

SENATE REPORT NO. 94-101
Legislative History
Senate Report No. 94-101

Following is the May 2, 1975, Congressional Report from the Interior and Insular Affairs Committee on H.R. 25. 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 ACT OF 1975
Interior and Insular Affairs Committee; United States Senate
HOUSE OF REPRESENTATIVES Report. No. 94-189; 121 CONG.REC. 12933; 121
CONG.REC. 13009; Senate Report No. 94-101; 94TH CONGRESS 1st Session; H.R.
25, Conference Report. May 2, 1975. - Ordered to be printed

Preamble

(a) 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 unless such person has obtained a permit from the State's regula

Mr. UDALL, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 25]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 25) to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:rol and Reclamation Act of 1975". ***

74 That the House recede from its disagreement to the amendment of the Senate to the title and agree to the same.

74 MORRIS K. UDALL, PATSY T. MINK, JOSEPH P. VIGORITO, JOHN MELCHER, TENO RONCALIO, JOHN F. SEIBERLING, M. ROBERT CARR, JOE SKUBITZ, PHILIP E. RUPPE, Managers on the Part of the House.

74 HENRY M. JACKSON, LEE METCALF, J. BENNETT JOHNSTON, Jr., FLOYD K. HASKELL, CLIFFORD P. HANSEN, Managers on the Part of the Senate.

75 JOINT STATEMENT OF THE COMMITTEE OF CONFERENCE

75 The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 25) to provide for the cooperation between the Secretary of the

Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes, submit this joint statement in explanation of the effect of the language agreed upon by the managers and recommended in the accompanying conference report.

INTRODUCTION

75 The Surface Mining and Reclamation Act of 1975, was introduced early in the 94th Congress in both the House (H.R. 25) and the Senate (S. 7). Both bills were identical to the conference report on S. 425 which was pocket vetoed by the President last December. There were 67 differences between the House bill and the Senate amendment. Only a few of these were significant. A general overview of the structure and content of the House bill, the Senate amendment and the conference report together with a brief discussion of major provisions and specific comments on some provisions follows.

OVERVIEW

75 Title I sets forth the findings and purposes of the legislation, which were melded by the conferees.

75 Title II establishes an Office of Surface Mining Reclamation and Enforcement within the Department of the Interior and delineates the duties of its Director. The House bill also contained additional provisions to insure greater independence for the Office within the Department, and prohibited conflicts of interest on the part of employees of the Office. The Senate receded and accepted these provisions with some minor modifications requested by the Department of the Interior.

75 Title III establishes a grant program to fund mining and mineral resources and research institutes in public colleges and universities. These institutes are to train qualified personnel in mine-related fields, and conduct research related to mining technology. The Senate amendment had less stringent qualification requirements for these institutes than the House bill. The Senate receded.

75 Title IV of both the House bill and the Senate amendment established a fund and a program for the reclamation of abandoned or "orphan" mined lands, and for the relief of areas that will be impacted by the rapid development of mining.

76 All coal mining operators are to be assessed a fee on each ton of coal produced for deposit in the reclamation fund. The House bill provided for (1) a fee of 10 percent of the value of the coal or not to exceed 10 cents per ton on underground mined coal and 35 cents per ton on surface mined coal; (2) a 5

percent of value limitation on the fee for lignite; (3) delayed payment of the fee; (4) an adjustment clause tied to the cost of living; and (5) an offset of payments to the fund against payment of state severance taxes. The Senate amendment provided the same fee for surface mined coal and a 25 cents per ton fee for underground mined coal, but no other comparable provisions. The conferees agreed on a 15 cents per ton fee for undergroundmined coal, the Senate receded on the 5 percent limitation on lignite and the House receded on its other provisions.

76 The Senate amendment provided explicitly for consultation with the Corps of Engineers in the reclamation program. The House receded on this point.

76 With regard to aid to impacted areas, H.R. 25 expanded coverage of the program to all energy resource developments, and not just coal mining. The Senate amendment expanded the program of filling and sealing mine shafts and voids to cover all types of mining but otherwise limited the use of the fund to coal mining impacts. The conferees agreed on the Senate approach with some modifications giving the Governor of each State an opportunity to use the fund for reclamation of lands affected by non-coal mining, but only after all coal mine impacts had been treated.

76 Title V contains the most critical portions of the two measures: the procedures and the environmental standards for the regulation of coal surface mining and reclamation. These requirements are quite detailed, but although there were a number of minor differences between the House bill and the Senate amendment, there were actually only five major differences.

76 (1) The House bill contained an outright ban on mining on alluvial valley floors west of the 100th meridian west longitude. The Senate amendment prohibited mining on such alluvial valley floors only when this would have a substantial adverse effect on croplands or haylands significant to the practice of farming or ranching. The House receded from its outright ban, and compromise language was accepted that modified the language in the Senate amendment. This compromise language clarified the intent of the conferees to protect potential as well as on-going farming and ranching operations.

76 (2) The House bill required the Corps of Engineers to supervise the disposal of all mine wastes and impoundment construction. The Senate amendment left this responsibility with the Secretary of the Interior. The conferees agreed to a compromise requiring the Corps to approve the basic standards regulating mine waste disposal and review plans but with no responsibility for on-the-ground supervision and enforcement.

76 (3) The House bill contained a conflict-of-interest provision not in the Senate amendment. The Senate receded.

76 (4) During the Secretary's review of Federal lands for areas unsuitable for mining, the Senate amendment expressly allows permits to be granted on a case-by-case basis. H.R. 25 did not contain a similar provision. The Senate language is included in the conference report.

77 (5) The Senate amendment required expedited decisionmaking by the regulatory authority in the case of cessation orders. The House bill did not contain a similar provision. The House receded.

77 Title VI of the House bill provided a three-option program for the regulation of surface coal mining on lands held in trust for Indian tribes. The Senate amendment contained a section requiring a study to develop, in consultation with the Indian tribes, legislation for surface mining regulation that would recognize the special jurisdictional status of Indian lands. In the interim, however, mining on Indian lands would still be subject to the environmental standards of the bill. The House receded.

77 Title VII of the House bill and Title VI of the Senate amendment provided for the designation of areas of Federal lands unsuitable for non-coal mining. The conferees adopted the language of the Senate amendment.

77 Title VIII of the House bill and Title VII of the Senate amendment contain administrative and miscellaneous provisions.

77 The Senate amendment contained two provisions designed to cushion adverse employment impacts that might result from the implementation of the Act. The House bill contained neither provision. Both were opposed by the Administration. The Senate receded in both instances.

MAJOR PROVISIONS

77 ABANDONED MINED LAND RECLAMATION

77 The conference report provides for a program to reclaim previously mined lands that were abandoned without being adequately restored, and which now constitute either serious danger to public health and safety, pollute waterways by sedimentation or acidity, or, at the very least are an ignominious blight in historic mining areas. The program covers restoration on both public and private lands.

77 Funding for this program is derived largely from a reclamation fee to be levied on every ton of coal mined: 35 cents per ton for surface-mined coal,

cents per ton for underground mined coal, or 10 percent of the value of the coal, whichever is less; except that the fee will not exceed 5 percent of the value for lignite. The differential fees were adopted recognizing the differing costs and values of the various coals, and to prevent an undue economic burden on the lower grades of coal. Fifty percent of the fees collected in any one state are to be expended in that State for the purposes of reclamation or alleviating the impacts of coal development in the area.

77 While the primary focus of the fund in the program is the reclamation of orphan lands, the conference report also provides that, in areas where there is relatively little damage from past coal mining, the State's share of the reclamation fee revenues may be used for other purposes; namely, filling voids and sealing tunnels from non-coal mining operations, and for building an adequate infrastructure of public facilities to support the housing and population increases which will accompany the anticipated rapidly burgeoning coal mining industry.

78 SURFACE MINING AND RECLAMATION STANDARDS

78 The informational and environmental requirements set forth in Title V are the most vital provisions of the conference report. The purpose of the bill is to end the present environmental degradation from the exploration for coal, surface coal mining and the surface impacts of underground mining, and to prevent future degradation. To this end the conference report sets forth a series of minimum uniform requirements for all such operations on both Federal and State lands. These standards deal with four basic issues: preplanning, mining practices, post-mining reclamation, and the protection of water resources. The first requires that an operator applying for a permit has done, among other things, certain research regarding adjacent land uses, the characteristics of the coal and the overburden, and hydrologic conditions. He must include in his application the planned methodology and timetable for the operation in a reclamation plan. The second set of requirements provide that mining methods be used which will minimize or obviate environmental damage or injuries to public health and safety. These include restrictions on the placement of overburden, blasting regulations, water pollution control requirements, and waste disposal standards. The third group of standards regard reclamation and restoration of the mined land to its pre-mined condition. These requirements include backfilling and regrading to approximate original contour, restoration of water quality and quantity, revegetation to pre-mining conditions and elimination of erosion and sedimentation. Protection of water resources is further discussed below.

78 Virtually all of the specific standards set forth in the conference report are already required in one or more of the several States regulating surface coal mining. Nonetheless, it was felt that some minimum uniform floor had to be established for the protection of the environment at a time when the growth of surface coal mining is projected to double over the next decade, often in environmentally delicate areas.

78 It is the understanding of the conferees that certain States may wish to impose more stringent requirements than those minimum standards set forth in the report. Some States in fact are already contemplating such measures, a move which is specifically sanctioned in this bill.

78 PROTECTION OF WATER RESOURCES

78 Surface coal mining operations can have a significant impact on the hydrologic balance of the mined area and its environs. Some of the more significant damages to water resources which may occur from surface coal mining are: increased sedimentation, dissolved solids, and erosion, increased salinity and mineralization of affected waters, acid mine drainage, altered drainage patterns, altered stream flow, including increased flooding, destruction of aquifers, draw down or loss of ground water supplies, disturbance of downstream hydrologic balances, and, particularly in arid and semi-arid areas, disruption of the essential hydrologic functions of alluvial valley floors which are essential to other, primarily agricultural, land uses.

78 The legislative history in the Committee Reports on protection of water resources is particularly pertinent to the provisions in the conference report.

79 The conferees recognize that total prevention of all these adverse hydrologic effects from mining is impossible and thus the conference report sets attainable standards to minimize such damages, protect the hydrologic balance of impacted areas and protect the rights of persons whose water rights are affected by mining operations. Accordingly, provisions directed toward the protection of essential hydrologic functions were included in the following sections of the conference report: (1) mining permit application requirements, (2) permit approval or denial criteria, (3) specific environmental standards, (4) monitoring requirements, (5) compensation requirements for decrease in water availability to other users, and (6) special requirements for mining operations on or affecting alluvial valley floors west of the 100th meridian. Of these provisions, probably the most critical environmentally are those related to the

protection of the essential hydrologic functions of alluvial valley floors in arid and semi-arid regions.

79 These alluvial valley floors in the West are frequently underlain with rich coal deposits. However, they also provide the only natural irrigation for haylands and croplands essential to farming and ranching operations. Unless the essential hydrologic functions of these alluvial valley floors are preserved, farming and ranching operations could suffer serious damage, and the use of these areas for future and potential farming and ranching would be precluded. Since rapid expansion of surface coal mining is projected for the West, the protection of scarce water resources and alluvial valley floors during and after mining is essential if we are to maintain the vital agricultural productivity of these areas.

79 Therefore, the conference report allows the issuance of a permit for surface coal mining only if the regulatory authority finds that the operation would not have a substantial adverse effect on alluvial valley floors significant to the practice of farming or ranching. These areas protected by this provision are very small. For example, the Department of the Interior estimates that approximately 97.3 percent of the total agricultural land in the Powder River Basin is undeveloped range land, which is expressly excluded from the restriction of Section 510(b)(5).

79 SURFACE COAL MINING ON INDIAN LANDS

79 The conferees recognize that there are special jurisdictional problems with respect to the regulation of mining on Indian lands, and a lack of consensus on this issue among the various Indian tribes. For this reason, the conference report provides for a study to be completed by 1976, to determine the appropriate program for regulating surface coal mines on lands held in trust for Indian tribes.

79 In the interim, however, the tribes are not left without environmental protection from mining operations on their lands. The Act requires that all leases on Indian lands include certain performance standards at least as stringent as those in the Act.

79 Furthermore, it is entirely within the discretion of Indian tribes, bands or groups to enter into leases for mining on Indian trust lands with the approval of the Secretary of the Interior. It is also entirely within their discretion to refuse to grant leases. Although all leases, whether negotiated or advertised for bids, must be approved by the Secretary, his approval is always subsequent to the agreement between the parties, after the landowner and the lessee have reached an agreement on all conditions and actually signed the lease.

80 COMMENTS ON SPECIFIC PROVISIONS

80 SECTION 402. - OBJECTIVES OF THE ABANDONED MINE RECLAMATION FUND

80 Although this section sets forth five priorities for the use of the abandoned mine reclamation fund, the conferees have clarified the language to indicate that the primary objective of the fund is the reclamation of abandoned lands affected by coal mining, and that relief of areas impacted by rapid coal development and reclamation of non-coal mined lands are subsidiary to that goal.

80 SECTION 405(a). - LAND ACQUISITION FOR RECLAMATION PROGRAM

80 The Secretary of the Interior is authorized in this section to acquire any necessary interest in lands in order to carry out the reclamation program authorized in Title IV. Interests may include various forms and are to be sufficient to assure that the purposes of reclamation are achieved and that the post-reclaimed land use does not contravene the reclamation itself. Under some circumstances easements might be obtained for reclamation purposes. Presumably the acquisition of easements would be less costly than the acquisition of the land in fee simple. Such easements should, of course, include provisions to assure maintenance of the reclamation.

80 SECTION 405(b) (4). - PUBLIC FACILITIES IN AREAS OF RAPID COAL DEVELOPMENT

80 The conference report provides funds for essential public facilities only in areas impacted by coal development (including coal conversion plants if located in the coal mining area). This includes those essential public facilities necessary to accommodate the development and provides that such facilities be necessary to meet the needs specified in the subsection. It should be noted that the existence of essential facilities is not the sole test, but facility capacity must also be considered. Inadequacy or insufficient capacity of essential facilities can be as limiting as the actual lack of such facilities.

80 SECTION 406(a). - FILLING VOIDS AND SEALING TUNNELS

80 This subsection permits the use of the abandoned mined land reclamation fund for filling voids and sealing tunnels created by any mining operation. It is however, the clear intent of the conferees that non-coal mined lands be reclaimed only after all lands affected by coal mining have been reclaimed or impacts of rapid coal mining expansion have been relieved.

80 SECTION 508. - REVEGETATION

80 The conferees agree that a reasonable interpretation of the revegetation standards would necessitate that the mining and reclamation plan include a demonstration that the necessary seeds are or will be available when needed to achieve revegetation. It is expected that the regulations governing State and Federal programs which are to be issued by the Secretary would so specify.

81 The conferees intend that revegetation is required in all instances in accordance with the basic standard in section 515(b)(19). Thus if the native premining vegetation is sparse due to climatic or other natural conditions, then such conditions would be controlling in the reclamation standard.

81 SECTION 510(b)(3). - ASSESSMENT OF MINE IMPACT ON HYDROLOGIC BALANCE

81 As part of the mining application and permit approval process, both the House bill and the Senate amendment provided that no application shall be approved unless the application affirmatively demonstrates and the regulatory finds in writing that an assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made. The House bill further specified that the proposed mining operation has been designed to prevent irreparable off-site impact to the hydrologic balance while the Senate amendment specified that the mining operation be designed to prevent to the maximum extent possible using best available technology irreparable off-site impacts to the hydrologic balance.

81 The conferees resolved the difference in the language pertaining to the design of the particular mining operation by requiring that the proposed operation be designed to prevent significant irreparable off-site damage to the hydrologic balance, including damage to alluvial valley floors.

81 SECTION 515(b)(1). - MAXIMIZATION OF COAL UTILIZATION AND CONSERVATION

81 It is the intent of the conferees in this subsection that coal will be mined in such a manner to assure maximum recovery of the resource during the course of any given mining operation. It is also their intent, that any surface mining operation be conducted so that it will not preclude future underground mining operations on that site.

81 SECTION 510(b)(5). - PERMIT APPROVAL AND DENIAL FOR MINING OPERATIONS ON ALLUVIAL VALLEY FLOORS

81 The House bill contained an outright ban of surface mining on alluvial valley floors west of the one hundredth meridian west longitude. The Senate amendment specified that a permit or portion thereof should not be approved if the proposed mining operation would have a substantial adverse effect on crop

lands or hay lands overlying alluvial valley floors where such crop lands or hay lands are significant to ranching and farming operations.

81 The conferees resolved these differences in virtually the same way as resolved in S. 425. The Conference Report stipulates that part or all of the mining operation is to be denied if it would have a substantial adverse effect on alluvial valley floors where farming can be practiced in the form of irrigated or naturally subirrigated hay meadows or other crop lands where such alluvial valley floors are significant to the practice of farming or ranching operations. The resolution also stipulated that this provision covered potential farming or ranching operations if those operations were significant and economically feasible. Undeveloped range lands are excluded in each instance.

82 There has been considerable discussion on the potential geographical extent of this provision. For example, estimates have ranged up to nearly 50 percent, of the land over the strippable coal in the Powder River Basin being included under this provision. The conferees strongly disagree with such interpretations nothing that specific investigations of representative portions of the Powder River Basin in the Gillette area, indicate that only 5 percent or so of the lands containing strippable coal deposits appeared to be alluvial valley floors. It should also be noted that the Department of the Interior advised the conferees that 97 percent of the agricultural land in the Powder River Basin is undeveloped range land, and therefore excluded from the application of this provision.

82 While both of these estimates are based on sample data, it is recognized that the amount of land affected in an area might well be higher and the total proportion of land affected in the entire Powder River Basin may also be higher. However, this data strongly suggests that the estimates of large scale geographic impacts of this provision are erroneous, not only in the Powder River Basin but also in other pertinent areas west of the 100th meridian.

82 SECTION 515(b) (9). - FILLING AUGER HOLES

82 This subsection has been misconstrued by some to mean that the entire length of an auger hole must be backfilled to satisfy this requirement. This is clearly not the intent of the conferees. It is intended only that auger holes be sealed, as tunnels and entryways must be sealed, to prevent drainage and protect public health and safety.

82 SECTION 515(b) (10) (F). - PRESERVING HYDROLOGY OF ALLUVIAL VALLEY FLOORS

82 The House bill specified that hydrologic integrity of alluvial valley floors must be preserved throughout the mining and reclamation operation.

82 The Senate amendment specified that it was necessary to do so to the maximum extent possible using the best available technology.

82 The conferees agreed that the essential hydrologic functions of alluvial valley floors in the arid and semi-arid areas of the country must be preserved throughout the mining and reclamation process.

82 The conferees adopted this stringent standard because ranching and farming operations must have bottom lands where hay or crops can be grown. Because of the low annual precipitation in the West dependable area for hay production are only those alluvial valley floors that can be irrigated by flood water spreading, diversion from stream flow, or by natural subirrigation. Some of the characteristics of alluvial valley floors which are essential for agricultural uses include: (1) sufficient runoff to allow for flood water irrigation each year; (2) development of flood plain and low terraces where water can be spread easily without significant mechanical alteration of the surface; and (3) shallow ground water where subirrigation is used, and therefore requires a minimum of valley floor dissection so that ground water is not drained.

83 The conferees used the term "essential hydrologic functions" to assure that these functions would be preserved while providing the opportunity to the mining industry to mine if they can reconstitute in the reclamation process these critical areas. The areas involved are those limited sites where natural sub-irrigation occurs above strippable coal and where sufficient water is available for flood irrigation and diversion from streams.

83 The essential hydrologic functions are the inherent properties of alluvial valley floors controlling the availability of water under a wide range of natural conditions. Such properties include for instance: interaction between ground and surface water; varying degrees of permeability throughout the deposit; infiltration rates; flow direction and gradients; capability of accumulating, holding and releasing water through drought and seasonal cycles; stability with respect to storm or flood runoff conditions; and maintaining quality of water available to the agricultural uses.

83 Alluvial valley floors do not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

83 SECTION 515(b) (13). - MINE WASTE DISPOSAL

83 In order to assure that mine waste impoundments used for the disposal of

liquid or solid waste material from coal mines are constructed or have been constructed so as to safeguard the health and welfare of downstream populations, the conferees adopted new language giving to the Army Corps of Engineers a role in determining the standards for construction, modification and abandonment of these impoundments.

83 Authority for the issuance of regulations and inspections of impoundments rests with the Secretary of Interior; however, such regulations should be developed by the Chief of Engineers. It is the intent of the conferees that the safety, engineering and design standards of the Corps of Engineers will apply, through the rules and regulations of the Secretary, to such structures and waste disposal banks which may serve as temporary or permanent impoundments. However, it is not the intent that the Chief of Engineers must therefore monitor or sign off on every such structure. That duty belongs to the Secretary of Interior, who may utilize appropriate skilled personnel from other Federal agencies as provided for in Title II. Concurrence of the Chief of Engineers is intended to also include his approval of the system of inspection and his participation in the training of inspectors to bring about competent and adequate enforcement of the standards.

83 All aspects of surveillance which do not require the actual physical inspection of individual sites would properly fall within the purview of the Chief of Engineers. Thus, the Corps' experience and expertise in the area of design, construction, maintenance, etc. which were utilized for carrying out the Congressionally authorized surveys of mine waste embankments in West Virginia following the disastrous failure of the mine waste impoundments on Buffalo Creek, is to be applied in order to prevent similar accidents in the future. In so doing, however, an unnecessary duplication of effort by two Federal agencies and the costly drain upon available manpower is to be avoided.

84 SECTION 515(d)(1). - PLACEMENT OF SPOIL ON THE DOWNSLOPE

84 This subsection allows spoil from the initial cut of a steep slope mining operation to be placed on a limited and specified area of the downslope, under certain restricted conditions. The provision applies only to new mines. It applies only to the first block or short linear cut necessary to join initial access to the coal (in most instances no more than one hundred feet). The permittee must demonstrate that the soil or spoil material will not slide, erode, etc. Permanent placement of such spoil under these limiting conditions

was permitted to balance the stated needs of the industry and environmental protection. The conferees are aware that initial cut spoil can be disposed of in many other ways including use in construction of haul roads or placed on less steep slope disposal areas identified in approved plan including previously mined lands not reclaimed to approximate original contour.

84 SECTION 519(c) (2). - BOND RELEASE FOR WATER POLLUTION CONTROL

84 After successful backfilling, regrading of the mined area the 60% of the operator's performance bond may be released. Release of a subsequent portion of the bond depends upon successful completion of revegetation and offsite siltation control. The adequacy of siltation control is to be gauged against natural levels of suspended solids as measured prior to mining, for it is the intent of the conferees that, after mining and reclamation there be no offsite degradation of water quality.

84 The Secretary will set the standards for measurement of suspended solid contributions. These must recognize the vast differences from region to region among major and small streams, year-round and intermittent streams, and natural variations in stream flow from year-to-year. The Secretary should also consider the availability or lack of availability of historic data.

84 SECTION 520(a). - CITIZEN SUITS

84 Subsection (a) assures that no operator can be sued under this section if he is operating in compliance with all regulations, orders, and an approved permit, even though the regulatory authority or the Secretary has failed to properly implement the Act. In such cases, the suit must be brought against the regulatory authority. The only exception to this provision occurs if the operator is itself a government agency or instrumentality, such as the Tennessee Valley Authority.

84 This subsection, however, in no way grants or is intended to grant immunity to an operator from any action brought by any individual under any existing statute or common law. All private rights under contract, tort, or property law are preserved. This intent is clearly reaffirmed and reiterated in subsection 520(e) of the conference report.

85 SECTION 522(b). - REVIEW OF FEDERAL LANDS

85 In agreeing that the Secretary may permit surface coal mining on Federal lands prior to completion of his mandatory review of the unsuitability of areas

for surface mining operations, the conferees intended that in addition to evaluating the permit application under the standards of the Act, the Secretary shall also make a determination if the area should be designated as unsuitable for surface mining and if the area is unsuitable, the Secretary should deny the permit.

85 SECTION 522(e). - DESIGNATION OF AREAS UNSUITABLE FOR MINING

85 This subsection prohibits surface coal mining on lands within the boundaries of national forests, subject to valid existing rights. It is not the intent, therefore, nor is it the effect of this provision to preclude surface coal mining on private inholdings within the national forests.

85 The language "subject to valid existing rights" in Section 522(e) is intended to make clear that the prohibition of strip mining on the national forests is subject to previous state court interpretation of valid existing rights. For example, in West Virginia's Monongahela National Forest, strip mining of privately owned coal underlying federally owned surface has been prohibited as a result of U.S. vs. Polino (133 F.S. 722, 1955). In this case the court held that "stripping was not authorized by mineral reservation in a deed executed before the practice was adopted in the county where the land lies, unless the contract expressly grants stripping rights by use of direct or clearly equivalent words. The party claiming such rights must show usage or custom at the time and place where the contract is to be executed and must show that such rights were contemplated by the parties." The phrase "subject to valid existing rights" is thus in no way intended to open up national forest lands to strip mining where previous legal precedents have prohibited stripping.

85 SECTION 529. - ANTHRACITE COAL MINES

85 This section authorizes the Secretary, at his discretion, to promulgate certain special regulations for anthracite coal mines already regulated by a state program with standards at least as stringent as those provided in this Act. This authorization, however, applies only to the environmental standards set forth in sections 515 and 516, and portions of the bonding and bond release provisions set forth in Sections 509 and 519. All other provisions of the Act and regulations issued pursuant thereto including the reclamation fee imposed by Title IV apply to anthracite mines in the same manner as for all other coal mines.

85 SECTION 701(9). - DEFINITION OF INDIAN LANDS

85 In defining Indian lands, the conferees were aware of certain

jurisdictional problems concerning the status of these lands. The conference report limits the definition to lands within the external boundaries of a Federal Indian reservation and to all other lands, including mineral interests, held in trust by the Federal government for any Indian tribe. This language is not intended to change any existing jurisdiction which the states may have over such lands.

86 SECTION 702(d). - ENVIRONMENTAL IMPACT STATEMENT

86 This Subsection provides that certain enumerated actions taken pursuant to the Act shall constitute major Federal actions significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (NEPA), i.e. that such actions will require the preparation of an Environmental Impact Statement.

86 The Section is not intended as a limitation or modification of NEPA but, to the contrary, the provision is viewed as being consistent with that Act. The Conferees believe that, properly interpreted and applied, the operation of NEPA will not result in any delay in the implementation of the various regulatory provisions of this environmental regulatory legislation including those actions

which must be accomplished in a relatively short time period such as the establishment of the Federal Enforcement Program within 135 days after enactment.

86 SECTION 716. - ALASKA COAL

86 This provision applies to those lands which, as a result of the Alaska Statehood Act or the Alaska Native Claims Settlement Act, were conveyed from Federal to state or private ownership. Its purpose is to assure that nothing in this Act - particularly the provisions of Section 714 - shall be construed as changing existing property rights with respect to lands so conveyed. The provision applies to any coal conveyed out of Federal ownership under these two laws regardless of its current ownership.

86 RELATIONSHIP OF H.R. 25 TO PRESIDENT FORD'S RECOMMENDED CHANGES

86 On February 6, President Ford transmitted to Congress the Administration's proposed surface coal mining bill. In his transmittal letter the President set out the 8 "critical" and 19 "important" differences between the Administration's proposal and the Conference Report on S. 425, 93d Congress.

86 H.R. 25 and the Senate amendment thereto each adopted some of the

President's recommendations. The conference committee considered the President's views very carefully during its deliberations. Eight changes recommended by the President are adopted in the conference report. The conference report also contains language designed to meet another six of the objections raised by the President.

86 The President's recommendations (in the order they appear in his February 6 letter) are set out below together with an indication of the relationship of the conference report to them.

87 CRITICAL CHANGES

87 1. Citizen suits. Administration Recommendation: "S. 425 would allow citizen suits against any person for a 'violation of the provisions of this Act'. * * * Citizen suits are retained in the Administration bill, but are modified * * * to provide for suits against (1) the regulatory agency to enforce the act, and (2) mine operators where violations of regulations or permits are alleged."

87 Conference Report - Section 520: Modifies language to meet Administration objection.

87 2. Stream siltation. Administration Recommendation: "S. 425 would prohibit increased stream siltation - a requirement which would be extremely difficult or impossible to meet and thus could preclude mining activities. In the Administration's bill, this prohibition is modified to require the maximum practicable limitation on siltation."

87 Conference Report - Section 515(b)(11)(B): Clarifies language so as to avoid interpretation feared by Administration.

87 3. Hydrologic disturbances. Administration Recommendation: "S. 425 would establish absolute requirements to preserve the hydrologic integrity of alluvial valley floors - and prevent offsite hydrologic disturbances. * * * In the Administration's bill, this provision is modified to require that any such disturbances be prevented to the maximum extent practicable so that there will be a balance between environmental protection and the need for coal production."

87 Conference Report - Section 515(b)(10)(F): Modifies language to avoid "absolute requirements" objected to by Administration.

87 4. Ambiguous terms. Administration Recommendation: "In the case of S. 425, there is great potential for court interpretations of ambiguous provisions

which could lead to unnecessary or unanticipated adverse production impact. The Administration's bill provides explicit authority for the Secretary to define ambiguous terms so as to clarify the regulatory process and minimize delays due to litigation."

87 Conference Report: Does not adopt Administration recommendation.

87 5. Abandoned land reclamation fund. Administration Recommendation: "S. 425 would establish a tax of 25~ per ton for underground mined coal and 35~ per ton for surface mined coal to create a fund for reclaiming previously mined lands that have been abandoned without being reclaimed, and for other purposes. * * * The Administration bill would set the tax at 10~ per ton for all coal * * * which would be ample."

87 "Under S. 425 funds accrued from the tax on coal could be used by the Federal government (1) for financing construction of roads, utilities, and public buildings on reclaimed mined lands, and (2) for distribution to States to finance roads, utilities and public buildings in any area where coal mining activity is expanding. * * * The Administration bill does not provide authority for funding facilities."

87 Conference Report - Section 401(d): Reduces reclamation fee on underground mined coal to 15~ per ton. Does not restrict the scope of the program.

88 6. Impoundments. Administration Recommendation: "S. 425 could prohibit or unduly restrict the use of most new or existing impoundments, even though constructed to adequate safety standards. In the Administration's bill, the provisions on location of impoundments have been modified to permit their use where safety standards are met.

88 Conference Report - Section 515(b)(13): Provides that Corps of Engineers will set location standards for impoundments, and thus eliminates language objected to by Administration.

88 7. National forests. Administration Recommendation: "S. 425 would prohibit mining in the national forests - a prohibition which is inconsistent with multiple use principles and which could unnecessarily lock up 7 billion tons of coal reserves. * * * In the Administration bill, this provision is modified to permit the Agriculture Secretary to waive the restriction in specific areas when multiple resource analysis indicates that such mining would be in the public interest."

88 Conference Report - Section 522(e)(2): Does not adopt Administration recommendations.

88 8. Special unemployment provisions. Administration Recommendation:
"The unemployment provision of S. 425 (1) would cause unfair discrimination among classes of unemployed persons, (2) would be difficult to administer, and (3) would set unacceptable precedents including unlimited benefit terms, and weak labor force attachment requirements. This provision of S. 425 is inconsistent with Public Law 93-567 and Public Law 93-572 which were signed into law on December 31, 1974, and which significantly broaden and lengthen general unemployment assistance. The Administration's bill does not include a special unemployment provision."

88 Conference Report: Adopts Administration recommendation.

88 "OTHER IMPORTANT CHANGES"

88 1. Antidegradation. Administration Recommendation: "S. 425 contains a provision which, if literally interpreted by the courts, could lead to a non-degradation standard similar to that experienced with the Clean Air Act.
*
* * Changes are included in the Administration bill to overcome this problem."

88 Conference Report - Section 102(a): Adopts Administration recommendation.

88 2. Reclamation fund. Administration Recommendation: "S. 425 would authorize the use of funds to assist private landowners in reclaiming their lands mined in past years. Such a program would result in windfall gains to the private landowners who would maintain title to their lands while having them reclaimed at Federal expense. The Administration bill deletes this provision."

88 Conference Report - Section 404: Does not adopt Administration recommendation.

88 3. Interim program timing. Administration Recommendation: "Under S. 425, mining operations could be forced to close down simply because the regulatory authority had not completed action on a mining permit, through no fault of the operator. The Administration bill modifies the timing requirements of the interim program to minimize unnecessary delays and production losses."

89 Conference Report - sections 504 and 506: Includes provisions designed to eliminate possibility of shutdown.

89 4. Federal Preemption Administration Recommendation: "The Federal interim program role provided in S. 425 could (1) lead to unnecessary Federal preemption, displacement or duplication of State regulatory activities, and (2) discourage States from assuming an active permanent regulatory role. * * *
In

the Administration bill, this requirement is revised to limit the Federal enforcement role during the interim program to situations where a violation creates an imminent danger to public health and safety or significant environmental harm."

89 Conference Report - Section 502: Does not adopt Administration recommendation.

89 5. Surface owner consent. Administration Recommendation: "The requirement in S. 425 for surface owner's consent would substantially modify existing law by transferring to the surface owner coal rights that presently reside with the Federal government. S. 425 would give the surface owner the right to "veto" the mining of Federally owned coal or possibly enable him to realize a substantial windfall. In addition, S. 425 leaves unclear the rights of prospectors under existing law. The Administration is opposed to any provision which could (1) result in a lock up of coal reserves through surface owner veto or (2) lead to windfalls. In the Administration's bill surface owner and prospector rights would continue as provided in existing law."

89 Conference Report - Section 714: Does not adopt Administration recommendation.

89 6. Federal lands. Administration Recommendation: "S. 425 would set an undesirable precedent by providing for State control over mining of Federally owned coal on Federal lands. In the Administration's bill, Federal regulations governing such activities would not be preempted by State regulations."

89 Conference Report - Section 523: Does not adopt Administration recommendation.

89 7. Research centers. Administration Recommendation: "S. 425 would provide additional funding authorization for mining research centers through a formula grant program for existing schools of mining. This provision establishes an unnecessary new spending program, duplicates existing authorities for conduct of research, and could fragment existing research efforts already supported by the Federal government. The provision is deleted in the Administration bill."

89 Conference Report - Title III: Does not adopt Administration recommendation.

89 8. Prohibition on mining in alluvial valley floors. Administration Recommendation: "S. 425 would extend the prohibition on surface mining involving alluvial valley floors to areas that have the potential for farming or ranching. This is an unnecessary prohibition which could close some existing mines and which would lock up significant coal reserves. In the Administration's bill reclamation of such areas would be required, making the prohibition unnecessary."

89 Conference Report - Section 510(b)(5): Modifies this provision to make it more precise.

90 9. Potential moratorium on issuing mining permits. Administration Recommendation: "S. 425 provides for (1) a ban on the mining of lands under study for designation as unsuitable for coal mining, and (2) an automatic ban whenever such a study is requested by anyone. The Administration's bill modifies these provisions to insure expeditious consideration of proposals for designating lands unsuitable for surface coal mining and to insure that the requirement for review of Federal lands will not trigger such a ban."

90 Conference Report - section 522: Modifies this provision to require expeditious administrative action on designations so as to avoid any moratorium.

90 10. Hydrologic data. Administration Recommendation: "Under S. 425, an applicant would have to provide hydrologic data even where the data are already available - a potentially serious and unnecessary workload for small miners. The Administration's bill authorizes the regulatory authority to waive the requirement, in whole or in part, when the data are already available."

90 Conference Report - Section 507(b)(11): Does not adopt Administration recommendation.

90 11. Variances, Administration Recommendations: "S. 425 would not give the regulatory authority adequate flexibility to grant variances from the lengthy and detailed performance specifications. The Administration bill would allow limited variances - with strict environmental safeguards - to achieve specific post-mining land uses and to accommodate equipment shortages during the interim program."

90 Conference Report - Section 515(c): Does not adopt Administration recommendation.

90 12. Permit fee. Administration Recommendation: "The requirement in S. 425 for payment of the mining fee before operations begin could impose a large 'front end' cost which could unnecessarily prevent some mine opening or force some operators out of business. In the Administration's bill, the regulatory authority would have the authority to extend the fee over several years."

90 Conference Report - Section 507(a): Adopts Administration recommendation.

90 13. Preferential contracting. Administration Recommendation: "S. 425 would require that special preference be given to reclamation contracts to operators who lose their jobs because of the bill. Such hiring should be based

solely on an operators reclamation capability. The provision does not appear in the Administration's bill."

90 Conference Report - Adopts Administration recommendation.

90 14. Any Class of buyer. Administration Recommendations: "S. 425 would require that lessees of Federal coal not refuse to sell coal to any class of buyer. This could interfere unnecessarily with both planned and existing coal mining operations, particularly in integrated facilities. This provision is not included in the Administration's bill."

90 Conference Report - Section 523(e): Modifies language to accommodate Administration concern.

90 15. Contract authority, Administration Recommendation: "S. 425 would provide contract authority rather than authorizing appropriations for Federal costs in administering the legislation. This is unnecessary and inconsistent with the thrust of the Congressional Budget Reform and Impoundment Control Act. In the Administration's bill, such costs would be financed through appropriations."

91 Conference Report - Section 712(a): Does not adopt Administration recommendation.

91 16. Indian lands, Administration Recommendation: "S. 425 could be construed to require the Secretary of the Interior to regulate coal mining on non-Federal Indian lands. In the Administration bill, the definition of Indian lands is modified to eliminate this possibility."

91 Conference Report - Section 701(9): Adopts Administration recommendation.

91 17. Interest charge. Administration Recommendations: "S. 425 would not provide a reasonable level of interest charged on unpaid penalties. The Administration's bill provides for an interest charge based on Treasury rates so as to assure a sufficient incentive for prompt payment of penalties."

91 Conference Report - Section 518(d): Adopts Administration recommendation.

91 18. Prohibition on mining within 500 feet of an active mine. "This prohibition in S. 425 would unnecessarily restrict recovery of substantial coal resources even when mining of the areas would be the best possible use of the areas involved. Under the Administration's bill, mining would be allowed in such areas as long as it can be done safely."

91 Conference Report - Section 515(b)(12): Does not adopt Administration recommendation.

91 19. Haul roads.Recommendation: "Requirements of S. 425 could preclude some mine operators from moving their coal to market by preventing the connection of haul roads to public roads. The Administration's bill would modify this provision."

91 Conference Report - Section 522(e)(4): Adopts Administration recommendation.

91 MORRIS K. UDALL, PATSY T. MINK, JOSEPH P. VIGORITO, JOHN MELCHER, TENO RONCALIO, JOHN F. SEIBERLING, M. ROBERT CARR, JOE SKUBITZ, PHILIP E. RUPPE, Managers on the Part of the House.

91 HENRY M. JACKSON, LEE METCALF, J. BENNETT JOHNSTON, Jr., FLOYD K. HASKELL, CLIFFORD P. HANSEN, Managers on the Part of the Senate.