

HOUSE REPORT NO. 93-1072
Legislative History
House Report No. 93-1072

Following is the May 30, 1974, Report from the Committee on Interior and Insular Affairs on H.R.11500. The text below is compiled from the Office of Surface Mining's COALEX data base, not an original printed document, and the reader is advised that coding or typographical errors could be present.

Surface Mining Control and Reclamation of 1974,
PROVIDING FOR THE REGULATION OF SURFACE COAL MINING OPERATIONS IN THE UNITED STATES, AUTHORIZING THE SECRETARY OF INTERIOR TO MAKE GRANTS TO STATES TO ENCOURAGE THE STATE REGULATION OF SURFACE MINING, AND FOR OTHER PURPOSES Interior and Insular Affairs; United States House
HOUSE OF REPRESENTATIVES H.R.11500. REPORT No. 93-1072; 93rd CONGRESS 2nd Session;
MAY 30, 1974. - Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Preamble

Mr. HALEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

together with

ADDITIONAL, DISSENTING, SEPARATE AND SUPPLEMENTAL VIEWS

[To accompany H.R. 11500]

The Committee on Interior and Insular Affairs, to who was referred the bill (H.R. 11500) To provide for the regulation of surface coal mining operations in the United States, to authorize the Secretary of Interior to make grants to States to encourage the State regulation of surface mining, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

EXECUTIVE COMMUNICATION AND DEPARTMENTAL REPORTS

154 The Executive Communication dated February 15, 1973, together with reports from the Department of the Interior dated April 3, 1973, April 9, 1973, and February 6, 1974; and the Department of Agriculture dated April 9, 1973, are set forth below:

155 U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, Washington, D.C., February 15, 1974.

155 Hon. CARL ALBERT, Speaker of the House of Representatives, Washington, D.C.

155 DEAR MR. SPEAKER: There is enclosed a draft bill "To provide for the cooperation between the Federal government and the States with respect to environmental regulations for mining operations, and for other purposes".

155 We recommend that this bill, a part of the environmental program announced February 15, 1973, by the President in his Environment and Natural Resources State of the Union Message, be referred to the appropriate committee for consideration and that it be enacted.

155 The adverse environmental effects that can result from mining operations have been a subject of growing national concern in recent years. The ever increasing demand for minerals, coupled with dramatic developments in our ability to recover them has led to an increase in mining activity. These activities will continue to be an important part of the American economy.

155 Mining operations, however, also pose a serious threat to the environment. In varying degrees State legislatures and mining companies have responded to the problem, but this effort suffers from lack of uniformity and unanimity.

155 The proposed bill would require that all ongoing and future mining activities be conducted in a way as to minimize their adverse environmental effects. The legislation provides for the development of State regulations based on minimum Federal performance standards which will require environmental consideration to be built into the mining operation.

155 The Administration's bill recognizes that the responsibility for developing and enforcing regulations rests with the States, while also recognizing that the effort must be nationwide with minimum standards enforced to protect the environment, and to the extent possible, place industry on an equal level in every State. The bill gives the States the opportunity to develop and submit regulations, in accordance with specific minimum performance standards, for approval by the Secretary of the Interior. If the State fails to develop an acceptable program within two years after enactment or if the State fails to enforce effectively its approved program at any time, the bill authorizes the Secretary to administer and enforce a mining and reclamation program within the State.

155 This legislation is long overdue. The longer it is put off, the larger the ultimate cost will be.

155 The Office of Management and Budget has advised that this legislative proposal is in accord with the program of the President.

155 Sincerely yours,

155 ROGERS C.B. MORTON, Secretary of the Interior.

156 A BILL to provide for the cooperation between the Federal government and the States with respect to environmental regulations for mining operations, and for other purposes

156 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mined Area Protection Act of 1973".

156 TITLE I

156 Section 101. Definitions

156 For the purpose of this Act, the terms -

156 (a) "Secretary" means the Secretary of the Interior;

156 (b) "mining operations" means (1) activities conducted on the surface or underground for the exploration for, development of, or extraction of minerals, organic or inorganic, from their natural occurrences, including strip or auger mining, dredging, quarrying, open pit, in situ distillation or retorting and leaching; and (2) the cleaning, concentrating, refining, or other processing or preparation (excluding smelting) and loading for interstate commerce of crude minerals at or near the mine site. It does not include the extraction of minerals in a liquid or gaseous state by means of wells or pipes unless the process includes in situ distillation or retorting. For the purposes of this Act, prospecting activities are excluded from this definition;

156 (c) "prospecting" means the first on-the-ground or airborne phase of a search limited to the gathering of evidence of mineralization of potential commercial worth and is not for the purpose of establishing mineral reserves. Prospecting includes geological reconnaissance, the use of geophysical and geochemical methods, and preliminary sampling but does not include the construction of access roads, mechanical trenching, construction of semi-permanent camp facilities or other activities which will result in appreciable disturbances to the natural condition of the area;

156 (d) "underground mining operations" means those mining operations carried out beneath the surface by means of shafts, tunnels, or other underground mine openings and such use of the adjacent surface as is incidental thereto;

156 (e) "surface mining operations" means those mining operations carried out on the surface, including strip, area strip, contour strip, or auger mining, dredging, and leaching, or any combination thereof, and activities related thereto;

156 (f) "open pit mining" means that surface mining method in which the overburden is removed from atop the mineral and in which, by virtue of the thickness of the deposits, mining continues in the same area proceeding predominantly downward with lateral expansion of the pit necessary to maintain

slope stability and necessary to accommodate the orderly expansion of the total mining operation. For the purposes of this Act, this definition shall include caving methods and leaching activities associated with open pit mining. For the purposes of this Act, the mining of surface coal deposits, except those relating to open pit anthracite coal operations, is excluded from this definition;

156 (g) "mined area" means the surface and subsurface of an area in which mining operations are being or have been conducted including private ways and roads appurtenant to any such area, land excavations, workings, refuse banks, tailings, spoil banks, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which results from or are used in, mining operations are situated;

157 (h) "operator of a mining operation" means an individual, society, joint stock company or a partnership, association, corporation, or other organization, controlling or managing a mining operation;

157 (i) "previously mined area" means a mined area on which mining operations have been abandoned prior to the enactment of this Act or a mined area on which mining operations are abandoned subsequent to the enactment of this Act due to the impracticability of the mining operation under reclamation standards established by or under regulations pursuant to this Act;

157 (j) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

157 (k) "reclamation" means the process of restoring a mined area affected by a mining operation to its original or other similarly appropriate condition, considering past and possible future uses of the area and the surrounding topography and taking into account environmental, economic and social conditions; and

157 (l) "soil" means all of the overburden materials that overlay a natural deposit of minerals, organic or inorganic, and also means such overburden materials after removal from their natural state by mining operations.

157 SEC. 102. Congressional Findings and Declarations. The Congress finds and declares -

157 (a) that mining operations are essential activities affecting interstate commerce which contribute to the economic well-being, security and general welfare of the Nation;

157 (b) that there are mining operations on public and private lands in the Nation which adversely affect the environment by destroying or diminishing the availability of public and private land for commercial, industrial, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods and the pollution of waters and air, by destroying fish and wildlife habitat and impairing natural beauty, by frustrating efforts to conserve soil, water and other natural resources, by destroying public and private property, and by creating hazards to life and property;

157 (c) that the initial and principal continuing responsibility for developing and enforcing environmental regulations for mining operations should rest with the States;

157 (d) that the cooperative effort established by this Act is necessary to the prevention and elimination of the adverse environmental effects of present and future mining operations; and

157 (e) that it is the purpose of this Act to encourage a nationwide effort to regulate mining operations to prevent or substantially reduce their adverse environmental effects, to stimulate and encourage the development of new, environmentally sound mining and reclamation techniques, and to assist the States in carrying out programs for those purposes.

158 TITLE II - ENVIRONMENTAL REGISTRATION FOR MINING OPERATIONS

158 Section 201. State environmental regulations for mining operations

158 (a) Each State, after public hearings and within two years of the date of enactment of this Act, may submit to the Secretary for review and approval or disapproval in accordance with this section State environmental regulations for mining operations on all lands within such State, except Federally-owned land or land held in trust by the United States for Indians. A State may at any time thereafter submit revisions to such regulations to the Secretary for review and approval or disapproval in accordance with this section. The Secretary shall approve the regulations or revision of such regulations submitted to him if in his judgment:

158 (1) the regulations require that, for any mining operation or mining operation activity, as defined in section 101(b), not in existence on the date of the Secretary's approval of the regulations, the operator proposing to initiate such operation or activity must obtain a permit prior to the

commencement thereof from a State agency established to administer the regulations and provide that such a permit will be issued only after the operator (i) files a mining and reclamation plan describing the manner in which

his reclamation activity will be conducted showing that such activity will be conducted in a manner consistent with the regulations and (ii) establishes to the satisfaction of the State agency that the operator has the physical and financial capacity to conduct his mining and reclamation activity in accordance

with the reclamation plan;

158 (2) the regulations require operators of mining operations in existence on the date of the Secretary's approval of the regulations to obtain permits in

accordance with paragraph (1) of this subsection within one year of such date,

except that (i) permits issued for such operations may allow up to two years from the date of the Secretary's approval of the regulations for the operators

to come into compliance with performance standards adopted or designated under

paragraphs (b) (3), (b) (4), and (b) (5) of this section; and (ii) permits issued

for such operations producing less than 10,000 tons per year of mine run material may allow departures from the performance standards for up to five years from the date of the Secretary's approval of the regulations, to the extent found by the State agency to be necessary on the basis of the small size

of such operations, their significance to the local economy, and the extent of

possible environmental damage;

158 (3) the regulations contain requirements designed to insure that the mining operation (i) will not result in a violation of applicable water or air

effluent or emission standards and regulations, (ii) will control or prevent erosion or flooding, release of toxic substances, accidental subsidence of mined

areas or land or rock slides, underground, outcrop, or refuse bank fires, damage

to fish, or wildlife or their habitat, or public or private property, and hazards to public health and safety, and (iii) will be in conformance with any

State land use planning process or program;

158 (4) the regulations require reclamation of mined areas and that reclamation work be performed as an integral part of the mining operation and be

completed within reasonable prescribed time limits, and that, in the case of mining operations for which the Secretary has adopted performance standards; except that in order to encourage the reworking and reclamation of previously mined areas, the regulations may allow reclamation to depart from the specifications adopted by the Secretary pursuant to subsection (b) (3) (ii) in those individual cases where the State determines that the cost of reclamation

on a previously mined area in strict compliance with such specifications is

impracticable, and that the environmental quality of the entire permit area would, on balance, be clearly enhanced;

159 (5) the regulations allow the State agency, in order to encourage advances in mining and reclamation practices, to authorize departures in individual cases on an experimental basis from the specifications adopted by the Secretary pursuant to subsection (b) (3) (ii) of this section, if the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by such specifications, and if the mining operation is no larger than necessary to determine the effectiveness and economic feasibility of the experimental practices;

159 (6) the regulations require posting of performance bonds or other equally appropriate financial arrangements, in amounts and upon conditions at all times sufficient to insure the reclamation of mine areas in the event that the regulations are not complied with or that reclamation is not completed in accordance with the mining and reclamation plan;

159 (7) the regulations provide for filing, updating, and permanent retention of engineering maps of all active surface and underground mining operations and of all inactive surface and underground mining operations for which engineering or other maps are available;

159 (8) the regulations provide that the responsible State agency will identify areas or types of areas in the State which, if mined, cannot be reclaimed with existing techniques to satisfy applicable performance standards adopted by the Secretary, and that the State agency will not issue permits to mine such areas until it determines that the technology is available to satisfy applicable performance standards;

159 (9) the regulations provide that regular reports will be made to the Secretary concerning the progress made by the State in carrying out the purposes of this title;

159 (10) the regulations require operators to make periodic reports to the responsible State agency, showing the progress of mining operations and of all required reclamation activities, and require regular monitoring by the State agency of environmental changes in mined areas to assess the effectiveness of the environmental regulations for mining operations;

159 (11) the regulations designate a single agency, or with the Secretary's approval, an interstate organization upon which the responsibility for administering and enforcing the regulations is conferred by the State or States and will insure full participation of those agencies responsible for State land

use planning and management, air quality, water quality and other areas of environmental protection;

159 (12) the State agency or interstate organization responsible for the administration and enforcement of the regulations has vested in it the regulatory and other authorities necessary to carry out the purposes of this Act including, but not limited to, the authority to obtain the cessation of mining operations for violation of applicable laws and regulations adopted pursuant to this Act;

160 (13) the regulations were developed with full participation of all interested Federal departments and agencies, State agencies, local governments, and other interested bodies and groups;

160 (14) the regulations provide for regular review and updating, and for public notice and an opportunity for public participation in their revision;

160 (15) funding and manpower are or will be committed to the administration and enforcement of the regulations sufficient to carry out the purposes of this title;

160 (16) the regulations are authorized by law and will become effective no later than sixty days after approval by the Secretary;

160 (17) training programs will be established, as necessary, for persons engaged in mining operations and in enforcement of environmental regulations;

160 (18) the regulations are compatible to the maximum extent practicable with approved regulations of adjacent States; and

160 (19) the regulations which are developed by the State agency to meet or exceed performance standards should consider in addition to relative degrees of environmental protection, the relative costs involved;

160 (b) (1) In choosing among specifications or other requirements which satisfy the performance standards in this subsection the Secretary shall consider in addition to the relative degrees of environmental protection, the relative costs involved.

160 (b) (2) The criteria set forth in subsection (a) of this section shall be further elaborated by the Secretary through guidelines which will be issued within 90 days after enactment of this Act and revised periodically as the Secretary deems appropriate.

160 (3) Within 180 days after enactment of this Act, the Secretary shall by regulation adopt performance standards for the reclamation of mined areas

affected by surface mining operations. Those performance standards shall include specifications that will ensure (i) that mined areas will be returned, as soon as feasible, to their original contour or to a contour similarly appropriate considering the surrounding topography and possible future uses of the areas; (ii) that there is no deposition of spoil material, except as necessary to the original excavation of earth in a new mining operation, on the undisturbed or natural surface within or adjacent to the mined area, and that reclamation be conducted concurrently with the mining operation; except that the State agency may allow departures from such specifications either through a State approved program pursuant to (a) (5) of this section or if the operator demonstrates that such departures will provide equal or better protection of life, property, and environmental quality; (iii) that throughout the mined area, soil conditions be stabilized and water management be conducted such that landslides are prevented, erosion is minimized, and water pollution by siltation and by acid, highly mineralized or toxic material drainage is minimized; and (iv) that the original type or similarly appropriate type of vegetation will be re-established on the area disturbed by the mining operations as soon after the soil handling is completed as feasible. He shall revise all such performance standards periodically as necessary.

161 (4) Within 180 days after the enactment of this Act, the Secretary shall by regulation adopt performance standards for the reclamation of areas affected by open pit mining, taking into consideration the unique nature of such operations. Those performance standards should ensure (i) that new mined areas should be returned, to the extent feasible, to approximately their original contour or to a contour similarly appropriate considering the surrounding topography and possible future uses of the area; (ii) that, to the extent feasible, there is no permanent deposition of spoil material or undisturbed or natural surfaces within or adjacent to the mined area; (iii) that, throughout the permit area, soil conditions will be stabilized and water management conducted, such that landslides are prevented, erosion is minimized, and pollution of water, including that in water impoundments created by the mining operation, by siltation and by acid, highly mineralized and toxic material drainage is minimized; and (iv) that, to the extent feasible, original type or similarly appropriate type vegetation will be re-established on the disturbed land areas. He shall revise all such performance standards periodically as necessary.

161 (5) Within one year after enactment of this Act the Secretary shall by regulation adopt performance standards for reclamation of areas affected by underground mining operations in order to prevent, minimize or correct environmental harm, including standards for minimizing subsidence and the

continuing discharge of acid, mineralized and toxic material drainage. He shall revise all such performance standards periodically as necessary.

161 (c) To advise the Secretary in developing guidelines and performance standards under subsection (b) of this section, there is established an Advisory Committee composed of representatives from the Departments of Agriculture and Commerce, the Environmental Protection Agency, the Tennessee Valley Authority and the Appalachian Regional Commission, the Council of State Governments, and such other representatives as the Secretary may designate. In order to ensure consistency with the purposes of the Clean Air Act and the Federal Water Pollution Control Act, the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency in those aspects of the guidelines and regulations under subsection (b) which affect air or water quality.

161 (d) The Secretary shall not approve regulations submitted by a State pursuant to this section until he has solicited the views of Federal agencies principally interested in such regulations. In order to ensure consistency with the purposes of the Clean Air Act and the Federal Water Pollution Control Act, the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency in those aspects of each State's regulations which affect air or water quality. The Secretary shall approve or reject the State regulations within 180 days after such regulations are filed.

161 (e) If the Secretary approves the regulations or revision thereof submitted to him by a State for approval, he shall conduct a continuing review and evaluation of the effectiveness of the regulations and the administration and enforcement thereof. As a result of the evaluation and review the Secretary may determine that:

162 (1) the State has failed to enforce the regulations adequately;

162 (2) the State's regulations require revision as a result of experience or the guidelines on regulations issued by the Secretary pursuant to section 201(b);

162 (3) the State has otherwise failed to comply with the purposes of this Act.

162 Upon making such determination the Secretary shall notify the State and suggest appropriate action, remedies, or revisions to the regulations affording the State an opportunity for a hearing. If within a reasonable time, as determined by the Secretary, the State has not taken appropriate action as determined by the Secretary, the Secretary shall withdraw his approval of the regulations, and issue regulations for such State under section 202 of this

title. After withdrawal of his approval and pending the issuance of regulations under section 202, the Secretary may administer and enforce the State regulations. Following the issuance of regulations under section 202 and while they are in effect, the Secretary is authorized to administer and enforce such regulations within such State.

162 Section 202. Federal regulation of mining operations

162 (a) If, at the expiration of two years after the date of enactment of this Act, a State has failed to submit environmental regulations for mining operations, or has submitted regulations which have been disapproved and within such period has failed to submit revised regulations for approval, the Secretary shall promptly issue environmental regulations for mining operations within such State. The Federal regulations issued by the Secretary for a particular State shall meet the requirements of the principles set forth in subsection (a) and (b) of section 201 of this Act.

162 (b) Regulations under this section shall be issued pursuant to the Federal Rule making procedures set forth in 5 U.S.C. 553.

162 (c) The Secretary may from time to time revise such regulations in accordance with the procedure prescribed in 5 U.S.C. 553.

162 Section 203

162 Where the Secretary administers and enforces the program for the State, or when the Secretary administers and enforces State regulations under section 201(e) of this title, he shall recover the full cost of administering and enforcing the program through the use of mining permit charges to be levied against operators of mining operations within the State.

162 Section 204. Termination of Federal regulations

162 If a State submits proposed State regulations to the Secretary after Federal regulations have been issued pursuant to section 202 of this title, and if the Secretary approves such regulations, such Federal regulations shall cease to be applicable to the State at such time as the State regulations become effective. Such Federal regulations, as changed or modified by the Secretary, shall again become effective if the Secretary subsequently withdraws his approval of the State regulations pursuant to subsection (e) of section 201 of this title.

163 Section 205. Inspections and investigations

163 The Secretary is authorized to make such inspections and investigations of mining operations and mined areas as he considers necessary or appropriate to evaluate the administration and enforcement of any State's regulations, or to develop or enforce Federal regulations, or otherwise to carry out the purposes of this Act, and for such purposes authorized representatives of the Secretary shall have the right of entry to any mining operation and into any mined areas. In order to enforce the right of entry into a specific mining operation or mined area the Secretary may obtain a warrant from the appropriate district court to authorize such entry.

163 Section 206. Injunctions

163 At the request of the Secretary, the Attorney General may institute a civil action in a district court of the United States or a Federal District Court of the Commonwealth of Puerto Rico, the Virgin Islands, and Guam or the High Court of American Samoa for an injunction or other appropriate order (1) to prevent any operator of a mining operation from engaging in mining operations in violation of Federal regulations issued under section 202 of this title or State regulations which the Secretary is authorized to enforce under section 201(e) of this title; (2) to prevent an operator of a mining operation from placing in commerce the minerals produced by a mining operation in violation of State regulations approved under section 201 of this title; (3) to enforce a warrant issued under section 205 of this title; or (4) to collect a penalty under section 207(a) of this title. The district court of the United States or a Federal District Court of the Commonwealth of Puerto Rico, the Virgin Islands, and Guam or the High Court of American Samoa for the district in which such operator of a mining operation resides or is doing business shall have jurisdiction to issue such injunction or order.

163 Section 207. Penalties.

163 (a) If any person fails to comply with any regulation issued under section 202 of this title for a period of fifteen days after notice of such failure, the Secretary may order cessation of such person's mining operations and such person shall be liable for a civil penalty of not more than \$1 000 for each day of continuance of such failure after said fifteen days.

163 (b) Any person who knowingly violates any regulation issued pursuant to section 202 of this title shall, upon conviction, be punished by a fine not exceeding \$1 0,000, or by imprisonment not exceeding one year, or both.

163 (c) The penalties prescribed in this section shall be in addition to any other remedies afforded by this title or by any other law or regulation.

163 Section 208

163 (a) Review of the Secretary's action in (i) promulgating any standards of performance under section 201(b) (2), (b) (3), (b) (4), and (b) (5); and (ii) approving or disapproving a State environmental regulations and standards or revision to those under section 201(a); may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within 90 days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

164 (b) Action of the Secretary with respect to which review could have been obtained under paragraph (a) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

164 Section 209. Research.

164 The Secretary is authorized to conduct or promote research, or training programs to carry out the purposes of this title. In so doing, the Secretary may enter into contracts with institutions, agencies, organizations, or individuals and make grants to non-profit organizations and collect and make available information resulting therefrom.

164 Section 210. Grants.

164 (a) The Secretary is authorized to make a grant to any State for the purpose of assisting such State in developing, administering and enforcing environmental regulations under this title provided that such grants do not exceed 80% of the program development costs incurred during the year preceding approval by the Secretary and do not exceed 60% of the total costs incurred during the first year following approval, 45% during the second year following approval, 30% during the third year following approval and 15% during the fourth year following approval, at which time the Federal grants shall cease.

164 (b) The Secretary is authorized to cooperate with and provide nonfinancial assistance to any State for the purpose of assisting it in the administration and enforcement of its regulations. Such cooperation and assistance may include:

164 (1) technical assistance and training, including provision of necessary curricular and instructional materials, in the administration and enforcement of the State regulations or program; or

164 (2) assistance in preparing and maintaining a continuing inventory of mining operations and mined areas in such State for the purposes of evaluating the effectiveness of its environmental regulations for mining operations programs and identifying current and future needs of the State's activities under this Act.

164 Section 211

164 In extending technical assistance to States under section 210 and in the enforcement of regulations issued by the Secretary under section 202 concerning matters relating to the reclamation of areas affected by surface mining, the Secretary may utilize the services of the Secretary of Agriculture and the Administrator of the Environmental Protection Agency, and may transfer funds to cover the cost thereof.

164 Section 212

164 Any records, reports, or information obtained under this Act shall be available to the public, except that upon a showing satisfactory to the Secretary by any person that records, reports, or information, or particular part thereof, to which the Secretary has access under this Act if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Secretary shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

165 Section 213. Rules and regulations

165 The Secretary is authorized to promulgate such rules and regulations as he considers necessary to carry out the provisions of this title.

165 Section 214. Authorization of Appropriations

165 There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out the provisions of this Act.

165 TITLE III

165 Section 301

165 (a) The heads of all Federal departments or agencies which have jurisdiction over land on which mining operations are permitted are authorized

to promulgate environmental regulations to govern such mining operations. Such department or agency heads shall issue regulations to assure at least the same degree of environmental protection and reclamation on lands under their jurisdiction as is required by any law and regulation established under an approved State program for the State in which such land is situated. Each Federal department and agency shall cooperate with the Secretary and the States, to the greatest extent practicable, in carrying out the provisions of this Act.

165 (b) Nothing in this Act or in any State regulations approved pursuant to it shall be construed to conflict with any of the following Acts or with any rule or regulation promulgated thereunder:

165 (1) the Federal Metal and Nonmetallic Mine Safety Act (80 Stat. 772; 30 U.S.C. 721-740);

165 (2) the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742);

165 (3) the Federal Water Pollution Control Act (79 Stat. 903), as amended, the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality;

165 (4) the Clean Air Act, as amended (79 Stat. 992; 42 U.S.C. 1857); and

165 (5) the Solid Waste Disposal Act, as amended (79 Stat. 997; 42 U.S.C. 3251).

165 Section 302. Separability

165 If any provision of this Act of the applicability thereof to any person or circumstance is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

165 U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, Washington, D.C., April 9, 1973.

165 Hon. JAMES A. HALEY, Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

165 DEAR MR. CHAIRMAN: We have recently conducted a careful review of the Administration's proposed Mined Area Protection Act, introduced as H.R. 4863, in an effort to identify those provisions which might be changed to further strengthen the bill.

166 Mindful that adequate time must be allowed for the Federal Government

and the State Governments to develop the stringent program provided by this bill, we have reduced a number of our time requirements to achieve the earliest realistic implementation of this program. We again urge the enactment of H.R. 4868 with these amendments.

166 Our amendments are attached to this letter.

166 Sincerely yours,

166 JOHN C. WHITAKER, Under Secretary of the Interior.

166 Enclosure.

INTRODUCTION

51 H.R. 11500 would establish a national program for the regulation of surface mining of coal as well as the surface effects of underground coal mining. As is discussed below, the legislation is timely both in terms of adequate environmental protection - which has been too long delayed - and in view of the certain expansion of the Nation's coal industry. The rules which will govern the extraction of coal by surface methods need to be established so that industry can proceed to grow and develop in an orderly and environmentally acceptable fashion.

51 The purpose of H.R. 11500 is to assure the establishment of a nationwide program for the regulation of surface coal mining in order to reduce environmental impacts and to provide for the reclamation of previously mined and unreclaimed lands by -

51 (1) covering all coal surface mining (contour and area stripping and open-pit operations), the surface impacts of coal processing from surface and underground mines;

51 (2) establishing administrative, environmental, and enforcement standards for regulatory programs to be administered by the States on non-Federal lands and by tribes on lands within Indian Reservations;

51 (3) providing authority for a Federal regulatory program to augment State or Tribal programs if necessary on non-Federal lands and establish a Federal regulatory program for Federal lands;

51 (4) establishing a program for the reclamation of previously mined and inadequately reclaimed lands;

51 (5) establishing a program for designating areas unsuitable for surface coal mining and a more limited program for minerals other than coal;

51 (6) establishing a new Office of Surface Mining Reclamation and Enforcement for implementing provisions on this Act;

51 (7) establishing a Federal grant-in-aid program to the States for State mining and mineral resource research institutes;

51 (8) establishing procedures for public review of the administrative and enforcement program through access to data, hearings, inspections and standing to sue for damages and for non-compliance with the Act; and

51 (9) recognizing the rights of surface owners and off-site water users.

51 Following the discussion of the need for legislation, the most significant elements of the bill are described in greater detail.

NEED

52 A. Coal and Other Energy Resources

52 Coal has always been a major contributor to the United States energy needs. For various reasons, the growth of the coal industry, in terms of U.S. consumption per year, has been relatively stagnant, or even declining during past decade. (see Table No. 1 p. 53). In 1973, coal contributed only 18 percent of the Nation's energy supply, while petroleum and natural gas combined to produce approximately 77 percent. Hydropower supplied a further 4 percent and nuclear, 1 percent.

52 In spite of the currently small proportion of the energy market served by the coal industry, coal represents over 90 percent of our total hydrocarbon energy reserves. (see Table No. 2, p. 53). This fact alone dictates that coal will be called upon to supply a significant proportion of our energy needs in the years to come. The further fact that oil and gas are in short or uncertain supply means that coal is likely to become an increasingly important source of fuel for the Nation through the year 2000. (see Table No. 3, p. 53).

52 According to the latest Bureau of Mines figures, coal production in 1973 amounted to 591 million tons. Total U.S. consumption was approximately 556 million tons, while exports amounted to 52.870 million tons. The overwhelming majority of domestic consumption was in electrical power generation (approximately 69 percent). Other uses included: bunker fuels, beehive coke plants, oven coke plants, and other manufacturing and retail deliveries (see Table No. 4, p. 53). Of the total 1973 U.S. production of coal, almost 50 percent was produced by surface mining methods, representing a sharp increase in the past few years.

52 B. Disturbed lands

52 Surface mining of coal in the United States involves the temporary or permanent degradation of vast tracts of land. With some outstanding exceptions, there has been little effort on the part of coal operators to restore disturbed areas to their previous levels of productive capacity. In the light of an unprecedented growth rate for the surface mine industry (see Table No. 5, p. 54) the passage of laws regulating coal surface mining in some 29 states has proven to be generally ineffective in bringing about necessary reclamation of the disturbed land areas.

52 A number of experts in government and industry think the continuation of the majority of the rapid growth in the coal surface mining industry will most likely occur in the West. The imminent disturbance of these lands is due to the large quantities of strippable reserves located primarily in the Northern Great Plains region. A National Petroleum Council report indicates that there are some 32 billion tons of bituminous, sub-bituminous coal and lignite in the West which are recoverable through surface mining techniques. (see Table Nos. 6 and 7, pp. 54-55). The fact that many of these deposits are extremely thick, as compared with those of the eastern and mid-western United States makes them economically attractive. Federal regulation of this development is made mandatory by the fact that 80 percent of Western coal is owned by the Federal government. The total coal reserves located on Indian lands is estimated by the U.S. Geological Survey to be in the vicinity of 25 billion tons.

53 A report issued by the Soil Conservation Service of the Department of Agriculture concerning the status of land disturbed as of January 1, 1974, indicates the scope of the problem state by state. Quoting a previous estimate by the Department of Interior to the effect that "153,000 acres of land were disturbed in 1964 by strip and surface mining", the report notes that in the past two years that rate has been exceeded by 35 percent.

53 "The present concerns about energy, combined with the knowledge about our huge coal reserves make it quite likely that the annual rate of land disturbance will be even greater," the report concludes. (see Table No. 9, p. 56).

2

TABLE
1. -
Annual
1
U.S.
consumption
of
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 coal,
 1963-
 73
 2(
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 tons)
 1963 409,225
 1964 431,116
 1965 459,164
 1966 486,266
 1967 480,416
 1968 498,930
 1969 507,275
 1970 517,158
 1971 494,873
 1972 516,776
 n1
 1973 556,022

53 n1 Preliminary figures.

53 Source: "Bituminous Coal Data", 1972 edition, National Coal Association.

*2*TABLE 2. - TOTAL
 U.S. HYDROCARBON
 RECOVERABLE
 RESERVES

	Number	Times1015Btu	Percent
Coal (billion tons)	182.0	4,136	88.4
Oil (billion barrels)	48.3	270	5.8
Natural gas (trillion cubic feet)	266.0	274	5.8

53 Source: Bureau of Mines.

*5*TABLE 3. - COAL
 AS AN ENERGY SOURCE
 IN THE UNITED
 STATES, PROJECTED

5[USDI, 1972, table 18]

Year	Total energy demand		Energy demand for coal	
	Trillion Btu	Percent increase	Trillion Btu	Percent increase
1971	69,000		14,000	
1975	80,000	16	16,000	14
1980	96,000	39	18,000	29
1985	116,500	69	24,000	72
2000		192,000	178	34,000
142				

53 Source: U.S. Energy through the Year 2000. U.S. Department of interior, December 1972.

*2*TABLE 4. - 1973 U.S. domestic coal consumption n1
2[In thousands of tons]

Electrical power utilities
386,879
Bunker fuels
116
Beehive coke plants
1,310
Oven coke plants
92,324
Steel and rolling mills
6,356
Other manufacturing
60,837
Retail dealer deliveries
8,200

53 n1 Preliminary figures.

53 Source: Bureau of Mines.

54

*3*TABLE 5. - AMOUNT OF
TOTAL U.S. COAL PRODUCTION
PROVIDED BY SURFACE MINING

Year	Total tonnage coal produced (in million short tons)	Percentage produced by surface mining
1973 n1	591	49.0
1972	595	48.9
1971	552	50.0
1970	603	43.8
1969	561	38.1
1968	545	36.9
1967	553	36.9
1 966	534	36.5
1965	512	35.0
1964	487	33.9
1963	459	33.2
1962	422	33.4
1961	403	32.3
1960	416	31.5
1959	412	31.3
1958	410	30.0
1957	493	26.8
1956	501	27.0
1955	465	26.2
1954	392	26.3
1953	457	23.4

54 n1 Preliminary figures.

54 Source: Bureau of Mines.

*6*TABLE 6. -

SUMMARY OF
ESTIMATED
RESERVES OF
STRIPPABLE
BITUMINOUS
COAL IN THE
UNITED STATES

N1

6[Million
short tons]

Region and State (feet:feet)	Remaining strippable reserves	Available strippable reserves	Minimum coal bed thickness (inches)	Maximum overburden thickness (feet)	Economic stripping ratio
Appalachia:					
Alabama	607	134	14	120	24:1
Kentucky -					
East	4,609	781	28	120	14:1
Maryland	150	21	28	120	15:1
Ohio	5,566	1,033	28	120	15:1
Pennsylvania	2,272	752	28	120	15:1
Tennessee	483	74	28	120	19:1
Virginia	2,741	258	28	120	15:1
West virginia	11,230	2,118	28	120	15:1
Subtotal	27,658	5,171			
Midwest:					
Arkansas	200	149	14	60	30:1
Illinois	18,845	3,247	18	150	18:1
Indiana	2,741	1,096	14	90	20:1
Iowa	1,000	180	28	120	18:1
Kansas	1,388	375	12	120	15:1
Kentucky -					
West	4,746	977	24	150	18:1
Michigan	6	1	28	100	20:1
Missouri	3,425	1,160	12	120	15:1
Oklahoma	434	111	12	120	15:1
Subtotal	32,785	7,296			
Rocky Mountain and Pacific Coast:					
Alaska n2	1,201	480	14	120	10:1
Colorado	870	500	60	50-120	4:1-10:1
Utah	252	150	60	39-150	3:1-8:1
Subtotal	2,323	1,130			
Total n3	62,766	13,597			

54 n1 Based on recent Bureau of Mines study of strippable coal reserves of the United States.

54 n2 Includes 478,000,000 tons of reserves in Northern Alaska fields (North Slope) that may not be economically strippable at this time.

54 n3 Strippable bituminous coal reserves for Idaho, Montana, New Mexico, and Washington were not estimated.

54 Source: "U.S. Energy Outlook, Coal Availability," National Petroleum Council, 1973.

55

*6*TABLE 7. -
SUMMARY OF
ESTIMATED
RESERVES OF
STRIPPABLE
SUBBITUMINOUS
AND LIGNITE
COAL IN THE
UNITED STATES

n1

6[Million
short tons]

Region and State (feet:feet)	Remaining strippable reserves	Available strippable reserves	Minimum coalbed thickness (inches)	Maximum overburden thickness (feet)	Economic stripping ratio
Subbituminous n2					
Rocky Mountain and Pacific Coast:					
Alaska	6,190	n3 3,926	60	120	12:1
Arizona	400	387	60	130	8:1
California	100	25	60	100	1:1
Montana	7,813	3,400	60	60-125	2:1-18:1
New Mexico	3,307	2,474	60	60-90	8:1-12:1
Washington	500	135	60	100	10:1
Wyoming	22,028	13,971	60	60-200	1.5:1-10:1
Total	40,338	24,318			
Lignitet					
Southwest:					
Arkansas	32	25	60	100	15:1
Texas	3,272	1,309	60	90	15:1
Subtotal	3,304	1,334			
Rocky Mountain and Pacific Coast:					
Alaska	8	5	0	0	0
Montana	7,058	3,497	60	60-125	2:1-18:1
North Dakota	5,239	2,075	60	50-125	3:1-12:1
South Dakota	399	160	60	100	12:1
Subtotal	12,704	5,737			
Total	16,008	7,071			
Total all ranks	119,112	44,986			

55 n1 Based on recent unpublished Bureau of Mines study of strippable coal reserves of the United States.

55 n2 Subbituminous coal reserves not estimated for Colorado and Oregon; lignite reserves not estimated for Alabama, Kansas, Louisiana and Mississippi.

55 n3 Includes 179,000,000 tons of undifferentiated subbituminous-lignite and 3,387,000,000 tons of subbituminous coal reserves in the Northern Alaska Fields (North Slope) that may not be economically strippable at this time.

55 Source: U.S. Energy Outlook, Coal Availability, National Petroleum Council, 1973.

56

*3*TABLE 9. - STATUS OF
LAND DISTURBED BY COAL
SURFACE MINING IN THE
UNITED STATES AND NEEDING
RECLAMATION AS OF JAN. 1,
1974, BY STATES
3[Acres]

by	State	Reclamation not required by law	Reclamation required law
	Alabama	57,878	118
	Alaska	2,400	
	Arizona	150	
	Arkansas	9,451	494
	California		
	Caribbean area		
	Colorado	4,687	641
	Connecticut		
	Delaware		
	Florida		
	Georgia		
	Hawaii		
	Idaho		175
	Illinois	49,748	20,891
	Indiana	2,500	6,000
	Iowa	25,650	
	Kansas	43,700	2,500
	Kentucky	69,000	117,000
	Louisiana		
	Maine		
	Maryland	2,250	3,851
	Massachusetts		
	Michigan	500	
	Minnesota		
	Mississippi		
	Missouri	72,506	1,250
	Montana	300	300
	Nebraska		
	Nevada		
	New Hampshire		
	New Jersey		
	New Mexico		25,798
	New York		

North Carolina		
North Dakota	10,000	200
Ohio	23,926	45,825
Oklahoma	13,858	6,350
Oregon		
Pennsylvania	159,000	33,000
Rhode Island		
South Carolina		
South Dakota	790	
Tennessee	20,500	5,200
Texas	5,470	
Utah	120	
Vermont		
Virginia	18,000	5,014
Washington	471	1,101
West Virginia	25,720	51,560
Wisconsin	234	76
Wyoming	3,078	2,828
Total	621,887	337,081

56 Source: U.S. Soil Conservation Service.

56 C. Social and Environmental Impacts

56 The social and environmental impacts of surface and underground coal mining have been enormous. The most serious effects are to be seen in the Appalachian region, where the entire socio-economic infrastructure of parts of Pennsylvania, West Virginia, Ohio, Kentucky, Virginia and Tennessee and Alabama has been profoundly affected by decades of extracting coal from the rich bituminous deposits. As a consequence of the hazardous environment associated with both underground and surface mining of coal, the health and safety of people living and working near the coal mines of the region are in more or less constant peril. One example of exposure of the general public to dangerous conditions is the disastrous collapse of a mine waste impoundment on Buffalo Creek, West Virginia, in which 124 people were killed and 4,000 rendered homeless in 1972.

57 The side-effects of coal mining in the humid areas of the East and mid-West-acid drainage which has ruined an estimated 11,000 miles of streams; the loss of prime hardwood forests and the destruction of wildlife habitat by strip mining; the degrading of productive farm land; recurrent landslides; siltation and sedimentation of the river systems; the destructive movement of boulders; and perpetually burning mine waste dumps - these constitute a pervasive and far-reaching ambience. Tragically, coal mining in America has left its crippling mark upon the very communities which labored most to produce the energy which once impelled the Nation's industrial plant and now generates much of its electrical power.

57 In the western States and the Northern Great Plains region the discovery of vast reserves of lignite and sub-bituminous coal has inspired plans for the

expansion of coal surface mining on a very large scale, thus major adverse impacts to the region's land and people lie ahead. Since the climate is arid and water therefore in short supply, the removal of thick coal seams and the consequent disruption of stream and river channels forming part of the hydrologic regime of the area will pose difficult and in some cases insurmountable reclamation problems. A 1973 study by the National Academy of Sciences entitled, "Rehabilitation Potential of Western Coal Lands" has this to say about re-establishing vegetation in these circumstances:

57 The potential for rehabilitation of any surface mined area in the West is critically site specific. Nevertheless, some broad principles apply to all sites. The rehabilitation of a specific site will depend on the detailed ecological and physical conditions at that site, the projected land use for the site after mining, the available technology that is applied to the site, and the skill in applying that technology.

57 We believe that those areas receiving 10 inches (250 mm) or more of annual rainfall can usually be rehabilitated provided that evaporation is not excessive, if the landscapes are properly shaped, and if techniques that have been demonstrated successful in rehabilitating disturbed rangeland are applied.
(p.3)

57 The drier areas, those receiving less than 10 inches (250 mm) of annual rainfall or with high evapotranspiration rates, pose a more difficult problem. Revegetation of these areas can probably be accomplished only with major, sustained inputs of water, fertilizer, and management. Range seeding experiments have had only limited success in the drier areas. Rehabilitation of the drier sites may occur naturally on a time scale that is unacceptable to society, because it may take decades, or even centuries, for natural succession to reach stable conditions. (p.3-4)

57 Since much of the Nation's prime grazing and farming land is located in the band of western states where these immense coal deposits are located - North Dakota, South Dakota, Montana, Wyoming, Colorado, Utah - the possibility for permanently despoiling thousands of acres of productive agricultural lands is very real indeed, as the Committee is well aware. Other land uses associated with surface coal mining and concomitant power and fuel development, are also expected to impact the region as population inflow creates residential, commercial and industrial growth in sparsely settled areas. Over-all water demands, socioeconomic stresses and pollution loads of various kinds brought by expected westward migration provide cause for genuine concern.

58 Officials, coal operators and other interested citizens testifying before

the Subcommittee on Environment and the Subcommittee on Mines and Mining in 1973

touched on many of these environmental issues. The following sampling indicates abreadth of concern behind the strong dissatisfaction with existing state regulation of surface mining, evident throughout the hearings.

58 Joe Begley (Blackey, Letcher County, Kentucky):

58 Strip mining is completely destroying hte land, its hills and its people.

For 130 years people here have lived hard lives, no money, no medicine, no education. They live in fear of the only industry they have known, the coal industry - and what that industry has done to the people here in the past.

Now

our valuable minerals and fossil fuels are being taken at even a faster rate and

yet our people starve to death living on the top of a gold mine . . . Strip mining means just what it says. It strips the people of everything they have

.
. . .

58 Russell Train (then Chairman, President's Council on Environmental Quality):

58 Additional damage can occur from strip mining - devastated wildlife habitat, landslides, silt and acid choked streams, and a blighted landscape.

In

particularly rich farmland, area strip mining can adversely affect future fertility, as it can the opportunities for revegetation in the arid West.

58 Dr. Moid Ahmad (Professor of Hydrology and Geophysics, Ohio University):

58 Satellite pictures indicate that the scars due to strip mining are deep

and permanent and show that the soil and hydrological characteristics are different than the surrounding land.Strip mines are producing acid water, salty

water in the West, and toxic elements. They will continue to produce these for

a long time.

58 Liane B. Russell (Tennessee Citizens for Wilderness Planning):

58 We supported passage of the Tennessee Strip Mine Law of 1967; and when this law and its enforcement proved to be quite inadequate to control the ravages of ever-increasing strip-mining in our State, we drafted and supported

strong, yet still moderate, State legislation . . . We have also been in frequent contact with the Division of Surface Mining and Reclamation of the Tennessee Department of Conservation in an attempt to promote strong administration. These State efforts have been only partially successful, both

at the legislative and administrative level.

59 E. A. Nephew (Oak Ridge Laboratory, Oak Ridge, Tennessee):

59 There is much that can be learned from the German experience in restoring surface mine lands. Their program has been in effect for some twenty years and has helped greatly to minimize social dislocations and environmental damage from brown coal mining.

59 Ernest Preate (Attorney, Scranton, Pennsylvania):

59 Too often in the past the purpose has been to shut (citizens) out of participating in these extremely important matters with a result that abuse and non-enforcement of State surface mining laws has created the very groundswell of public opinion which has necessitated this committee and this Congress focusing their attention on this problem . . . with respect to the drafting of a strong Federal surface mining law.

59 James L. Coen (Blacksburg, Virginia):

59 It is my belief that the State government itself is either unwilling or unable to deal with the problems strip mining presents. The failure of the Virginia Legislature to pass the minimal regulatory bill is quite indicative of the situation. When our State officials fail to provide for the needs of its constituency, we must turn to our Federal Government for relief.

59 Robert Handley (President, Coal River Improvement Association, West Virginia):

59 (Answering a question as to whether it is his impression that, whatever the wording of the law in West Virginia or the way it is administered, the primary criterion is to enable the operator to maximize his profit) "I think that is unquestionable."

59 James W. McGlothlin (President, Tri-County Independent Coal Operators Association, Grundy, Virginia):

59 The majority of my membership and myself included favor a very strong reclamation program. It will no doubt be expensive, however, I think that the cost of that is going to be borne by every citizen in the Nation if they decide to use electricity from coal. I really favor a Federal program to cause each State to pass a reclamation law and cause each State to enforce it.

59 Walter Heine (Associate Deputy Secretary for Mines and Land Protection, Pennsylvania Department of Environmental Resources):

59 We would welcome wise Federal legislation in the area of surface mine

control so that the unfair competitive advantage now enjoyed by States which are allowing poorly regulated strip mining to devastate the countryside, will not continue. Some of these State programs have been quite ineffective because of weak laws, inadequate funding, and frankly, political interference.

60 Henry Clandillon Phibbs, II, Sierra Club, Wilson, Wyoming):

60 In Wyoming, there is another factor which makes Federal action imperative. This is the simple fact that the Federal government owns roughly 50 percent of Wyoming's land surface and roughly 70 percent of its minerals. It is a fundamental Federal responsibility to protect and utilize these land and mineral resources for the immediate and long range benefit of the entire country. This is not a question that can be left to the individual states.

60 Bruce Hagen (Commissioner, North Dakota Public Service Commission):

60 Governor Link says he wants to emphasize that our State law only covers privately owned and State lands, and he believes that Federal legislation is urgently needed to cover all lands that are surface mined in the United States.

60 As this sampling of testimony shows, the social and environmental side-effects of coal surface mining and the related failure of State regulation to provide an adequate degree of protection, are matters of widespread concern. At the present time when world food shortages are placing increasing pressures on America's once-overabundant food and fiber production, the Nation cannot afford to lose any productive range and farmland. Neither can the Nation afford to waste prime timberland, nor jeopardize the shrinking water resources of its river systems, whether in the Rockies or in the Appalachians. The likelihood of a materials scarcity and the possibility of public health problems resulting from contaminated or depleted water supplies, should serve to emphasize the foolhardiness of continuing on the present course in coal surface mining regulation.

60 D. A National Issue

60 President Nixon has urged the passage of a bill to regulate coal surface mining nationally. In his message to Congress of January, 1974, he stated:

60 A Mined Area Protection Act is needed to encourage the development of State programs which permit the mining of coal and other minerals to go forward in a way that is environmentally safe. The absence of clear legislation in this area is inhibiting the development of our coal reserves.

60 Across the Nation, church organizations, environmental and public interest groups and others have reacted against the excesses of coal surface mining by pressing for enactment of Federal legislation outlawing this method of coal mining. These groups claim that reclamation has been shown to be neither feasible nor enforceable. Some industrial groups are equally opposed to strong Federal enforcement of environmental standards for coal surface mining.

60 The Committee has taken the position that coal surface mining is essential to fulfilling the Nation's energy requirements. The Committee is equally convinced that equity requires that environmental and social costs which have heretofore been relegated to off-site property owners and to the community at large, must be borne by the producers and users of coal. The means of accomplishing such restitution is through a system of minimum Federal enforcement standards established in the Act to protect environmental values and property rights.

61 E. State regulation of coal surface mining

61 Twenty-nine States, responding to popular discontent regarding the social and environmental impacts of coal surface mining, at various times have enacted regulatory legislation imposing more or less stringent controls on the industry. (see Table No. 10, p. 62). Such laws have been often hailed as the strictest in the Nation. Citizens who organized and lobbied for the new State laws generally assumed that old abuses were ended; that the rights of other property-owners would be respected by surface mine operators; and that the environmental resources of the community, would be fully protected by the State regulatory authority.

61 Unfortunately, public confidence in State regulation of surface coal mining has frequently been misplaced. As environmental problems multiply rather than recede, popular discontent has reasserted itself. The reasons for the failure of State regulation vary from State to State.

61 One factor in the disappointing record of State regulation has been the continued rapid expansion of the industry relative to the States' capability of managing such mines due to the relatively low cost and high profits of surface mining. Because it is capital-intensive rather than labor-intensive consequently offering an alternative to the mounting costs of labor in underground coal mining operations, surface mining has proved attractive to operators. In some States, the increasing trend toward surface mining has placed heavy burdens on the State regulatory agency. Even where State law is strong and unambiguous, enforcement agencies have often been under-staffed,

under-equipped and under-financed.

61 Political influence is another factor in the failure of State regulation. Subtle or otherwise, it is often used to moderate enforcement of State laws. In States where the coal industry dominates the economy as a major source of jobs and taxes, powerful leverage is available.

61 Some studies have examined the effectiveness of coal surface mining regulation in two States, Kentucky and West Virginia. In 1972, the Stanford Research Institute completed a study for the West Virginia legislature, which was then considering legislation to outlaw surface mining of coal. This study indicates that although West Virginia coal surface mining had been under continuous State surveillance since 1941, the results of reclamation requirements were not impressive. The amount of vegetative cover was selected as the prime indicator of overall effectiveness of reclamation required by the State, and on that basis, a 75 percent vegetative cover was considered acceptable. The results were as follows:

61 A total of 6,565 linear miles (248,078 acres) were disturbed by contour strip mining in West Virginia as of October 1971. However, mining affects lands beyond the limits of the mines themselves. These affected areas could be from 3 to 5 times the area disturbed in mining or from 744,234 acres to 1,240,390 acres.

62 "A total of 2,868 linear miles (109,613 acres) had less than 50 percent cover and were classified as not reclaimed. An additional 2,001 miles (76,463 acres) had more than 50 percent cover from natural sources. However if the standard measurement for natural revegetation were raised to 75 percent cover, most lands would be considered not reclaimed since they have less than this value. If added to the acres with less than 50 percent cover, more than 71 percent of all surface mined land would be considered not reclaimed . . .

2 Table No. 10. - Summary of provisions included in current State coal surface mining laws

Type of provision	Number of States
States having coal surface mining laws	29
Hearings:	
Public hearings at time of permit application	
Public hearings at other times	14
Enforcement and penalties:	
Closing of surface mine for noncompliance	15
Fines for violations	23
Bond forfeiture requirements	27

Denial of future permit for violation	25
Imprisonment for violations	7
Bonding:	
Bonding requirements	29
Partial bond release	8
Performance standards:	
Separation of topsoil	2
Slope limitation on reclaimed area	11
Time period for completion of reclamation	20
Specified treatment of highwalls	5
Source: Congressional Research Service.	

62 In reviewing the policy decisions which led up to this result, the Stanford Report comments "the Executive Branch has taken the position that there is no specific proof or evidence that surface mining causes certain types or degrees of environmental damage, although environmental consequences are acknowledge. In the absence of being able to provide such proof, the Executive Branch has interpreted the statute to apply the operational letter of the law regardless of the environmental consequences . . ."

62 A second study, sponsored by the Appalachian Regional Commission and the Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection, was completed by Ford, Bacon & Davis of New York for MATHEMATICA, Inc., of Princeton, New Jersey. The focus of this study is on surface mining and reclamation technologies and the economics thereof. However, some observations of State regulatory efficiency and recommendations for improvements were offered in the course of the study. In referring to a marked disparity between the record of violations per inspection (taken as an indicator of the alertness of State inspectors) as shown for different inspection areas, the study noted that the disparity was eventually acknowledged to be the result of "widespread corruption and inefficiency" in the inspection area in question. "Division personnel claim knowledge of this prior to disclosure, but noted their inability to deal effectively with the situation because of political constraints," the study comments.

63 Apart from the deficiencies of State regulatory systems (although some, to be sure, function with marked efficiency) perhaps the greatest handicap faced by conscientious State regulators consists of the very real possibility of job and tax loss to the State if its laws are strictly enforced so as to drive surface mine operators into more lenient neighboring States. The ease with which small surface mining equipment can be transported long distances, and the relative simplicity of gaining access to coal for surface mining operations, allows many Eastern operators a high degree of flexibility as to where and when they will mine coal. Only Federal regulation establishing uniform requirements

can deal with this situation.

63 The obvious inability of the States to develop any coherent, comprehensive national or regional policy covering the surface mining of Federally-owned coal or coal under Indian lands is a further limiting factor related to the broader aspects of regulation already mentioned. Federal grants to the States and Federal enforcement standards uniformly applied to provide the necessary minimum protection of environmental values and off-site properties will ensure continuance of coal surface mining to meet the energy needs of the Nation, and will also eliminate many if not all of the regulatory problems which have plagued the States and frustrated citizens of the coal-producing regions.

63 F. Surface mining methods and techniques

63 In contrast to underground coal mining (which requires removing coal from the earth), surface mining consists of removing earth from the coal. If the size of the coal deposit justifies the cost of large equipment, surface mining operators may penetrate the surface to a depth of 500 feet or more. Equipment depends upon the terrain, the ratio of coal to overburden, and the value of the coal deposit per acre. In general, there are three broad categories of surface mining operations: contour, area and open pit.

63 Contour mining occurs on steep terrain, the steepness being defined differently state-by-state. In the mountains of Appalachia where contour mining is prevalent, the operator excavates a portion of the hillside (the "first cut") on the coal seam where it intersects with the surface. He then proceeds to strip off the overburden, following the seam along the contour and excavating as far into the mountain as may be profitable. Component parts of a contour mine are: The "bench," or flat area from which the coal is removed; the "outslope" or spoil bank, consisting of overburden material which has been cast over the downhill side of the bench; the "highwall," a more or less vertical bank marking the inner limit of the bench; and the "haulroad" which permits access to the mine site. "Augering," or drilling into the coal seam under the highwall to recover more of the coal, frequently accompanies contour mining.

63 A variant of contour mining is called "mountain-top removal". This method of mining proceeds entirely through the elevation, following the coal seam. It permits nearly complete recovery of the coal seam, or of multiple coal seams if done sequentially. The overburden is placed downslope in the so-called

"head-of-the-hollow fill." The end result is not a serpentine bench and highwall but rather a flat area comprising the "solid bench" from which the coal has been removed, and the contiguous "fill bench" where the overburden has been deposited.

64 Area mining occurs on flat or rolling country-side, which may include relatively steep areas, depending on the size of the equipment being used. Overburden is piled to one side in a ridge on the area from which coal has been removed. This continuous backfilling results in a furrowed mine site terminating in a ditch and a highwall which marks the final "cut", usually at the limit of the disturbed area. Area mining is practiced in the western Appalachians and in the Midwest and West.

64 Open pit mining is similar to area surface mining in some respects. Except for one or two special cases in the West, this type of mining does not resemble deep open pit copper mines. The term "pit" is appropriate mainly because the ratio of overburden to coal is small as compared to the ratio found in area surface mining (i.e., the thickness of coal removed is greater than the thickness of the overburden removed). As a result, the amount of overburden is insufficient to fill the pit and a depression or hollow configuration is the end product.

64 Surface mining equipment includes bulldozers used to provide access to the site and to prepare coal for loading, as well as drill rigs used to bore holes in which explosives are detonated, shattering the overburden. The most costly part of the operation is removal of the overburden, which is accomplished in contour mining with front-end loaders or small power shovels. On bigger operations requiring massive movements of rock and soil, giant drag-lines, wheel excavators and power shovels are preferred (Big Muskie, the world's largest drag-line, based near Cumberland, Ohio, weighs 27 million pounds and is capable of moving 325 tons of rock at a time). Smaller shovels and front-end loaders generally load the exposed coal into trucks which may carry as much as 200 tons per trip. Some mechanical augers are able to drill horizontally 250 feet into the coal seam, in the process removing coal from under the highwall. Transportation of the coal to final destination is usually by train or barge.

64 Following removal of the coal, reclamation of the mining site takes place, in two phases. First comes the back-filling, drainage and regrading required to achieve the desired configuration of the surface and proper drainage of water on or under it. Next comes revegetation: the preparation of topsoil, fertilization, cultivation, and seeding or planting desired species. Special equipment designed to spray a mixture of fertilizer, seed and mulch is widely utilized either with trucks or with helicopters for revegetation on rough

terrain.

64 Both regrading and revegetation must be integrated into the total mining plan of the operator. The most serious off-site environmental impacts result from exposure of overburden to the weather with consequent erosion, sedimentation, siltation, acid drainage, landslides, and leaching of toxic chemicals. The essence of good reclamation therefore consists of reducing as much as possible the time from initial disturbance of the land surface to the successful re-establishment of a vegetative cover, to achieve which, performance standards relating to environmental protection must be carried on concurrently with the mining operations, except under special circumstances.

64 New surface mining methods, such as mountain-top removal, are generally modifications of existing methodology, made possible by the increased versatility of different types of self-propelled machinery now available. Combinations of rubber-tired and tracked vehicles together with semi-stationary equipment such as augers, are often used to great effect. Most of this equipment has been adapted from the construction industry and in fact is sometimes used interchangeably.

65 Aside from the development of safe, powerful explosives replacing nitroglycerine, perhaps the most significant development in coal surface mining during the past decade has been its enhanced earth-moving capability. The range of existing technology needs to be brought fully to bear upon accomplishing rapid and effective reclamation of disturbed areas, as regards both current operations and, in addition, those areas which have been improperly reclaimed in the past and abandoned.

65 In the humid East, retention of overburden material on the bench, avoiding all unnecessary placement of unconsolidated material on steep slopes, would contribute most significantly to the elimination of slides, sedimentation, siltation and other off-site effects which threaten downstream areas. The basic concept embodying this principle is returning the mining site to its approximately original contour.

65 Approximate original contour is equally valid when applied to midwestern and western coal surface mining, inasmuch as the concept includes the idea of blending the site into the surrounding terrain to the greatest degree possible. It also embodies conformity to the prevailing hydrologic pattern. Because low rainfall and erodability of soil severely handicap reclamation efforts in the West, minimizing the impacts to the hydrologic balance of the mine site and surrounding area takes on special significance in assuring that the reclamation

objectives of the Act are met.

65 The emphasis on return to the approximate original contour, should not obscure the fact that the appropriate methodology will vary from site to site. Responsibility for devising methods for reaching any necessary reclamation goals should be left up to the operator. Within the limits of economic constraints, the available equipment and his own ingenuity, the surface mining operator will develop whatever approach best suits his needs and the peculiarities of his mining site. Considering the remarkable increase in productivity which economies of scale and adaptation of suitable equipment have achieved in coal surface mining, and considering the novel means for handling overburden being practiced in some States, new reclamation techniques will certainly be forthcoming to meet higher reclamation requirements.

65 G. Timeliness of Federal regulation

65 A primary constraint upon the coal industry in discharging its reclamation responsibilities is the poor competitive position of coal relative to oil and natural gas. In the 1940's and 1950's the industry experienced the trauma of losing its steamship market to oil. Subsequently, the switch of railroads to diesel engines and the relinquishment of the home heating market to oil and gas further stunted the growth of the coal industry. Economic depression haunted the coal fields for years, held at bay only by expansion of the electric utility market for high sulfur-low Btu steam coal, and by the rising demand of Canadian, Japanese and other foreign steel mills for high Btu-low sulfur metallurgical coal.

66 This picture has altered radically since the onset of the national energy crisis precipitated by the Arab oil embargo. The Nation's dangerous over-reliance on imported oil and the parallel inadequacy of its domestic oil and natural gas supplies have brought about a general awareness that increased development of our coal reserves is a matter of top priority in terms of protecting economic growth and national security. The Federal government has responded to the crisis with a series of proposals which will ensure a long-range, continuous demand for coal both as a direct source of energy and as converted into various substitutes for oil and natural gas.

66 The Federal Energy Office has instituted a program calling for the conversion, where possible, of electric power generating plants to coal consumption. The House of Representatives recently approved the Energy Research and Development Appropriations Act. This Act includes \$2 83,400,000 channeled to the Office of Coal Research and a further \$1 03.7 million to the Bureau of

Mines for coal-related research. (see Table No. 11, p. 60). A large portion of these funds are earmarked for coal gasification and liquefaction projects. Other funds are to be expended on stack gas emission removal technology to enable the burning of medium and high sulfur coal by electric utilities which are currently finding the availability of adequate sources of low-sulfur coal conforming to the requirements of Federal air quality standards limited.

66 These Federal programs signal a widespread commitment of the development and utilization of coal in the Nation's energy future. The coal industry has responded to this renewed interest with major increases in prices. (see Table No. 12, p. 67). The import of these recent events is to belie the claim that fluctuations in demand for coal and concomitant price uncertainties make the cost of reclaiming surface mined land economically unacceptable.

2 Table No. 11. - Research and development funds for coal as authorized in the Energy Research and Development Appropriations Act for fiscal year 1975

Office of Coal Research:	
Coal liquefaction	79,600,000
High Btu gasification	37,800,000
Low Btu gasification	49,000,000
Advanced power systems (including \$7,500,000 for MHD)	12,700,000
Direct boiler combustion	34,000,000
"Pioneer plant" projects	42,100,000
Advanced research and supporting technology; systems studies	21,637,000
Administration	6,563,000
Total	283,400,000
Bureau of Mines:	
High Btu gasification	19,200,000
Coal liquefaction	27,388,000
Basic research on chemistry of coal and conversion processes	3,200,000
Other coal projects	2,712,000
Surfur-oxides removal from powerplant stack gases (cirate process)	2,00,000
Improved coal mining technology	46,200,000
Total	100,700,000
U.S. Geological Survey:	
Determination location and properties of coal resources; coal environmental analysis	2,496,000
Investigations on coal hydrology (water needs for development of this resource)	1,250,000
Total	3,746,000
Total coal research and development appropriations	387,846,000

66 Source: Congressional Record, Apr. 30, 1974, p. H3356.

*5*TABLE 12. -
JANUARY 1974 FUEL

REPORTS FROM
 AMERICAN PUBLIC
 POWER ASSOCIATION
 MEMBER UTILITIES
 USING COAL

Plant	State	Percentage of rise in price from - n1		
Plant	State	December 1973	June 1973	January
1973				
Wallingford	Connecticut	7.5	18	32.0
Rochelle	Illinois	NA	NA	10.0
Cedar Falls	Iowa	NA	16	16.5
Kansas City	Kansas	NA	NA	16-24.0
Lansing	Michigan	NA	13	17.0
Detroit Lakes	Minnesota	31.0	NA	NA
Fairmont	do	NA	NA	9-27.0
Austin	do	NA	NA	49.0
Independence	Missouri	NA	NA	40.0
Fremont	Nebraska	n(2)	n(2)	n(2)
Nebraska-Public power district		NA	14	15.0
Jamestown	New York	13.0	NA	59.0
Burlington	Vermont	NA	52	NA
Danville	Virginia	NA	NA	78-89.0
Richland Center	Wisconsin	NA	NA	8.0

66 n1 The percent figures show the rise in price from the date indicated in the column heading to January 1974.

66 n2 Increase by 30 from September 1973 to January 1974.

66 Source: American Public Power Association.

66 Because the industry can be confident that the Federal government is committed to a program of reserch and development which will vastly expand the market for coal, the future for the industry is assured. The coal industry can also be assured of a reasonable return on its investment. On a per-Btu basis, coal remains one of the cheapest of all of our energy resources. (see Table No. 13, p. 69).

66 Thus the argument that reclamation is prohibitively expensive, if it was ever valid, is certainly no longer so. In regard to the most stringent performance standards, namely those associated with returning the mining site to the approximate original contour, recent studies have shown that even in the steepest Appalachian terrain, reclamation according to these requirements is economically feasible using currently available equipment. There is evidence, in fact, that compliance in some cases increases profitability to the operator.

66 A report by the President's Council on Environmental Quality entitled

"Coal Surface Mining and Reclamation; An Environmental and Economic Assessment of Alternatives" states that:

66 . . . the cost of advanced reclamation techniques are small compared to the market value of coal, e.g. only three to nine percent of the price of coal at the mine. In fact, since coal can be produced by surface mining in Appalachia for \$0.75 to \$2 .50 per ton less than by underground mining, the competitive position of surface mined coal would not deteriorate even at the highest range of reclamation costs.

68 (See Table No. 14, p. 69).

68 Recent rises in the price of coal give this statement even greater emphasis. Responsible spokesmen within the industry have pointed out that reclamation costs are economically acceptable. For example, a report entitled "Coal and the Energy Shortage" presented by the Continental Oil Company, (of which Consolidation Coal Co., the Nation's second largest producer of coal is a wholly owned subsidiary) states that:

68 even taking the largest of these (reclamation) costs would add only two to three percent to the average residential electric bill.

68 A recent study done by Mathematica, Inc., of Princeton, New Jersey, entitled Design of Surface Mining Systems in the Eastern Kentucky Coal Fields, (January 29, 1974), states that the estimated average total reclamation costs for surface mined land in Eastern Kentucky is \$1 65 per disturbed acre. The report points out that this cost " . . . is equivalent to approximately \$0 .32 per ton based on the oft-used estimate of 0.5 disturbed acres per 1,000 tons of coal produced. Note that this estimate excludes charges for depletion and depreciation, since these are not true cash flows. If, however, these charges were included, estimated reclamation costs would be about \$0.38 per ton."

68 Recent coal price increases unrelated to reclamation costs have already added considerably more than this amount. Bituminous coal prices (f.o.b. mine) rose over 50 percent between 1969 and 1971, according to "Bituminous Coal Data" for 1972, issued by the National Coal Association. (see Table No. 15, p. 70). Since then prices on the spot market have skyrocketed, to the point where many utilities report having difficulty in locating reasonably accessible supplies of coal. (see Table No. 12, p. 67). It therefore appears that the ability of the industry to absorb any increased costs of reclamation consistent with the standards of the Act is no longer in doubt. (see Table No. 16, p. 69).

68 H. Research and Trained Technicians

68 The consequences of dependence on foreign powers for one of the basic mineral fuels - petroleum - has been brought home to Americans; but that dependence does not stop with petroleum. In 1972, minerals and mineral fuels accounted for a \$7 .5 billion deficit in the U.S. balance of trade, an increase of \$4 billion in two years (as compared with only a \$2 .3 billion increase over the ten-year period of the '60's). The thrust of Title VIII of the Act is not an immediate solution to the energy crisis as a whole or to the specific problems of extraction, reclamation, and processing of minerals and fuels, in particular. Its purpose is to assure that the U.S., in the future, will have the research base, the technological capability, and the qualified man-power to avoid repeated crises of mineral supply and technology. Only thus can it avoid disadvantageous dependence upon foreign sources for these items so critical to its domestic welfare.

69 The need to provide a more adequate national program of mining and minerals research through the establishment of mining and minerals research centers is documented in House Report No. 92-1028. The Report focused upon the expanding consumption of non-renewable resources in the United States; the failure of the U.S. to develop mineral and mineral fuel technology at a rate fast enough to cope with increased consumption; and, finally, the current inadequate and decreasing supply of trained manpower in the mineral engineering fields.

*4*TABLE 13. - COST
OF COAL VERSUS
OTHER HYDROCARBON
ENERGY RESOURCES,
MAY 1973

million	Quantity delivered	Percentage of total	Average price (cents per Btu's)
Coal	34,120,000 tons	58.5	39.5
Oil	38,900,000 barrels	18.3	71.1
Gas	295,690,000,000 cubic feet	23.2	33.7

69 Source: Federal Power Commission.

*6*TABLE 14. -
ESTIMATED
INCREMENTAL
PRODUCTION COSTS
FOR VARIOUS
RECLAMATION COSTS

Calculated production per acre mined n1	Costs of reclamation, cents/ton
---	---------------------------------

		\$1,000 per mined acre	\$2,000 per mined acre	3,000 per mined acre
\$4,000 per mined acre				
Appalachia Region:				
Alabama	4,030	24.8	49.6	74.4
99.2				
Kentucky (eastern)	4,460	22.4	44.8	67.2
89.6				
Ohio	5,330	18.8	17.6	56.4
35.2				
Pennsylvania	4,610	21.8	43.6	65.4
87.2				
Tennessee	4,180	24.0	48.0	72.0
96.0				
Virginia	5,900	17.0	34.0	51.0
68.0				
West Virginia	7,060	14.2	28.4	42.6
56.8				
Average	5,080	20.4	40.8	61.2
81.6				
Central Region:				
Illinois	7,200	13.8	27.6	41.4
55.2				
Indiana	6,620	15.0	30.9	45.0
60.0				
Kentucky (western)	7,340	13.6	27.2	40.8
54.4				
Average	7,050	14.2	28.4	42.6
56.8				
Western Region:				
Colorado	12,100	8.2	16.4	24.6
32.8				
Montana n2	66,100	1.6	3.2	4.8
6.4				
Wyoming	66,100	1.6	3.2	4.8
6.4				
Average	48,000	3.8	7.6	11.4
15.2				

69 n1 Based on density of 1,440 tons of bituminous coal per acre-foot at 80 percent recovery, based on 1960 data.

69 n2 Montana entry changed to reflect mining of sub-bituminous coal in Power River Basin.

69 Source: Advanced from Surface Mining and Our Environment, Department of Interior, 1967, p. 114. Coal Surface Mining and Reclamation An Environmental and Economic Assessment of Alternatives, Council on Environmental Quality.
*3*TABLE 16. - INCREASED PROFITS OF SELECTED MAJOR INDEPENDENT COAL PRODUCERS 1969-70

as Profits percentages

	of sales 1969
1970	
Pittston	4.1
6.9	
Westmoreland Coal Co	1.5
5.2	
North American Coal Co	2.9
3.4	
Eastern Gas & Fuel	5.8
7.7	

69 Source: "Concentration by Competing Raw Fuel Industries in the Energy Market and its Impact on Small Business," hearings before the Subcommittee on Special Small Business Problems of the Select Committee on Small Business, House of Representatives, 92d Cong., 1st sess., vol. 1, p. 41.

70

5

TABLE
15. -
AVERAGE
VALUE
OF
BITUMINOUS
COAL
5 [
Per
ton
f.o.b.
mine]

Year	Strip mines	Auger mines	Underground mines	Total all mines
1940	\$1.56		\$1.94	1.91
1945	2.65		3.16	3.06
1950	3.87		5.15	4.84
1955	3.48	\$3.60	4.86	4.50
1956	3.74	4.17	5.20	4.82
1957	3.89	4.12	5.52	5.08
1958	3.80	3.60	5.33	4.86
1959	3.76	3.83	5.23	4.77
1960	3.74	3.37	5.14	4.69
1961	3.67	3.24	5.02	4.58
1962	3.64	3.33	4.91	4.48
1963	3.57	3.25	4.82	4.39
1964	3.55	3.35	4.92	4.45
1965	3.57	3.36	4.93	4.44
1966	3.64	3.58	5.05	4.54
1967	3.68	3.59	5.18	4.62
1968	3.75	3.53	5.22	4.67
1969	3.98	3.81	5.62	4.99
1970	4.69	6.08	7.40	6.26
1971	5.19	6.57	8.87	7.07

70 n1 Includes power strip pits proper and excludes horse stripping operations and mines combining stripping and underground in the same operation
1940. Includes data on all strip mines subsequent to 1940.

70 Source: National Coal Association "Bituminous Coal Data" 1972 edition.

70 The Minerals Resources Research Act, which was the forerunner of Title VIII is supported by the Final Report of the National Commission on Materials Policy, June 1973; and again in "Mining and Minerals Policy, 1973," Second Annual Report of the Secretary of Interior under the Mining and Minerals Policy Act of 1970.

70 It is well-known that demand for all minerals is growing rapidly, both domestically and worldwide. Most of the known, rich, easily recoverable deposits of minerals have been developed. The United States must now turn to exploration for new deposits and development of known low grade ore deposits. Research will also be needed into substitution, alternative uses of minerals, improved mining and processing technology and deep seabed mining. This effort will require an increasing amount of trained talent in the mining and minerals engineering fields.

70 The urgency of sustaining grants (on a dollar-for-dollar matching basis) and other Federal financial assistance for mining and minerals research and training centers to ward off the progressive weakening of mineral engineering disciplines in U.S. colleges and universities is evident. Neither industry, the States, nor the Federal government provide sufficient support to halt and reverse present downward trends in research and research manpower at a time when both should be expanding to meet present deficiencies and growing needs.

70 I. Data on Coal Reserves and Leases

70 Tables presenting following data have been included at the conclusion of this section of the Report: Total coal reserves (see Table No. 17, p. 71); Federal coal leases (see Table No. 18, p. 71). Indian coal leases (see Table No. 19, p. 72).

71
*8*TABLE
17. -
TOTAL
ESTIMATED
REMAINING
MEASURED
AND
INDICATED
COAL
RESERVES
OF THE

UNITED STATES AS OF JAN. 1, 1970
 n1
 8[In beds 28-in and more thick, for bituminous, anthracite, and semianthracite, and 5 ft or more thick for subbituminous and lignite beds - million tons]

State total	Remaining measured and indicated reserves				Total	Total - All ranks more than 14 in and 3,000 ft or more overburden as of	
	Bituminous	Subbituminous	Lignite	Anthracite semianthracite		n	of
Alabama	1,731	0	n(2)	0	1,731	13,444	12.9
Alaska	667	5,345	n(3)	n(4)	6,012	130,087	4.6
Arkansas	313	0	n(2)	67	380	2,420	15.7
Colorado	8,811	4,453	0	16	13,280	80,679	16.5
Georgia	18	0	0	0	18	18	100.0
Illinois	60,007	0	0	0	60,007	139,372	43.1
Indiana	11,177	0	0	0	11,177	34,661	32.2
Iowa	2,159	0	0	0	2,159	6,513	33.1
Kansas	328	0	0	0	328	18,678	1.8
Kentucky west	20,876	0	0	0	20,876	36,482	57.2
Kentucky east	11,049	0	0	0	11,049	28,850	38.3
Maryland	557	0	0	0	557	1,168	47.7
Michigan	125	0	0	0	125	220	56.8
Missouri	12,623	0	0	0	12,623	23,339	54.1

Montana	862	31,228	6,878	0	38,968	221,698	17.6
New Mexico	1,339	779	0	2	2,120	61,455	3.4
North Carolina	n(5)	0	0	0	n(2)	110	0
North Dakota	0	0	36,230	0	36,230	350,649	10.3
Ohio	17,242	0	0	0	17,242	41,568	41.5
Oklahoma	1,583	0	0	0	1,583	3,195	49.5
Oregon	n(6)	n(6)	0	0	n(6)	332	0
Pennsylvania	24,078	0	0	12,525	36,603	69,686	52.5
South Dakota	0	0	757	0	757	2,031	37.0
Tennessee	939	0	0	0	939	2,606	36.0
Texas	n(6)	0	6,870	0	6,870	12,918	53.2
Utah	9,155	150	0	0	9,305	32,070	29.0
Virginia	3,561	0	0	125	3,686	9,817	37.3
Washington	312	1,188	0	0	1,500	6,183	24.3
West Virginia	68,023	0	0	0	68,023	101,186	67.3
Wyoming	3,975	25,937	n(3)	0	29,912	120,684	24.8
Other States	n(6)	n(6)	46	0	46	4,721	1.0
Total	261,510	69,080	50,781	12,735	394,106	1,556,840	25.3

71 n1 Figures are reserves in ground, about half of which may be considered recoverable. Includes all beds under less than 1,000 ft of overburden and over 28-in in bed thickness for bituminous and anthracite and 5 ft or more for subbituminous and lignite.

71 n2 Small reserves of lignite in beds less than 5 ft thick.

71 n3 Small reserves of lignite included with subbituminous reserved.

71 n4 Small reserves of anthracite in the Bering River field believed to be too badly crushed and folded to be economically recoverable.

71 n5 Negligible reserves with overburden less than 1,000 ft.

71 n6 Data not available to make estimate.

71 Source: "U.S. Energy Outlook, Coal Availability," National Petroleum Council, 1973.

*3*TABLE 18. - COAL LEASES
ON FEDERAL LANDS

State	Number of leases	Total acreage
Alabama	1	200.00
Alaska	5	2,753.14
California	1	80.00
Colorado	111	120,905.56
Montana	17	36,232.27
New Mexico	29	41,038.12

North Dakota	19	16,275.75
Oklahoma	53	87,013.56
Oregon	3	5,403.18
Utah	194	266,632.49
Washington	2	521.09
Wyoming	89	199,701.04
Total	524	776,756.20

71 Source: U.S. Geological Survey.

72

TABLE 19. - Coal leases on Indian lands

Leases	Type of mining on producing leases
1. Peabody Coal Co.:	
Hopi-Navajo (Arizona):	
(a) Hopi-Navajo, 40,000 acres	
(b) Navajo, 24,858 acres	
Southern Ute (southern Colorado), 19,452 acres	
Northern Cheyenne (southeastern Montana), 6 leases, 16,035 acres	Surface mining.
2. Utah International, Inc.: Navajo (northwestern New Mexico), 31,416	Do.
3. Pittsburg & Midway Coal Mining Co.: Navajo (westtana), 13,237 acres	Do.
4. El Paso Natural Gas Co., and Consolidation Coal Co.: Navajo (northwestern New Mexico), 40,287 acres	
5. Westmoreland Resources: Crow (southeastern Montana), 2 leases, 30,876 acres	Do.
6. American Metals Climax: Crow (southeastern Montana), 14,237 acres	
7. Shell Oil Co.: Crow (southeastern Montana), 30,248 acres	

72 Source: Bureau of Indian Affairs.

Issues

72 MINERAL COVERAGE

72 Legislation introduced in the 93rd Congress and referred to the Interior and Insular Affairs Committee included bills covering (1) only surface mining for coal, (2) surface coal mining and the surface effects of underground coal mines, and (3) surface mining for all minerals including the surface effects of underground mines.

72 The case for controlling the environmental impacts from surface coal mining can be readily made from the experience of strip mining in the Appalachian and Mid-West coal fields. The potential for irreparable environmental damage in the West clearly exists since it is not now known what

the long-term effects of area mining will be and whether successful revegetation can be achieved.

72 Moreover, the necessity to include regulation of the surface effects of underground coal mining has been highlighted by the occurrence of such disasters as the Aberfam mine waste landslide in England in the early 1960's and the collapse of a mining waste pile impoundment at Buffalo Creek, West Virginia, in 1972. Other hazards to the environment and human health and safety associated with underground mining include: surface subsidence and the spontaneous combustion of and long-term land and air pollution resulting from the disposition of mining wastes. In addition, the adequate control of surface mining environmental impacts in areas with an extensive mining history may require the concomitant regulation of the surface effects of underground mining because actual operations often combine surface and underground mines either on a contemporary or sequential basis.

72 Surface mining of minerals other than coal also presents environmental issues. The Committee found however, that the numerous distinctions between the mining technologies and associated environmental problems of coal surface mining as opposed to surface mining of such minerals as copper, iron and molybdenum militated against inclusion of all minerals in a single bill. The Committee however, did adopt a separate title which is applicable to such minerals. Title VI discussed elsewhere, addresses the serious problem of the development of mining sites in residential or urban areas or other locations that are inappropriate from a rational land use planning viewpoint.

73 FLEXIBILITY

73 Flexibility is a necessary element in a rational program of surface mining regulation. While performance standards should be cast in terms of general applicability, the Committee recognizes that land use considerations may justify a variance from the general standard or that a variable standard should be implemented in recognition of the distinctions in climate, terrain, and other physical features. While the bill allows variances or exceptions to the general standards, care has been taken to ensure that such exceptions have not been so broadly drafted that the exception could become the rule.

73 The bill is built upon the Committee's finding that in the vast majority of cases, certain reclamation goals must be achieved if the term "reclamation" is to have any real meaning. Nevertheless, the Committee has approved

exceptions to these requirements to achieve flexibility and avoid arbitrary constraints. For example, the elimination of highways, return of the land to approximate original contour, establishment of viable vegetative cover and the prohibition of dumping spoil material on mountain slopes are among the standards critical to the elimination of the worst effects of coal surface mining and yet these standards are either subject to exception, framed in variable terms, or both. Rather than weakening the effectiveness of these standards, such treatment is viewed by the Committee as justified and desirable. Workable Federal requirements must be appropriate to the mining setting and such standards should not preclude practices which are beneficial from a planning viewpoint.

73 Another element of flexibility is the avoidance of excessive detail in the requirements of the Federal performance standards. The Committee is aware, however, of the history of the development of State laws on the subject of regulation of coal surface mining. This history presents a pattern of increasingly detailed legislation and such detail is often traceable to regulations which have failed to provide full implementation of the more general performance standards of the legislation itself. The Committee believes that it has struck a balance between legislation which merely frames performance standards in terms of general objectives and standards which are cast in terms more detailed than those generally found in regulatory legislation. In choosing a middle path, the Committee is mindful of the past failures on the State level and thus bases its approval of H.R. 11500 on the expectation that regulations promulgated under the Act will fully implement the environmental performance standards. Obviously, the mere reproduction of the statutory environmental performance standards in the regulations would be inadequate.

73 STATE AND FEDERAL LAND PROGRAMS

73 Every State which has, or contemplates having, coal surface mining operations is provided with the opportunity to prepare a State program for the regulation of surface mining within its borders. Within twenty-four months after enactment of this Act, each such State may submit its State program to the Secretary of Interior for his approval, which must substantiate the existence of appropriate State laws, adequate funding, qualified personnel, and a permit system for surface mining and reclamation operations. The Secretary shall approve the State program after he has held at least one public hearing within the State, and after he has received the written concurrence of the Administrator of the Environmental Protection Agency (whose views he must publicly disclose along with those of the Secretary of Agriculture and of certain other Federal agencies) and if he has found that the State has the necessary legal authority and qualified personnel to enforce the Federal environmental protection standards.

74 Within six months after submission of the State program, the Secretary of Interior must either approve or disapprove it. In case of disapproval, the State may resubmit its program within sixty days, provided the resubmission takes place within thirty months after the enactment of this Act. The Secretary has another sixty days to approve or disapprove the resubmitted State program.

74 A Federal program is to be implemented within a State only where the State fails to submit, or the submittal or resubmittal has failed to be approved by the Secretary, or where an approved State program is not enforced or implemented by the State regulatory agency. The Secretary is required to receive a proposed State program even after the Federal program has been established and when received must render his decision within six months. There is no limit placed on the number of times a State may resubmit its State plan under these circumstances.

74 In any event, within thirty-two months after enactment of this Act, either an approved State program or a Federal program must be established, and not later than thirty-six months after enactment of this Act every operator must have a permit issued under the State program or under the Federal program which is in full compliance with all the provisions of the Act. Prior to the issuance of such a permit, as discussed in another portion of this report, permits must be in compliance with the interim performance standards.

74 This bill prohibits all surface coal mining on lands in the National Park System, the National Wilderness Preservation System, the National Wildlife Refuge System, the national forests (exclusive of National Grasslands), or the Wild and Scenic Rivers System. On all other Federal lands, the Secretary is to prepare and implement a Federal lands program bringing all Federal mineral leases, contracts and permits into conformity with all requirements of the Act. Within ninety days after enactment of this Act, all existing surface coal mining operations on Federal lands are to conform with interim environmental protection standards, and within eighteen months after enactment of this Act, all requirements of the Act must be incorporated into the terms and conditions of every Federal mineral lease, permit, or contract issued by the Secretary. Rules and regulations covering the preparation and submission of State programs, development and implementation of Federal programs, and the permanent regulatory procedure based on the provisions of Title II must be promulgated by the Secretary within six months after enactment of this Act.

75 The Secretary may enter into joint Federal-State programs regarding Federal lands where unusual circumstances such as checkerboard ownership patterns exist, but in no case is a State law to be pre-empted by a less stringent Federal requirement. The bill provides for the continuance of existing coal surface mining operations on Federal lands. However, such operations must be in compliance with the interim environmental protection standards. "Existing operations" are defined as including those where, although actual mining may not have started, substantial legal and financial commitments have been made prior to September 1, 1973.

75 The bill addresses itself to the needs of coal consumers, in particular electric utilities which may be hard-pressed (under the twin constraints of oil shortage and Federal air quality standards) to find adequate coal supplies. To make sure that Federally-owned coal is available to all classes of people on an equitable basis, the Act authorizes the Secretary to require that permittees, lessees and contractors as part of their permit application give assurances that Federal antitrust laws will be complied with.

75 Assistance to the States in developing, administering and enforcing their State programs has been provided on a matching basis (80 percent the first year, 60 percent the second and 40 percent for the third and fourth years), and a wide range of other forms of assistance relating to State programs on a cooperative basis will also be available from the Secretary and from other Federal agencies. Research and demonstration projects may be carried out by the States and their political subdivisions under grants from the Secretary. Annual appropriations beginning at \$10 million for the fiscal year ending June 30, 1975, and increasing to \$20 million for the next two years and \$30 million for each fiscal year thereafter are to be available to the Secretary for these and other administrative purposes.

75 STATE MINING AND MINERAL RESEARCH INSTITUTES

75 In keeping with the decision that the Federal role should be one of support and encouragement for ongoing State programs, and in view of the advisability of building on already existing institutions in order to foster the required growth of research and training in minerals engineering fields, the Committee has provided for support to the States, on a matching basis to meet this great need.

75 Grants are to be allotted by the Secretary not only to qualified public

colleges or universities for generalized research and training, but grants are also authorized to institutes for particular research and demonstration projects of industry-wide application, and thirdly, to any agencies, institutes, firms or individuals to undertake research into any aspects of mining and mineral resources problems related to a mission of the Department of the Interior not otherwise being studied.

75 A basic grant of \$2 00,000 for the fiscal year 1975, would be limited to one qualified public college or university in a State conducting research and education in minerals engineering fields. The grant in the second year would be increased to \$300,000 in fiscal year 1976 and to \$4 00,000 for each fiscal year thereafter for five years. An Advisory Committee on Mining and Minerals Resources Research consisting of the heads of various Federal agencies and four knowledgeable laymen, is to be organized by the Secretary for the purpose of determining the eligibility of applicant colleges and universities and to advise the Secretary on other aspects of the program.

76 A qualified public college or university is one which has a "school, division or department conducting a program of substantial instruction and research in mining or minerals extraction or beneficiation engineering", for a period of at least two years employing at least five full-time faculty members for such length of time. In States where more than one college or university is eligible, the Governor is to make the designation. Where a State has no public college or university, the Advisory Committee is authorized to allocate that State's allotment to one private college or university which it deems to be eligible.

76 The institutes will conduct research in mining and mineral resources and will train mineral engineers and scientists. Research may include "exploration; extraction; processing; development; production of mineral resources; mining and mineral technology; supply and demand for minerals; the economic, legal and social engineering, recreational, biological, geographic, ecological, and other aspects of mining, mineral resources and mineral reclamation."

76 Funds for specific mineral research and demonstration projects at the institutes are to be drawn from annual appropriations of \$5 million beginning in fiscal 1975, and continuing for six years thereafter. These monies are to be available by application to the Secretary.

76 A third category of funding of \$10 million in fiscal year 1975 and increasing by \$2 million each fiscal year thereafter for six years, provides the Secretary funding for grants to institutions and individuals, including the institutes established under the Act, for the purpose of undertaking research into any aspect of mining and mineral resources problems related to the mission of the Department of Interior.

76 CITIZEN PARTICIPATION

76 The success or failure of a national coal surface mining regulation program will depend, to a significant extent, on the role played by citizens in the regulatory process. The State or Department of Interior can employ only so many inspectors, only a limited number of inspections can be made on a regular basis and only a limited amount of information can be required in a permit or bond release application or elicited at a hearing. Moreover, a number of decisions to be made by the regulatory authority in the designation and variance processes under the Act are contingent on the outcome of land use issues which require an analysis of various local and regional considerations. While citizen participation is not, and cannot be, a substitute for governmental authority, citizen involvement in all phases of the regulatory scheme will help insure that the decisions and actions of the regulatory authority are grounded upon complete and full information. In addition, providing citizen access to administrative appellate procedures and the courts is a practical and legitimate method of assuring the regulatory authority's compliance with the requirements of the Act.

77 Thus in imposing several provisions which contemplate active citizen involvement, the Committee is carrying out its conviction that the participation of private citizens is a vital factor in the regulatory program as established by the Act.

77 H.R. 11500's major citizen participation provisions are as follows:

77 REGULATORY PROGRAMS

77 (a) Regulations - 180 days following enactment, the Secretary is to promulgate regulations for the Act's permanent program after holding at least one public hearing. (Sec. 202)

77 (b) Approval of State plan - Prior to the approval or disapproval of a State program, or approval or disapproval of a State's resubmitted program, the Secretary must hold at least one public hearing in the State. (Sections 203 and

217)

77 PERMIT PROCESS

77 (a) Permit Approval or Denial - Prior to submitting an application for a mining permit, the applicant must give notice of intention to submit such application through newspaper advertisements and a hearing on the application shall be granted upon the filing of objections to the application. (Section 214)

77 (b) Exceptions from general environmental performance standards - H.R. 11500 provides for exceptions to specific environmental performance standings relating to spoil placement, backfiling, and other specific standards. Notice and a public hearing are required before such exceptions may be granted. (Sections 201 and 211) Public notice and opportunity for a hearing is also required prior to granting of suspensions of certain reclamation requirements due to the unavailability of equipment necessary to comply with such requirements. (Section 201)

77 (c) Bond Release - After notice through newspaper advertisement, an operator may apply for a full or partial release of his permit bond. Upon the filing of objections to such release by a citizen, the regulatory authority must hold a public hearing on the matter. (Section 217)

77 ENFORCEMENT

77 (a) During the interim program, the Secretary is directed to implement a program of Federal inspections to enforce the Federal interim standards. Upon the receipt of any information which may be furnished by any person, and which gives rise to a reasonable belief that the interim standards are being violated, the Secretary is to order the immediate inspection of the alleged offending operation. The person who provides the Secretary with the information is to be notified as to the time of the inspection and may accompany the inspector during the inspection. (Section 201(f))

77 (b) A provision similar to that described immediately above is operative after the interim period. (Section 220)

77 The Committee is aware of the concern of some that a relatively open administrative and judicial procedure will allow the participation of individuals with little or no real interest in the issues involved in such proceedings. On the other hand, limiting access to those who have purely economic or proprietary interests would certainly frustrate the Committee's desire that surface coal mining, planning and regulatory processes be responsive

to local citizens and other individuals or groups who have a legitimate stake in the outcome of these governmental actions. The history of coal surface mining is replete with examples of significant environmental and social costs being borne by those who neither profited from the mining activities nor had full access to the institutions of government to correct this unfair distribution of the impact of such mining.

78 The Committee bill adopts a broad test of standing to participate in such critical decisions as the issuance of a permit, designation of areas unsuitable for surface coal mining and bond release. It is the intent of the Committee that the phrases "any person with a valid legal interest" or "any person having a right which is or may be adversely affected" shall be construed to be coterminous with the broadest standing requirements enunciated by the United States Supreme Court. The Committee is of the belief that the implementation of these principles shall suffice to protect the administrative processes of the Act from possible abuse by individuals whose interest in the questions at issue do not justify granting them the right to invoke the Act's procedures.

78 The bill also provides for the establishment of the rights of citizens to bring an action against any person, including the appropriate regulatory authority, for the enforcement of the Act as well as actions for damages resulting from the failure of any operator to comply with the provisions of the Act.

ELEMENTS OF MINE REGULATION PROGRAM

78 INTERIM PROGRAM

78 The implementation of a national program of coal surface mining regulation requires procedures for the orderly phase in of new standards and redefined agency responsibilities. The Committee was concerned that the bill give the States ample time to develop a program that will meet the Act's requirements and that will not threaten the continuous supply of coal by the sudden imposition of new performance criteria. On the other hand, the Committee found unacceptable the alternative of allowing mining to continue as it is currently practiced in many states during a lengthy period to the full implementation of the Act. Thus the Interim Program of Section 201 was designed in accordance with the following principles:

78 (1) The legislation should require the substantial curtailment of the most environmentally damaging aspects of surface mining relatively soon after the enactment date;

78 (2) Requirements imposed upon the States during the interim period should

be capable of ready implementation by the States under present systems or regulations;

78 (3) The scheme of the interim period should provide a smooth transition into the implementation of the permanent program;

78 (4) The Interim Program should reflect the basic principles of the legislation (State lead, citizen participation, minimum Federal environmental standards, and concurrent Federal inspections to back up States).

79 Two environmental performance standards which are basic to the elimination of the most serious environmental degradation caused by coal surface mining are the prohibition of placement of materials downslope from the bench in mountain mining areas and the requirements that the mine site be regarded to the approximate original contour. These requirements are included in the interim program as well as other standards which are similar to requirements currently enforced in most States (adequate revegetation, segregation and replacement of top soil or other suitable growing medium, the protection of water resources and the control of surface disposal of mine wastes).

79 Although the spoil placement and regrading standards are of utmost importance, in recognition of the problems encountered in a phase in of new regulations, the Committee adopted certain limited exceptions to these requirements. These exceptions relate to the granting of a variance on the basis of land use considerations and the temporary exemption to the regrading standards if the operator can demonstrate that the necessary equipment is not available. It should be emphasized that the operator is required to meet the regrading standards on excepted lands when the needed equipment becomes available at a later date. In any event, the Committee is of the belief that the interim environmental standards are so framed that operators will be able to come into compliance early in the interim period and thus significant loss of production will be avoided.

79 The particular issue of an operator's ability to modify mining methods on steep slopes was fully considered by the Committee and is discussed elsewhere in this report.

79 Along with performance criteria structured to avoid the possible harsh results of the immediate imposition of new standards, the Committee was careful to establish an interim procedure which would allow the orderly phase in of the new program without an interruption of the delivery of coal. Under the terms of Section 201 and related sections, an operator may continue to mine coal after the date of enactment provided that he is in compliance with the interim standards by the 120th day after enactment. New operations may also commence

during the interim period provided that the operator obtain a permit from the state agency as would be required prior to enactment except that after enactment

all new permits must conform to the interim standards. In order to avoid a hiatus at the end of the interim period the operator in expectation of mining after the interim period shall submit an application for a permit within eighteen months after enactment. Thus the State is given ample time to act upon such application prior to the point when a permit in full compliance is required.

79 Section 201(g) provides that any operator operating pursuant to a valid permit during the interim, irrespective of when the permit was issued and who is awaiting administrative action on his permit application filed in conformance with the full program, may continue operating beyond the expiration of his permit through to the point when the State program is approved or disapproved six months thereafter. The Committee recognizes that delays may be encountered in the permit approval process or in the procedures for approval of a State plan, the implementation of a Federal program for a State or the implementation of a Federal program for Federal lands. It is the purpose of Section 201(g) to avoid any unforeseen procedural infirmities and it is certainly the Committee's intent that the interim procedures be so construed to avoid any interpretation of procedural technicality which could result in the shutting down of ongoing operations.

80 The Committee structured the interim program on the premise that most existing operations are currently subject to State regulatory programs and thus a phase in procedure which relies, in part, upon existence of state agencies is appropriate. Regulatory programs presently exist in all but three states in which coal surface mining is conducted. H.R. 11500 sets no standards for the State agency during the interim period other than the requirement that any State program include the interim standards in permits as set forth in Section 201 and that any inspection comply with the procedures and enforce the standards of the interim program. Thus States which do not have a regulatory agency established by statute may still participate in the interim program through administrative action of a suitable agency. Certification of this fact by the Governor of a State to the Secretary is sufficient to qualify that State for the funding provided in H.R. 11500 during the interim period.

80 While State regulatory mechanisms remain operative and constitute the chief element of the interim program, H.R. 11500 does provide for backup federal inspections during this period. Along with federal inspections triggered by information from any citizen (see section on federal enforcement in this

report), H.R. 11500 requires federal inspection if State inspection reports indicate the occurrence of two consecutive violations of Federal standards as well as random federal inspections of mine sites. Thus the State machinery is preserved but the integrity of the Federal standards is assured through Federal oversight.

80 The Secretary is given considerable latitude in directing the Federal inspectors and as manpower limitations may be a factor, it is intended that the federal inspection activities be focused upon those areas where there may be the greatest difficulty in meeting the federal standards. This does not necessarily imply that the intensity of federal inspection should be in direct proportion to the number or size of mines, but rather that emphasis should be guided by such factors as the environmental hazards involved, the difficulty of the industry in meeting the interim standards and the difficulties which may be encountered by certain States in administering and enforcing such standards.

80 Section 201 also provides funds to the Secretary to fully reimburse the States for all costs involved in enforcing the interim standards through the administration and inspection system. In order to provide such resources on a timely basis to the Secretary, H.R. 11500 provides that funds authorized for the interim inspection program reimbursement (and the other activities identified in Section 601(a)) shall be available for contract upon enactment. Thus the Secretary of Interior is granted authority to incur obligations and to enter into contracts under such authorizations. His action in so doing shall be deemed a contractual obligation of the United States for the payment of the cost thereof, and such funds shall be deemed to have been expended when so obligated.

81 PERMIT SYSTEM

81 In any regulatory system, the determination that reclamation can or cannot be accomplished in an area proposed to be mined depends initially upon the judgment of the regulatory agency. Experience has shown that without a thorough and comprehensive data base presented with the permit application, and absent analysis and review both by the agency and by other affected parties based upon adequate data, this judgment is apt to reflect the economic interest in expanding a State's mining industry. Valid environmental factors tend to receive short shrift. To meet this problem the bill delineates in detail the type of information required in permit applications and the criteria for assessing the merits of the application.

81 Of fundamental importance in the permit application is the pattern of

ownership. This bill provides protection for the surface owner which is discussed elsewhere in this report.

81 The physical parameters of the mining site and its environs must be clearly set forth in the application, so as to yield an accurate picture of the geological, hydrologic, surficial, developmental, ecological and general land use features of the landscape which will be affected directly or indirectly by the operator. Due to the movement of water through the environment, the hydrologic aspects of the application requirements will have the most profound implications for off-site residents and the community as a whole. Both the quantity and the quality of water supplies available to downstream users have been destroyed by the abysmal reclamation practices of coal operators in areas where the State laws were insufficient or not enforced. Except for information derived from test borings relating to quantitative and qualitative analysis of the coal seam, all other such information shall be open to public scrutiny, especially that pertaining to toxicity.

81 The operator must show, through the vehicle of a mining and reclamation plan, just how he intends to protect surface and ground water, (both on- and off-site) and the rights of water users.

81 As part of a detailed description of measures to be taken in conformity with the Act to prevent hazards to public health and safety, a certificate of insurance covering on-site and off-site damage and personal injury is required. The reclamation plan is a blueprint for action, revealing the degree of practicality of the operator's commitment. Post-mining land uses are to be set forth in detail along with necessary public or private support activities, so that the transition from one mode of pre-mining land use to a possibly different mode of post-mining land use is shown to be in keeping with the Act and also feasible. The plan must include a time schedule indicating how each step in the procedure is to be carried out.

81 Each application will be available for public review at an appropriate place. The applicant must supply proof of newspaper notice that acquaints local residents with the location of the operation and where the application may be examined. This requirement responds to the Committee's awareness of the severe difficulty which local people frequently experience in attempting to investigate the nature of impending surface mine operations.

81 Permit approval or denial must be based on a written finding by the regulatory authority that the mining application affirmatively demonstrates that

the requirements of the Act and rules and regulations of the Secretary will be met; that reclamation of the land affected will be achieved; and that post mining land use conforms with certain criteria. The agency must also find that the reclamation and mining plan is practicable.

82 In its review of the application, the regulatory authority must determine specifically that the affected land does not lie within an area either under study or under designation as unsuitable for mining, nor situated within 300 feet of occupied dwellings, public buildings, nor within 100 feet of public roads. Moreover, the regulatory authority must find that impacts to the hydrologic balance will be minimal; that the area is contiguous and more than a mile from parks and historic sites and totally outside of various land and river systems which are Federally protected, including national forests; and finally that the applicant has not forfeited a bond under the Act for the past five years, nor is any operation under his ownership or control currently in violation of the Act or of other Federal air or water protection statutes.

82 Permits are to be issued for a term of no more than five years, except for permits for steep slope surface coal mining, which shall be for two years (by definition, a steep slope is one which exceeds 20 degrees from the horizontal). In the latter instance, the bill recognizes the need for more careful handling of spoil by the operator, under the requirements of the performance standards, and therefore provides a shorter period for mandatory review of the permit and of the operator's compliance with Federal requirements.

82 Any valid permit issued pursuant to this Act shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit and upon written finding by the regulatory authority that terms of the existing permit are being met; that the operation is in compliance with the environmental protection standards and with the approved State program; that renewal will not jeopardize the operator's continuing responsibility to satisfy any remaining reclamation responsibility; and that the performance bond will continue in full force and effect. However, any application for revision of a valid permit, or any portion of a renewal application which concerns land areas beyond the boundaries authorized in the existing permit shall be treated as a new application, subject to all the provisions of the Act pertaining thereto.

82 A successor in interest to the permittee is granted the right to continue the coal surface mining operation while his application for a permit is under consideration by the regulatory authority, so long as the operation is in compliance with the permittee's mining and reclamation plan and so long as the

permittee's performance bond continues in full force and effect. The bill also allows an operator whose application is awaiting administrative action during the interim period before approval or disapproval of a State program, to continue to operate his surface mine beyond the date of expiration of his permit subject to the terms and conditions of his permit and until the appropriate regulatory authority has acted or until six months after date of approval or disapproval of a State program.

82 The interim performance standards apply to all new permits issued by State agencies from date of enactment. After 120 days from date of enactment all operations existing on date of enactment must comply with these standards, during which time the agency must have amended permits accordingly. Within 18 months after enactment, any operator who expects to surface mine following the time of approval of a State program must submit an application which is in full compliance with the Act and with the entire range of permanent performance standards, for land which he expects to mine under the approved State program. If he is to mine on steep slopes, the permit conditions must include, in addition to the general performance standards, standards specific to steep slope mining.

83 On Federal lands, within 90 days of enactment the operator's lease, contract or permit terms must include interim performance standards, and within a period of 18 months from date of enactment must include all performance standards and other requirements of the Act.

83 Since the Act covers surface impacts of underground coal mining concurrently with those of surface mining, underground coal operators will be bound by permit requirements of the Act. They are required to apply for permits, the terms of which include standards relating to minimizing surface subsidence, sealing portals and openings, disposing of mine wastes, constructing impoundments for mine wastes, revegetating disturbed areas, preventing off-site damages, and discharge of waterborne pollutants. Ameliorating these surface environmental effects is the responsibility of the operator so that the blight of areas dominated by underground coal mining can also be ended.

83 The Act does not require a permit for mineral exploration. Permits issued pursuant to an approved Indian lands program are to be valid but reviewable under a Federal lands program. Where there is no approved Indian lands program, however, an operator's permit for Indian lands must comply with the same terms as for Federal lands.

83 LAND USE CONSIDERATIONS

83 With few exceptions, surface coal mining operations should constitute a temporary use of the land. This concept is reflected in the permit approval

process as well as the environmental protection standards established by H.R. 11500. Both are premised on the goals of the legislation that land affected by surface mining be returned to a form and productivity at least equal to that of its pre-mining condition, and that such condition will not contribute to environmental deterioration and is consistent with the surrounding landscape.

83 Obviously, the principal performance standards (regarding to approximate original contour, avoiding reckless spoil placement, revegetation and other) have the same goal - restoration. Moreover, the permit process requires the submission and approval of post-mining land use and thus is designed to elicit an evaluation of the operator's plan and ability to return the land to a useful condition. The environmental and social stresses engendered by surface mining, discussed elsewhere in this report, are well documented. It is this combination of performance criteria and procedural requirements (coupled with the designation process discussed below) to be established by H.R. 11500 that will assure the greatest possible minimization of the undesirable consequences of surface mining.

84 On the other hand, surface mining also presents possible land planning benefits as such mining involves the opportunity to reshape the land surface to a form and condition more suitable to man's uses. In such instances, the overburden and spoil become a resource to achieve desired configurations rather than a waste material to be disposed of or handled by the most economic means. The performance standards recognize that return to approximate pre-mining conditions may not always be the most desirable goal of reclamation and thus appropriate exceptions to the general requirements are provided. As the realization of such alternative post-mining land uses as industrial, commercial or residential development will often depend on the commitments or assurances that necessary services will be available, evidence of such availability prior to mining is a necessary part of the permit approval process.

84 The process for designation of land areas as unsuitable for surface coal mining is also premised on the notion that successful management of surface mining depends, in large part, on the application of rational planning principles. While coal surface mining may be an important and productive use of land, it also involves certain hazards and is but one of many alternative land uses. In some circumstances, therefore, coal surface mining should give way to competing uses of higher benefit. Section 206 establishes a program by which such decisions can be made. Under this section, to become eligible to assume

regulatory responsibility a State must establish a process designed to provide the technical data needed to enable the regulatory authority to make objective decisions as to which, if any, land areas in a State are unsuitable for all or certain types of surface mining.

84 The Committee wishes to emphasize that this section does not require the designation of areas as unsuitable for surface mining other than where it is demonstrated that reclamation of an area is not physically or economically feasible under the standards of the Act. The other criteria for designation, which relate to general planning and environmental concerns, are discretionary and thus the State could determine that no lands should be designated thereunder, or, on the other hand, could prohibit all or some types of surface mining entirely. In addition to the discretionary designation criteria, the designation process includes other elements of flexibility. For example, the designation of unsuitability will not necessarily result in a prohibition of mining. The designation can merely limit the specific types of mining and thus the coal resource may still be extracted by a mining technology which would protect the values upon which the designation is premised. In addition, after an area is designated, coal development is not totally precluded as exploration for coal may continue. Moreover, any interested person may petition for determination of a designation.

84 It should be noted that the designation process is structured to be applied on an area basis, rather than a site by site determination which presents issues more appropriately addressed in the permit application process. The Committee believes that the area by area approach of Section 206 thus serves the industry since such a process may, in advance of application, identify lands which are either not open to surface mining or where surface mining is subject to restrictions.

84 Although the designation process will serve to limit mining where such activity is inconsistent with rational planning, in the opinion of the Committee, the decision to bar surface mining in certain circumstances is better made by Congress itself. Thus Section 209 provides that permit applications must be denied for operations located within certain publicly owned lands such as National Parks, national forests, wilderness areas, and the corridors of wild and scenic rivers.

85 Because of the evolution of the surface coal mining industry, reclamation and environmental protection actions are often viewed as necessary evils to be tacked on to the end of a process that has been developed for the purpose of producing coal at the least possible cost. Experience with sound reduction practices, however, indicates that the best approach to mining and reclamation involves the combining of both of these activities in one process. Thus there is ample evidence to reject the recent assertion by one industry group that "the reclamation and mining processes cannot be combined." In fact, the opposite is true.

85 The authors of one recent engineering study concerned with the design of new and more environmentally acceptable mining systems observed in reviewing current practices that "preproduction mine planning and design is not a prerequisite to profitable mining" and thus for the surface mining industry in the Eastern coal fields, "the mining methods employed today remain essentially unchanged since their inception, even though equipment used has changed over the years (e.g., the front-end loader has replaced the power shovel for stripping and coal loading)". In addition, "because reclamation consists of a series of distinct post-mining activities - appended, as it were, to existing mining methods - the potential for significant further reduction in the environmental impacts of surface mining is severely limited." (Mathematica, page 155-56.)

85 A basic tenet underlying this legislation is the principle that the environmental protection and reclamation, at a minimum meeting the standards in this Act, are a co-equal objective with that of producing coal. The continued selection of mining techniques by engineers whose primary objectives are the most efficient removal of the overburden and transport of the coal is not sufficient to be fully responsive to the purposes and intent of the Act. Moreover, if the mine design objectives include the environmental performance standards as elements to be thoroughly integrated in the overall mining process instead of treated as separate rituals to be performed merely because they are required, then it is quite probable that accomplishment of the environmental practices will become cost-effective.

85 The following is a discussion of the key environmental performance standards of H.R. 11500.

85 RETURN TO APPROXIMATE ORIGINAL CONTOUR

85 H.R. 11500 requires that the mine site be regarded to the approximate original contour unless a variance, consistent with the terms of legislation,

from the standard is necessary to achieve an alternative post-mining land use. Moreover, the regrading standard of H.R. 11500 was formulated to cover all types of mining operations under all conditions. Thus it is, of necessity, a flexible standard which imposes different requirements in different mining circumstances. The bill's critics have alleged, to the contrary, that the term "approximate original contour" imposes an overly rigid and impractical requirement. It should be emphasized, therefore, that a reasonable interpretation of H.R. 11500 cannot justify the assertion that the bill requires either the impossible task of restoration of the original contour or the useless act of digging a new pit to obtain fill material to achieve full restoration of the original topography.

86 As defined in the bill, approximate original contour means a surface configuration which closely resembles the configuration of the land prior to mining and blends into the drainage pattern of the surrounding terrain. The term contour is defined by the dictionary as "the outline of a figure or body, with a line or lines representing such an outline." The contour of ground is similarly defined as the outline of the surface of the ground with respect to its undulations. These two definitions primarily refer to the shape or configuration of a surface. In addition, with respect to mapping, contour takes on an additional meaning; the imaginary line connecting the points on the land surface that have the same elevation and the line representing such line on a map or chart. In order to understand this concept it is necessary to distinguish between the dimensions of elevation and configuration.

86 CONTOUR MINING

86 Contour mining operations operate on a portion of the local relief, a band on the mountainside or the top portion of the hill. A characteristic of this mining is that always some undisturbed land, either above or below, or both above and below the mining site remains. Operations do not cover the landscape on a contiguous tract basis.

86 In virtually all cases of contour mountain mining, sufficient spoil by volume is created to return the mine site to approximate original contour in terms of shape or configuration as well as elevation. The swell property of the materials removed (overburden) from the mine site during mining assures this condition with present stripping ratios. The geometry of the contour mountain mine as shown in figure 1 bears this out. Original points on the landscape, both above and below the mine, remain, becoming reference points for regarding.

86 A variation in contour mining which results in mountain top removal leaves no remaining highwall and thus no reference point on the original landscape above the operation. In this instance, regrading to approximate

original contour takes on the principal property of shape or configuration, not elevation. The rebuilding of an escarpment removed by a mountain top operation is impossible, regardless of the amount of spoil produced. Regrading to approximate original contour, blending into surrounding land forms and uses, for such an operation in the Appalachian coal fields is shown in figure 2.

86 A major criticism of this standard under these conditions is that the requirement of regrading to "approximate original contour" forces mine operators to use a particular mining technique widely used in Pennsylvania known as the modified block cut. This is not the case. The Committee is prescribing performance standards to achieve a certain degree of reclamation and has no intention of dictating how these standards are achieved. In fact, operators of surface mines in West Virginia and Tennessee are reclaiming to approximate original contour, backfilling all highwalls by methods other than the modified block cut. Indeed, the industry is already practicing methods which can be used to meet the standards of the bill in a number of States and under different conditions.

87 AREA TYPE MINING

87 Area mining, the second basic type of mining addressed in the proposed legislation, is characterized by operations covering relatively large, contiguous tracts of land that are relatively flat or gently rolling. The topography of such an area has low local relief. Although slopes may be relatively steep or near vertical, as in a mesa formation, the local relief is sufficiently small so that the mining destroys or turns over all of the land which makes up the local relief on the tract mined.

87 [See Original]

87 [See Original]

89 In area mining, the ability to reclaim to approximate original contour depends primarily on the quantity of spoil available in relation to the amount of coal removed (the stripping ratio).

89 A profile of a typical area mining operation where the volume of spoil equals or exceeds the volume of coal removed is shown in figure 3. The environmental standard proposed intends that the overburden from the first cut will be blended into the undisturbed landscape and mine site and the final cut is backfilled with spoil from several previous cuts as well as from the top of the highwall if desired. In such instances, the actual elevation of the reclaimed land might be higher than the premined lands due to the swell of spoil material.

89 Two other conditions arise, however, in the area mining situation. The first, however, occurs where the spoil is sufficient to return the mined area to approximate original contour but not to the approximate original elevation. The second condition arises when the stripping ratio is such that there is not sufficient spoil to achieve either element of approximate original contour (elevation or configuration).

89 The first condition is illustrated in figure 4. The original topography is of low local relief (relatively flat). The average overburden is 50 feet thick and the average thickness of the coal seam is 100 feet. Conservatively assuming a 20% expansion of the overburden, the problem is to grade a pit averaging 150 feet deep by a length and breadth of the mining operation with 60 feet of fill material so that it blends into the surrounding environment. This can be accomplished by regarding the final mining site into a saucerlike depression which resembles the original landscape. Spoil material would be graded upward past the top of the coal seam on each of the highwalls while the overburden on top of the highwalls would be pushed down and blended into the slope between the original elevation and the depressed topography of the regraded spoil at the bottom of the mining site.

89 H.R. 11500 provides special treatment for the second special condition, illustrated in figure 5, presented in a few surface coal mines that are similar in nature to open pit hardrock mining. Such mines are described in the approximate original contour provision as thick seam operations carried out in the same location over a substantial period of time, where such an operation follows the coal deposit vertically (i.e., the operation moves down through the deposit as is the case in the area mining situation) and where the overburden removed is insufficient to return to either the approximate original configuration or elevation. In such cases the regrading standard requires that the overburden be used to cover the floor of the mining operation, to provide some drainage control and to establish a slope of at least the angle of repose against the highwalls completely covering the coal seam and extending to the original contour. An angle of repose fill against the highwall provides a surface which may be more stable than the highwall with respect to weather. The covered coal seam is protected in part against accidental combustion, or other problems if the coal seam is an aquifer. In addition, the slope of natural repose has an added safety value, since it does not present a hazard to either wildlife or human life, as would a vertical face.

89 [See Original]

89 [See Original]

89 [See Original]

93 REVEGETATION

93 Revegetation of mined areas is an essential aspect of the reclamation process since it assures: (1) the surface stability and erosion control of the regraded areas, (2) appropriate water retention desirable on the mine site, (3) the long-range productivity of the land, (4) the diversity of species capable of sustaining pre-mining land uses, and (5) aesthetic value.

93 Elements critical to successful revegetation include climate, stability of regraded areas, appropriate drainage and moisture availability, the absence of toxic materials on the surface or in potential root zone levels, and appropriate surface soil manipulation and soil conditioning.

93 In recognition of such factors, H.R. 11500 sets forth the following criteria: (1) the operator must establish a vegetative cover consisting of diverse species native to the area or introduced species where appropriate capable of regeneration; (2) the operator will be responsible for the survival of the revegetation for a period which varies with the annual amount of precipitation of the area, and (3) the reestablished vegetation must be capable of plant succession within the ecological context and time frame particular to the area.

93 The history of revegetation in Eastern and Central U.S. mined areas indicates a high probability of meeting the bill's requirements providing that a minimum of care is taken during the mining and reclamation cycle. In these areas a wide range of revegetation plantings (including grasses, trees, legumes and others) have proven successful. Under many different conditions in these areas, revegetation efforts have resulted in establishing diverse species and regeneration and plant succession has occurred. In some instances, however, revegetation has been attempted through the establishment of ground cover monocultures and it is not at all clear that such methods will result in plant succession within a suitable time frame. Moreover, although volunteer growth may appear on abandoned mine spoil piles in humid areas if the soil is not toxic, the time frame necessary to achieve the desired degree of density - 20 to 30 years - is too long to be considered acceptable.

93 In any event, revegetation of mine sites in arid and semi-arid areas of the country is considerably more problematical than that of the humid central and Eastern coal fields. In fact, the most recent scientific study concerning

the revegetation potential of Western coal mine lands, Rehabilitation Potential of Western Coal Lands, a report of the National Academy of Sciences, emphasizes the relationship between the level of precipitation and the expected time for natural regeneration of plant cover.

93 We believe that those areas receiving 10 inches (250 mm) or more of annual rainfall can usually be rehabilitated provided that evapotranspiration is not excessive, if the lands are properly shaped, and if techniques that have been demonstrated successful in rehabilitating disturbed rangeland are applied. However, we must emphasize that this belief is not based on long-term, extensive, controlled experiments in shaping and revegetating western lands that have been surface mined. Few such studies have been made, and those in process have only a few years' data to report. Nevertheless, much research has been done on revegetating western ranges, disturbed roadways, and other denuded areas in arid lands. We believe that the techniques developed in these studies can and should be adapted to the higher rainfall areas of the West. The drier areas, those receiving less than 10 inches (250 mm) of annual rainfall or with high evapotranspiration rates, pose a more difficult problem. Revegetation of these areas can probably be accomplished only with major, sustained inputs of water, fertilizer, and management. Range seeding experiments have had only limited success in the drier areas. Rehabilitation of the drier sites may occur naturally on a time scale that is unacceptable to society, because it may take decades, or even centuries, for natural succession to reach stable conditions.

94 Rehabilitation of mined lands, however, requires more than achieving a stable growth of plants. If environmental degradation is to be avoided, the plants themselves should be a mixture of species capable of sustaining the former native animals.

94 With the introduction of irrigation techniques, the time period required for reclamation in arid and semi-arid areas decreases considerably but the basic correlation between time and amount of rainfall remains. This is due in large part to the special problem of establishing vegetation which will be able to survive at the natural level of precipitation, including the natural cycles of moisture availability, after the irrigation is removed and the reclamation effort is concluded.

94 The differential time limits for revegetation responsibility of H.R. 11500 is based on the average annual precipitation isopleth demarcating the coal

fields in the arid and semi-arid West from those in the more humid areas of the East and Northwest. Thus the standard of 26 inches became the basic measure used in the bill to distinguish between coal mine regions in arid and semi-arid areas and such regions in humid areas.

94 The Committee recognizes, however, that within arid and semi-arid regions the length of time necessary to reestablish vegetation on mining spoil varies considerably. The time estimates for revegetation set forth in the Academy report for the wettest of the potential mining areas (given the natural vegetation characteristics of the area) in the arid and semi-arid areas of the country ranges from 10 years upward. Thus a 10-year standard of the bill represents a minimum time under the most favorable circumstances. Regulatory authorities may establish longer periods of responsibility suitable to subregional climatic and vegetative zones.

94 The time limit set for revegetation responsibility in the more humid areas (over 26 inches of precipitation) was set at five years. This provides sufficient time for the revegetation to prove establishment and regeneration. For instance, "on the average, four years elapsed - after mining - before mine sites are adequately and totally reclaimed in accordance with Kentucky) regulations. (Mathematica, page I-54).

94 The Committee recognizes that in some areas and under some conditions, intensive agricultural activity such as row crop cultivation are suitable post-mining land uses. In those instances where long-term intensive agricultural activities are approved as a post-mining land use, the period of revegetation responsibility begins at the date of initial planting of the intensive agricultural crop and the period covers the agricultural activity for the respective time period.

95 Some concern has been expressed that lands reclaimed for extensive agricultural use such as grazing or pasture must not be used during the period of reclamation responsibility. The Committee does not intend this at all. For instance, grazing use of such lands during the period of operator responsibility is consistent with the intent, but presumably the type and extent of use would be such that it would not endanger the survival and coverage of the revegetation.

ELEMENTS OF MINE REGULATION PROGRAM

MINING IMPACTS ON HYDROLOGIC BALANCE

95 Surface coal mining operations can have a significant impact on the hydrologic balance of the mined area and also its environs. The hydrologic

balance is the equilibrium established between the ground and surface waters of an area and between the recharge and discharge of water to and from that system.

Some of the measurable indicators of such an equilibrium are: flow patterns of ground water within aquifers; the quantity of surface water as measured by the volume rate and duration of flow in streams; the erosion, transport and deposition of sediment by surface run-off and stream flow; the quality of both ground and surface water including both suspended and dissolved materials; and the interrelationship between ground and surface waters. The hydrologic balance of an area is a complex relationship maintained by a number of factors. The impacts of mining on any one of these factors can trigger changes throughout the system.

95 The total prevention of adverse hydrologic effects from mining is impossible and thus the bill sets attainable standards to protect the hydrologic balance of impacted areas within the limits of feasibility. For most critical areas uncertain fragile hydrologic settings, the bill specifies standards which are imperative to begin to assure that adverse impacts to the hydrologic balance are not irreparable. It is not intended by such minimum standards that these measures will be considered wholly sufficient to meet the objectives of "minimizing disturbance to the prevailing hydrologic balance." It is anticipated that the State regulatory authorities will strengthen such provisions and require whatever additional measures are necessary to meet local conditions.

95 One of the major criticisms directed at the environmental standards pertaining to the hydrologic balance centers on the use of the terms "on and off" the permit area. Concern has been expressed that this means that the hydrologic characteristics of the site prior to mining must be maintained in the actual working mine excavation. Such an interpretation is not justified. Reference to "on-site" refers to the mine's permit areas. Potentially large areas can and have been included in applications for mining. Of course, the actual operating area of the mine is necessarily de-watered. The justifiable concern is how extensive the secondary effects could be - such as a draw-down of groundwater in surrounding areas. The bill requires that the operator will take such measures as are necessary to minimize the disturbance to the hydrologic balance in the surrounding areas. In addition, the operator is to conduct reclamation activities on a continuing basis that assure the impacts are minimized after mining has been completed.

96 The impact of coal mining on water resources has been well-documented. A number of studies provide insight into potential water resource impacts of

mining in arid and semi-arid areas and of effects of mining in humid areas.

96 Five publications cited and the abbreviations used in this text are listed here:

96 Beaver Creek: Influences of Strip Mining on the Hydrologic Environment of Parts of Beaver Creek Basin, Kentucky, 1955-66, U.S. Geological Survey Professional Paper 427-C, Washington, 1970.

96 Tradewater: Effects of Coal Mining on the Water Resources of the Tradewater River Basin, Kentucky, Geological Survey Water Supply Paper 1940, Washington, 1972.

96 Cheyenne: Hydrology of the Upper Cheyenne River Basin, Sediment Sources and Drainage-Basin Characteristics, Geological Survey Water Supply Paper 1531, Washington, 1961.

96 NAS: Rehabilitation Potential of Western Coal Lands, National Academy of Sciences, A Study for the Energy Policy Project, Washington, 1974.

96 Decker: Hydrology of the Decker Coal Mine and Vicinity, Southeastern Montana, Preliminary Report, Montana, Bureau of Mines and Geology, 1974.

96 Past mining operations have a mixed impact on stream flow regimes. In the Appalachian mountain mining areas, conventional contour mining has resulted in greater peak flows, more rapid changes in discharge, reduction in base flows and increased flooding of streams (Beaver Creek, page C-1).

96 Reclaimed spoil areas resulting from area mining in more gently rolling terrain under humid conditions act as deposits which can store and slowly release groundwater. Under such conditions, it has been found that "stream flow is sustained during extended periods of no precipitation . . . owing to drainage from mined areas while streams in non-mined sub-basins cease flowing." (Tradewater, page 60).

96 In arid and semi-arid settings, mining alters drainage patterns which can "result in a decrease in storm run-off volume and loss of recharge to alluvial aquifers in downstream valleys" (NAS, page 68). The unconsolidated materials resulting from strip mining can have similar hydrologic properties to the aggradational features of Western streams, which can result in a loss of water to both the surrounding lands and downstream areas (Cheyenne, page 168).

96 Water quality impacts are readily noticeable and have an extended geographic influence. Mining increases the mineralization of waters and is a

function of the type or chemistry of the strata disturbed, the amount of water available, and the duration of contact with the disturbed material.

96 In Appalachian mountain mining areas, the dissolved solid content of streams has been measured and found to be 12 times greater than that in non-mined areas (for instance a yield of 1,370 tons per square mile compared to 111 tons per square mile). However, flow directly from mine sites has been measured containing dissolved solids concentrations equivalent to a yield of 1400 tons per square mile - a pollution load increase of 126 times that of unmined areas (Beaver Creek, page C-2).

97 Area mines in humid settings can have similar impacts, with stream flows containing 17 times the amount of dissolved solids and flows from non-mined areas. However, particular constituents had increase concentrations of up to 300 times that of non-mined areas (Tradewater, page 54).

97 These increases in chemicals in surface waters provided significant water problems for all types of uses as well as precluding the realization of the full potential of the streams for recreational and wildlife purposes.

97 In some arid and semi-arid areas, one of the possible impacts of surface mining on water quality is an increase in salinity (sodium, bicarbonate, sulfate). For example, in one instance where water quality is monitored at an active Western mine, sufficiently high concentration of sodium, up to sixteen times that of the normal concentration in surface flow, indicates a high to very high alkalinity hazard for irrigation and thus for revegetation purposes at the mine site. In this case, downstream water uses are not affected because the volume of flow from the mine at this time is quite small (0.5 cfs) compared to the receiving stream (more than 20 cfs 99% of the time) and there is adequate capacity for dilution (Decker, page 12).

97 Sediment yields from strip mines can be exceedingly high and can persist at high levels for long periods after mining unless adequate revegetation and soil stabilization work is done to replace the appropriate surface drainage at the site.

97 In the Appalachian mountain mining areas, sediment concentrations in streams commonly exceed 30,000 parts per million (ppm) during storms whereas streams in non-mined areas yield 600 ppm under the same hydrologic circumstances. On an annual basis, such yields from watersheds containing strip mines are equivalent to 1900 tons per square mile compared to 25 tons sq.mi. on non-mined areas. Moreover spoil banks yielded a considerably greater amount of sediment, 27,000 tons per sq.mi., while is more than 1000 times greater than

yields from non-mined areas. Yields from inadequately reclaimed mine sites continue at a high level of 5,600 ppm (250 tons per sq.mi.) for long periods after mining has ceased (Beaver Creek, pages C-38-41).

97 Sedimentation from coal mining has resulted in shortening the useful life of major public works facilities - flood control reservoirs and navigation channels - as well as clogging streams and increasing flood flows.

97 While the processes of sedimentation in the arid and semi-arid areas of the country are the same as those in humid regions, the potential for large area impacts adjacent to streams is greater in the arid and semi-arid coal areas since the erosional balance of stream valleys is more fragile.

97 Substantial surface mining in the arid and semi-arid areas of the West has not existed long enough to allow full analysis of the hydrologic consequences of such activities. Insight into the potential problem of sedimentation in such areas, however, can be gained through studies of the cumulative effect of past experiences with the destruction of vegetation over large areas (e.g., overgrazing, deforestation and construction). One such case is the experience of sedimentation on the Rio Puerco, a tributary of the Rio Grande River. Briefly stated the pattern presented in that situation entailed the destruction of vegetation in part of the valley triggered substantial erosion and head cutting and deepening of the stream channel. This lowered the groundwater levels on adjacent alluvial valley floors which resulted in further destruction of vegetation since roots could not reach the lowered water table. Erosion increased and the cycle worsened. Over a period of years, the head cut moved up the valley. Eventually the entire alluvial floor was affected by reducing the amount of and changing the nature of the vegetation which was essential to the local economy as well as to the long-term productivity and stabilization of the land.

98 While the above example is an extreme case in which little was done to manage lands to control erosion, a pattern similar to the history of the Rio Puerco could result from expanded surface coal mining in similar areas of the West without regard for hydrologic consequences (NAS, page 68-69).

98 The purpose of the hydrologic balance provisions of H.R. 11500 is to assure the maintenance of that balance on and off the mining site during and after the mining operation. Looking back at the Rio Puerco situation, the amount of disruption during any one year to the surface area of the basin could have been considered minimal. However, taken together and accumulating over a period of time, the disturbances resulted in a major alteration of the tributary valley.

98 Similarly, individual disturbances caused by mining might be considered minimal and of small geographic consequence. On the other hand, there are indications that their cumulative impact could be of long duration and of large geographic extent.

98 Provisions in the Act directed towards maintenance of the hydrologic balance include: (1) certain mining permit application requirements, (2) permit approval or denial criteria check off, (3) specific environmental standards, (4) monitoring requirements, and (5) compensation requirements for decrease in water availability to users.

98 MINING APPLICATIONS

98 H.R. 11500 requires that the operator make a determination of the hydrologic consequences of the proposed mining and reclamation operations. It is intended that the data assembled with this assessment be included in the application so that the regulatory authority, utilizing this and other information available, can assess the probably cumulative impacts of all anticipated mining in the area upon the hydrology and adjust its actions and recommendations accordingly.

98 Meeting such requirements will necessitate more planning and engineering on the part of the mining operator than is now generally the case. Current experience, however, clearly shows that where operators have carried out adequate planning and engineering, they have been able to identify, ways of limiting environmental impacts to the mine site and have been able to conduct operations in critical water and environmental areas, for example in the Hanaford Creek Basin in Washington.

98 PERMIT APPROVAL AND DENIAL

98 One of the written findings the regulatory authority makes in the approval or denial of an application for a mining permit addresses the impacts of mining on the hydrologic balance of the area. This finding also includes the authority's assessment of the probable cumulative impact of existing and anticipated mining on the hydrologic balance of the area affected. These specific standards are emphasized at the permit approval stage due to the critical and long-term impacts mining can have on the water resources of the area affected.

99 ENVIRONMENTAL STANDARDS

99 Principal environmental standards pertaining to the hydrologic balance focus on providing toxic drainage, prevention of sedimentation and siltation, avoidance of channel deepening and enlargement, restoring recharge capabilities and preserving the functions of alluvial valley floors.

99 With respect to acid mine and other toxic drainage, a wide range of alternatives are available to the industry to avoid pollution of ground and surface waters through a number of techniques including treatment, diverting water from producing deposits, and isolating toxic overburden from ground and surface water flow.

99 Similarly, technology exists to prevent increased sediment loads resulting from mining from reaching streams outside the permits area. One of the outstanding examples of such control, applicable throughout the United States, is the double sedimentation pond method used at the Centralia coal mine located in the Hanaford Creek Basin, Washington. In this instance, in order to meet year-round water quality standards for migrating fish in an area of fine grained and readily erodable overburden and high rainfall, the company developed a relatively inexpensive method of settling - virtually all the sediment in the surface runoff from the mining operation. Elimination of sediment is achieved by introducing biologically inert flocculating compounds into sedimentation ponds. Even though the Centralia mine produces 3.4 million tons of coal per year and is located in a predominantly hilly area, this general sedimentation control technology is applicable to other area mining situations and to the Appalachian fields where such facilities might serve more than one specific mine site in a small drainage area.

99 In cases where there will be water discharge from the mine sites, the number of such discharges shall be minimized by collectively controlling and channeling the water course into an acceptable receiving stream or areal location. It should also be understood that prior to any discharge off the permit area, the discharge should be treated, if appropriate, to remove pollutants that may be present in the discharge. Such treatment must, at a minimum, ensure compliance with applicable local, State or Federal water quality requirements.

99 Meeting such requirements will necessitate more planning and engineering on the part of the mining operator than is now generally the case. Current experience, however, clearly shows that where operators have carried out adequate planning and engineering, they have been able to identify ways of limiting environmental impacts to the mine site and have been able to conduct operations in critical water and environmental areas, for example in the Hanaford Creek Basin in Washington.

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100 With respect to acid mine and other toxic drainage, a wide range of alternatives are available to the industry to avoid pollution of ground and surface waters through a number of techniques including treatment, diverting water from producing deposits, and isolating toxic overburden from ground and surface water flow.

100 Avoidance of channel deepening and enlargement is also specified for those operations requiring discharge of water. This is particularly important in the arid and semi-arid areas where the natural erosional balance of the streams is in accordance with ground water levels. Deepening of the channel often results in lowering the ground water level since in such areas streams maintain the equilibrium of ground water systems. This is in contrast with streams in more humid areas where ground water levels often determine the flow in streams. The lowering of ground water in the semi-arid and arid areas could result in a reduction in the vegetative cover which in turn would trigger greater erosion from the landscape during rainstorms. Thus the cycle of increased runoff and erosion, channel deepening and additional lowering of the ground water is started and continued. A number of techniques are available to prevent this from occurring, including specifically timing and controlling the amount and rate of release of discharge from mines to stream channels, or the use of other techniques to assure appropriate infiltration downstream from the mine.

100 In order to assure that both the short and long term disruptive impacts of mining and ground water supplies are minimized, it is necessary that reclamation be conducted in such a way so as to maximize the recharge capacity of the minesite upon completion. Recharge capacity refers to the ability of an area to replenish its ground water content from precipitation and infiltration from surrounding lands. Restoring recharge capacity does not mean restoring the aquifer, but rather that the capability of an area to recharge an aquifer be restored. Spoil handling and placement and grading operations should be designed to enhance the recharge potential of the site. It is anticipated that in those

mining operations which singularly or in combination would mine or seriously affect large aquifers, mining should be predicated on the ability of the operator to replace to the extent possible the ground water storage and recharge capability of the site by selective spoil material segregation and handling.

100 ALLUVIAL VALLEY FLOORS

100 Of special importance in the arid and semi-arid coal mining areas are alluvial valley floors which are the productive lands that form the backbone of the agricultural and cattle ranching economy in these areas. For instance, in the Powder River Basin of eastern Montana and Wyoming, agricultural and ranching operations which form the basis of the existing economic system of the region, could not survive without hay production from the naturally sub-irrigated meadows located on the alluvial valley floors. In reviewing the reclamation potential of lands in the West and adjusting mining to assure its compatibility with existing and future land uses, the National Academy of Science study stated:

101 In the planning of any proposed mining and rehabilitation it is essential to stipulate that alluvial valley floors and stream channels be preserved. The unconsolidated alluvial deposits are highly susceptible to erosion as evidenced by the erosional history of many western valleys which record several periods of trenching in the past several thousand years. Removal of alluvium from the thalweg of the valley not only lowers the water table but also destroys the protective vegetation cover by draining soil moisture. Rehabilitation of trenched valley floors would be a long and expensive process and in the interim these highly productive grazing areas would be removed from use.

101 H.R. 11500 specifies that the operator is to "preserve throughout the mining and reclamation process the hydrologic integrity of alluvial valley floors in the arid and semi-arid areas of the country." While the Academy study called for the preservation of alluvial valley floors, such a requirement would not recognize that under sitespecific circumstances it is possible to mine on valley floors and still be able to assure the maintenance of the hydrologic functions of the area. Where mining is proposed on alluvial valley floors the methods of ground and surface management would have to be designed for the specific characteristics of the site and could be difficult to achieve. However, given the potential short and long-term disruption of the lands and economy so affected, this additional effort appears necessary and justifiable.

101 It should be noted that efforts by the Federal government to rehabilitate alluvial valley floors which have been denuded and damaged have been very expensive, of long duration, and only partially successful. The

effort to prevent such damage from occurring, however, would have required careful planning, but also would have been much less expensive than later rehabilitation efforts. Indeed, it is the present practice at a number of existing Western coal mines to avoid damaging such valley floors and stream channels.

101 Concern has been expressed as to the definition of alluvial valley floor

- especially with respect to the scale and size of the deposit and drainage area. Alluvial valley floors as used in this report refers to those unconsolidated deposits formed by streams (including their meanders) where the ground water level is so near the surface that it directly supports extensive vegetation. Alluvial valley floors receive recharge from a large area. In effect, water availability in the valley floor is far in excess of the actual precipitation on the surface of the deposit. If a mining operation encompasses the upstream end of an alluvial valley floor deposit, the hydrologic consequences of mining would tend to be less complex than an operation which would intercept and cut through a valley floor. Maintenance of the hydrologic function during the mining process means assuring that the water balance both upstream and downstream of the mine is maintained so that natural vegetative cover is not destroyed and the erosional balance of the area is not seriously disrupted. In addition, upon the completion of mining, the backfilling, placement of material, and grading, must assure that the hydrologic function of the area prior to mining is continued and that the operation does not become a barrier to water movement and availability in the valley deposit.

102 MONITORING HYDROLOGIC IMPACTS

102 H.R. 11500 also specifies special monitoring procedures to be followed in water scarce areas or in those instances where the mining has a potential to substantially disrupt the hydrologic balance or use of water. Particular types of data to be collected and analyzed are specified. It is intended that the data collection and resulting analysis take place before and continue throughout the mining and reclamation process, and be conducted in sufficient detail so that accurate assessments of the impact of mining on the hydrologic setting of the area can be determined. Throughout the mining process such data and analysis should also prove useful to the regulatory authority in assessing the impact of additional applications for mining permits and in determining what types of adjustments should be made.

102 The bill also requires a regulatory authority to establish guidelines covering the design, content, and procedures of data collection and analysis in order to assure that such data is accurate and acceptable to all parties. This is a long-standing provision of other Federal regulatory programs such as the

Environmental Protection Agency, the Atomic Energy Commission and the Federal Power Commission which depend in part on data collected and analyzed by firms being regulated. Consideration might well be given to establishing third party operations (nonprofit groups) for the purpose of monitoring, data collection and analysis, in order to assure that all information collected is handled in a neutral way, and available equally to government, industry and the public. Such groups might also be able to make estimates as to prospective impacts of changes in mining and how such impacts might be minimized in order that an orderly development of the resources may take place without significant or long-term damage to the environment or the productivity of the land.

102 STEEP SLOPE MINING

102 Surface coal mining on steep slopes requires special environmental protection provisions since such operations present special environmental hazards. The provisions of H.R. 11500 addressing steep slope mining were written in recognition of the natural instability of the geologic structure of many steep slope coal areas, which greatly increases the possibility of land slides and leads to rapid and massive erosion. The problems of steep slope mining are magnified by the fact that steep slope areas are located in some of the highest zones of annual average precipitation in the country.

102 Based on available landslide and mining operation data, the Committee defined for the permanent program steep slopes as those slopes of 20 degrees or more with the recognition that it might be desirable for regulatory authorities to include lower slopes based on specific geologic conditions, climatic and other factors.

103 Many of the State regulatory programs controlling mining in steep slope areas have some special environmental standards geared to this situation. The effectiveness of these standards for specified practices is problematical. Most Appalachian states do restrict spoil placement on the downslope and prohibit fill benches (the placement of spoil over the slope) on only the steepest slopes. Fill benches are prohibited in slopes over 33 degrees in Maryland and Kentucky and over 30 degrees in West Virginia. The amount of material that can be placed down slope from the mine bench is controlled in relation to the slope. For instance, Kentucky's regulations specify that the width of the first cut (depth of cut into hillside) which can be thrown over the side are: 45 feet for 31-33 degrees slopes; 55 feet for 29-30 degrees slopes; 60 feet for 28 degrees slopes; 80 feet for 27 degrees slopes, and so on. Experience, however, has shown that it is extremely difficult to stabilize such massive amounts of material placed on steep downslopes. Moreover, regulation of operators is frustrated since it is difficult to determine actually how much material has

been placed over the side of the hill. Most contour surface mining in the Appalachian states occurs on steep slopes between 14 and 33 degrees; therefore operations governed by existing state regulations prohibiting fill benches are few. An excerpt from a 1973 Senate study, Factors Affecting the Use of Coal in Present and Future Energy Markets, clearly summarizes the situation:

103 [Bench] width limits are largely disregarded if the operator finds that the economic limit of mining permits additional cuts, These practices have resulted in continued landslides which occur during mining as well as many years after. A sample study of 190 landslides resulting from strip mines in eastern Kentucky revealed that 86 percent of landslides were on slopes of 20 degrees or more, with 54 percent of the slides being on slopes of 25 degrees or more.

103 Subsequently, in 1970, Kentucky required some operators, on a demonstration basis, to purposely spread out the overburden pushed downslope in order to prevent landslides. Such methods, however, are subject to massive sheet and gully erosion and slumping, especially in the high rainfall areas such as the Appalachian region, and, in effect reduce neither the amount of environmental damage nor the number of operator violations. Substantial insight into the effectiveness of regulating Appalachian mountain strip mining under present laws is given by a study which assessed the enforcement activities of the Kentucky Division of Reclamation. 32 In spite of the fact that the present Kentucky statute and regulations are considered to be model state surface mining legislation, 33 preliminary data reveal the occurrence of significant violations to the State law and regulations by strip mining operators (Table 7). For all types of mountain strip mining, more than one-third of the inspections (the State inspects each mine every two weeks) revealed major violations including, for instance: exceeding bench width, operating off permit area, dumping excessive material over the outslope, and lack of drainage controls.

104

*2*TABLE 7. - Percentage of Official State Inspections in Which One or More Violations Found and Recorded in Eastern Kentucky Strip Mine Operations, 1971

Mining method:	Percentage of inspections having one
	more violations
Conventional contour	43
Slope reduction	50
Parallel slope fill	34

Head of hollow fill	49
Pit storage of spoil	41
Mountaintop removal	47
Mountain auger	42

104 The significance of this is further emphasized when it is recognized that most damages from such violations cannot be remedied; the operator usually agrees to stop activities which are in violation and to avoid such practices in the future. This evidence reinforces the concept that certain surface mining practices cannot be regulated satisfactorily, and in these instances, the best answer is to prohibit those specific activities.

104 In limiting material an operator may place downslope, the Committee decided that a total prohibition might be unsatisfactory in limited instances and thus the Bill provides for the placement of spoil from the first "initial block or short linear cut necessary to obtain access to the coal seam" downslope of the bench. It is expected that the initial block or short linear cut will be only that sufficient to gain access to the coal seam for the initial lift of coal after gaining equipment maneuvering room. The principal factors governing the size of this cut include the type of mining technique employed, the scale or size of equipment and the angle of slope.

104 The Committee expects that under most circumstances, only one or perhaps two initial cuts will be needed on any coal seam beneath the common highpoint of elevation. There may be instances in which an operator may want to make additional cuts into a coal seam at various intervals around the seam outcrop. Spoil from these additional cuts should not be placed on the downslope. In other words, the Committee does not contemplate that the regulatory authority will allow a series of "initial" cuts to be made such that the general prohibition relating to downslope spoil would be frustrated. Present practices in some of the Appalachian States indicate that this is entirely feasible as well as practical since there are alternative places for the placement of spoil from such operations if it is not possible to keep it entirely on the bench. For instance, at the present time in West Virginia the material from the first cut is set aside - usually on an old strip bench - on nearby or adjacent lands.

104 Similarly, with respect to the placement of the spoil from the first initial cut the mine operator need not necessarily use the downslope if, for example, the permit area includes flat land which may be used (if approved by the regulatory authority) as an appropriate area.

104 The assertion has been made that meeting the requirements of "approximate original contour" in mountain mining situations is not practical, and is technically or economically impossible. These and arguments were fully answered by a study published last January, "The Design of Surface Mining Systems in Eastern Kentucky Coal Fields" a study funded by the Appalachian Regional Commission, directed by the Kentucky Department of Natural Resources and Environmental Protection and conducted jointly by two consulting firms: Mathematica (Princeton, New Jersey) and Ford, Bacon & Davis (New York, New York). The objectives of the study were to identify modified surface mining technologies and regulatory policies and procedures at the State level which would result directly and indirectly in reducing and preventing environmental impacts of surface mining. The findings of this study are generally applicable to mountain mining in the entire Appalachian coal fields since regional applicability was one of the purposes of the study.

105 The study and recommendations fully support the position that the requirement of regrading of mountain mining sites to approximate original contour and limitations on dumping spoil downslope are necessary, workable, and should not result in any significant reduction of coal supply. With respect to environmental impacts of conventional contour mining methods, the study states that:

105 [the] conventional methods employed always result in permanent fill bench - the result of disposal of overburden on slopes below the coal seam. And, except where entire mountain tops are removed, the conventional methods leave an exposed highwall after mining. These two characteristics of conventional mining - the permanent fill bench and exposed highwall - are the direct cause of many of the undesirable environmental effects of mining. Landslides occur when the fill benches become unstable, erosion results from unvegetated outcrops, and exposed highwall degrade aesthetic values immediately following mining, at least.

105 The study concludes that:

105 Elimination of the highwall and permanent fill bench would, in our opinion, significantly reduce the major remaining environmental impact of surface mining.

105 This conclusion is expanded in the text:

105 The primary finding in the [mining] methods area is that complete contour restoration methods are generally desirable and feasible using existing equipment. Those methods involve a change in operating procedures, such that overburden materials are not placed, even temporarily, on natural slopes below the coal seam being mined. While this study was in progress, the practicability of complete contour restoration methods was demonstrated - without government

funding of any kind - at mines in West Virginia and Pennsylvania . . .
Planning

and operating procedures for two contour-restoration methods - the buried highwall and spoil above highwall methods - are described in detail in Chapter V

of this report. Employment of either of these methods is feasible at the present time in Eastern Kentucky, and would result in an improved appearance, fewer landslides, and better materials classification (thus reduced water pollution).

106 In another section of the report, the authors comment on the economic and practical aspects of meeting these requirements.

106 The surest way to prevent landslides is probably . . . the use of 'no fill bench' mining methods. Such methods - known by various names; including pit storage of spoil and block cutting - have been widely publicized of late but are not practiced in Eastern Kentucky. However, as discussed later in this chapter, such methods are roughly comparable in profitability to existing conventional contour methods and can be practiced using existing equipment.

106 It should be noted that the coal price levels and operating costs used for analysis were for the years 1971-72. Since then, coal prices have risen substantially faster than the costs of factors of production thus removing any doubt about the levels of profitability utilizing such techniques.

106 EXCEPTIONS

106 Although usually preferable, it may not always be best to return mountain lands to their approximate original contour. In various areas such as the mountainous Appalachian coal fields, there is a paucity of flood free, relatively flat developable land. Thus some surface mining operations offer the opportunity for creating a resource which otherwise might not be available or might be prohibitively expensive.

106 The mining application process and the environmental standards for steep slope mining allow for variance from the regarding requirement to achieve a desirable postmining land use, provided that the proposed use of the land is reasonable and capable of being met with respect to public and private investments. The bill also stipulates that fill areas created for such development are to be designed and constructed so that the land is capable of development upon completion of mining. It is expected that the Secretary of Interior will include in regulations to be issued under this Act such fill placement standards as are necessary to assure suitable site development potential upon completion of mining. Standards might parallel those used by the Department of Housing and Urban Development for developing fill areas for construction purposes.

106 The Committee felt that these planning and fill placement requirements were reasonable since:

106 (1) The utility of a flat land site on a mountain top is dependent upon suitable access, adequate utilities, such as water, storm water and sewage control. Without indication that public jurisdictions involved will assume responsibility for maintaining the necessary public facilities, the development of flat areas should not be encouraged.

106 (2) Controlled placement and compaction of spoil is desirable so that surface created is suitable for use without waiting for an extended period of years for settling prior to development.

106 (3) As the requirement of return to approximate original contour and the limitation of dumping spoil downslope are environmentally preferable, exceptions to the standards should only be granted where it is demonstrated that such exceptions are necessary to allow a desirable and achievable post mining land use. As agricultural and recreational uses can be accomplished by following the general requirements, it is not contemplated that exceptions will be granted for such uses. Thus most recreational and extensive agricultural uses can be conducted on the mountain slopes which have been regarded to their approximate original contour.

107 SURFACE DISPOSAL OF MINE WASTES FROM PROCESSING PLANTS

107 Disposal of mine wastes can present significant hazards to the environment, health and safety of the public, and the social setting for the areas affected. Common problems include air pollution from dust and combustion, water pollution from leaching, siltation and erosion. Moreover, mine waste piles can constitute hazards to life and property when used as embankments for water impoundments or move due to inherent instability. In addition, often such piles are unsightly and aesthetically incompatible with their surroundings.

107 Regulation of the disposal of such wastes in this Act is appropriate since often waste disposal sites are interspersed with or adjacent to strip mine operations. In addition, after the Buffalo Creek disaster it became apparent that State and Federal regulation of waste disposal practices using impoundments were inadequate.

107 With respect to surface disposal of mine wastes in dry piles (not in embankments or impoundments), H.R. 11500 requires operators to lay down and compact wastes in layers and intersperse appropriate incombustible materials in order to prevent combustion and water pollution through leaching. The final outslope grade of such piles and their configurations are to be such that they are compatible with surroundings, stable and revegetated with a diverse and

permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent to the cover of the natural vegetation of the area.

107 In those instances where operators use impoundments and embankments for disposal of wastes and coal processing liquids, such structures or embankments are to be designed and constructed so that:

107 (a) they incorporate the latest engineering practices;

107 (b) they achieve necessary stability to protect health or safety of the public;

107 (c) at a minimum, they are compatible with the structures constructed under the Small Watershed Act, Public Law 83-566;

107 (d) it is assured that leachate will not pollute surface or ground water, and

107 (e) no mine wastes determined unsuitable for construction by sound engineering practices are used in the construction of embankments or dams.

107 The engineering and construction standards of the Small Watershed Program (P.L. 83-566) as the minimum basic yardstick for impoundment construction was adopted for a wide range of reasons. First, these standards for waste dams are sufficiently flexible to allow for the wide range of physical and land use conditions in coal fields throughout the United States yet adequately provide for the protection of health or safety of citizens, downstream land uses, and the environment of each area. Secondly, these standards are appropriately applied to the regulation of waste impoundments as they:

107 (1) apply to impoundments of small to moderate size; up to 250,000 acre feet storage capacity; (2) apply across the U.S. in a large range of physical and climatic settings;

108 (3) provide variable standards appropriate to different downstream conditions or uses (remote forests or rangeland to densely populated and urbanized areas);

108 (4) assure that the structural embankment is built to be impervious and not used purposefully or incidentally as a filter for clarifying or treating mine wastes.

108 The regulations complementing the bill's waste impoundment provisions shall include design, engineering and construction specification compatible with those used in the Public Law 83-566 program. These regulations will thus specify such design and engineering parameters as maximum probable flood and rainstorm, antecedent conditions with respect to soil moisture, materials

specification, and density and impermeability requirements as well as many other engineering considerations.

ELEMENTS OF MINE REGULATION PROGRAM

108 SURFACE IMPACTS OF UNDERGROUND MINES

108 The environmental problems associated with underground mining for coal which are directly manifested on the land surface are addressed in Section 212 and such other sections which may have application. These problems include surface subsidence, surface disposal of mine wastes, disposal of coal processing wastes, sealing of portals, entry ways or other mine openings, and the control of acid and other toxic mine drainage. Wastes resulting from underground operations are governed by the same standards which apply to wastes from surface mined coal. Mine waste is mine waste regardless of its origin and it is entirely appropriate to deal with the problem in one bill. Moreover, both types of mines are often in close proximity and frequently wastes are disposed of jointly and operations are intermingled. These provisions are discussed in a separate portion of the report.

108 Subsidence control. Underground coal mining across the country has resulted in creating large areas of land which are subject to surface subsidence. These areas range from intensively developed cities such as Wilkes-Barre and Scranton, Pennsylvania, and Rock Springs, Wyoming, to rural lands being used for agricultural or timber-growing. Surface subsidence has a different effect on different land uses. Generally, no appreciable impact is realized on agricultural and similar types of land and productivity is not affected. On the other hand, when subsidence occurs under developed land such as that in urbanized areas, substantial damage results to surface improvements be they private homes, commercial buildings or public roads and schools. One characteristic of subsidence which disrupts surface land uses is its unpredictable occurrence in terms of both time and location. Subsidence occurs, seemingly on a random basis, at least up to 60 years after mining and even in those areas it is still occurring. The estimated cost for controlling subsidence under the 200 urbanized areas now affected is approximately \$1 billion. It is the intent of this section to provide the Secretary with the authority to require the design and conduct of underground mining methods to control subsidence to the extent technologically and economically feasible in order to protect the value and use of surface lands. Some of the measures available for subsidence control include:

109 (1) leaving sufficient original mineral for support;

109 (2) refraining from mining under certain areas except allowing headings to be driven for access to adjacent mining areas, or

109 (3) causing subsidence to occur at a predictable time and in a relatively uniform and predictable manner. This specifically allows for the uses of longwall and other mining techniques which completely remove the coal.

109 Sealing of underground mine openings . Underground mine openings should be sealed for both health and safety reasons as well as environmental protection purposes when mines are worked out or the openings are otherwise no longer needed. Protection of public health and safety is clearly apparent and is not disputed. The environmental effects of abandoned underground mine openings can be quite severe in those instances where such mines are a source of acid or toxic water pollution.

109 Acid and toxic water pollution. Underground mining is the principal source of existing acid and mineral pollution from coal mining. Such acid and mineral pollution have already affected more than 10,500 miles of streams in the 8 Appalachian coal states and nearly 6,000 miles of these streams are continuously polluted by acid mine drainage. In terms of the number of sources of acid mine drainage, underground mines account for 67% of the sources, yet produce 88% of acid drainage. Surface mines produce the rest. However, active underground mines are proportionately the greatest pollution source since they represent only 5% of all mines, yet produce 19% overall acid drainage.

109 Contrary to the situation in most industries, the discharge of water from many underground coal mines does not cease when the operation shuts down or is abandoned. Presently, mine operators are not required to develop a mining operation in a manner designed to eliminate or minimize polluting discharges after mining. Sec. 212(d) would require operators to have abatement programs underway to ultimately result in no polluting discharge when the mine is abandoned. Sec. 212(b)(7) would make it illegal to discharge water-borne pollutants after mining and the elimination of polluting discharges from abandoned mines should significantly reduce the pollution of more than 10,000 miles of streams that are being adversely affected in this manner.

109 SPECIAL BITUMINOUS COAL MINES

109 For some special and very narrowly defined mining situations, the Committee provided that the regulatory authority may grant a few exemptions from the basic grading standard of "approximate original contour," and on-site handling of spoil.

109 For a mine to be eligible for these exemptions, it must meet all of the following criteria:

109 (1) The operation is active on the date of enactment of the legislation and because of past duration of mining (at least 10 years) has substantially committed to a mode of operation which warrants granting all or some of the exceptions.

110 (2) The operation involves the mining of multiple coal seams and mining has been initiated on the deepest coal seam in the current operation.

110 (3) The operation is mining a coal seam on an inclination of 15 degrees or more from the horizontal.

110 (4) The operation will be situated on the same site for its mining life and under present plans will result in a pit depth in excess of 900 feet vertically from the original land surface.

110 During the Subcommittee action on this legislation, the only known operation which would qualify for the section exemption was the "big pit" at the Sorenson Mine near Kemmerer, Wyoming. Engineering data provided by the mining company and papers on this area prepared by the Geological Survey shown at this site over 240 feet of coal in multiple seams pitching at 20 degrees West from the outcrop. (Geography and Geology of a Portion of Southwestern Wyoming with Special Reference to Coal and Oil, A.C. Veatch, U.S.G.S. Professional Paper No. 56, 1907, Plate 3; location along fifth standard parallel).

110 In this instance, the company initiated over a decade ago a horseshoe shaped pit mining operation, sloping 20 degrees into the formation, with the heel of the horseshoe being the outer edge of the bench over which the overburden is placed. As the mining operation continues, the horseshoe shaped pit is systematically expanded on all sides. Overburden placement reaches from the valley floor to the outer edge of the mine bench which has been extended by the fill. Mining company engineers estimate that this operation will produce 60 million tons of coal and displace 212 million tons of overburden over approximately 30 years.

110 COAL ACCESS AND HAUL ROADS

110 The access and haul roads constructed for the purpose of the mining operation are a major source of siltation on a continuing basis both during and

after mining. Present practice, especially in mountain mining areas, is simply to abandon such roads upon completion of mining on the premise that permanent access is provided to the previously "remote or inaccessible" areas. In fact, however, there has been little continuing social or economic value for such access to remain. Moreover, in many instances these roads have been used for nothing more than dumping areas for solid wastes and other debris. On the other hand, the Committee recognizes that such roads, under limited and prescribed conditions, might well continue to serve a useful purpose to landowners. It is expected that such instances will be identified before hand in the approved mining and reclamation plan under which the mining operation is being conducted.

110 In order to overcome the continuing and long-standing environmental problems these roads present, the Committee specifies in the bill that roads are to be designed and constructed with appropriate limits to grade, width, surface materials and culvert placement and size in order to control drainage and prevent erosion outside the permit area. Such design and construction features are especially critical if roads are part of long-term post-mining intensive land use development since they provide a reasonable basis for the post-mining maintenance and use. In such instances, a measure of assurance as to their continuing maintenance is required as part of the mining application.

111 Access roads if appropriately constructed can perform environmental protection functions by breaking up drainage down long slopes or perhaps serving as a barrier to keep spoil off the outslope. The design and construction of such roads under appropriate engineering standards assuring that the environmental and maintenance objectives are met implies that in some instances there well might be some narrow and shallow fill areas on natural slopes for the construction of such roads as an initial activity preceding the actual mining process.

111 ENFORCEMENT

111 Efficient enforcement is central to the success for the surface mining control program contemplated by H.R. 11500. For a number of predictable reasons - including insufficient funding and the tendency for State agencies to be protective of local industry - State enforcement has, in the past, often fallen short of the vigor necessary to assure adequate protection of the environment. The Committee believes, however, that the implementation of minimal Federal standards, the availability of Federal funds, and the assistance of the expertise of the Office of Surface Mining Reclamation and Enforcement in the Department of Interior, will combine to greatly increase the effectiveness of

State enforcement programs operating under the Act. While it is confident that the delegation of primary regulatory authority to the States will result in fully adequate State enforcement, the Committee is also of the belief that a limited Federal oversight role as well as increased opportunity for citizens to participate in the enforcement program are necessary to assure that the old patterns of minimal enforcement are not repeated.

111 The mechanism fashioned by the Committee to meet the dual need of limited Federal enforcement oversight and citizen access is operative in both the interim period and after a State program has been approved. When the Secretary receives information from any source that would give rise to a reasonable belief that the standards of the Act are being violated, the Secretary must respond by either ordering an inspection by Federal inspectors during the interim period or, after the interim, notice to the States in the follow-up inspection that the State's response is inadequate. It is anticipated that "reasonable belief" could be established by a snapshot of an operation in violation or other simple and effective documentation of a violation.

111 PROTECTION OF THE SURFACE OWNER

111 A major problem which plagues the development of coal resources by surface mining methods is the necessity to reconcile the competing interests of those with rights in the surface property and the operator with rights in the coal to be mined which has been severed from the surface estate. This dilemma is presented in three situations: (1) in purely private ownership patterns, where the mineral estate was either conveyed separately from the surface estate or reserved in a conveyance of the surface rights; (2) where the Federal government leases coal which underlies a surface estate conveyed to a private party by the government under the authority of one of the various non-mineral entry laws; and (3) where an individual holds a lease or permit from the Federal government on public lands containing strippable coal deposits.

112 Although H.R. 11500 contemplates the full reclamation of strip mined lands following the destruction of the surface during the mining process, the interruption of the use of the surface during the mining period and the delay in the restoration of the surface to full productivity or value requires that the interests of the surface owner be recognized. Various mechanisms designed to protect the surface owner were considered in Subcommittee and Full Committee, including the posting of bond to cover certain damages to the surface. The Committee, however, settled on a provision structured upon the concept of consent with variations depending upon the title of the surface owner. Thus section 210 requires the permit applicant to provide the regulatory authority with evidence of the consent of the surface owner and the requirements of valid consent are set forth in section 709.

112 The Committee believes that requiring the consent of the surface fee

owner in situations where the coal to be surface mined is obtained through a Federal lease is consistent with the history of Congressional concern that surface fee owners be appropriately protected from disruption resulting from the extraction of coal reserved to the United States. Indeed, the initial reservation of rights in the coal was approved by Congress in 1909 at President Theodore Roosevelt's urging which was premised on his assurances that mining and agricultural surface uses need not be mutually exclusive according to Gates, History of Public Land Law Development, (a report to the Public Land Law Review Commission dated 1968 at page 729). It follows, therefore, that the Congress never contemplated that the reservation of coal to the United States would result in the extensive disruption to surface uses attendant to modern surface mining methods. Aware from the outset that the then existing mining technology could result in some limited interference of surface uses Congress required in the 1909 enactment either the surface owner's consent to the mining or the payment of damages to the surface owner resulting from extraction of the coal (35 Stat. 844 (1909), 30 U.S.C. 81). Similar mechanisms for the payment of damages have been adopted through the years.

112 What may have been appropriate protection in 1909 when coal was primarily extracted by underground mining methods simply fails in light of the surface mining technology of 1974. Where coal belonging to the United States is to be surface mined, the payment of damaging in lieu of the consent of the surface fee owner is inadequate. Only the fee surface owner's consent to the mining will fully protect his interest. It should be noted that although the term "written consent" is defined as a document executed after the date of enactment, one who has obtained the acquiescence of the surface owner to such surface mining prior to the date of enactment is protected by the terms of section 709 itself.

112 While surface mining pursuant to a Federal coal lease also affects the lessee or permittee of the surface, in this case a strict written consent requirement is not imposed. Section 709 provides for either written consent or in the alternative the posting of a bond to secure payment to the lessee or permittee for such damages as may be caused to his surface rights and the use and enjoyment thereof. It is the intention of the Committee that any such damages should be calculated on the basis of the benefits recognized in section 709 which would have been enjoyed by the permittee or lessee during the time remaining under the lease or permit which exists at the time surface use is interrupted by surface mining operations.

113 Section 709 also addresses a third situation where both the surface and mineral estates are held by private parties. The section requires that either

the written consent of, or waiver by, the surface owner be obtained.
"Waiver"
is defined in section 705 as any document which demonstrates a clear
intention
to convey rights in the mineral estate for the purpose of extracting such
minerals by current surface mining methods.

113 Under this definition, any conveyance, contract or other instrument
which legitimately confers the right to mine the coal by surface mining
methods
currently practiced at the time the coal will be mined will constitute
waiver.
Thus the operator is protected from the possibility of a surface owner
demanding
additional consideration for a right the operator has already obtained.

113 The Committee is aware of the jurisdictional distinctions underlying
its
treatment of the surface owner protection issue in the case where the coal is
in
Federal ownership as opposed to the situation where the rights in the coal
are
held by private parties. Nevertheless the Committee believes that the
environmental and social interests in the orderly regulation of the nation's
surface coal mining industry necessitate the complete protection of the
rights
of the surface owner and this protection can only be achieved by requiring
that
consent be procured before strip mining commences.

113 Surface mining can alter both the quantity and quality of water in
affected areas. In some areas of the country, land use, income and value is
predicated on the quantity and quality of available water. Decreasing the
availability of that water can be as economically disruptive to the land and
income of the surface owner as if the land were mined. Therefore, H.R. 11500
also provides that the operator include with his mining application: (1)
written
consent of all owners of water rights reasonably anticipated to be affected;
or
(2) evidence of a capability to provide substitute water supply at least
equal
in quality and quantity to such owners of water rights; or (3) the execution
of
a bond in order to compensate for the reduction in water quantity or quality,
damage to the surface estate, and any adverse effect upon the long-term
productivity of lands resulting from such loss of water.

113 THE SECRETARY OF THE INTERIOR

113 The administration and enforcement of all Federal provisions
contained
in the Act is the responsibility of the Secretary of Interior. More
specifically, in Title V an Office of Surface Mining Reclamation and
Enforcement
is created within the Department of Interior, headed by a Director who is to
be
appointed by the President with the advice and consent of the Senate. The

Director is responsible to the Secretary who will assign him duties, consistent with the Act.

114 Initially, the Secretary's responsibility relates to the enforcement of Federal interim performance standards which the States are required to incorporate into the operator's permit during the interim period and which also apply to operations on Federal and Indian lands. It is the Secretary's duty to respond to any reasonable evidence of violations of these Federal standards by using the authority vested in him to bring about compliance.

114 During the interim period, the Secretary also must review the proposed State enforcement programs to determine whether or not the requirements set forth in the Act are being met, particularly with reference to a State's ability to enforce the full range of Federal performance standards. Once a State program is approved, the Secretary is still obliged to monitor the State's performance and where there is a breakdown in the State enforcement, he may take over the State program in whole or in part. The system of Federal inspection is designed to provide random but regular on-site review of operations during the interim period (triggered where appropriate by information provided to the Secretary by any individual) and to ensure that inspection reports are readily available for review by citizens who desire to monitor the operation. The Secretary must accord any person who reported a violation which brought about an inspection the right to accompany the inspector onto the surface mining site.

114 The establishment of permanent Federal regulatory programs on Federal as well as on Indian lands and in States that are without approved State programs, and the promulgation of rules and regulation governing these programs, constitutes another significant aspect of the Secretary's responsibility. In dealing with Indian tribes, the Secretary will provide financial assistance for the development of Indian lands programs consistent with the Act. He will in general accord the tribes much the same latitude as the States. Tribal concurrence is necessary before the Secretary may approve any permit for surface mining on Indian lands.

114 Lastly, the Secretary shares with the Secretary of Agriculture the responsibility for administering the Abandoned Coal Mine Reclamation Fund. Under the provisions of Title IV, certain types of land which have been mined or affected by mining for coal may be acquired by the Secretary, reclaimed and deposited of. In addition, other lands may be acquired by the Secretary for use

in developing housing for persons affected by coal mining dislocations or by natural disasters. Matching grants to the States may be made by the Secretary to assist in acquiring lands for rehabilitation, and any State's governor may request the filling of voids, sealing of tunnels and disposing of other mine-related public hazards by the Secretary.

114 The Secretary's role is not limited to the environmental protection provisions of the Act. In addition he is given charge of employee protection. Any employee who believes he has been fired or discriminated against in his employment because of actions taken to testify or file proceedings under the Act may appeal to the Secretary. Moreover, a continuing study of shifts of employment resulting from enforcement of the Act is to be conducted by the Secretary.

114 The Secretary's performance in carrying out these provisions will rectify the inadequacies of past reclamation. However, the advice and counsel of the other Federal agencies, notably the Environmental Protection Agency, is required prior to making key decisions.

115 DESIGNATION OF LANDS UNSUITABLE FOR MINING OF MINERALS OTHER THAN COAL

115 Under the Mining Law of 1872 anyone is free to explore for hard rock minerals in the public domain, including minerals reserved to the United States located under surface held in private ownership. Upon the discovery of a valuable deposit, the mining laws convey the right to mine without regard to the environmental consequences and with severely limited protection for the surface owner or property owners within the vicinity of the mining operation. Quite literally, this allows a mining company to prospect and mine in people's back yards and other developed areas where mining is totally inconsistent with established land uses or areas of extremely important environmental value. While the Committee chose not to address the surface effects of mining of minerals other than coal in H.R. 11500, it did include a mechanism in title VI which would allow the elimination of the worst abuses under the mining law on a case by case basis but would not unduly interfere with the operation of the mining law pending its complete review and revision.

115 Section 501 establishes a program for designating areas unsuitable for mining of minerals other than coal. The process contemplated by Section 501 gives citizens the right to petition for review by the Secretary for a designation of unsuitability on the basis of criteria spelled out in the section. Under these criteria designation could be made in areas of predominantly urban or suburban character or such areas where mineral entry would result in significant damage to areas of historic, cultural, scientific, aesthetic, or natural values of more than local significance or where mining

would unreasonably endanger human life and property. Such designations will not affect existing operations or those for which there are firm plans and substantial legal and financial commitments prior to January 1, 1974.

115 It should be emphasized that the section does not withdraw any area from the operation of mining laws, nor does it ignore the interests of mineral development. Indeed, before any designation could be made, the Secretary would be required to make a determination of the impact of such a designation upon the availability of necessary minerals. The section simply says that where mineral entry is obviously inappropriate from an environmental and planning viewpoint - on the basis of rather narrow criteria - mineral entry may be prohibited.

115 INDIAN LANDS PROGRAM

115 Indian tribes which control large coal deposits in the West and in the Northern Great Plains region, occupy the role of coal owner-political entity-Federal ward. In attempting to arrive at an equitable solution to the problem of regulating surface coal mining on Indian lands so as to protect tribal cultural values and the physical environment, the Committee has respected the strong desire of the tribes to be independent of any State interference. The Act so states explicitly.

116 Of course, the Committee does not intend that such regulatory authority be used by the tribe to improve its commercial position vis-a-vis an operator any more than a State would be expected to extract new or unreasonable terms or consideration merely because it possesses authority to regulate those with whom it does business.

116 By and large Title III of the Act treats the tribes on a par with the States. The Secretary is authorized to make grants to Indian tribes to assist in the development and administration of Indian lands programs which must comply with all the provisions of the Act. Rules and regulations are to be promulgated by the Secretary for such programs. The title contains a categorical prohibition against the leasing of any coal under tribal ownership without the prior written approval of the tribe.

116 Within 24 months after the date of enactment, if the tribe has submitted its tribal program, the Secretary must approve or disapprove the program within 60 days after submission. Another 90 days are allowed for resubmission in the

event of disapproval. Upon a second failure to gain approval, or if no request for a 6-month extension is received, the Secretary must establish a Federal program for the tribal lands. A condition imposed upon any tribe submitting a program is that a public hearing be held for enrolled tribal members. Furthermore, the tribe must waive any defense of sovereign immunity and become subject to the jurisdiction of the Federal courts in connection with legal action brought against it with regard to the Act.

116 To a degree, the Indian lands program and the Federal lands program are interchangeable. The tribe may, for example, request the Secretary to administer its program, in which case he shall do so. More particularly, the Secretary must ensure that all permits are in compliance with provisions of the Act. If within 6 months of date of enactment, the tribe declines to request funding to develop its own tribal program, the Secretary is required, in the interests of protecting the rights and interests of the tribe, to establish a Federal program on the reservation, following adequate public notice and hearing. Upon the subsequent approval of an Indian lands program, within 30 days the Federal program must be withdrawn and all Federal permits brought into conformity with the Indian program requirements. Enforcement would then be assumed by the tribe, with adjudication by tribal courts and Federal District courts.

116 Grants and other forms of assistance are allowable to Indian tribes to facilitate development of the Indian lands program. Two million dollars of appropriated funds are earmarked for this purpose, to be disbursed by the Secretary.

116 ABANDONED COAL MINE RECLAMATION FUND

116 The widespread environmental degradation associated with coal surface mining - including the indiscriminate dumping of coal mine wastes on the land surface and into streams - has resulted in the serious deterioration of the social and economic climate of affected regions. Where States have not accepted the burden of rehabilitating these regions, the environmental and social costs have devolved upon local residents. The injustice of requiring persons least able to shoulder such an enormous burden to do so is obvious.

117 A number of States have enacted various reclamation fees or taxes on coal, ranging up to the equivalent of 30 cents a ton. It is evident that such fees have not constrained the development or production of coal in these States, nor placed coal at a competitive disadvantage with adjacent States having no or substantially lower fees. Kentucky is a good case in point. For the two years after imposing a fee of 30 cents per ton or 4 percent of sales price (whichever is greater) coal production continued to rise, even though surrounding States

had no or substantially lower fees.

117 Two principal considerations form the basis for the Title IV reclamation fee; first, to set the fee at such a level that it is not a burden on the industry, and second, to provide at the same time sufficient funds for meeting program objectives within a reasonable time frame.

117 The fee is uniform on all coal production and has the advantage of being neutral in that it does not change the relative production costs among operators, regions, and mining types. With respect to the interfuel competitive advantage of coal, one can assume with a high degree of confidence that the demand for coal is inelastic for several reasons. First, the production cost (market price) per million Btu's of coal is nearly one-half that of oil, its prime competitor in the utility industry. A year ago, oil sold to utilities at a level of 24 cents per million Btu's higher than coal, which at that time averaged 37 cents per million Btu's. This disparity has increased since then.

117 The reclamation fee proposed in H.R. 11500 of 1.23 cents per million Btu's averages to about 30c per ton of coal produced in 1972.

117 A fee at such a level will not alter the competitive positions of coal being produced in the various States. Furthermore, as it represents such a small share of the price differential with competing sources of energy, it may be reasonably concluded that the proposed reclamation fee will have no adverse impact on production and development of coal. The fee at this level, though, will provide the minimum amount of revenues necessary to fund the proposed Abandoned Coal Mine Reclamation Program. This fee will produce approximately 180 million dollars a year, which will be needed to meet high priority program needs in the coming decades.

117 The Fund established under the Act is to be administered by the Secretary of the Interior for the purpose of protecting the health or safety of the public, protecting the environment from continued degradation, conserving land and water resources, expanding public facilities such as utilities, roads, recreation and conservation facilities, improving land and water for the economic and social development of the area, and providing research and demonstration in water quality control programs and techniques.

117 Provision is made allowing one type of credit against the reclamation fee paid to the Federal Abandoned Mine Reclamation Fund. The operator may deduct from payment of the Federal fee up to one-half of any reclamation fee, license fee, severance tax or other similar charge paid by the operator to any State with respect to coal mine operations in such State in proportion to that

the proceeds of such fee, tax or charge are used by the State to support reclamation or conservation activities comparable to those provided by this title.

117 Additionally, 40 percent of the revenues derived from coal mined in each county, school district or lands within the reservation of an Indian tribe is to be returned to that county, or county impacted by coal operation, school district or Indian tribe for schools, roads and public health care centers.

118 Western operators, in supplying an even larger share of the Nation's energy requirements, will bring about the movement of workers and families into the new coal regions. Most of the local political units are in no position to cope with the impending growth problems especially with respect to the tax and bonding capacity. The need to forestall the destructive effects of this growth is seen as requiring the bill's departure from a totally retroactive approach to mined lands rehabilitation. In the East, the return of 40 percent of the funds collected back to the local county or school district may serve to supplement the inadequate tax base which has often kept public services at an inadequate level. Improvement in local roads, schools and health care is generally a matter of long-standing need in coal mining communities.

118 As a parallel provision, authority is also granted for the development of sites for housing (but not housing itself) with necessary on and off-site public facilities, for meeting specific needs in areas undergoing rapid coal development as well as in the older coal mining areas. The reclamation of lands for such purposes is predicated on the needs of persons employed in mines or associated work, persons disabled as a result of such employment, persons displaced by governmental action, natural disasters or catastrophic failure from any cause. The Secretary is authorized to fund the planning and technical assistance which is a necessary prerequisite to determine the feasibility of such projects. Even though the Secretary of Interior can carry out this work directly, authorization is also provided to make grants to the States, their instrumentalities, other public bodies or non-profit organization designated by the State. Such projects might well provide appropriate opportunity for the Secretary to work through such suitable groups as non-profit housing corporations and regional commissions which are providing technical assistance to States and localities concerning similar housing needs.

118 Rural lands which have been damaged by mining activity and remain unreclaimed are to be the focus of a program administered by the Secretary of Agriculture utilizing monies from the Fund. The Secretary of Agriculture may enter into agreements with landowners, residents, tenants or owners of water rights under 80 percent matching grants covering no more than 30 acres of land

owned by the participants. The purpose of the acreage limitation is to prevent windfall profits from accruing to private landowners from public expenditures. Those whose water rights have been affected adversely by the disturbance of the hydrologic balance due to the coal mining activities may also qualify for assistance.

118 This program is based on the successful land stabilization and conservation provisions of the Appalachian Regional Development Act of 1965 (Public Law 89-4). Inclusion in H.R. 11500 allows rural privately owned lands affected by coal mining to be reclaimed in all areas of the United States.

118 Under the program for the acquisition and reclamation of abandoned mine lands, the Secretary of Interior, after proper study of the costs and benefits to be derived, would select certain lands and acquire title to the interests for the United States, using the power of condemnation where serious hazards to life, health or safety exist. Public hearings will be held prior to acquisition of lands to be reclaimed. The Secretary may make 90 percent matching grants to States to encourage the acquisition of unreclaimed lands to be made available for rehabilitation under the Act. Once reclaimed, land may be sold to State or local governments to be used for valid public purposes.

119 Bids and contracts for reclamation projects are to be supervised by the Secretary of Interior and any revenue derived from the sale of reclaimed land is to be returned to the Fund. Under a system of competitive bidding, the Secretary of Interior may also dispose of reclaimed land at not less than fair market value for private industrial, commercial, residential or private recreational development.

119 At the request of the governor of any State, the Secretary of Interior is authorized to fill voids, seal abandoned tunnels and remove other such public hazards with funds collected under this title. The cost of utilizing mine waste for these particular purposes may also be charged against this fund.

119 This title also provides for a continuing responsibility for some sources of mine pollution. The Committee believes that mining operators or companies which created the adverse situation and still retain the rights to the remaining coal have a social obligation to correct the adverse situation, even though there was no legal requirement to correct the situation at the time of

mining. The Committee has established the date of July 1, 1977, for compliance with the section, after which mine operators would be subject to an enforcement action in accordance with Title II of this Act. The July 1, 1977, date was selected because a period of 2-3 years is a reasonable time for corrective measures to be undertaken.

119 Recent estimates indicate that there are more than 2800 inactive coal mining operations discharging pollutants into the nation's waters. In addition, 540 mine and refuse bank fires are presently burning causing serious health and safety hazards to the public as well as destruction of property and coal resources. The Committee feels that the provisions of this title will result in a significant reduction of pollution from these sources.

119 REHABILITATION OF ABANDONED MINE LANDS

119 Historically, the environmental effects of mining coal have been neglected upon the abandonment of the operation. Even during the heyday of coal production in the Appalachian and Western coal fields, there were few constraints upon the industry to clean up its wastes. Rather, it was assumed implicitly that the permanent degrading of the local surroundings and the pollution of streams was the inevitable price which the community had paid in return for jobs and tax revenue generated by the coal industry.

119 Giant dumps of burning mine waste often containing waste water and constituting a threat to downstream communities; rivers clogged with coal fines from coal treatment plants; streams devoid of aquatic life as a result of acid drainage; derelict tipplers and mine buildings; black roads spreading coal dust; the tumbledown shanties of company towns; surface subsidence of land due to caving of abandoned underground mines and underground mine fires - all too often, this has been the heritage of coal mining in America.

120 With the rapid development of improved surface mining techniques and equipment during the decades following the second World War, many coal communities were faced with new and forbidding factors. The introduction of the bulldozer and shovel into mountainous regions where geological conditions coupled with high rainfall brought periodic floods and landslides in the normal course of events, further extended the variety and severity of environmental costs imposed on area residents. These new forms of mine wastes were brown and red rather than black: silt, rocks and boulders of all sizes, released in the process of uncovering the coal seam, and causing leaching and sedimentation of creeks and rivers of the region.

120 Where the sulfur content of coal is high, exposure of low-grade coal and

other toxic materials which have been cast aside causes the formation of acid, often for long periods of time. These acids further reduce the quality of water available to local people, often ruining the domestic water supplies. The widespread use of cheap and powerful explosives to loosen and breaken up overburden lying above the coal seam further complicates these effects by opening fissures into old abandoned underground mines, frequently hastening the process of acidformation underground and simultaneously bringing about its release into aquifiers and well.

120 Contour surface mining has created thousands of miles of unstable outslopes below the mined bench. Belatedly, state laws were enacted to control these drastic consequences. However, irrespective of state reclamation laws, coal operators in general have continued in the old tradition, abandoning their operations once the coal was exhausted or its removal no longer economically attractive.

120 The Committee takes the position that the Federal government has a responsibility to remove this longstanding blight from regions which fueled the industrial growth of America prior to the advent of the internal combustion engine. The cost of rehabilitation is estimated at \$7 to \$10 billion.

120 In all, it is estimated that a million and a half acres of land have been directly disturbed by all coal mining and over 11,500 miles of streams polluted by sedimentation or acidity from surface or underground mines.

120 Estimates of program costs for correcting these problems have been made by several Federal agencies during the past four years total nearly \$10 billion and are summarized as follows:

*2*Cost estimates

Environmental impact:	Millions
1. Stabilization, reshaping and revegetation of strip mined land	\$2,040
2. Controlling acid mine drainage, clearing heavily silted streams, sealing of mineshafts	6,600
3. Stabilization of mine waste banks and removal of fire and flood hazards	220
4. Control of subsidence under urbanized areas	1,000
5. Extinguishment of underground and outcrop mine fires	50
Total	9,910

121 These estimates provide a basis for identifying the order of magnitude of funds required to correct these problems.

121 Last year the Corps of Engineers developed a program to rehabilitate a

small area, Cabin Creek, West Virginia. Cabin Creek is a short 10-mile tributary to the Kanawha River near Charleston, West Virginia. The Corps has designed a program for basic rehabilitation which provides for: (1) erosion and sediment control by stabilization of strip mines and coal refuse banks; (2) flood control needed due to sediment-filled streams through clearing stream channels; and (3) water quality control from acid mine drainage. The first cost estimate for this work is nearly \$10 million:

	Millions
Waste bank and stream mining stabilization	\$6
Sediment removal, 10.5 miles of channel	1.4
Acid mine drainage treatment	2.3
Total (first cost)	9.7

121 This type of program typifies the work needed in virtually every watershed in which there has been significant amount of underground and surface mining over the past decades.

121 Reclamation also plays a major part in protecting existing public investments in some areas. For instance, the Cabin Creek case study centers on a tributary that contributes a major silt load to navigable waterways. Similarly, the drainage area of the \$5 7 million Fishtrap Dam and Reservoir in Eastern Kentucky has been substantially affected by both underground and surface mining. Reclamation expenditures are warranted to protect such public investments. Acid mine drainage and other pollution problems substantially have affected the useful life of other reservoirs and water control works in the Appalachian chain and other coal fields.

121 The burden of paying for reclamation is rightfully assessed against the coal industry. The bill adopts the principle that the coal industry, and by extension the consumers of coal, must bear the responsibility for supporting special rehabilitation programs to recover and reclaim areas which have been severely impacted in the past by coal mining operations.

Committee Action

121 LEGISLATIVE HISTOR Y

121 A number of surface mining bills were introduced in the early months of the 93rd Congress, which was reflective of the considerable legislative activity on the subject in previous Congresses. During the 92nd Congress, the Committee on Interior and Insular Affairs favorably reported and the House passed H.R. 6482 by a vote of 265 yeas to 75 nays, in October of 1972. Although the Senate Committee on Interior and Insular Affairs had reported a surface mining bill (S.

630) the previous month, the 92nd Congress adjourned before the Senate took any action on the legislation.

121 When the Subcommittees on the Environment and Mines and Mining of the Committee on Interior and Insular Affairs held hearings on the subject of surface mining regulations in the 93rd Congress, the following bills were pending before the Committee: H.R. 3 (Mr. Hays et al.), H.R. 181 (Mr. Dingell et al.), H.R. 726 (Mr. McDade), H.R.

122 1000 (Mr. Hechler et al.), H.R. 1411 (Mr. Peyser), H.R. 1603 (Mr. Perkins), H.R. 2380 (Mr. Price of Illinois), H.R. 2425 (Mr. Shoup), H.R. 2551 (Mr. Hechler et al.), H.R. 2677 (Mr. Hechler et al.), H.R. 2861 (Mr. Price of Illinois), H.R. 3518 (Mr. Vigorito), H.R. 4863 (Mr. Saylor - the Administration bill), H.R. 5377 (Mr. Hechler et al.), H.R. 5651 (Mr. Udall et al.), H.R. 5988 (Mr. Saylor et al.), H.R. 6603 (Mr. Foley), H.R. 6709 (Mr. Dingell). *

122 * Subsequently the following bills were introduced: H.R. 8743 (Mr. Burton), H.R. 8787 (Mr. Burton). H.R. 8812 (Mr. Saylor), H.R. 9135 (Mr. Seiberling), H.J.Res. 36 (Mr. Hechler), H.R. 12898 (Mr. Hosmer), H.R. 13108 (Mr. Hosmer), H.R. 15000 (Mr. Hechler).

122 Hearings were commenced on April 9, were continued on April 10, 16, 17 and May 14, and were completed on May 15. Over a hundred witnesses appeared before the joint Subcommittees or submitted statements for the record. In April of 1973 the joint Subcommittees visited coal surface mines and reclaimed areas in West Virginia, Kentucky, Ohio and Pennsylvania. Inspection sites were recommended by industry and environmental groups as well as State regulatory agencies and thus the Subcommittee members were able to obtain a first-hand look at different mining methods practiced on steep slopes and gently rolling terrain as well as reclamation methods of varying degrees of success. The Subcommittees also toured Western mining sites during an inspection trip in May, 1973. During this field investigation the members viewed large operations in Montana, Wyoming, Arizona and New Mexico which were representative of Western thick-seam coal surface mining.

122 Upon the conclusion of hearings and field inspections, a new bill was prepared as a Committee Print under the direction of the Chairmen of the joint Subcommittees. This print, known as "Draft No. 3", incorporated many features of the bills pending before the Committee as well as provisions addressing concerns raised during the Subcommittee hearings and inspection trips. By a vote of the joint Subcommittees on August 2, 1973, Draft No. 3 was adopted as the markup vehicle and the joint Subcommittees held 29 days of public markup sessions. On November 12, 1973, the joint Subcommittees agreed to report the amended text of Draft 3 as a clean bill (H.R. 11500) to the Full Committee.

122 Full Committee deliberations began on February 20, 1974. After 19 days of public markup sessions, action was completed on May 14, 1974, and the Committee favorably reported H.R. 11500 as amended to the House by a vote of 26 to 15. The reported bill is therefore, the result of years of efforts including extensive hearings, field investigations, and lengthy markup sessions appropriate to the technical nature of the legislation's subject matter.

122 RELATION OF H.R. 11500 TO OTHER LAWS

122 Certain aspects of coal mining operations are now subject to regulation under two major Federal programs - the Coal Mine Health and Safety Act of 1969 and the Federal Water Pollution Control Act.

122 Under the Coal Mine Health and Safety Act of 1969, as amended, the Secretary of Interior regulates certain health and safety aspects of both surface mines and surface activities of underground mines.

123 This regulation, however, is directed at the protection of the miner while on the site of the mining operations.

123 In several instances, H.R. 11500 specifies that certain activities are to be conducted in such a way as to provide for the protection of the health or safety of the public (both on and off the mine site). For example, standards are set forth controlling the design, construction and use of impoundments for the disposal of mine wastes. Such provisions are not duplicative of the Coal Mine Health and Safety Act but are supplementary to the authority granted to the Secretary of Interior by that Act.

123 Since the Secretary of the Interior is given the principal responsibility for administering both laws, the Committee feels that he will be able to coordinate the implementation of his responsibilities under H.R. 11500 with those under the Coal Mine Health and Safety Act of 1969.

123 The Committee does not contemplate that any of the environmental protection standards or other provisions of this Act be implemented in such a way as to endanger coal miners working underground nor to contravene the health and safety standards and other provisions of the Coal Mine Health and Safety Act of 1969, as amended.

123 The committee felt that the requirement for the Secretary of the Interior to obtain the concurrence of the Administrator of the Environmental Protection Agency is necessary to ensure that any environmental requirement of

this Act is consistent with the environmental programs and authorities of the EPA and, in particular, those programs authorized under the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

Specifically,

the Secretary must obtain the Administrator's concurrence in the coal surface mining regulations and requirements under the environmental protection and State

program approval provisions of the bill, as well as the final approval of any State Program. The EPA has been directed by the Congress to ensure the environmental well-being of the country. EPA has established water quality standards, air quality standards, and implementation and compliance requirements

for the coal mining and processing industry, and issues permits to the industry

to ensure appropriate pollution abatement and environmental protection. The committee concluded that because of the likeness of EPA's abatement programs and

the procedures, standards, and other requirements of this bill, it is imperative

that maximum coordination be required and that any risk of duplication or conflict be minimized.

123 Statutory authority to regulate the adverse environmental effects of surface and underground coal mining under the Federal Water Pollution Control Act, as amended, is limited to the treatment or removal of any pollutants from

discharges into the waters of the United States. Section 402 of the Act requires operators of all industrial facilities having point source discharges,

including most but not all coal mines, to obtain a permit to discharge their effluent. Such permits are conditioned to require the removal of pollutants by

employing the best practicable control technology currently available.

Section

304(h) (2) of the Act requires EPA to promulgate effluent guidelines specifying

the requirements for coal mining. In most cases surface and underground coal mining operations may be required to treat or otherwise control their discharge

to remove or reduce iron, manganese, suspended solids, acidity and alkalinity,

heavy metals, and other toxic substances.

124 The vast majority of coal mines are covered by this program. Some coal

mines which do not have any discharge or do not have a point source discharge,

that is, they do not discharge through a defined culvert, pipe, ditch, channel,

or other conveyance structure, are not covered by the program. Section 304(e)

of the Act requires the EPA to issue guidelines for processes, procedures, and

methods to control nonpoint sources of pollutants from mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines.

124 The above programs authorized by the Federal Water Pollution Control Act, as amended, can deal only with a part of the problem. The FWPCA does not contain the statutory authority for the establishment of standards and regulations requiring comprehensive preplanning and designing for appropriate mine operating and reclamation procedures to ensure protection of public health and safety and to prevent the variety of other damages to the land, the soil, the wildlife, and the aesthetic and recreational values that can result from coal mining. The statute also lacks the regulatory authority to deal with the discharge of pollutants from abandoned surface and underground coal mines.

124 It is clear that broader authority, such as that proposed in H.R. 11500 is necessary to provide the needed authority and regulatory framework to minimize the adverse environmental effects of coal mining.

124 COST OF LEGISLATION

124 In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates that the following costs will be incurred in carrying out the provisions of H.R. 11500.

*5*A. REGULATION OF SURFACE
COAL MINES AND ABANDONED-MINE
RECLAMATION FUND

5[In millions of dollars]

	Authorization for appropriations set forth in H.R. 11500 (fiscal years)			
	1975	1976	1977	1978 and thereafter
Interim program and Indian lands	10	10	10	
Administration of State programs	10	20	20	30
Research and special studies	5	5	5	5
Total	25	35	35	35

124 Fiscal 1975. - In view of the short period of time remaining between the date of enactment and the close of the fiscal year 1975 (June 30, 1974), it is anticipated that none of the funds authorized will be necessary.

124 Fiscal years 1976 and 1977. - It is estimated that 35 million dollars will be needed for each of the first two full years of activities under this Act. From this, 10 million dollars each year is available for: (1) reimbursing the States for implementing the minimum Federal environmental performance standards during the interim program and while developing their permanent regulatory programs; (2) funding the development of regulatory programs for Indian tribes; and (3) developing a capability within the States to meet the responsibilities under the designation of lands authority (Section 206).

125 During each of these two years, 20 million dollars is made available to the Secretary of the Interior to establish and operate an Office of Surface Mining Reclamation and Enforcement in order to carry out the administrative

responsibilities under the Act including the review of State programs, providing for Federal enforcement, and administering the Abandoned Mine Reclamation Program.

125 In addition, five million dollars is provided each of these years for a general research and demonstration authority (Section 707) and for the special study of subsidence and underground waste disposal. (Section 704).

125 Fiscal year 1978 and later. - H.R. 11500 provides thirty-five million dollars per year to the Secretary of Interior on a continuing basis. It is estimated that 30 million dollars per year is necessary to provide matching grants to the States during the first four years of implementation of the approved State program and to cover the expenses of the Federal administration and enforcement responsibilities under the Act. The continuing funds for research and demonstration remain at the \$5 million level on an annual basis.

*8*AUTHORIZATIONS FOR APPROPRIATIONS

AS SET FORTH IN H.R. 11500 n1

*8*B. STATE MINING AND MINERAL RESOURCES RESEARCH INSTITUTES

	Fiscal year -					
	1975	1976	1977	1978	1979	1980
1981						
State a lotments to institutes (801)	7	7	14	14	14	14
14						
Research funds to institutes (802)	5	5	5	5	5	5
5						
Other research (806)	10	12	14	16	18	20
22						
Total	22	24	33	35	37	39
41						

125 n1 Millions of dollars.

125 Fiscal year 1975. - In view of the short period of time remaining between the date of enactment and the close of the fiscal year 1975 (June 30, 1974) it is anticipated that none of the funds authorized will be necessary.

125 Fiscal year 1976. - It is anticipated that 35 institutions will qualify for the Section 801 grants at the outset and, with \$200,000 per institution authorized, the total comes to \$7 million. It is anticipated that the research funds for the Institutes and other purposes will be used at the authorized levels in order to meet the critical requirements of manpower training and research.

125 Fiscal years 1977-81. - In Section 801 grants of \$4 00,000 annually are predicated on 35 institutions qualifying. It is expected that the need for other research funds will grow at a rate of \$2 million per year and thus the total appropriation through this period increases in an orderly manner from \$33 to \$4 1 million annually.

SECTION-BY-SECTION ANALYSIS OF H.R.11500 SHORT TITLE

127 The short title of the Act is the "Surface Mining Control and Reclamation Act of 1974."

SECTION-BY-SECTION ANALYSIS OF H.R. 11500 TITLE I ASSISTANCE TO STATES

127 Section 101. Findings

127 This section sets out the Subcommittee findings relating to surface coal mine operations. These findings are that:

127 (1) mining for coal and other minerals is an essential activity to the nation;

127 (2) many mining operations have numerous adverse effects on the environment and on public and private lands and properties;

127 (3) significant differences exist in the number, distribution, duration, and technology of coal and non-coal mines and the most urgent and widespread environmental problems are caused by surface coal mining;

127 (4) production from both surface and underground coal mines significantly helps to supply national energy needs and since most coal reserves are accessible only through deep mining, the existence of that portion of the industry is essential to the national interest;

127 (5) mining operations, when environmentally sound, contribute to the welfare of the nation;

127 (6) the primary regulatory authority for controlling environmental impacts of surface coal mining rests with the States, but lack of effectiveness in the State program may require the Federal Government to assume regulatory responsibility; Federal and Indian lands will remain under Federal regulatory authority;

127 (7) abandoned mines and unreclaimed lands constitute a continuing economic, social, and environmental burden on the areas in which they are located.

127 Section 102. Purposes

127 This section states that the purpose of Congress in passing this Act is to establish a nationwide program to prevent the adverse effects to society and the environment resulting from surface coal mining operations as well as the surface impact of underground coal mining operations. Guidance is provided in the method of implementing such a program by directing that priorities be established on types, distribution, location of mining operations and environmental impacts relative to population centers and impacted land uses.

127 A further purpose is to assure that surface coal mining operations are conducted only where reclamation as required by the Act is feasible so as to prevent degradation to land and water; and to assure that adequate procedures are undertaken to reclaim the disturbed areas as an integral part of surface coal mining operations. Assistance is provided to the States for the development and implementation of a program to achieve the purposes of the Act.

128 The rights of land owners with a legal interest in the land must be fully protected from surface mining operations and appropriate procedures established for public participation in the development, revision, and enforcement of regulations, standards, reclamation plans or programs established by any regulatory authority under this Act. The bill also establishes a program for the rehabilitation of lands previously mined and left unreclaimed which continue to substantially degrade the quality of the environment or endanger the health or safety of the public.

SECTION-BY-SECTION ANALYSIS OF H.R. 11500 TITLE II CONTROL OF ENVIRONMENTAL IMPACTS OF SURFACE MINING

128 Section 201. Initial Regulatory Authority

128 Since the Federal environmental protection standards and other provisions of the Act pertaining to coal surface mining operations will not come into full force until 30 months or more after the date of enactment of the Act, this section presents an initial regulatory program providing environmental protection standards for the most critical and damaging activities of surface mining with respect to environmental impacts and the health or safety of the public. The initial regulatory program also provides a transitional step toward the full-scale regulatory program, with which it will be integrated. In essence, the initial regulatory program consists of:

128 (a) a set of environmental protection standards;

128 (b) procedural requirements with respect to submitting permit applications;

128 (c) Federal enforcement and funding capable of backing up the States in their implementation of the initial program; and

128 (d) basic elements of citizen participation provisions contained in the bill.

128 Environmental protection standards incorporated into the initial regulatory program will require:

128 (1) preventing placement of waste material on steep slopes below the

bench, except for that required by the small initial cut needed to gain access to the coal seam, or limited placement as approved by the regulatory authority where a plateau is created providing that such placement is consistent with approval post mining land use and except in areas which are generally flat or gently rolling mining on occasional steep slope is permitted if the mining leaves a flat plain;

128 (2) regrading the mine site to its approximate original contour with all highwalls covered, except when spoil from the entire mining operation is insufficient to meet the regrading standard or when variation from the regrading requirement is necessary to achieve the approved equal or better post-mining economic or public land use;

128 (3) segregating and preserving topsoil or suitable subsoil in order to aid in the establishment of the required diverse vegetative cover capable of self-regeneration and plant succession, on those lands which have been mined and regraded and including introduced species;

129 (4) stabilizing and revegetating all wastes placed on the surface from both underground and surface coal mines, and if any impoundments are used for waste disposal, engineering them to specified standards to assure the protection of downstream residents and the environment;

129 (5) minimizing disturbance to the hydrologic balance and quality and quantity of water in the surface and ground water systems on and adjacent to the mine site.

129 Exceptions to certain of these environmental protection standards are allowed in cases where adequate equipment is shown to be unavailable to the operator;

129 On and after the date of enactment of the Act, all new coal surface mining operations must comply and all new permits required from State regulatory authorities must contain terms requiring compliance with the initial environmental protection standards. Existing operations have 120 days from enactment within which to comply, during which time the State regulatory authorities must amend existing permits. Operators who expect to surface mine for coal after a State program has been approved pursuant to section 203, must file an application for a permit which must be in full compliance with the Act.

129 In recognition of the possibility that unforeseen delays may occur in the transition from the initial regulatory program to the approved State or Federal program, the section provides that an operator with a valid permit may

continue to operate beyond the date of expiration of his permit, while awaiting administrative action on his application for a new permit during the period prior to approval or disapproval of a State program and 6 months thereafter. Furthermore, existing operations on Federal or Indian lands may commence or continue coal surface mining prior to the approval of a Federal program, if they have substantial legal and financial commitments and if they comply with the environmental protection standards.

129 Within one hundred and eighty days after the date of enactment, the Secretary of Interior is required to issue rules and regulations for implementing the Federal enforcement program, which will remain in effect in each state where there is surface coal mining until a state or federal program has been approved. The Secretary, who is empowered to draw on personnel of other Federal agencies for his inspection force, must provide one Federal inspection of each mine site every three months on a random basis. He must also inspect any operation found to be in violation of the environmental protection standards during two consecutive State inspections, and must take necessary enforcement actions.

129 The section assures citizens access at centrally located Federal offices to all inspection reports submitted by State regulatory agencies, and enables citizens to provide the Secretary with information which could lead him to believe that environmental standards are not being enforced. This information must trigger Federal inspection of the operation in question, with the complainant being given the opportunity of accompanying the Federal inspector onto the site.

130 Section 202. Permanent Environmental Protection Standards

130 This section grants the Secretary of Interior the authority necessary to promulgate regulations covering the full surface mining and reclamation control programs both state and federal established in the Act within 180 days after the date of enactment. Public review and public hearings are provided during this process and the Secretary must obtain written concurrence of the Administrator of the Environmental Protection Agency with those regulations promulgated which relate to Federal air and water quality laws.

130 Section 203. State Programs

130 In order for any State to assume its primary role in administering surface mining regulation, this section requires submission to the Secretary of Interior, within 24 months after the passage of the Act, of a State program which demonstrates that the State has legal, financial, and administrative

capability for carrying out the provisions of the Act.

130 The State program must specifically show that the State has a law providing for the regulation of surface mining and reclamation in accordance with all provisions of the Act and subsequent regulations. The State program must provide for sanctions or penalties for all violations of State laws, regulations, or conditions of permits concerning surface mining, must meet the minimum requirements of this Act as referenced in the Coal Mine Health and Safety Act of 1969 as amended, must provide sufficient administrative and technical personnel with funding to fully implement and enforce provisions of this Act, must show that a process for designating areas unsuitable for surface coal mining has been established and that a process exists for coordinating review of any mine permit with any other Federal or State permit issued under this Act.

130 The Secretary of the Interior is directed to approve or disapprove each State program in whole or in part within 6 months after submission. Prior to such decision he must hold at least one public hearing within the State on the program, disclose views of all Federal agencies having special expertise pertinent to the proposed State program, obtain the written concurrence of the Administrator of the Environmental Protection Agency for those aspects of the State program relating to federal air and water quality laws.

130 If the Secretary disapproves a State program in whole or in part, the State shall have sixty days to resubmit a revised State program or appropriate portion thereof. No State may resubmit a proposed program after 30 months after the date of enactment of the Act. The Secretary must approve or disapprove a resubmitted State program within 60 days of its resubmittal.

130 Section 204. Federal Programs

130 This section grants authority to the Secretary to establish a Federal program for the permanent regulation of surface mining in any State which fails to: (1) obtain complete approval of its program under Section 203, or (2) adequately enforce, maintain, or implement this program once approved. Authority is also granted the Secretary to provide Federal enforcement of any or all parts of the approved State program on any or all mines pursuant to the enforcement authority in Section 220 of the Act.

131 States having a constitutional convention in 1974 and legislatures which do not meet in regular session until 1975 may receive an extension of six months beyond the twenty-four month period for submission of program.

131 Section 205. Resubmittal of State Program

131 A State may submit a program any time after a Federal program has been implemented in that State and the Secretary shall have six months, following the procedure in section 203(b), to approve or disapprove such program. Such program shall be approved if the State demonstrates the capability of carrying out the provisions of this Act. Until the State program is approved the Federal program shall remain in effect.

131 Section 206. Designating Areas Unsuitable for Surface Coal Mining

131 As a condition of having a State program approved by the Secretary of Interior, this section requires States to establish a planning process enabling decisions on the unsuitability of lands for all or any type of surface coal mining.

131 Lands must be so designated if reclamation as required by this Act is not economically or physically possible.

131 Lands may be so designated if: (1) Surface coal mining would be incompatible with Federal, State, or local plans to achieve essential government objectives; (2) the area is a fragile or historic land area; (3) the area is in "natural hazard lands" - those lands where development could endanger life and property, such as unstable geological areas; (4) the area is in "renewable resource lands" - those lands where uncontrolled or incompatible development could result in loss or reduction of long-range productivity, and could include watershed lands, aquifer recharge areas, significant agricultural or grazing areas. In complying with this section, a State must have established an appropriate agency, data base and inventory system, and methods for implementing land use planning decisions and affording adequate public review.

131 The Secretary of Interior is to review Federal lands and make some determinations based on the standards set forth above. Any person having an interest which may be adversely affected may petition either the State or Federal Government to have an area so designated based on the above criteria or to have a designation terminated. Public hearings on any area to be so designated must be held.

131 Land upon which surface coal mining operations are being conducted on the date of enactment, or for which there is substantial legal and financial commitment prior to September 1, 1973, are not to be so designated. In addition, prior to the designation of any area as unsuitable for mining, the regulatory authority must prepare from existing and available information a statement on the potential coal resources in the area affected, the overall demand for coal, and the impact of the designation on the environment, the area's economy and the supply of coal.

131 Section 207. Effect on State Law

131 This section stipulates that any provision of State law or program which provides more stringent environmental protection from surface coal mining than do the provisions of this Act as not to be construed as inconsistent with this Act. This provides the Secretary of Interior with the legal basis to approve State regulatory programs with more stringent controls, consistent with the intent that the environmental protection standards are to be considered as the minimum necessary.

132 Section 208. Permits

132 This section stipulates that after six months from the Federal approval of a State program or the implementation of a Federal program in a State, no person shall conduct surface coal mining unless a permit is obtained in full compliance with this Act. The duration of such permit is not to exceed five years, and is nontransferable, except to a successor in interest who applies within 30 days after succeeding to such interest and is able to obtain a bond.

132 Section 209. Permit Approval or Denial

132 This section establishes general and specific criteria which must be met if a mining permit or permit renewal is to be approved. Generally, in order to approve a mining permit application, the regulatory authority must find in writing that: (a) all requirements of this Act will be met; (b) there is objective assurance that reclamation can be achieved; and (c) the proposed post-mining land use is compatible with surrounding non-mining land uses, is practical, and is achievable with respect to any necessary public or private investments and support.

132 The regulatory authority may: (1) approve the mining permit application as submitted; (2) disapprove such application, returning it to the applicant with reasons for disapproval; (3) return the mining application to the operator requesting changes to make it conform to the requirements of the Act; (4) alter such permit application with respect to mining methods, timing, or sequencing of individual operations; or (5) delete areas of specific operations from all or part of the plan so as to assure that the environmental protection objectives of the Act are met.

132 Specifically, the regulatory authority cannot approve a mining permit application and issue a permit unless the permit application affirmatively demonstrates that, and the regulatory authority makes specific written findings to the effect that:

132 (1) reclamation of land to be affected will be done in accordance with the Act;

132 (2) the proposed post-mining land use is practical, likely to be achieved, and not inconsistent with surrounding land uses;

132 (3) proposed mining area is not in an area designated unsuitable for surface coal mining or in an area under study for a designation, unless there has been substantial legal and financial commitment prior to September 1, 1973;

132 (4) land to be affected is not within 300 feet of buildings, or certain public facilities, nor within 100 feet of public road right-of-way;

132 (5) the impacts of the mining operation on the hydrologic balance on and off the permit area are minimized;

132 (6) the operator is not ineligible to obtain a coal mining permit from any other program authorized by this Act;

132 (7) the operator has not had any mining permit revoked within five years of filing application;

133 (8) the mining operation will not adversely affect lands and water used by the public unless appropriate screening is approved;

133 (9) the mining operation is not located in the National Park System, National Wilderness System, National Forests, National Wildlife Refuge System, or Wild and Scenic Rivers System (unless an existing mine has substantial legal and financial commitments prior to September 1, 1973);

133 (10) all permit areas are contiguous;

133 (11) the applicant has made no partial or total bond forfeiture under the provisions of this Act within the past five years;

133 (12) the application is complete.

133 In addition, the mining operator must list any violation on any other surface coal mining operation of air and water environmental protection statutes and the disposition of such violations. Violations must have been corrected or be in the process of correction, according to proof required before permit application is approved.

133 Section 210. Application Requirements

133 This section lists the basic data necessary for development of the

mining and reclamation plan which must be submitted along with the permit application. The information required here is a key element of the operator's affirmative demonstration that the environmental protection provisions of the Act can be met as stipulated in section 209 and includes:

133 (1) identification of all parties, corporations, and officials involved to allow identification of parties ultimately responsible for the operation as well as to cross-check the mining application with other applications in the same State and other States;

133 (2) description of method of mining, starting dates, location, termination dates and schedule of activities;

133 (3) summary listing of past mining and reclamation permits including those suspended or revoked;

133 (4) maps and data sufficient to fully describe the surface and subsurface features of the area to be mined, the chemical and physical properties and geologic setting, so that basic information is available to the regulatory authority in order to determine the impact of the mining operation and to be able to replicate the conclusions reached by the operator with respect to the environmental protection measures proposed in the mining and reclamation plan. Such information shall also include all relevant legal documents, test borings, keyed to the appropriate maps, and independent laboratory analysis of such borings (with certain data regarding the coal seam to be held confidential);

133 (5) evidence of compliance with section 709;

133 (6) evidence of compliance with section 610;

133 (7) a full description of the on- and off-site hydrologic consequences of mining and reclamation, including the impact on the quality and quantity of water in ground and surface water systems.

133 The section also specifies that a mining and reclamation plan be part of the application and include, among other items, the following major points:

133 (1) a plan for the entire mining operation for the life of the mine including identification of the subareas anticipated to be included on a permit by permit basis, their sequencing, and mining and reclamation activities;

134 (2) an identification and description of the land use setting of the area to be affected prior to mining and its proposed postmining land use, its configuration, drainage plans, including specific evidence that the proposed land use is reasonable with respect to its practicality and if additional

resources are necessary that they will be available on a timely and adequate basis;

134 (3) a detailed description of all schedules and methods for complying with environmental standards.

134 The applicant must file a complete copy of the application with the local court house of the county in which mining is proposed at the time of submission to the State, so that this application will be available for public review.

134 The application to the regulatory authority is to be accompanied by a certificate of insurance for not less than \$1 00,000 indicating the operator has liability protection for on- and off-site personal injury and property damage. Any valid permit issued under this Act shall carry with it the right of renewal, and an application for the renewal of a permit must be filed 120 days prior to the termination of the existing permit and must contain all information required by the regulatory authority, updating and revising both the mining and reclamation plan contained in the original permit application. Application for permit renewals shall include: (1) a listing of any claims, settlements or judgments arising out of existing operation; and (2) written assurance from the bond issuer that existing bond will continue in full force for the duration of the extension requested as well as any additional bond required. The portion of a renewal application which concerns new permit areas shall be treated as a new application.

134 Prior to the approval of any permit extension or revision, the regulatory authority must notify all parties who participated in the public review and hearings on the original permit, must give notice to appropriate public authorities, and must meet the other requirements specified in section 214, Public Hearings and Notices.

134 Section 211. Environmental Protection Performance Standards

134 Environmental protection performance standards set forth in this section are the heart of the bill. The operator will be required to:

134 (a) maximize utilization and conservation of the coal being mined;

134 (b) restore the land to a condition at least fully capable of supporting uses it was able to support prior to mining;

134 (c) contain temporary environmental damage within the permit area;

134 (d) limit the amount of area disturbed at any one time and keep current with the reclamation schedule;

134 (e) separate topsoil and protect it from deterioration, or segregate and protect a more suitable subsoil if available;

134 (f) stabilize and protect all surface areas including spoil piles to control air and water pollution;

134 (g) separate and promptly bury toxic materials;

134 (h) backfill, compact and grade to restore the approximate original contour with all highwalls, spoil piles and depressions eliminated, unless the operator can demonstrate that waste material from the entire permit area is insufficient, in which case less stringent regrading requirements are allowable;

135 (i) create impoundments under the approved reclamation plan, only if such factors as size, stability, water quality and level, access, and effect on adjacent landowners are acceptable;

135 (j) refrain from constructing roads in or near streams or drainage channels;

135 (k) replace topsoil or best available subsoil on regraded areas;

135 (l) establish on the regraded areas a diverse vegetative cover native to the area and capable of self-regeneration, with introduced species allowable in accordance with approved postmining land use;

135 (m) assume responsibility for successful revegetation for five years after the last year of augmented seeding, fertilizing, irrigation or other work to assure adequate survival and plant density, except in regions having an annual average precipitation of 26 inches or less when the operator's period of responsibility is extended to ten years.

135 (n) minimize disturbances to the hydrologic balance onsite and associated offsite areas by avoiding toxic drainage, preventing offsite flows of suspended solids, restoring recharge capabilities of minesites, preserving alluvial valley floors in arid and semi-arid areas, and avoiding channel deepening and enlargement in operations discharging water from mines;

135 (o) prevent offsite damages and immediately correct such conditions;

135 (p) construct water retention facilities by incorporating the best available engineering practices in order to achieve necessary stability and safety to protect the health or safety of the public and at a minimum is compatible with the design, engineering and construction standards used for

structures built under P.L. 83-566, and that no mine wastes such as coal fines and slimes are to be used in the construction of such impoundments and embankments;

135 (q) stabilize and revegetate all mine wastes deposited on the surface;

135 (r) in using explosives, give advance written notice to local governments and adjacent affected residents and public notice limit type and equipment and other factors so as to prevent injury to persons, property, underground mines and ground or surface waters and refrain from blasting in certain sensitive areas;

135 (s) refrain from surface coal mining within 500 feet of an underground mine unless mining through an abandoned mine;

135 (t) fill all auger holes.

135 (u) construct access roads, haul roads, or haulageways with appropriate limits applied to grade, width, surface materials, spacing, and size of culverts.

135 In addition, this section sets forth certain other performance standards designed to protect the environment, and applying only to steep-slope surface coal mining (which term is not to include mining operations on flat or gently rolling terrain which will leave a plain or predominantly flat area) as follows:

135 (1) spoil or waste materials may not be placed on the slope below the bench or cut, except where necessary to gain access to the coal seam and then only under specified conditions to prevent slides, erosion and water pollution;

136 (2) return the site to the approximate original contour, covering highwalls completely and limiting disturbance above the highwall;

136 (3) mining permits, while renewable, may not be issued for more than two years;

136 (4) "steep slope" is defined as any slope above 20 degrees or a lesser slope as determined by the regulatory authority after due consideration of the soil, climate and other environmental characteristics of a region or State;

136 (5) regarding post-mining land uses, any industrial, commercial, residential or public facility development proposed for the affected land must be shown to be compatible with adjacent land uses, obtainable according to need and market, assured of necessary public facilities, supported by public

agencies' commitments, financially facillicable, planned according to schedule, and designed by a registered civil engineer in conformance with professional standards to assure the stability, drainage, and configuration necessary for the intended use.

136 Variances may be granted from performance standards which require the restoration of the approximate original contour, the covering of all highwalls, the prohibition against placement of spoil on steep slopes, and liability for establishing revegetation, only in cases where industrial, commercial, residential, or public facility development is proposed for post-mining land use and where the regulatory authority, after public notice and public hearing, issues a written finding that the proposed use is a higher or better economic or public use which can only be obtained if one or more of the variances are granted. However, no such variance is to be effective for more than three years, unless substantial progress toward completion of the development is underway according to the schedule shown in the approved mining and reclamation plan.

136 Section 212. Performance Standards for Underground Mining Operations

136 Environmental protection standards for surface mining operations also apply to underground mines. In this section, the Secretary is required to incorporate in his regulations the following key provisions concerning the control of surface effects from underground mining:

136 Underground mining is also to be conducted in such a way as to assure appropriate permanent support to prevent surface subsidence of land and the value and use of surface lands, except in those instances where the mining technology approved by the regulatory authority at the outset results in planned subsidence. Thus, operators may use underground mining techniques, such as long-wall mining, which completely extract the coal and which result in predictable and controllable subsidence.

136 Portals, entryways, shafts or accidental breakthroughs between the surface and underground mine workings must be sealed when they are no longer needed for the conduct of the mining operation.

136 Environmental standards controlling the surface disposal of mine wastes are the same as those discussed in the previous section (Section 210).

137 After surface operations or other mining impacts are complete at a particular site, the area must be regraded and a diverse and permanent vegetative cover established.

137 In order to prevent the creation of additional subsidence hazards from underground mining in developing areas, permissive authority is provided to the regulatory agency to prohibit underground coal mining in urbanized areas,

cities, towns, and communities and under and adjacent to industrial buildings, major impoundments, or permanent streams.

137 In addition, the bill requires that all operators, both during and after mining, shall have an abatement and remedial program to eliminate (1) any polluting discharge into streams and (2) fire hazards and other conditions that constitute a hazard to the health or safety of the public. Provisions of the Act and regulations pertaining to State and Federal programs, permits, bonds, inspection and enforcement, public review and administrative and judicial review are applicable with such modifications to the application requirements, permit approval and denial procedures and bond requirements deemed necessary by the Secretary in order to accommodate differences between surface and underground mines.

137 Section 213. Revision and Review of Permits

137 This section establishes a process for the revision of a permit during its term as well as review by either a State regulatory authority or the Secretary of existing permits issued prior to the assumption of regulatory jurisdiction by the current regulatory authority.

137 An operator may submit an application for a permit revision to the regulatory authority and within a period of time established by that agency, the application shall be approved or disapproved. The regulatory authority is to establish guidelines for procedures which may vary depending upon the scale and extent of the proposed revision. In all events, however, the process will be subject to the Act's notice and hearing requirements and a proposed revision which would extend the area covered by existing permit (other than incidental boundary revisions) is to be made through the normal permit application process.

137 The regulatory authority may require revision of a permit during its term provided that it follows the State or Federal program's notice and hearing requirements.

137 Where one regulatory authority assumes the program formally administered by another, this section provides that permits issued by the previous agency shall remain valid but are subject to review by the present regulatory authority. The situation could arise where a Federal program is established in a State which has failed to adequately enforce or maintain an approved State program or where a State submits and wins approval of a State program after a Federal program has been implemented in that State. If upon review of an existing permit the regulatory authority determines that the permit is in violation of the current program, the regulatory authority shall give notice to the permittee that he has 90 days to submit a new application. The operator

shall have a reasonable time to conform on-going mining to the requirements of the newly implemented program.

138 Section 214. Public Notice and Public Hearings

138 This section assigns the responsibility for giving public notice, holding hearings and submitting comments to the mining permit applicant, the regulatory authority, and interested third parties.

138 The applicant is required to -

138 (a) place an advertisement identifying the ownership, precise location, and boundaries of the land to be affected in a local newspaper of general circulation in the locality of the proposed new surface mine. This advertisement must appear at least once a week for four consecutive weeks;

138 (b) submit, along with the mining permit application, a copy of this advertisement;

138 (c) submit, within seven days after making application for a mining permit, copies of letters sent to various local governmental bodies whose functions might be affected by the mining operation, notifying them of the intention to surface mine, indicating the application's permit number and where a copy of the mining and reclamation plan may be inspected;

138 (d) cooperate with the regulatory authority concerning the inspection of the proposed mine area;

138 (e) assume, if a public hearing is held, the burden of proving that the application is in compliance with State and Federal laws (including provisions of this Act).

138 The regulatory authority must:

138 (a) receive, and make available to the public comments on the application from local agencies, in the same manner and at the same location as are copies of the mining application;

138 (b) provide for public hearings upon request and place notice of such hearings, including date, time, and location, in a newspaper of general circulation in the locality at least once a week for three consecutive weeks prior to the scheduled hearing date;

138 (c) respond in writing to written objections on the mining application received from any party not less than ten days prior to any proposed hearing. Such response shall include (1) the regulatory authority's preliminary assessment of the mining application; (2) proposals as to the terms and conditions of the permit to mine; (3) the amount of bond to be set for the operation; and (4) answers to material factual questions presented in the

written objections;

138 (d) make available to the public prior to or at the time of the hearing the regulatory authority's estimate as to any other conditions of mining or reclamation which may be required or contained in the preliminary proposal.

138 For the purpose of such hearings, the regulatory authority may administer oaths; subpoena witnesses and written or printed materials; compel attendance of witnesses or production of materials; take evidence, including site inspection of the land to be affected or other mining operations carried on by the applicant; arrange with the applicant for access to the proposed mining area; and keep a complete record of each public hearing.

138 Interested citizens may -

138 (a) review mining applications at specific locations;

139 (b) file written objections and request hearings concerning mining applications;

139 (c) request inspection of the proposed mining area relative to the hearing and accompany the inspection tour;

139 (d) review the regulatory authority's written response to the objections submitted;

139 (e) appear at public hearings and present views and comments with respect to the mining application.

139 Section 215. Decisions of the Regulatory Authority and Appeals

139 Under the administrative procedure established in this section, if hearings on the mining application have been held within 30 days after their completion, the regulatory authority shall provide to the applicant and all parties to the administrative proceeding its written findings granting or denying the permit in whole or in part and stating its reasons.

139 In instances where no hearings have been held, the regulatory authority is to notify the applicant in writing of its decision. If the application has been denied in whole or in part, specific reasons for denial must be included. This response must be given within a reasonable time after submission of the permit application, taking into account the time needed for appropriate field investigations of the site, the complexity of the permit application, whether or not written objections have been filed, and the fulfillment of other administrative responsibilities by the regulatory authority under this Act, including those in sections 208 and 209.

139 Approval of the application results in the issuance of the mining

permit. If, however, the permit is denied, then: (a) within 30 days of denial the applicant may request a hearing on the disapproval; (b) upon such a request the regulatory authority will hold the hearing within 30 days, notifying all interested parties and following the procedure outlined above.

139 Any person who has participated in the administrative proceeding shall have the right of judicial review by the appropriate court in accordance with State and Federal law.

139 Section 216. Posting of Bond

139 With respect to posting a permit bond, this section specifically requires that:

139 (1) the bond is to be filed with the regulatory authority after the mining and reclamation plan is approved but before the permit to mine is issued;

139 (2) the bond is to be payable to the regulatory authority and conditioned upon the operator's meeting all applicable requirements under the Act;

139 (3) the amount of bond is to be sufficient to assure that all reclamation will be accomplished by a third party in the event of default or forfeiture by the mining operator, and it is not to be less than \$10,000;

139 (4) the bond shall cover part or all of the area under permit, and must cover that land on which the operator is conducting coal surface mining operations. If the bond is for only part of the permit area, it must be adjusted and increased as new portions of the permit area are disturbed or affected;

140 (5) liability under bond is for the duration of the surface mining and reclamation operation, including the full period of the operator's responsibility for revegetation requirements;

140 (6) the bond can be (1) a surety issued by a company licensed in the State of operation, (2) cash, (3) negotiable bonds of the U.S. Government or such State, or (4) negotiable certificates of deposit in any bank. Cash deposit or the market value of negotiable bonds or certificates shall be equal to or exceed the amount of the bond required.

140 The amounts of the initial and subsequent bonds are to be determined by the regulatory authority. In all cases the amount must be sufficient to cover the full cost of reclamation.

140 The section also establishes guidelines by which cash or securities deposited for bonding purposes can be placed under responsible financial

management on behalf of the operator in order to protect their value and utility to both the regulatory authority and the operator.

140 Section 217. Bond Release Procedures

140 The release of the operator from financial obligations under bond may be done in two stages under this section, depending on the amount of reclamation accomplished.

140 The operator may request that up to 60% of the bond for any area may be released after completion of backfilling, regrading, and drainage control for a bonded area in accordance with the approved mining and reclamation plan. The decision as to whether to release any or up to 60% of the total bond is to be made within 160 days, based on the regulatory authority's inspection and assessment of: (a) conformance with the requirements of the Act; and (b) an assessment of the significance of residual problems of surface and ground water pollution, and the cost of completing reclamation and abating pollution.

140 The second bond release step is after completion of the revegetation requirement including the operator's responsibility for the time-period specified in section 211. On request for such final bond release by the operator, the regulatory authority must inspect and evaluate the reclamation work within 60 days prior to responding. Denial of the request requires the regulatory authority to set forth reasons for unacceptability and recommend actions for correcting the deficiencies. The amount of bond retained must be sufficient to cover the cost of a third party re-establishing vegetation for the period of liability.

140 For any bond release request, public notice must be given on a substantive basis equivalent to public notice for mining applications except that the advertisement in newspapers is for three weeks instead of four. In addition, letters substantively stating the release request must be sent to public agencies or local government bodies which are potentially affected by release of the bond and operator's responsibility for the work covered by the bond. A decision on the bond release request must be made within 60 days.

140 Provisions for written comments, objections, and requests for hearings by interested parties and governmental agencies or bodies and the responsibility of the regulatory authority to answer in writing and hold such hearings are the same for the final bond release procedure as are those discussed above with respect to the application for mining permits.

141 Section 218. Suspension and Revocation of Permits

141 In this section, the general rule governing the suspension or revocation of a permit prohibits such action until:

141 (1) the regulatory authority has given prior notice to the operator of violation of provisions of the Act or the approved State or Federal program;

141 (2) a reasonable time, but not more than 90 days, has been given to the operator to correct the violation; and

141 (3) if requested by the operator (permittee), the regulatory authority has held a public hearing on the violation and suspension.

141 However, special rules do apply which allow the immediate suspension or revocation of a permit, providing that the continuation of the mining operation will:

141 (1) endanger the public health or safety;

141 (2) threaten significant damage to public and private property;

141 (3) endanger the quality and quantity of a public or private water supply;

141 (4) pose other significant harm to land, air, or water resources. In such cases, the permit or such portion of the permit related to the offending activity must be suspended, subject to a subsequent determination, after a public hearing if so requested by the permittee, of whether the permittee has violated the provisions of the permit, State or Federal programs.

141 Following the hearing, the regulatory authority must provide the permittee in writing either affirming or rescinding the suspension and stating the reasons therefor. The permittee has the right of judicial appeal of such a decision in the appropriate U.S. District Court.

141 On revocation of the permit by the regulatory authority, the operator shall immediately cease any surface coal mining operation on the permit area and the regulatory authority shall forfeit the performance surety bonds for the operation. The Secretary of Interior must be notified immediately upon revocation of any permit by any State regulatory authority.

141 Section 219. Inspections and Monitoring

141 This section instructs the regulatory authority to carry out inspection of each mining operation according to the following criteria:

141 (1) irregular and averaging not less than one per month for each operation;

141 (2) occurring without prior notice to the operator;

141 (3) including filing of reports adequate to insure the enforcement of

the requirements under this Act;

141 (4) rotating inspectors at adequate intervals.

141 After each inspection, the inspector shall notify the operator and the regulatory authority of each violation of any requirement of the Act. Copies of all inspection reports are to be made available to the public at central locations and at Washington, D.C.

141 For the purpose of administering and enforcing any approved State or Federal program under this Act, every permittee must establish and maintain appropriate records, make monthly reports to the regulatory authority, install, use and maintain any necessary monitoring equipment or method, evaluate the results of such monitoring in accordance with the procedures established by the regulatory authority, and provide such other information relative to surface mining as the regulatory authority deems reasonable and necessary.

142 Special additional monitoring and data analysis are specified for those mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance or water use either on or off the mining site. Access to the mine site, monitoring equipment, areas of monitoring, and records of such monitoring and analysis must be provided promptly to authorized representatives of the regulatory authority without advance notice and upon request.

142 A clearly visible sign must be maintained at the mine entrance.

142 Section 220. Federal Enforcement

142 The Federal enforcement system contained in this section, while predicated upon the States taking the lead with respect to program enforcement, at the same time provides sufficient Federal backup to reinforce and strengthen State regulation as necessary. Federal standards are to be enforced by the Secretary on a mine-by-mine basis for all or part of the State as necessary without a finding that the State regulatory program should be superceded by a Federal permit and enforcement program.

142 The provisions for Federal enforcement have a number of specific characteristics.

142 (1) The Secretary may receive information with respect to violations of provisions of this Act from any source, such as State inspection reports filed with the Secretary, or information from interested citizens.

142 (2) Upon receiving such information, the Secretary must notify the State or such violations and within ten days the State must take action to have the violations corrected. If this does not occur, the Secretary shall order Federal inspection of the operation. If the inspection is based on data from a third party, that party shall be afforded the opportunity to accompany the Federal inspector.

142 (3) If on the basis of inspection, the Secretary determines that a violation has occurred, which creates an imminent danger to public health or safety or can cause imminent significant environmental harm, he shall immediately order cessation of the operation or a relevant portion thereof, until the violation is abated or the order modified by the Secretary.

142 In the case of a violation which does not cause such imminent danger, the Secretary must issue a notice setting a period of no more than 90 days for abatement of the violation. A pattern of violations caused by unwarranted or willful failure to comply with provisions of the Act requires the Secretary to order the permittee to show cause why his permit should not be suspended or revoked.

142 All orders issued by the Secretary take effect immediately and all orders shall be specific and substantive with respect to the nature of the violation, the remedial action required, time for compliance and seriousness of the violation.

142 If violations occurring under an approved State program appear to result from the failure of the State to enforce the program effectively, the Secretary shall so inform the State. If the problems extend beyond two weeks, the Secretary shall give public notice of his finding with respect to the State program. After public notice, and until the State satisfies the Secretary that it will enforce all provisions of the Act, the Secretary of Interior shall enforce any permit condition required by this Act, shall issue new or renewed permits for surface mining operations, and issue other orders as necessary for compliance with the provisions of this Act. Upon request of the Secretary, the Attorney General of the U.S. may enforce such Secretarial orders for various actions in a district court of the U.S.

143 The Secretary may request the Attorney General to apply for injunctive relief whenever a permittee violates an order of the Secretary, hinders implementation of the Act, refuses to permit inspection of the mine, or refuses to furnish information.

143 Section 221. Judicial Review

143 Any decision of the Secretary approving or disapproving a State program under section 203 or preparing and promulgating a Federal program under section 204 may be reviewed in an appropriate United States Court of Appeals by a petition filed within 60 days of such decision by a person who participated in the administrative proceedings and who was aggrieved by such decision according to this section.

143 All other decisions or orders of the Secretary shall be reviewable in the appropriate United States District Court for the locality in which the surface coal mining operation is located. Commencement of a proceeding under this section shall not operate as a stay of action by the Secretary unless so ordered by the court.

143 Section 222. Review by the Secretary

143 This section provides that any permittee who has had his permit revoked or suspended, and any person adversely affected by such revocation or suspension, may apply to the Secretary for review of such revocation or suspension within 30 days after such revocation or suspension upon receipt of an application the Secretary shall conduct an appropriate investigation, including public hearings.

143 Section 223. The Establishment of Right to Bring Citizens Suits

143 This section provides standing to any person to commence a civil action in a district court against (1) any person alleged to be in violation of any provision of this Act or (2) a regulatory authority where there is a failure to perform any act or duty under this Act excepting discretionary actions.

143 Any resident of the United States injured in any manner through failure of any operator to comply with the provisions of this Act, regulations issued thereto, orders, permits issued by the Secretary, may bring action for damages in U.S. district court.

143 Citizens suits in some instances may not be commenced before the expiration of 60 days after an operator is notified of the alleged violation, or, if the Secretary or State has commenced and is diligently prosecuting a civil or criminal action to require compliance with a mining permit, orders, or provisions of the Act. However, in such instances, the person may intervene as a matter of right.

143 The court in issuing any final order may award litigation (including reasonable attorney and expert witness fees) to any party whenever appropriate.

The court may also require filing a bond or equivalent security if request for temporary restraining orders or injunctions is sought.

144 Section 224. Penalties

144 Any permittee who violates any permit condition or who violates any other provisions of this title may be assessed a civil penalty by the Secretary not to exceed \$10,000 for each violation according to this section.

144 A civil penalty shall be assessed only after an opportunity for a public hearing has been afforded the person charged with a violation.

144 Any person who willfully and knowingly violates a condition of a permit, or fails or refuses to comply with an order issued by the Secretary under this Act, shall be fined not more than \$1 0,000, or imprisoned for not longer than one year, or both.

144 Any person who knowingly makes a false statement, representation, or certification with respect to any application, record, report, plan or other document filed or required to be maintained under this Act shall be fined not more than \$1 0,000, or imprisoned for not longer than one year, or both.

144 Section 225. Federal Lands

144 This section requires the Secretary of Interior to implement a Federal lands program regulating coal surface mining operations which at a minimum meets all the requirements of this Act.

144 Within 90 days after the enactment of this Act, the interim environmental protection standards contained in section 201 are to be made part of every existing coal surface mining operation on Federal lands.

144 Within 18 months after enactment, all provisions of this Act are to be incorporated by reference or otherwise in any Federal lease, permit, contract, issued by the Secretary which may involve surface coal mining and reclamation operations or surface impacts of underground coal mine operations. Secretary may require that the lessee, permittee or contractor surface mining coal owned by the United States give satisfactory assurances that the antitrust laws of the United States will be complied with.

144 The Secretary may arrange with a State to have the checkerboardFederal and non-Federal lands jointly managed under a State mining regulatory program or

accept such authority from a State for non-Federal lands. Such agreements must at a minimum include all requirements of this Act and not preclude Federal inspection of any operations.

144 This section does not authorize the Secretary to delegate to any State or any authority jurisdiction over mining activities taking place on Federal or Indian lands or to delegate to the States trustee responsibilities towards Indians and Indian lands. Prior to approval of a Federal program, existing operations on Federal and Indian lands may continue operating.

144 Section 226. Special Bituminous Coal Mines

144 This section authorizes the regulatory authority to issue separate regulations for interim and permanent programs for special bituminous coal mines meeting various criteria and existing on the date of enactment. Such alternative regulations shall pertain only to the standards governing on-site handling of spoil, elimination of depressions and regarding to approximate original contour, shall specify that remaining highwalls are to be stable, and that all other environmental protection standards in the Act shall apply along with the other provisions.

SECTION-BY-SECTION ANALYSIS OF H.R. 11500 TITLE III INDIAN LANDS PROGRAM

145 Section 301. Grants to Tribes

145 In this section the Secretary is authorized to make annual grants to any Indian tribe to develop an Indian Lands Program to realize benefits from the development of its coal resources while protecting the cultural values of the tribe and the physical environmental of the reservation.

145 The distribution of funds under this Act shall preserve the power of the Indian tribes to approve or disapprove surface mining and reclamation operations.

145 Indian Lands Programs developed by any Indian tribe shall meet all provisions of this Act. Any related provision of a tribal code more stringent than the provisions of this Act shall not be construed to be inconsistent with this Act.

145 Section 302. Coal Leasing

145 In this section the Secretary is directed to obtain the written approval of the tribe before leasing coal under ownership of the tribe.

145 Section 303. Approved of Program

145 Under this section, if within 24 months after receipt of a grant under this Act, a tribe submits a program, the Secretary shall approve the program within 60 days after its submission if it is consistent with the standards set out in this Act. If disapproved, the tribe shall have 90 days to resubmit their program. If the resubmitted program is not approved, the Secretary shall develop a Federal program for the tribe.

145 Any tribe developing a program shall hold a public hearing for all enrolled members of the tribe and waive the defense of sovereign immunity for the tribe.

145 Section 304. Administration by the Secretary

145 This section provides that at any time a tribe may elect to have the Secretary administer its program.

145 Section 305. Existing Operations

145 Coal surface mining operations on Indian lands existing on the date of enactment of this Act, or before an Indian program is begun, shall be subject to the provisions of section 201(g) and section 225 according to this section.

145 Section 306. Federal Programs

145 Under this section if a tribe fails to submit a proposal for a grant within 6 months after the date of enactment of this Act, the Secretary shall develop and implement a Federal program for that tribe. Before implementing such a program the Secretary shall give adequate public notice and hold a public hearing for the enrolled members of tribe.

146 Section 307. Personnel

146 This section provides that a tribe may use funds received under this title for the training and hiring of professional and technical personnel.

146 Section 308. Authorization

146 This section provides there shall be a priority on the first \$2 million for each fiscal year, made available under section 601(a), for the purposes of this title.

146 Section 309. Reports to the Secretary

146 Under this section each tribe receiving a grant under this title shall report to the Secretary at the end of each fiscal year on activities undertaken by the tribe under this title.

146 Section 301. Reports to Congress

146 According to this section the Secretary shall report annually to the President and the Congress on all actions taken in furtherance of this title, and on the impact of other programs on the ability of tribes to fulfill the requirements of this title.

146 Section 311. Enforcement

146 This section provides that a tribal court shall have jurisdiction over all persons engaged in surface coal mining operations on a reservation to enforce an Indian Lands Program.

SECTION-BY-SECTION ANALYSIS OF H.R. 11500 TITLE IV ABANDONED MINE RECLAMATION

146 Section 401. Abandoned Mine Reclamation Fund

146 This section establishes in the U.S. Treasury and Abandoned Mine Reclamation Fund which derives its dollars from: appropriations authorized by this Act; funds from the lease, sale, rental of lands reclaimed under this Act; user charges on reclaimed lands; and from a reclamation fee of 1.23 cents per million BTUs charged on all coal produced or imported. Forty percent of the revenues derived from a county, school district or lands of an Indian tribe are to be returned to that county, school district or Indian tribe for use in meeting obligations respecting schools, roads and health care. Also, as much as one-half of any State reclamation fee or tax charged the operator may be credited against the amount of the reclamation fee due the Fund.

146 The Act specifies that the Secretary of Interior must use the money in the Fund for certain purposes and must make available to the Secretary of Agriculture up to one-fifth of the Fund for purposes set forth under section 405.

146 Section 402. Objectives of Fund

146 According to this section, the Fund is for the reclamation of previously mined areas. Reclamation projects are to be given a priority on the following basis: (1) protection of health or safety of the public; (2) protection of the environment from continuing degradation and conservation of land and water; (3) the protection, construction, or enhancement of public facilities and their use; (4) improvement of lands and waters to a suitable condition useful in the economic and social development of the area affected; and (5) research and demonstration projects relating to reclamation and water quality control programs.

147 Section 403. Eligible Lands

147 This section specifies that only those lands which were mined for coal or affected by such mining, waste banks, coal processing, or other mining processes and abandoned or left in an inadequate reclamation condition prior to the enactment of this Act are eligible for expenditures under the Fund. In addition, there must be no continuing responsibility for reclamation under State or other Federal laws for such lands to be eligible.

147 Section 404. Reclamation Responsibility

147 This section states that by July 1, 1977, all surface coal mining operators shall eliminate all continuing or episodic polluting discharges, mine or refuse bank fires, or other conditions that present an imminent hazard to the health and safety of the public which resulted from past mining operations where mineral rights are held by the operator after date of enactment. Such areas shall be reclaimed prior to July 1, 1977, subject to procedures and penalties of title II.

147 Section 405. Reclamation of Rural Lands

147 This section establishes a program to provide small rural landowners technical and financial resources to reclaim lands affected by coal surface mining operations which were left unreclaimed or inadequately reclaimed.

147 Any one landowner (including owner of water rights), resident, or tenant is limited to a total of 30 acres of land on which reclamation can be conducted under this section, and the Federal share of such work shall not exceed 80% of the costs.

147 This program is administered by the Secretary of Agriculture and the reclamation work is to be accomplished according to a mutually-agreed-upon plan through contracts with the landowner, for periods of not more than ten years, to accomplish the land stabilization conservation work required in order to reclaim the affected lands.

147 Up to one-fifth of the money available in the Abandoned Mine Reclamation Fund during any one year shall be made available to the Secretary of Agriculture for the purposes of this section.

147 Section 406. Acquisition and Reclamation of Abandoned and Unreclaimed Mined Lands

147 This section establishes a program, administered by the Secretary of Interior, for the reclamation of abandoned mine lands or lands or lands affected by surface coal mining operations which are large tracts, or lands to be developed for specific purposes such as commercial, industrial, residential, and other intensive land uses. This program complements the rural lands program provided in Section 404.

147 Four basic steps are required under this program: land identification, land acquisition, land reclamation, and post-reclamation land use including disposition.

148 Prior to initiating reclamation programs on particular tracts of land, the Secretary shall make a thorough study of the areas involved, identifying those lands needing reclamation and establishing projects according to the priorities established in Section 302 above and with costs and benefits computed.

148 Land acquisitions for those parcels on which work will be done can be accomplished by either the Secretary of Interior or the States involved. If a State acquires such land and transfers it to the Federal Government, up to 90% of the acquisition costs may be Federally funded. For those projects which because of public health or safety or environmental damages require quick and easy acquisition, specific authorities for condemnation and quick land and mineral acquisition are provided to the Secretary of Interior.

148 The reclamation of these acquired lands is to be conducted under Federal control. Contracts for reclamation are to be entered into on a competitive basis. Costs of reclamation are to be borne entirely by the fund.

148 After reclamation, land may be retained in Federal ownership, made available to States or local governments, or disposed of to parties in the private sector. If such land was originally made available to the Federal Government through State acquisition, such State may have a preference to purchase lands after reclamation. The Secretary has the authority to sell land to State or local governments at a price less than fair market value, providing that it is used for valid public purpose and that the cost to the State and local governments shall be no less than the cost to the Fund for the purchase and reclamation of the land. Disposition of the land to the private sector is allowed in those instances for industrial, commercial, residential, or other intensive private uses. Such disposition shall be under a system of competitive bidding, accepting not less than fair market value of such lands and under other such regulations as the Secretary may require to assure lands are put to a

proper use and that the reclamation work is not obviated. The Secretary is also authorized to acquire, develop and transfer land to any project, public or private, for housing sites for persons employed or disabled by mining or dislocated by natural disasters or catastrophic failures. Areas experiencing rapid development of coal reserves qualify for assistance of this type.

148 The Secretary is directed to hold a public hearing in each county in which lands to be reclaimed are located in order to afford local citizens and governments the maximum opportunity to participate in decisions concerning the use of lands once reclaimed.

148 Section 407. Filling Voids and Sealing Tunnels

148 This section specifically establishes programs for subsidence control and sealing those tunnel shafts and entryways resulting from mining which constitute a hazard for public health or safety. The Secretary is to acquire such interest in lands as he determines necessary to carry out provisions of this section.

148 Section 408. Fund Report

148 This section requires the Secretary to make an annual report to Congress beginning in January 1976 on reclamation activities accomplished and underway which are supported by the Fund along with recommendations as to future uses of the Fund.

SECTION-BY-SECTION ANALYSIS OF H.R. 11500 TITLE V RECLAMATION AND ENFORCEMENT

Section 501. Creation of Office

149 This title creates in the Department of the Interior a new office, the Office of Surface Mining Reclamation and Enforcement.

149 The Director of the Office is to be appointed by the President, confirmed by the Senate, and compensated at a salary rate for Level IV of the Executive Schedule.

149 The staff of the office is to be recruited on a basis of professional competence and capability in objectively administering provisions of the Act. In addition, program responsibilities directed at the development or use of coal or other mineral resources, are not to be assigned to the office.

149 The title also lists the chief functions of the office which include: the administration of all programs for controlling surface mining operations required by this Act; review, approval, or disapproval of State programs for the control of surface mining operations; implementation of the initial regulatory program and the Federal enforcement activities required by this Act; providing

assistance to States and Indian tribes for the development of programs to assure adequate control of surface mining operations; developing and maintaining an information and data center on surface mining, reclamation, and surface impacts of underground mining and assuring that such information is made available to State and local agencies conducting land use planning and groups concerned with surface and underground mining operations; assisting the States in developing appropriate standards and procedures for determining those areas of a State to be designated unsuitable for all or certain types of mining; and monitoring Federal or State research programs concerning mining and reclamation.

SECTION-BY-SECTION ANALYSIS OF H.R. 11500 TITLE VI A PROGRAM FOR NON-COAL MINE ENVIRONMENTAL IMPACT CONTROL

149 Section 601. Designation of land as unsuitable for mining of minerals other than coal.

149 For Federal lands within a State, the Secretary may, and if requested by a Governor, shall review any such lands to determine if they are unsuitable for mining of minerals other than coal. Federal lands may be so designated if they are -

149 (1) predominantly urban or suburban land and the mineral estate remains in the public domain, or

149 (2) lands where mining could result in irreversible damage to historic, cultural, scientific, or esthetic values.

149 Any person shall have the right to petition the Secretary to seek exclusion of an area from mining. Such person shall obtain a hearing within a reasonable time. The Secretary may withdraw the land to be reviewed temporarily, not to exceed 2 years, from mineral entry or leasing.

150 No lands may be designated unsuitable for mining operations under this section if there are mining operations being conducted thereon on the date of enactment of this Act.

150 Prior to any designation under this section the Secretary shall prepare a statement on -

150 (1) the potential mineral resources of the lands in question;

150 (2) the demand for such minerals;

150 (3) impact of the designation or failure to designate on the environment, economy, and supply of such minerals.

150 Any person with a valid legal interest who participated in proceedings under this section, and who is aggrieved by a decision of the Secretary under this section, shall have the right to appeal to the appropriate United States District Court.

150 The Secretary may make annual grants to States to develop programs for the designation of lands unsuitable for mining minerals other than coal. Such grants shall not exceed 80% of the total cost incurred during the first year; 70% during the second and third year; and 60% during each year thereafter.

SECTION-BY-SECTION ANALYSIS OF H.R. 11500 TITLE VII APPROPRIATION
AUTHORIZATION: DEFINITIONS AND GENERAL PROVISIONS

150 Section 701. Authorization of Appropriations

150 This section authorizes appropriations to the Secretary in the following categories:

150 (1) through contract authority to the Secretary of Interior, \$10,000,000 available upon enactment and \$1 0,000,000 for each of the two succeeding years, to implement sections 201, 205, and 221, having to do with initial regulatory programs, designating areas unsuitable for surface mining, and Indian land programs. This assures the availability of funds upon enactment and on subsequent timely bases for the critical aspects of getting this program underway initially.

150 (2) \$10,000,000 for the fiscal year ending June 30, 1975, \$2 0,000,000 for each of the two succeeding fiscal years, and \$3 0,000,000 for each fiscal year thereafter, for administrative and other purposes of the Act.

150 (3) \$5 ,000,000 for the fiscal year ending June 30, 1975, and for each fiscal year thereafter, for research and demonstration projects under section 407.

150 Section 702. Relation to Other Laws

150 Section 702 disclaims any conflict between the Act or any State regulations approved pursuant to it, and the Federal Metal and Nonmetallic Mine Safety Act, the Federal Coal Mine Health and Safety Act, the Federal Water Pollution Control Act, the Clean Air Act as amended, the Solid Waste Disposal Act, the Refuse Act, and the Fish and Wildlife Coordination Act.

150 Section 703. Employee Protection

150 Section 703 makes unlawful the firing or discrimination against any person who has filed a suit or testified under provisions of the Act, and gives

such person recourse to review by the Secretary of Labor. After opportunity for public hearing, the Secretary is to make findings of fact and issue orders where a violation has occurred, for reinstatement of the employee with compensation. The Secretary's orders are subject to judicial review. The applicant in a successful pleading is to be reimbursed for his costs, including attorney fees. The Secretary is required to evaluate the effects of enforcement of the Act on employment, to investigate complaints, and hold public hearings concerning alleged discharges and layoffs. His subsequent report and any recommendations are to be made public.

151 Section 704. Study of Subsidence and Underground Waste Disposal in Coal Mines

151 According to this section; in order to develop standards to maximize the stability, value, and use of lands overlying underground coal mines, the Secretary shall conduct a study of the control of subsidence. The Secretary shall report the results of his study to the Congress within two years after the date of enactment of this Act.

151 Section 705. Definitions

151 The following terms are defined in this section: Secretary; State; commerce; surface coal mining operations; surface mining and reclamation operations; lands within any State; Federal lands; Indian lands; Indian tribe; Indian lands program; State program; Federal program; Federal lands program; reclamation plan; State regulatory authority; regulatory authority; person; permit; permit applicant; permittee; fund; approximate original contour; written consent; waiver; fragile or historic lands; natural hazards lands; renewable resource lands; operator; reclamation; permit area; silt; aquifer; imminent danger to the health and safety of the public; and unwarranted failure to comply.

151 Section 706. Grants to the States

151 This section authorizes the Secretary to cooperate with and to make annual grants to States for administering State programs under the Act, disbursed at the rate of 80% of total costs the first year, 60% the second year, and 40% during the third and fourth years. Technical assistance, training, instructional material and a continuing inventory of information for evaluating the effectiveness of State programs are among the types of assistance to be rendered by the Secretary. All Federal departments and agencies having relevant data area to assist as well.

151 Section 707. Research and Demonstration Projects

151 This section authorizes the Secretary to conduct research and training, enter into contracts and make grants to qualified institutions, agencies and persons, to implement provisions of the Act, in addition to contracting and making grants for demonstration projects involving reclamation of areas disturbed by surface mining.

151 Section 708. Annual Report

151 This section requires the Secretary to submit an annual report on Federal and State activities pursuant to the Act and recommendations for appropriate administrative or legislative action.

152 Section 709. Protection of the Surface Owner

152 Section 709, concerning lands in which mineral rights are separate from surface rights, requires the permit application to include written consent or waiver from the owner of the surface of the land to be surface mined. Where the Federal Government owns the coal and the surface is held under a patent, the permit application must contain the surface owner's written consent or a document which demonstrates the acquiescence of the surface owner to surface mining of minerals within his boundaries. The written consent of the lessee of the surface land, or a bond covering payment of damages to the surface estate, must accompany the permit application in cases where the coal is Federally-owned and the surface is held under lease or permit.

152 Should the operation remove or disturb an aquifer, thus significantly affecting the hydrologic balance or use of water, the written consent of those water right owners or land owners who might be affected is required with the application for permit, or proof of capability for providing them a substitute water supply, or execution of a bond to compensate for damages. Underground coal mining is specifically excluded from the provision of this section.

152 Section 710. Severability

152 Section 710 establishes that the application of the remainder of the Act is not to be affected by invalidation of any of its parts.

SECTION-BY-SECTION ANALYSIS OF H.R. 11500 TITLE VIII STATE MINING AND MINERAL RESOURCES INSTITUTE

152 Section 801. Authorization of State Allotments to Institutes

152 This Section authorizes appropriations to assist States in carrying on the work of mineral resources research institutes. Funds are to be distributed by the Secretary of Interior at the rate of \$200,000 for fiscal year 1975,

\$300,000 for fiscal year 1976, and \$4 00,000 for each fiscal year thereafter for five years, to a public college or university in each participating State.

152 An advisory Committee created under this title will determine the eligibility of colleges or universities under guidelines requiring that the public college or university have a school, division or department conducting a program of substantial instruction and research in mining or minerals extraction or beneficiation engineering which must have been in existence for at least two years and must have at least five fulltime faculty members. Matching non-Federal funds must be available on a dollar for dollar basis, with the Governor of the State deciding between qualifying colleges or universities within a State, and the Advisory Committee selecting an eligible private college or university in a State which has no qualifying public college or university.

152 Research carried out at qualifying institutes will cover a wide range of investigations, demonstrations and experiments in mining and minerals resources problems and will include the training of mineral engineers and scientists.

153 Section 802. Research Funds to Institutes

153 This section authorizes an annual appropriation of \$5 ,000,000 to the Secretary of Interior for fiscal year 1975 and for six fiscal years thereafter, to assist institutes in carrying out projects of industrywide application which could not otherwise be undertaken. Grants must be approved by the Secretary under criteria which incorporate a prohibition against the use of grant money for the acquisition of land or the rental, purchase, construction or upkeep of buildings.

153 Section 803. Funding Criteria

153 This section requires that each institute designated to receive funds under sections 801 and 802 must set forth a plan showing its curriculum, its policies and procedures and its fiscal responsibility for ensuring that purposes of this title are implemented. If the Secretary finds that Federal monies received by an institute are improperly diminished, lost or misapplied, further allotments to the State concerned will be suspended until such funds have been replaced. Appropriated funds under this title may be used for printing and publishing the results of the authorized research, and cooperative endeavors between institutes and other agencies and individuals are encouraged.

153 Section 804. Duties of the Secretary

153 This section charges the Secretary of Interior with administering the

title, prescribing rules and regulations, consulting with, assisting and coordinating research with other Federal agencies. In his annual report to Congress, the Secretary will indicate whether the allotment to any State has been withheld, based on a determination as to compliance with provisions of section 803, made by him on or before July 1 of each year following enactment of the title.

153 Section 805. Autonomy

153 This section disclaims any intent to interfere with the legal relationship between participating colleges and universities and related State governments, or to authorize Federal control of education at such colleges and universities.

153 Section 806. Authorization for Other Research Programs

153 This section authorizes annual appropriations for seven years, beginning with \$10,000,000 in fiscal year 1975 and increasing by \$2,000,000 each fiscal year thereafter, to the Secretary of Interior to make grants, contracts and other arrangements with educational institutions, foundations, private firms and individuals and local, State, and Federal agencies, to undertake research into aspects of mining and mineral resources problems not otherwise being studied. The Secretary is directed to utilize participating institutes as far as possible, giving due consideration to various factors bearing on appropriateness in relation to a given project.

153 Section 807. Miscellaneous Provisions

153 This section instructs the Secretary of Interior to cooperate with other Federal agencies, private institutions and individuals in order to avoid duplication of effort and to stimulate research in otherwise neglected areas as part of a comprehensive nationwide program of mining and mineral research. He is to make available information on projects planned, in progress, or completed. The Secretary at the same time is specifically barred from assuming any authority over mining and mineral research or related responsibilities of other Federal agencies.

154 Provisions of section 3684 of the Revised Statutes may be waived by the Secretary in arranging for mining and mineral resources research work under this title. No appropriated funds may be expended unless all information, patents and other developments resulting from the activity will be made public. However, the existing rights of patent owners will be protected.

154 Section 808.Center for Cataloging

154 This section directs the Secretary of Interior to establish a center for cataloging current and projected scientific research in all fields of mining and mineral resources which will classify for public use such information as is provided by all Federal and non-Federal agencies, colleges, universities, private institutions, firms and individuals. Federal agencies are required to cooperate.

154 Section 809. Interagency Cooperation

154 This section authorizes the President to clarify agency responsibility and foster interagency coordination in mining and mineral resources research, including review of Governmentwide research, elimination of duplication, identification of technical needs, recommendations as to allocation of technical effort, review of manpower needs and actions to facilitate interagency communication.

154 Section 810. Advisory Committee

154 This section provides for the appointment of an Advisory Committee on Mining and Mineral Research by the Secretary of Interior, to be composed of the Director of the Bureau of Mines, the Director of the National Science Foundation, the President of the National Academy of Sciences, the President of the National Academy of Engineering, the Director of the United States Geological Survey, and not more than four other persons knowledgeable in the field of mining and mineral resources research. The Chairman will be designated by the Secretary, who will consult with and consider recommendations of the Committee in conducting research and making grants under this title. Members of the Committee will be compensated at a rate fixed by the Secretary but not to exceed maximum rate of pay under pay grade GS-18 for time spent on committee business or travel time, unless they are Federal, State, or local government employees or officers.

Additional, dissenting, separate, and supplemental views

UDALL, JOHNSON, TAYLOR, RUPPE, MARTIN

RUPPE

MARTIN

JONES

HOSMER, SKUBITZ, STEIGER, STEPHENS, RUNNELS, SEBELPUS, TOWELL, YOUNG,
BAUMAN,
SYMMS

SKUBITZ

CAMP, KETCHUM

SUPP-VIEW: ADDITIONAL VIEWS OF MR. UDALL, MR. JOHNSON, MR. TAYLOR, MR. RUPPE,
AND MR. MARTIN

While I support the Committee Report, I and those joining me in these additional views cannot condone the Committee's approval of the requirement of

the consent of the surface owner to surface mining in those instances where thee

has been a severe ownership of the surface from the underlying coal in section

709. While protection of the rights of the surface owner is certainly important, the mechanism adopted by the Committee is of doubtful wisdom, questionable effectiveness and is constitutionally suspect. The central difficulty of the Committee approach is the fact that a surface owner lucky enough to hold his rights over a coal deposit would enjoy large windfall benefits from property that he does not own and which, in the West, neither he

nor his predecessors ever owned. His veto over the right to mine someone else's

coal will be worth whatever the mining companies will pay for it and that can be

a great deal. Our information is that speculators are already pressuring surface owners and in some cases have offered several hunder dollars per acre to

obtain surface rights and therefore the veto opportunity which section 709 will

provide. If the present language of H.R. 11500 is adopted and such specification would certainly increase.

The problem is compounded by the fact that not only are mining companies purchasing Western ranches where there is no coal in the hope that these ranches can be traded to owners of surface over Federal coal, but also by the fact that there are instances where one mining company owns the surface overlying coal leased to one of its competitors. If surface owner consent becomes law, the possibilities for unjust enrichment and anti-competitive practices are obvious.

Apart from the fact that Federal legislation should avoid unjust enriching anyone, those who are opposed to strip mining should realize that conferring a

mining veto on the surface owner will not stop mining; it will mean rather that

mining will follow an irrational pattern dictated by the willingness of individual surface owners, rather than the systematic development of the coal deposits best suited to mining and reclamation. A more wasteful approach to the

use of our vital coal resources can hardly be imagined. Coal is going to be mined and much of it will be strip mined. In the interest of both the environment and the energy economy the decision to strip mine should be based on

a number of factors including environmental considerations, surrounding land

uses and geologic conditions as well as property ownership patterns. The mere accident of a severed estate should not be the controlling criterion, but if section 709 is approved, such could be the case.

Section 709 is also subject to the constitutional objection that it disrupts rights conveyed pursuant to State law. H.R. 11500 does not directly address existing property right but it is obvious that even though the right to enter and mine may have been validly reserved, such a reservation would render a nullity if section 709 is enacted into law.

Those subscribing to these additional views should not be considered as countenancing the abuses which have arisen out of the so-called Kentucky broad form deed - protection against them can be devised and adopted in this bill. Western lands are another matter. At the time they were opened both the Federal government and homesteaders fully understood that the coal underlying the land belonged and would continue to belong to all the people. Certainly also those who bought surface rights from earlier fee owners knew that the coal was being retained for future development and this reservation was, no doubt, reflected in the property purchase price. The fact that new mining methods have been developed since some of these lands were patented or conveyed does not affect the validity of the original reservation nor the principle that the decision to develop the resource remains a matter of government concern to be decided by the appropriate governmental institutions and not delegated to a private citizen. Certainly, the surface owner should be compensated for any losses he may sustain as a result of the mining process; indeed, he should have his damages in advance and the bill can be further amended to so provide (such requirements would not, of course, disrupt the rights the surface owner may possess under State laws). But the surface owner and his shadow, the speculator, should not be able to enrich themselves at the ultimate expense of the public as consumers of energy.

MORRIS K. UDALL.

HAROLD T. JOHNSON.

ROY A. TAYLOR.

PHILIP E. RUPPE.

JAMES G. MARTIN.

I support the report of the Committee recommending enactment of H.R. 11500. The Committee on Interior and Insular Affairs labored through nearly 50, often stormy mark-up sessions to produce this legislation which is, on balance, a careful compromise between those who would abolish or phase-out coal surface mining altogether and those who would prefer to permit "business as usual" in the coal surface mining industry to continue. The country needs too much coal now and in the foreseeable future to abolish coal surface mining. However, just as importantly, the nation cannot and does not need to allow the continuation of practices which have resulted in nearly 1,000,000 acres of unreclaimed, in some cases, wholly useless land to be created. Very early in Subcommittee mark-up, the Subcommittees determined to adopt a regulatory approach to coal surface mining rather than the approach of abolition. The theory behind the regulatory approach is that the coal surface mining industry must properly internalize its environmental and social costs, costs which it has been allowed to pass on to the environment in the form of streams choked with sediment, mountaintops cut off from access by perpendicular highwalls, etc., and, in economic form, to local communities in the form of eroded tax bases.

It is my belief that the Committee has succeeded in establishing a regulatory framework which can bring about the internalization of these costs without prohibiting coal surface mining. This does not mean, however, that I shall not be open to amendments to this bill. The work of the Committee is capable of improvement, particularly in the complex area of regulatory procedure (as opposed to environmental standards). In these additional views I should like to outline some of my feelings regarding a few of the major concepts on which I worked in some detail and which are embodied in the legislation and to share my reservations about some sections in the bill.

A. REGULATORY JURISDICTION

A threshold issue which the Subcommittees faced was which level of government was going to be cast in the role of Administrator of the regulatory process. Should the federal government assume primary regulatory jurisdiction, should such jurisdiction remain in the states or should the system of regulation be a mixed one? The Committee finally agreed on a regulatory system which continues primary regulatory authority in the states (with strong federal back-up enforcement powers) but which conditions the continuation of such state authority on federal approval of state regulatory programs in compliance with the Act. I believe that this solution offers the best chance that, in most states, the spirit and letter of the law will be enforced and obeyed while at

the same time allowing the nation to take advantage of the very real expertise which has been built up in the states in the area of coal surface mining regulation.

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On the one hand, a system of purely federal regulation from the date of enactment of this legislation would force the creation of a new bureaucracy controlled from Washington, with little real knowledge of the local and regional conditions which make the practice of coal surface mining vary so much from state to state. The creation of such a bureaucracy might or might not integrate the personnel and expertise of existing state bureaucracies. Furthermore, enforcement of the law would tend to vary nationally as a function of the commitment of the particular Administration in power in Washington. On the other hand, simple continuation of state regulatory authority with no federal criteria or back-up enforcement capability is probably unacceptable in light of the uneven record which the states have compiled in coal surface mining regulation. With the states administering programs in compliance with the criteria enunciated in the bill and with the federal government always in a position to take over the administration of a state program in the event that a particular state is not doing a good job, there is a greater chance under the approach of H.R. 11500 that most states, for political and other reasons, will strive to do the job of coal surface mining regulation properly. Some have alleged that H.R. 11500 gives the states only a chimera of regulatory authority and that the real power will be in the federal government. In my opinion if, after the passage of several years, the federal government is running coal surface mining regulatory programs in the states, it will not be for lack of opportunity given the states to run those programs themselves.

B. THE INTERIM PERIOD

Having chosen the system described briefly above, the Subcommittees were faced with the task of deciding how to introduce the coal industry, regulatory authorities and the public, those groups which would be most affected by the legislation, to the bill. The Subcommittees found this problem one of the most vexing of the many they faced.

It was determined that the states should be given a certain amount of time to come up with a program, based on the provisions of the Act, for approval by the Secretary of the Interior. What, if any, requirements to place on the states, federal government and the coal operators during the "interim" between the date of enactment coal approval or final rejection of a state program, was the

subject of great debate. The alternatives before the Committee can be broken down into three categories:

(1) Make no additional requirements during the interim period, relying on existing state law and enforcement to effectively regulate the coal surface mining industry.

(2) Require new coal surface mines and existing mines expanding by a certain amount to operate only under new state "interim" permits in compliance with the full Act. This is the solution adopted by the Senate.

(3) Require certain baseline environmental standards to be implemented by coal surface mine operators, and enforced by state regulatory authorities with federal back-up inspection and enforcement, for the duration of the interim period.

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The Committee chose the third alternative, a compromise between making the full Act applicable to coal surface mining immediately at the date of enactment and not making any standards in the Act applicable until state programs had been approved or finally disapproved.

The choice of the third alternative makes much sense to me. To choose alternative No. 1 would be unsound, because of the amount of land now and to be affected by surface coal mining during the interim period (the length of the interim will depend on the rapidity with which states act to submit programs and the Secretary responds to such submission, but the interim period plus time for operator compliance with a state program could relieve an operator from compliance with the full act environmental protection standards for up to 38 months after the date of enactment). In light of the potential for explosive growth in the coal industry in the coal industry in the next couple of years, too much damage to the environment could be done under present state laws during the interim period under alternative No. 1. However, to choose the second alternative, that chosen by the Senate would, in my opinion, be tantamount to a moratorium on new starts and on certain expanding existing mines. For the Senate-passed bill will require too much adjustment by existing state regulatory bureaucracies for most states to be in a position to start issuing permits in compliance with the full Act for a significant period of time after enactment. This means that new mines could be seriously delayed in opening. We should not raise even the chance of a moratorium on new coal surface mining activities regardless of our intention to stop past practices.

Nevertheless, section 201 of H.R. 11500 in which the interim program is set forth has come in for much criticism, on the one hand from those who favor the Senate bill approach and, on the other, from those who have criticized us for "unrealistic" time requirements and unnecessary detail in the interim period. Those who are criticizing us for not adopting the Senate bill approach may have, I think, a fundamental different with the Committee on the approach to take toward introducing those affected to the Act. Those who criticize us on the basis of time and other requirements, however, do not seem to be questioning the type of interim period that the Committee has chosen, but seem to be questioning whether or not we have allowed sufficient time for the affected parties to adjust to the interim requirements and whether the time to effect the changeover from the interim period to approved state programs (or federal programs in those states not obtaining approval of submitted programs) will be sufficient to avoid problems. In short this type of criticism is of the details of the interim period and not the fundamental concept. My reason for stressing this point is that I believe that the Committee's interim period program is conceptually sound. Further scrutiny of individual details of the program may reveal, however, that some changes, perhaps in one or another time requirement, should be made.

C. APPROXIMATE ORIGINAL CONTOUR

One of the key environmental protection standards of H.R. 11500 which, with one exception, all coal surface mine operators must comply in the interim period as well as thereafter, is the requirement to return a mine site to its "approximate original contour" unless the coal operator can obtain a variance from such requirement from the regulatory authority. There has been so much misunderstanding of this concept that, as sponsor of an amendment which altered the definition of the term "approximate original contour" in Full Committee, I would like to explain precisely what I understand its meaning and application to be.

"Approximate original contour" (hereafter "AOC") is defined in H.R. 11500 to mean:

"That surface configuration achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining and blends into and is in accordance with the drainage pattern of the

surrounding terrain, with all highwalls, spoil piles, and depressions eliminated except that water impoundments may be permitted where the regulatory authority determines that they are in compliance with the requirements of this Act." (Subsection 705(22))

Coal industry concern seems to be focused on two aspects of the definition:

(1) the need to regrade the mined site so that it "closely resembles" prior surface configuration and "blends into" surrounding terrain and (2) the need to "eliminate depressions" in general. Confusion has existed as to whether or not it will be possible under this definition of AOC to conduct both area mining of thick seams covered by a relatively thin layer of overburden and mountaintop removal operations in which whole tops of mountains are removed in order to uncover a coal seam.

The removal of a thick seam of coal covered by a relatively thin stratum of overburden will create a depression which cannot be filled in, so as to obtain the original elevation of the land, without hauling an enormous amount of materials from some other location, thereby creating a depression or at least a disturbance somewhere else. Hence, it has been said, that H.R. 11500's requirement to return to AOC makes western thick seam coal surface mining physically and/or economically impossible. This is an erroneous interpretation of the concept. Firstly, AOC as it applies to thick seam area mining in the West is not intended to require that the mined site be returned to its original elevation. Original elevation simply often cannot be obtained. A large depression will remain after such mining. What is required is that the coal operator regrade the mined area inside and around the perimeter of the mined area so that the depression blends into the surrounding terrain and that, within the mined area, the surface of the land "closely resembles" its premining configuration. Final highwalls will have to be graded in order that such blending may be accomplished as well as to comply with the requirement that highwalls be eliminated. Let me reiterate, then, the AOC requirement does not mandate the attainment of original elevation. Secondly, the requirement that depressions be "eliminated" is not intended to refer to the large depression created by the entire mining operation itself but to smaller-scale depressions created within the mined area. In other words, it is these smaller-scaled depressions which must be eliminated (except where water impoundments are allowed) not the depression created by the entire mining operation.

Note that in the first proviso in subsection 201(b)(2)(B) and 211(b)(8), an alternative grading standard is established for those mines which resemble hard rock open pit mines. In these situations, the standard of AOC, although

flexible, simply will be unobtainable. The Committee recognized this, reflecting a desire to assure that the grading standards in the bill are not so onerous that they will bar any particular type of mining. Hence, insofar as I am concerned, there is no intent to render thick seam area mining impossible under the definition of AOC.

With respect to mountaintop mining operations, again the term AOC is not intended to require the attainment of the same elevation after mining as existed prior to mining, but simply to attain a configuration or shape closely resembling pre-mining conditions. Hence, provided that the coal operator can comply with requirements relating to spoil placement, etc., and provided that a surface configuration closely resembling premining conditions can be obtained, mountaintop mining is not barred. We are not mandating "approximate original elevation". Understandably, there will have to be considerable interpretation of what "closely resembles" means under local conditions in order to apply AOC in the mountaintop mining situation. I do believe that the creation of flat plains where once mountaintops existed is a practice that should not be continued except where the operator needs such a flat plain in order to obtain a post-mining land use authorized by the regulatory authority. However, conversely, I do not think that the coal operator ought to have to restore every bump of a mountain or ridge top in order to attain the standard of AOC.

D. ENFORCEMENT

H.R. 11500 contains comprehensive provisions for inspections, enforcement notices and orders, administrative and judicial review, and penalties. These requirements are of equal importance to the provisions of the bill regarding mining and reclamation performance standards since experience with State surface mining reclamation laws has amply demonstrated that the most effective reclamation occurs when sound performance standards go hand in hand with strong, equitable enforcement mechanisms.

Generally, the enforcement provisions of this bill have been modeled after the similar provisions of the Federal Coal Mine Health and Safety Act of 1969. Where the enforcement provisions of this bill depart from those of the 1969 health and safety law, they do so to accommodate the fact that this bill encourages the States to retain or develop regulatory authority over surface coal mining and reclamation operations, and seek to protect the environment and the public health and safety as opposed to the protection afforded the coal miner on coal mine property by the Coal Mine Health and Safety Act. Other departures, particularly in regard to the issue of civil penalties, represent, in my view, an effort to prevent deficiencies in the model structure from carrying over to this bill.

1. Inspections and Enforcement; Federal-State relationship

The role of the Federal Government has been carefully delineated in this bill, particularly in regard to its activities in those situations where the State is the prime regulatory authority. For the "interim" period discussed above, section 201(f) provides that beginning no later than one hundred and eighty days after enactment and continuing until a State program has been approved or a "full-Act" Federal program has been implemented, the Secretary is required to carry out a Federal enforcement program which includes inspections, and enforcement actions in accordance with the provisions of section 220. The intent of this provision is to place the Secretary in the role of monitoring State activity in the interim period and providing back-up enforcement where appropriate.

Since practically all surface coal mining operations covered by the interim regulatory procedure are presently regulated by existing State regulatory authorities (the major exception being operations on Federal and Indian lands), it is not the purpose of this interim Federal enforcement program to place the Secretary of the Interior in the business of issuing mining permits for operations on lands within the jurisdiction of the States. The bill imposes a duty upon the States to review and revise existing permits to ensure compliance with the interim standards of section 201, and obliges the States to issue new permits in accordance with those standards. In my view the Secretary would be required to assure State performance of these duties and obligations, pursuant to the Federal inspection and enforcement provisions of section 201(f).

Once State programs or Federal programs replace the interim regulatory procedure, section 219 requires that Federal inspections must be made for purposes of developing, administering, or enforcing any Federal program, and assisting or evaluating the development, administration, or enforcement of any State program.

In those situations in which the Secretary is the regulatory authority, Federal inspections must occur on an irregular basis averaging not less than one inspection per month for the operations covered by each permit. In those situations where the State is the regulatory authority and the Secretary carries out inspections for assistance and evaluation purposes, Federal inspections should take place in sufficient number to carry out properly these back-up and

monitoring functions. In addition to normally programmed inspections, section 220(a)(1) of the bill also provides for special inspections when the Secretary receives information giving him reason to believe that violations of the Act or permit have occurred. Of course any inspection, Federal or State, must occur without prior notice to the permittee or his agents or employees.

By mandating primary enforcement authority to field inspectors, this bill recognizes, as does Federal mine health and safety legislation, that inspectors are in the best position to recognize and control compliance problems. The bill establishes three strong but flexible enforcement mechanisms which provide inspectors with the tools necessary to respond to the most minor and the most serious violations.

I. Cessation order (section 220(a)(2)). - During any Federal inspection, if the inspector determines that any violation of the Act or permit condition or any other condition or practice exists which creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the inspector must order a cessation of the mining operation causing or contributing to the danger or harm. The cessation order may apply to all or a portion of the surface coal mining and reclamation operation in question. The imminent danger or environmental harm closure provision is so critical that it is the only place in the bill where the Federal inspector is required to act even if the inspection is being made for purposes of monitoring a State regulatory authority's performance. To provide otherwise would be to perpetuate the possibility of tragedies such as the Buffalo Creek Flood, which can be at least partially attributed to the sad fact that government regulation of the collapsed mine waste banks fell between the cracks of the not quite meshed functions of various State and Federal agencies.

Two other points are necessary to fully explain this provision. Since neither the Congress nor any regulatory authority can totally predict the public and environmental hazards arising from such a complex endeavor as surface coal mining, the bill does not restrict the closure authority of section 220(a)(2) to violations of the Act or permit. Instead any condition or practice giving rise to imminent danger or environmental harm is sufficient to invoke the authority. Lastly while section 705(33) provides a definition of "imminent danger to the health or safety of the public", there is no definition in the bill for the phrase "significant, imminent environmental harm to land, air, or water

resources". This phrase may be undefinable in the abstract, although relatively easy to identify in the concrete; however, it is crucial to point out that not only must the environmental harm be imminent but it must also be significant. Since surface coal mining operations by their very nature cause some degree of environmental harm to land, air, or water resources, even when in full compliance with standards such as are contained in this bill, the immediate cessation order based on significant, imminent environmental harm must not be invoked in cases where only permissive, controlled, or temporary environmental harm is occurring.

II. Notice of violation (section 220(a)(3)). - Where the Secretary is the regulatory authority and a Federal inspector determines that a permittee is violating the Act or his permit but that the violation is not causing imminent danger to the health or safety of the public or significant, imminent environmental harm, then the inspector must issue a notice to the permittee setting a time within which to correct the violation. The inspector can extend this initial period for up to ninety days. In my view, this ninety day limit is overly restrictive. There are sufficient mechanisms in the bill to prevent abuse of this discretionary authority. If the violation has not been corrected, in the opinion of the inspector, within the established time, the inspector must immediately order a cessation of the mining operation relevant to the violation.

The enforcement mechanism of section 220(a)(3) will be utilized by the inspector in the great majority of compliance problems. It not only enables the inspector to gain immediate control of the problem, but also provides him with essential flexibility to appropriately deal with minor as well as major violations.

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In order to prevent Federal-State overlap, the Federal inspector is only to use his authority under section 220(a)(3) where the Secretary is the regulatory authority. However, in other circumstances the Secretary must ensure, in accordance with the provisions of section 220(a)(1), that the State is notified of the compliance problem so that it may act under the terms of the approved State program.

III. Show cause order (section 220(a)(4)). - Where the Secretary is the regulatory authority and a Federal inspector determines that a pattern of violations of the Act or permit exists or has existed and that such violations are caused by the unwarranted failure of the permittee to comply or are willfully caused by the permittee, the inspector must issue an order to the

permittee to show cause as to why his permit should not be suspended or revoked. Further action on the show cause order is subject to the provisions of section 222(d).

This provision requires that suspension or revocation of a mining permit be preconditioned upon conduct which demonstrably fails to meet the standards of care and diligence which are to be expected of permittees who seek to comply with the law. This is a sound approach particularly in light of the stringency of the closure authority previously addressed. This provision, however, patently conflicts with section 218 of the bill, an unfortunate holdover from an earlier draft of H.R. 11500, which establishes such broad, vague criteria for suspension and revocation of permits as to be clearly punitive. The approach presented by section 218 ought to be abandoned in favor of the definitive, flexible mechanisms of section 220.

While the bill grants a great deal of authority to Federal inspectors, it is important to remember that adequate protection must be afforded the regulated parties against the possibility of abuse of this authority. To this end formal internal administrative review and judicial review of inspectors' decisions are permitted by sections 222 and 221 respectively. Furthermore section 220(a)(5) insures that due process will begin at the inspectorate level and provides the opportunity to modify, vacate, or terminate a clearly erroneous notice or order without the burden of more formal administrative review.

Finally, it should be noted that while section 220 speaks in terms of Federal enforcement, it is to be expected that the Secretary will use this scheme as the basis for measuring whether state enforcement mechanisms are sufficiently strong and flexible to warrant approval of that portion of submitted State programs.

2. Administrative Review

In order to assure expeditious review and due process for persons seeking administrative relief of enforcement decisions of Federal inspectors under the provisions of section 220, section 222 of the bill establishes, clear, definitive administrative review procedures. Those persons having standing to request such administrative review include permittees against whom section 220 notices and orders have been issued and persons having an interest which is or

may be adversely affected by such notice or order. Any person with standing may request a public hearing which must be of record and subject to the Administrative Procedure Act. Pending review the order or notice complained of will remain in effect, except that in narrowly prescribed circumstances temporary relief may be granted to a notice or order issued under section 220(a)(3). In no case, however, will temporary relief be granted if the health or safety of the public will be adversely affected or if significant, imminent environmental harm will be caused. This provision will insure that the mining and reclamation performance standards will continue to protect the public health and safety or the environment during any administrative proceeding in which their validity is challenged, until the issue is determined on the merits.

In all cases where a section 220(a)(4) show cause order has been issued a public hearing must be held. The Secretary must issue a decision within sixty days following the completion of the hearing as to whether or not to suspend or revoke the permit. Pending this decision, the permittee may continue to operate. The alternatives of suspension or revocation are within the discretion of the Secretary. It is expected that the degree of seriousness of the types of violations and kinds of conduct giving rise to the show cause order will be the dominant factor considered by the Secretary in making his decision. These factors should also be considered by the Secretary in his determination of suspension periods. On the other hand, in determining the period following revocation within which reclamation must be completed, weight should also be given to the practicalities of the reclamation which needs to be performed. It is also expected that the Secretary will give highest priority to administrative review of section 220(a)(3) show cause orders.

3. Judicial Review

Section 221 of the bill establishes specific provisions for judicial review of Secretarial actions. Because of the thoroughness and degree of due process afforded judicially reviewable actions by the Secretary, judicial review is to be based on the record made before the Secretary. The courts should render their decisions on the basis of whether or not the Secretary's decision was arbitrary and capricious or supported by the record. Temporary relief from Secretarial decisions may be granted only under the same kind of narrowly prescribed circumstances as discussed above in the context of administrative review.

4. Penalties

Where the Secretary is the regulatory authority, section 224 of the bill provides that civil penalties will be mandatory for violations leading to a cessation order under section 220. The Secretary has discretionary authority to assess civil penalties for other violations. The Secretary is required to make findings of fact and issue a written decision as to the occurrence of a violation and the amount of the penalty which is warranted only where the person charged has availed himself of the opportunity for a public hearing and the hearing has, in fact, been held. The bill also provides that approved State programs must contain criminal and civil penalties no less stringent than the Federal provisions with the same or similar procedural requirements relating thereto. Aside from the aforementioned points, the civil and criminal penalty provisions of the bill are generally identical to those of the Federal Coal Mine Health and Safety Act of 1969.

E. TITLE IV AND SECTION 709(B)

I wish now to comment on two provisions in H.R. 11500 which give me some concern: (1) Title IV, relating to the program to reclaim abandoned mined land, and (2) section 709(b), in which a coal operator holding a right to mine federally owned coal is required to obtain the written consent of any private owner of the surface estate above such federal coal. No one can quarrel with the need to do something about unreclaimed, abandoned mined land. However, the Committee solution to the problem is fraught with difficulty. On the issue of the written consent of the owner of the surface estate above federal coal, the Committee has opened the door to windfall profits for a few at the expense of the consumer of coal-based products without in any way assisting the cause of environmental protection.

A trip over or through those eastern coal fields in which coal mining, surface or underground, has been taking place for some time now cannot help but leave an observer with the feeling that something should be done to bring unreclaimed and abandoned or "orphan" lands back to a condition which would support productive activities. Title IV sets forth a blueprint for reclaiming these lands. Section 401(a) establishes the "Abandoned Mine Reclamation Fund" in the treasury of the United States.

The largest contributions to be made to the Fund will come from a severance fee of 1.23 cents per million BTU's to be levied on all coal produced by surface and underground mining methods. Such a fee works out to be around 30 cents per ton for high BTU, eastern coal, but may work out to be less than half this amount for low BTU lignite found primarily in some western states. Who will pay

this fee? Since about 62 per cent (on a BTU basis) of all coal mined currently goes to the production of electric power, the consumers of electric power produced by burning coal will end up paying the lion's share of the fee after the fee has been passed on to electric companies through contract escalation clauses. Consumers of industrial products, primarily steel, will pay just about all the rest of the fee. Does the incidence of the fee on these two consumer sectors of our economy bear any relationship to the damage, primarily in Appalachia and in the midwest, to be reclaimed by the funds raised by the fee? Except insofar as it was prior consumers of coal-based products, i.e. electricity and steel, which benefited from the lower cost of coal mined without reclamation activities, there is no relationship. And merely because I may have consumed, in prior years, electricity produced from coal mines in which there was no reclamation does not mean that I should pay, as a consumer of these same products now, for that reclamation. The decision to create a program to reclaim abandoned mine lands is a national decision reflecting a new environmental and social awareness. As such, the federal taxpayer should have to foot the bill for the abandoned mine land reclamation program. The initial money for the program should come from General Treasury revenues, which is how the Senate bill handles the problem.

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Assuming, however, that it is the will of the Congress that the fund should be largely built from severance fee revenues, let us look for a minute at what Title IV directs various governmental agencies to do with the money raised. Subsection 401(e) stipulates that a coal operator may take up to a 50 per cent credit against the 1.23 cents per million BTU levy for any state fees collected for "reclamation or conservation activities comparable to those provided by this Title". There may well be merit in this provision (if states take advantage of the obvious invitation inherent in this provision to establish severance fees) because of the value in keeping monies raised by any severance fee close to home. However, a 50 per cent credit cuts the amount of the fee, optimistically estimated prior to the credit at about \$180 million per year (based on a taxable production of 600 million tons per year and an average fee of 30 cents per ton) to \$90 million.

Subsection 401(d) takes another bite out of the fund: 40 per cent of the revenues derived from coal mined in each county, school district or on Indian

lands is to be returned to the county, school district or Indian tribe "for use in meeting obligations with respect to schools, roads and health care." No one would deny that expanding coal production is going to trigger the need for such infrastructural investment. And it may well be proper that coal companies and consumers of coal-based products should pay for some part of the cost of those investments. But 40 per cent of \$90 million is \$36 million. I question whether or not all of this money will be able to be spent as fast as it accumulates for the important but not very well specified purposes outlined in subsection 401(d).

Lastly, I am concerned that the Committee has not stated with sufficient specificity just what it wants the Secretary to do with the monies left in the Fund after the credits and withdrawals described above have been made.

Subsection 406(a)(2) authorizes the Secretary to acquire any lands affected by surface mining which have not been reclaimed to their "approximate original condition." The Secretary is directed to select lands as a function of the priorities listed in Section 402. Section 402 lists five "objectives" of the Fund created by Title IV. These objectives are very broadly and vaguely stated. They really give very little direction to the Secretary. The Secretary is given a carte blanche as far as his choice of what lands should be purchased and reclaimed with Fund revenues. On top of this he is not even required to make a written finding regarding his choice. Then, there is no clear statement regarding the standard to which abandoned mine lands should be reclaimed.

Section 709(b), which requires that the written consent of a private landowner must be obtained before a coal operator may surface mine federally owned coal beneath the private landowner's surface estate, is not legislation to protect the environment. Rather, it is legislation that will assure that a coal operator will have to pay two times for the right to mine coal owned by the United States taxpayer, one time to the federal government and another time to the private surface estate owner, an individual who has no legal interest in the coal underlying his estate. This obvious windfall to surface estate owners serves no environmental purpose. It will simply result in the bidding up of the price of coal for the benefit of the owner of the surface estate. Federal coal is a national energy reserve owned by all Americans. No one, including surface

estate owners above that coal, should be able to tie up the use of that coal or to increase its price to the consumer above that price created in the market. I sympathize with those surface estate owners whose land may be removed from agriculturally productive purposes. But I think that the rights of the surface estate owner can be adequately protected by requiring that a coal operator make prompt and full payment to the owner of the surface estate for any damages caused by coal surface mining to the economic interest of such owner in his estate.

Conclusion

The coal industry stands at the brink of an era in which it can and must make more significant contributions to the nation's energy supply picture than it has ever made before. But in this new age of environmental awareness and respect for what we now understand to be dwindling natural resources, the industry should not and does not have to make such a contribution at the expense of the environment. We must set the environmental groundrules for coal industry expansion now. These groundrules should assure that the natural environment is protected to the greatest extent feasible without cramping unjustifiably such expansion. I think that H.R. 11500 performs the task of setting the groundrules fairly and equitably. It is not perfect legislation and should and will be amended on the Floor of the House. However, it is workable legislation. It is not, as some have alleged, the product of "environmental extremism." Neither is it an "industry bill." It is the Committee's best effort in a complex subject area. I urge that you support its passage.

PHILIP E. RUPPE, Member of Congress.

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SUPPLEMENTARY

SUPPLEMENTARY VIEWS OF MR. MARTIN OF NORTH CAROLINA ON H.R. 11500

I concur substantially with the separately stated views of Mr. Ruppe. HR-11500 has emerged from countless Member-hours of labor in both the Environment and Mines and Mining Subcommittees and in full Committee. By and large, it is a balanced bill allowing reasonable access to surface-mineable coal, and requiring reasonable reclamation of mined land. There remain some difficulties to which specific attention should be called.

There is great concern in North Carolina, and certainly in other states, about the potential impact of this legislation on essential supplies of coal for industrial, commercial, and residential heating and for the generation of

electric power. This is complex legislation and we are dealing in a technology few of us understand with anything approaching completeness. Inevitably, terms we have incompletely defined out of necessity eventually will be defined judicially.

In concurring in the views of Mr. Ruppe, I am impressed with his comments on both reclamation fees and the rights of owners of surface estates. I am also impressed by his discussion of approximate original contour and wish to state my conclusion that it is not intended that mountain top mining should be, or is, prohibited by this legislation.

Additionally, I have reservations regarding the concept of restoration to approximate original contour. The term, approximate original contour, is a descriptive term implying a lot less than restoring every butterfly, and a lot more than merely pushing some dirt into a hole. But, even with the clarifying language added in full Committee, we leave room for varying interpretations of the term. This is probably good to the extent that there is room, as a result, for dealing with vastly different local circumstances. One should look at "approximate original contour" in the context of a bona fides effort to restore mined land to a condition that is consistent with pre-existing geological structures and which will not deteriorate into a condition endangering neighbors or the environment, and in the context of a situation in which the possible post-mining uses of the land are consistent with pre-mining uses. The primary objective should be to wind up with stable slopes that will divert rainwater along the various downhill streams in approximately the proportions as did the original contours. Further clarifying language should be considered.

I am also concerned about the prohibition on highwalls and suggest the need for further action in regard to this feature. Highwalls are the vertical faces of "L" shaped mining cuts on sloped land. The bill mandates their elimination as a result of reclamation. A cautious reading would indicate that highwalls are inconsistent with restoring the approximate original contour of the mined land. It is not certain that on the land from which coal firing North Carolina electric generating facilities comes, sloped land, all highwalls can be eliminated. It is not certain that even with the relatively new "modified block cut" method of mining, these vertical faces can be covered with any degree of permanence. Permanence. Permanence there is the key because land settles, and this year's gentle slope approximating original contour and hiding the highwall

could become a gradually-exposed highwall next year or in the next decade, even absent erosion. Are all highwalls bad? Not if nature's own hillsides are to answer. The bill may create a situation in which the best of intentions coupled with the most expert application of the most efficient technology cannot cope with the problem of supplying the energy needs of millions.

In its consideration of HR-11500, the House of Representatives will have before it the product of good intentions and hard work, an act of compromise and caution. The above cautionary notes, part of a longer list of candidates for caution, are submitted to cause the raising of some eyebrows in concern of the potential this bill has for severely limiting, instead of encouraging, access to the coal upon which millions depend for their electric power. These points, and the points being made by others, deserve careful attention before this bill is enacted. We must regulate, and we must reclaim; we must also have coal. These needs are not incompatible.

JAMES G. MARTIN, Member of Congress.

Additional, dissenting, separate, and supplemental views

STATEMENT OF SUPPLEMENTAL VIEWS TO H.R. 11500 BY CONGRESSMAN JAMES R. JONES

Although I subscribe to H.R. 11500 in principle and have voted to report it to the House, I retain some concern that certain of its provisions appear to be an over-reaction to past abuses or, at best, examples of poor legislative construction and drafting.

If an application to mine has been filed, section 201(g) provides for continuation of surface mining for all validly permitted operations until six months after the approval or disapproval of a State program. This cutoff of mining authorization resulting from a failure by the appropriate regulatory authority is unfair and unduly jeopardizes the supply of coal from areas where the regulatory authority is not functioning properly. In some States there will be so many applications pending when the State regulatory authority is approved that it may be unrealistic to expect that they will all be processed within six months. The language of 201(g) is indistinct in that it doesn't address the issue of whether the resubmittal of a State program after initial disapproval tolls the six-month grace period.

In the States where the program is disapproved, it is even less realistic to expect the Federal government to be able to move in and process all pending applications within six months. Such a Federal program would be subject to

judicial review on ground of compliance with NEPA and other laws. There is no provision which tolls the running of a surface miner's six-month grace period while such judicial review is holding up the processing of his application.

This important provision has a very real potential for working undue hardship on surface miners who have, in good faith, attempted to comply with the law. The unrealistic time frame for administrative action, coupled with the withdrawal of mining authorization due to no fault of the miner, demonstrates either poor draftsmanship or a punitive attitude toward the surface mining industry. Neither makes healthy legislation.

In addition to the unduly short time periods allowed under section 201(g), other time limitations in the Act seem to threaten orderly administrative procedure, which usually results in a deleterious effect on the ability to legally surface mine coal. For instance, section 201(c) requires that within 120 days after enactment, the regulatory authority shall review and amend all permits to incorporate the interim performance standards. The same 120 day period is allowed for all existing mining operations to come into compliance with the interim standards. The 120 day period is simply insufficient for either the State or the operators to meet the requirements of the Act.

There appears to be no provision for new surface mines on Federal land unless there were "substantial legal and financial commitments prior to September 1, 1973" for such mines (sec. 201(h)). There is no definition for the quoted phrase. Under section 225, the Secretary has up to 18 months to promulgate rules under which new mines on Federal lands may be permitted. Promulgation of the program will be subject to judicial review under NEPA and others laws. Thus, the Secretary promulgates a program for Federal lands, and for an indeterminate period for judicial review thereafter, there can be no new mines on Federal lands.

No new surface mine permits on Federal lands have been issued for almost two years. Therefore, if the term "substantial legal and financial commitment" means anything more than an application for a permit, the phrase may be meaningless. Again, this bill inhibits a necessary segment of our nation's coal supply through failing to provide a complete and adequate procedural process.

Another inhibition against new surface mines, which seems unjustifiable is the prohibition against new mines in the national forests (sec. 209(d)(9)). The Secretary has adequate authority to prohibit surface mining where it would be inappropriate. To prohibit mining on national forest land unnecessarily and arbitrarily ties the Secretary's hands and may well preclude some lands which are the most appropriate for surface mining.

Another example of over-reactive regulation or legislation drafting which does not appear to reflect the intent of my colleagues is sec. 212(d)(3). While we included an exception (sec. 212(d)(1)) to some of the environmental

protection performance standards when the development of a higher or better post-mining use could be shown, the language of sec. 212(d)(3) requires that a "substantial portion" of the alternative use be in "process of completion" by three years from the date of permit issuance. This makes the intended exception an illusion in most cases since the mining operation itself will usually not be completed in three years from date of the permit issuance.

JAMES R. JONES,

member of Congress.

While H.R. 11500 would go a long way toward assuring that coal mined lands are adequately reclaimed in the future, it would do little to repair the blight that still exists on lands that have been previously mined and left unreclaimed. At best, the bill's provision for an abandoned mine reclamation fund is inadequate. At worst, it is counterproductive and could threaten the already beleaguered deep mining industry, particularly in the East.

According to the latest survey by the U.S. Soil Conservation Service, over 2.5 million acres of stripmined land lie unreclaimed. These lands remain an eyesore, a hazard and a source of serious water pollution. Their agricultural productivity is zero. To these must be added the hazards and pollution from thousands of abandoned deep mines and "gob" piles. So widespread are these conditions and their effects that they clearly constitute a major national problem. Estimates for correcting these conditions total over \$9 billion, at current prices.

An amendment I authored - which was adopted in Subcommittee but defeated in the full Committee - would have generated an abandoned mine reclamation fund of some \$450 million annually, to reclaim the orphan lands and thousands of miles of polluted rivers and streams. With this fund, the job of restoring these lands could be completed in twenty years. The amendment provided for a gross reclamation fee of \$2.50 on each ton of coal mined. But up to 90 per cent of the gross fee could be offset by credits for the cost of reclamation activities required by the bill and costs of coal mine safety equipment and black lung benefits required by the Coal Mine Health and Safety Act.

The industry is well able to support this fee. The net reclamation fee will average well under \$1.00 for deep mines and under \$2.00 for stripmines. If an average cost of \$1.50 per ton is projected, this will result in an increase of less than two hundredths of a cent per kilowatt-hour in the cost of electricity, even if all electricity were dependent on coal for its fuel.

The increase is also insignificant in the light of the electric power

industry's willingness to spend vast sums to transport coal from western to eastern states. American Electric Power System has announced plans to deliver Wyoming sub-bituminous coal to power plants in the Ohio Valley, some of which are located in West Virginia. Transportation costs of \$14 per ton are to be passed through automatically to users of electric power in the Appalachian and Midwestern states. Total delivered price would be about \$24 per ton. Yet the equivalent Appalachian coal can be delivered to the Ohio Valley below \$18 per ton.

The schedule of credits against the gross fee would have provided strong incentives for revitalizing the underground coal industry, by restoring the competitive position of deep coal mining. 97% of the national coal reserves can only be reached by deepmining. Only 3% can be reached by stripmining. Even if we subtract the reserves that cannot be extracted economically by existing methods, the ratio of deepminable coal to stripable coal is 8 to 1. Yet in recent years deepmining has become increasingly less competitive, partly as a result of increased costs, added by Congress, for meeting the requirements of the Coal Mine Safety Act amendments. Future black lung benefits and other statutorily imposed costs are expected to bring the total of such costs to nearly \$3.00 per ton for deepmined coal.

The Bureau of Mines reports that 1,585 deep mines with an annual production of 62 millions tons have already closed since 1970. Most of these mines are in Appalachia. Moreover, a majority of the deep mines have been working only one shift. According to Bureau of Mines estimates, underground production has a potential for rapid expansion of about 14 per cent, whereas stripmine production has a potential for rapid expansion of only about 7 per cent. Yet the enormous, easily-stripped deposits of low-grade sub-bituminous coal and lignite located in the Northern Great Plains region are already attracting major investment capital from the East - capital which is desperately needed to upgrade and expand Appalachian coal mines.

The people of Appalachia and the nation will pay many times over for the demise of the eastern coalmining industry. It will involve not only the loss of jobs and further depression of the regional economy; citizens in the East and Midwest will pay in greatly increased rates for electric power. And ultimately the entire Nation will pay, when the cream has been skimmed off the western coal deposits and the big energy conglomerates have realized their quick profits and

America must turn back to mining in the East to find coal.

The "Jones amendment," adopted by the Committee, ignores these serious problems - and will, in fact, exacerbate them. By setting a fee of 1.23 cents per million BTU on coal, the amendment would further penalize Appalachian coal, which has as much as twice the BTU content of western coal.

Furthermore, the fee would generate only \$160 million annually for the abandoned mine reclamation fund. This fund would be so small that it would take 70 to 100 years to complete the job of reclaiming orphan lands. In fact, since 40% of this fee would be retained by the State in which the coal is mined, to be used for housing and other purposes, the job of reclamation would take over 100 years, so small would be the annual fund remaining.

Because of these many inequities, I plan to reintroduce my reclamation fee amendment as a substitute for the reclamation fee provisions of the bill when it comes to the floor of the House. Recognizing that much of the western coal is extremely low in BTU content, my substitute includes a provision that reduces the \$2.50 per ton fee by 10 cents for each 1,000 BTU by which the average BTU value per pound of coal mined falls below 16,000 BTU. This would reduce the gross fee to around \$1.70 per ton for western sub-bituminous coal mines and \$1.50 per ton for lignite mines.

My substitute will also allow the following credits against the gross reclamation fee, in addition to the credits already described above:

1. the cost of all coal mine safety and reclamation facilities and equipment already purchased but not previously amortized;
2. the amount up to 12 1/2% of the gross fee, of any reclamation fee, severance tax or other similar charge paid to any state, to the extent that the proceeds of such fee, tax, or charge are used by the state to support reclamation activities; and
3. activities, facilities and equipment required in order to comply with the federal Water Pollution Control Act.

The substitute also imposes the fee on imported coal, subject to most of the same credits.

In addition to the credit for state reclamation fees or severance taxes, the substitute also provides that 37.5 per cent of all money collected from the reclamation fee shall be turned over to the state in which the coal was mined, for use within the state for acquisition, reclamation, conservation or

development of public lands or Indian lands within the state, giving prime consideration to the needs of communities which supply the major part of the work force for coal mining operations. Since the proposed fee is expected to generate in excess of \$450 million per year, this latter provision represents a distribution of \$170 million or more each year to the states in which the coal is mined. Yet the fund for restoring abandoned previously mined lands would still be large enough to allow this reclamation to be completed in about thirty years.

All of these benefits add up to the fulfillment of two oft repeated pledges. The first pledge is to restore jobs and a livable environment to the people of the coal mining regions. The second is that there would be "no new Appalachias" in the new areas being opened up to coal mining.

The opposition of the combined oil, coal and electric power lobbies to both the bill as a whole and to the regional reclamation fee proposal was shameful, but not surprising. For generations, the coal industry (60 per cent of which is now owned by the oil and power industries) has been extracting fabulous wealth from the Appalachian region and leaving incredible devastation and destitution in its wake. This is simply because the coal industry has not been required to assume the cost of ameliorating the human and environmental consequences of its activities.

This bill, coming at a time of escalating demand for coal, provides the House with a unique opportunity, by adopting my substitute reclamation fee, to reverse this pattern of devastation and destitution and retain, at the same time, a viable coal deepmining industry essential to the future of the nation's economy.

JOHN F. SEIBERLING, Member of Congress.

DISSENTING VIEWS

We oppose the passage of H.R. 11500, the "Surface Mining Control and Reclamation Act of 1974", as amended and reported by the Committee on Interior and Insular Affairs.

We fully recognize the need for strict and fair legislation to regulate surface coal mining to assure that environmental depredations of the past are never repeated. We believe that an essential and integral part of the surface

mining process is the prompt and certain restoration of mined land to a decent and environmentally acceptable condition.

We also recognize that our complex industrial society is power dependent and that the availability of adequate energy from surface mined coal is a societal value in America deserving at least equal legislative consideration with environmental values.

We oppose H.R. 11500 because the bill unwisely and unnecessarily discriminates against energy values in its single minded focus upon environmental values.

We propose substitution of the bill H.R. 12898 which we believe properly respects both these values.

The bill H.R. 12898 is quite strict in its requirements that mined land be reclaimed and restored. It prohibits the mining of any land that cannot be put back in as good a condition as before mining. But it does not impose unreasonable and unneeded restrictions or bans upon surface coal mining in order to accomplish these objectives as does H.R. 11500.

Rather, H.R. 12898 fairly and squarely reinforces both the environmental ethic and the energy ethic in the United States. By contrast, H.R. 11500 is an overreaction environmentally to the need to control and regulate surface coal mining in this country. It is ill-conceived legislation, the provisions of which are ambiguous, vague, and indefinite of application to the facts and varied conditions of surface coal mining in the United States. It is in essence a detailed federal regulatory measure which pays no more than lip service to the concept of state regulatory programs. It is short-sighted and dangerous legislation for a nation which is involved in serious energy circumstances because it minimizes the access to and the production of coal - our most abundant and logical fuel source - and presupposes the protection of the natural environment as our paramount national interest.

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We oppose H.R. 11500, because some of the major provisions of the bill, if passed and enacted will result in serious and lasting detriments to the nation.

H.R. 11500 will:

(1) Impose arbitrary, confusing, unnecessary and unreasonable procedural requirements on the surface mining of coal. The results will be disastrous to consumers and small coal operators, making the bill anti-consumer and anti-small business legislation (See Title II, Section 201 and Section 211), H.R. 12898 will not do this;

(2) Illogically require each State to designate areas unsuitable for surface coal mining based solely on some regulators arbitrary determination of whether reclamation is physically and economically possible. It allows no consideration of new mining and reclamation methods or other factors influencing a surface coal mine operator's economic ability to demonstrate that proper reclamation of such lands can be accomplished (See Section 206), H.R. 12898 will not do this;

(3) Needlessly impose a costly, burdensome and onerous task upon any coal operator to submit detailed information with his permit application to surface mine coal. The economic impact of supplying such sophisticated and costly information will ultimately squeeze many small coal operators (whose contributions to the energy supply are essential) out of business (See Sections 208, 209, 210, 213, 214, 215, 217, 218), H.R. 12898 will require essential and relevant information;

(4) Needlessly impose arbitrary and unreasonable environmental protection performance standards by: (a) prohibiting the placement of spoil etc. on the downslope in contour (mountain) surface coal mining even though it is to be properly shaped, graded and revegetated. This is an anti-small business provision since it is largely small operators who operate on steep slopes (See Sections 201(b)(1) and 211(c)(1)), H.R. 12898 differs considerably.

(b) requiring the restoration of the approximate original contour of the land after surface mining by backfilling, compacting and grading of the land with all highwalls, spoil piles and depressions eliminated. In many cases these steps may be unnecessary for putting the mined land in a responsible condition. When they are not necessary this requirement imposes a very costly and often physically impossible burden of finding enough soil to fill in the area, replace the overburden and topsoil and restore the land to its "approximate original contour" (See Section 201(b)(2)(A) and 211(b)(8)), H.R. 12898 is less burdensome.

(c) requiring absolute preservation of the hydrologic integrity of alluvial valley floors and the restoration of the water recharge capacity of the minesite to approximate premining conditions as a prerequisite to obtaining a permit to surface mine coal. This assumes that nature's monetary hydrological conditions, which are sometimes sad, indeed, must be forever preserved and never improved, and to do all this would require the possession of the omnipotent powers of a

deity (See Section 211(b)(14)(D) and (E)); H.R. 12898 is less absolute,

(5) Regulate underground coal mining operations and the surface effects of underground coal mining by imposing arbitrary and unreasonable procedural and environmental standards (See Section 212). The regulation of underground mining is a separate subject and should not be confused with surface mining regulation. H.R. 12898 does not do this;

(6) Require the enforcement of unreasonable permit provisions that are overly harsh and needlessly discourage mining. They include civil penalties of up to \$10,000 per day and criminal penalties of a \$10,000 fine and/or one year's imprisonment and authority to issue arbitrary "shutdown orders" by inspectors and individuals from various federal agencies as well as the States with limited and varying expertise or knowledge of surface mining operations and problems (See Sections 220 and 224), H.R. 12898 does not do this;

(7) Permits Citizen's suits, and public participation in all procedural matters and allows for almost constant intervention by third parties thus creating a level of litigious harassment which could lead to mischief and abuse of the legal process (See Section 223), H.R. 12898 does not do this and requires those seeking to enforce its provisions to have a real and legitimate interest which they seek to protect;

(8) Impose a moratorium on surface coal mining on Federal and Indian lands by incorporating immediately upon enactment of H.R. 11500 all the procedural requirements and environmental standards to all surface mining and reclamation operations on federal lands. This will impose, together with tribal approval or disapproval, at a minimum, an eighteen month moratorium on permits for new surface coal mining operations on federal lands (See Section 225 and Title III); H.R. 12898 does not do this;

(9) Impose a reclamation tax calculated on the basis of total BTU's contained in the coal produced or imported during the preceding quarter. The proceeds will pay for the acquisition and reclamation of abandoned or inadequately reclaimed lands. This anti-consumer provision will inequitably increase costs of electrical energy for citizens who buy from utilities burning strip mined coal. Any obligation here is a national one, not a haphazard local obligation (See Title IV Section 401 et seq.), H.R. 12898 does not do this;

(10) Unfairly grants to surface owners (where the mineral and surface rights are in separate ownership) a veto power over the disposition of federally or

privately owned coal. This could amount to a very substantial windfall to the surface owner and require the lessee-coal operator to pay twice for the same coal, first to the federal government for the lease, and second to the surface owner or lessee for his written consent to mine (See Section 709), H.R. 12898 does not do this.

BACKGROUND

During the past few years there has been a growing and proper concern in Congress over the need to regulate and control the surface mining of coal in the United States. In the past some strip mine operators have obscenely scarred the national landscape. There is obvious need to regulate and control strip mining. There is a legitimate and pressing need to protect and enhance our environment by requiring the certain reclamation of mined land. This is a need which past strip miners largely have ignored. They will continue their depredations unless they are stopped. To this end the Committee on Interior and Insular Affairs worked long and diligently to produce a bill to provide for the regulation of surface coal mining in the United States. That its majority insisted on H.R. 11500 instead of H.R. 12898 is exceedingly unfortunate. The latter bill is balanced and effective. The former is unbalanced and will do more harm of one kind than it does good of another kind.

Throughout the Committee deliberations on H.R. 11500 we have been concerned, and we believe our concern is shared by many other Members of Congress, that this bill and the bill, S. 425, which passed the other body, go too far in unnecessarily restricting and curtailing the nation's supply of coal. Our concern in this regard has markedly increased with the energy crisis and the factual recognition, by most energy experts, that we must increasingly rely on our coal reserves as the essential short-term solution to our energy crisis.

H.R. 11500 and S. 425 have the common fault of drastically overweighing environmental considerations in relation to other public interests which fairly should be in mind in making the costs versus benefits evaluation of programs to regulate the strip mining of coal.

ENERGY LOAD GROWTH

By 1990, the United States will probably double its present energy consumption. Domestic oil and natural gas which today accounts for two-thirds of the nation's energy supply will be able to meet only forty percent of the 1990 demand. Nuclear, hydropower, solar, geothermal and other non-fossil fuels will be able to supply only another twenty percent of the demand. The remaining

forty percent must be supplied by coal, which today provides only about twenty percent of the U.S. energy demand. Unless we make this growth in coal use possible we will be in the impossible situation of a continuously increasing reliance on foreign sources of oil and gas. In view of the Arab embargo which has severely impacted our energy requirements across the country, the obvious logic is to turn to our vast coal reserves to meet the near-term energy shortfall. Economic reasons, based on the balance of payments and foreign exchange deficits also are compelling in this regard.

There are approximately three trillion tons of coal scattered from Pennsylvania and West Virginia to Washington State and from Alaska to Alabama. If only a quarter of these known reserves can be tapped to meet our energy demands they will satisfy the nation's domestic energy for 200 to 300 years. It is estimated that the anticipated demand for coal in 1974 will increase to 660 million tons, while domestic production forecasts the production of only 590 to 650 million tons of coal.

SHIFT FROM ENERGY SURPLUS TO SHORTAGE

H.R. 11500 and S. 425 were born in a climate of abundant energy supply. Alternatives to coal as an energy source were cheap and plentiful. Coal fired boilers were being switched to oil for environmental reasons. The situation has now changed drastically. Those boilers are being switched back to coal again. It is in this new climate that the substitute bill, H.R. 12898, was born. The facts are that there no longer is an abundance of energy resources to meet U.S. requirements. There is a severe energy shortage in our country today. The need for access to our coal resources available by surface mining is now critical.

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The present energy crisis will not soon disappear. It dictates that we not enact any bill which severely curtails the production of coal by imposing rigid and unnecessary regulations and unreasonable environmental standards on surface coal mining. H.R. 11500 would do just that. It basically aims to reduce surface mine coal production by stringent regulations, and to make surface coal mining so difficult and costly that coal mining in the United States is driven underground.

When it is realized that approximately two-thirds of the nation's coal production is used to produce electrical energy, the impact upon the national economy of the resultant curtailment of coal production which would be brought about by the enactment of H.R. 11500 can better be understood.

Approximately 80% of the country's generating capacity in 1973 relied upon fossil fuels. Coal's contribution was 377 million tons. According to data supplied by the National Electric Reliability Council, that tonnage was expected to increase to 401 million tons in 1974, but with ongoing reconversions from residual oil back to coal, 1974 coal use will be revised upward. NERC projects the 1982 coal requirement for boiler fuel at 684 million tons. To produce that quantity of coal, many new mines will need to be opened and developed. The circumstances require that surface mines be opened, not closed. The national fossil fueled electric generating capacity is expected to increase from a 1973 level of 331,900 megawatts to 560,300 megawatts in 1982. The accompanying tables provided by NERC clearly demonstrate the swiftly growing role coal must play if the nation's ever increasing electrical energy needs during this decade are to be met.

Another factor we must consider is the estimate by the Federal Power Commission that 161 of the coal-burning electric utility plants in the United States will have to close down in 1975 because of restrictions in the Clean Air Act and similar legislation. This would result in a loss of 70.4% of the nation's installed reserve generating capacity. According to the February 25, 1974, EPC staff study, the greatest impact of these electrical power plant shutdowns will be in the area served by the East Central Area Reliability Agreement. The States of Ohio, Indiana, West Virginia and Kentucky will feel the impact most intensely.

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TABLE 1. - ESTIMATE OF FOSSIL FUEL REQUIREMENTS
1973-82 -TOTAL NERC (UNITED STATES ONLY)

In billions of kilowatt-hours/Year

	Fossil	All other	Gross total	Net total
1973	1,536.8	409.2	1,947.8	1,862.4
1974	1,665.8	465.1	2,130.9	2,022.7
1975	1,716.9	583.9	2,300.8	2,146.6
1976	1,835.6	638.0	2,473.6	2,353.6
1977	1,943.4	720.3	2,663.7	2,536.7
1978	2,075.1	785.5	2,860.6	2,723.7
1979	2,200.7	880.5	3,081.2	2,932.5
1980	2,287.2	1,032.1	3,319.3	3,159.1
1981	2,370.1	1,203.9	3,574.0	3,395.5
1982	2,423.3	1,415.4	3,838.8	3,645.1

Source: National Electric Reliability Council, "Estimated fossil fuel requirements for the electric utility industry of the United States 1973-82."

TABLE 11. - ESTIMATE OF FOSSIL FUEL REQUIREMENTS 1973-82 - TOTAL NERC
(UNITED

STATES ONLY)

In millions of kilowatts/Year

Electric generating capability

total	Combustion		Fossil n1	Total	All other	Grand
	Steam turbine	Not classified n2				
1973	297.8	34.1	0	331.9	83.6	415.5
1974	321.4	40.1	0	361.5	101.1	462.6
1975	343.6	44.0	0	387.6	115.9	503.5
1976	360.7	48.0	.1	408.8	131.0	539.8
1977	382.4	53.8	.2	436.4	140 .3	576.7
1978	407.1	59.0	1.5	467.6	156.6	624.2
1979	428.1	62.7	3.2	494.0	177.6	671.6
1980	447.8	64.2	6.3	518.3	202.8	721.1
1981	463.3	66.4	11.4	541.1	233.4	774.5
1982	475.9	67.3	17.1	560.3	271.2	831.5

n1 Combustion turbine includes combined cycle capability.

n2 Fossil capability planned (type and fuel undecided).

Source: National Electric Reliability Council, "Estimated Fossil fuel requirements for the Electric Utility Industry of the United States 1973-1982."

The next most heavily impacted region will be the service area encompassed by the Mid-America Interpool Network, with most of the reduced capacity in the States of Illinois and Missouri.

The third hardest hit area will be the Southeastern Area Reliability Council, with over 75 per cent of the affected generation in Tennessee, Alabama and Kentucky.

Of 103,891 megawatts of installed capacity affected, 70,250 megawatts will be subject to shutdown for non-compliance with the inflexible and unattainable air emission standards under the Clean Air Act in 1975.

The Committee has chosen to draft legislation which, in effect, if not in bold language, will cripple much of the national capability to produce coal by surface methods. It has done so by giving lip service to reason but, in the final analysis, writing a bill which in many parts of the country will simply prohibit surface mining. Moreover, the Committee has gone beyond the question of surface mining and extended the purview of the bill to the underground sector as well.

In 1973 surface mining of coal accounted for approximately 49 percent of production. Of that amount, 211 million tons (73 percent) was consumed by electric utilities.

Surface mining occurs in practically every state where coal is mined. Kentucky leads in surface mining output in terms of tonnage but in many states such as Indiana, Arizona, Alaska, Montana, North Dakota, Texas, Kansas and Wyoming, surface mining accounts for virtually all the coal produced.

Surface mining has grown rapidly in the past several years as a result of a number of economic and geologic factors. It also has grown because of technological innovations which both enhance production efficiency and the capability to restore or reclaim mined land. However, for three years its increase in percentage of national output has slowed and even dropped slightly. This is largely the result of fears about the enactment of just such a bill as H.R. 11500.

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There does not appear to be any feasible way to replace surface mining tonnage with deep tonnage, especially in the short or mid-term. Indeed, to the extent that such a conversion would be forced, the cost may well be measured both in terms of human life as well as in dollars. Thus, a bill such as H.R. 12898, which stops environmental degradation while still facilitating the extraction of needed energy resources, is the essence of reason.

The proponents of H.R. 11500 ignore a basic fact of life insofar as coal production is concerned and that fact is that America needs every pound of coal our mines can produce. From surface and from underground, from east, mid-west and west, the major task of the American coal industry is to produce coal in ever increasing quantities. The objective of our legislation should be to insure that this surface mining is done properly and is followed by effective reclamation. As it stands, H.R. 11500 simply ducks the problems of reclamation by preventing mining.

It will impose arbitrary and unreasonable restrictions and standards on the surface mining of coal. The result will be disastrous to every American who

relies in any major way on energy to support his lifestyle. And, that includes just about everybody.

Fewer than 5% of the surface coal mines in the United States produce as much as 200,000 tons of coal annually. This is an anti-small business bill as well because 65% of the 2,300 surface coal mines in the United States produce 50,000 tons or less a year. Such small operations could never afford to research and prepare the exaggerated and unreasonably detailed mining permit applications H.R. 11500 requires.

The excessive costs of compliance with, and administration of its unnecessary requirements and overly restrictive standards of performance will hit hard at every consumer's pocketbook - not just in terms of his electric power bill, but also in the cost of every item he buys, because no product comes to the market today without a substantial component of energy cost. Thus H.R. 11500 is also an anti-consumer bill.

It is unquestionably a most confused bill. Two hundred and two amendments to H.R. 11500 were sponsored during committee consideration. A whopping 137 actually were called up and 88 adopted while 49 were rejected. Many of those 49 were rejected without consideration on the merits because debate was arbitrarily foreclosed by a closure resolution. Of the 202 amendments, 98 were offered by various sponsors of H.R. 11500; and of those 98 amendments, 97 were sponsored by members of the two subcommittees (Environment and Mines and Mining) which handled the bill. An additional 48 amendments were sponsored by Subcommittee members who were not sponsors of the bill, yielding a total of 145 amendments sponsored by members of the two Subcommittees. These statistics are recounted as incontrovertible evidence of how sorry a vehicle H.R. 11500 is.

This clearly demonstrates that H.R. 11500 as developed in 20 joint Subcommittee markup sessions was unworkable. Unfortunately, after 19 markup sessions in the Full Committee, the bill still remains a bad product.

Title II is called the "heart of the bill", since it includes all of the procedural and performance requirements. It would seem, therefore, that the most careful consideration should have been given to this title, and that amendments would have been carefully explained and discussed by the Committee prior to adoption or rejection of the amendment on its merits. This is particularly true because the legislative history of a measure can be very important to its ultimate interpretation by administrators and courts. Where no legislative history exists, the courts are left to their own imaginative

interpretation of the legislative language unaided and without guidance from a clear expression of legislative intent. It would follow, therefore, that a thorough Committee discussion and analysis of Title II, and of amendments proposed and adopted or rejected, would have been regarded as essential, not just for guidance in writing the Committee report, but also for those who will later be called upon to interpret and implement the legislative language.

But what are the facts?

The Committee adopted a "gag rule" on April 3. Under that rule, 58 amendments to Title II were to be disposed of without debate. With the exception of a few comments here and there, the record will disclose that the "gag rule" remained in force throughout the entire so-called "consideration" of Title II.

Having failed to establish a legislative history concerning the "heart of the bill", it follows that the Secretary of the Interior, the States, the courts and the industry are left unaided in interpreting it. They will be on their own in extremely troubled waters.

A careful analysis of the various time factors in the bill will disclose a disregard for the numerous difficulties inherent in a "start-up" regulatory program as complex as this. Delays in the opening of new mines are almost a certainty. The shutdown of some existing mines is more than likely. Expansion of existing mines will be delayed. The inevitable result will be a diminution of coal production in the short-term. A delay in the expansion of coal production in the middle-term.

And, possibly no long term future at all for the surface mining of coal. Some provisions of the bill seem purposely designed to shut down mines, especially small mines. With this in mind, the impact upon the nation's coal production is compounded.

1. Procedural requirements and time factors

H.R. 11500 provides for the following:

(a) On or after the date of enactment, new surface coal mining operations must have a permit in compliance with the interim requirements (section 201(b)).

(b) Within 120 days after enactment, existing permits will be reviewed and the requirements of the interim program shall be incorporated into the permit (section 201(c)).

(c) Within 180 days of enactment the Secretary shall implement a Federal enforcement program to be effective in each state (section 201(f)).

The requirement for new permits to be in compliance with section 201(b) is upon enactment. Therefore, the state regulatory authority will require an instant and immediate interpretation of all of the "environmental protection standards" of that subsection for the issuance of a new permit. With respect to existing operations, compliance is mandated within 120 days of enactment by incorporation of the requirements of the bill in each existing permit. However, no reasonable period is allowed for the operator to come into compliance with such requirements after incorporation. Sixty days later (180 days after enactment), Federal inspectors are to be in the field issuing orders for compliance and taking "necessary enforcement action" pursuant to the Federal enforcement provisions. Those Federal enforcement provisions include civil penalties of up to \$10,000 per day and criminal penalties of a \$10,000 fine and/or one year's imprisonment. Keep in mind that this Federal enforcement program is scheduled to go into effect 180 days after enactment and is to remain in effect until the state program has been accepted. Thus the interpretation of section 201(b) establishing the interim program becomes exceptionally important. Who will be the inspectors and individuals who will make on-the-spot, in the field interpretations of those interim performance standards? Subsection 201(f) (3) says that they will be personnel of the Office of Surface Mining Reclamation and Enforcement as well as personnel from the United States Geological Survey, the Bureau of Land Management, and the Mining Enforcement and Safety Administration, and may be from the Forest Service, the Soil Conservation Service, or the Agricultural Stabilization and Conservation Service. This is a blueprint for chaos.

On the same day the Secretary is to implement a Federal enforcement program, that is, 180 days after enactment, the Secretary, under the provisions of section 202, is required to promulgate regulations for a permanent regulatory procedure, which will be the basis upon which state regulatory programs will be approved or disapproved. At this point, it would be useful to review the multitude of other actions the Secretary must take prior to the promulgation of the regulations. And, with this in mind it becomes critical to ask, can he possibly meet that 180-day deadline to promulgate regulations?

The actions to be taken by the Secretary of the Interior within 180 days after enactment with respect to the permanent environmental protection standards are these:

(a) He must draft and publish proposed regulations pursuant to the requirements of the Act. Considering the internal review and approval procedure, probably the shortest period of time in which this could be accomplished would be 30 days, but since he will also have to comply with the National Environmental Policy Act and prepare and circulate an environmental impact statement, 90 days would be more realistic.

(b) Hold at least one public hearing on the proposed regulations. This would require a 30-day notice period subsequent to the publishing of the proposed regulations. Added to that period would be the actual hearing days.

(c) Provide at least 45 days for comments from State and local governments and interested persons. This could run concurrently with notice for a public hearing.

(d) Prepare and file an environmental impact statement. While it is possible it is difficult to envision this complex document being prepared in less than 90 days, and standard review period with the Council of Environmental Quality is another 90 days, for a total of 180 days for the environmental impact statement alone.

(e) Consider all comments and relevant data presented at the hearings and revise permanent environmental protection standards accordingly. Judging from the promulgation of other regulations, 30 to 60 days would be required.

(f) Obtain the written concurrence of the Administrator of the Environmental Protection Agency. It is difficult to anticipate what this time period would be, but it would not seem unrealistic to estimate 30 days.

(g) At this point the Secretary need only go through the final internal clearance procedures in preparation for promulgation of the permanent environmental protection standards. This could take 15 to 30 days if no difficulties were encountered.

At this point the permanent standards would be promulgated upon which the state might then design a state regulatory program to be submitted to the Secretary for approval. However, this assumes that no appeal to the courts involving the promulgation of the regulations themselves, or upon the environmental impact statement, is instituted and pursued. If such judicial proceedings are commenced, it is difficult to estimate when the regulations would indeed be promulgated.

Since it is not likely that the draft regulations would be published prior to the completion of the environmental impact statement, it is more likely that the draft regulations will not be published until 90 days after enactment. Added to that 90 days would be another 45 days for comments and another 30 days for notice of hearings (which could run concurrently). A lapse in time of 135 days to 165 days is inescapable. Consideration of comments could easily consume another 30 days. Added to that would be written concurrence of EPA - another 30 days - plus the review period of the Council on Environmental Quality - 90 days

- plus internal clearance prior to promulgation of permanent environmental protection standards - another 15 to 30 days. It becomes clear that the 180-day deadline for the Secretary to promulgate the permanent environmental protection standards is unrealistic and cannot be achieved. A more realistic estimate would be in the neighborhood of from 12 to 18 months. The bill itself recognizes this in the Federal lands section. The Federal lands program, which is to be based on the same standards as those established in the permanent environmental protection standards applicable to a state program, is not required to be promulgated until 18 months after enactment.

At this point the states are finally able to commence preparation of legislation to be presented to the state legislatures to comply with the regulations of the Secretary. The States must overcome the following hurdles:

(a) Enact a state surface mining and reclamation law which is in accordance with all of the requirements of the Act and the regulations promulgated by the Secretary.

(b) Demonstrate that the state has adequate administrative and technical personnel and sufficient funding to carry out such a program.

(c) Establish a process for designating areas unsuitable for surface coal mining (which would likely require an additional act in the State legislature).

(d) Establish a process for coordinating the review and issuance of a permit which other Federal and State permit processes applicable to the proposed operations.

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If the 12-18 month estimate for the final promulgation of permanent environmental protection standards is probable, and we believe it is, then the time period left to the State to win the enactment of its proposed program by the state legislatures, has been diminished to a mere 6 to 12 months.

While subsection 204(c) authorizes the Secretary to extend the period for submission of a state program for up to 6 months, this applies only to states which have a constitutional convention in 1974 and whose legislatures do not meet in regular session until 1975. Since those qualifications are in the conjunctive, both must be met. Therefore, states whose legislatures do not meet in regular session until 1975 (some legislatures meet only biennially for 60 to 90 days) and who will not have a constitutional convention in 1974, could not present a program to their legislature during its regular session since the 1975

session would have already adjourned and that legislature would not meet again in regular session until 1977. A six month extension would only extend the time to January of 1977, too late for the legislature to act. This is based on the presumption that this bill would become law by July of 1974 and the publication of the final permanent environmental protection standards could not be accomplished until 12 to 18 months after enactment.

Unless this bill is merely paying lip service to the concept of state regulatory programs, and we believe that to be the case, the time factors for preparation and submission of proposed state programs to the Secretary for approval should be based upon the point in time that the Secretary publishes final permanent protection standards. That is, the time for the states to submit a program for approval should be 18 to 24 months or such other period as is appropriate, after the adoption and publication of the permanent environmental protection standards and not based upon the date of enactment. There are no penalties against the Secretary should he fail to promulgate regulations by the end of the 180-day period specified in the bill - the penalties are against the state.

Another time factor worthy of note is the requirement in section 201(e) that an operator "in expectation of operating such mines after the date of approval of a state program" must file an application for a permit not later than 18 months after the date of enactment. It should be noted that time for the state to submit programs to the Secretary for approval will not expire for six additional months. After submission, the Secretary has six months to approve or disapprove the state program, and if he disapproves it, the state has an additional 60 days to resubmit. Considering the 24 months for submission of a state program plus the six months approval period for the Secretary, the application will be lying around collecting dust for a year before the state regulatory authority could even consider the application under an approved state program. That period could be extended by another two months in the event of a resubmittal, and while it is not likely, but possible, some state might qualify for the six month extension authorized in subsection 204(s). So, it is possible that a permit application could be required to be filed up to 20 months prior to the implementation of an approved state program.

With those time factors in mind, there is the possibility of 38 months elapsing after enactment before the approval of a state program, another provision of section 201(e) becomes worthy of comment. The regulatory authority has six months from the date of approval of a state program to act upon such

applications. But, the regulatory authority must act on such applications not
. . . later than 36 months from the date of enactment." Here we find that it is possible that a state regulatory authority is required by this measure to grant or deny a permit 60 days prior to the approval of a state program.

Setting that problem aside for a moment, the state regulatory authority is given six months in which to act upon a permit application. It must act within that period of time if existing mines are to continue to operate because section 208 prohibits any surface coal mining without a permit six months after the approval of a state program. With this in mind, a review of the actions taken by the regulatory authority in its approval process is appropriate.

The application must advertise certain required data in a local paper of general circulation for four consecutive weeks. Local governmental bodies have 30 days thereafter in which to submit comments. Any person with a valid legal interest or the officer or head of a Federal, State or local governmental agency or authority shall have a right to file objections within 30 days after the last publication of the notice. If objections are filed, a public hearing is to be held. The date, time and location of the public hearing also must be advertised in a newspaper of general circulation at least once a week for three consecutive weeks, before the date specified for the hearing. Sometime subsequent to the hearing the regulatory authority will issue a decision, either granting the permit or denying it. If it is denied, the applicant can then ask for a re-hearing, which is to be held within 30 days after the request. Within 30 days after the re-hearing, the regulatory authority shall issue and furnish the applicant a written decision. If everything came off on schedule, it would appear that six months is hardly adequate to complete all these actions. But that assumption would only be realistic in those few cases where the State had only a handful of applications to review.

Based upon 1972 figures provided by the Bureau of Mines, the procedures outlined above have to be completed on 2,309 strip mines and 574 auger mines, for a total of 2,883 mines. If the permit applications were evenly divided among the 25 States in which surface mining occurs, meeting the six-month deadline before shutting down the mines might be possible. But, seven States will have between 100 and 750 applications to process within the six-month period. (See accompanying tables.) Kentucky with 761 strip or auger mines and Pennsylvania with 677 such mines would be most heavily hit. Due to the administrative problems of reviewing 700 permits, much less holding hearings on most or all of such permits, the inescapable result is that numerous mines will not have their permits issued within the time frame established, and will

therefore have to shut down or be subject to the penalties provided in the Act.

This impact will be most heavy in Kentucky, Pennsylvania, West Virginia, Ohio,

Alabama, and Tennessee (See Tables I and II).

Additional, dissenting, separate, and supplemental views

TABLE I. - NUMBER OF STRIP AND AUGER MINES, BY SIZE OF MINE OUTPUT, BY STATE, STRIP MINES/In net tons]

State	Over 500,000	200,000- 500,000	100,000- 200,000	50,000- 100,000	10,000- 50,000	Less than 10,000
Total						
Alabama	6	11	18	16	38	13
102						
Alaska	1					
1						
Arizona	1					
1						
Arkansas			1	1	2	3
7						
Col orado	3		1	1	2	1
8						
Illinois	19	2	3	3	4	2
32						
Indiana	12	1	2	7	9	5
36						
Iowa				6	3	
9						
Kansas	1	1	1			1
4						
Kentucky	22	22	51	80	225	117
517						
Maryland			3	8	18	12
41						
Missouri	3	3	2		1	2
11						
Montana	3	1				2
6						
New Mexico	1	1			1	1
4						
North Dakota	4	2	2		2	4
14						
Ohio	17	23	27	44	66	59
236						
Oklahoma	2	1	3	3	2	2
13						
Pennsylvan ia	1	10	50	83	344	134
622						
Tennessee		3	12	20	43	16
94						
Texas	2	1				
3						
Utah					1	
1						

Virginia		3	7	33	140	61
244						
Washington	1					1
2						
West						
Virginia	4	18	38	64	114	50
288						
Wyoming	8	1	1		2	1
13						
Total	111	104	223	369	1,016	486
2,309						
Coal						
production						
(in						
millions						
of tons)	163.1	31	30.4	25.6	22.9	2.7
275.7						

TABLE II. - NUMBER OF STRIP AND AUGER MINES, BY SIZE OF MINE
OUTPUT, BY STATE - AUGER MINES

State	200,000 to		50,000 to	10,000 to	Less than	Total
	Over 500,000 net tons	100,000 to 500,000 net tons				
Alabama			1			1
Kentucky	3	10	27	86	118	244
Maryland				1	8	9
Ohio		1	2	22	10	35
Pennsylvania					18	37
Tennessee			2	6	1	9
Virginia		2	5	56	59	122
West						
Virginia		7	8	40	44	99
Total	3	20	44	230	277	574
Coal						
production						
(in						
millions						
of tons)	1.4	2.7	3.1	6.8	1.6	15.6

*3*COAL PRODUCTION -
BITUMINOUS AND LIGNITE
3[In millions of tons]

Type of mining	1972	1973 n1
Underground	304.1	301.5
Strip	275.7	275.3
Auger	15.6	14.2
Total	595.4	591.0

n1 1973 figures are not final.

Source: "Coal - Bituminous and Lignite in 1972", Mineral Industry Surveys, Bureau of Mines, Department of the Interior.

From the above it is clear that substantial dislocation of the nation's current coal production capacity will be inescapable if H.R. 11500 were to be enacted. That is why it is so necessary to substitute HR. 12898.

When it is considered that approximately 30% of our nation's electric power is currently supplied by the burning of surface mined coal, the adverse impact of H.R. 11500 becomes even more significant. Furthermore, the projections of the National Electric Reliability Council of an increased need for coal for electric power generation from a level of 377 million tons annually in 1973 to 684 million tons annually in 1982 (an increase of 81%) would not be attainable under the language of H.R. 11500. In contrast, without sacrificing the environmental ethic, it would be feasible under the language of H.R. 12898. This projection from NERC seems conservative when compared with the objective announced by Secretary Morton on May 6 of doubling and possibly tripling the production and use of coal by 1985, that is, going from approximately 600 million tons per year to something close to 2 billion tons per year.

Keep in mind that this dislocation of coal supply is based upon the supposition that current mining activity can qualify for a permit and continue to operate, such as would be possible under H.R. 12898. In contrast, many existing mines will not be able to meet the requirements of H.R. 11500 and many prospective mines will simply not open.

2. Designation of areas unsuitable for mining

There are two sections in the bill, H.R. 11500, which relate to the designation of areas unsuitable for mining: Section 206 relates to the designation of areas unsuitable for surface coal mining. Section 601 relates to the designation of Federal lands as unsuitable for mining operations for minerals or materials other than coal.

With respect to the designation of areas unsuitable for surface coal mining, such decisions should be based solely on whether reclamation in accordance with the requirements of this Act is physically and economically possible. A decision as to whether it is economically feasible is a prerequisite and is implicit in an operator's decision to apply for a permit. He is the proper, and perhaps the only, individual who can truly assess the economics of a mining and reclamation operation. Whether reclamation is physically possible is a matter that, in the normal course of affairs, would be determined prior to the decision on the economic feasibility of reclamation. Since a decision as to the economics of a reclamation plan can best be made at the time of a decision on the permit application, it is unwise to pre-judge such matters on an ex parte basis prior to the time when an application is filed and the operator

demonstrates to the regulatory authority that reclamation can indeed be accomplished. What was economically impracticable one year may be economically sound the subsequent year due to advances in technology, improved mining methods, changes in prices, or the introduction of whole new generations of mining equipment.

The remaining categories of criteria should be eliminated as inappropriate. Subsections 206(a)(3)(A) and (B) can amount to the taking of an easement for public purposes for which compensation should be paid. Subsection 206(a)(3)(C) appears to be a new type of Federally enforced zoning. Whereas, subsection 206(a)(3)(D) appears to be a standard which is inapplicable to surface mining but would be applicable to the construction of public facilities, housing, and industrial complexes.

Since the decision as to the economic feasibility of reclamation is implicit in the permit application review process, and since the other criteria are inappropriate, the entire section is inappropriate, unwise and unnecessary and should be eliminated.

With respect to Federal coal lands, the Secretary already has adequate authority under the Mineral Leasing Act to insure that unsuitable lands are not leased or that prospecting permits are not issued in areas determined to be unsuitable for surface coal mining operations. There is no need for it in this legislation and the substitute bill, H.R. 12898, wisely omits it.

With respect to the designation of areas unsuitable for mining minerals other than coal, this section - section 601 - should be eliminated as being non-germane to the subject of the bill. It is eliminated from the substitute bill. However, if the question of germaneness is to be overlooked, the section should be substantially altered.

First, subsection 601(c) should be modified so that a person petitioning the Secretary to exclude an area from mining would be required to have an interest which is or may be adversely affected. Secondly, his petition should be more than a simple letter, and he should be required to allege certain facts and submit supportive evidence which tends to establish those facts that the area is indeed one which falls within the criteria established in section 601. It should be noted that both of these are requirements of section 206 with respect to a petition to have an area designated unsuitable for the surface mining of coal, and at a minimum should be applicable to petitioning for designation of an area unsuitable for the mining of all other minerals.

Subsection 601(h) is a "backdoor" method of launching a land-use program, a matter under active consideration by the House of Representatives. It should therefore be deleted in favor of the consideration of the broader legislation now pending in Congress.

It is difficult to quantify exactly the coal loss from Section 206 which relates to areas unsuitable for mining. This will depend in large measure upon action taken by the State agency and upon the ability of the opponents of surface mining to work their will upon the regulatory body as well as in the courts. It is quite apparent, however, that the net effect of this language is to inject a new atmosphere of uncertainty into rational planning necessary for expanded coal production. In such an environment, there must be a real and growing reluctance on the part of coal producers to commit themselves for mining in areas which are potentially unsuitable or by utilities and other large consumers to build facilities which would depend upon coal mined from those areas. The bill allows any acre in the nation to be declared unsuitable. It is clearly necessary that a narrower definition be made if, in fact, this section has to have any real meaning whatsoever.

Section 209(d) (9) would preclude the mining of more than 11 billion tons of coal now located under national forests. Such mining, whether by surface or deep method, would not be permitted even though it could clearly be shown to be in the national interest, and even though the extraction of this coal would not in any way effect the other uses to which this land would be put. We look upon this as a major error in H.R. 11500, one which should be rectified in the national interest, one which is eliminated by the substitute bill, H.R. 12898.

3. Permit application data

Under this section (section 210) there are seventeen paragraphs describing the data to be submitted with a permit application. This occupies nearly six pages of the bill simply listing the data to be supplied. In addition, the mining and reclamation plan requires another nine paragraphs to list the information to be supplied. Some of this information will be extremely costly to come by, such as the detailed map described in section 210(b) (9), which map must be prepared under the direction of or certified by a professional engineer or registered land surveyor and a professional geologist. This map must show contour lines showing elevation and depicting the topography, the surrounding drainage area, the location and name of all roads, railroads, rights-of-way, utility lines, oil wells, gas wells, water wells, lakes, creeks, streams, rivers, springs, and other surface water courses, the name and boundary lines of

the present owners of abutting property showing the location of buildings within a thousand feet of the permit area and the use of each building. In addition, other maps must be supplied showing the proposed mine area, test borings, core samples, water tables, aquifers, essentially all geologic data conceivable with respect to an area.

Furthermore, the operator must perform hydrologic studies to determine the "hydrologic consequences of the mining and reclamation operations", including the dissolved and suspended solids, and data to permit an assessment of the cumulative impacts of all anticipated mining in the area upon the hydrology. On top of all this there must be chemical analysis of the properties of both the overburden and the coal, with data on the potential of acid or toxic forming materials in the overburden and of the strata lying beneath the coal. These are merely three samples of the type of data that must be supplied with a permit application.

With 65% of the surface mines producing less than 50,000 tons per year, and nearly 90% of the auger mines producing less than 50,000 tons per year, the economic impact upon these small operators to develop and submit such sophisticated, costly and largely unnecessary information is at once apparent. It would appear that the bill was carefully designed to squeeze the small miner out of business. Is it any wonder that the measure has been characterized as being "anti-small business"?

4. Environmental protection performance standards

(a) Spoil on the Downslope. - The prohibition against any spoil on the downslope " . . . except from the initial block or short linear cut necessary to obtain access . . . " is another anti-small business provision of H.R. 11500. This provision alone will put most of the small operators out of business, since it is largely small operators who operate on the steep slopes. It is an unnecessary and costly legislative provision because the true test of whether downslope spoil can be stabilized and revegetated to prevent slides and excessive erosion depends upon the particular soil and other conditions at each particular site. The decision relative to downslope spoil and its proper placement should be made on an individual basis with respect to each permit application and should not be based upon some sweeping legislative prohibition.

In 1973, 289.5 million tons of surface mined coal was produced in the United States. Of that total, 140 million tons (48.4 per cent) came from the Appalachian states.

Of the Appalachian production, 93.6 million tons (66.8 per cent) came from

mines with a slope angle of 15 degrees or more, and 69.3 million tons (49.5 per cent) of Appalachian surface production came from mines on slopes of 20 degrees or more.

For the Appalachian region, the larger total, 93.6 million tons, is in jeopardy because of at least two sections of H.R. 11500, section 211(b)(8) dealing with return to original contour and section 211(c) which prohibits placing spoil on the outslope.

Proponents may argue that the full 93 million tons would not be lost, but the chances that it will be are large. The bill requires states to impose the step-slope sanctions. It even encourages them to impose it on slighter slopes. Therefore, as a consequence, H.R. 11500 would have a crippling impact on mountain surface mining. Again, the substitute, H.R. 12898, would function to enforce reclamation without imposing such disasters.

In many instances, outslope soil placed on extremely steep slopes cannot be stabilized over the long term to prevent slides, erosion and water pollution. Generally recognized principles of soil mechanics show this is impossible since the operator has no alternative to such a requirement - even if a potential alternative were better - he may well have to choose not to mine the reserve in question.

The one method mentioned most frequently as an alternative to conventional surface mining - the modified block cut method does not really provide a suitable substitute. It has several serious shortcomings.

Because it forces operations into a short, crowded pit, the method allows, at best, only 50 per cent of the production possible for conventional mining methods utilizing the same amount of equipment and manpower. Thus, to keep the production of a given mine at previous levels, the operator would be forced to double his work and equipment force, and thus his costs per ton.

The modified block cut method is relatively untried in parts of the Appalachian region, especially in the southern area. There is no real assurance that the environmental problems resulting from it will not be as serious as those from conventional mining.

H.R. 11500 would impose inordinate and unnecessary costs on mine operators and the end users of their products. For many operators in the Appalachian regions, such expense effectively prohibits any further surface mining. These Appalachian surface producers are little fellows. Bureau of Mines data shows 1,372 surface mine producers in southern Appalachia alone. Of that number 89.3

per cent produced less than 100 thousand tons a year, and 44.9 per cent produced between 10,000 and 50,000 tons per year. Obviously, producers of this size and financial support have minimum ability to make dramatic changes in mining practice. As is evident from H.R. 12898, the substitute bill, there is no really pressing requirement for them to do so for the environmental ethic can be satisfied without it.

In any event, a present lack of equipment in being would effectively preclude the quick shift to alternative mining methods even if such methods were environmentally and technically sound. Equipment of the type required is in extremely heavy demand, not only for coal mining, but also in construction, metal mining and many other industries.

The impact on Appalachian surface coal production, of the imposition of the modified block cut, would be most severe in southern Appalachia. There, 59 million tons of surface coal was produced in 1973, 52 million of which came from slopes in excess of 20 degrees. Of the total production from surface mines, 57 million tons came from slopes of 15 degrees or more, so at least that much tonnage is in jeopardy by H.R. 11500.

We must assume that the bulk of tonnage on slopes above 20 degrees will be lost and tonnage produced on slopes of 15 degrees or more will be placed in serious question. No doubt, some small part of this resource could be recovered by other mining methods or from less steep slopes. This, however, would be possible only in highly particular and unusual circumstances. For the most part, as nearly as we have been able to determine, one must be prepared to accept as part of the cost the passage of H.R. 11500, the elimination of all or the vast preponderance of the tonnage produced in southern Appalachia on slopes of 15 degrees or more.

What does this mean?

To the area involved, it means a potential job loss to more than 10,000 people, people who live and work in the relatively limited geographic area. It means a payroll loss in excess of 100 million dollars per year and all of the benefits which accrue from such a payroll, again in a relatively limited geographic area.

But to the country, it means a great deal more.

Approximately 24 million tons of high quality coal moves from the southern Appalachian coal fields to electric utilities each year. The reliability of these utility systems is based upon the continued ability of the southern Appalachian coal producers to continue to ship coal. Utilities ranging from Ohio south

through Georgia need this southern Appalachian coal to meet current air quality standards. Thus, to deny it would worsen our current energy imbalance and make much more difficult our national effort to improve air pollution control.

(b) Backfilling to Approximate Original Contour. - Section 211(b)(8) of H.R.

11500 would require that the land be backfilled, compacted and graded after mining "in order to restore the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated." Except in cases where water impoundments are authorized and in those cases where small depressions are needed to assist revegetation, all surface coal mines must follow that procedure unless they qualify for the alternative backfilling and grading procedures under one of the two provisos in that subsection.

The first proviso, which is the proviso of most concern to us, was apparently intended to deal with those situations where a coal seam is extremely thick and the overburden is relatively thin. Such coal seams occur primarily in the Northern Great Plains. Where coal seams are 70 or more feet thick and overburden amounts to 30 to 50 feet, after the removal of the 70 feet of coal and the replacement of the 30 to 50 feet of overburden, a depression must necessarily result. It appears that the Committee intended to deal with that situation by providing for alternative grading requirements. But in order for a mining operation to be eligible to follow such alternative grading requirements, it must necessarily be the type of mining operation which is described in the first part of the proviso, namely: ". . . surface coal mining which is carried out at the same location over a substantial period of time, where the operation follows the coal deposit vertically and the thickness of the coal deposit relative to the overburden is large and where the operator demonstrates that the overburden and the spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour . . ." If the operation meets all of those criteria then the alternative grading plan may be authorized. Since all of these qualifications are connected with the conjunction "and", then the logical construction is that all must be present.

Assuming that a hypothetical but not untypical surface coal mine will cover a 640-acre area (one section), with a coal seam 70 feet thick, and the overburden

is 50 feet thick, the following is an analysis of the bill's language and its application to the hypothetical mine to determine if that mine can qualify for the alternative grading plan:

(a) Is mining carried out at the same location over a substantial period of time? That would depend upon the construction of the word "substantial". If a 40-acre pit were opened and the coal removed in three 25-foot layers, it is possible, but perhaps questionable, that the hypothetical mine could qualify under this requirement.

(b) Does the operation follow the coal deposit vertically? Here is the difficulty. There are mines (largely anthracite) where the coal seam is actually vertical and it is mined through the use of slam shell shovels. On the other hand, does the term "follows the coal seam vertically" apply to those cases where the coal is taken off in three layers from 40-acre pits, but the mining property is 5,280 feet square? Does 70 feet vertically where the ultimate mining operation will move 5,280 feet horizontally meet the requirement of following the coal deposit vertically? A 40-acre pit will be 1,320 feet square. Does the 70 feet vertically as opposed to 1,320 feet horizontally qualify as following "the coal deposit vertically"?

(c) Is the thickness of the coal deposit relative to the volume of overburden large? This qualification would appear to fit the hypothetical operation.

(d) Is there insufficient overburden, spoil and waste materials to restore the approximate original contour? Obviously, there would be insufficient overburden, spoil and waste materials and here again, it would appear that the hypothetical operation would qualify.

So, out of four qualifications, two would be applicable, one may be questionable, but the last, and most significant - that mining follows.

219 the coal deposit vertically - would appear not to be applicable. Since it is patently impossible to restore the land to the approximate original contour under these circumstances, the regulatory authority could not issue a permit, and the mining of such thick seams would consequently be prohibited.

Such a result could deal a mortal blow to coal gasification and liquefaction projects whose economic viability depend upon large quantities of low-cost coal.

The original contour provisions of H.R. 11500 also have a heavy impact on coal production in the West, especially in the thick seams of Montana and Wyoming. The problem of original contour is intensified by additional language in Section 705(22) of H.R. 11500 relating to the flow of water as a result of surface mining operations.

The proponents of H.R. 11500 seem to want to gloss over the problems of

restoration to original contour by indicating that, in fact, it can be done, or that there are provisions for variances in those instances where it cannot be accomplished. The facts suggest otherwise.

Overburden, when removed from its natural state, swells about 22 per cent. If a hole 80 feet deep is dug and the overburden is replaced, it will swell to approximately 98 feet of overburden. This would work out well if 18 feet of coal were removed as it would allow the miner to bring the surface back to its original contour. However, the large coal seams in the West range from 10 feet to 90 feet in thickness with overburden of 25 feet to 80 feet. It is easy to see that there is no hope of removing a large vein of coal and then restoring the overburden to original contour.

Repeatedly throughout the hearings on H.R. 11500 and in the discussion within the Committee, we have suggested that the bill should be amended to permit an operator to restore land to similar topography as previously existed, and should also permit the operator to restore the surface to a different topography, if such topography is more beneficial or permits a higher use than the original, such as in the case of highly eroded lands restored, to permit an agricultural use. The provisions of the substitute bill, H.R. 12898, properly provide for such a reasonably and environmentally sound reclamation option.

There is another complicating factor to the restoration to original contour. Under the proposed Section 705(22) of H.R. 11500, surface configuration must blend into and be in accordance with the drainage pattern of the surrounding terrain. Obviously, a depression in the mine area must occur if overburden is insufficient and inescapably would effect drainage pattern.

Furthermore, Section 211(b)(8) allows an exemption to approximate original contour where overburden is insufficient only for operations which continue in the same location for a substantial period of time and where the operations follow the coal deposit vertically. This rules out all known surface mining operations in the West, for the mining method there is to follow the seam horizontally. The same requirement is in the initial regulatory procedures at Section 201(b)(2)(B).

Thus, no matter what reclamation is done under terms of H.R. 11500, it would appear to us that surface mining on thick western seams would be precluded, and the country would be denied the benefit of the results of such mining activity.

Plains area, approximately 24 million tons of coal is produced. The bulk of this production is by surface mining method and is consumed both in the area involved as well as by utilities and other consumers as far away as the mid-west and southwestern regions of the United States.

However, comparisons with the present production from thick seam western coal seriously understates the impact that H.R. 11500 would have upon the availability of a domestic resource to an increasingly energy hungry America. That production is anticipated to increase greatly. Denied both anticipated and present production from this source, many American utilities would be forced to shutdown or impose permanent black-outs and brown-outs.

Estimates made available to us indicate that current commitment from the region involved, i.e., Montana and Wyoming, are for a production level more than 100 million tons of coal per year by the end of this decade or the very beginning of the next. This coal will be consumed in the area involved, as well as being shipped to utilities in the West, the Southwest and the Mid-Western part of the United States. We must emphasize that this tonnage has already been committed and power plants are even now under construction to consume it. If, because of the passage of H.R. 11500, the surface mines designed to meet this demand are in fact prohibited by law from operating, we will be facing an energy crisis of major proportions in large parts of the United States.

In addition, the vast resources of the area, in excess of 50 billion tons of coal readily mineable by surface methods would be forever precluded from mining. No coal company or utility could make the type of commitments necessary to recover this coal in view of the fact that the proposed bill would preclude the surface mining of the property involved.

But utility generation is only one part of the problem. The impending coal gasification industry will be located in the West. Its economics and technical feasibility are founded firmly upon the availability of thick western surface mined coal. So, too, will the first generation of liquefaction plants be based upon such coal. As America moves into the era of liquefaction and gasification, its ability to mine and use such thick western seam coal will be crucial if the country is to become energy self-sufficient.

There have been suggestions that the thick seam western coal can be mined by underground rather than surface methods. This contention ignores the practical

realities concerned with the technology of underground mining and with the serious health and safety questions it involved. There is simply no technical

way that such mining can be accomplished without a waste of the resource involved, creating serious environmental problems in the areas concerned, and incurring sharply increased risks of both fatal and non-fatal accidents underground. We do not think that the Congress of the United States should by direction or by omission establish a precedent which would move the coal industry in the direction of underground mining which presents hazards to the men involved as well as environmental disaster for the areas concerned.

Finally, with regard to western mining, we must comment upon the scare tactics used by the proponents of H.R. 11500 with respect to the alleged damage which could be caused by expanded surface mining. In a National Academy of Science study for the Energy Policy Project of the Ford Foundation, the question was examined in great detail. The conclusion was reached that, with anticipated coal production by 1990, surface lands disturbed in the West would total but 92,000 acres. This acreage represents an area about the size of the city limits of Mobile, Alabama. It is only a minute fraction of the total area involved in these large Western states. The report also concludes that much of the mined area could, in fact, be reclaimed.

We have reviewed in some detail the allegation that western mining might have an adverse impact on the nation's food supply. We discovered that the impact is minimal. For example, an area in the Northern Great Plains required to maintain one cow for one year is capable of producing 2 1/2 million tons of coal from a 40-foot seam. The tradeoff, therefore, is 2 1/2 million tons of coal, with approximately 6 to 8 million dollars at current coal prices, for the value of a steer over a period between 1 and 3 years from the time the land is disturbed until the time it is returned to useful production. This cost-benefit analysis suggests that even if the land could not be returned to a useful purpose, a supposition we do not accept, the benefit of mining far exceeds the cost in terms of an imperceptible drop in food production, a dip which obviously could be easily made up in other parts of the area or in a better utilization of the land involved in such production.

Finally, the question of western coal development has raised the specter of competition between different sections of the country for a market share of the expanding coal demand. We regard this development as extremely unfortunate and as a smoke screen behind which the proponents of H.R. 11500 can work to achieve

their own particular ends. In fact, the United States needs the maximum production from all sectors of the country where coal can be produced. It is simply impossible to meet the coal demand to the type envisioned from any one area of the country. The sheer magnitude of projected coal demand requires heavy investments in both surface and underground mining and the development of an infrastructure throughout the country to move that coal to market where it can be consumed. Appalachia, the Mid-West and the Far West all have a major role to play in the development of a coal industry responsive to the emerging national needs. Economics, geology and geography will determine the ultimate market share for each section of the country, but such market share will be set largely by supply constraints and not by those of the demand side.

The achievement of the national objective of doubling or possibly tripling our present coal production by 1985, as enunciated by Interior Secretary Morton, would be highly impossible should H.R. 11500 be enacted. As the Secretary said concerning the achievement of that national objective:

This means large increases both in surface and underground production; both in the West and in the East. Every region and district will have to contribute if we are to meet the enormous requirements for coal production that we foresee."

(c) Hydrologic balance. - Two provisions of H.R. 11500 are very troublesome as they relate to maintaining the hydrologic balance. These provisions are: First, "restoring recharge capacity of the mine site to approximate pre-mining conditions"; and, second, "preserving throughout the mining and reclamation process the hydrologic integrity of the alluvial valley floors in arid and semi-arid areas of the country".

The use of the words "reasoning" and "preserving" are absolutes. The use of absolutes robs the administrator of reasonable discretion so that he is given no alternative but to deny a permit if the hydrologic integrity cannot be "strictly preserved" during the mining and reclamation process, or if the recharge capacity cannot be "restored" to approximate premining conditions. Reasonable deviations from those absolutes should be permitted and should be within the discretion of the regulatory authority because without the opportunity to use reasonable discretion, the regulatory authority may unreasonably and unwisely be required to deny a permit.

In contrast to H.R. 11500, the substitute bill, H.R. 12898, permits it to be flexible. There is simply no sensible reason not to allow it.

NUMBER OF UNDERGROUND MINES,
BY SIZE OF MINE OUTPUT, BY STATE, 1972

State	Net tons						Total
	Over 500,000	200,000 to 500,000	100,000 to 200,000	50,000 to 100,000	10,000 to 50,000	Less than 10,000	
Alabama	5	4	2		4	9	24
Arkansas						1	1
Colorado	1	6	3	2	7	8	27
Illinois	20		3		3		26
Indiana	1	1	1	1			4
Iowa		1	1				2
Kentucky	29	29	51	65	285	238	697
Maryland			1		1	3	5
Montana						3	3
New Mexico	1						1
Ohio	14	8	2	2	5	4	35
Oklahoma				1		1	2
Pennsylva nia	40	27	20	12	23	37	159
Tennessee	1	4	10	18	46	29	108
Utah	1	10	4	2	3	1	21
Virginia	7	20	15	30	160	95	327
Washingto n					1		1
West Virginia	49	92	61	70	161	115	548
Wyoming		1		1		3	5
Total	169	203	174	204	699	547	1996

Source: "Coal - Bituminous and Lignite in 1972," Mineral Industry Surveys, Bureau of Mines, the Department of the Interior.

5. Regulation of underground mining

The bill is unclear as to whether a state can assume the regulation of underground mines under the provisions of section 212, since it refers only to the "procedures" of section 202, and section 203 authorizing state programs, by its language appears to be limited strictly to surface coal mining. Assuming, however, that a state could undertake to regulate its underground mining under this Act, the problems of permit review and approval would be multiplied. For example, in Kentucky 1,458 permits would have to be reviewed instead of the 761 previously mentioned; in Pennsylvania 836 permits would have to be reviewed instead of the 677 previously mentioned; in West Virginia 935 permits would have to be reviewed instead of 387; and in Virginia 697 would have to be reviewed instead of 366. Obviously, the administrative problems of the review and permit issuance procedure in those states is compounded, and further dislocation of the nation's coal supply would necessarily result.

The application of H.R. 11500 to underground mining should be limited to the surface operations in connection with an underground mine. Adding another debilitating layer of regulation on a segment of the coal mining industry which is already reeling under extensive regulatory burdens could be the final straw. Again, the substitute bill, H.R. 12898, handles this subject with the logic it merits and has application only to surface efforts.

Of extreme concern to the total coal industry is a little known section of H.R. 11500, Section 212(b)(1), which provides for control of underground workings. This section deals primarily with subsidence control, although its impact will be to effectively eliminate much of the current productive capability of the underground mining industry.

The language of the section makes it extremely difficult to specify with any precision the quantitative impact which it would impose. However, there are certain things which are obvious.

First, the section would provide for the elimination of subsidence except in those instances where subsidence can be effectively planned in advance, and where subsidence is an integral part of the mining technology involved. As we understand the section, the only technology that would be permitted is longwall mining which currently accounts for less than 5 per cent of national production. However, even in this case to the extent that subsidence could not be preplanned, even longwall operations would not be permitted. More damaging perhaps, is the fact that as the language is now written, it would severely impact upon both conventional and continuous mining technology by both reducing the amount of the resource able to be recovered and by severely curtailing the productivity from existing capital and labor inputs.

In 1973, more than 300 million tons of coal were deep mined by conventional and continuous mining methods and thus subject to curtailment under this Act. If the language in H.R. 11500 were to be construed strictly, we have every reason to believe that more than 40 per cent of the 300 million tons mined by conventional and continuous technology would be eliminated from the mining industry. This loss would effectively cripple the ability of the coal industry to meet even present requirements and when coupled with the constraints imposed on surface mining would mean the virtual destruction of coal mining as a viable alternative to Mid-East oil for an energy intensive America. In addition to the actual physical loss, an impact of the magnitude set forth above would threaten the economic viability of whatever portion of the underground industry

remains since it would lessen both the recovery of the resource and the economic structure of the coal mining industry. Thus, the heavy burden of H.R. 11500 effects not only the surface mining industry in Appalachia and the West, but also the underground industry in Appalachia, the Mid-West and the Far West and threatens the very life of the bituminous coal industry in the United States.

6. Enforcement

As pointed out earlier, the Secretary's inspectors would be recruited from a variety of Federal agencies under H.R. 11500. These inspectors will have varying degrees of expertise and knowledge of surface mining operations and problems, but will be authorized and even required to issue "shutdown orders" in cases of "imminent danger to health or safety, or where a condition or practice is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources." This last category of possible violations which could trigger a shutdown order, relating to environmental harm to land, air, or water resources is subject to widely varying interpretations. Conceivably, many legitimate activities of a surface miner, including the act of mining, could, depending upon the personal predisposition of the inspector, be considered a "condition" or "practice" which "can reasonably be expected to cause significant, imminent environmental harm."

If a shutdown order is issued and it is or becomes apparent that the order was erroneous, it is the operator and the workmen who will suffer by the loss of production of coal and by the loss of wages. Consequently, the circumstances under which such shutdown orders can be issued should be carefully circumscribed, and limited to those instances where damages are irreparable and irreversible, such as "an imminent danger to the health or safety of the public."

7. Citizens suits

H.R. 11500 authorizes any person, irrespective of his direct interests in the matter, to participate in the hearings in all the following cases:

(a) Hearings on the Secretary's regulations upon which the state regulatory program will be developed;

(b) Hearings on the promulgation of a Federal program;

(c) Hearings on the approval of a State program;

(d) Hearings on the approval of each permit and hearings on the revision of a permit or renewal;

(e) Hearings with respect to orders issued by the regulatory authority;
and

(f) Hearings with respect to the release of a bond.

On top of all of these hearings, which in general provide for access to the courts for additional judicial review, the bill allows for almost constant intervention by third parties in the regulatory program. In addition, section 223, which establishes the right of citizens to bring suits, has injected a new level of intervention. This intervention is in the courts, and is on top of the judicial review provisions of section 221. Furthermore, it is in addition to all other existing remedies in the courts, and places jurisdiction in the United States District Court. The court can award damages, assess penalties or issue injunctions. Since state courts also have jurisdiction over such matters, and especially with respect to damages, the operator may be subject to suit both in Federal and State courts for the same "alleged violation." Besides adding a new level of potential litigious harassment, such a provision could lead to mischief and to an abuse of legal process. In contrast, H.R. 12898 requires intervenors to show an interest to themselves in any court proceedings.

8. Federal lands program

In Section 225 which relates to federal lands, a serious delay factor is injected into surface mining. This Section would permit a delay of up to 18 months while the Secretary of the Interior develops regulations dealing with the federal lands.

In our opinion, the 18-month figure is extremely low. It is more likely that the delay in new starts on surface mines for federal lands would amount to two to three years at the very minimum because this is the time frame that will probably be required by the Secretary of the Interior to permit coal development on such lands.

As indicated earlier, section 201 provides for interim programs for both existing and new mines on non-Federal land. Subsection 201(h) relates specifically to Federal lands and Indian lands. However, subsection 201(h) does not authorize the establishment of an interim regulatory program for Federal or Indian lands, but specifically states that only "existing coal surface mining operations on Federal land and Indian land may commence or continue mining operations." And later in the subsection "existing coal surface mining

operations" are defined as "those in existence on the date of enactment of this Act and those for which substantial legal and financial commitments were in existence prior to September 1, 1973." It is clear from this language that leasing and start-up of new mines on Federal lands are not contemplated or authorized by the language of the bill until a permanent Federal program is promulgated and implemented.

Section 225 relates to the establishment of the permanent Federal lands program. Subsection 225(b) reads as follows:

Within 90 days after the date of enactment of this Act, the interim environmental protection standards are to be made a part of every existing surface coal mining operation on Federal lands within any State.

Here, again, the application of interim environmental protection standards is limited to existing surface coal mining operations, which, according to the definition utilized in subsection 201(h) would be an operation in existence on the date of enactment or for which substantial financial and legal commitments had been made prior to September 1, 1973. Clearly, new operations on Federal lands cannot obtain an interim permit, but must await the promulgation of the permanent Federal program. Subsection 225(c) authorizes 18 months for the incorporation of "all requirements of this Act into the Federal lands program" in any Federal lease, permit, or contract. This can only be interpreted as being an 18-month moratorium on new Federal leases and surface mining permits necessary for the operation of such mines.

Such a moratorium would commence on the date of enactment and would be an add-on to the existing moratorium declared by Interior Secretary Morton. He stated on May 6th that:

Since February, 1973, we have issued no coal leases except those needed to maintain ongoing operations, or as a reserve for production in the near future.

In actual practice, there has been a moratorium, though undeclared, in effect for about three years rather than the fifteen months indicated by the Secretary. H.r. 11500 could extend that moratorium to nearly five years. This would further endanger this nation's ability to increase coal production at an early date, as is needed and has been urged both by government and non-government energy experts. As Secretary Morton said of developing our domestic energy resources:

We shall be worse than foolish if we fail to develop and use them to secure our ability to survive, prosper, and grow in a world that is always competitive and frequently hostile.

Adding an additional 18 months to the moratorium on new coal operations on

Federal lands is playing right into the hands of that part of the world which is "frequently hostile." For a nation which relies on oil to provide 46 per cent of its energy requirements and gas to provide 32 per cent of its energy requirements and which already has the OPEC noose around its neck, it is neither wise nor rational to purposely delay the early development of this vast domestic energy resource.

Section 201(h) permits only new surface coal mining operations on federal and Indian lands for which "substantial legal and financial commitments are in existence prior to September 1, 1973." Notwithstanding the fact that "substantial legal and financial commitments" are nowhere defined in the bill, this national prohibition on new starts until a permanent regulatory program is established, ignores the FEO prediction that U.S. energy needs are expected to increase annual domestic coal production from 602 million tons in 1973, to 962 million tons in 1980.

Title III provides for the establishment of regulatory programs for surface coal mining on Indian lands. Before any new permit may be issued the following actions must be completed:

(1) Tribal application for annual grants to develop and administer a regulatory program in compliance with the requirements of the Act;

(2) Congressional appropriation and Secretarial distribution of authorized funds;

(3) Tribal development of proposed Indian lands programs;

(4) Federal publication of the proposed program, written comments from any interested person solicited, public hearing held, EPA concurrence obtained, program approved by the Secretary of the Interior, NEPA process accomplished, and adjudicatory remedies exhausted;

(5) Tribal approval of the terms and conditions of the coal lease and compliance demonstrated with Section 709(d) pertaining to the likely affect of the proposed surface coal mining operation on the hydrologic balance of water on or off the site.

9. 1.23 cents per million BTU tax on all imported or domestically produced coal

Title IV of H.R. 11500 relates to the acquisition and rehabilitation of

"orphaned land." Orphaned lands are defined in section 403 as being lands which were mined for coal or which were affected by such mining, waste banks, coal processing, or other mining processes, and abandoned or left in an inadequate reclamation status prior to the date of enactment of this Act, and for which there is no continuing reclamation responsibility under State or other Federal laws. Section 401 establishes an Abandoned Mined Land Reclamation Fund, whose principal source of revenue is a reclamation fee or tax" . . . calculated on the basis of total BTUs contained in the coal produced or imported during the preceding quarter (or part thereof) at a rate of 1.23 cents per million BTU's." A credit is authorized for up to one-half of the amount" . . . of any reclamation fee, license fee, severance tax, or other similar charges paid by the operator to any State . . . " the proceeds of which are used for comparable purposes. In addition, up to 40 per cent may be paid over to the local political subdivisions of the States to be used for schools, roads, and health care.

The deletion of the \$2.50 per ton reclamation tax and the substitution of the \$1.23 cents per million BTU's tax is, of course, an improvement over the Subcommittee's bill. However, this discriminates against coal as an energy source and will result in increased costs to electric rate payers. At current production rates of approximately 600 million tons per year, it will add about \$180 million annually to the cost of producing coal. This, of course, is in addition to the other substantial cost increases inherent in the implementation of the other requirements of the bill. All these costs will be passed right on down to the ultimate consumer - you and me.

If, indeed, there exists an obligation to reclaim orphaned lands, it is a national one, not one to impose on tomorrow's rate payers. The substitute bill, H.R. 12898, properly recognizes this unfairness by eliminating the tax provisions of H.R. 11500.

An amendment was adopted in Committee which authorizes the payment of 40 per cent of the coal collected to the local political subdivisions of the States to be used to provide schools, roads, and health care. These, too, are public purposes, and as such should be funded out of general revenues. There is no question that schools, roads, and health care will be needed in areas where coal is mined, but that need is not dependent upon the existence of coal mining, it is present in every community. The Committee gave no consideration to the prospective amount of revenue to be raised and paid over the local political

subdivision where the coal is produced, nor did it give any consideration to the relative need for those funds by the various coal producing communities. It is not difficult to envision the perpetration of many great inequities. These will occur where the mining community is in one county but the actual mines are in another county. The county in which the coal is mined receives all of the benefits, and the county in which the miners actually live would receive nothing, thereby completely perverting the intention of the amendment: that is, to provide some financial assistance to local governments of coal mining communities. This unfortunate result can be attributed to the Committee's lack of expertise and experience in tax matters.

The remaining funds collected from this 1.23 cents per million BTU tax, which is imposed upon not only imported coal, but also on all domestically produced coal, whether from surface mines or underground mines, would be used to acquire and rehabilitate "orphaned lands".

While the rehabilitation of orphaned lands is a worthy objective, it should be, as noted, a national obligation since the Nation as a whole benefited from the lower cost of fuels in the years when these lands were mined. The "conventional wisdom" was different during that period, and mining practice were dictated by that conventional wisdom and by the state of the mining art. Much of the "orphaned lands" were mined during World War II when the objective was to obtain the coal as quickly and economically as possible. To place the burden of this land reclamation program on the mining industry of today is about as appropriate as requiring farmers of today to pay for the acquisition and rehabilitation of lands acquired under the Bankhead-Jones Act.

10. Protection of the surface owner

Under the provisions of subsection 709(b), an operator who has obtained a lease from the Federal Government for coal owned by the Federal Government under lands whose surface has passed into private ownership, must obtain the written consent of the surface owner to enter the property to extract the coal. This grant to a surface owner an effective veto power over the disposition and mining of Federally owned coal. This is a new right in surface owners never before authorized by statute or common law. The elimination of the bonding and other alternatives to compensate the surface owner for damages to his estate is tantamount to a giveaway of Federal coal rights to the surface owner. The operator will be required to come to some agreement with the surface owner, possibly on conditions resembling blackmail. This could amount to a substantial

windfall for the surface owner. The coal lessee is required to pay twice for the same coal - first to the Federal Government for the lease, including bonus and royalties; and second, he must pay the surface owner. It is unconscionable for the Federal Government to encumber coal owned by all of the people by granting a veto power to a single individual.

With respect to subsection 709(a) the surface owner consent provision in this subsection constitutes a substantial shift of rights from the mineral owner of the lands to the surface owner. This becomes especially clear upon an examination of the definition of "written consent" as contained in subsection 705(23). Under that definition, "written consent" must be granted subsequent to the date of enactment of the Act. The relative rights of the surface owner vis-a-vis the mineral owner are matters primarily within the purview of state law with respect to non-Federal lands. Federal interference or alteration of those rights could lead to unjust enrichment and invade the proper sphere of state power.

The surface owner is entitled to full compensation for actual damages to his surface estate, including the temporarily loss of the use of his land, and such compensation as may be appropriate for inconvenience suffered as a result of that temporary loss of use. This is the law and it is eminently fair. But he is not entitled to an unjust enrichment, which H.R. 11500 would grant him.

As we have clearly demonstrated in the preceding ten points, H.R. 11500 lacks reasonable balance between the legitimate aims of mined land reclamation and environmental protection on the one hand, and this Nation's real and essential need for energy. We believe that reasonable surface mining legislation should be enacted. We do not take a "back seat" to anyone in our desire to protect the environment and in our desire to insure that this Nation is a clean and pleasant place in which to live. But we cannot close our eyes to this Nation's serious energy crisis. We are providing a fair bill in the substitute, H.R. 12898, which eliminates the various objectionable features of H.R. 11500 that we have pointed out.

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There is much high-quality reclamation of mined land now being accomplished under existing State laws. Those accomplishments have been ignored. Many States have proven that they are equal to the task of enacting workable legislation and providing vigorous and effective enforcement. The substitute bill will cause the remainder to do so. This Republic has survived for 198

years without H.R. 11500. Its future survival will not be enhanced by its enactment. Quite the contrary, H.R. 11500 could endanger the future vitality of the Republic. It must not be enacted, or it must be substantially reformed prior to final action by the House of Representatives. The substitute, H.R. 12898, is the proper vehicle for that purpose.

Additional, dissenting, separate, and supplemental views

ADMINISTRATION OPPOSES H.R. 11500

The Administration objections to H.R. 11500 are documented in a letter to the Committee from the Department of the Interior dated February 6, 1974. It states that the enactment of H.R. 11500 will result in serious losses of substantial amounts in our coal supplies, approximating a 20 to 30 per cent shortfall. The Administration in its letter of February 6th goes on to list fourteen (14) specific objections to H.R. 11500 as reported from the Subcommittees and urgently requests that the legislation be "reappraised in light of current fuel shortages."

As recent as May 29, 1974, the Administration in a letter to Chairman Haley indicated that the Administration feels very strongly that the bill, H.R. 11500, is unacceptable in its present form because of significant factual and interpretive uncertainties involving unacceptable coal production losses.

By a letter dated May 29, 1974, to Congressman Craig Hosmer, the Federal Energy Office states that the enactment of H.R. 11500 will result in substantial and unacceptable losses in coal supplies and estimate that up to 187 million tons will be precluded from production in 1975 and 251 million tons in 1980.

The letters are as follows:

U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, Washington, D.C.,
February 6, 1974.

HON. JAMES A. HALEY, Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter presents the Administration's views concerning H.R. 11500 a bill "To provide for the regulation of surface coal mining operations in the United States, to authorize the Secretary of Interior to make grants to States to encourage the State regulation of surface mining, and for other purposes."

Enactment of H.R. 11500 will result in serious losses in coal supplies. While the losses are difficult to estimate precisely, they are plainly of a substantial magnitude. In the past year the energy resource supply situation

has changed drastically. Surface mining legislation must be reappraised in the light of current fuel shortages. In the short run, we must both expand current production and exploit untapped reserves of existing energy sources. Energy conservation measures must be undertaken and longer range solutions will be provided by the development of new technologies.

It is our policy to encourage industry to produce our abundant coal reserves in an environmentally sound manner. Domestic coal production in 1973 was approximately 590 million tons. We have 1.5 trillion tons of identified coal resources, 245 billion tons of which are now economically recoverable reserves. Approximately 45 billion tons of the economically recoverable reserves are mineable by surface mining methods, which are generally less expensive and less wasteful of the coal reserves than underground mining. Our plans call for immediate conversion of oil burning power plants to coal where possible. Some 26 plants, out of a possible 42, have been requested to convert back to coal. Preliminary estimates show that demand in 1974 will exceed 1973 production by upwards of 15 percent for these oil substitution uses and other demands. In addition, such estimates show that coal production losses might amount to five to fifteen percent of 1973 production, other things being equal, if H.R. 11500 is enacted. The country simply cannot afford this 20 percent to 30 percent shortfall in view of the current energy situation.

Our objections to H.R. 11500 should not be interpreted as a lessening of the Administration's firm commitment to the prompt enactment of environmentally sound mining legislation. The more important of our objections to the bill are set forth below.

1. Interim program. - While we recognize that there may be advantages to an interim regulatory program, the program provided for by section 201 of the bill imposes an unacceptable heavy initial administrative burden on the state and Federal agencies which would be responsible for carrying it out. Immediate implementation of the program will result in wholly unwarranted restriction or termination of existing surface mining operations and severe curtailment of coal production needed to meet our short term energy requirements. Over the longer term, and with proper preparation, adequate protective provisions are essential but we strongly object to an initial regulatory procedure which will disrupt and severely curtail coal production. More particularly, neither existing nor new surface mines should be required to operate subject to the standards set forth

section 201(c). Complying with these standards within the short time limits provided and revising or issuing permits with such standards attached as conditions is highly unrealistic. If an interim regulatory procedure is to be provided, its implementation should be the responsibility of the various states, should be one that is established based on clear and automatic criteria and must not result in substantial coal supply losses over the short term.

2. Designating lands unsuitable for surface coal mining. - The administrative procedure provided in H.R. 11500 for designation of lands as suitable or unsuitable for mining is inflexible, cumbersome and not appropriate for the case-by-case determinations that are necessary with respect to determining whether surface mining should be carried on. While we recognize that identification of such areas under some circumstances is appropriate, any such designation should be related to the possibility of complying with the bill's performance criteria.

More specifically Section 205 requires the surface mining regulation authority to withdraw land from surface mining based upon its determination that "reclamation . . . is not . . . economically possible". However, the economics of reclamation can vary widely, depending on the operator and technologies involved. Once lands have been withdrawn by administrative action, a similar, full scale administrative action would be required to open them again. Each operator will have differing resources and contract requirements, either of which considerations might make mining desirable even though reclamation would not be "economical" under other circumstances. By the same token, the technology of reclamation is rapidly changing, and increased efficiency may suddenly make reclamation of a proposed operation "economical" where it had not previously been so.

The regulatory authority should not have the responsibility of determining for mining companies whether proposed ventures are profitable or not. Rather it should be concerned that reclamation will indeed occur. Appropriate bonding requirements will give the regulatory authority adequate means to insure that this occurs.

The economic aspects of reclamation are appropriate for consideration only on an ad hoc basis with respect to each individual permit application. If the permitting agency determines that under the circumstances reclamation would not or could not occur, it may deny a permit, without affecting the status of the land and without prejudicing the ability of the applicant, or another operator, to demonstrate at a later date that reclamation will be accomplished.

Finally, the regulatory authority must have adequate and appropriate

discretion to take into account such objectives as land use programs, areas of critical environmental concern and related considerations.

3. Protection of public areas. - Section 208(d) contains several provisions apparently aimed at protecting areas used by the general public. These provisions are vague, unduly inflexible and duplicative of other protections in the bill, including those relating to the designation of lands unsuitable for surface mining.

In addition, section 208(d)(9) is too broad. For example, we strongly object to inclusion of national forests. Further, more careful consideration must be given to the administration of Federal lands by land management agencies. Also the bill could subject the Federal government to liability for the taking of rights which might exist under existing law, for example, those rights of certain permit holders or lease holders.

4. Performance criteria. - Several of the performance criteria as set forth in H.R. 11500 are too rigid and inflexible and could result in substantial coal losses. These include:

(a) Restoring original contour: While we agree that restoration of the approximate original contour of surface mined land is generally desirable, the provisions of H.R. 11500 are too restrictive. They could preclude desirable post-mining land uses such as recreation and agriculture and might result in substantial coal losses.

(b) Hydrologic: Although the effects of the bills' provisions relating to minesite hydrology, particularly sections 210(b)(14) and 610(d), are largely unknown, and need further study, these provisions are inappropriate both because of adverse impact on coal supply and because they are inadequately tailored to appropriate environmental protection. Among other matters, the requirement that the recharge capacity of aquifers be restored is not always attainable.

Preservation of stream channels may be undesirable when such streams can be diverted to permit recovery of needed coal in an environmentally appropriate manner.

(c) Impoundments: Subject to appropriate engineering requirements, there is no justification for prohibiting the use of mine waste and tailings for construction of impoundments.

(d) Underground mine buffer: An unqualified prohibition of surface mining in

relation to underground mine openings is unreasonable and would prohibit mining through abandoned underground mines.

(e) Explosives: Any explosion will necessarily change, to a greater or lesser degree, the course, channel or availability of ground and surface water.

(f) Augering: The bill's augering requirement is inappropriate and unduly wasteful of coal resources.

5. Underground mining. - Any general requirement that new underground mines be backfilled is unwise. Backfilling presents safety and economic difficulties which have not yet been fully evaluated.

6. Public Notice and Hearings; Decisions of Regulatory Authority and Appeals. - The provisions of H.R. 11500 are vague and indefinite as to ripeness for review, finality of administrative review, appropriate forum and scope of review and will result in needless litigation.

7. Federal enforcement. - Any Federal enforcement provision must be clear and must delineate sharply Federal and state enforcement responsibilities. The Secretary should be afforded strong and more equitable enforcement authority, consistent with the enforcement mechanisms of the Federal Coal Mine Health and Safety Act of 1969.

8. Abandoned mine reclamation fund. - Title III of H.R. 11500 would create an Abandoned Mine Reclamation Fund with direct Congressional appropriations and other receipts on a revolving basis and would establish a program for reclaiming privately owned land which has already been surface mined. We agree that reclaiming our "orphan lands", victims of past mining damage, is a serious problem. The rural land reclamation provision set forth in section 305 could provide substantial windfall property benefits to private landowners. In view of the magnitude of the problem and the amount of Federal dollars available at this time, we cannot support the kind of massive Federal outlay which would be necessary to make any significant progress in the restoration of these lands.

The first priority in mined area protection must be to arrest ongoing damage presently being inflicted on the land and all needed funding should be devoted to a regulatory program to achieve this objective. Moreover, a large percentage of previously mined areas contain coal which is presently of commercial value or will become so as technology advances. This means that second generation mining activities will bring new opportunities for reclamation. The Administration proposed surface mining legislation contained provisions to

encourage the reworking of past mined areas by methods which will promote reclamation of the entire area. This would not require Federal expenditures and should result in significant rehabilitation of past damaged lands. A \$40 million authorization for the Abandoned Mine Reclamation Fund is misleading as an indication of the amount required to carry out the task involved and would constitute an unwarranted diversion of funds from the current reclamation program.

Particularly objectionable in the abandoned land reclamation program is the imposition of a \$2.50 per ton fee on current operations to be used for this program (section 301(d)). The fee will unreasonably raise current coal costs and penalize current coal consumers for damages caused by other operations and, to the extent that credits for past expenditures are provided, could operate as a barrier to market entry and cause dislocations in the economic factors bearing on mine operations.

9. Responsibility for surface mining reclamation program. - Sound administration requires that authority and responsibility for the surface mining reclamation program run directly to the Secretary of the Interior. The Secretary should have sufficient flexibility to manage the program efficiently, utilizing Departmental resources where appropriate and adjusting the program as future developments warrant.

10. Program for non-coal mine environmental impact control. - Title V's non-coal mine environmental impact control program has two facets - a requirement that states designate lands unsuitable for non-coal mining and provisions for a study of non-coal mining. The Secretary of the Interior, in conjunction with other Federal agencies, already has the latter authority and is carrying out the study objective. The Administration proposed "Mined Area Protection Act" was the product of such study and would have included non-coal mining. More significantly, however, designating areas as unsuitable for non-coal mining, as contemplated by H.R. 11500, is simply inappropriate for the reasons set forth in item (2) and should be undertaken only in conjunction with a full regulatory program.

11. Procurement. - Section 603, which prohibits federal procurement from mines where violations of other provisions of the bill have occurred, is unclear, administratively unworkable and duplicative of the direct enforcement provisions of the bill. Even assuming that a clear and workable provision could be established, the additional paperwork, effort and confusion involved are not worth the marginal benefits the provisions would produce. Requiring various

procurement agencies to determine that no violations of surface mining regulation have occurred, including such matters as whether surface owners have consented to surface mining, would unduly divert such agencies from the program functions and contribute relatively little to the enforcement effort.

12. Continuing Federal Grants to States. - While we agree that Federal grants to support State surface mining programs are desirable in the early years of such programs, we oppose the bill's provisions because of high funding levels provided in section 606. The States should assume responsibility for a reclamation program after the initial incentive and assistance are provided by the Federal government and any such Federal assistance should not duplicate fees received by the States from operators. In our view a grant formula providing 80% of the State program costs the first year prior to approval, and 60%, 45% and 30% in successive years, with a final 15% allotment in the fourth year would be adequate to assist the States in developing an effective workable long-range program.

13. Surface owner protection. - The surface owner consent provisions of section 610 constitute a substantial shift of rights from the mineral owner of lands to the surface owner. The rights of surface and mineral interest holders are a matter primarily of state law with respect to non-Federal lands. Federal alteration of those rights invades the proper sphere of State power and is largely extraneous to the bill's purpose of assuring that surface-mined land is completely and promptly reclaimed. In any event, appropriate bonding alternatives must be available to protect tangible surface rights affected by surface mining.

14. Mining and Mineral Research Centers. - Inclusion of Title VII, which among other things authorizes the establishment of mining and mineral research centers, is unacceptable. The President vetoed a bill containing similar provisions passed by the 92nd Congress (S. 635) because it would have fragmented and undermined the priorities of our current research efforts and because it would have created an inflexible program precluding the best use of available research talents of the nation regardless of location. Adequate authority already exists for support of needed mineral research programs.

In view of the technical nature of the problems raised by the section 707(d), we defer to the Secretary of Commerce for comment on that provision.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's

program.

Sincerely yours,

JOHN C. WHITAKER, Acting Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, Washington,
D.C.,
May 29, 1974.

Hon. JAMES A. HALEY, Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: We have undertaken a thorough review of H.R. 11500 which, on May 14, 1974, was ordered reported by your Committee. We have concluded that the bill has several objectionable features which must be changed in order to strike the right balance between our need for environmental protection and our energy requirements. The Administration feels very strongly that the bill is unacceptable in its present form.

We have made a study of the effects of the bill on coal production and, while there are significant factual and interpretive uncertainties with any study of this kind, I am led to conclude that the bill will involve unacceptable coal production losses.

Enclosed is a table giving summary estimates of the possible and minimum expected effect of certain provisions of the bill on coal production.

235 The "possible" effects assume strict interpretation and implementation of the bill. The "minimum expected" effects assume a much less stringent interpretation and application of those features of the bill. Under both assumptions, however, costs of mining will rise significantly in many cases. The total effects of the bill cannot be obtained by adding the individual ones; they are not cumulative. We are preparing a more detailed analysis of H.R. 11500 as it relates to coal production and expect it to be available in the near future.

For 1975 coal losses would probably range from 31 to 187 million tons of needed coal. These losses are attributable to certain selected features of the bill. Other features could add to this loss depending upon interpretation and application. These figures assume that in the first three years of the Act's effectiveness the more liberal interim standards will apply and that certain existing practices will continue. After the first three years, more stringent standards become effective and we expect they will be more stringently applied. On this basis, the potential loss beyond 1977 is projected to be 33 to 271

million tons by 1980 and the latter projection assumes significantly (perhaps 50%) higher production costs in many cases.

Throughout your Committee's work on H.R. 11500, the Administration has consistently pointed out that unless major changes were made in the bill, its implementation could seriously damage the Nation's energy position with respect to coal production. Regrettably, H.R. 11500, as reported by the Committee still has many of the deficiencies we have previously addressed. I urge very strongly that amendments be adopted to make this a workable bill. My principal concerns are:

1. Interim Program. - In the bill, as amended, the interim compliance sections would present some very severe problems in terms of administerability. This is important because it can adversely affect short-term supplies of needed coal. Among other matters, the timing of the program is unworkable. It would go into effect immediately for new mines and after 120 days for existing mines. Compliance with these deadlines by the coal industry will be almost impossible. Until State requirements and permits are issued, industry will be unable to determine how the bill's requirements apply to its own operations. As to new operations, we think not less than 90 days should be allowed before the bill's requirements come into play with a requirement that the State regulatory agencies act within 30 days on interim permit applications. For existing operations, the state regulatory agency should be required to specify within 60 days how the interim requirements apply to operations and each operator should then have 120 days to comply.

Additionally, the bill should be amended to make it clear that during an interim program, the Federal Government will not be issuing permits where a State fails to act and the Federal role will consist of monitoring and limited enforcement.

2. Designating Lands Unsuitable for Mining. - The bill's provisions for designating lands on which surface mining cannot take place have several deficiencies. Section 206(a)(2) appears to create a general presumption that all lands are unsuitable for mining unless it is established through the administrative procedures required by the bill (including notice, hearing and formal decision) that surface mining is both physically and economically possible. The procedural effect of this could be a nationwide moratorium on surface mining, something clearly not intended by the Committee. Surface mining presently accounts for 50% of all coal mining or roughly 300 million tons, based on 1973 figures. At the least, the burden of establishing unsuitability should

be shifted so that the bill would provide that an area must be designated unsuitable only if it is shown that it is not physically possible to reclaim. In

this connection the Administration has on several occasions expressed the view

that it is inappropriate to classify lands as unsuitable based on economic criteria, and I want to reiterate our strong opposition to this provision.

Finally, we think the procedure for designation of lands unsuitable should be improved and the bill should be amended to allow permit-by-permit approval of surface mining even in areas designated as unsuitable, where the State finds that in the particular circumstances reclamation subject to the bills overall requirements will in fact occur.

3. Surface Subsidence from Underground Mining. - Our consistent position has been that measures taken to control land surface subsidence, resulting from underground mining are proper. We note that two major improvements were made in Committee markup on H.R. 11500 to allow postponement of subsidence control until study of surface subsidence and underground mining is completed and to grant the Secretary of the Interior authority to modify permitting requirements for minimizing surface subsidence effects from underground mining. H.R. 11500, as amended, does not adequately cover the overall subject of applicable underground mining technology to minimize the problem of surface subsidence. Section 212(b) (1) leaves unclear the intent of "to prevent subsidence to the extent technologically and economically feasible." This provision if interpreted to prohibit induced subsidence in a controlled manner where possible and appropriate, could result in serious production losses. The coal losses in 1975 from adopting such an interpretation could amount to 17 to 117 million tons, could result in costs higher than present costs and could result lower overall resource recovery. We urge you to have your committee study this provision in detail for it may have the profound effect of disallowing recovery of vitally needed coal in certain areas by either surface or underground mining methods.

4. Exclusion of Surface Mining in National Forests. - We oppose the legislative prohibition against surface mining of coal in national forests. National forests should be left open for coal development under multiple use principles. As I have previously expressed, our opposition to prohibiting mining in National Parks, Refuges, Wildernesses and Wild and Scenic Rivers specified in section 209(d) (9) is based on our concern with legislative taking of existing private rights. It has been our policy to prohibit new surface mining in the areas named in the bill, other than national forests, and we expect this policy to continue.

5. Performance Criteria. Even after the Committee's markup, some of the bill's performance criteria will result in unacceptable coal production losses.

The permanent requirements relating to hydrology may well preclude mining of vast coal areas, particularly in the west. Beyond this, we simply do not have sufficient information of the effects on hydrology and the pro's and con's of various specific provisions which are in the bill.

The prohibition against the placement of spoil on the downslope in steep slope areas alone could involve substantial production losses in the range of 3 to 16 million tons in 1975 and 18 to 105 million tons in 1980. I am also concerned with the short-range impact of the bill's interim requirements relating to mining on steep slopes. While I generally agree with the desirability of these provisions, a broader equipment variance should be allowed than that now provided by section 201(b)(7), since we anticipate that during the 2-year interim period equipment shortages will be a real constraining factor on coal production.

Further, the bill should be explicit in Section 211 in providing language to identify further what constitutes "approximate original contour," and to accept the newer land restoration methods presently being employed such as head-of-hollow fill and spoil haulback. These may be disallowed as the bill is now worded. The overall effect of the bill's provisions mandating return to original contour (including provisions relating to mountain top mining, thick seams and spoil on the downslope) would likely range from 4 to 59 million tons of coal lost from production on 1975. This assumes for the interim program that some mountain top mining will continue and variances will permit spoil on the downslope. In 1980 the original contour requirement might be met through the haul back method but at significantly higher cost.

6. Non-coal mine environmental impact control. - While the Committee restricted the original provisions of Title VI of H.R. 11500 so that they apply only to Federal lands, we continue to believe they are undesirable. To the extent that the Interior Department already has authority to control use of Federal lands, the provisions are unnecessary. Beyond this, the procedure for designating lands unsuitable for non-coal mining is inappropriate and should be undertaken only in conjunction with a full non-coal regulatory program.

7. Surface owner protection. - The Administration has stated on several occasions its opposition to the bill's surface owner consent provisions on the ground that they constitute unwarranted Federal shifting of rights which are more properly a matter of state law. More particularly, section 709 of the

Committee reported bill is objectionable because it requires (i) surface owner consent for surface mining Federally owned coal and (ii) either consent of or a bond for the benefit of Federal permit and lease holders before Federal coal can be surface mined. A bonding alternative must be provided to protect the owners of tangible surface rights affected by surface mining. We also believe it is wholly inappropriate to give permit and lease holders a new right to veto the use of Federal coal. We also object to the needless inclusion of consent or bond requirements for the benefit of those whose use of water might be affected by mining. This provision appears so uncertain as to be unworkable and the appropriate objectives would be achieved through the bill's basic reclamation requirement.

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8. Mining and Mineral Research Centers. - Inclusion of Title VIII which among other things authorizes the establishment of mining and mineral research centers, is unacceptable. The President vetoed a bill containing similar provisions passed by the 92nd Congress (S. 635) because it would have fragmented and undermined the priorities of our current research efforts and because it would have created an inflexible program precluding the best use of available research talents of the nation regardless of location. Adequate authority already exists for support of needed mineral research programs.

Attached is an Addendum setting forth additional modifications which should be made in the bill.

The Administration will continue to work with the Congress to produce good surface mining legislation. I cannot emphasize too strongly, however, that there remain serious objectionable features in the bill, which must be changed to strike the right balance between our need for environmental protection and our energy requirements.

Sincerely yours,

ROGERS C. B. MORTON, Secretary of the Interior.

TABLE 1. - POSSIBLE EFFECTS OF SELECTED FEATURES OF H.R. 11500 ON COAL PRODUCTION [In millions of tons]

Selected features	1975		1980	
	Possible	Minimum expected	Possible	Minimum expected
Mountaintop mining	27	4	36	n1 0
Thick seams, shallow overburden	32	0	,67	0

Spoil on downslope	16	n2 3	105	18
Small surface mines	38	14	48	18
Subsidence from underground mining	n3 117	17	n3 99	15
Possible overall effect	187	31	271	33

n1 Assumes extensive use of the haulback method at significantly higher costs.

n2 Assumes parts of Virginia and Alabama surface-mined coal production will be affected, and that in the interim other States will continue as now.

n3 Includes all production from shallow cover mines (300 ft) and that the bill eliminates all underground mining with less than 300 ft cover.

NOTES

(a) The above figures are not cumulative.

(b) These figures do not include estimates for possible loss of production due to interpretation to lands unsuitable for mining, national forests, hydrological balance, Federal lands, surface owners' protection, and other provisions of the bill.

(c) Responsibility for surface mining reclamation program: Sound administration requires that authority and responsibility for the surface mining reclamation program run directly to the Secretary of the Interior and not to the Office of Surface Mining Reclamation and Enforcement as specified in Title V. The Secretary should have sufficient flexibility to manage the program efficiently, utilizing Departmental resources where appropriate and adjusting the program as future developments warrant.

(d) Indian program: The surface mining program which would be established by Title III of the bill is unnecessary and ill-advised. The Secretary of the Interior now has adequate authority to protect Indian lands and is exercising that authority. Both Federal and Indian resources would be needlessly diverted to the separate programs which Title III would authorize. This would result in overtaxing the already limited manpower and financial resources available for surface mine reclamation work and dilute the effectiveness of such programs on Indian lands.

(e) Confidentiality of information: It is essential that the application requirements of the bill be modified to provide for preserving the confidentiality of competitively sensitive material made available by permit applicants.

(f) Citizen suits: The scope of section 222, which authorizes citizen suits in the Federal courts, is extremely broad and could subject operators to serious risk of undue harassment. First, authorization for the recovery of damages instead of merely for injunctive relief is unprecedented in environmental citizen suit litigation. In addition, such actions are authorized not merely for violation of an operator's permit, but also for violation of the Act itself. This would bypass the procedural safeguards available to challenge a permit at the time of issuance and would amount to a collateral attack upon an issued permit and an unwarranted interference with the discretion of the issuing agency. Finally, section 222(b) (2) provides for litigation in the U.S. District Courts against a state-regulated agency and is therefore in violation of the eleventh amendment of the Constitution.

ADDENDUM - LETTER TO CONGRESSMAN HALEY CONCERNING H.R. 11500

(a) Judicial review; procedure: Actions implementing H.R. 11500 should be subject to review only by United States Courts of Appeals rather than by U.S. District Courts and Federal regulations of program-wide import (those issued pursuant to sections 202, 211 and 212) should be reviewed only in the United States Court of Appeals for the District of Columbia on a petition to review filed within 90 days of the issuance of the regulations. In addition, we believe the language of section 222 permitting judicial review of Secretarial disapproval of State plans should be eliminated. This would be consistent with other environmental laws which preclude review of such decisions. We are also opposed to permitting citizen intervention in criminal proceedings as section 223 would now apparently permit. This section should also be modified to delete the provision under which expenses of litigation may be awarded against the government.

(b) Abandoned mine reclamation: Title IV of the reported bill would create an Abandoned Mine Reclamation Fund with fees and other receipts on a revolving basis and would establish a program from reclaiming privately owned land which has already been surfaced mined. Primary funding of the program would be derived from a 1.23~ per million BTU tax on coal mined. This amounts to approximately 15~ to 35~ per ton on coal mined in the United States. We agree that reclaiming our "orphan lands", victims of past mining damage, is a serious problem. The rural land reclamation provision set forth in section 405 could provide substantial windfall property benefits to private landowners. In view of the magnitude of the problem and the amount of dollars available at this time, we cannot support the kind of massive outlay which would be necessary to make any significant progress in the restoration of these lands. The first priority in mined area protection must be to arrest ongoing damage presently being inflicted on the land and all needed funding should be devoted to a

regulatory program to achieve this objective. Moreover, a large percentage of previously mined areas contain coal which is presently of commercial value or will become so as technology advances. This means that second generation mining activities will bring new opportunities for reclamation. The Administration proposed surface mining legislation contained provisions to encourage the reworking of past mined areas by methods which will promote reclamation of the entire area. This would not require Federal expenditures and should result in significant rehabilitation of past damaged lands.

FEDERAL ENERGY OFFICE, OFFICE OF THE ADMINISTRATOR, Washington, D.C., May 29, 1974.

HON. CRAIG HOSMER, House of Representatives, Washington, D.C.

DEAR MR. HOSMER: Your letter of May 9 requested that I provide you with an analysis of the effect that H.R. 11500, the "Surface Mining Control and Reclamation Act of 1973," would have on our nation's coal supply.

In the bill's present form, it would seriously cut existing coal production and also remove vast amounts of coal reserves from future production.

The Administration feels very strongly that the bill is unacceptable in its present form.

The Bureau of Mines has given me the results of an intensive analysis of the bill in its present form on what effects the bill's requirements will probably have on production in 1975 and 1980. The estimates show that up to 187 million tons will be precluded from production in 1975 and 251 million tons in 1980.

The Bureau of Mines' final report may have some additional comments on the effects on our coal supply. It is certainly apparent at this point, however, that enactment of H.R. 11500 will result in serious losses in coal supplies. While the losses are difficult to estimate precisely, they are substantial and unacceptable. The early planning stages of Project Independence show clearly that coal will play a lead role in our nation's energy production and we need increases in coal production, not decreases. The adverse effects on our economy and balance of payments are apparent if we do not substitute domestic coal production for oil imports.

You requested an analysis of the impact of the several specific portions of the bill which appear to bear special significance with respect to our coal supply.

Section 206. - Designation of Areas unsuitable for Surface Coal Mining.

This section appears to create a general presumption that all lands are unsuitable for mining unless it is established through the bill's procedures (including notice, hearing, and formal decision) that surface mining is physically and economically possible. The bill might also provide that Federal lands may be designated as unsuitable, regardless of existing operations, and existing leases may be conditioned to limit surface coal mining. Approximately 12 million tons per year are currently produced from Federal lands with upwards to 200 million tons estimated per year by 1985. All of this coal could be precluded from mining.

However, a catastrophic effect of this section could be a nationwide ban on new surface mining. A large percentage of future increases in coal production is scheduled to come to surface mines. Our preliminary estimates show that up to 30 million tons could be precluded under this section this next year, and upwards to 350 million tons per year by 1985.

Section 209(d) (9). - Prohibition of Mining in National Forests.

The prohibition of coal surface mining within National forests would foreclose the recovery of up to 7 billion tons of coal. With approximately only 45 billion tons of domestic recoverable surface reserves, the prohibition of coal surface mining within National forests would therefore preclude the mining of over 15 percent of our nation's recoverable surface mineable coal reserves. We cannot, within any reasonable degree of accuracy, at this time calculate the effect on immediate production.

Section 211(b) (8). - Backfill to Approximate Original Contour.

Section 211(c) (1). - No Spoil on Down Slope on Steep Slopes.

Section 211(c) (2). - Backfill to Approximate Original Contour on Steep Slopes.

The requirements of these sections are very difficult to quantify in terms of the effects on coal supply. The accuracy in estimating the coal reserves that would be adversely affected is constrained by the fact that each case would have to be determined on its own merits and thus far we have not inventoried or evaluated the thousands of instances where the requirements of these sections would preclude the mining of coal. We know that the requirements would create adverse mining economic conditions and in many cases it would probably not be technically possible to comply. Our best estimate at this point is up to 2.5 billion tons of coal would be permanently lost to mining, with an immediate

annual loss in production of up to 67 million tons. (Currently, approximately 75 million tons per year of coal production comes from mines operating on lands in excess of 20-degree slopes in the Appalachian area. We estimate that upwards to 16 million tons of coal will be adversely affected in 1975 and 105 million in 1980.)

Section 211(b)(14). - Minimize Hydrologic Balance Disturbance.

Here, again, it is very difficult to accurately estimate the quantity of coal reserves that would be lost under this requirement because of the lack of complete inventory data on the thousands of instances where this section's requirement would preclude the mining of coal. However, we would expect that vast coal areas in the western plains states would be adversely affected. Our best estimate at this time is that upwards to 19 million tons per year of near term production could be precluded, and 12.5 billion tons of coal reserves could be precluded from future mining.

Section 225. - Federal Lands (fails to provide for new mines).

This section fails to provide for the operation of new mines on new leases on Federal lands until the Secretary of the Interior implements a Federal lands program, including judicial review of the approval of a Federal program. The time frame of Secretarial action and judicial review is somewhat speculative; however, it is estimated that a one-year delay would preclude the mining of up to 10 million tons, and an 18-month delay could preclude an additional 10 million tons.

Section 710. - Protection of the Surface Owner.

The Interior Department estimates that about 14.2 billion tons of Federal coal underlie non-federally owned surface lands. The National Coal Association estimates that the figure is about 37.5 billion tons. The National Coal Association estimate may be closer to the correct figure, and could even be conservative. Therefore, from 14 to 38 billion tons, and more, could be precluded from mining under this section.

Section 212(b)(1). - Subsidence from Underground Mining.

We estimate that upwards to 100 million tons of annual production could be adversely affected from 1977 on.

The above analysis of the individual sections should not be construed as cumulative effects on production and reserves. For example, some of the coal affected under the "areas unsuitable" section could be the same coal affected under the "original contour" or other sections.

If I can be of any additional assistance, please do not hesitate to call me.

Sincerely yours,

JOHN C. SAWHILL, Administrator.

H.R. 12898 - A VIABLE ALTERNATIVE

The widescale adverse reaction to H.R. 11500 since it was reported by the Subcommittees together with the descent of the energy crisis has demonstrated the need to seek a legislative vehicle which provides a balanced and reasonable approach to the regulation of surface or strip coal mining. H.R. 11500 will stifle coal production at the very moment that as a Nation our national interest requires that it be increased. Millions of people have never seen a strip mine, but over a hundred million people in the last few months have seen a gasoline line at their neighborhood filling station. The need for coal, petroleum and all forms of energy is apparent, great and growing. In the face of that, something has to give. Considerations other than the strictly environmental ones must be brought fairly into play.

H.R. 12898 does that.

H.R. 12898 is a bill which is firmly committed to the strict regulation of surface coal mining in order to prevent the desecration of our natural inheritance by reckless mining practices and the shameful neglect of a sound reclamation program.

H.R. 12898 is a bill which is environmentally sound in protecting society from the adverse effects of surface mining.

H.R. 12898 calls for the expenditures and the efforts necessary to dig coal and obtain its value without, at the same time, sacrificing other values.

It will cost money to preserve environmental values. But preserving them is worth that money and the cost will be paid by the users of energy. However, there will be users of energy, because there will be energy to use. That is what H.R. 12898 will accomplish. That is what H.R. 11500 would not accomplish.

H.R. 12898 calls for the strict Federal regulation of surface coal mining operations, and authorizes the Secretary of the Interior to make grants to the States to encourage them to likewise regulate surface coal mining.

H.R. 12898 must be a good bill because it seems to make everybody a little unhappy: the Administration does not like parts of it, the environmentalists don't like the idea of EPA being denied an arbitrary veto in the coal mining area and industry is screaming that it is being put in a straitjacket and threatened with jail. That is OK. Let them all scream.

Let them all come in with their amendments and let the full U.S. House of

Representatives resolve the issues. It is not a perfect bill, but it is written clearly and in a manner which is amendable. In contrast, H.R. 11500 has been turned into such a legislative nightmare that amending it is an almost impossible task.

In putting H.R. 12898 together, the views of all parties concerned was sought and their input requested. This is what can be called a ratcheting process. We sought to let them work out their frustrations and discover for themselves how hard it is to write a bill and how much compromise is required in the legislative process. In seeking consensus on the various proposals and counter-proposals, we hoped to produce a resignation to the need to fairly balance environmental values and energy values and other values recognized by society. We believe coal industry people and utility representatives will huff and puff, but eventually acknowledge H.R. 12898 as a superior vehicle for mark-up purposes and probably have some amendments they want. We do not expect the environmentalists who had the major hand in designing the one-sided H.R. 11500 will embrace H.R. 12898, but possible if they really believe there should be legislation on this subject this year, they could grudgingly admit that it can be done with H.R. 12898 and a bill with reasonable respect for the environment enacted.

To reiterate, the objective of H.R. 12898 as a substitute for H.R. 11500 is to continue the production of coal by surface coal mining techniques, with due respect for the environment, and a conscious consideration of the energy requirements of this Nation. The ratcheting approach to writing this legislation has produced a reasonable bill that is a sound alternative to H.R. 11500. As a substitute H.R. 12898 can be marked-up, amended, and be subjected to the full legislative process.

There should be no illusion that H.R. 12898 will accomplish its environmental objectives at no increase in the cost of coal to the consumer. Nobody gets something for nothing. It was cheap to rape the landscape. We will have to, and we should, pay to stop that sort of foolish waste. The increased cost of coal to the consumer which will result from the substitute bill is the necessary trade-off for the provisions to protect the environment from recurrence of the past excesses of irresponsible surface mine operators.

The following are amongst the major provisions of H.R. 12898, the balanced substitute for the unbalanced H.R. 11500:

1. An interim regulatory procedure which will take effect within 90 days from the date of enactment. The interim permit will provide for the restoration of the approximate original contour, require topsoil replacement, and a stable and self-regenerative vegetative cover. It will prohibit spoil placement on steep slopes, require stabilization of waste piles and the burying of toxic material, require protection of water quality and quantity, and protection from offsite damages. The regulatory authority may alter downslope and contour restoration requirements only if it will result in the land ending up with an equal or better economic or public use. (sec. 201)

2. A procedure requiring the Federal government to establish minimum coal mining and reclamation guidelines for state regulatory and enforcement programs within 180 days following the date of enactment. (Sec. 202)

3. Provisions for approval of state regulatory programs which meet stiff Federal guidelines for surface coal mining and reclamation operations. (Sec. 203)

4. Provisions for a Federal program to be implemented on Federal lands and in states which fail to adopt a Federally approved plan within 24 months after the date of enactment. (Sec. 204, 221)

5. A provision compelling the states and Federal agencies to establish an objective land review program for designating areas unsuitable for surface coal mining operations under existing technology because they cannot be properly reclaimed. Decisions would be based on public hearings and scientific data. (Sec. 205)

6. A ban on surface coal mining operations except in accordance with 5 year renewable permits conditioned on adherence to a sound mining and reclamation plan setting forth the engineering techniques to be used in the surface coal mining and reclamation operation. (Sec. 207-209, 212)

7. The posting of a reclamation bond or deposit adequate to assure satisfactory and permanent reclamation of the mined land, adequate insurance to compensate for any offsite damages from mining operations. (Sec. 210-211)

8. Comprehensive mining and reclamation performance standards for both surface coal mining and surface operations incidental to underground coal operations. (Sec. 213-214)

9. Provisions insuring public notice of permit applications and provisions for public hearings on promulgation of state and Federal standards, mining

permit applications, bond release procedurs, and a provision authorizing citizen suits. (Sec. 215, 220)

10. Provisions requiring both state and Federal inspections of surface mining operations together with provisions for adequate monitoring and record keeping. Provisions for studies of subsidence and underground waste disposal in coal mines. (Sec. 216-218, 302)

11. Stiff penalty provisions for violations by mine operators, including revocation, suspension, permit denials, and civil and criminal fines and imprisonment of up to one year. (Sec. 219).

12. Protection for owner of the surface estate by requiring written consent of the surface estate by requiring written in lieu, thereof, execution of a bond to secure payment for any damages to the surface estate as fixed by agreement or court order. (Sec. 308)

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The provisions of H.R. 12898 and section by section analysis are as follows:

[H.R. 12898, 93d Cong., 2d sess.]

A BILL To provide for the regulation of surface coal mining operations, to authorize the Secretary of the Interior to make grants to States to encourage the State regulation of surface coal mining, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Surface Coal Mining Reclamation Act of 1974".

Additional, dissenting, separate, and supplemental views

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TITLE I - FINDINGS AND PURPOSES

FINDINGS

SEC. 101. The Congress finds that -

(a) the extraction of coal by underground and surface mining from the earth is a significant and essential activity which contributes to the economic, social, and material well-being of the Nation;

(b) there are surface and underground coal mining operations on public and private lands in the Nation which adversely affect the environment by destroying or diminishing the availability of land for commercial, industrial, recreational, agricultural, historic, and forestry purposes, by causing erosion and landslides; by contributing to floods and the pollution of water, land, and air; by destroying public and private property; by creating hazards to life and property; and by precluding postmining land uses common to the area of mining;

(c) surface and underground coal mining operations presently contribute significantly to the Nation's energy requirements, and substantial quantities of the Nation's coal reserves lie close to the surface, and can only be recovered by surface mining methods, and therefore, it is essential to the national interest to insure the existence of an expanding and economically healthy coal

mining industry;

(d) surface and underground coal mining operations affect interstate commerce, contribute to the economic well-being, security, and general welfare of the Nation and should be conducted in an environmentally sound manner;

(e) the initial and principal continuing responsibility for developing and enforcing environmental regulations for surface and underground coal mining operations should rest with the States; and

(f) the cooperative effort established by this Act is necessary to prevent or mitigate adverse environmental effects of present and future surface coal mining operations.

PURPOSES

SEC. 102. It is the purpose of this Act to -

(a) encourage a nationwide effort to regulate surface coal mining operations to prevent or substantially reduce their adverse environmental effects, to stimulate and encourage the development of new, environmentally sound surface coal mining and reclamation techniques, and to assist the States in carrying out programs for those purposes;

(b) assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are protected from the adverse impacts of surface coal mining operations pursuant to the provisions of this Act;

(c) assure that surface coal mining operations are not conducted where reclamation as required by this Act is not feasible;

(d) assure that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided in accordance with the policy of Mining and Minerals Policy Act of 1970; and

(e) assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of regulations, standards, mining and reclamation plans, or programs established by the Secretary or any State pursuant to the provisions of this Act.

TITLE II - CONTROL OF ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING OPERATIONS

INTERIM REGULATORY PROCEDURE

SEC. 201. (a) On and after ninety days from the date of enactment of this Act, no person shall open or develop any new or previously mined or abandoned site for surface coal mining operations on lands on which such operations are

regulated by a State regulatory authority unless such person has obtained a permit from such regulatory authority. All such permits shall contain terms requiring compliance with the interim surface coal mining and reclamation performance standards specified in subsection (c) of this section. The regulatory authority shall act upon all applications for such permit within thirty days from the receipt thereof.

(b) Within sixty days from the date of enactment of this Act, the State regulatory authority shall review and amend all existing permits in order to incorporate in them the interim surface coal mining and reclamation performance standards of subsection (c) of this section. On or before one hundred and twenty days from the date of issuance of such amended permit, all surface coal mining operations existing at the date of enactment of this Act on lands on which such operations are regulated by a State regulatory authority shall comply with the interim surface coal mining and reclamation performance standards in subsection (c) of this section with respect to lands from which the overburden has not been removed.

(c) Pending approval and implementation of a State program in accordance with section 203 of this Act, or preparation and implementation of a Federal program in accordance with section 204 of this Act, the following interim surface coal mining and reclamation performance standards shall be applicable to surface coal mining operations on lands on which such operations are regulated by a State regulatory authority, as specified in subsections (a) and (b) of this section:

(1) with respect to surface coal mining operations on steep slopes, no spoil, debris, or abandoned or discarded mine equipment may be placed on the natural or other downslope below the bench or cut created to expose the coal seam except that spoil from the cut necessary to obtain access to the coal seam may be placed on a limited or specified area of the downslope: Provided, That the spoil is shaped and graded in such a way so as to prevent slides, and minimize erosion, and water pollution, and is revegetated in accordance with paragraph (3) below: Provided further, however, That the regulatory authority may permit limited or temporary placement of spoil on a specified area of the downslope on steep slopes in conjunction with surface coal mining operations which will create a plateau with all highwalls eliminated, if such placement is consistent with the approved postmining land use of the mine site;

(2) with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials),

and grade in order to restore the approximate original contour of the land with all high walls, spoil piles, and depressions eliminated, unless depressions are consistent with the approved postmining land use of the mine site;

(3) the provisions of paragraphs (1) and (2) of this subsection shall not apply to surface coal mining operations where the permittee demonstrates that the overburden, giving due consideration to volumetric expansion, is insufficient to restore the approximate original contour, in which case the permittee, at a minimum, shall backfill, grade, and compact (where advisable) in order to cover all acid-forming and other toxic materials, to achieve an angle of repose based upon soil and climate characteristics for the area of land to be affected, and to facilitate a land use consistent with that approved for the postmining land use of the mine site;

(4) the regulatory authority may grant exceptions to paragraphs (1) and (2) if the regulatory authority finds that one or more variations from the requirements set forth in paragraphs (1) and (2) will result in the land having an equal or better economic or public use and that such use is likely to be achieved within a reasonable time and is consistent with surrounding land uses and with local, State, and Federal law;

(5) with respect to all surface coal mining operations, permanently establish, on regraded and all other lands affected, a stable and self-regenerative vegetative cover, where cover existed prior to mining and which, where advisable, shall consist of native vegetation;

(6) with respect to all surface coal mining operations, remove the topsoil in a separate layer, replace it simultaneously on a backfill area or segregate it in a separate pile from the subsoil, and if the topsoil is not replaced in a time short enough to avoid deterioration of topsoil, maintain a successful cover by quick growing vegetation or by other means so that the topsoil is protected from wind and water erosion, contamination from any acid or toxic material, and is in a usable condition for sustaining vegetation when replaced during reclamation, except if the topsoil is not capable of sustaining vegetation, or if another material from the mining cycle can be shown to be more suitable for vegetation requirements, then the operator shall so remove, segregate, and protect that material which is best able to support vegetation, unless the permittee demonstrates that another method of soil conservation would be at least equally effective for revegetation purposes;

(7) with respect to surface disposal of coal mine wastes, coal processing wastes, or other wastes in areas other than the mine workings or excavations,

stabilize all waste piles in designated areas, through compaction, layering with incombustible and impervious materials, and grading following by vegetation of the finished surface to prevent, to the extent practicable, air and surface or ground water pollution, and to assure compatibility with natural surroundings in order that the site can and will be stabilized and revegetated according to the provisions of this Act;

(8) with respect to the use of impoundments for the disposal of coal processing wastes or other liquid or solid wastes, incorporate sound engineering practices for the design and construction of water retention facilities which will not endanger the health or safety of the public in the event of failure, that construction will be so designed to achieve necessary stability with an adequate margin of safety to protect against failure, that leachate will not pollute surface or ground water, and that no fines, slimes and other unsuitable coal processing wastes are used as the principal material in the construction of water impoundments, water retention facilities, dams, or settling ponds;

(9) prevent to the extent practicable adverse effects to the quantity and quality of water in surface and ground water systems both during and after surface coal mining and reclamation; and

(10) minimize offsite damages that may result from surface coal mining operations and institute immediate efforts to correct such conditions.

(d) (1) Upon petition by the permittee or the applicant for a permit, and after public notice and opportunity for comment by interested parties, the regulatory authority may modify the application of the interim surface coal mining and reclamation performance standards set forth in paragraphs (1), (2), (3), and (4) of subsection (c) of this section, if the permittee demonstrates to the satisfaction of the regulatory authority that -

(A) he has not been able to obtain the equipment necessary to comply with such standards;

(B) the surface coal mining operations will be conducted so as to meet all other standards specified in subsection (c) of this section and will result in a stable surface configuration in accordance with a surface coal mining and reclamation plan approved by the regulatory authority; and

(C) such modification will not cause hazards to the health and safety of the public or significant imminent environmental harm to land, air, or water resources which cannot reasonably be considered reclaimable.

(2) Any such modification will be reviewed periodically by the regulatory authority and shall cease to be effective upon implementation of a State program

pursuant to section 203 of this Act or a Federal program pursuant to section 204 of this Act.

(e) The Secretary shall issue regulations to be effective one hundred and eighty days from the date of enactment of this Act in accordance with the procedures of section 202, establishing an interim Federal surface coal mining evaluation and enforcement program. Such program shall remain in effect in each State in which there are surface coal mining operations regulated by a State regulatory authority until the State program has been approved and implemented pursuant to section 203 of this Act or until a Federal program has been prepared and implemented pursuant to section 204 of this Act. The interim Federal surface coal mining evaluation and enforcement program shall -

(1) include inspections of surface coal mining operations on a random basis (but at least one inspection for every site every three months), without advance notice to the mine operator, for the purpose of evaluating State administration of, and ascertaining compliance with, the interim surface coal mining and reclamation performance standards of subsection (c) above. The Secretary shall cause any necessary enforcement action to be implemented in accordance with section 217 with respect to violations identified at the inspections;

(2) provide that the State regulatory agency file with the Secretary copies of inspection reports made;

(3) provide that upon receipt of State inspection reports indicating that any surface coal mining operation has been found in violation of the standards of subsection (c) of this section, during not less than two consecutive State inspections or upon receipt by the Secretary of information which would give rise to reasonable belief that such standards are being violated by any surface coal mining operation, the Secretary shall order the immediate inspection of such operation by Federal inspectors and necessary enforcement actions, if any, to be implemented in accordance with the provisions of section 217. The inspector shall contact the informant prior to the inspection and shall allow the informant to accompany him on the inspection; and

(4) provide that moneys authorized pursuant to this Act shall be available to the Secretary prior to the approval of a State program pursuant to section 203 of this Act to reimburse the States for conducting those inspections in which the standards in subsection (c) above, are enforced and for the administration of this section.

PERMANENT REGULATORY PROCEDURE

SEC. 202. Not later than the end of the one-hundred-and-eighty-day period immediately following the date of enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations covering a permanent regulatory procedure for surface coal mining and reclamation operations setting permanent surface coal mining and reclamation performance standards based on the provisions of sections 213 and 214, and establishing procedures and requirements for preparation, submission and approval of State programs, and the development and implementation of Federal programs under this title. Such regulations shall not be promulgated and published by the Secretary until he has -

(a) published proposed regulations in the Federal Register and afforded interested persons and State and local governments a period of not less than forty-five days after such publication to submit written comments thereon;

(b) consulted with and considered the recommendations of the Administrator of the Environmental Protection Agency with respect to those regulations promulgated under this section which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act (33 U.S.C. 1151-1175) and the Clean Air Act, as amended (42 U.S.C. 1857); and

(c) held at least one public hearing on the proposed regulations. The date, time, and place of any hearing held on the proposed regulations shall be set out in the publication of the proposed regulations. The Secretary shall consider all comments and relevant data presented at such hearing before final promulgation and publication of the regulations.

STATE PROGRAMS

SEC. 203. (a) Each State in which surface coal mining operations are or may be conducted, and which proposes to assume State regulatory authority under this Act, shall submit to the Secretary, by the end of the twenty-four month period beginning on the date of enactment of this Act, a State program which demonstrates that such State has the capability of carrying out the provisions of this Act and meeting its purposes through -

(1) a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act and the regulations issued by the Secretary pursuant to this Act;

(2) a State law which provides sanctions for violations of State laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of this Act, including civil and criminal penalties, forfeiture of bonds, suspension, revocation, and withholding of permits, and the issuance of notices and orders by the State regulatory authority or its inspectors;

(3) a State regulatory authority with sufficient administrative and technical personnel, and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of this Act;

(4) A State law which provides for the effective implementation, maintenance, and enforcement of a permit system, meeting the requirements of this title for theregulation of surface coal mining and reclamation operations on lands within the State;

(5) establishment of a process for the designation of lands unsuitable for surface coal mining operations in accordance with section 205; and

(6) establishment, for the purpose of avoiding duplication, of a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operations.

(b) The Secretary shall not approve any State program submitted under this section until he has -

(1) solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State program;

(2) consulted with and considered the recommendations of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act (33 U.S.C. 1151-1175) and the Clean Air Act, as amended (42 U.S.C. 1857);

(3) held at least one public hearing on the State program within the State; and

(4) found that the State has the legal authority and qualified personnel

necessary for the enforcement of the surface coal mining and reclamation performance standards. The Secretary shall approve or disapprove a State program, in whole or in part, within six full calendar months after the date such State program is submitted to him.

(c) If the Secretary disapproves any proposed State program, in whole or in part, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State program, or portion thereof.

(d) For the purposes of this section and section 204, the inability of a State to take any action to prepare, submit or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in a loss of eligibility for financial assistance under title III of this Act or in the imposition of a Federal program. Regulation of the surface coal mining operations covered or to be covered by the State program subject to the injunction shall be conducted by the State until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of this section and section 204 shall again be fully applicable.

(e) If State compliance with this section requires an act of the State legislature, the Secretary may extend the period for submission of a State program up to an additional twelve months.

FEDERAL PROGRAMS

SEC. 204. (a) The Secretary shall prepare, promulgate, and implement a Federal program for the regulation of surface coal mining operations in any State which fails to -

(1) submit a State program covering surface coal mining and reclamation operations by the end of the twenty-four-month period beginning on the date of enactment of this Act;

(2) resubmit an acceptable State program, or portion thereof, within sixty days of disapproval of a proposed State program, in whole or in part: Provided, That the Secretary shall not implement a Federal program prior to the expiration of the initial period allowed for submission of a State program as provided for in clause (1) of this subsection; or

(3) adequately implement, enforce, or maintain a State program approved pursuant to section 203.

(b) Prior to implementation of a Federal program pursuant to section 204(a), the Secretary shall consult with and publicly disclose the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having expertise pertinent thereto and shall hold at least one public hearing within the State for which the Federal program is to be implemented.

(c) Whenever a Federal program is promulgated for a State pursuant to this Act, any statutes or regulations of such State which are in effect to regulate surface coal mining operations subject to this Act shall, insofar as they are inconsistent or interfere with the purposes and the requirements of this Act and the Federal program, be preempted and superseded by the Federal program.

DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

SEC. 205. (a) To be eligible to assume primary regulatory authority pursuant to section 203, each State shall establish a planning process enabling objective decisions to be made based upon public hearings and competent and scientifically sound data and information as to which, if any, areas or types of areas of a State (except Federal lands) cannot be reclaimed with existing techniques to satisfy applicable standards and requirements of law. The State agency will not issue permits for surface coal mining of such areas unless it determines, with respect to any such permit, that the technology is available to satisfy applicable performance standards.

(b) The Secretary, and, in the case of national forest lands, the Secretary of Agriculture, shall conduct a review of the Federal lands and determine, pursuant to the standards set forth in subsection (a) of this section, areas or types of areas on Federal lands which cannot be reclaimed with existing techniques to satisfy applicable standards and requirements of law. Permits for surface coal mining will not be issued to mine such areas unless it is determined, with respect to any such permit, that the technology is available to satisfy applicable performance standards.

(c) In no event is an area to be designated unsuitable for surface coal mining operations on which surface coal mining operations are being conducted on the date of enactment of this Act, or under a permit issued pursuant to this Act, or where substantial legal and financial commitments in such operations are in existence prior to the date of enactment of this Act. Designation of an area as unsuitable for mining shall not prevent mineral exploration of the area so designated.

EFFECT ON STATE LAW

SEC. 206. Any provision of State law or regulation in effect upon the date of enactment of this Act, or which may become effective thereafter, and provides more stringent regulations of surface coal mining and reclamation operations than the provisions of this Act, or any regulation issued pursuant thereto, shall not be construed to be inconsistent with this Act.

PERMITS

SEC. 207. (a) Except as provided in subsection (c) of this section, on and after six months from the date on which a State program is approved by the Secretary, pursuant to section 203 of this Act, or the Secretary has promulgated a Federal program for a State not having a State program, pursuant to section 204, no person shall engage in surface coal mining operations unless such person has obtained a permit in full compliance with this Act from the appropriate regulatory authority.

(b) All permits issued pursuant to the requirements of this Act shall be issued for a term not to exceed five years and shall be nontransferable: Provided, That a successor in interest to a permit holder who applies for a new permit within thirty days of succeeding to such interest and who is able to obtain the bond coverage of the original permit holder may continue surface coal mining and reclamation operations until such successor's application is granted or denied.

(c) Any person engaged in surface coal mining operations pursuant to a permit issued under section 201 and awaiting administrative action on his application for a permit from the appropriate regulatory authority in accordance with this section may continue to operate for a four-month period beyond the time specified in subsection (a) of this section if the appropriate regulatory authority has not acted on his application.

PERMIT APPLICATION REQUIREMENTS: INFORMATION, AND MINING AND RECLAMATION PLANS

SEC. 208. (a) Each application for a permit pursuant to a State or Federal program under this Act shall be submitted in a manner satisfactory to the regulatory authority and shall contain:

(1) the names and addresses of the permit applicants (if the applicant is a subsidiary corporation, the name and address of the parent corporation shall be included); every legal owner of the property (surface and mineral) to be mined; the holders of any leasehold or other equitable interest in the property; any

purchaser of the property under a real estate contract; the operator if he is a person different from the applicant; and, if any of these are business entities other than a single proprietor, the names and addresses of principals, officers, and resident agent;

(2) the names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and address of any person or group owning, of record or beneficially, 10 per centum or more of any class of stock of the applicant and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation within the United States or its territories and possessions;

(3) a description of the type and method of surface coal mining operation that exists or is proposed;

(4) evidence of the applicant's legal right to enter and commence surface coal mining operations on the area affected;

(5) the names and addresses of the owners of record of all surface and subsurface areas abutting on the permit area;

(6) a statement of any current or previous surface coal mining permits in the United States held by the applicant and the permit identification;

(7) a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has held a Federal or State surface coal mining permit which subsequent to 1960 has been suspended or revoked or has had a surface coal mining performance bond or similar security deposited in lieu of bond forfeited and a brief explanation of the facts involved in each case;

(8) such maps and topographical information, including the location of all underground mines in the area, as the regulatory authority may require, which shall be in sufficient detail to clearly indicate the nature and extent of the overburden to be disturbed, the coal to be mined, and the drainage of the area to be affected;

(9) a copy of the applicant's advertisement of the ownership, location, and boundaries of the proposed site of the surface coal mining and reclamation operation (such advertisement shall be placed in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks and may be submitted to the regulatory authority after the application is filed);

(10) a schedule listing any and all violations of this Act and any law, rule,

or regulation of the United States or of any department or agency in the United States pertaining to air, or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the oneyear period prior to the date of application. The schedule shall also indicate the final resolution of any such notice of violation.

(b) Each application for a permit shall be required to submit to the regulatory authority, as part of the permit application, a surface coal mining and reclamation plan which shall contain:

(1) the engineering techniques proposed to be used in the surface coal mining and reclamation operation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan where appropriate for backfilling, soil stabilization, and compacting, grading, and appropriate revegetation (where vegetation existed prior to mining); an estimate of the cost per acre of the reclamation, including statements as to how the permittee plans to comply with each of the applicable surface coal mining and reclamation performance standards established under this Act;

(2) the consideration which has been given to developing the surface coal mining and reclamation plan in a manner consistent with local physical, environmental, and climatological conditions and current surface coal mining and reclamation technologies;

(3) the consideration which has been given to insuring the maximum practicable recovery of the coal;

(4) a detailed estimated timetable for the accomplishment of each major step in the surface coal mining and reclamation plan;

(5) the consideration which has been given to making the surface coal mining and reclamation operation consistent with applicable State and local land use programs;

(6) a description, if any, of the hydrologic consequences of the surface coal mining and reclamation operation, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding area so that an assessment can be made of the probable cumulative impacts of all anticipated surface coal mining in the area upon the hydrology of the area and particularly upon water availability;

(7) a statement of the results of test borings or core samplings from the

land to be affected, including where appropriate the surface elevation and logs of the drill holes so that the strike and dip of the coal seams may be determined; the nature and depth of the various strata of overburden; the location of subsurface water, if encountered, and its quality; the thickness of the coal seam found; an analysis of the chemical properties of such coal to determine the sulfur content and the content of other potentially acid or toxic forming substances of the overburden and the stratum lying immediately underneath the coal to be mined; and

(8) proprietary information, which if made available to the public would result in competitive injury to the applicant, may be designated confidential and, if accepted by the regulatory authority shall be subject to the provisions of section 1905 of title 18, United States Code. Appropriate protective orders against unauthorized disclosure or use by third parties may be issued with respect to such information, and violations of such orders shall be subject to penalties set forth in section 219 of this Act.

(c) Each applicant for a surface coal mining and reclamation permit shall file a copy of his application for public inspection with an appropriate official, approved by the regulatory authority, in the locality where the mining is proposed to occur, except for that information pertaining to the coal seam itself.

(d) A valid permit issued pursuant to this Act shall carry with it a right of successive renewals provided that the permittee has complied with such permit. Prior to approving the renewal of any permit, the regulatory authority shall review the permit and the surface coal mining and reclamation operation and may require such new conditions and requirements as are necessary or prescribed by changing circumstances. A permittee wishing to obtain renewal of a permit shall make application for such renewal within one year prior to the expiration of the permit. The application for renewal shall contain:

(1) a listing of any claim settlements or judgments against the applicant arising out of, or in connection with, surface coal mining operations under said permit;

(2) written assurance by the person issuing the performance bond in effect for said operation that the bond continues and will continue in full force and effect for any extension requested in such application for renewal as well as any additional bond the regulatory authority may require pursuant to section 210 of this Act;

(3) revised, additional, or updated information required under this section.

Prior to the approval of any extension of the permit, the regulatory authority shall notify all parties who participated in the public review and hearings on the original or previous permit, as well as providing notice to the appropriate public authorities, and taking such other steps as required in section 209 of this Act.

PERMIT APPROVAL OR DENIAL PROCEDURES

SEC. 209. (a) The regulatory authority shall notify the applicant for a surface coal mining and reclamation permit within a period of time established by law or regulation, not to exceed ninety days, that the application has been approved or disapproved. If approved, the permit shall be issued after the performance bond or deposit and public liability insurance policy required by section 210 of this Act has been filed. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is notified that the permit or any portion thereof has been denied, the applicant may request a hearing on the reasons for said disapproval unless a hearing has already been held under section 209(f). Such hearing shall be held in the locality of the proposed surface coal mining operation as soon as practicable after receipt of the request for a hearing and after appropriate notice and publication of the date, time, and location of such hearing. Within sixty days after the hearing the regulatory authority shall issue and furnish the applicant and any other parties to the hearing the written decision of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor.

(b) Within ten days after the granting of a permit, the regulatory authority shall notify the State and the local official who has the duty of collecting real estate taxes in the local political subdivision in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

(c) Prior to the issuance of a permit, the regulatory authority may require the applicant to alter his proposed surface coal mining and reclamation plan with respect to the methods, sequence, timing of specific operations in the plan, or the deletion of specific operations or areas from all or part of the plan in order to assure that the surface coal mining and reclamation objectives of this Act are met.

(d) No permit will be issued unless the regulatory authority finds that:

(1) all applicable requirements of this Act and the State or Federal program

have been satisfied;

(2) the applicant can demonstrate that reclamation as required by this Act and the appropriate State or Federal program under this Act can be accomplished under the surface coal mining and reclamation plan contained in the permit application;

(3) the land to be affected does not lie within three hundred feet from any occupied dwelling, unless the owner thereof waives this requirement, nor within three hundred feet of any public building, school, church, community, or institutional building, or cemetery; or the land to be affected does not lie within one hundred feet of the outside right-of-way line of any public road, except that the regulatory authority may permit such roads to be relocated, if the interests of the public and the landowners affected thereby will be protected;

(4) no lake, river, stream, creek, or watercourse may be moved, interrupted, or destroyed during the surface coal mining or reclamation process except that lakes, rivers, streams, creeks, or watercourses may be relocated where consistent with the approved mining and reclamation plan; and no surface coal mining or reclamation activities will be conducted within one hundred feet of any lake, river, stream, or creek, except where permitted by the approved mining and reclamation plan;

(5) surface coal mining operations will not take place on any area of land within one thousand feet of parks or places listed in the National Register of Historic Sites, unless screening or other measures approved by the regulatory authority are used or if the mining of the area will not adversely affect or reduce the usage of the park or place; and

(6) the application on its face is complete, accurate, and contains no false information.

(e) The regulatory authority shall not issue any new surface coal mining permit or renew or revise any existing surface coal mining permit if it finds that the applicant has failed and continues to fail to comply with any of the provisions of this Act applicable to any State, Federal, or Federal lands program, or if the applicant fails to submit proof that violations described in subsection (a) (10) of section 208 have been corrected or are in the process of being corrected to the satisfaction of the regulatory authority, department, or agency which has jurisdiction over such violation.

(f) Any person having an interest which is or may be adversely affected by the proposed surface coal mining and reclamation operation or any Federal, State, or local governmental agency having responsibilities affected by the

proposed operation shall have the right to file written objections to any permit application and request a public hearing thereon within thirty days after the last publication of the advertisement pursuant to section 208(a)(9). If written objections are filed and a hearing requested, the regulatory authority shall hold a public hearing in the locality of the proposed surface coal mining and reclamation operation as soon as practicable from the date of receipt of such objections and after appropriate notice and publication of the date, time, and location of such hearing. Within sixty days after the hearing the regulatory authority shall issue and furnish the parties to the hearing the written decision of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor.

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POSTING OF BOND OR DEPOSIT: INSURANCE

SEC. 210.(a) After a surface coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond for performance payable, as appropriate, to the United States or the State, under an approved State program, and conditioned that the applicant shall faithfully perform all the applicable requirements under this Act. The bond shall cover that area of land within the permit area upon which the applicant will initiate and conduct surface coal mining and reclamation operations within the initial year of the permit term. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file annually with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit and shall be determined by the regulatory authority. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by a third party in the event of forfeiture; in no case shall the bond be less than \$10,000.

(b) The bond shall be executed by the applicant and a corporate surety approved by the regulatory authority, except that the applicant may elect to deposit cash, negotiable bonds of the United States Government or such State, or negotiable certificates of deposit of any bank organized under the laws of any State or the United States. The cash deposit or market value of such securities

shall be equal to or greater than the amount of the bond required for the bonded area.

(c) The amount of the bond or deposit required shall be increased or decreased by the regulatory authority from time to time as affected land acreages are changed or where the cost of future reclamation increases or decreases.

(d) After a surface coal mining and reclamation permit application has been approved but before such permit is issued, the applicant for a permit shall be required to submit to the regulatory authority a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which such permit is sought, or evidence that the applicant has satisfied State or Federal self-insurance requirements. Such policy shall provide for both on-and off-site personal injury and property damage protection in an amount adequate to compensate any persons injured or damaged as a result of surface coal mining and reclamation operations and entitled to compensation under the applicable provisions of Federal or State law, but in any event shall not be less than \$100,000, or for such higher amounts as the regulatory authority deems necessary in light of potential risk and magnitude of possible off-site damages. Such policy shall be for the term of the permit and any renewal, including the length of any and all reclamation operations required by this Act.

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RELEASE OF PERFORMANCE BONDS OR DEPOSITS

SEC. 211. (a) The permittee may file a request with the regulatory authority for the release of all or part of the performance bond or deposit. Within thirty days after any application for bond or deposit release has been filed with the regulatory authority, the permittee shall submit a copy of an advertisement placed at least once a week for three consecutive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. Such advertisement shall be considered part of any bond release application and shall contain a notification of the location of the land affected, the number of acres, the permit number and the date approved, the amount of the bond filed and the portion sought to be released, and the type of reclamation work performed. In addition, as part of any bond release application, the permittee shall submit copies of letters which have been sent to adjoining property owners, and local governmental bodies, planning agencies, sewage and water treatment authorities, water companies, and all other public utility companies whose facilities cross or may be sufficiently close to the

concerned area to be affected thereby in the locality in which the surface coal mining and reclamation activities took place, notifying them of intent to seek release of the bond.

(b) The regulatory authority may release in whole or in part said bond or deposit if the authority is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this Act: Provided, however, That -

(1) no bond shall be fully released until all reclamation requirements of this Act are fully met, and

(2) an inspection and evaluation of the affected surface coal mining and reclamation operation is made by the regulatory authority or its authorized representative prior to the release of all or any portion of the bond.

(c) If the regulatory authority disapproves the application for release of the bond or portion thereof, the authority shall notify the permittee, in writing, stating the reasons for disapproval and recommending actions necessary to secure said release. The permittee shall be afforded an opportunity for a public hearing in accordance with the procedures specified in section 209(a), unless a hearing has already been held under subsection (d) of this section.

(d) Any person having an interest which is or may be adversely affected by the proposed release of the bond or any Federal, State, or local governmental agency having responsibilities affected by the proposed release shall have the right to file written objections to the proposed release of the bond and request a public hearing thereon to the regulatory authority within thirty days after the last notice has been given in accordance with subsection (a) of this section. If written objections are filed and a hearing requested, the regulatory authority shall inform all the interested parties, of the time and place of the hearing, which shall be held in the locality of the affected surface coal mining operation as soon as practicable after receipt of the request for such hearing. The date, time, and location of such public hearing shall be advertised by the regulatory authority in a newspaper of general circulation in the locality once a week for three consecutive weeks.

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REVISION AND REVIEW OF PERMITS

SEC. 212. (a) During the term of the permit the permittee may submit an application, together with a revised surface coal mining and reclamation plan, to the regulatory authority for a revision of the permit.

(b) An application for a revision of a permit shall not be approved unless the regulatory authority finds that reclamation as required by this Act and the State or Federal program can be accomplished under the revised surface coal mining and reclamation plan. The revision shall be approved or disapproved within a period of time established by the State or Federal program, but such period shall not exceed ninety days. The regulatory authority shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply: Provided, That any revision which proposes a substantial change in the intended future use of the land or significant alterations in the mining and reclamation plan shall, at a minimum, be subject to the notice and hearing requirements of section 209 of this Act.

(c) Any extensions to the area covered by the permit except incidental boundary revisions shall be made by application for another permit.

(d) The regulatory authority may require reasonable revision or modification of the permit provisions during the term of such permit: Provided, That such revision or modification shall be subject to notice and hearing requirements established by the State or Federal program.

(e) Permits issued pursuant to an approved State program shall be valid but reviewable under a Federal program. Following promulgation of a Federal program, the Secretary shall review such permits to determine if the requirements of this Act are being carried out. If the Secretary determines that any permit has been granted contrary to the requirements of this Act, he shall so advise the permittee and provide him a reasonable opportunity for submission of a new application and reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the Federal program.

(f) If a State submits a proposed State program to the Secretary after a Federal program has been promulgated and implemented, and if the Secretary approves the State program, the Federal program shall cease to be effective thirty days after such approval. Permits issued pursuant to the Federal program shall be valid but reviewable under the approved State program. The State regulatory authority may review such permits to determine if the requirements of the approved State program are being carried out. If the State regulatory authority determines that any permit has been granted contrary to the requirements of the approved State program, it shall so advise the permittee and provide a reasonable opportunity for submission of a new application and reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the approved State program.

Additional, dissenting, separate, and supplemental views

SURFACE COAL MINING AND RECLAMATION PERFORMANCE STANDARDS

SEC. 213. (a) Any permit issued under any approved State or Federal program pursuant to this Act to conduct surface coal mining operations shall require that such surface coal mining operations will meet all applicable surface coal mining and reclamation performance standards of this Act.

(b) The following general surface coal mining and reclamation performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the permittee to -

(1) conduct surface coal mining operations so as to maximize the utilization and conservation of the coal being mined so that re-affecting the land in the future through surface coal mining operations can be minimized;

(2) restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or an equal or better economic or public use suitable to the locality;

(3) minimize to the extent practicable, any temporary environmental damage so that it will affect only the permit area;

(4) limit the excavation area from which coal has been removed at any one time during mining by combining the process of reclamation with the process of mining to keep reclamation operations current, and completing such reclamation in any separate distinguishable portion of the mined area as soon as feasible, but not later than the time specified in a reclamation schedule which shall be attached to the permit;

(5) remove the topsoil from the land in a separate layer, replace it simultaneously on a backfill area or segregate it, and if the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is protected from wind and water erosion, and contamination from any acid or toxic material, and is in a usable condition for sustaining vegetation, except if the topsoil is not capable of sustaining vegetation or if another material from the mining cycle can be shown to be more suitable for vegetation requirements, then the permittee shall so remove, segregate, and protect that material which is best able to support vegetation, unless the permittee demonstrates in the reclamation plan that another method of

soil conservation would be at least equally effective for revegetation purposes;

(6) stabilize and protect all surface areas affected by the surface coal mining and reclamation operation to control as effectively as possible erosion and attendant air and water pollution;

(7) provide that all debris, acid, highly mineralized toxic materials, or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface waters and sustained combustion;

(8) backfill, compact (where advisable to provide stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated (unless small repressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to paragraph (9) of this subsection): Provided, however, That in surface coal mining operations where the permittee demonstrates that the overburden, giving due consideration to volumetric expansion, is insufficient to restore the approximate original contour, the permittee, at a minimum, shall backfill, grade, and compact (where advisable) in order to cover all acid-forming and other toxic materials, to achieve an angle or repose based upon soil and climate characteristics of the area of land to be affected and to facilitate a land use consistent with that approved for the post mining land use of the mine site;

(9) construct, if authorized in the approved surface coal mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that -

(A) the size of the impoundment is adequate for its intended purposes;

(B) the impoundment dam construction will be so designed to achieve necessary stability with an adequate margin of safety;

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and that degradation of water quality in the receiving stream as a result of discharges from the impoundment will be minimized;

(D) the level of water will be reasonably stable;

(E) final grading will provide adequate safety and access for proposed water users; and

(F) diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic

uses will be minimized;

(10) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to such bed or channel so as to result in serious adverse effects on the normal flow of water;

(11) replace the topsoil or the other more suitable material from the mining cycle which has been segregated and protected;

(12) establish on the regraded areas and all other lands affected a stable and self-regenerating vegetative cover (including agricultural crops if approved by the regulatory authority), where cover existed prior to mining, which, where advisable, shall be comprised of native vegetation;

(13) assume the responsibility for successful revegetation for a period of five full years after the completion of reclamation (as determined by the regulatory authority) in order to provide a stable and self-regenerating vegetative cover suitable to the area, except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the permittee's assumption of responsibility and liability will extend for a period of ten full years after the completion of reclamation: Provided, That unless prior thereto, the operator can demonstrate to the satisfaction of the regulatory authority that such a vegetative cover has been established for at least three full growing seasons;

(14) minimize the disturbances to the hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining and reclamation operations by -

(A) avoiding acid or other toxic mine drainage to the extent practicable by preventing, retaining, or treating drainage to reduce mineral content which adversely affects downstream water uses when it is released to water courses;

(B) casing, sealing, or otherwise managing boreholes, shafts, and wells in a manner designed to prevent acid or other toxic drainage to ground and surface waters;

(C) conducting surface coal mining operations so as to minimize to the extent practicable the adverse effects of water runoff from the permit area;

(D) if required, removing and disposing of siltation structures and retained silt from drainways in an environmentally safe manner;

(E) restoring to the maximum extent practicable recharge capacity of the aquifer at the minesite to premining conditions; and

(F) relocating surface and ground water in a manner consistent with the permittee's approved surface coal mining and reclamation plan.

(15) minimize offsite damages that may result from surface coal mining operations and institute immediate efforts to correct such conditions;

(16) with respect to the use of impoundments for disposal of mine wastes or other liquid or solid wastes, incorporate sound engineering practices for the design and construction of water retention facilities which will not endanger the health and safety of the public in the event of failure, construct such facilities to achieve necessary stability with an adequate margin of safety to protect against failure, prevent leachate from polluting surface or ground water and prohibit fines, slimes, and other unsuitable coal processing wastes from being used as the principal material in the construction of water impoundments, water retention facilities, dams, or settling ponds;

(17) with respect to surface disposal of mine wastes, coal processing wastes, and other wastes in areas other than the mine workings or excavations, stabilize all waste piles in designated areas through construction in compacted layers with incombustible and impervious materials, and provide that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this Act;

(18) with respect to the use of explosives -

(A) provide advance written notice to local governments and advance notice to residents who would be affected by the use of such explosives by publication in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks of the planned blasting schedules and the posting of such schedules at the entrances to the permit area, and maintain for a period of at least three years a log of the magnitudes and times of blasts;

(B) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons, (ii) damage to public and private property outside the permit area, and (iii) adverse impacts on any underground mine, and

(C) refrain from blasting in specific areas where the safety of the public or private property or natural formations of more than local interest are endangered;

(19) refrain from surface coal mining within five hundred feet of active underground mine workings in order to prevent breakthroughs;

(20) construct access roads, haulroads, or haulageways with appropriate limits applied to grade, width, surface materials, spacing, and size of culverts in order to control drainage and prevent erosion outside the permit area, and upon the completion of mining either reclaim such roads by regrading and revegetation or provide for their maintenance so as to control erosion and siltation of streams and adjacent lands; and

(21) fill auger holes to a depth of not less than three times the diameter with an impervious and noncombustible material.

(c) The following mining and reclamation performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those

general performance standards required by this section: Provided, however, That

the provisions of this subsection (c) shall not apply to those situations in which an operator is maining on flat or gently rolling terrain, on which an occasional steep-slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area:

(1) No spoil, debris, soil, waste materials, or abandoned or disabled mine equipment may be placed on the natural or other downslope below the bench or cut created to expose the coal seam except that, where necessary, spoil from the cut necessary to obtain access to the coal seam may be placed on a limited or specified area of the downslope, provided that the spoil is shaped and graded in such a way so as to prevent slides and minimize erosion and water pollution and that the other requirements of subsection (b) can still be met.

(2) For the purposes of this subsection, the term "steepslope" is any slope above twenty degrees or such other slope as the regulatory authority may determine to be necessary based upon soil, climate, and other characteristics of a region or State.

(d) (1) In cases where an industrial, commercial, agricultural, residential, recreational or public facility development is proposed for postmining use of the affected land, the regulatory authority may grant appropriate exceptions to the requirements for regarding, backfilling, and spoil placement as set forth in

subsection 213(b) (8) and in subsection 213(c) (1) of this Act, if the regulatory authority determines;

(A) after consultation with the appropriate land use planning agencies, if any, the proposed development is deemed to constitute an equal or better economic or public use of the affected land, as compared with the premining use;

(B) the equal or better economic or public use can be most effectively obtained only if one or more exceptions to the requirements for regrading, backfilling, and spoil placement as set forth in subsection 213(b) (8) and subsection 213(c) (1) of this Act are granted;

(2) With respect to subsection 213(b) (12) and subsection 213(b) (13) of this Act, where postmining land use development is in compliance with all the requirements of this subsection and where the regulatory authority has found that an exception to the revegetation standards is necessary to achieve the postmining land use development, the regulatory authority may grant an appropriate exception.

(3) All exceptions granted under the provisions of this subsection will be reviewed periodically by the regulatory authority to assure compliance with the terms of the approved schedule and reclamation plan.

(e) The Secretary may develop, promulgate, and revise, as may be appropriate, improved surface coal mining and reclamation performance standards for the protection of the environment and public health and safety. Such development and revision of improved surface coal mining and reclamation performance standards shall be based upon the latest available scientific data, the technical feasibility of the standards, and experience gained under this and other environmental protection statutes. The performance standards of subsections (b) and (c) of this section shall be applicable until superseded in whole or in part by improved surface coal mining and reclamation performance standards promulgated by the Secretary. No improved surface coal mining and reclamation performance standards promulgated under this subsection shall reduce the protection afforded the environment and the health and safety of the public below that provided by the performance standards contained in subsections (b) and (c) of this section. Improved surface coal mining and reclamation performance standards shall not be promulgated by the Secretary until he has followed the procedures specified in subsections (a), (b), and (c) of section 202 of this Act.

MINING AND RECLAMATION PERFORMANCE STANDARDS FOR SURFACE OPERATIONS
INCIDENT
TO UNDERGROUND COAL MINING

SEC. 214. (a) In order to regulate the adverse effects of surface operations incident to underground coal mining, the Secretary shall, in accordance with

the procedures established under section 202 of this Act, promulgate rules and regulations embodying the requirements specified in subsection (c) of this section which shall be applicable to surface operations incident to underground coal mining.

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(b) The performance standards specified in subsection (c) of this section shall be applicable to all such operations until superseded in whole or in part by improved performance standards promulgated by the Secretary in accordance with subsection (e) of section 213 of this Act.

(c) Any approved State or Federal program pursuant to this Act and relating to surface operations incident to underground coal mining shall require the underground coal mine operator to -

(1) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mineworkings when no longer needed for the conduct of the underground coal mining operation;

(2) with respect to surface disposal of mine wastes, coal processing wastes, and other wastes in areas other than mineworkings or excavations, stabilize all waste piles created by the current operations in designated areas through construction in compacted layers with incombustible and impervious materials, and provide that the final contour of the waste pile will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(3) with respect to the use of impoundments for disposal of mine wastes or other liquid and solid wastes incorporate sound engineering practices for the design and construction of water retention facilities which will not endanger the health and safety of the public in the event of failure, construct such facilities to achieve necessary stability with an adequate margin of safety to protect against failure, prevent leachate from polluting surface or ground water, and prohibit fines, slimes and other unsuitable coal processing wastes from being used as the principal material in the construction of water impoundments, water retention facilities, dams, or settling ponds;

(4) establish on regraded areas and all other lands affected, a stable and self-regenerating vegetative cover, where cover existed prior to mining, which, where advisable, shall be comprised of native vegetation;

(5) minimize off-site damages resulting from surface operations incident to underground coal mining; and

(6) prevent to the extent practicable the discharge of waterborne pollutants

both during and after mining.

(d) All operators of underground coal mines, both during and after mining, shall have abatement and remedial programs to prevent the discharge of waterborne pollutants to the extent practical and to eliminate fire hazards and other conditions which constitute a hazard to public health and safety.

JUDICIAL REVIEW

SEC. 215. (a) (1) Any action of the Secretary to approve or disapprove a State program pursuant to section 203 of this Act or to prepare and promulgate a Federal program pursuant to section 204 of this Act shall be subject to judicial review only by the appropriate United States Court of Appeals upon the filing in such court within thirty days from the date of such action of a petition by any person who participated in the administrative proceedings related thereto and who is aggrieved by the action praying that the action be modified or set aside in whole or in part. A copy of the petition shall forthwith be sent by registered or certified mail to the other parties, the Secretary, and the Attorney General and thereupon the Secretary shall certify and the Attorney General shall file in such court the record upon which the action complained of was issued, as provided in section 2112 of title 28, United States Code.

(2) Any promulgation of regulations by the Secretary pursuant to sections 213, 214, and 221 of this Act shall be subject to judicial review only by the appropriate United States Court of Appeals in accordance with the procedures set forth in subsection (1) of this section.

(3) All other orders or decisions issued by the Secretary pursuant to this Act shall be subject to judicial review only in the United States District Court for the locality in which the surface coal mining operation is located. Such review shall be in accordance with the Federal Rules of Civil Procedure. In the case of a proceeding to review an order or decision issued by the Secretary under section 219(b) of this Act, the court shall have jurisdiction to enter an order requiring payment of any civil penalty assessment enforced by its judgment.

(b) The court shall hear such petition or complaint on the evidence presented and on the record made before the Secretary. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(c) In the case of a proceeding to review any order or decision issued by the

Secretary under this Act, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceeding if -

(1) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(2) there is a substantial likelihood that the person requesting such relief will prevail on the merits of the final determination of the proceeding; and

(3) such relief will not present imminent danger to the public health and safety or cause significant imminent environmental harm to the land, air, or water resources which cannot reasonably be considered reclaimable within the scope of the bonded reclamation plan.

(d) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Secretary.

INSPECTIONS AND MONITORING

SEC. 216. (a) The Secretary shall cause to be made such inspections of any surface coal mining and reclamation operations as are necessary to evaluate the administration of approved State programs, or to develop or enforce any Federal program, and for such purposes authorized representatives of the Secretary shall have a right of entry to, upon, or through any surface coal mining and reclamation operations.

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(b) For the purpose of developing or assisting in the development, administration, and enforcement of any approved State or Federal program under this Act or in the administration and enforcement of any permit under this Act, or determining whether any person is in violation of any requirement of any such State or Federal program or any other requirement of this Act, the regulatory authority shall -

(1) require any permittee to (A) establish and maintain appropriate records, (B) make monthly reports to the regulatory authority, (C) install, use, and maintain any necessary monitoring equipment or methods, (D) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as the regulatory authority shall prescribe, and (E) provide such other information relative to surface coal mining and reclamation operations as the regulatory authority deems reasonable and necessary;

(2) for those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance or water use either on or off the mining site, specify those -

(A) monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence;

(B) monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seamed to be mined;

(C) records of well logs and borehole data to be maintained; and

(D) monitoring sites to record precipitation.

The monitoring, data collection, and analysis required by this section shall be conducted according to standards and procedures set forth by the regulatory authority in order to assure their reliability and validity; and

(3) the authorized representatives of the regulatory authority, without advance notice and upon presentation of appropriate credentials (A) shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are located; and (B) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under this Act.

(c) The inspections by the regulatory authority shall (1) occur on an irregular basis averaging not less than one inspection per month for the surface coal mining and reclamation operations for coal covered by each permit; (2) occur without prior notice to the permittee or his agents or employees; and

(3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this Act. The regulatory authority shall make copies of such inspection reports freely available to the public at a central location in the pertinent geographic area of mining. The Secretary or the regulatory authority shall establish a system of continual rotation of inspectors so that the same inspector does not consistently visit the same operations.

(d) Each permittee shall conspicuously maintain at the entrances to the

surface coal mining and reclamation operation a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the surface coal mining and reclamation operation.

(e) Each authorized representative of the regulatory authority, upon detection of each violation of any requirement of a State or Federal program pursuant to this Act, shall forthwith inform the permittee in writing, and shall report in writing any such violation to the regulatory authority.

FEDERAL ENFORCEMENT

SEC. 217. (a)(1) Whenever, on the basis of any information available, including receipt of information from any person, the Secretary has reason to believe that any person is in violation of any requirement of this Act or any permit condition required by this Act, the Secretary shall notify the State regulatory authority, if one exists, in the State in which such violation exists. If no such State authority exists or the State regulatory authority fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure and transmit notification of its action to the Secretary, the Secretary shall immediately order Federal inspection of the surface coal mining operation at which the alleged violation is occurring unless the information available to the Secretary is a result of a previous Federal inspection of such surface coal mining operation. When the Federal inspection results from information provided to the Secretary by any person, the Secretary shall notify such person when the Federal inspection is proposed to be carried out and such person shall be allowed to accompany the inspector during the inspection.

(2) When, on the basis of any Federal inspection, the Secretary or his authorized representative determines that any permittee is in violation of any requirement of this Act or any permit condition required by this Act, which violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, which cannot reasonably be considered reclaimable within the scope of the bonded reclamation plan, the Secretary or his authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the violation has been abated.

(3) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program or a Federal lands program, or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that any permittee is in violation of any requirement of this Act or any permit

condition required by this Act, but such violation does not create an imminent danger to the health or safety of the public, or cause or can be reasonably expected to cause significant imminent environmental harm to land, air, or water resources which cannot reasonably be considered reclaimable within the scope of the bonded reclamation plan, the Secretary or his authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or subsequently extended, the Secretary or his authorized representative finds that the violation has been abated, he shall immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Secretary or his authorized representative determines that the violation has been abated.

(4) When, on the basis of a Federal inspection which is carried out during the enforcement of a Federal program, or a Federal lands program, or during Federal enforcement of a State program in accordance with subsection (b) of this section, the Secretary or his authorized representative determines that a pattern of violations of any requirements of this Act or any permit conditions required by this Act exists or has existed, and if the Secretary or his authorized representative also finds that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this Act or any permit conditions, or that such violations are willfully caused by the permittee, the Secretary or his authorized representative shall forthwith issue an order to the permittee to show cause why the permit should not be suspended or revoked.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and, where appropriate, a reasonable description of the portion of the surface coal mining and reclamation operation to which a cessation order applies. Each notice or other order issued under this section shall be given promptly to the permittee or his agent by the Secretary or his authorized representative who issues such notice or order, and all such notices and orders shall be in writing and shall be signed by such authorized representative. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Secretary or his

authorized representative. A copy of any such order or notice shall be sent to the State regulatory authority in the State in which the violation occurs.

(b) Whenever the Secretary finds that violations of an approved State program appear to result from a failure of the State to enforce such program effectively, he shall so notify the State. If the Secretary finds that such failure extends beyond thirty days after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Secretary that it will enforce this Act, the Secretary shall enforce any permit condition required under this Act, shall issue new or revised permits in accordance with the requirements of this Act, and may issue such notices and orders as are necessary for compliance therewith.

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(c) The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the surface coal mining and reclamation operation is located or in which the permittee thereof has his principal office, whenever such permittee or his agent (A) violates or fails or refuses to comply with any order or decision issued by the Secretary under this Act, or (B) interferes with, hinders, or delays the Secretary or his authorized representative in carrying out the provisions of this Act, or (C) refuses to admit such authorized representative to the mine, or (D) refuses to permit inspection of the mine by such authorized representative, or (E) refuses to furnish any information or report requested by the Secretary in furtherance of the provisions of this Act, or (F) refuses to permit access to, and copying of, such records as the Secretary determines necessary in carrying out the provisions of this Act. Such court shall have jurisdiction to provide such relief as may be appropriate. Temporary restraining orders shall be issued in accordance with Rule 65 of the Federal Rules of Civil Procedure, as amended. Except as otherwise provided herein, any relief granted by the court to enforce an order under clause (A) of this subsection shall continue in effect until the completion or final termination of all proceedings for review of such order under this title, unless, prior thereto, the district court granting such relief sets it aside or modifies it.

REVIEW BY THE SECRETARY

SEC. 218. (a) (1) A notice or order issued to a permittee pursuant to the provisions of subparagraphs (a) (2) and (3) of section 217 of this title, or to any person having an interest which is or may be adversely affected by such

notice or order or by any modification, vacation, or termination of such notice or order, may apply to the Secretary for review of the notice or order within thirty days of receipt thereof or within thirty days of its modification, vacation, or termination. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or person having an interest which is or may be adversely affected, to enable the applicant and such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

(2) The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United State Code.

(b) Upon receiving the report of such investigation, the Secretary shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order, or the modification, vacation, or termination of such notice or order complained of and incorporate his findings therein.

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(c) Pending completion of the investigation required by this section, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any notice or order issued under section 217(a)(3) of this title together with a detailed statement giving reasons for granting such relief. The Secretary may grant such relief, with or without a hearing, under such conditions as he may prescribe, if -

(1) the applicant shows that there is substantial likelihood that the findings of the Secretary will be favorable to him; and

(2) such relief will not present imminent danger to the health or safety of the public or cause significant imminent environmental harm to the land, air, or water resources which cannot reasonably be considered reclaimable within the scope of the bonded reclamation plan.

(d) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to section 217(a)(4), the Secretary shall hold a public hearing after giving written notice of the time, place, and date thereof. Any such hearing shall be of record and shall be subject to section 554 of title V of the United States Code. Within sixty days following the public hearing, the Secretary shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the Secretary revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the Secretary, or the Secretary shall declare as forfeited the performance bonds for the operation.

(e) In view of the urgent need for prompt decision of matters submitted to the Secretary under this section, action shall be taken as promptly as practicable, consistent with adequate consideration of the issues involved.

PENALTIES

SEC. 219. (a) In the enforcement of a Federal program or Federal lands program, or during Federal enforcement of a State program pursuant to section 217(b) of this Act, any permittee who violates any permit condition or who violates any other provision of this title, may be assessed a civil penalty by the Secretary, except that if such violation leads to the issuance of a cessation order under section 217(a)(3), the civil penalty shall be assessed. Such penalty shall not exceed \$10,000. Each day of a continuing violation may be deemed a separate offense. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation; the appropriateness of such penalty to the size of the business of the permittee charged; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

(b) A civil penalty shall be assessed by the Secretary only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing. Where such a public hearing has been held, the Secretary shall make findings of fact, and shall issue a written

decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. Where appropriate, the Secretary shall consolidate such hearings with other proceedings under section 218 of this Act. Any hearing under this section shall be of record and shall be subject to section 554 of title 5 of the United States Code. Where the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Secretary after the Secretary has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be paid.

(c) If no complaint, as provided in section 215 of this Act, is filed within thirty days from the date of the final order or decision issued by the Secretary under subsection (b) of this section, such order and decision shall be conclusive.

(d) Interest at the rate of 6 per centum per annum shall be charged against a person on any unpaid civil penalty assessed against him pursuant to the final order of the Secretary, said interest to be computed from the thirty-first day after issuance of such final assessment order.

(e) Civil penalties owed under this Act, either pursuant to subsection (c) of this section or pursuant to an enforcement order entered under section 215 of this Act, may be recovered in a civil action brought by the Attorney General at the request of the Secretary in any appropriate district court of the United States.

(f) Any person who willfully and knowingly violates a condition of a permit issued pursuant to a Federal program or a Federal lands program or fails or refuses to comply with any order issued under section 217(a) of this Act, or any order incorporated in a final decision issued by the Secretary under this Act, except an order incorporated in a decision issued under subsection (b) of this section or section 305 of this Act, shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(g) Whenever a corporate permittee violates a condition of a permit issued pursuant to a Federal program or a Federal lands program or fails or refuses to comply with any order issued under section 217 (a) of this Act, or any order incorporated in a final decision issued by the Secretary under this Act except an order incorporated in a decision issued under subsection (b) of this section

or section 305 of this Act, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (f) of this section.

(h) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to a Federal program or a Federal lands program or any order or decision issued by the Secretary under this Act shall, upon conviction be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year, or both.

(i) As a condition of approval of any State program submitted pursuant to section 203 of this Act, the civil and criminal penalty provisions thereof shall, at a minimum, incorporate penalties no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto.

ESTABLISHMENT OF RIGHT TO BRING CITIZENS SUITS

SEC. 220. (a) Except as provided in subsection (c) of this section any person having an interest which is or may be adversely affected by actions of the Secretary or the regulatory authority may commence a civil action on his own behalf in an appropriate United States district court -

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any regulation, order, or permit issued under this Act;

(2) against the Secretary where there is alleged a failure of the Secretary or State regulatory authority to perform any act or duty under this Act which is not discretionary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to remedy such violation or failure and to apply any appropriate civil penalties or injunctive relief under this Act.

(b) No action may be commenced -

(1) under subsection (a) (1) of this section -

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Secretary, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the regulation, order, or permit, or provision of this Act;

(B) if the Secretary or State has commenced and is diligently prosecuting administrative or judicial action to require compliance with the regulation, permit, order, or provision of this Act, but in any such action in a court of the United States any person described in subsection (a) may intervene as a matter of right;

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the regulatory authority. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by regulation.

(c) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, except against the United States or any Federal officer or agency, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

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(d) Nothing in this section shall restrict any right which any person (or class or persons) may have under any statute or common law to seek enforcement of this Act or to seek any other relief (including relief against the Secretary or a State agency).

(e) The Secretary, if not a party in any action under this section, may intervene as a matter or right.

FEDERAL LANDS

SEC. 221. (a)(1) After the date of enactment of this Act all new surface coal mining permits, leases, or contracts issued with respect to surface coal mining operations on Federal lands shall incorporate therein the interim surface coal mining and reclamation performance standards of subsection (c) of section 201 of this Act.

(a)(2) Within sixty days from the date of enactment of this Act, the Secretary shall review and amend all existing surface coal mining permits, leases, or contracts in order to incorporate therein the interim surface coal mining and reclamation performance standards of subsection (c) of section 201 of

this Act. On or before one hundred and twenty days from the date of issuance of such amended permit, lease, or contract, all surface coal mining operations existing at the date of enactment of this Act on Federal lands shall comply with the interim surface coal mining and reclamation performance standards with respect to lands from which the overburden has not been removed.

(b) The Secretary, in consultation with the heads of other Federal land managing departments and agencies, shall promulgate and implement a Federal lands program which shall be applicable to all surface coal mining and reclamation operations taking place on any Federal land. The Federal lands program shall incorporate all surface coal mining reclamation requirements of this Act and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal lands in question.

(c) Within eighteen months after the date of enactment of this Act, all surface coal mining reclamation requirements of this Act through the Federal lands program shall be incorporated by reference or otherwise in any Federal mineral lease, permit, or contract issued by the Secretary which may involve surface coal mining and reclamation operations or surface operations incident to underground coal mines. Incorporation of such requirements shall not, however, limit in any way the authority of the Secretary to subsequently issue new regulations, revise the Federal lands program to deal with changing conditions or changed technology, and to require the lease, permit, or contract holder to conform any surface coal mining and reclamation operations to the requirements of this Act and the regulations issued pursuant to this Act. With respect to national forest lands, the Secretary shall include in permits, leases, and contracts those conditions and requirements deemed necessary by the Secretary of Agriculture. The Secretary of Agriculture shall administer the provisions of such surface coal mining leases, permits, or contracts relating to reclamation and surface use, and is authorized to enforce such provisions.

The Secretary, or in the case of lands within national forests the Secretary of Agriculture, may enter into agreements with a State or with a number of States to provide for a joint Federal-State program covering a permit or permits for surface coal mining and reclamation operations on land areas which contain lands within any State and Federal lands which are interspersed or checkerboarded and which should, for conservation and administrative purposes, be regulated as a single-management unit. To implement a joint Federal-State program the Secretary, or in the case of lands within national forests the Secretary of Agriculture, may enter into agreements with the States, may delegate authority to the States, or may accept a delegation of authority from the States for the purpose of avoiding duality of administration of a single

permit for surface coal mining and reclamation operations. Such agreements shall incorporate all of the requirements of this Act, and shall not preclude Federal inspection or enforcement of the provisions of this Act as provided in sections 216 and 217.

(d) Except as specifically provided in subsection (c), this section shall not be construed as authorizing the Secretary or the Secretary of Agriculture to delegate to the States any authority or jurisdiction to regulate or administer surface coal mining and reclamation operations or other activities taking place on the Federal lands.

(e) This section shall not be construed as authorizing the Secretary to delegate to the States any authority or jurisdiction to regulate or administer surface coal mining and reclamation operations or other activities taking place on Indian lands or to delegate to the States trustee responsibilities toward Indians and Indian lands.

TITLE III - GENERAL PROVISIONS AND ADMINISTRATION

AUTHORITY OF THE SECRETARY

SEC. 301. (a) In carrying out his responsibilities under this Act the Secretary shall:

(1) administer the State grant-in-aid program for the development of State programs for surface coal mining and reclamation operations provided for in this title;

(2) maintain a continuing study of surface coal mining and reclamation operations in the United States;

(3) assist the States in the development of State programs for surface coal mining and reclamation operations which meet the requirements of this Act;

(4) publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act; and

(5) conduct hearings, administer oaths, issue subpoenas, and compel the attendance of witnesses and production of written or printed materials as necessary to carry out his duties under this Act.

(b) For the purpose of carrying out his responsibilities under this Act, including the enforcement thereof, the Secretary may by agreement utilize with or without reimbursement the services, personnel, and facilities of any Federal agency.

Additional, dissenting, separate, and supplemental views

STUDY OF SUBSIDENCE AND UNDERGROUND WASTE DISPOSAL IN COAL MINES

SEC. 302. The Secretary shall conduct a full and complete study and investigation of the practices of backfilling all coal mine wastes and coal processing plant wastes in mine voids or other equally effective disposal methods and the control of subsidence to maximize the stability, value, and use of lands overlying underground coal mines. The Secretary shall report to the Congress the results of such study and investigation no later than the end of the two-year period beginning on the date of enactment of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 303. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

RELATION TO OTHER LAWS

SEC. 304. Nothing in this Act or in any State regulations approved pursuant to it shall be construed to conflict with any of the following Acts or with any rule or regulation promulgated thereunder:

- (1) The Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721-740).
- (2) The Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801).
- (3) The Federal Water Pollution Control Act (33 U.S.C. 1151-1175), the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.
- (4) The Clean Air Act, as amended (42 U.S.C. 1857).
- (4) The Solid Waste Disposal Act (42 U.S.C. 3251).
- (6) The Refuse Act of 1899 (33 U.S.C. 407).
- (7) The Fish and Wildlife Coordination Act (16 U.S.C. 661-666c)

EMPLOYEE PROTECTION

SEC. 305. (a) No person shall discharge, or in any other way discriminate against, or cause to be discharged or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) Any employee or a representative of employees who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary for a review of such discharge or alleged discrimination. A copy of the application shall be sent to the person or operator who will be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be on record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation the Secretary shall make findings of fact. If he finds that a violation did occur, he shall issue a decision incorporating therein his findings and an order requiring the party committing the violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no violation, he shall issue such a finding. Orders issued by the Secretary under this subparagraph shall be subject to judicial review in the same manner as other orders and decisions of the Secretary are subject to judicial review under this Act.

(c) Whenever an order is issued under this section, at the request of applicant, a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees), to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the persons committing the violation.

GRANTS TO THE STATES

SEC. 306. (a) The Secretary is authorized to make annual grants to any State for the purpose of assisting such State in developing, administering, and enforcing State programs under this Act. Such grants shall not exceed 80 per centum of the program development costs incurred during the year prior to approval by the Secretary, shall not exceed 60 per centum of the total costs incurred during the first year following approval, 45 per centum during the second year following approval, 30 per centum during the third year following approval, and 15 per centum during the fourth year following approval. Not

later than the end of the fourth year following approval, the State program shall be fully funded from State sources, and each application for a permit pursuant to an approved State program or a Federal program under the provision

of this Act shall provide for payment of fees as determined by the regulatory authority. Such fees shall be based as nearly as possible upon the actual or anticipated costs of reviewing, administering, and enforcing such permit, and shall be payable on a phased basis over the period of the permit.

(b) The Secretary is authorized to cooperate with and provide assistance to any State for the purpose of assisting it in the development, administration, and enforcement of its State programs. Such cooperation and assistance shall include -

(1) technical assistance and training, including provision of necessary curricular and instruction materials, in the development, administration, and enforcement of the State programs; and

(2) assistance in preparing and maintaining a continuing inventory of information on surface coal mining and reclamation operations for each State for

the purposes of evaluating the effectiveness of the State programs. Such assistance shall include all Federal departments and agencies making available data relevant to surface coal mining and reclamation operations and to the development, administration, and enforcement of State programs concerning such operations.

PROTECTION OF THE SURFACE OWNER

SEC. 307. (a) In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by surface coal mining operations, the application for a permit shall include the following:

(1) the written consent of, or a waiver by, the owner or owners of the surface lands involved to enter and commence surface coal mining operations on such land, or, in lieu thereof,

(2) the execution of a bond or undertaking to the United States or the State, whichever is applicable, for the use and benefit of the surface owner or owners of the land, to secure the immediate payment equal to any damages to the surface estate which the surface coal mining operation will cause to the crops or the tangible improvements of the surface owner as may be determined by the parties involved or as determined and fixed in an action brought against the permittee or upon the bond in a court of competent jurisdiction. This bond is in addition to the performance bond required for reclamation by this Act.

(b) For the purposes of this section, the term "surface coal mining operation" does not include underground mining for coal.

PROTECTION OF GOVERNMENT EMPLOYEES

SEC. 308. Section 1114, title 18, United States Code, is hereby, amended by adding the words "or of the Department of the Interior" after the words "Department of Labor" contained in that section.

SEVERABILITY

SEC. 309. If any provision of this Act or the applicability thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

DEFINITIONS

SEC. 310. For the purposes of this Act -

(1) the term "Secretary" means the Secretary of the Interior, except where otherwise described;

(2) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(3) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between a State and any other place outside thereof, or between points in the same State which directly or indirectly affect interstate commerce;

(4) The term "surface coal mining operations" means -

(A) activities conducted on the surface of lands in connection with a surface coal mine the products of which enter commerce or the operations of which directly or indirectly affect commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, and area mining (but not open pit mining), and in situ distillation or retorting, leaching, or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, or loading of coal for interstate commerce at or near the mine site: Provided, however, That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 per centum

of the tonnage of minerals removed for purposes of commercial use or sale;
and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include land affected by mineral exploration operations which substantially disturb the natural land surface, and any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities;

(5) the term "surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of such operations;

(6) The term "lands within any State" or "lands within such State" means all lands within a State other than Federal lands and Indian lands;

(7) The term "Federal lands" means any land or interest in land owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof;

(8) The term "State program" means a program established by a State pursuant to title II to regulate surface coal mining and reclamation operations on lands within a State in accordance with the requirements of this Act and regulations issued by the Secretary pursuant to this Act;

(9) The term "Federal program" means a program established by the Secretary to regulate surface coal mining and reclamation operations on lands within any State in accordance with the requirements of this Act;

(10) The term "Federal lands program" means a program established pursuant to title II to regulate surface coal mining and reclamation operations on Federal lands;

(11) The term "mining and reclamation plan" means a plan submitted by an applicant for a permit under a State program, Federal program, or Federal lands

program which sets forth a plan for mining and reclamation of the proposed surface coal mining operations pursuant to section 208;

(12) The term "State regulatory authority" means the department or agency in each State which has primary responsibility in that State for administering the State program pursuant to this Act;

(13) The term "regulatory authority" means the State regulatory authority where the State is administering this Act under an approved State program or the Secretary where the Secretary is administering any or all provisions of this Act;

(14) The term "person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization;

(15) The term "permit" means a document issued by the regulatory authority for a surface coal mining site pursuant to a State program, or a Federal lands program, authorizing the permittee to conduct surface coal mining and reclamation operations.

(16) The term "permit applicant" or "applicant" means a person applying for a permit;

(17) The term "permittee" means a person holding a permit;

(18) The term "backfilling to approximate original contour" means that part of the surface coal mining and reclamation process achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to surface coal mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and depressions eliminated except that water impoundments may be permitted where the regulatory authority determines that they are necessary or desirable for reclamation or public recreation purposes;

(19) The term "operator" means any person engaged in surface coal mining operations;

(20) The term "reclamation" or "reclaim" means the process of land, air, and water treatment that restricts and controls water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other harmful effects resulting from surface coal mining operations, so that the affected areas, including, where appropriate, areas adjacent to the mining site are restored to a stable condition capable of supporting the uses which they were capable of supporting prior to mining or an equal or better economic or public use suitable to the locality;

(21) The term "unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care;

(22) "Open pit mining" means surface mining in which (1) the amount of material removed is large in proportion to the surface area disturbed; (2) mining continues in the same area proceeding downward with lateral expansion of the pit necessary to maintain slope stability or as necessary to accommodate the orderly expansion of the total mining operation; (3) the operations take place on the same relatively limited site for an extended period of time; (4) there is no practicable method to reclaim the land in the manner required by this Act; and (5) there is no practicable alternative method of mining the mineral or ore involved;

(23) The term "imminent danger to the health or safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this Act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause death or serious physical harm to persons outside the permit area before such condition, practice, or violation can be abated.

SECTION-BY-SECTION ANALYSIS OF H.R. 12898

"SURFACE COAL MINING RECLAMATION ACT OF 1974"

TITLE I - FINDINGS AND PURPOSES

Section 101. Findings

This section sets forth the findings of Congress regarding the significance of coal production to assure the integrity of the Nation's well being by supplying raw materials necessary for supporting individual citizens as well as National goals. Recognition of the adverse environmental effects of mining forms a part of these findings, as well as, the effects of mining on public health and safety. The States are recognized as the primary government sector that should have responsibility for administering surface coal mining controls for environmental improvement.

Section 102. Purposes

This Section sets forth the purposes of the Act, which include:

(a) The encouragement of a nationwide effort to prevent adverse effects to society and the environment from surface coal mining operations and encourage development of new sound surface coal mining and reclamation techniques.

(b) The assurance of rights of surface landowners and other persons.

(c) The assurance that surface coal mining operations are not conducted where reclamation is not feasible.

(d) Assurance that the coal supply essential to the Nation's energy requirements is provided in accordance with the policy of the Mining and Minerals Policy Act of 1970.

(e) Assurance that appropriate procedures are provided for public participation.

TITLE II - CONTROL OF ENVIRONMENTAL IMPACTS OF SURFACE COAL MINING OPERATIONS

Section 201. Interim Regulatory Procedure

This section prescribes an interim program for administering surface coal mining and reclamation controls within in each State during the period between the date of enactment of this Act and the time when a State program, approved by the Secretary of the Interior is implemented, or when a Federal program is developed to implement permanent regulatory procedures.

State permits including the interim performance standards for new surface coal mining operations would be required on and after 90 days from the date of enactment. All permits for existing surface coal mining operations would be reviewed and revised by the State within 60 days from the date of enactment and existing operations would be required to comply with the interim performance standards within 120 days of the issuance of the revised permits. Interim performance standards include backfilling to approximate original contour and limit spoil placement on steep slopes unless variances are approved by the State regulatory authority. The burden of proof is placed on the permit applicant to prove that a variance in overburden control is necessary because the equipment necessary for such handling techniques is not available. The permit applicant must also demonstrate that the variance will not endanger the public health or safety, and that the alternative surface configuration will be stable and environmentally sound. Variances will be reviewable from time to time by the State and will expire upon implementation of a State or Federal program. Spoil stabilization, topsoiling, vegetation, surface and sub-surface water control, toxic material treatment, mine and processing plant waste, and other interim control requirements are established.

A Federal evaluation and enforcement program will be implemented to evaluate the effectiveness of State administration and to determine compliance with the interim mining and reclamation performance standards. Monies authorized for reimbursement of costs of program development, administration and enforcement would be available prior to approval of a State program.

The interim regulatory procedure is also applicable to surface coal mining operations on Federal lands.

Section 202. Permanent Regulatory Procedure

This section requires the Secretary to promulgate regulations covering surface coal mining and reclamation operations not later than 180 days after enactment. Before promulgating these regulations the Secretary must publish the proposed regulations and allow 45 days for comment, hold at least one public hearing, and consult with and consider the recommendations of the Administrator of the Environmental Protection Agency on those regulations which affect air or water quality standards promulgated under the Federal Water Pollution Control Act and the Clean Air Act.

Section 203. State Programs

This section requires States, that wish to assume regulatory authority under the Act, to submit to the Secretary a State program within 24 months after enactment which demonstrates that the State has the capability of enforcing the provisions of this Act. The program must include a State law which provides for regulation of surface coal mining and reclamation operations, sanctions for violations at least equal to the minimum requirements of this Act, and a permit system. Sufficient funding and personnel to carry out the program, a process for designating lands unsuitable for surface coal mining, and a coordinating system for permits, must also be set forth in the program. The Secretary must approve or disapprove the State program within 6 months of submission and must consult and obtain the view of other Federal agencies, consult with and consider the recommendations of the Administrator of the Environmental Protection Agency with regard to air and water quality provisions, hold at least one public hearing, and find that the State has adequate legal authority and personnel, before approving a program. A State may resubmit a disapproved program within 60 days after reviewing notice. States enjoined from taking actions relating to a program will not lose eligibility for grants under this Act or have Federal programs imposed for a period of one year or until the injunction terminates which ever is shorter.

Section 204. Federal Programs

This section requires the Secretary to implement a Federal program in any State which fails to submit a program within 24 months of enactment, fails to resubmit a revised program within 60 days after notification of disapproval, or fails to enforce a program once approved. Prior to implementing a Federal program in any State the Secretary must obtain and disclose the views of the Environmental Protection Agency, Secretary of Agriculture, and other interested Federal agencies and hold at least one public hearing.

Section 205. Designating Areas Unsuitable for Surface Coal Mining Operations.

This section requires States to establish a planning process for determining which if any land areas are unsuitable for surface coal mining operations. State agencies may not issue permits on such areas until satisfied that technology is available to satisfy applicable performance standards. Areas on which surface coal mining operations are being conducted on the date of enactment of this Act or where substantial legal and financial commitments to mine are in effect prior to enactment are not to be designated unsuitable. The Secretary or the Secretary of Agriculture in the case of National Forest Lands shall conduct a review of Federal lands for designation of lands unsuitable for surface coal mining.

Section 206. Effect on State Law

This section provides that State laws which provide more stringent environmental controls of surface coal mining and reclamation operations than do provisions of this Act shall not be held to be inconsistent with this Act.

Section 207. Permits

This section defines the time to be for obtaining permits under the permanent regulatory procedure. All persons engaged in surface coal mining must obtain permits within 6 months of the approval of State programs or promulgation of Federal programs. An additional 4 month period is permitted if the applicant is awaiting action by the regulatory authority on his permit. All permits shall be for a term to exceed 5 years and are not transferable.

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Section 208. Permit Application Requirements: Information, and Mining and Reclamation Plans

This section sets forth the information that is to accompany the permit application.

The permit application information requirements generally require a mining and reclamation plan, as well as information on the proposed mining site and on past permit performance by the applicant. Adherence to Federal air and water pollution laws is recognized by requiring a listing of all violations of such laws, rules or regulations that occurred during the year prior to the date of permit application.

The mining and reclamation plan data submission requirements contain general categories of information necessary to assure that the operator has performed a premining site evaluation in sufficient depth to plan the operation to facilitate a return of the site to a useful status following mining. Also, the planning information required, as specifically enumerated in promulgated regulations, would be sufficient to assure the regulatory agencies that provisions have been planned to prevent damage of the permit area during mining.

The applicant is required to file for public inspection a copy of his application with an appropriate official approved by the regulatory authority in the locality where the mining operation is proposed to occur. Publication of a description of the property to be mined in a generally circulated newspaper in the locality of the permit area for a specific length of time is required.

The permit renewal provisions provide the right of successive renewals provided the permittee has complied with the permit, require a listing of claim settlements or judgments arising from operations under the permit, written assurance of continuation of the performance bond, and additional or new information required under this section. All parties who participated in the review and hearing proceedings on the initial permit will be informed of any permit renewal application.

Section 209. Permit Approval or Denial Procedures

This section sets forth the procedures for permit approval or denial under State or Federal programs.

Subsection (a) sets forth the sequence of actions following approval or denial of a permit, gives the time limits, action by the regulatory authority and for the applicant to submit an appeal to a denial, sets the locality for hearings, and delineates the actions of the regulatory authority following the hearing.

Subsection (b) requires that the regulatory authority notify the local real estate tax authority of any permit approval decision.

Subsection (d) sets forth six specific provisions which must be met prior to permit approval.

Hearing procedures for public participation concerning the issue of permit approval appear in this section. Judicial review of any decision concerning the permit application decision by any interested party is provided under section 215 of the Act.

Section 210. Posting of Bond or Deposit: Insurance

This section requires the permit applicant to post a bond, in an amount to be determined by the regulatory authority, at least sufficient for reclamation if performed by a third party but in no case less than \$10,000. The bond will be posted after approval of the permit application but before the permit is issued. The bond is to cover that increment of land within the permit area which will be disturbed during the initial year of the permit and the liability will be for the duration of the operation plus time coincident with vegetation requirements. The amount of the bond shall be adjusted periodically to reflect changes in acreage disturbed and costs of reclamation. Prior to issuance of a permit a certificate of public liability insurance or evidence of self-insurance applicability shall be submitted to the regulatory authority in an amount deemed necessary by the regulatory authority but in no case less than \$10,000.

Section 211. Release of Performance Bonds or Deposits

This section allows the permittee to request the release of all or part of the bond and establishes procedures for public participation concerning bond release. Persons who have interest which are or maybe adversely affected by proposed bond releases may file written objections and request a public hearing as may permittees whose request for release has been denied. The regulatory authority must conduct an inspection prior to releasing any bond and no bond may be fully released until all reclamation requirements of the Act are fully met.

Section 212. Revision and Review of Permits

This section provides for the revision of permits during the term of the permit, upon application of the permittee, or on the initiative of the regulatory authority. Provisions for public hearings are established. Extensions to permit areas must be made by application for another permit rather than by revision of existing permits. This section also establishes that permits, issued pursuant to an approved State program or Federal program, will be valid but subject to review and revision should an existing State program be replaced by a Federal program or a State program be approved after a Federal program has been implemented.

Section 213. Surface Coal Mining and Reclamation Performance Standards

The objective of this section is to attain an environmentally sound end use of reclaimed mined land without unduly restricting needed coal production. The standards set forth in this section specify the requirements that must be met by the permittee whether mining under a permit issued under a State or a Federal program.

The twenty-one requirements contained in subsection (b) apply to surface coal mining operations in areas having a slope of 20 degrees or less. The land is to be restored to an equal or higher use than that which existed prior to mining, while off-site damage from slides, blasting, drainage, and other sources is prevented during mining. Reclamation concurrent with mining is required. The mined area will be backfilled to approximate original contour; topsoil or similar suitable material replaced; the area revegetated; and drained and controlled during and following mining. Treatment or control of toxic substances, coal wastes and mine debris is required. Maintenance of water quality and quantity in off-permit areas is mandated. The responsibility of permittees for a sufficient period following reclamation to assure successful return of the land to an approved usable condition is delineated.

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The special provisions of subsection (c) apply to surface coal mining operations on slopes above 20 degrees or such other slope as determined by the regulatory authority and address the problems of slides of spoil and debris which have prevailed in steep slope areas in the past. The backfilling provisions of subsection (b) apply with the additional specific proviso that only the spoil from the cut necessary to gain access to the coal may be placed in a controlled condition on downslope areas. Provisions for planned variations from this reclamation treatment are allowed when approved as meeting specified land use needs as well as being environmentally sound in the context of this Act.

Control of erosion and any air and water pollution sources on surface areas affected by the mining and reclamation operation is recognized as a cardinal principle of good reclamation and is required by this section. Combustible materials will be controlled and disposed of in a manner that will not contribute to ignition of the coalbed or coal refuse - a source of pollution problems in past mined areas for which society is continuing to pay control costs.

Although backfilling to approximate original contour is required, variations are permitted depending on special geologic conditions or planned end uses,

particularly in areas where "mountaintop" mining is utilized. The result will be final land form suited to variations in soil or climate conditions with final treatment of reclaimed areas to meet specifically planned reclamation objectives consistent with local or regional needs.

This section directs the Secretary to develop improved surface coal mining and reclamation performance standards provided they assure no less than the same degree of environmental protection as do the standards set forth in the Act. Such standards development authority will enable the Secretary to respond flexibly in his regulation of an industry subject to constantly developing new and improved technology.

Section 214. Mining and Reclamation Performance Standards for Surface Operations Incident to Underground Coal Mining

This section establishes procedures to be followed in promulgating rules and regulations for underground coal mines. Basic performance standards for surface operations incident to underground coal mines include sealings of openings, construction requirements for waste piles and impoundments, revegetation of affected areas, abatement of water pollution, and elimination of fire hazards.

Section 215. Judicial Review

This section establishes procedures for judicial review of any order or decision issued by the Secretary under this Act by the appropriate U.S. Court of Appeals or U.S. District Court upon petition by any person who participated in the related administrative proceedings. Courts are to hear petitions on the evidence presented and on the record made before the Secretary. Courts may grant temporary relief under certain conditions and the judgment of the court will be final subject to final review by the Supreme Court.

Section 216. Inspections and Monitoring

This section establishes procedures and grants right of entry to the Secretary to make inspections to evaluate State programs and to develop or enforce Federal programs. Requirements are established for record keeping, reporting and monitoring sites. Inspections are to occur on an irregular basis without advance warning and reports of inspections are to be made available to the public.

Section 217. Federal Enforcement

This section establishes a system of enforcement procedures which are similar to the enforcement procedures under the Federal Coal Mine Health and Safety Act

of 1969. The system is flexible in that enforcement tools are geared to the gravity of violations and encourage operators to voluntarily comply with provisions of the Act to avoid penalties, loss of production and the loss of the permit.

If the regulatory authority finds during any inspections, a violation of the Act or permit which also creates an imminent danger to public health or safety or causes significant imminent environmental harm to land, air, or water resources which cannot reasonably be considered reclaimable within the scope of the bonded reclamation plan, an order shall be issued to cease coal mining operation on that portion of the operation causing the imminent danger or environmental harm until the condition or practice is abated. For violations other than those which result in imminent danger to public health and safety or significant imminent environmental harm, a notice fixing the time of abatement shall be issued. If the operator does not abate the violation when the notice expires, an order to cease operations related to the violation shall be issued and shall remain in effect until the violation is abated. If the regulatory authority finds that a pattern of violations exists or has existed at any particular operation, and the violations are caused by unwarranted failure of the permittee to comply, an order to show cause why the permit should not be revoked shall be issued.

The Secretary is authorized to request the Attorney General to obtain injunctions or other appropriate court orders to assist him in the enforcement of the Act.

Section 218. Review by the Secretary

This section established an administrative mechanism for review of Federal enforcement actions taken pursuant to section 217. The procedures set forth in this section are based on the provisions of section 105 of the Federal Coal Mine Health and Safety Act of 1969.

Section 219. Penalties

Civil penalties up to \$10,000 may be assessed for violations of any permit condition or provision of the Act under Federal programs, Federal lands programs, or during Federal enforcement of State programs. Civil penalties shall be assessed for any violation which leads to the issuance of a cessation order. Criminal penalties are provided for persons or corporations who willfully violate provisions of the Act, make false statements or falsify or tamper with monitoring methods or devices required by the Act.

Section 220. Establishment of Right to Bring Citizen Suits

This section provides that any person who has an interest which is or may be adversely affected by actions of the Secretary or regulatory authority may bring civil action in an appropriate U.S. District Court against any person, including the United States or other governmental agency, who is alleged to be in violation of provisions of the Act or any regulation, order to permit issued under the Act. A citizen suit may be brought against the Secretary for failure to perform any duty which is not discretionary with the regulatory authority. Before bringing citizen suits, 60 days notice must be provided to other parties and such suits may not be commenced against the regulatory authority if it is diligently prosecuting administrative or judicial action to require compliance.

Section 221. Federal Lands

This section requires that after the date of enactment all new surface coal mining permits or leases on Federal lands will incorporate the interim performance standards. Within 60 days from enactment all existing permits and leases will be amended to include the interim performance standards and within 120 days from the date of issuance of such amended permits and leases existing operations shall comply with the performance standards.

The Secretary is required to promulgate a Federal lands program which incorporates all requirements of the Act and within 18 months of enactment the requirements of the Federal lands program shall be incorporated in all permits and leases which involve surface coal mining or surface operations incident to underground coal mines. With respect to National Forest Lands the permits and leases shall contain requirements deemed necessary by the Secretary of Agriculture who also is authorized to administer and enforce the reclamation and surface use provisions.

Provisions to authorize a joint Federal-State program for interspersed or checkerboard lands would establish a more manageable system to prevent duality and conflicts of management of permits that may encompass lands under both State and Federal jurisdiction other than Indian lands. No authority for administration of Federal or Indian lands; however, is to be delegated to the States.

TITLE III - GENERAL PROVISIONS AND ADMINISTRATIONS

Section 301. Authority of the Secretary

This section vests responsibility for carrying out provisions of this Act except where otherwise specified with the Secretary of the Interior.

Section 302. Study of subsidence and Underground Waste Disposal in Coal Mines

This section authorizes a study of subsidence and waste disposal associated with underground coal mines. The report to Congress is due two years after the date of enactment.

Section 303. Authorization of Appropriations

This section authorizes such appropriations as may be necessary for administering the Act.

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Section 304. Relation to other Laws

This section sets forth those laws with respect to which no conflicts shall be construed to exist with any provision of this Act or any State regulations promulgated pursuant to this Act including both mine health and safety Acts; water, air, solid waste disposal, and refuse Acts; and the Fish and Wildlife Coordination Act.

Section 305. Employee Protection

This section establishes procedures for the protection of employees of surface coal mining and reclamation operations who are discharged or discriminated against because they avail themselves of the provisions of this Act. The Secretary may require the reinstatement with compensation of affected employees where violations occur.

Section 306. Grants to the States

This section authorizes the Secretary to make annual grants to States for developing, administering, and enforcing programs under this Act. Limitations are set on the percentage relationship such grants may bear to total costs. Technical and other non-monetary assistance to States is also authorized.

Grants to States are to be phased out by the end of the fourth year after approval of a State plan by the Secretary.

Section 307. Protection of the Surface Owner

This section provides for the protection of surface owners where such owner is not the owner of the mineral estate by the inclusion, as part of the permit application, of the written consent of the surface owner or by execution of a bond to secure immediate payment equal to damages to crops or to tangible

improvements by the surface owners as determined by the parties involved or by a court of competent jurisdiction.

Section 308. Protection of Government Employees

This section provides for the protection of authorized representatives of the Secretary while carrying out the provisions of this Act, the provisions of the Federal Coal Mine Health and Safety Act of 1969, and the Federal Metal and Nonmetallic Mine Safety Act.

Section 309. Severability

This section contains the customary severability provision.

Section 310. Definitions

This section provides definitions of pertinent terms used in the Act including:

(a) "Surface Coal Mining Operations" which is defined to include activities conducted on the surface of lands in connection with surface coal mining methods such as contour strip, auger, mountain top. box cut, and area mining. Open pit mining methods are specifically excluded as are mines where the extraction of coal is incidental to the extraction of other minerals and the tonnage of coal does not exceed 16 2/3 per centum of the tonnage of minerals removed. Underground coal mines are not included in this definition.

(b) "Backfilling to Approximate Original Countour" which is defined to mean that part of the reclamation process achieved by backfilling and grading of the mined area so that it closely resembles the surface configuration of the land prior to mining with all highwalls, spoil piles eliminated.

(c) "Open Pit Mining" which is defined to mean that surface method where the amount of material removed is large in proportion to surface area disturbed, mining proceeds downward with lateral expansion to maintain slope stability and expansion of the operation, operations are on a limited site for extended periods, and there is no practicable method to reclaim the land or alternative method of mining possible.

CONCLUSION

We sought to establish in these dissenting views that enactment of H.R. 11500, in its present form, would be improvident, and seriously endanger this nation's economy. Also, it would mean another surrender of reason to extremism.

H.R. 11500 represents the improvisation of mining performance standards which have never been tested in the field. The blithe assurances of individuals not experienced in mining that such improvised performance standards will work because they wish it to be so, will not convert non-engineering fact into workable standards. We believe that the House of Representatives and the Congress, in its wisdom, should not further endanger this nation's energy supply and thereby endanger its economy by adopting this illconceived legislation. In the face of a crisis, zeal in adherence to a cause or a slogan is no substitute for reason.

If passed, H.R. 11500 would be foremost among the environmental laws whose cumulative effect would seriously, and perhaps permanently, damage the economy of the United States and the well being of Americans.

To protect environmental values, while at the same time equally protecting energy values, we are proposing that a substitute for H.R. 11500 in the form of the bill, H.R. 12898, which does, in fact, equally respond and respect those values, and other values upon which our complex economic society and the welfare of our people depend.

CRAIG HOSMER, JOE SKUBITZ, SAM STEIGER, ROBERT G. STEPHENS, Jr., HAROLD RUNNELS, KEITH SEBELIUS, DAVID TOWELL, DON YOUNG, ROBERT E. BAUMAN, STEVEN D. SYMMS.

ADDITIONAL VIEWS OF REPRESENTATIVE JOE SKUBITZ

With few exceptions, I am in substantial agreement with the dissenting views on H.R. 11500. I cannot agree with the Minority view with respect to opposition to the establishment of a reclamation fee for the purpose of reclaiming abandoned mined lands. However, the formula proposed by the Majority borders on the ridiculous. There are several other points which I will cover during the debate.

JOE SKUBITZ.

SEPARATE VIEWS OF REPRESENTATIVE JOHN N. HAPPY CAMP AND REPRESENTATIVE WILLIAM M. KETCHUM

We strongly oppose the passage and enactment of H.R. 11500 in its present form. H.R. 11500 is, in our opinion, a detailed Federal regulatory program which merely pays lip service to the concept of state regulation of surface mining.

While we agree substantially with the dissenting views, we are not in total agreement with them because it is our opinion that the regulation and control of

surface mining, which has traditionally been the primary responsibility of the several states, should continue and remain a responsibility of the states.

JOHN N. HAPPY CAMP, WILLIAM M. KETCHUM.

COMMITTEE RECOMMENDATION

154 The Committee on Interior and Insular Affairs recommends the enactment of H.R. 11500 as amended. The motion ordering the bill reported favorably was adopted by a roll call vote May 14, 1974, with 26 votes cast for and 15 votes cast against.