitor employees assigned to the surface mining area would probably be moved to EPA and assigned to EPA's Enforcement and Compliance Monitoring Section. Given these conditions, we estimate that, in addition to administrative costs of between \$1.3 million and \$2.4 million, approximately \$50,000 to \$65,000 would be needed to move the 27 Solicitor employees and their associated office equipment and supplies. Additional moving costs would be incurred when the remaining OSMRE employees are relocated to the new EPA building.

Estimated Time to Complete Transfer

The time to complete a transfer to another agency consists of both the time to move personnel and equipment and the time that would be required for the program to become fully operational at another agency. The physical move could be accomplished in a matter of weeks with only minor disruption to the agency's operations once adequate office space is obtained. For example, in 1981 about 600 Maritime Administration employees were physically relocated from the Department of Commerce to the Department of Transportation in two phases during successive weekends.

The amount of time necessary to reach full operational status, however, is not as easy to determine. In a 1981 report, we stated that with any

major change, such as a transfer of functions between agencies, substantial problems during the initial periods of reorganization are inevitable.² Problems include delays in obtaining key agency officials, inadequate staffing, insufficient funding, inadequate office space, and difficulties in establishing support functions such as payroll and accounting systems. We found that solving these start-up problems resulted in delays ranging from 9 months to 30 months and distracted agency officials from concentrating on their new missions during the critical first year of operations. For example, two of the six agencies that we reviewed for that report had delays of from 10 to 23 months in obtaining key officials; all six agencies had difficulty obtaining office space and experienced delays of from 9 to 30 months in acquiring needed staff; and four of the six agencies experienced delays of from 13 to 29 months in establishing administrative support functions.

Industry representatives and environmental groups familiar with the surface mining program also indicated that transferring the regulatory function would result in disruption and instability. Factors cited as contributing to this disruption and instability included the need to replace employees that may be lost in the transfer, loss of continuity in the program, uncertainty created in the regulated community, possible delays in issuing regulations, and the reestablishment of communication channels.

Possible Relocation Alternatives

Our review of the missions and programs of existing federal agencies and departments indicates that the surface mining regulatory function closely parallels the environmental programs administered by EPA. Coal industry representatives, environmental groups, and state mining officials that we interviewed suggested only one other possible recipient agency—the U.S. Department of Agriculture. (App. II lists the individuals and groups contacted.) Further, these respondents commented that an independent agency, established to carry out the surface mining regulatory function, would lack clout because of its small size and would have difficulty obtaining needed funding. While these groups were willing to discuss relocation alternatives, all respondents, with the exception of the Audubon Society, commented that the surface mining regulatory function should not be moved from Interior at this time. Generally, they were concerned that (1) stability was needed in the program, (2) Interior provides a better balance between environmental protection and resource development interests, and (3) regulatory zeal

²Implementation: The Missing Link in Planning Reorganizations (GGD-81-57, Mar. 20, 1981).

would not change simply by relocating the function. The views expressed by industry representatives and environmental groups on various agency candidates are summarized in appendix III.

Staffing Source

Under 5 U.S.C. 3503 and 3501, when a function is transferred from one agency to another, all employees in the competitive service (except for employees whose appointment is required by the Congress to be confirmed by, or made with, the advice and consent of the U.S. Senate or who are members of the Senior Executive Service) currently performing the function must be transferred to the receiving agency before that agency can hire anyone else to perform that function. The same requirements hold if one agency replaces another. In November 1984, the Congress extended similar employment rights to Senior Executive Service employees when an agency's function is transferred (5 U.S.C. 3595(e)). Noncareer (political) appointees would not be afforded the same employment rights and could be replaced as part of any transfer of the surface mining regulatory function.

The Congress always has the authority legislatively to specifically exempt any transfer from these requirements. However, according to an Office of Personnel Management personnel staffing specialist, the Congress has not exercised this option since 1961 when the Agency for International Development assumed the functions of the International Cooperation Administration. In addition, he said that the Office of Personnel Management has consistently opposed exempting transfers from the coverage provided for under 5 U.S.C. 3503. Accordingly, if the surface mining regulatory function was transferred from Interior to EPA or any other agency, it would almost certainly be staffed largely with OSMRE career employees.

Representatives of environmental interest groups and the coal industry that we talked with typically commented that OSMRE employees at the working level were technically competent and should be retained. However, these same representatives expressed dissatisfaction with the management level staff (the primary decision makers) and said that, if the function is transferred, changes should be made. If vacancies occur because of the transfer, the positions would be filled from various sources. According to OSMRE's Personnel Officer, management and administrative staff could be recruited from anywhere; whereas, scientists would come from academia, the states, or other federal agencies; and mining inspectors would be recruited from state regulatory agencies

or universities. She told us, however, that auditors would be very difficult to replace.

We conducted our review from August 1987 through March 1988 in accordance with generally accepted government auditing standards. To determine which existing federal agencies might be most capable of carrying out the surface mining regulatory function and the time required for the agency to again become fully operational, we reviewed the missions of each existing federal agency and interviewed representatives of the coal industry, environmental groups, and the states. To determine the costs associated with relocating an agency function and the time to physically relocate the function, we (1) reviewed the estimated costs and moving estimates developed by OSMRE for centralizing its staff in Washington, D.C.; (2) obtained estimated moving costs from GSA officials, the Congressional Budget Office, and GAO's Property Management staff; and (3) discussed the costs and time associated with moving the Maritime Administration with Department of Transportation officials.

We discussed the information obtained during the review with Interior officials and have incorporated their comments where appropriate. However, in accordance with your request, we did not obtain official agency comments on a draft of this report.

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 this letter. At that time, we will send copies to the Secretary of the Interior and to the Director of OSMRE. Copies will also be made available to others upon request.

Major contributors to this report are listed in appendix IV.

Sincerely yours,



James Duffus III
Associate Director

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Abbreviations

DOE	Department of Energy
EPA	Environmental Protection Agency
GAO	General Accounting Office
GGD	General Government Division
GSA	General Services Administration
OSMRE	Office of Surface Mining Reclamation and Enforcement
RCED	Resources, Community, and Economic Development Division
SMCRA	Surface Mining Control and Reclamation Act

Moving Cost Estimates

Dollars in thousands

Cost factor	Cost estimates	
	Low	High
Renovation and alteration of space, including partitions, rugs, and the laying of telephone lines (\$12-\$15 per square foot)	\$616	\$770
Moving expenses, including equipment and furniture	19	38
Telephone service	72	84
Special electronic equipment moves	20	20
Total	\$727	\$912

Note: The estimates include the following assumptions:

- OSMRE regional alignment and location would not change.
- Only Washington, D.C., Interior employees would be relocated. (Approximately 353 OSMRE employees and 27 Office of the Solicitor employees.)
- Because it cannot be determined at this time where the newly transferred agency would be located, the new office space would have to be completely renovated. The actual cost, however, could be significantly lower if less renovation is needed to meet the agency's needs.
- GSA told us that moving expenses average about \$225 per employee, including desks, file cabinets, and telephones. This would amount to about \$85,500. However, our estimates were based on separate moving and telephone costs. GAO Property Management contracts out the moving of offices for \$50 to \$100 per employee depending on the complexity of the move, whereas GSA estimates this cost at \$100 per employee. Using GSA phone service estimates, we estimate it would cost about \$72,400 to provide such service. According to a GSA official, a rough estimate would be about \$200 per instrument plus a 10-percent contingency (\$83,600).
- The movement of special electronic equipment such as portable computers and copiers would cost approximately \$20,000, according to the Chief, OSMRE Planning Branch.
- Because existing furniture may not fit into the space now being allowed by GSA (135 sq. ft. per employee), the agency may have to excess existing furniture and purchase unitized office furniture. However, this cost factor has not been included in our estimate because it could be offset by savings associated with leasing a smaller office space (135 sq. ft. per employee versus about 200 sq. ft. OSMRE employees currently occupy).

Organizations and Individuals Contacted by GAO

Dr. Ronald C. Moe, Senior Analyst, U.S. Congressional Research Service, Washington, D.C.

Mr. Gregory E. Conrad, Senior Counsel, American Mining Congress, Washington, D.C.

Harold P. Quinn, Jr., Counsel and Director/Surface Mining and Leasing, and Mr. Daniel R. Gerkin, Senior Vice President/Public and Constituent Relations, National Coal Association, Washington, D.C.

Mr. Bob Vines, Bituminous Coal Operators Association, Washington, D.C.¹

Ms. Sara Chasis, Senior Staff Attorney, Natural Resources Defense Council, New York, New York²

Mr. Ben Greene, President, West Virginia Mining and Reclamation Association

Ms. Cathy Carlson, Surface Mining Project Coordinator/Public Lands and Energy Division, National Wildlife Federation, Washington, D.C.

Ms. Wyona Coleman, Sierra Club

Mr. Steve Quarles, former Deputy Under Secretary for the Department of the Interior, now on the Board on Mineral and Energy Resources, National Academy of Sciences, Washington, D.C.

Ms. Carolyn Johnson, Freelance Consultant (formerly with the Public Lands Institute)

Mr. Jim Lyon, Environmental Policy Institute, Washington, D.C.

Mr. Kenes C. Bowling, Interstate Mining Compact Commission

Mr. Jack Rachie, Wyoming Mining Association

Mr. Rick Southerland, Sierra Club Legal Defense Fund, San Francisco, California

¹Referred us to the positions or views expressed by the American Mining Congress and the National Coal Association.

²Referred us to the Sierra Club Legal Defense Fund and the National Audubon Society.

**Appendix II
Organizations and Individuals Contacted
by GAO**

Ms. Hope Babcock, National Audubon Society, Washington, D.C.

Mr. Kenneth R. Faerber, Commissioner, West Virginia Department of
Energy

Views Expressed by Industry, Environmentalists, and States on Various Candidate Agencies

Environmental Protection Agency

Environmental groups told us that, if the surface mining regulatory function was to be moved anywhere, EPA would be the logical receiving agency. Generally, they said that EPA could draw upon its existing expertise in environmental protection, had more experience in dealing with environmental legislation than Interior, and could provide clearer direction for the surface mining program. For example, the Audubon Society representative told us that moving this function would eliminate the institutional conflict that exists at Interior between developing mineral resources and protecting the environment and would send a clear signal to the receiving agency that it should give additional attention to OSMRE's mission. Further, she commented that EPA was the only logical agency to assume this regulatory role because of its (1) experience with water pollution and runoff, (2) water expertise and good reputation as a regulatory agency, and (3) experience in dealing with citizens' concerns and involvement in pollution problems. Industry representatives, on the other hand, said that EPA was a single-purpose agency and as such would not provide a proper balance between SMCRA's stated goals of energy production and environmental protection.

The question still remains, however, whether the surface mining regulatory function would be improved if placed within EPA. Three environmental groups and a National Academy of Sciences representative told us that, in their view, EPA already has problems managing its own programs. Faced with its own problems, these respondents are concerned that the surface mining regulatory function would not receive needed attention. Further, industry representatives said that much of the controversy surrounding OSMRE revolves around the complexity of the act itself and the polarization of the issues and that, given this situation, the same problems would exist wherever the regulatory function is located.

We have also reported problems in EPA's management with respect to cleaning up hazardous waste and enforcing air standards. For example, in November 1987 we reported that EPA's oversight of hazardous waste handler inspections has been limited because of resource constraints and other priorities.¹ In January 1987 we reported that EPA is far behind its regulatory timetable for closing facilities that did not certify compliance with groundwater monitoring and financial responsibility requirements.²

¹Hazardous Waste: Facility Inspections Are Not Thorough and Complete (GAO/RCED-88-20, Nov. 17, 1987).

²Hazardous Waste: Enforcement of Certification Requirements for Land Disposal Facilities (GAO/RCED-87-60BR, Jan. 27, 1987).

Department of Agriculture

The Sierra Club and the West Virginia Mining and Reclamation Association pointed out that the Department of Agriculture had expertise in resource management dealing with land, soil, and timber and that the Soil Conservation Service is currently responsible under SMCRA, Title IV, for reclaiming rural abandoned mined lands. However, the Sierra Club representative did not believe the function should be transferred to Agriculture because she believed the agency has a dismal record on environmental issues. The National Academy of Sciences representative told us that the Department of Agriculture is not environmentally oriented and lacks regulatory and water pollution experience. Although the West Virginia Mining and Reclamation Association representative recognized Agriculture's related experience, he could not see any advantages to transferring the regulatory function to this or any other agency.

Department of Energy

Only the coal industry representatives mentioned DOE as a possible agency for the surface mining function. However, they discounted this alternative either because they could not envision the function being transferred to DOE or because the agency is production-oriented and has no environmental expertise. Environmental groups and the National Academy of Sciences representative also opposed a transfer of the regulatory function to DOE for similar reasons, and one respondent stated that DOE's mission of resource development is directly contrary to the purposes of SMCRA.

Department of Labor

Although the Labor Department was not suggested as a possible location for the surface mining regulatory function, we questioned industry representatives and environmental groups on this possibility because the agency has regulatory experience under the Federal Mine Safety and Health Amendments Act of 1977. Overall, respondents commented that Labor's mission of worker protection is far afield from environmental protection and that the agency lacks expertise in environmental matters.

Independent Agency

The creation of an independent agency to carry out the surface mining regulatory program could provide the agency with a new start and bring greater clarity and focus to its mission, according to several people we interviewed. However, for a variety of reasons, respondents did not believe creating an independent agency was a viable option. One coal industry representative projected that the existing amicable relationship with industry would deteriorate and regulators would become more narrow-minded whereas another industry representative told us that

budget fights could hurt an independent agency. Environmental groups told us that a new independent agency would not be large enough to have political clout and would be subject to excessive external political pressure. The National Academy of Sciences representative concurred that such an agency would not have the necessary clout and, along with the Congressional Research Service representative, commented that because of its small size it would have difficulty attracting staff.

Remain at Interior

Overall, all interest groups, with the exception of the Audubon Society, commented that the surface mining regulatory function should not be transferred at this time. Although these groups gave many reasons for their positions, the principal ones were that (1) simply changing the location of the regulatory activity without changing a perceived pro-development regulatory philosophy would not improve surface mining regulatory performance, (2) Interior provides a better balance between the opposing goals of coal production and environmental protection than any existing federal agency, and (3) after 10 years of struggle to implement SMCRA, stability is needed.

The National Academy of Sciences representative (formerly the Department of the Interior's Deputy Under Secretary) told us that, at the present time, Interior may be less intent on enforcement because the current administration tends toward resource development rather than resource protection. He said that as administrations change there can be substantial changes in the emphasis given to development versus resource protection objectives. However, he does not believe that this is reason enough to remove the regulatory function from Interior. Instead, the function should be insulated from Interior's development-oriented functions, thus reducing the impacts of the changes in emphasis. He said that Interior should recognize that OSMRE's mission is different from the older Interior agencies, such as the Bureau of Land Management, and that OSMRE should be combined with similar agencies such as the Minerals Management Service and placed under an assistant secretary having regulatory experience.

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