63d Congress, 2nd Session, May 12, 1914, favorably reporting on H.R. 14094, the first major leasing bill introduced in the Congress.

In another sense, the reasons advanced for the rejection of the system of location under the mining laws and the introduction of a leasing system for the minerals named in the 1917 and 1920 acts were concerned with these minerals as fuel and fertilizer minerals. The public and the Congress believed that existing laws governings the use and disposition of the public lands, including the mining laws, were inadequate to insure general use of fuel and fertilizer minerals at reasonable rates. As noted, vast areas of the public lands containing these minerals had been withdrawn from entry several years before the first major leasing bill was introduced in Congress in 1914.

CLASSIFICATION IS KEY

The director of the Geological Survey has the authority and responsibility, under the Act of March 3, 1879 (43 U.S.C., sec. 31) as supplemented by the Reorganization Plan No. 3 of 1950 (5 U.S.C., sec. 481, note) and Secretary's Order No. 2563 (15 F.R. 3193), to classify lands as valuable for the leasable minerals in order to retain the mineral rights in federal ownership. He also has the authority and responsibility, in the first instance, of determining for the Department which deposits are subject to the leasing provisions and those which are subject to the prospecting provisions of the mineral leasing acts.

This classification function is a key to the question raised by the title of this article. This is because the leasing acts, i.e., the Mineral Leasing Act of 1920 (30 U.S.C. 181–287) including the Potassium Leasing Act of 1927 (30 U.S.C. 281–287) and its predecessor, the Potassium Leasing Act of 1917 (40 Stat. 297), repeal the General Mining Law (30 U.S.C. Ch. 2) as to minerals named in the leasing acts. Such minerals are no longer subject to location but only to lease (Wilbur v. Krushnic, 280 U.S. 306, 314 (1930)).

Implicit in the authority and responsibility of the director to classify lands as valuable for the leasable minerals is the responsibility, in the first instance, of determining whether or not a given mineral deposit comes under the mineral leasing acts. For most deposits this poses no particular problem and raises no questions. In general coal is coal, and oil is oil, and salt is salt. However, natural and civil laws are not always easily reconciled. Some reconcilation was undertaken by the Congress in the process of considering and enacting the mineral leasing laws, and these guidelines are most instructive. The balance of this article consists chiefly of a review of these Congressional guidelines. Some examples are given of their application to problems arising as successful exploration or new technology bring forth new leasable industrial minerals, unknown or without value when the leasing acts were passed.

POTASH FIRST LEASABLE MINERAL

It is instructive to concentrate on potash because it was the first leasable mineral, its law was reviewed and amended by Congress after a decade of experience, and it presents a wide variety of occurrences and possible complications.

Because of a German monopoly on potash fertilizer production, the Congress appropriated funds for a potash resource study in 1911 and 1912. This led to the first potash land withdrawal on January 16, 1913, and to the Potassium Leasing Act of 1917 (40 Stat. 297). Until 1917 potassium had merely been one of the named mineral substances in the several general leasing bills introduced in the Congress. Wartime emergency demands caused its earlier separation from what became the Mineral Leasing Act of 1920.

The main purpose of amending the 1917 act in 1927, the legislative history shows, was to harmonize the earlier act with the Mineral Leasing Act of 1920. The 1917 act had permitted title to pass to one-fourth of a prospecting permit area. This provision did not appear in the 1920 act. One objection to the 1917 act was that the selections isolated remaining lands. It gave title to 160 acres per discovery, against 20 acres for a mining claim discovery. Congress was also unhappy over patenting provisions that did not assure development, and over misuse of the law to gain title for other purposes.

Under the Potassium Leasing Act of 1927 (30 U.S.C. 281–287) the Secretary of the Interior is authorized to grant a prospecting permit giving the exclusive right to prospect for chlorides, sulfates, carbonates, borates, silicates, or nitrates of potassium in federal lands. Upon showing that a valuable deposit has been