

PATENTS, DATA AND DESIGN

Among features of the proposed regulations which most greatly disturb Sinclair are the provisions concerning dissemination and use of all the data and information from work during the research and development term of the lease. Section 3172.9(d)(3) provides that the lessee must not make available to others besides representatives of the Secretary of the Interior, the results of the research work under the lease or any information concerning the same without prior written approval. It is not clear to the reader just how a lessee could comply with this section. It is likely that numerous agents and individual contractors, as well as employees, will be aware of at least certain aspects of the research and at least some related information. Policing this requirement would be very difficult. This section indicates that no research personnel could publish technical papers on their work without the approval of the Secretary. We feel that the lessee should own the data and thereby be able to release reports and publications based on his work as he wishes and that the Department of Interior should receive reports sufficient to show due diligence in prosecuting the research and that these should be held in confidence for at least five years.

Section 3172.9(d)(1)4 requires a lessee to allow to all persons designated by the Secretary access to the leased premises and all other facilities in which any part of the research is conducted. This requirement would appear to extend to allowing any "designated" competitors access, even into our research laboratories if any part of the work is conducted in them.

Section 3172.9(d)(1)2 of the proposed regulations requires reporting with "detailed disclosure of all materials, processes, and equipment involved, including all the technical and financial data needed to enable any qualified person to carry out the work * * *". The effect of this is that if the lessee should spend millions to develop a process and detailed design, he must give it to the government and hence to his competitors for them to practice without charge. This certainly will not foster either research or competition; it amounts to confiscation and will discourage expenditures of large amounts for research and development.

Section 3172.9(e) states that the public will acquire title to all patents and inventions made in the course of the lease, except where proper showing of exceptional circumstances is made. This is one of the most critical points for private companies and investors. The effect would be that the lessee may make development expenditures of many millions, and then must give all the results away. The lessee would have no chance to recoup through licensing the moneys risked on research, as has been the heart of the free enterprise patent system. It would seem to place a premium on waiting and letting others do the early development. Let someone else develop the process and then apply for commercial leases to utilize the results without risk or prior investment. The "proper showing of exceptional circumstances" appears to be a formidable obstacle; some in the proposed Bronco project consortium feel this point may keep the project from ever going forward.

We strongly recommend that the free enterprise patent policy be sustained. The developer should own his inventions and not be restricted in efforts to recover his expenditures in them. The developer should own the data and be permitted to utilize them as he wishes. We would not object to a requirement of licensing at reasonable royalty rates after some waiting period.

In summary, our past research on underground retorting of oil shale and our current participation in the Anvil Points cooperative research project lead us to believe that shale oil production will become attractive in the foreseeable future. However, engineering and economic analyses made in connection with these projects indicate low potential return on investment. We are not in complete agreement with the idea that the current nuclear approach to the problem can reduce costs radically, even if the process works. Since there is little technical promise of substantial improvement in shale oil economics, we believe the government should be prepared to accept smaller royalty rates than are used in conventional oil and gas leases and much smaller than in the proposed regulations. Investment should be encouraged by the government through investment tax credits and depletion allowance on raw shale oil.