

Overview

Following a decade of public debate, consensus was reached in 1979 on a Federal coal leasing program considered adequate to ensure protection of the environment upon development of leased tracts. The basic framework of that program—the legislative mandates and the concept of a tiered structure of land use planning, activity planning, and mine permitting—are still workable and capable of ensuring environmental protection. However, 1982 shifts in the policy underlying the leasing program—as evidenced by changes in the implementing regulations—have shaken that consensus. While OTA did not discover any “fatal flaws” that would absolutely preclude mining on recently leased tracts, we conclude that the recent policy changes very likely have raised the cost and difficulty of ensuring environmental compatibility, and have increased the risk of adverse environmental impacts should those tracts be developed. As a consequence, public confidence in the environmental soundness of the Federal leasing program has decreased.

The planning processes during which tracts are continuously evaluated for their acceptability for leasing have become too unpredictable and unsystematic to assure compliance with the environmental mandate. There are two basic aspects of the recent policy and program changes that contributed to this unpredictability:

First, the high leasing rates—the large quantity of coal to be offered for lease combined with inflexible lease sale schedules—of the past 3 years taxed the resources of the Bureau of Land Management (BLM) beyond the point where they could adequately assess the acceptability of the tracts proposed to be offered. Even without compressed planning and analysis schedules, BLM’s assessment capability already was taxed by field personnel rotations and turnovers, which resulted in a loss of “institutional memory” and contributed to inadequate data and analyses. Consequently, decisions about acceptability have been deferred past the land use and early activity planning stages, where they are scheduled to be made, to the Secretarial decision or mine permitting stage. Tracts have been carried forward

to the lease offering without adequate data and analyses to make a fully informed decision about their environmental compatibility. Decision deferrals also have led to overuse of lease stipulations (conditions placed on a lease) to address uncertainties about impact mitigation requirements. In some instances, tracts were removed prior to sale by mechanisms that were unrelated to the leasing process. Further, the quality and quantity of data and analyses vary widely among regions, among tracts within a region, and between sales within a region.

Second, changes in program regulations in 1982 reduced the effectiveness of the environmental protection measures that contributed to the consensus on the 1979 Federal coal leasing program. The 1982 regulations no longer require-prior to the environmental impact statement—the use of a “threshold” concept for determining whether potential cumulative impacts are severe enough to warrant dropping tracts from further consideration for leasing. In addition, most regulatory standards for the adequacy of data and analyses were eliminated, adding to the uncertainty about the acceptability of proposed tracts. Preparation of Resource Management Plans (required under the Federal Land Policy and Management Act of 1976 and the Federal Coal Leasing Amendments Act of 1976) was given lower priority when the 1984 deadline for their completion was eliminated, allowing indefinite reliance on existing land use plans prepared under earlier legislative mandates and updated or amended to meet the 1976 requirements. The latter do not constitute the sort of “fresh-start” comprehensive land use planning envisioned in the current statutory framework. Their continued use increases the risk of adverse environmental impacts occurring if a leased tract is developed, and adds to the perception that BLM data and analyses have been inadequate to support planning and leasing decisions.

Program Improvements

An environmentally (and economically) sound leasing program is an important part of the Nation’s energy future and of public land manage-

ment policy. Unless reasonable public expectations about “soundness” are satisfied, however, an effective and predictable Federal coal leasing program is not likely. The recent actions taken by the Department of the Interior to review the leasing program are a positive step toward decreasing environmental risk and regaining the public consensus about the soundness of the program, and priority should be given to their rapid completion and implementation. However, there are a number of other measures identified by OTA that also can help to ensure environmental protection and compliance with the existing statutory mandates, reduce the environmental risk of leasing decisions, maintain a predictable and stable leasing process, and restore public confidence in the environmental soundness of the leasing program.

1. Lower but steady leasing rates would make the land area that has to be evaluated for coal leasing in a given period of time more manageable, reduce the number of tracts to be offered at one time and therefore the probability that environmentally sensitive tracts would be leased, and allow all participants in leasing, including the industry and affected communities, to plan more effectively for leasing activities.
2. Decentralizing decisionmaking authority on tracts and tonnages to be offered and on what schedule to the Regional Coal Team or BLM State Office level, and reorganizing leasing regions to match State boundaries, would improve the sensitivity of leasing decisions to State and local needs and priorities.
3. Improving the effectiveness of public participation through efforts to increase public awareness and understanding of, and involvement in, the planning and leasing process also could improve the environmental soundness of, and public confidence in, the leasing program. In this context, it is very important to accommodate the environmental and socioeconomic concerns of special interest groups such as Indian Tribes, States and communities, and farmers and ranchers when carrying out lease planning activities and eventual mine development.
4. Completion of adequate Resource Management Plans by BLM (and the Forest

Service) would ensure that comprehensive areal land use planning is completed before activity planning for a lease sale and is adequate to support informed decisions on tract acceptability for leasing. It also would help ensure that preliminary cumulative impact assessments are incorporated in general land use planning decisions. In this context, it is important that BLM planning be coordinated more closely with that of the Forest Service and other Federal agencies, and with State and local plans, to ensure that coal leasing does not undermine the goals of other programs.

5. The data and analyses that support planning and leasing decisions also must be improved before environmental risk can be reduced and public confidence restored. Compilation of a comprehensive data base, evaluation of the amount of data and analysis needed at each decision stage, and expansion of ways to use data and analyses from industry and other participants in leasing are some ways such an improvement could occur without significant increases in BLM resources. Continued research on mitigation and reclamation techniques and on the use of the threshold concept for cumulative impact analysis also would make planning more effective. In addition, greater encouragement and incentives for experienced, qualified personnel to remain in the field could significantly improve the quality of data and analyses.
6. Guidelines and standards for the adequacy of pre-sale data and analyses at all stages in the leasing process should be incorporated in the program regulations. Regulatory standards and guidelines would be more predictable, would provide better guidance to field personnel, and would be more intelligible and accessible to other participants in the leasing process than the current guidelines, which reside primarily in BLM internal memoranda.
7. A workable threshold concept for estimating cumulative impacts should be developed and included in the regulatory requirements for evaluating tract acceptability during land-use planning and for tract ranking as well as in the environmental impact statement.

8. **Policies and procedures for effectively using lease exchanges** to protect environmentally sensitive tracts should be established. It is necessary to clarify when such exchanges, which can be a useful tool for reducing environmental risk, can be undertaken and how.
9. **Policies and procedures for leasing coal lands where the Federal Government does not own or manage the surface** (split estate lands) need to be evaluated to resolve the uncertainty about the effectiveness of land use and activity planning and pre-lease environmental protections on such lands, and to ensure that BLM procedures for split estate areas balance public concerns and surface owner interests adequately.
10. **Procedures for environmental assessment of Preference Right Lease Applications**

need to be evaluated to determine **if they provide adequate environmental protection and to ensure that they are consistent across regions.**

It is important that the Department of the interior give priority to establishing an effective, predictable, and stable leasing program that reduces the environmental (and economic) risk of leasing decisions, and that allows the industry to plan confidently for acquisition of coal reserves, the environmental community to be confident that leasing decisions will be in accord with legislative requirements, and, most importantly, the owners of the resources—the citizens of the United States—to be confident that Federal lands are managed in the Nation’s best interests.