

Interior nor Congress should require of a developing industry adherence to standards more rigorous than existing operations.

The proposed regulations require compliance with pollution requirements which are not themselves specified or otherwise described. We believe that the same requirements should be applied to all mining and industry in the area and that requirements should be delineated as completely as possible before leasing starts. It may be necessary for the state legislatures or Congress to take part in developing these pollution and surface damage control regulations so they are the same for all industry.

ROYALTY

Sinclair feels that the royalty provisions of the proposed regulations act uniformly against the interest of the public and private investor who might provide the money to support the development of this resource. One section, 31725(b), states that the royalty shall be "3 percent on the gross value, at the point of shipment to market, of the mineral products from the oil shale, * * *". This might be construed as applying to raw shale oil sold at the plant gate in Western Colorado, or to gasoline produced at the Colorado plant and shipped to market, or to gasoline produced at a midwest refinery from shale oil. We recommend clarification because this regulation could promote inefficiency by inducing intermediate sales and precluding integrated plant complexes. If this royalty component is retained, it should be specified as applying to fair market value of the raw shale oil at the outlet of the retort and the fair market value of any unrefined metallic salt isolated and sold or further refined elsewhere. In the calculation of royalty on any basis, reasonable allowance should be made for transportation and processing.

The most important section regarding royalty is 31725(d). The royalty rate is to be a percentage of "net income" from the production of mineral products from oil shale. The "net income" is to be computed without allowance for royalty or depletion. The royalty is to apply to that portion of the net income which exceeds certain percentages of original cost of the capital assets, used in production and processing, less depreciation. The investment should include direct costs of development and construction and, if the government takes title to data and patents, all research expenditures. All royalty should be waived during the developmental term.

The most serious aspect of the proposed approach is its confiscatory nature, during the latter part of a commercial projects life. During this period, eighty to ninety percent of the net income could be taken by federal income tax and royalty for projects showing only modest rates of return before royalty.

Royalty tends to result in wastage of the resource by forcing early cutoff of production; it adds to operating costs and results in earlier reaching of the breakeven point. We recommend another means for deriving public revenues. The holding of leases for speculation should be discouraged by requiring the expenditure of substantial funds on research and development for each year of the development lease or for a substantial reserve rental to apply from the beginning of the lease. This would encourage the lessee to undertake construction and production at the earliest possible date. We also suggest low fixed royalty, such as 5% on the gross value of the first products recovered from retorting or spent shale leaching. Such a reasonable figure is recommended to keep from leaving too much of the reserve in the ground.

Competition should also be fostered in the acquisition of developmental-commercial leases. This should be in the form of open bidding on the amount of bonus or price to be paid for the lease, in addition to the fixed royalty and committed development program or rental.

Section 31724(e) of the proposed regulations provides for readjustment of base royalties at 20-year periods. This provision is consistent with the statute, but the advisability of any such readjustment is presumably with the unilateral discretion of the then Secretary of the Interior. Without additional criteria and guidelines, this could result in a great deal of uncertainty as to the stability of a very large investment. To relieve this uncertainty, some reasonable and more definitive ground rules should be established. Also the first 20-year period would start with the issuance of the research term of the lease. Due to research and start-up time, this could well result in royalty rates being certain for a period of much less than 20 years.