

any part of the area of land described in a request for permission to operate is such that previous experience with operations under similar conditions shows that substantial deposition of sediment in stream beds, landslides, or water pollution cannot feasibly be avoided * * *."

The regulations contain no definition of "substantial deposition of sediment" or "water pollution". This, of course, jeopardizes substantial investments represented in rental and royalty payments and plant construction. There are no guidelines to govern the actions of the "appropriate departmental officer" and thus these investments are risked and may be lost through the exercise of unfettered discretion of the said departmental officer.

K. Coordination among Federal agencies and problem of conflicting Federal and State authority

The proposed regulations appear to apply to lands now under the jurisdiction of the Forest Service with respect to management of surface use. Such dual control by the two departments is almost sure to lead to conflicts resulting in a situation where the holder does not know what instructions to abide by.

The regulations as they pertain to mining safety, and in establishing general practices relating to minimizing the polluting of the waters of springs, streams, wells or reservoirs invade the province and jurisdiction of other federal agencies and the several states.

The control of water pollution is largely a state activity. In addition to the various regulatory statutes of each state, Congress has enacted the Federal Water Pollution Control Act, 33 U.S.C.A. § 466. The abatement program of that act indicates the sensitivity of Congress about displacement of functions traditionally belonging to the states. The act established a Federal Water Pollution Control Administration which has been established as a separate bureau in the Department of the Interior and provides for cooperation with state water pollution control agencies and encouragement of uniform state laws, an establishment by the states of water quality standards, together with grants for research. Only if it shall be determined after hearing that a state has not submitted a plan approved by the agency or if there is failure to comply with the requirements of the plan then, and only then, can that administration take affirmative steps to control and abate water pollution.

Safety regulation is imposed by other state and federal laws and regulations. For example, the United States Bureau of Mines now makes regular safety inspections of the phosphate mining operations on federal leases.

Furthermore, the proposed regulations would duplicate in the "appropriate officer" the conservation responsibilities historically performed by the Regional Mining Supervisor of the U.S.G.S.

The regulations should contain provisions for avoiding conflicts among the various federal and state agencies.

L. Shutdown of all operations upon forfeiture of bond

The effect of § 23.6(e) is to allow the Department to completely close down a holder's operations on all its permits and leases throughout the United States if the "appropriate officer" concludes that a given bond should be forfeited. Thus, if the "appropriate officer" concludes that re-vegetation has not been properly concluded, the Department can refuse to grant permission to conduct exploratory, development, or extractive operations on federal lands under the jurisdiction of the Department resulting in a closing down of all a holder's operations. It is submitted that this would be tantamount to a cancellation of a holder's leases and that such authority far exceeds any authority given in the applicable statutes and is contrary to the provisions of 30 U.S.C. § 188.

The provision for appeal in the proposed regulations fails to specify the procedures to be followed for such appeals and the basis upon which an adverse decision may be reversed. As to departmental appeals, a holder should be entitled to a hearing before an examiner who is completely independent of the Department of the Interior and who would be authorized and required to make findings of fact in each case. The regulations should grant a holder the right to appeal any directive, order, or decision to the appropriate courts. It is further suggested that any decision of the Department should be considered to be a final agency action subject to judicial review under § 10c of the Administrative Procedures Act if it is made effective pending a departmental appeal of the decision.