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WASHINGTON D C 20548

2-16-73

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FEB 16 1973

The Honorable Henry S Reuss
 Chairman, Subcommittee on Conservation and
 Natural Resources
 Committee on Government Operations
 House of Representatives

Dear Mr Chairman

This letter is in further response to your letter of August 3, 1972, in which you requested our advice on the steps taken by the General Accounting Office (GAO) and the Department of Justice to insure that any claim against a coal operator arising under the Federal Coal Mine Health and Safety Act of 1969 (30 U S C 801) is offset against any sum owed him by the United States. The offset procedure was provided for in the Federal Claims Collection Standards (4 C F R 102.3) issued jointly by the Department of Justice and GAO, pursuant to authority in the Federal Claims Collection Act of 1966 (31 U S C 952)

In our report "Improvements Needed in the Assessment and Collection of Penalties--Federal Coal Mine Health and Safety Act of 1969" (B-170686, July 5, 1972), we concluded that the Federal Claims Collection Act and the implementing standards were applicable to the collection of civil penalties under the Federal Coal Mine Health and Safety Act of 1969

The Federal Claims Collection Standards (4 C F R 102 3) contain the following provision relating to the offset of claims against sums owed to a creditor

Collections by offset will be undertaken administratively on claims which are liquidated [determined by agreement or litigation] or certain in amount in every instance in which this is feasible * * * Appropriate use should be made of the cooperative efforts of other agencies in effecting collections by offset * * * and all agencies are enjoined to cooperate in this endeavor.

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The act and its implementing standards place in the administrative agencies the responsibility for collecting claims resulting from their activities, including the use of an offset procedure. Therefore, neither the Department of Justice nor GAO is responsible for initiating offset action on claims arising from penalties assessed by the Bureau of Mines under the Federal Coal Mine Health and Safety Act of 1969.

Officials of the Department of the Interior's Office of the Solicitor, who have responsibility for legal matters involving the Federal Coal Mine Health and Safety Act of 1969, informed us in August 1972 that the offset procedure was not used because they doubted that it could be used prior to a judgment by the court enforcing collection.

They said that this opinion was based on the grounds that (1) the enforcement action provided for in the act¹ is mandatory on the part of the Secretary and therefore he cannot bypass this statutory requirement by offsetting beforehand and (2) the act authorizes the court in any enforcement action to consider and determine the relevant issues and enforce, modify, or set aside the civil penalty assessed by the Secretary.

Because of the joint responsibilities of GAO and the Department of Justice under the Federal Claims Collection Act, we requested the views of the Attorney General regarding the appropriateness of using the offset procedure prior to a court judgment. In its reply dated November 15, 1972, the Department of Justice concluded that the offset procedure prescribed by the Federal Claims Collection Standards should be applied to claims arising under the Federal Coal Mine Health and Safety Act of 1969.

¹For civil penalties not paid within the prescribed time, the Secretary is required to file a petition for enforcement in any appropriate district court of the United States.

B-170686

In our opinion, the offset procedure provided for in the Federal Claims Collection Standards can and should be applied by the Bureau of Mines to the collection of civil penalties assessed under the Federal Coal Mine Health and Safety Act of 1969 prior to entry of a judgment by the court.

In accordance with instructions from your office, we are not furnishing a copy of this report to the Secretary of the Interior. We understand that you will make the report available to him. We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

A handwritten signature in cursive script, reading "James B. Axtell".

Comptroller General
of the United States