

REPORT BY THE  
**Comptroller General**  
 OF THE UNITED STATES

## Coal Trespass In The Eastern States-- More Federal Oversight Needed

Recent public and congressional concerns have focused on the illegal mining of Federal coal in the East, specifically in Alabama. GAO's review, requested by the Chairman, Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce, confirms that coal trespass is a serious problem.

### The Bureau of Land Management

- has not taken aggressive and timely action to investigate coal trespass and prosecute trespassers,
- does not have a good grasp of Federal mineral ownership in the Eastern States to identify trespassers, and
- lacks "presence" and an overall plan to prevent and control trespass in the Eastern States.

GAO made recommendations to improve the Bureau's oversight of Federal coal and other minerals in the Eastern States. As an alternative, the Secretary of the Interior may want to divest himself of management responsibility where scattered and isolated Federal coal tracts underlie State and private surfaces.



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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-151071

The Honorable John D. Dingell  
Chairman, Subcommittee on Energy  
and Power  
Committee on Interstate and  
Foreign Commerce  
House of Representatives

*HSE 02303*

Dear Mr. Chairman:

This report is in response to your January 19, 1979, request on the adequacy of the Department of the Interior and its Bureau of Land Management efforts to identify coal trespass and to initiate enforcement actions in Alabama and other Eastern States. The report discusses the Department's and the Bureau's action and oversight involving Federally owned coal and other minerals in the Eastern States, and concludes that a serious coal trespass problem exists in Alabama and a similar problem may exist in other Eastern States.

As you have requested, a draft of this report was not sent to the Department of the Interior for review and comment. As you are aware, on February 22, 1979, we received a similar request on coal trespass from the Chairman, Subcommittee on Oversight and Investigations, House Committee on Interior and Insular Affairs and--as agreed with your office--we are also sending him a copy of this report. We plan no further distribution until the June 1, 1979, coal trespass hearing is held. At that time we will send copies to the Department of the Interior and other interested parties, and make copies available to others upon request.

Sincerely yours,

Comptroller General  
of the United States

COMPTROLLER GENERAL'S  
REPORT TO THE SUBCOMMITTEE  
ON ENERGY AND POWER  
HOUSE COMMITTEE ON INTERSTATE  
AND FOREIGN COMMERCE

COAL TRESPASS IN THE  
EASTERN STATES--MORE  
FEDERAL OVERSIGHT  
NEEDED

D I G E S T

Recent public and congressional concerns have focused on the illegal mining of Federal coal, particularly in Alabama. Published estimates of potential losses to the Government--based on the value of the coal--range from \$135 million to over \$1 billion throughout the Eastern States.

On January 19, 1979, the Chairman, Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce, asked GAO to examine the adequacy of the Bureau of Land Management's and Department of the Interior's efforts to identify Federal coal trespasses and initiate enforcement actions in a timely fashion. The Chairman also asked GAO to examine the Bureau's procedures and monitoring methods for preventing and halting such trespasses and identifying Federal coal ownership. Subsequently, the Chairman, Subcommittee on Oversight and Investigations, House Committee on Interior and Insular Affairs, requested similar information.

GAO examined the situation, asking:

--Has the Bureau investigated suspected coal trespasses and prosecuted trespassers in an aggressive and timely manner? (See p. 5.)

--Is information on Federal mineral rights available to help identify trespasses and manage the resources? (See p. 15.)

--Does the Bureau have an overall plan to identify, prevent, and control trespass in the Eastern States? (See p. 21.)

The answer to all three questions is negative.

GAO believes coal trespass is a serious problem in Alabama, and similar problems may exist in other Eastern States. How much coal has been taken is not really known at this time. The \$135 million to \$1 billion estimate developed by the Bureau's Eastern States Office is based on very limited data, and is thus unreliable; but GAO believes it does illustrate the potential significance of the trespass problem in the Eastern coal States.

AGGRESSIVE AND TIMELY  
ACTION NOT TAKEN

Despite an awareness of coal trespass in Alabama and Maryland, and the likelihood of additional cases in other Eastern States, the Bureau has not taken aggressive and timely steps to investigate and prosecute trespassers.

Even for suspected trespass cases in Alabama, reported as early as November 1976, the Eastern States Office has not taken aggressive and timely investigative action. This is because the Office at first did not recognize the significance of the trespasses and lacked adequate staff, investigative procedures, and strong policy and guidance from Bureau headquarters.

*p* The Bureau's efforts have been and continue to be reactive to coal trespasses, most of which were identified incidental to a limited land use study in Alabama. Officials in the Office of the Secretary of the Interior were not informed of coal trespass until January 1979, although the Bureau Director was briefed in May 1978. Even the May 1978 briefing was

long overdue, since the Bureau's Eastern States Office was aware of many coal trespasses by September 1977 and had indications of trespass in Alabama as early as 1975.

The Bureau's response to the identified trespasses apparently was triggered more by television news reports than by a conclusion that coal trespass is a serious problem.

As of April 1979, the Interior Department had sought to recover damages--about \$3.5 million--in only 1 of the 50 identified cases. No liability had been determined for the remaining cases. GAO noted that the 6-year statute of limitations may adversely affect the Government's success in collecting monetary damages in coal trespass cases.

#### LACK OF INFORMATION ON FEDERAL MINERAL OWNERSHIP

Much of the trespass problem is due to the Bureau's not having a grasp of what Federal minerals the Government actually owns in the 31 Eastern States. The Bureau has not completed the mapping of Federal minerals underlying Federal, State, and private lands in any of the 31 States. This is essential for first identifying and then managing such resources.

While the Bureau recently accelerated its mapping of coal resources under State and private surfaces, it has no program for obtaining aerial photographs and other resource data or for assigning staff to identify coal trespasses through a matching process, beyond what has been identified in a four-county area of Alabama.

BUREAU "PRESENCE"  
AND OVERALL PLAN LACKING

The Bureau lacks "presence" in the Eastern States and has no overall plan for defining the magnitude of the coal trespass problem, establishing procedures to assure its resolution, or setting priorities and providing the staff necessary for safeguarding coal and other mineral resources in the Eastern States.

Until recently, the Bureau had no public awareness program--which can serve as an important deterrent--for coal trespass in the Eastern States. Even now, the program basically is limited to Alabama.

The coal trespasses identified so far have occurred under State or private surface lands, generally located in small scattered tracts ranging in size from 20 to 200 acres. GAO recognizes that because Federal coal is scattered throughout the Eastern States and because the Bureau lacks administrative control over the surface, the management of these reserves poses a difficult problem. The Interior Secretary should determine the best interest of the Government in either expending the additional resources necessary to properly manage the coal or seek equitable means of divesting itself of this responsibility.

RECOMMENDATIONS TO THE  
SECRETARY OF THE INTERIOR

GAO recommends that the Secretary of the Interior, through the Bureau of Land Management and its Eastern States Office, develop an overall strategy and plan to safeguard and otherwise manage Federal coal in the Eastern States, which should include immediate steps to:

--Establish an effective investigative approach and an appropriately staffed work

group to come to grips with existing coal trespass cases, considering the legal implications of the statute of limitations in determining the priority of individual cases.

- Determine the extent of coal trespass in the Eastern States by following through on the accelerated Federal coal mapping program and, at the same time, establishing an aggressive trespass identification program beyond the four-county area of Alabama.
- Expand the public trespass awareness program--beyond Alabama--to include:
  - Making computer listings of Federally owned minerals in other Eastern States available to the public.
  - Implementing a reward system for public information leading to the identification of trespass cases.
  - Notifying the public through advertising of the Federal mineral ownership in the Eastern States.
  - Implementing a "hotline" to enhance and simplify trespass reporting by concerned citizens.
- Assure that adequate staff resources are made available to accomplish these tasks, either through reallocations within the Bureau or additional positions justified to the Interior Department.

An adequate Bureau "presence" in the Eastern States is vital to identify and safeguard Federal mineral resources. Thus, the Secretary should require--as part of the overall coal management plan--a specific determination as to whether retention of Federal coal rights under State and privately owned surfaces in the Eastern States is cost effective, considering the small, scattered ownership patterns, and increased costs

to effectively monitor and manage these resources. If the Secretary determines that such retention is not cost-effective, GAO believes the Interior Department should seek appropriate means of divesting itself of this responsibility, while being assured the public interest is protected.



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ABBREVIATIONS

GAO General Accounting Office  
FBI Federal Bureau of Investigation  
BLM Bureau of Land Management  
FMMMP Federal Minerals Management  
Mapping Program

## CHAPTER 1

### INTRODUCTION

Recent public and congressional concerns have focused on the illegal mining of Federal coal, particularly in Alabama. Published estimates of potential losses to the Government--based on the value of the coal--range from \$135 million to over \$1 billion throughout 31 Eastern States. The coal trespass problem and estimated losses were detailed and emphasized initially in a briefing document presented in May 1978 by the Bureau of Land Management's Eastern States Office.

~~DLG 0107~~ 01690

On January 19, 1979, the Chairman, Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce, requested that we examine the adequacy of the Bureau's and the Department of the Interior's efforts to identify the coal trespasses and initiate enforcement actions in a timely fashion. The Chairman also requested that we examine the Bureau's procedures and monitoring methods for preventing and halting such trespasses and identifying Federal coal ownership.<sup>1/</sup> Subsequently, the Chairman, Subcommittee on Oversight and Investigations, House Committee on Interior and Insular Affairs, requested similar information.

#### BUREAU RESPONSIBILITIES FOR FEDERAL MINERALS IN THE EASTERN STATES

The Bureau's Eastern States Office in Maryland is responsible for land and mineral management throughout 31 States adjacent to and east of the Mississippi River. This Office is responsible for managing Federally owned minerals underlying about 39 million acres of Federal, State, and private land, including about 845,000 acres in known coal fields within 13 States.

The Eastern States Office has field offices in Tuscaloosa, Alabama, and Duluth, Minnesota. The Tuscaloosa

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<sup>1/</sup>A copy of the Chairman's letter is included as app. I of this report.

office was established in May 1977 to conduct land use studies in a four-county area of Alabama, intended to improve mineral management and provide a basis for a coal-leasing program expected to be initiated in 1980. The Duluth office is responsible for multiple-use planning and management of Federal land and resources in Minnesota, Wisconsin, and Michigan.

The Bureau's Eastern States Office currently has 91 full-time positions and 82 other than full-time staff-years to accomplish its land and mineral management responsibilities in the 31 Eastern States. In contrast, the 11 western Bureau offices have 4,923 full-time positions and 3,657 other than full-time staff-years covering 18 Western States. The western bureau offices are responsible for managing about 270 million acres of Federal mineral ownership.

According to Bureau estimates, Federal coal ownership throughout the Eastern coal States totals about 845,170 acres, as shown in the following table summarized by surface ownership.

Table 1

<u>State</u>	<u>Federal Coal Ownership Under State Surfaces (acres)</u>	<u>Federal Coal Ownership Under Private Surfaces (acres)</u>	<u>Federal Coal Ownership Under Federal Surfaces (acres)</u>
Alabama	-	91,780	183,412
Arkansas	-	1,228	35,360
Illinois	-	3,347	92,152
Indiana	-	118	24,657
Iowa	-	1,320	-
Kentucky	39,416	-	127,510
Maryland	3,662	-	-
Michigan	-	1,225	-
Missouri	-	6,779	-
Ohio	23,442	200	66,592
Pennsylvania	6,767	-	8,104
Virginia	-	-	31,649
West Virginia	<u>7,591</u>	-	<u>88,859</u>
TOTAL	<u>80,878</u>	<u>105,997</u>	<u>658,295</u>

As shown above, "State surfaces" represents lands whose surface ownership was delegated to the States through land use projects, although coal rights were retained by the Federal Government.

"Private surfaces" represents lands on which private owners hold title to the surface, while the Federal Government retains title to the underlying coal. This portion of the Federal coal reserves is where most coal trespasses have been identified so far. Of the 50 coal trespasses identified as of April 1979, all but 2 are located in Alabama which contains over 86 percent of the acreage in the Eastern States where Federal coal is believed to underlie private surface. All the Alabama trespasses fall within a four-county area containing Federal coal under about 79,000 acres of private surface. The other two cases are located in Maryland, and involve State surface ownership.

"Federal surfaces" represents lands within National Forests. Federal coal underlying lands owned by other Federal agencies is not included in the Bureau's estimates. For example, the Tennessee Valley Authority is solely responsible for about 116,000 acres of coal. Also, about 159,000 acres of Federal land within military reservations are underlain by Federal coal resources.

A Bureau document states that, with the exception of Federal coal under National Forests lands, virtually all Federal coal managed by the Bureau's Eastern States Office is located in small, scattered tracts, ranging in size from 20 to 200 acres. The document further states that because Federal coal is scattered throughout the Eastern States and because the Bureau generally lacks administrative control over the surfaces, the management of these coal reserves poses a problem not faced by the Bureau in the Western States. GAO believes that there is some credence to the latter contention, although similar management problems do exist in the Western States but perhaps not to the extent they do in the Eastern States.

#### SCOPE OF REVIEW

We interviewed Bureau of Land Management personnel and reviewed available records at the Bureau's Washington Office, the Eastern States Office in Silver Spring, Maryland, and the

field office located in Tuscaloosa, Alabama. We also interviewed other Department of the Interior officials.

Our work was basically directed to answering the following major questions, which form the organizational framework for this report:

- Has the Bureau investigated suspected coal trespasses and prosecuted trespassers in an aggressive and timely manner? (See ch. 2.)
- Is information on Federal mineral rights available to help identify trespass and manage the resources? (See ch. 3.)
- Does the Bureau have an overall plan to determine the extent of trespasses in the Eastern States and to identify, prevent, or control it? (See ch. 4.)

## CHAPTER 2

### THE BUREAU HAS NOT TAKEN AGGRESSIVE AND TIMELY ACTION TO INVESTIGATE SUSPECTED COAL TRESPASSES AND PROSECUTE TRESPASSERS

The Bureau of Land Management and its Eastern States Office have taken limited action to investigate suspected coal trespass cases and to prosecute trespassers. Even for suspected trespass cases in Alabama, initially reported as early as November 1976, the Eastern States Office has not taken aggressive and timely investigative action. The lack of action occurred, in our view, because the Eastern States Office did not initially recognize the overall significance of the trespasses and, in conjunction, lacked adequate staff resources, investigative procedures, and strong policy and guidance from the Bureau's Washington Office. *DLG-01697*

Much of the investigative action taken to date was limited and was apparently initiated in response to January 1979 television news reports. As a result, the Bureau has not taken timely action to recover coal losses to the Government in Alabama which it feels are realistically estimated--based on the value of the coal--at about \$64 million. As of April 1979, Bureau has sought to recover damages--of about \$3.5 million--in only 1 of 50 identified cases. No liability has been determined for the remaining cases.

#### MANY TRESPASSES WERE IDENTIFIED BY SEPTEMBER 1977, BUT NONE HAVE BEEN RESOLVED

The Bureau had suspected potentially serious coal trespass in Alabama as early as 1975 and, by November 1976, the U.S. Geological Survey reported two suspected cases to the Eastern States Office. As of September 1977, the Office had identified 31 suspected trespasses. By April 1979, a total of 50 coal trespasses were identified in the Eastern States--48 in Alabama, and 2 in Maryland. 1/ In addition, the Bureau

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1/ The two Maryland cases were identified in September 1978 by an Eastern States Office cartographic aide on his own initiative. Evidence of suspected trespass was confirmed by field investigation in December 1978.



identified three trespasses other than coal involving timber, occupancy, and oil or gas--which have not been resolved.

None of the 50 suspected coal trespass cases had been fully investigated and resolved (see Table II) as of April 1979. However, the Bureau has reviewed six cases sufficiently to provide a basis for issuing coal trespass notices to four coal companies operating in Alabama. One case has been referred to the Department of Justice. Although in August 1977 representatives of this company admitted to mining Federal coal, the Bureau did not refer the case to the U. S. Attorney until February 1979.

The Bureau has tentatively determined that 7 other cases appear to involve legitimate leases and 10 other cases may not involve Federal coal. Therefore, the investigation of the 27 remaining cases had not progressed beyond the preliminary review stage as of April 1979. Field examinations have been made for all suspected cases to determine the location and boundaries of Federally owned coal and whether mining actually occurred. Reports of these investigations had not been completed as of April 1979. Table II gives the status of all suspected coal trespass cases identified as of April 1979.

The Eastern States Office did not initially recognize the significance of coal trespass

Despite indications of trespass in Alabama as early as 1975 and reported trespass cases in 1976 and 1977, the Eastern States Office did not fully realize the serious impact of the problem until 1978. The Office Director advised us that he simply did not become concerned until April 1978 when the Office had analyzed the problem and estimated that potential losses in Alabama ranged from about \$64 million to about \$478 million. At this point, the Office still faced staffing shortages and procedural weaknesses.

Investigative staff resources have been inadequate

Staffing resources assigned to review and investigate the suspected cases have been, and remain, inadequate as to the number and disciplines needed to review, investigate, and resolve the cases in a timely manner. For example, the

Table II

Status of Suspected Coal Trespass

Cases Identified as of April 1979

<u>Status of cases</u>	<u>Number of Cases</u>
Being screened (note a)	
Verifying compliance with federal coal lease	7
Field exam shows trespass doubtful	10
Field exam results pending or need follow-up	<u>27</u>
Total cases being screened	<u>44</u>
Investigations/reviews in progress (note b)	
Considered willful trespass and referred to Justice Department	1
Awaiting trespass determination by Regional Solicitor	<u>5</u>
Total cases being investigated/reviewed	<u>6</u>
Total cases registered (note c)	<u>50</u>
Cases resolved	0

a/Cases which are being screened to determine if notice of trespass should be issued.

b/Cases where trespass notices were issued and investigations or reviews begun.

c/Suspected coal trespass cases entered in the "Trespass Register" maintained by the Bureau's Eastern States Office.

Eastern States Office has only recently established an authorized position for a special agent (criminal investigator), although the Bureau Manual states that special agents should be used when detailed investigation and collection of evidence is needed. The position was authorized in February 1979 but had not been filled as of April 1979. In addition, the Office has no mineral examiners.

Although the Eastern States Office reported as early as May 1978 that its efforts to deal with the trespass problem were being hampered by a lack of permanent positions and personnel to do the job, the Bureau's Washington Office has not approved requests for the additional positions. The Bureau Director felt that the estimated magnitude of trespass was questionable and that such action would be premature. As a result, no Eastern States Office personnel were assigned full-time to the coal trespass cases until November 1978.

The Eastern States Office Director told us that he has not had staff resources in adequate numbers and disciplines to resolve these cases. He stated that after a suspected trespass is detected, the staff determines land and mineral ownership from existing Federal land records--including tract books, patents, cadastral survey plats, and other records--before conducting an on-the-ground investigation to confirm or deny a Federal coal trespass. If boundaries are too uncertain, a survey is made to establish actual boundaries. Meetings with company representatives, if possible, are used to further substantiate the amount and value of coal removed. Interviews with state regulatory, tax, and other agencies may be necessary to obtain information on the mining operation. If a trespass appears willful, the Bureau may, after consultation with the Regional Solicitor and the U.S. Attorney, assign a special agent or request the Federal Bureau of Investigation (FBI) to investigate.

Because limited staff were available, the Eastern States Office response, prior to November 1978, had been extremely limited in view of the relatively large number of suspected trespass cases. The Eastern States Office did not assign a staff member 1/ full-time to review the coal trespass cases until November 1978.

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1/This staff member is an environmental specialist rather than a mineral specialist or trained investigator.

In February 1979, the Eastern States Office temporarily assigned four additional staff members 1/ to review the 25 Alabama trespass cases which had not been developed beyond a preliminary stage. The Eastern States Office Director said that this effort will be completed soon and will result in issuing notices of trespass or closing the cases. The two Maryland trespass cases are in the preliminary review stage. A special agent on loan from a Western State office was temporarily assigned in February 1979 to investigate one suspected case.

Staff time devoted to coal trespass has been minimal. During fiscal year 1978, the Eastern States Office staff charged only 38 staff days and, for fiscal year 1979 (through January 1979), the staff expended about 120 staff days in coal trespass work.

The 10 staff members of the Tuscaloosa office representing several disciplines, including geology and realty, were effective in identifying many suspected trespasses. However, their involvement was part-time, and trespass identification was incidental to their primary purpose of land use studies for a four-county area. Accordingly, the Eastern States Office directed the staff not to pursue the suspected cases further. Annual work plans for the Tuscaloosa office provided no planned time for resolving coal trespasses until the plan for fiscal year 1979 scheduled 10 staff-months. Time and attendance records show that the Tuscaloosa personnel expended only 87 staff days from June 1977 through January 1979 (about 19 months) in identifying and developing the trespass cases.

#### Lack of effective investigative procedures

The Bureau and its Eastern States Office have not developed and approved procedures for screening and investigating suspected coal trespass cases. Numerous problems are associated with the current handling of these cases. For example, the Tuscaloosa project office manager said that the Bureau's manual is outdated and provides minimal assistance for coal trespass problems. This has caused confusion for the Eastern

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1/Three staff members are realty specialists and one is a natural resources specialist.

States Office staff responsible for screening and investigating trespasses. Also, important weaknesses and inconsistencies exist in specific manual instructions. As a result, the Eastern States Office generally lacks procedures to achieve stated Bureau policies to

- take prompt and efficient action to discover and report trespasses,
- investigate suspected trespasses aggressively,
- terminate unauthorized use of lands and minerals,
- recover full compensation, and
- report criminal action where applicable.

The first attempt by the Eastern States Office to draft coal trespass screening procedures did not take place until July 1978. Although these procedures were revised in December 1978 and January 1979, they have not been completed or approved as of April 1979. Officials said that a major reason for the delay in developing screening procedures was the absence of a strong policy and guidance from the Bureau.

We have identified important weaknesses and inconsistencies in existing Bureau manual instructions as follows:

- P 16
- The manual does not consistently reflect legislation which provides flexibility in choosing the method of investigation. The Federal Land Policy and Management Act of 1976 authorizes the Bureau to conduct law enforcement activities, which it interprets as authority for the use of its own special agents for detailed investigation and collection of evidence in suspected criminal trespass cases. Although the mineral trespass section of the manual 1/ recognizes this provision, the manual's procedure for trespass investigation 2/ states that in cases of apparent criminal intent, the initial findings provide the basis for referring the matter to the FBI. The manual prohibits further Bureau of Land Management investigation except at the request of the FBI.

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1/Bureau of Land Management manual, section 9235.

2/Section 9230 of the Bureau manual.

--There are no criteria for determining when and under what circumstances a suspected coal trespass should be recorded in the Trespass Register, which is maintained by the Eastern States Office and used to trigger the initial screening process for suspected cases. For example, two suspected cases had been identified in Maryland, and field inspections were performed in December 1978. Yet, these suspected incidents were not recorded in the Trespass Register until we noted their omission and brought them to the Office's attention in March 1979. Also, the Tuscaloosa project office manager told us that he had tentatively identified 10 or 15 possible trespasses which have not yet been recorded.

In investigating trespass cases, the Interior Department's Regional Solicitor, Atlanta, Georgia, noted numerous procedural problems and, in March 1979, recommended that the Bureau develop step-by-step processes to improve the control, investigation, and prosecution of these cases. He suggested

- an investigation immediately upon discovery,
- use of personnel trained in investigative techniques,
- expert survey of ownership as soon as possible,
- an examination of title to the property,
- early consultation with the solicitor's office to examine potential legal problems in issuing a trespass notice and in determining the trespasser's liability, and
- a revising of the manual to establish specific steps to be followed when a potential coal trespass is discovered.

#### Statute of limitations

A legal issue which might arise concerns the statute of limitations preventing the Government from collecting monetary damages in coal trespass cases in the Eastern States. The statute--28 U.S.C. 2415 (b) and 2416(c)--states, in part: An action to recover damages resulting from a trespass on public lands must be brought within six years after the right of action accrues. In calculating the limitations period,

however, there are excluded those periods during which facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances.

Interior officials believe that the Department has not lost any opportunities to recover damages in coal trespass cases in Alabama or in the other Eastern States due to the expiration of the statute. They believe that the Department could not have reasonably known of these trespasses until very recently and that, consequently, it has not lost its right to seek payment for coal trespass.

Whether or not the Department should reasonably have discovered a particular trespass is a question to be decided by a court.

#### A CASE STUDY OF THE BUREAU'S DELAY

The following case demonstrates the Bureau's lack of aggressive and timely action in reviewing, investigating and resolving suspected trespasses. In this case, the Bureau's Eastern States Office identified and stopped an ongoing coal trespass operation in Alabama during July and August 1977, but the Office has since delayed taking actions necessary to recover its losses estimated at over 151,000 tons and valued at about \$3.5 million. Delay also occurred because the U.S. Geological Survey--called upon to assist the Bureau in this case--initially lacked procedures for determining the coal company's liability for trespass. These delays, on the part of the Bureau and the U.S. Geological Survey, due primarily to a lack of staff and adequate procedures, have also precluded the necessary land reclamation.

The chronology of events and delays stem from July 21, 1977, when a private citizen notified the Bureau's Tuscaloosa office that Federal coal in Fayette County, Alabama, was possibly being removed without authorization. After verifying the unauthorized active mining operation and identifying the responsible coal company, the Eastern States Office issued a trespass notice in August 1977. This action stopped the ongoing operation and prevented further losses. Also, in August 1977, company representatives admitted mining

the Federal coal. However, the Eastern States Office took few additional, effective steps to recover its losses until after the January 1979 news media coverage of the coal trespass problem--when it requested the temporary assignment of a Western State office special agent to investigate the case.

Although the special agent was not assigned until February 1979, the facts available in July 1977 appeared to warrant an immediate investigation by an experienced investigator as required by the Bureau manual. The manual states, in part, that

"BLM Special Agents should be consulted in trespass cases where it has been determined that Federally-owned resources have been removed without proper authorization. The Special Agents should be utilized in these trespass cases where detailed investigation and collection of evidence is needed--particularly those of a willful and/or criminal nature."

Because the Eastern States Office lacked a trained investigator and adequate procedures, initial attempts to obtain and evaluate the facts of the case were incomplete, and pertinent information was not appropriately considered. The 18-month delay in assigning the special agent obviously delayed obtaining the information the Bureau needed to make a definite decision of willful or innocent trespass.

According to Interior and Bureau officials, assignment of the special agent, in this case, was a result of the January 1979 news media revelations that the company knowingly mined Federal coal. The special agent's investigation provided sufficient information to cause the Bureau to refer the case to the U.S. Attorney in Alabama in February 1979, as a willful trespass.

Geological Survey delays  
in determining trespasser's  
liability

The Eastern States Office was, and remains, dependent on the U.S. Geological Survey for determinations of the liability incurred in coal trespass, and it was the Survey's initial lack of procedures and methodology which delayed proper determinations. This determination is needed before a case can be presented for settlement.



Neither the Code of Federal Regulations nor the Bureau's manual provides a specific methodology for determining coal values in trespass cases. The Regulations provide only that payment for innocent trespass must be made for the value of the coal in place before severance; payment for willful trespass must be made for the full value of the coal at the time of conversion without deducting labor or expense incurred in removing and marketing the coal. These terms are not further defined.

In September 1977, the Eastern States Office requested the Survey to determine the liability in this case. However, the determination was delayed until late March 1978, due to the lack of specific procedures for determining the value and amount of coal removed. Survey officials advised us that, because the trespass was new to the office, they were not prepared to handle the case and needed additional time to develop a method for determining the amount of coal removed. The officials also said that poor communications with the trespasser caused some delay.

The Survey's initial determination of over \$342,000 was erroneously calculated on the basis of a 12.5 percent royalty rate for the 108,846 tons of coal removed rather than on the basis of the value of the coal in place. In April 1978, after reviewing the initial determination, the Eastern States Office requested a redetermination, based on an assumption of innocent trespass, using the value of the coal (less mining costs) rather than a royalty rate basis. The Survey had to develop model procedures for determining mining costs--based in part on information provided by the trespasser with some delay. As a result, in October 1978, the U.S. Geological Survey determined that the coal was valued at about \$3.5 million and deducted mining costs of about \$750,000 resulting in a liability determination of \$2.7 million.

Accordingly, in November 1978, the Office demanded a \$2.7 million payment from the coal company. However, the Office is revising its demand to reflect the current position that the trespass was, in fact, willful. Eastern States Office personnel told us that the \$2.7 million demand will be increased to represent the value of coal without deducting expenses incurred in removing and marketing the coal. This revision appears to be in accordance with regulations that payment for willful trespasses must be made for the full value of the coal at the time of conversion, without deductions.

### CHAPTER 3

#### INFORMATION ON FEDERAL MINERAL RIGHTS

#### GENERALLY HAS NOT BEEN AVAILABLE TO IDENTIFY

#### TRESPASS OR MANAGE THE RESOURCES

The Bureau of Land Management has not completed the mapping program that is essential to identifying and managing Federal mineral resources. While the Bureau has recently accelerated its mapping of coal resources under State and private surfaces, it has no program for obtaining aerial photographs and other resource data or for assigning personnel to identify--through a matching process--coal trespasses beyond what has already been identified in a four-county area of Alabama.

#### THE BUREAU HAS ONLY PARTIALLY IDENTIFIED FEDERAL MINERAL OWNERSHIP IN THE EASTERN STATES

The Eastern States Office has not completed the identification of Federal mineral ownership underlying Federal, State, and private lands in any of the 31 Eastern States. Bureau officials told us that a mapping program to identify all Federal mineral ownership in the Eastern States is expected to be completed by the end of fiscal year 1982, and the mapping of Federal coal ownership under Federal, State, and private land in known Eastern coal regions should be completed by the end of fiscal year 1981. Officials also stated that an accelerated portion of this mapping program, concentrating on Federal coal underlying State and private land in 12 Eastern States, is expected to be completed by the end of fiscal year 1979. However, we were told that the Eastern States Office has not prepared any detailed planning documents in support of the above completion dates (e.g., schedules for completion of the individual maps or work load analyses showing resources to be directed to this effort based on the total number of maps required), and the Office has experienced difficulty completing these maps in a timely fashion.

The above maps are part of a Bureau initiated Federal Minerals Management Mapping Program (FMMMP) begun in 1974,

and now the Bureau considers it one of the first steps necessary in meeting the requirements of the Federal Land Policy and Management Act of 1976. In passing the act (Public Law 94-579, Oct. 21, 1976), the Congress declared that

"\*\*\* it is the policy of the United States that the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts."

The Bureau developed the FMMMP with the help of other public agencies to search thousands of title documents for the basic inventory data to determine Federal land and mineral ownership, to be depicted on maps and ultimately used for more effective resource management.

The specific maps superimpose surface ownership and the mineral estate on 1:100,000 scale-base maps 1/ furnished by the Bureau's Denver Service Center. Basic information on Federal mineral ownership is derived from sources--such as Federal deeds and original land office patents, public land files, and the Inventory of Real Property Owned by the United States--showing which Federal agencies administer land in each county, with the title and acreage of each tract. The Bureau then uses a legal description or map of the various agencies' holdings for plotting the maps. In the case of public domain 2/ States, using a rectangular survey system, a computer program was devised to printout all Federal mineral ownership by State, county, township, range, and section with a complete legal description of the land, the acreage, and the type of mineral and surface reservations. This printout has been completed for the 13 Eastern public domain States. The mapping processes for these States are simplified because the records research has been completed and systematically organized. However, in States without the rectangular survey

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1/One inch equals approximately 1.6 miles.

2/Lands which were added by the U.S. Government, during national expansion (e.g., the Louisiana Purchase) and have remained in Federal ownership. The public domain excludes the original colonies and their territories.

system (i.e., the 18 non-public domain, original colony States), the legal descriptions are too complex to be computer-coded, so the tracts must be plotted from original deeds.

The above mapping program was initiated in the Eastern States Office in fiscal year 1975, but the Office has completed less than half of the required 60 FMMMP maps covering only portions of 9 of the 31 Eastern States. Our review of agency documents and discussions with mapping program officials and technicians showed that the Office's ability to complete the mapping in a timely manner has been hampered by

- excessive delays in getting requisite equipment;
- the limited number of standard base maps the Bureau's Denver Service Center is able to supply the Eastern States Office each year due to manpower and budget problems (the Office is able to get only 15 of the 45 maps needed annually); and
- the continual, rapid turnover of cartographic technicians.

Recognizing it can take up to 2 years from the time the base maps are delivered to the time when the finished maps are printed, the Eastern States Office began, in December 1978, an accelerated mapping effort aimed at plotting the Federal coal reservations under only State and private surfaces in the Eastern States containing Federal coal. 1/

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1/Twelve of the 14 Eastern coal States are being mapped under the accelerated program. They are Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Missouri, Ohio, Pennsylvania, and West Virginia. Two remaining States are not part of the program because all Federal coal in Virginia is under Federal surfaces and the Federal coal in Tennessee is managed by the Tennessee Valley Authority.

The Office expects to complete this phase by the end of fiscal year 1979. These maps, complete for 3 of the 12 States 1/ as of April 1979, will provide a much-needed graphic portrayal of Federal coal ownership in the Eastern States and can be used with remote-sensing imagery 2/ (satellite and aerial photographs, and maps) and other data sources to identify suspected coal trespass cases. Given the importance of these maps for identifying trespass and the mapping problems the Eastern States Office has experienced, we believe it is important that the Bureau assure resources are adequate to complete this mapping by the end of fiscal year 1979.

THE BUREAU HAS NO FORMAL COAL  
TRESPASS IDENTIFICATION PROGRAM

While the Bureau has recently accelerated its mapping of coal resources under State and private surfaces, it has no formal program to identify--through a matching process--coal trespasses beyond the four-county area of Alabama.

Identifying trespasses is an important first step in deterring future trespasses. In order to do this, the Bureau needs

- aerial and satellite photographs,
- maps depicting current land uses, and
- information from concerned citizens.

By matching data from these sources with Federal coal ownership plotted on maps, the Bureau is able to determine if surface disturbance has occurred on land overlying Federal coal. If Federal coal is thought to be involved, an on-the-ground inspection is made to determine if trespass has, in fact, occurred.

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1/Accelerated mapping of Federal coal under non-Federal surface in Maryland, Missouri, and West Virginia has been completed (76 maps). Mapping of Alabama and Pennsylvania is 97-and 68-percent complete, respectively (32 maps), and 112 maps remain covering these and the other 7 Eastern coal States.

2/Imagery-gathered from data collected by sources that are not in direct physical contact with the ground.

The Eastern States Office staff has been effective in identifying surface coal trespasses in Alabama with aerial photographs and maps, but most of the cases identified were incidental to a land use study which was being prepared in four Alabama counties. The Bureau has no ongoing program to obtain aerial or satellite photographs for the remaining coal states. Even if the photographs were available, a plan to obtain the staff resources needed to review the photographs and maps for identifying trespass has not been approved.

The Eastern States Office has no formal program for directing resources to identify suspected coal trespasses in the portions of Alabama falling outside the land use study area or the other coal States included in the accelerated mapping program discussed on page 15. Resources for a data comparison phase, to identify trespasses in the Eastern States, have not been provided and there is no assurance they will be. Bureau officials stated that unless staff funds already allocated in the Bureau's Annual Work Plan and in fiscal years 1979 and 1980 budgets are redirected to provide for data comparisons, the trespass identification phase might not be undertaken until fiscal year 1981.

The Eastern States Office provided us the following estimate of necessary work months and funds for a two-phase approach for identifying coal trespasses on State and private surfaces in Eastern coal States. This is in addition to the resources required to investigate existing trespass cases, as discussed on pages 6-9. A request for these resources is expected to be presented for consideration at the May 1979 mid-year review of the Bureau's fiscal year 1979 Annual Work Plan.

Trespass Identification Activity Resources

	Phase I		Phase II	
	Checking Landsat data and photos, etc. against Federal coal ownership		Initial field checking to verify detected sites	
<u>Fiscal Year</u>	<u>Staff Months</u>	<u>Dollars</u>	<u>Staff Months</u>	<u>Dollars</u>
1979	5	\$ 10,000	--	-----
1980	12	19,000	8	\$ 20,000
1981	--	-----	23	55,000
1982	--	-----	53	122,000
Total	<u>17</u>	<u>\$ 29,000</u>	<u>84</u>	<u>\$197,000</u>

There is no assurance that the above staffing or funds will be provided through supplemental funding, reprogramming, or deferring of planned activities elsewhere in the Bureau. Nevertheless, based on the Eastern States Office's assumption that necessary resources will somehow be provided, the Office has stated that, through the remainder of fiscal years 1979 and 1980, it expects to complete the first stage of the trespass identification process. Beginning in late fiscal year 1980 and extending into fiscal years 1981 and 1982, the Office expects to begin field checking those cases that have been identified during its efforts in fiscal years 1979 and 1980. The Office estimated that as many as 60 cases could be identified a year.

Although these trespass identification measures will be helpful for surface trespasses, the Bureau has no plans and programs to identify possible trespasses in underground coal mining operations. Aerial and satellite photographs will not help identify underground coal trespass. No Federal agency is responsible for inspecting private underground mining operations to identify coal trespass if Federal coal is adjacent to ongoing operations. For example, a private underground mine may be operating adjacent to Federally owned coal and encroaching upon it without the Interior Department's awareness.

The U.S. Geological Survey has responsibility and authority to inspect underground mines having Federal coal. However, a Survey official stated that identifying coal trespasses in these mines would be almost impossible because of generally inaccurate survey lines that mine operators under Federal leases provide.

## CHAPTER 4

### THE BUREAU LACKS "PRESENCE" AND AN OVERALL PLAN TO IDENTIFY, PREVENT, OR CONTROL COAL OR OTHER MINERAL TRESPASSES IN THE EASTERN STATES

The Bureau's efforts to deal with the Eastern States' coal trespass problem have generally been reactive. This is due to the agency's lack of "presence" in the Eastern States and of an overall coal management plan which would (1) provide for the definition of the magnitude and priority of the coal trespass problem and (2) establish procedures to assure its resolution. For example, until just recently the Bureau had no public awareness program--an essential deterrent to coal trespasses. Even now, the Bureau's efforts are basically limited to Alabama. The problem identified with coal may be symptomatic of a larger problem involving the Bureau's ability to effectively manage mineral resources in the Eastern States.

### THE BUREAU LACKS "PRESENCE" AND AN OVERALL PLAN TO IDENTIFY TRESPASSES AND SAFEGUARD FEDERAL COAL AND OTHER MINERAL RESOURCES

Presently, the Bureau does not have an overall plan for identifying, preventing, and controlling coal and other mineral trespasses in the Eastern States. As stated earlier, part of this problem for coal stems from the absence of a complete mapping and matching process; but another important contributing factor is the lack of Bureau presence in the Eastern States. Until the Bureau's eastern presence increases, its ability to identify trespasses and safeguard Federal mineral resources will be greatly hindered.

Bureau officials told us that the lack of Bureau visibility in the Eastern States--only one office in Maryland and two field offices in Alabama and Minnesota--is a major reason for the occurrence of coal trespasses in the East and the Bureau's limited ability to deal with the problem. The officials said that the problem has resulted largely from the Bureau's emphasis on western land issues raised by the Congress and environmental groups, and the past lack of demand for, or interest in, Federal Eastern coal.



THE BUREAU APPARENTLY TOOK NO ACTION  
ON COAL TRESPASSES UNTIL THE MAY AND  
JUNE 1978 BRIEFINGS AND HAS SINCE  
PROVIDED ONLY VERBAL GUIDANCE TO THE  
EASTERN STATES OFFICE ON THIS MATTER

The possibility of coal trespasses in Alabama and its potential seriousness was noted in Eastern States Office memorandums to officials in the Bureau's Washington Office in April 1975 and August 1976. In November 1976, the Eastern States Office recorded the first two suspected Alabama coal trespasses. By September 1977, the magnitude of coal trespasses in Alabama should have become evident, given the 31 cases then identified. Also, this should have raised concerns within the Eastern States Office as to the likelihood of potentially serious coal trespasses in other Eastern coal States. However, it was not until May and June 1978, that the Eastern States Office staff briefed Bureau officials on coal trespass. The briefings described the situation as serious--in need of action from the Bureau and Interior Department--and suggested alternative courses of action which might be taken if additional staff and funds were provided. Except for the printed materials prepared for the two briefings, we found no written record of these meetings. Directions or guidance provided by the Bureau's top management in response to the briefings have never been formally documented according to Bureau officials, including the Bureau Director.

Bureau and Eastern States Office personnel who attended the briefings advised us that the following principal actions took place as a result of the briefings:

- The Eastern States Office prepared a Coal Trespass Issue Paper for the Secretary of the Interior as requested by the Acting Bureau Director, at the May 3, 1978 briefing.
- The Bureau Director verbally instructed the Eastern States Office at the June 20, 1978 briefing to (1) close any ongoing coal trespasses; (2) develop coal trespass screening procedures; (3) segregate coal trespass cases that should be pursued; (4) realign current programs and priorities to do these tasks within existing budget and staffing constraints, and (5) prepare a specific program in terms of funds and staff positions to deal with the coal trespass

problem as part of the fiscal year 1979 Annual Work Plan submission, within existing funding and manpower constraints. The Director assigned the Office of Coal Management responsibility for monitoring the Eastern States Office's progress in accomplishing these tasks and for acting as liaison between the Eastern States Office and the Bureau for coal trespass matters.

The Bureau Director said the coal trespass data presented at the June 1978 briefing was highly speculative, and the methodology used to estimate the magnitude of the problem throughout the Eastern States was questionable. He said better definition of the trespass problem and refinement of the data presented was needed before the matter could be brought to the Interior Secretary's attention. As a result, the Coal Trespass Issue Paper was not forwarded to the Secretary.

The Eastern States Office officials agree that the estimates on the magnitude of coal trespasses throughout the Eastern States were speculative. The estimates were developed in an attempt to draw attention to the Eastern States coal trespass problem and were based on the best available, but limited, data gathered primarily through literature searches.

The Eastern States' estimates developed reflect an attempt on the part of the Office to project what they felt, and still feel, is an accurate assessment of coal trespass in Alabama. They feel that while the estimates of the magnitude of trespasses in other Eastern States are questionable, they nonetheless demonstrate the potential significance of the problem in the other Eastern States. We agree. 1/

Eastern States Office's response  
to the Bureau Director's instructions

In response to the Bureau Director's June 1978 verbal instructions to realign the Office's priorities to deal with

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1/See app. II for details on the method used to calculate the magnitude of coal trespasses in Alabama and the other Eastern States.

the coal trespass problem, and within existing funding and manpower constraints, the Eastern States Office

- verified that all ongoing coal trespasses identified to date in Alabama had been stopped;
- drafted coal trespass screening procedures in July 1978 (not yet approved);
- realigned work priorities to provide limited staff to review and determine which of the trespass cases should be pursued further;
- issued a public notice and initiated a media campaign to describe Federal mineral ownership in Alabama; and
- submitted to the Office of Coal Management in September 1978, a multi-year program (not yet approved) for minerals management in the Eastern States, with an emphasis on coal management.

The Bureau has taken few steps  
to increase public awareness  
on coal trespass matters

An important step in coal trespass abatement is the implementation of a public awareness program. Such an awareness program is essential because it can act as a deterrent to coal trespass. However, until December 1978, the Bureau had no such program and even now the Eastern States Office's efforts are generally limited to Alabama.

Recent public awareness efforts in Alabama and some of the planned programs should help deter future trespasses. In April 1979, Bureau officials stated that by making the location of Federal minerals known to the public, and by diligently pursuing known trespasses, illegal removal of Federal minerals will significantly decline. They also stated that the Eastern States Office has designed and initiated a public information program to inform landowners, coal operators, State and local governments, and the public as to the presence and location of Federal minerals in Alabama. This program is to be extended to other States during the remainder of fiscal year 1979 and will continue into fiscal year 1980.

We confirmed the use of several recent measures in Alabama to make the public aware of the location of Federal mineral ownership and incidents of trespass. These measures included:

- Written legal notice in several local newspapers regarding Federally owned coal acres.
- Letters to surface owners in the Alabama study area stating that their lands may be underlain by Federal minerals.
- Miscellaneous news releases, such as the announcement that notices of trespass were issued to various coal firms, and the announcement of the availability of a computer listing of Federal mineral ownership in Alabama.

Because these measures have been partially successful we believe that, as information on Federal mineral ownership becomes available, these measures should be implemented in the other Eastern States.

Proposed program cites need for  
comprehensive coal management effort

The proposed minerals management program developed by the Eastern States Office and submitted to the Bureau's Washington Office focuses mainly on coal management and deals with the coal trespass problem as part of the Office's annual work plan submission, recognizing the existing budget and staffing constraints. The program's section on coal trespass was developed to achieve the goals established to comply with the Bureau Director's guidance to (1) screen trespass reports for prosecutability and (2) initiate a program to discourage future trespasses. The trespass program requires \$358,000 annually in fiscal years 1980-82 for staff and physical resources to accomplish the established goals, but the program provides little detail on how this will be done and, in fact, recommends that a comprehensive coal management program be developed.

The program states that developing the Eastern coal resources appears to offer many advantages in meeting the President's plan to develop America's coal resources and alleviate the Nation's energy demand problems. The program

also states that the Alabama land use study has shown a healthy and positive attitude on the part of land owners to develop Federal coal. The program notes, however, that

--land use plans for the coal States are either inadequate or totally absent and

--there is a strong need for the Bureau to pursue a comprehensive coal management program in the East including a comprehensive strategy to deal with coal trespasses.

As of March 1979, the Bureau's land use studies have been limited primarily to a four-county area of Alabama. The Bureau opened a project office in Tuscaloosa in May 1977 to conduct the studies to improve mineral management and provide a basis for coal-leasing programs.

The Bureau has not responded to the Eastern States Office's minerals management program

The Eastern States Office Director told us that he has not received the Bureau's response to the proposed minerals management program sent in September 1978, although he had solicited comments and expressed a willingness to provide additional information. We were also told that (1) there were no documents from the Bureau's Washington Office specifically calling for action on coal trespasses; (2) there were no indications of commitment from the Bureau's Washington Office to Eastern States Office concerning pursuit of the trespass situation in Alabama; and (3) verbal inquiries from the Washington Office were asking for a definition of the problem rather than providing assistance.

The Bureau Director advised us that, in his opinion, the Bureau's actions have been adequate and reasonable, given the lack of available data to assess the extent of coal trespasses in the Eastern States, and the limited Bureau resources available for managing the public lands and mineral reservations. The Director said he viewed the Eastern States Office request for additional staff and funds as being typical of all Bureau organizations and that, given his concern about the reliability of the data presented, he saw no need to act "hysterically" in redirecting resources from other Bureau programs to deal with the coal trespass issue.

In our view, the limited involvement of the Eastern States Office with coal trespass and the lack of an approved comprehensive coal management program appear to support a recommendation of a recent Bureau evaluation 1/ of the Eastern State Office's capabilities. The evaluation report states that the Eastern States Office does not have clear goals and objectives, generally in either short- or long-term programs, and that a clearly defined, recognized, and accepted mission has not been established. The report recommended that the Eastern States Office, with appropriate assistance from the Bureau's Washington Office, prepare a program document with goal options for the Bureau Director's approval. According to the report, this program document is essential to provide the entire Eastern States Office with a unified sense of mission and accomplishment, and it should include staffing needs and timeframes.

Apparently, the only coal trespass directives or guidance provided to the Eastern States Office by the Bureau's Washington Office were the verbal instructions given by the Bureau Director at the June 1978 briefing. Before this briefing, Eastern States Office efforts to deal with coal trespasses were simply reactions to those identified in Alabama--limited almost exclusively to reviewing one active case and logging the other suspected cases in the Trespass Register. Eastern States Office efforts since the June 1978 briefing have been, and continue to be, reactions to the verbal instructions which, in essence, said "do your best with what you have". The draft coal trespass-screening procedures and the proposed minerals management program developed in response to the verbal instruction have not been completed or approved. Also, public awareness efforts undertaken have been generally limited to Alabama. These actions do not provide a comprehensive program for dealing with coal trespasses, defining the problem's magnitude and priority, and managing Federal mineral resources.

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1/"General Management Evaluation Report--Eastern States Office, September 11 through 22, 1978," Washington Office, Bureau of Land Management, October 31, 1978.

Inadequate staffing appears to be a major barrier affecting coal trespasses

Staffing shortages appear to be one of the most important factors affecting the Bureau generally and the coal management efforts, including coal trespasses, specifically. In a January 1979 report on the permanent manpower ceilings, the Bureau's Division of Budget and Program Development emphasized the fact that manpower ceilings were extraordinarily acute, seriously limited the Bureau's ability to respond to existing--let alone new--program commitments, and jeopardized a key Administration priority of placing greater reliance on coal as a national energy source. The January 1979 report states that the Bureau has already redirected 34 personnel positions from the other efforts to (1) compensate for coal management positions reduced by the President's fiscal year 1978 budget and (2) maintain coal program manpower at fiscal year 1978 levels. The report further states that a minimum of 36 personnel positions should be allocated to coal management throughout the Nation in fiscal year 1979 and that 5 of these positions are needed in the Eastern States to

- complete the Alabama land use plan,
- process suspected coal trespasses so that outstanding Federal claims can be collected and potential bidders can be qualified for future leases, and
- complete assessments of Federal mineral resources (locations and patterns) in the Eastern States.

The report states that, despite previous augmentation of the coal management effort, unless personnel ceilings are increased, processing Federal coal trespasses will be jeopardized.

The Bureau's trespass abatement efforts were termed minimal at a January 1979 agency-sponsored trespass leadership conference. <sup>1/</sup> The summary report from the conference states that only 1 percent of the Bureau's total capability

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<sup>1/</sup>"Summary Report--Resources Trespass Leadership Conference," Department of the Interior, Washington, D.C., Jan. 8-12, 1979.

is presently engaged in trespass abatement efforts and as a result

- additional trespasses are encouraged,
- the United States is deprived of revenues, and
- disrespect for the property rights of the Government increases.

In a recent overview of the proposed coal program, the Eastern States Office recognized that the trespass problem has been hindered by two factors, chiefly: a lack of permanent manpower and a lack of authority delegated from the Washington Office to proceed with trespass investigations.

We have found no detailed program for dealing with the Eastern States' coal trespass problem, nor have we found any indication that developing such a program was ever undertaken by the Eastern States Office or the Bureau. Despite the seriousness of the coal trespass problem in Alabama, the apparent likelihood of additional trespasses in other Eastern coal States, and the need for additional resources to develop and implement an effective trespass identification, prosecution, and prevention program (within the context of a comprehensive coal management program), the Eastern States Office Director in recent testimony 1/ stated that it would be premature to amend the fiscal year 1980 budget to request increases for these purposes.

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1/Statement by the Director, Eastern States Office, Bureau of Land Management, Department of the Interior, before the Subcommittee on Oversight and Investigations, House Committee on Interior and Insular Affairs, Atlanta, Georgia, Apr. 2, 1979.



## CHAPTER 5

### CONCLUSIONS AND RECOMMENDATIONS

#### CONCLUSIONS

The Eastern States Office's overall response to suspected coal trespass cases was initially delayed because the Office simply did not recognize the overall significance until early 1978, when analysis of the situation in Alabama showed estimated losses--based on the value of the coal--of about \$64 million. The Office lacks adequate staff resources, investigative procedures, and strong Bureau guidance to investigate and resolve suspected trespasses. The Bureau did not bring coal trespasses to the Interior Department's attention until January 1979 news reports dramatized the need for corrective action.

We believe that the Bureau has not taken adequate steps to resolve suspected Federal coal cases in Alabama and that it needs to develop, as part of a comprehensive coal management plan, a detailed program to (1) determine the magnitude of coal trespass throughout the Eastern States and (2) provide for timely resolution of cases identified.

We found that the Eastern States Office has been unable to accomplish the work necessary to investigate and resolve the suspected cases in a timely manner. This is due primarily to (1) the limited staff resources devoted to the coal trespass problem and (2) the lack of approved procedures for screening and processing suspected cases.

Because of staffing shortages, including the lack of special agents and mineral examiners, staff time expended in identifying and investigating suspected trespasses has been minimal, considering the potential for recovery and the need to safeguard remaining Federal mineral resources. Many suspected trespasses were identified only incidental to a limited land use study in Alabama and, during 19 months of study, the Tuscaloosa staff spent only 87 staffdays in identifying and developing trespass cases. Even though the Eastern States Office had analyzed some of the 50 suspected cases sufficiently to issue 6 trespass notices to 4 coal companies, and representatives of one company admitted mining Federal coal, the Eastern States Office staff spent only 38 staff

days in fiscal year 1978 in coal trespass work. None of the suspected cases has been resolved.

We also found that the Eastern States Office generally lacked procedures to achieve stated Bureau policies for investigating and resolving suspected trespasses. The Bureau has not provided strong guidance in these matters and draft procedures have not been approved. Specific manual instructions are outdated and do not provide sufficient guidance to (1) conduct authorized law enforcement activities, and (2) establish procedures for handling cases and determining trespassers' liability.

The 6-year statute of limitations may adversely affect the Government's success in collecting monetary damages in certain coal trespass cases. Thus, the Interior Department should consider this in determining priorities for selecting and resolving individual cases.

The Bureau has not completed identification of Federal minerals ownership throughout the 31 Eastern States. Thus, information on Federal mineral rights has not been available in a useful format that would serve to inform the public of the Bureau's presence or to serve as the basis for the comprehensive, balanced management required by the Federal Land Policy and Management Act of 1976. The mapping of Federal coal underlying State and privately owned land throughout the 12 Eastern coal States is scheduled to be completed by the end of fiscal year 1979. However, this will not be sufficient to assure effective management of all Federal coal or other minerals and, without an aggressive identification program, will not prevent or control coal trespasses. Additional mineral mapping and planning is needed to meet requirements of the 1976 act for multi-use, balanced management. These additional efforts are ongoing, but the lack of inventory data and staffing resources have impeded the Bureau's progress in meeting requirements for mapping and land use planning and in providing effective control over all Federal minerals in the Eastern States.

Presently, the Bureau does not have programs for identifying and controlling trespasses of its scattered coal resources in the Eastern States. In part, this problem stems from the incomplete mapping of these scattered resources and the lack of Bureau presence in the Eastern States. However, the Bureau also lacks a systematic method of monitoring the resources and identifying trespasses through a matching of

aerial or satellite photographs with maps of ownership. Even if the photographs were available, there is no approved plan for obtaining the staff resources needed to analyze them and detect surface mining trespasses. Moreover, the Bureau and the Department have no plans or programs which would identify trespasses in underground mining.

The Bureau has recognized, and the Eastern States Office agrees, that the estimate of trespass losses amounting to more than \$1 billion was highly speculative and that the methodology used to estimate the magnitude of the problems was questionable. In our view, however, the Bureau's estimate is useful in showing that a serious problem exists in Alabama and that the potential exists for coal trespasses in other Eastern states.

In view of the Bureau's lack of presence in the Eastern States, a public awareness program could have provided some deterrent to coal trespasses. However, the Bureau had no program until December 1978--and, then, it was implemented primarily in Alabama. We believe that the awareness program should be implemented in the other Eastern States as information on Federal mineral ownership becomes available.

We believe that coal trespass in Alabama is a serious problem and, because the Bureau's presence in other Eastern States is extremely limited, similar problems may exist elsewhere. Yet, the Bureau lacks the comprehensive planning, staffing, and other resources necessary to determine the extent of coal trespasses in the other States and to safeguard Eastern coal, which seems destined to play a more significant role in meeting increased energy demands. Moreover, the Bureau itself has recognized the need to clarify the Eastern States Office mission, goals, and objectives. We believe that this clarification is necessary and should address the objective of determining the extent of trespass and safeguarding Federal coal and other mineral resources. Properly stated, such objectives and related workload analyses should be useful in gauging the resources necessary to accomplish the objectives.

The Bureau has recognized that the unauthorized removal of Federal coal resources from State and privately owned lands in the Eastern States presents a significant management problem. The Director stated that the small, scattered nature of Federal coal tracts in the East, which range from 20 to 200 acres, coupled with the lack of administrative control over the surface,

presents management problems not faced by Bureau offices in the West. We believe there is some credence to this latter contention, although similar management problems do exist in the Western States but perhaps not to the extent as in the Eastern States.

Other Bureau documents show that

- land use plans for Eastern States are either inadequate or totally absent,
- land owners have shown a healthy and positive attitude toward development of Federal coal resources, and
- there is a strong need for the Bureau to pursue a comprehensive coal management program in the East, including a comprehensive strategy to deal with coal trespass.

We believe that the Bureau has not developed comprehensive plans to identify, safeguard, and manage Federal mineral resources throughout the Eastern States in a manner which will provide the balanced management required by the Federal Land Policy and Management Act of 1976. In this regard, the Bureau noted in 1977 that provisions of the act will eventually affect nearly every phase of its operation. However, the Bureau concluded that "\*\*\*the sheer volume of actions necessary to implement the new law is almost staggering\*\*\* consequently, it will take perhaps 5 to 10 years to fully implement the new law."

We recognize that management of coal in the Eastern States --particularly under State and private surfaces--poses some unique challenges. We believe the Bureau needs to find means to effectively manage Federal coal under such lands or, as an alternative, seek to divest itself of this responsibility.

#### RECOMMENDATIONS

We recommend that the Secretary of the Interior, through the Bureau of Land Management and its Eastern States Office, develop an overall strategy and plan to safeguard and otherwise manage Federal coal in the Eastern States, which should include immediate steps to:

- Establish an effective investigative approach and an appropriately staffed work group to come to grips with existing coal trespass cases, considering the legal implications of the statute of limitations in determining the priority of individual cases.
- Determine the extent of coal trespass in the Eastern States by following through on the accelerated Federal coal mapping program and, at the same time, establishing an aggressive trespass identification program beyond the four-county area of Alabama.
- Expand the public trespass awareness program-- beyond Alabama--to include:
  - making the computer listings of Federally owned minerals in other States available to the public,
  - implementing a reward system for public information leading to the identification of trespass cases,
  - notifying the public through advertising of the Federal mineral ownership in the Eastern States, and
  - implementing a "hotline" to enhance and simplify trespass reporting by concerned citizens.
- Assure that adequate staff resources are made available to accomplish these tasks, either through reallocations within the Bureau or additional positions justified to the Interior Department.

An adequate Bureau "presence" in the Eastern States is vital to identify and safeguard Federal mineral resources. Thus, the Secretary should require--as part of the overall coal management plan--a specific determination as to whether retention of Federal coal rights under State and privately owned surfaces in the Eastern States is cost-effective, considering the small, scattered ownership patterns, and increased costs to effectively monitor and manage these resources. If the Secretary determines that such retention is not cost-effective, we believe the Interior Department should seek appropriate means of divesting itself of this responsibility, while being assured the public interest is protected.

CLARENCE A. BROWNE, OHIO  
 CARLOS J. MOYERHEAD, CALIF.  
 JAMES M. COLLINS, TEX.  
 W. HENRY MARE, ILL.  
 DAVE STOGYMAN, MICH.  
 EDWARD R. MADIGAN, ILL.  
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CONGRESS OF THE UNITED STATES  
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 SUBCOMMITTEE ON ENERGY AND POWER  
 OF THE  
 COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE  
 WASHINGTON, D.C. 20515  
 January 19, 1979

The Honorable Elmer B. Staats  
 Comptroller General of the United States  
 U. S. General Accounting Office  
 441 G Street, N.W.  
 Washington, D. C. 20548

Dear Mr. Staats:

Some disturbing information has come to our attention concerning reports of mineral trespass on Federal lands within Alabama and other Eastern States. It appears that these trespasses have resulted in the loss of millions of dollars worth of Federally owned coal and have caused severe environmental damage. These trespasses could be characterized as one of the most blatant "heists" of all time.

Department of the Interior documents and our staff investigation indicate

- BLM lacks adequate procedures to identify lands and mineral rights and to notify the public that they are part of the Federal domain;
- BLM does not have an effective system for monitoring these lands and preventing trespasses;
- Once BLM field personnel discovered trespasses in Alabama, top officials of BLM were notified, but did not take aggressive action to halt the trespasses and prosecute the trespassers;
- Top DOI officials claim that they were not advised by the BLM of the trespasses in Alabama or in other Eastern States until this month, even though internal BLM documents showed estimates that up to \$1 billion in coal may have been removed illegally in those States and that as long ago as last April, May, and June memoranda were prepared by the Eastern States Office of the BLM

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to brief these top officials. Such briefings apparently never took place;

- The BLM never sent investigators to these other States, nor did they provide adequate funds and personnel to identify and prosecute trespassers;
- Although top DOI officials, have told our staff that the trespasses could be greater than current estimates when one considers the entire United States, no serious effort has been made to survey all States; and
- One internal BLM "Issue Paper" warns of the "political sensitivity of this matter" and requests "formal policy guidance on the future course of action" regarding these mineral trespasses. Apparently, seven months later, no such "guidance" has been forthcoming.

The documents and our preliminary investigation appear to show a callous disregard for the public lands by BLM and DOI officials and no support for the efforts by the Eastern States Office of the BLM. The only apparent outward sign of any of the results of the BLM investigation to date is a brief Federal Register notice of December 15, 1978 relative to some lands in Alabama, but, to our knowledge, no similar notice has been issued in other States.

We are greatly concerned about the extent to which the DOI and BLM have pursued this investigation. We request that the GAO promptly begin a thorough examination of the adequacy of the BLM and DOI efforts to identify the trespasses and initiate civil and criminal enforcement actions in a timely fashion. We are particularly interested in knowing when the Eastern States Office began their inquiry and the actions taken by the Director of the BLM and Secretarial officials to implement recommendations for staff and personnel to pursue the matter vigorously. We want to know the current status of the investigation and whether any enforcement actions have been initiated and, if so, their status. We request that the GAO identify all BLM and DOI personnel who were aware of this investigation, determine when they became aware of it, determine their role in the matter and the actions they have taken or failed to take to insure that it is carried out effectively and in a timely fashion. We also request that the GAO examine the adequacy of BLM procedures and monitoring methods for preventing and halting such trespasses. It is also unclear whether BLM even knows what lands and interests therein are under

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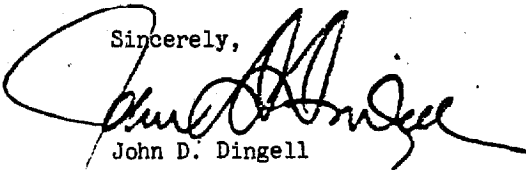
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Federal ownership or whether the trespasses are limited to coal or include other minerals.

Because our Subcommittee will probably hold hearings on this matter very soon, our Subcommittee staff will also conduct an investigation into some of these matters. Our investigation, however, will not be as detailed as yours and will not cover many of the items mentioned above. We request that the GAO coordinate its activities with our staff, keep our staff advised of your progress, and advise us when you will be able to provide a report to us. It is possible that we will also seek GAO assistance and possible testimony at the hearing.

Please do not provide a copy of your draft report to the agency for review and comment, particularly your conclusions and recommendations. If you believe that some review is needed of factual data, we suggest a conference for this purpose. We will request comments on your final report.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Dingell", written over the typed name below.

John D. Dingell



METHOD USED TO CALCULATE THE  
MAGNITUDE OF COAL TRESPASS IN  
ALABAMA AND THE OTHER EASTERN STATES

In April 1978, the Bureau of Land Management's Eastern States Office developed what have since become controversial estimates of the magnitude of Federal coal trespass in Alabama and the other Eastern coal States. The Office's estimates of the volume and value of Federal coal removed (see table II-1) have been termed speculative and highly questionable by the Bureau's Director and other officials.

The Director of Eastern States Office and staff responsible for the estimates agree they are far from comprehensive and are based on assumptions and methods of calculation which provided their best estimates at the time. For this reason, the projections were displayed as high-low ranges with appropriate qualifications as to their accuracy when presented to Bureau officials for consideration at the May and June 1978 briefings (see pp. 22 and 23).

The Eastern States Office told us, however, that they are confident the low range of the estimate for a four-county area of Alabama alone (i.e., \$64 million) is a realistic projection of the magnitude and seriousness of coal trespass in that State. This is because the low range was based on (1) minimum values for the Federal coal acreage compromised by suspected Alabama trespasses identified as of April 3, 1978; (2) the low average coal seam depth (i.e., 2 feet) and volume of coal per acre (i.e., 3,480 tons) thought to be typical for the area of trespass; and (3) the \$25-a-ton market price for Alabama steam grade coal. We were told the high range of the Alabama estimate and the extrapolation of values for the other coal States based on Alabama's experience were done on a "best effort at the time basis" to emphasize the coal trespass problem in the Eastern States and can be properly termed speculative and questionable.

The Eastern States Office has never refined nor reestimated their projections of the volume and value of Federal coal removed as a result of trespass. The Office did, however, refine their estimates of the Alabama trespass acreage and the Federal coal ownership under Federal and non-Federal

surfaces throughout the Eastern States. We were told the new figures in total appear to be supportive of the acreage data used for the initial April 1978 estimate but vary significantly on an individual State or county basis.

Calculations used to estimate the magnitude of coal trespass in Alabama and the other Eastern coal States

The Eastern States Office's total estimates of Federal coal losses in Alabama's four-county land use study area range from \$63.7 million to \$478.3 million. The Office's estimates for all Eastern States with proven coal production, including Alabama, are based on the level of trespass experienced in the study area and range from \$135.6 million to \$1.017 billion (see table II-1).

To determine the magnitude of trespass in the four-county land use study area, Eastern States Office analysts estimated the minimum and maximum amount of Federal coal acreage that might have been lost as a result of the 39 suspected trespass cases identified in the study area and reported to the Office as of April 3, 1978. Their estimate showed Federal coal losses ranged from 733 acres to 3,770 acres. In the interest of conservatism, they used the 733-acre low range to project the volume and value of coal lost assuming, on the basis of information available from the land use study, 1,740 tons of coal per acre-foot 1/ recovered; coal seam depths ranging from 2 feet to 15 feet; and a \$25 price per ton for steam grade coal. The following calculates the amount of Federal coal lost due to trespass in the land use study area based on the above variables.

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1/An acre-foot is a volumetric measure of the amount of coal underlying an acre of area at a seam depth of 1 foot; e.g., 2 acre-feet equals an acre of coal with a 2-foot seam depth and contains an estimated 3,480 tons of coal (i.e., 1,740 tons per acre-foot x 2 feet).

Coal Loss Estimates for Alabama

	<u>Acres</u>	x	<u>Tons of coal per acre</u>	x	<u>Dollars per ton</u>	=	<u>Value of coal lost millions</u>
Minimum:	733		2 acre-feet (1,740 tons per acre-foot- x 2 feet)		\$ 25		\$ 63.7
Maximum:	733		15 acre-feet (1,740 tons per acre-foot-x 15 feet)		\$ 25		\$ 478.3

In determining the magnitude of coal trespass throughout the 13 Eastern coal production States (including Alabama) Eastern States Office analysts assumed, on the basis of the Alabama land use study experience, <sup>1/</sup> that 1 percent of the estimated 155,913 Federal coal acres <sup>2/</sup> underlying private surfaces in these States has been lost due to trespass. Their calculation of Federal coal losses assumes that the volumetric and coal value data for the land use study area are typical for Eastern coal States:

Coal Loss Estimates for Eastern States

	<u>Acres</u>	x	<u>Tons of coal per acre</u>	x	<u>Dollars per ton</u>	=	<u>Value of coal lost millions</u>
Minimum:	1,559		2 acre-feet (1,740 tons per acre-foot- x 2 feet)		\$ 25		\$ 135.6
Maximum:	1,559		15 acre-feet (1,740 tons per acre-foot- x 15 feet)		\$ 25		\$1,017.3

<sup>1/</sup>The 733 acres of estimated Federal coal trespass in the Alabama land study area is approximately 1 percent of the area's 70,553 acres of Federal coal reservations.

<sup>2/</sup>Eastern States Office estimate based on literature search only.

Table II-1  
Estimated Coal Trespass Losses--  
Alabama and Other Eastern Coal States

	<u>Four-County Alabama land use study area</u>	<u>Eastern States with proven coal production (note a)</u>
Acres of suspected Federal coal trespass (note b)	733	1,559
Tons of Federal coal lost (thousands) (note c)		
--assume 2 acre-feet	2,550	-
--assume 15 acre-feet	19,131	40,690
Value of Federal coal lost (in millions of dollars) (note d)		
--assume 2 acre-feet	\$ 63.7	\$ 135.6
--assume 15 acre-feet	\$ 478.3	\$ 1,017.3

a/States included are Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Maryland, Missouri, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia.

b/Based on the 39 suspected trespass cases in the Alabama land use study area reported to Eastern States Office as of April 3, 1978. The 733 acres is the lower limit of the estimated area (ranges from 733 to 3,770 acres) from which Federal coal may have been removed as a result of the cases identified. This represents approximately 1 percent of the estimated 70,553 acres of Federal coal reservations within the study area which, when projected to the 13 coal production States indicated about 1,559 acres of trespass potential (i.e., 1 percent of the estimated 155,913 acres of Federal coal ownership under private surface in these States).

c/Assumes an average 1,740 tons of coal per acre-foot (i.e., 1 acre of surface underlain by 1 foot of coal). For example, 2 acre-feet recovered would equal 3,480 tons of coal per acre.

d/Based on an average \$25-price per ton of steam grade coal.

Major deficiencies with data or methodology used for the estimates

Three variables used to determine the magnitude of trespass are speculative and questionable, and are the primary reasons the estimates lack credibility. The variables are (1) the acreage estimate for the 13 Eastern coal production States, (2) the seam depth used to compute the maximum amount of coal mined from each acre, and (3) the price per ton of coal used to place a value on potential Federal coal losses.

Acreage estimate

As previously noted, the 1,559 acres of estimated Federal coal trespass throughout the 13 Eastern coal production States is based on the 1-percent trespass factor for the four-county Alabama land use study area. The 733-acre study area figure, which formed the basis for the assumption of 1-percent incidence of trespass throughout the Eastern States, represents an estimate of the study area involved in possible coal trespass as of April 1978. Therefore, the estimated extent of coal trespass in the Eastern States is based on incomplete information for Alabama with no factual data from the other States, and the representativeness of Alabama's experience is highly questionable.

Also, we noted an inconsistency in the method the Eastern States Office used to apply the 1-percent Alabama study area trespass experience to the Eastern coal States. The 1-percent factor derived by the Office is based on the acres of suspected trespass compared to the study area's total acres of Federal coal reservations. However, in deriving the suspected trespass acreage for the 13 Eastern coal States, the Office applied the 1-percent factor to acreage underlain by Federal coal resources instead of the total Federal coal reservations throughout the 13 States.

Coal seam depth

The upper limits of the estimated coal trespass ranges are based on a 15-foot coal seam, which Eastern States Office analysts now say is totally unrealistic for Alabama or any

other Eastern coal State. A more realistic estimate for the maximum coal seam thickness has not been developed.

#### Price per ton of coal lost

One major weakness of the estimates was the price of coal per ton used to compute the estimated coal losses in Alabama and the Eastern States. The \$25 price represents the market value of coal at the time of conversion at a powerplant. The market value is used by the Bureau, only when determining the liability of a willful trespass. The value used for innocent trespass liability determination is somewhat less than a willful trespass because mining costs are deducted from the market value. Also, the value of coal will vary depending on the quantity and quality of the coal and the location of mines and end users.

The value of coal and the nature of trespass will both vary, and these variances were not provided for when making these estimates.

#### Summary

It is doubtful that any reliable estimate of the magnitude of coal trespass throughout the Eastern States could be made with little factual information presently available on the location of Federal and mineral ownerships or on the incidence of trespass in the East. We did not attempt to estimate the extent of coal trespass in Alabama or make a projection of possible trespass in other Eastern States. We believe, however, that the estimates developed by the Eastern States, given all their limitations, do show that a serious problem exists in Alabama 1/ and demonstrate the potential significance (not extent) of additional trespasses in other Eastern coal States. 2/

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1/As of April 1979, 48 suspected Alabama coal trespasses have been identified and reported to the Eastern States Office, and the one case presented for settlement involves damages of \$3.5 million.

2/A limited test of a developmental trespass detection method in Maryland uncovered two suspected coal trespasses.

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