

HEARING, APRIL 24, 1978
Legislative History
January 19-20, 1978 Hearing

SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT OF THE COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

JANUARY 19, 1978, JANUARY 20, 1978; Serial No. 95-27

1 THURSDAY, JANUARY 19, 1978

1 U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENERGY AND THE
ENVIRONMENT, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,

1 Washington, D.C.

1 The subcommittee met at 9:45 a.m., pursuant to notice, in room 1324
Longworth House Office Building, Hon. Morris K. Udall (chairman of the
subcommittee) presiding.

1 The CHAIRMAN. The subcommittee will be in session. We have a lot of
ground left to cover this morning and I apologize for not starting the
meeting on time. I was one of the many victims of the traffic conditions on
the freeway today. I apologize to those kept waiting.

1 I have an opening statement. I will try to summarize it quickly and
hope our witnesses will do likewise.

1 On August 3 of last year President Carter signed H.R. 2 which became
Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977.

1 After years of controversy and debate the Nation finally put a
Federal law on the books that would stop the worst abuses of coal strip
mining, and require the land to be restored to usable condition, and let us
get on with the job of getting the coal the country needs. The bill, as
enacted, included many compromises between environmental and industry
concerns as we in the Congress recognized the need to guarantee a sure supply
of coal.

1 But the controversy that surrounded the writing of the law has not
subsided.

1 The controversy has changed arenas, moving now to the new Office of
Surface Mining Reclamation and Enforcement in the Department of the Interior.
Specifically, interest is now focused on the recently promulgated regulations
addressing the act's interim period.

1 A number of charges have been made. It is asserted in some quarters
that the delays encountered in issuing the regulations, in the appointment of
the Director of the Enforcement Office, and in funding the program all
justify the delay of the act's implementation.

1 Others argue that the regulations have exceeded the scope of the act
or that the act itself is deficient in important respects. We have also
heard that the regulations regarding sedimentation ponds are unnecessarily
strict and will require construction of structures that are simply too big.

2 These and other serious charges have been made. I believe that it is the responsibility of this subcommittee to look into these assertions through the exercise of its oversight responsibility. I have therefore convened these hearings.

2 We have scheduled a number of witnesses today and tomorrow. Our first witness is a man intimately familiar with the development of the act and with the regulation of coal mining. He is the Director of the Office of Surface Mining Reclamation and Enforcement, Mr. Walter Heine.

2 After Mr. Heine's testimony, we will then turn to State regulatory agencies, coal mining associations, environmentalists, and other interested parties.

2 A number of other people asked to testify but we were unable to schedule them although we are happy to accept written statements from any legitimate source for the record. In exercising oversight jurisdiction the subcommittee faces the dilemma of carving out the time necessary to listen to all interested parties or limiting the witness list.

2 Believing that it is better to use the time we have available to receive a representative cross-section of opinion, I authorized a limited witness list for these hearings. I believe, however, that today and tomorrow we will be able to delve into the major issues.

2 The implementation of major national legislation is not an easy job. The Department of the Interior has performed a yeoman's effort under the implementation timetable endorsed by the Department last April, and approved by the Congress in the act.

2 Nevertheless, there may be problems with the regulations, and there have been problems of delay. Our task here is to determine just how serious those problems are and whether they present insurmountable hurdles to the effective implementation of the act.

2 Let me just say two other things. So often Congress passes a law through that is new and complex and then we charge off to put out the latest fire, attending to the next crisis. We never go back and rarely do we see how the old laws are working, whether we acted wisely or see if changes are necessary. I have determined to make this a different kind of proposition.

2 I hope we can have an annual hearing for the first few years of the law and focus on how well it works and what is wrong with it. I see that as the beginning of a continuing process.

2 Second, I wanted to explain the timebox which has been complicated by my delay. This afternoon this room, and the presence of most of us, will be needed for action on the important Alaska lands bill. So we simply must work this out by about 12:30 or around then. We have a long list. Members will undoubtedly have questions and comments. So I would like to urge all the witnesses this morning to see if they cannot summarize in 5 or 10 or 12 minutes at the most the guts of what you want to tell us, what is wrong with the act, what is right with it, recommendations you have to make, and to the extent that you can summarize and hit the high points. It would be most helpful to us.

2 With that, we will proceed to Mr. Walter Heine, the Director of the Office of Surface Mining. We have your statement. You may proceed.

2 [Prepared statement of Walter Heine may be found in the appendix.]

STATEMENT OF WALTER HEINE, DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY WILLIAM EICHBAUM, ASSOCIATE SOLICITOR, AND PAUL REEVES, DIRECTOR, OSM TASK FORCE

3 Mr. HEINE. Thank you, Mr. Udall and members of the committee.

3 On my left I have with me today Mr. William Eichbaum, who is the Associate Solicitor for the Department that is specifically assigned to the Office of Surface Mining, and on my right I have Mr. Paul Reeves, who is the task force leader specifically responsible for the early implementation of the act and the putting together of the regulations, of which he has been highly commended many times. He did an excellent job.

3 For the sake of brevity, I will summarize my statement, which will primarily express some of the accomplishments that we have achieved during the short time that the Office of Surface Mining has been functioning. Specifically we have issued the final regulations for: The initial regulatory program; the initial program on Indian lands; and the financial interest of regulatory agency employees. And we have proposed regulations pending for the initial enforcement on Federal lands.

3 We have conducted a large number of meetings and are continuing to do that throughout the country to try to express to mine operators the function of the act and our interpretation of the act and recommendations for the program.

3 We are proceeding, of course, with recruitment up to the point of actually hiring people because, as I will mention later, we do not have the

year's appropriations.

3 Most of the changes in the regulations for the initial program are discussed in the preamble of the revised regulations that were published in the Federal Register. Both the regulations and the preamble are in the briefing notebooks that we provided for the subcommittee and you have had this material since early this week. The comments were extensive and I would like to summarize those.

3 The regulations for the initial program were written and revised with a number of concepts in mind, including: Providing additional detail to the regional, State, and other geographic dimensions of the act; and further delineating the phasing in of environmental protection standards between the initial and permanent program as well as within the initial program. This phasing in pertains not only to the presence or absence of a standard but also to the scope or degree to which the standard is defined or enforced.

3 There are five principal areas on which we did receive quite a bit of public comment. First, with respect to sedimentation control the act specifies that additional suspended solids - sediment - are to be prevented, using best technology currently available, from entering streamflow or runoff outside permit areas and in no event should such additions exceed State or Federal water quality standards.

3 A number of different techniques are used for sediment control. The use of sedimentation ponds is a common control technique if designed, constructed, and operated properly, and represents one of the best ways of controlling sediment pollutants.

4 The proposed regulations required that ponds be designed to handle maximum flows from a 24-hour 25-year precipitation event with a 24-hour detention time. Criticism centered on the resulting large size of structure.

4 The revised regulations specify a design standard to handle a maximum flow from a 24-hour 10-year precipitation event with a 24-hour detention time. We reduced the proposed standard to a 10-year precipitation event. This reduced the potential size of these ponds substantially.

4 Pond size can be further reduced by application of other onsite sediment control practices. Excluded also is the requirement to treat water diverted around the operation. We estimate that this standard will achieve approximately 95 percent of the efficiency of sedimentation pond capabilities to reduce suspended solids.

4 Second, concerning blasting provisions, we made changes, all of which I will not go into, but primarily the area of preblast surveys. We emphasized more what we thought was the intent of the legislation, to give an opportunity for the others and citizen groups, who are concerned about blasting, a chance to get together with the mine operators and to discuss their concerns and to recognize each other's problems and primarily so citizens can understand how blasting is conducted and what is involved. Criticism centered on the approach taken to the technical specifications and the range of content of the preblast survey.

4 Third, the act requires for all new mining permits which include prime farmlands, the operator must show that he "has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland. * * * " He also has to meet the soil reconstruction standards.

4 Permits issued prior to date of enactment, or revisions or renewals thereof, are exempted from this particular test. This provision became effective upon the date of enactment, that was August 3.

4 The proposed regulations: One, included this provision in the initial program; two, set criteria for defining the identifying such lands; three, specified the soil reconstruction standards; and four, detailed the grandfather clause. Criticism challenged each of these points.

4 The final regulations included special provisions for prime farmland protection since the act mandates their immediate applicability.

4 Additional guidance was provided concerning the scope of the grandfather clause so that this provision includes expansions of existing operations that one, were in the original permit area or in an approved mining plan prior to August 3, 1977, or two, are contiguous and under existing State regulations or practice would have normally been considered as a renewal or revision of a previously approved plan. The revised soil reconstruction standards include an opportunity for alternative reclamation approaches if the resulting land productivity meets the standard specified in the act.

4 Fourth, there was concern about underground mines and since our interpretation of the act is that the impact included in the definition of surface mining operations does include certain aspects of underground mining, we made significant revisions in that portion of the initial regulations and set them forth in a separate section for underground mining.

5 This was emphasized by a number of people and I certainly agree that there are peculiarities to underground mining that should be addressed

separately. So we set forth a separate section on underground mining.

5 Finally, there was also some concern about preexisting structures and for reasons of brevity I will not proceed through that.

5 You suggested that we talk briefly about our problems with implementation of the act. Secretary Andrus sent you, Mr. Chairman, a letter last week detailing the problems which are rapidly developing due to the lack of direct appropriations for this program. The full letter is provided here for the record. I would like to emphasize two points stressed in the letter, and I quote:

5 Of great concern to me are indications that lack of funding and enforcement capability is encouraging some segments of the coal mining industry to take a wait-and-see attitude toward the reclamation regulations. I am also concerned over the loss of momentum in the States, both with respect to State enforcement of the interim Federal regulations and the development of State programs for permanent State assumption of enforcement responsibility. Without the State grant funds included in the appropriations request, States are holding off on hiring the additional staff they need.

5 [The letter referred to may be found in the appendix as attachment to Mr. Heine's prepared statement.]

5 Mr. HEINE. In my opinion, if this condition continues for a substantial period of time, it will be impossible to meet the entire implementation schedule included in the act.

5 Further, some individuals have already proposed that the act be amended to extend the statutory dates for compliance for a 60- to 90-day period to accommodate for existing and perceived delays. We do not favor this approach for several reasons:

5 One. During the period of proposing and enacting such a short-term extension, additional confusion and uncertainty will be created until all proposals are settled. This would become self-defeating if the process of change involved as much time as the extension sought.

5 Two. Such an approach assumes an inflexibility of implementation and enforcement actions which we do not believe are inherent in the act.

5 For instance, the December 16, 1977, date of applicability of the initial environmental standards for mines operating on Indian lands has passed. Specific regulations for such mines were published on that date. Since then, the response in the industry has been mixed. Some operators have called for the formal extension of the statutory dates, other operators have undertaken on a

voluntary basis the preparation of a "compliance plan" detailing the actions and time required to bring their mines into compliance with the regulations.

5 We have been told that these plans will be completed shortly and sent to us for review. This approach reflects the basic obligation of operators to comply with the act. The approach also provides a working basis to move forward in the implementation of this act. As we have previously discussed, the regulations provide for preparation of compliance plans in limited circumstances for nonconforming structures.

6 This example points out that sufficient flexibility is inherent in the act to allow both operators and Government to diligently pursue implementation. We are prepared to take immediate enforcement action where required, for example, in those instances of "imminent danger to health and safety of public" or "significant, imminent harm to land, air, and general environment." I believe that this combination of the phased and diligent approach to complying with all standards and the capability to immediately take required enforcement action is a fair but tough approach.

6 Such an approach requires sustained cooperation among all parties affected: Citizens, operators, State, and Federal officials. It also requires continued support from Congress and I look forward to working with you to keep that support. Thank you.

6 That concludes my prepared statement. I would be happy to answer any questions and if some of them get into both legal areas and some into the historic areas of the promulgation of the regulations, Mr. Reeves would be available to assist on some of those types of questions, and Mr. Eichbaum.

6 The CHAIRMAN. My questions are going to be very brief and my comments very brief, largely for one reason. My colleagues should understand that we have structured the format of these hearings so that today we hear from Mr. Heine at the beginning and then we hear from others. At the close of the hearing tomorrow we will then recall them to the stand to respond to charges, accusations, and perhaps some compliments that may have been thrown their way.

6 So it may well be that the members will want to save questions for you until they have heard from your critics. You will have representatives here that will attend as much as possible?

6 Mr. HEINE. Yes, throughout the hearing.

6 The CHAIRMAN. I recognize that you have been an innocent bystander who got caught in the middle of those trying to shoot down the B-1 bomber. I will try to talk to Chairman Mahon of the Appropriations Committee to see if we can get this changed. We recognize we have put you in a difficult position. We tell you to do certain things by a certain date. We give you deadlines and then we hold the money back that you need and the States need. We are sympathetic to this and we recognize that difficulty and are going to do what we can.

6 I hope with your great record in Pennsylvania - I think everyone knows that many times we have pointed to Pennsylvania not only as an example of a good law but as an example of commonsense administration. You had a very admirable record according to most people in the industry and I think they would agree that a good law can be administered fairly.

6 Now you will be tested on a national basis to see if you can do the same thing in that arena. I wish you well, and want to assure you of all the support and cooperation that I can give you.

6 I would only raise one other question. It is not a major one, but there has been a great outcry in this country against lawyers and over technical regulations and, particularly against language that is not concise, plain, and simple. I offered an amendment at the time of the writing of the bill which required that regulations be written in concise, plain, and understandable language. I must say, reading the regulations in the Federal Register, I think your performance is a notch or two above the kind of thing we typically get out of Federal regulators, but there is clearly room for improvement.

7 I just give you one example. Regulations No. 62688, which deals with definitions, you define ditches - and you are concerned about structures that drain roads not being blocked. The language outlines ditches as culverts, drains, drainage racks, debris basins, and other structures, serving to drain access, should not be constructed in any manner that impedes drainage or adversely blocks the intended purpose.

7 It seems to me you could have said the same thing, structures which drain roads should not be blocked to save all the excess verbiage. I asked my staff to look up some other horrible examples. There is one in No. 6278, defining roads, meaning access, and all roads constructed, reconstructed for use in surface coal mining and reclamation operations including use by coal haul vehicles leaving the transfer process or storage area, when I thought roads means access haul roads used in surface coal mining operations.

7 As you draft and redraft these things, I hope you will keep in mind the admonition that there is a simple, plain way of saying things and that we should not be tempted into the way of trying to use five four-syllable words when one- or two-syllable words will perform the same function.

7 Mr. SEIBERLING. I would like to be recognized for a minute.

7 The CHAIRMAN. The gentleman is recognized.

7 I want to say, before Mr. Seiberling starts, that he is, probably more than any other member of the committee over the years, the member that has played a hand in putting this bill together. If anyone has a right to comment, or has a right to criticize it, it is the gentleman from Ohio.

7 Mr. SEIBERLING. I appreciate that and the tremendous drive that you put into this without which we would not have this bill or we would not be sitting here today and discussing implementation.

7 I must say that I have spent an awful lot of time in trying to shoot down the colossal boondoggle of the B-1 bomber, and I never thought this would end up cutting you out of the picture. But it proves that everything is interrelated.

7 I think the administration is to be commended for its wisdom and astuteness in selecting for the administrator of this program the one person in this country who has more qualifications and more experience and more levelheadedness than any other in this field in administering such a program.

7 He obviously not only knows the problems involved in strip mining regulations, reclamation, but he knows what the States need to do and he knows what they are up against. He knows what the industry is up against, because he administered the pioneering program in this country in the State of Pennsylvania. So I think we are extremely fortunate in having someone like Walter Heine as the administrator.

7 Mr. Heine, I just have one question here relating to your comment about the retaining ponds, sedimentation ponds. You mentioned that you have excluded the requirement of treating the water diverted around the operation, providing that the quality is not diminished by diversion. Of course, the quality may not be diminished, but the quality may not be very good when it gets to the diversion, and I wonder if you would elaborate on that. How do you equate that

with the requirement that there be no increase in the suspended solids and so forth of the act?

8 Mr. HEINE. The nondisturbed area above a mine and the whole watershed above a mining operation will, obviously, when it rains on that area, yield runoff which may be of good quality. It may contain a certain level of suspended solids and as this water approaches a mining operation, it is the responsibility of that operator, therefore, to move that water through his operation or around his operation so it does not become contaminated and that is how our regulations read.

8 He cannot add in any way to the contamination of that water. If that water should be of such poor quality initially because of offsite pollution from other mines or from whatever source, then it was judged improper and probably illegal to require that miner to upgrade that water which he did not pollute by putting it through such sediment ponds or whatever is necessary to upgrade the quality of that water.

8 He is simply processing it around this operation.

8 Mr. SEIBERLING. It is not in the law, but would there be any point in recommending a change in the law or regulations to provide some kind of an incentive for the operator, even though he has no responsibility for the water that does not originate - or conditions that do not originate in his operation, upgrading them and running them through his sedimentation system? For example, we may have a situation where you have an abandoned mine above an acting one. Of course, we have an abandoned mine reclamation fund, and I presume you will put that to work. That was to be my next question to you.

8 Is there some way of providing an incentive perhaps through the abandoned mine reclamation fund, to get an operator to install additional facilities to improve the quality of water? The provisions of the act, as I understand them, permit the hiring of outside people to do the reclamation work and I do not know why that could not be a coal mine operator himself if he is reclaiming land other than that which he is operating at the time.

8 Mr. HEINE. Yes; Mr. Seiberling, an operator could become part of an overall reclamation scheme on a watershed where we have an abandoned mine. He has his equipment there. It may be quite easy for him to move in an abandoned mine and undertake some reclamation. Of course, all of this will be done on a bidding basis.

8 If he is right there and if it is prudent for him to get his equipment

moved during slow periods by undertaking such reclamation this might be the cheapest way for the Government to have it done. So any way that we can encourage an operator to reclaim old lands or to treat existing pollutant sources, we certainly will do that.

8 Mr. SEIBERLING. My other question was, what is the status of the abandoned mine reclamation fund, and have you actually gotten to the point yet where you have started using any of this money? I realize that appropriations are required there also, but I just wondered what the status is.

8 Mr. HEINE. You are right. There is a requirement for an appropriation. Of course, we are waiting for that. Up to this point we have asked the States to submit to us their identification of critical areas that should be taken care of with this money, right from the beginning.

9 For instance, mine fires, anything where there is an imminent hazard to the health and safety of the public. The States are identifying those and we can, after getting our appropriations, plan to go into those areas, and undertake some of that kind of reclamation.

9 Mr. SEIBERLING. How does the \$2 6,640,000 which is in the budget for fiscal 1978 compare with the anticipated receipts?

9 Mr. HEINE. I am advised that it is about one-fourth of the anticipated receipts for 1 year. As you know, first payments are coming in and are actually due the end of this month for the last quarter of last year.

9 Mr. SEIBERLING. Is it only one quarter, because that is all you felt you could use in the initial phase?

9 Mr. HEINE. That is initially true. We have to phase into this.

9 Mr. SEIBERLING. Are you in a position to disclose at this point what the request is for fiscal 1979?

9 Mr. HEINE. I do not have the information immediately with me, but I know we do intend to greatly expand the program. We hope by that time it will be in full gear, or at least some gear.

9 Mr. SEIBERLING. Thank you. I consider myself the father of this concept, so I have a parental interest in its progress.

9 Mr. VENTO. Mr. Chairman, Mr. Heine, I was reading and listening to your statement. The rules and regulations issued on December 13 are being very much contested, and of course, obviously, you do have some funding problems before you can put into effect the other provisions of the act.

9 I suppose that some of the criticism comes about because these may only be interim regulations that are being contested as if they were being enacted if they were final. What will happen? What is the time-frame now with regard to the court case that was entered on the same day? What types of problems does that present to the implementation of this act?

9 Mr. HEINE. We are going to proceed at the same rate regardless of whether or not that case is in court. If you want to know specifics of the status of that case, Mr. Eichbaum could give you those details.

9 Mr. VENTO. I do not want to get into those details. I was just wondering what obstacles were present in terms of the implementation, other than the problem of the appropriations. What about that as being a problem in terms of what you are trying to accomplish?

9 Mr. HEINE. We do not envision that there will be any holdup in our implementation of the act, unless we get an adverse court decision rapidly out of this. But we are proceeding with our normal implementation as best we can without the budget, regardless of that court case.

9 Mr. VENTO. Do you see some operators who are waiting to follow the provisions of the rules and regulations on the outcome of that case? Are you finding compliance generally good in any type of monitoring system that you have to date, inadequate as it may be?

9 Mr. HEINE. We have spoken before about 2,500 operators throughout the country in the last month during a number of seminars. I have also spoken privately to a large number of operators plus their association representatives. As far as I can determine, most operators are planning to move ahead with complying with this act. They are concerned about meeting some of the deadlines because of the strike and the weather and other reasons. But I have run into very few that simply said we are not going to do anything. Most are proceeding, and that is our concern, that we want to keep that kind of momentum going.

10 Mr. RAHALL. Most of my questions will come following the rest of the testimony that is to occur before the oversight hearings. I want to first commend you, Mr. Chairman, for having these hearings. I think it reflects the concern of the Congress that the law we passed is being administered fairly to all parties and that the intent of the law as the Congress meant it is carried out. I am glad to see these hearings.

10 I appreciate your testimony, Mr. Heine. I have not personally met you before today, but I do know you have been around the country. You have been in my part of southern West Virginia, and you have heard some of the problems with the regulations as they are written. I am also concerned about the lack of appropriations, the problem that has been discussed.

10 You mentioned in your testimony that you are prepared to take immediate enforcement action where required in those cases where imminent danger of health and safety of the public is occurring. I am wondering how you are prepared to do this without the adequate appropriation process? Do you have personnel on hand, and are they being paid so that you can undertake this?

10 Mr. HEINE. Yes; we have some personnel on hand. The Associate Solicitor's Office, Mr. Eichbaum's office, does not have 13 attorneys on board. We do have limited capability, but some capability in technical areas. That is comprised primarily of the task force that was assembled by the Secretary and has been functioning for the last 9 or 10 months.

10 So on a case-by-case basis where there are imminent danger situations brought to our attention we could, first of all, try to work through the States, and I certainly feel and know that the States do not want imminent danger situations to exist in their States. They are going to act forthrightly on those. But in those few cases where perhaps we feel a little more movement would be necessary, we will try to prod the States to eliminate those.

10 Mr. RAHALL. How many such cases have been brought to your attention? Would you say a great many, or very few?

10 Mr. HEINE. None that I can really cite to you. Perhaps some of the staff can think of some. But I cannot really think of any.

10 The CHAIRMAN. All right, Walter. I guess that will do it for now. If you want to take seats up here so you can look your critics in the eye, we have a few chairs on the side.

10 Let me also say that the taxpayers here that are standing, these chairs on the lower level may be filled. If members of the press or witnesses waiting to testify would like to come forward and take any of these chairs in the lower level or any of the first five or six on this side, we will be glad to accommodate you.

10 We are now going to have a panel from the National Governors' Association. We have Mr. James E. Pitsenbarger, State of West Virginia; Mr. C. C. McCall, State of Colorado; Mr. Steve Freudenthal, State of Wyoming; Mr. Robert Bell, State of Kentucky; Mr. Anthony Abar, State of Maryland; and Mr. Kovacic, State of Missouri.

11 Would you gentlemen come forward? Mr. Pitsenbarger, I understand you are going to quarterback or MC this presentation for the Governors' Association. It is apparent that you face a most formidable obstacle in putting this law into effect. I want to hear as quickly as we can your problems, hopes, frustrations, and complaints.

11 If you proceed, we will be glad to hear you.

11 [The prepared statements of James E. Pitsenbarger, Steve Freudenthal, William Kovacic, and Anthony Abar may be found in the appendix.]

A PANEL REPRESENTING THE NATIONAL GOVERNORS' ASSOCIATION, CONSISTING OF: JAMES E. PITSENBARGER, RECLAMATION DIRECTOR, WEST VIRGINIA; C. C. MCCALL, RECLAMATION DIRECTOR, COLORADO; STEVE FREUDENTHAL, STATE PLANNING COORDINATOR, RECLAMATION DIVISION, WYOMING; WILLIAM KOVACIC, RECLAMATION SPECIALIST, MISSOURI; ROBERT BELL, SECRETARY, DEPARTMENT OF NATURAL RESOURCES, KENTUCKY; AND ANTHONY ABAR, RECLAMATION, MARYLAND

TEXT: 11 Mr. PITSENBARGER. First I would like to read a statement on behalf of the National Governors' Conference. I greatly appreciate the opportunity to present testimony this morning on behalf of Gov. Jay Rockefeller, of West Virginia, chairman of the National Governors' Association Subcommittee on Coal, and on behalf of Gov. Julian Carroll, of Kentucky, chairman of the NGA Committee on Natural Resources and Environmental Management.

11 Unfortunately, both Governor Rockefeller and Governor Carroll are unable to appear this morning because of the press of their State legislative sessions. After conferring with your committee staff, the NGA agreed to present this panel of State reclamation officials representative of interested States in the different coal mining regions of the Nation.

11 Since it was not possible to convene our NGA task force on surface mining in the short period after we received the invitation to testify, I will limit my comments to three general observations for the States as a whole. Then

each of us will present our individual State's specific views on implementation of the new surface mining law.

11 First, the States want to express our full support for Walter Heine, the Director of the Office of Surface Mining, and his staff. They have done a creditable job in trying to get the program moving in the face of major financial and staffing shortages. We share his deep concern over the need to move as quickly as possible to fully fund OSM's operations. The lack of funds and staffing has made it impossible for OSM to provide a meaningful presence at the regional office level and will greatly limit OSM's ability to carry out its responsibilities once new permitting begins. Moreover, many States are desperately in need of grant money authorized by the act to develop our programs and expand our staffs to meet the new responsibilities of the act.

12 Second, we particularly appreciate the openness with which first the Department of the Interior's task force and now the OSM have approached the regulation drafting process. Many of our NGA recommendations were adopted and we feel that generally the regulations for the interim program were improved significantly over the proposed rules published in September. However, some problems peculiar to certain State do remain and will be addressed by individual States on this panel.

12 Third, we would like to point out that a number of the States are faced with the need to enact legislation giving their reclamation divisions the authority to implement the interim standards. All of the States facing this need are not moving to get their legislatures to pass such legislation during the current session. This is a problem which apparently was unforeseen at the time of passage of the Federal surface mining bill.

12 We are hopeful that this will not unduly slow down implementation of the interim standards, but wanted to make this committee aware of the problem. This concludes my general presentation for NGA. I will not move to the State of West Virginia's individual views.

12 My name is James E. Pitsenbarger, chief of the division of reclamation, department of natural resources from the State of West Virginia. Having been through several amendments and regulation changes concerning surface mining laws in our State, I wish to compliment the Department of the Interior on the promulgation of the rules and regulations as a job well done under tight time constraints. It is a difficult task.

12 At the beginning, I wish to make it very plain that the State of West

Virginia wishes to be the regulatory authority for surface mining in our State.

We have a lot of experience. We have had a law since 1939. Just until a few years back there was no reclamation law connected with it.

12 In 1967 there came a change. In 1971 there were other changes, and since that time there have been more changes. We feel today that we have one of the best laws in the United States, as good a reclamation law as anyone can have that will not work to have problems. We can work things out without building some of the ponds that we will discuss later.

12 Section 710.11(d) (2) regarding applicability. This section of the rules and regulations places a hardship on the regulatory authority in our State. Our operators cannot begin to construct or reconstruct a sediment basin by May 4, 1978, because of weather conditions. If we can conform, we are looking at the snow in most of the parts of our State in that part of the year, and the heavy rain and everyone knows that when you are working on a foundation of a house you do not work during the rainy season or when the snow is 3 feet deep.

12 Section 715.15(b), disposal of soil in valley or head of hollow. The first sentence in this section states no waste material must be disposed of in valley or head-of-hollow fills. Where can we put it? It is either the mountaintop or the valleys. With proper engineering, proper placement, good drainage control, the waste can be placed in the valleys and kept to an area that we can use later on and so forth, rather than quit mining.

13 We feel this paragraph should be changed.

13 Section 715.15(b) (6). We in West Virginia have pioneered the area that is recognized in several parts of the country, even so far as to say that the people of Russia enjoyed their visit with us so much that they took our specifications back with them. We are faced with the problem of drainage control in our valleys, which we disagree with.

13 We have tried this type of valley fill in the regulations and we have had problems. The drainage criteria under the valley fields we agree with. There is no problem there. The drains you cannot have under the valley fields you cannot control. But when we try to divert we end up with ditches filling up so that sliding off the water goes back to where Mother Nature put it to start with. We have no control. We have erosion.

13 We build a chimney or a rock drain and all the water is directed to drain into the natural drainway, and from this - we have been building this since 1972, early 1973, and we have had no failures. We have started these

around the whole State. We would be glad to show them to you.

13 Mr. SEIBERLING. Are we questioning the witnesses individually or as a whole?

13 The CHAIRMAN. I would prefer to have the whole panel testify first. The staff advised me that we can only allocate 2 or 3 minutes to each State.

13 Mr. SEIBERLING. How about a clarifying question?

13 The CHAIRMAN. Go ahead.

13 Mr. SEIBERLING. Are your objections addressed to the proposed regulations or to the act itself?

13 Mr. PITSENBARGER. Regulations, sir.

13 Mr. SEIBERLING. Thank you.

13 Mr. PITSENBARGER. Section (8) of 715.15 indicates that there will be 50 feet of outslope on the valley field. I understand from OSM that this is a mistake in typing up the regulations. We hope that can be changed. If it is not changed, then we will lose several thousand yards in our valley fields and we will end up building a lot of valley fields instead of just one in order to get our yardage in these fields. I understand that will be taken care of.

13 Last and not least, the sedimentation control measures. The Federal bill with few modifications follows along the same lines as the State bill. In 1971 an amendment was passed which said a drainage system must be any place maintained - where a drain system must be installed prior to mining and thereafter maintained, which is similar to what Federal law says.

13 We went to the SCS for assessment. Our Department of Natural Resources said, OK, we have a drain system. They got together all the big heads and they came up with one type of drain system which was an impoundment. So that is what our first drain system was. Just a few days down the road we found that there might be other ways to control sediment.

13 Sure enough, other ways have been developed since 1971. Our first original book had 65 pages in it. It was a little handbook. You could carry it in your back pocket. It is now a full-sized book, 168 pages, and those additional pages are nothing more than the new ways that we have found to control sediment.

14 Now, along come the Federal regulations saying, you have one way to do it and that is it. That is, build a big impoundment.

14 I have a couple of things that I could show you.

14 The CHAIRMAN. Go ahead, but make it brief.

14 Mr. PITSENBARGER. The sediment control in our State is in a sharp, narrow valley. We are up high mining. We built our sediment control and we built it to the criteria that was set by the U.S. Forest Service. The Bureau indicates the size which we have in our present law in existence right now. This indicates what we are to have - what we would have to build in order to comply with Federal regulations on May 4. It went from 19.5 up to 80 feet high.

14 In our State an impoundment is a scary feature. Since 1972 someone - they have problems. We feel this will create quite a hardship. This particular one is sitting about within 400 feet of the skirts of a little town. Theoretically, this pond could wipe out that little town because we have in that pond 18,259,759 gallons of water. Our thought to the regulations people is, how would they like to be living in a house and have to look up for days, for years, and look at this impoundment hanging over their heads?

14 We feel it is beyond the call of duty to come up with that. They have told us they may or may not reach the 30 parts per million.

14 The CHAIRMAN. We have to talk to Mr. Heine tomorrow about this question. He cannot see this chart well. Will you pass that up while we are listening? There may be some valid point here.

14 Mr. PITSENBARGER. I will finish with our ultimate feeling, which is to mine our natural resources and leave the environment in as good or better condition as before mining. This area happens to be one area that has been mined. I would like to pass this up to you. That pond went to 60 feet from 18.5 feet. It is one area that Congress has looked at and said, this is the way it should be done.

14 Our next representative on the panel will be Mr. C. C. McCall, from Colorado.

14 Mr. McCALL. I appreciate the opportunity to be here and work with the National Governors' Conference. I just learned about this particular meeting about a week ago, and was really happy that I was able to arrange my schedule to be here.

14 I do not have any real specific comments in regard to the statutes and regulations. However, I would like to relate some general observations that I

would have.

14 Having served in my State's reclamation program, the Montana reclamation program, and now as the director of the Division of Reclamation of Colorado, I basically agree with the Federal law, and have mixed emotions. But basically I can say that I am glad there is a Federal law.

14 However, I would echo Pete's comment that I think States should carry out the administration and upgrade their laws so we can all agree. It is certainly Colorado's feeling that we want to do that.

14 I would like to tell the committee that many States are faced with every other year legislative meetings. We are in Colorado having our regular session next year. I do not want you to think we are dragging our feet, but we anticipate bringing our law up to equal or greater status at that particular time.

15 I would also like to point out that I realize there have been difficulties on the Federal scene with OSM's program having its budget not funded at this particular time, and that has not been staffed up. It has posed somewhat of an imposition on the various States in trying to upgrade their program either this year or now working with the interim program, because there are really very few people to ask when you call Washington about specific problems. They do the best they can, and they have treated us with tact and diplomacy and courtesy.

15 But it has been a detriment to the State in trying to work any Federal program, the lack of people. When they finally get their funds it will be 6 to 8 weeks before they can get staffed up. So that is still quite a while. So even if funding were to occur by the end of the month, it will be almost April before we can get definitive answers to our questions.

15 From a State standpoint, we have all been going through passing State laws and State regulations and we have sat where Walter sits in defending our own statutes and regulations. Most assuredly, there are always concerns that are brought up and exceptions to the law and general criticism. Generally, however, for the most part, we find, or I have found in my experience, that you have to give a law a while, a year or two, to try it on for size. The same with regulations.

15 I would also like to point out to the committee, I firmly believe that whether it is going to work depends on the interpretation and close coordination

between the two parties that are trying to work with it.

15 I would hope that Walter and his staff, and I feel sure he will, I have known him for quite some time, will work closely with the States and because the OSM is off to a slow start they will recognize that has impeded the States' efforts to try to keep up. I hope they will recognize this.

15 Interpretation is the key to it. Any State law, I might say, any State law, Colorado, West Virginia, Kentucky, if it were interpreted strictly could put any operator out of business. I think that is a fact. I would certainly stand behind that particular statement. I really believe that is all I have to say.

15 I will be glad to answer any questions. I sure appreciate the opportunity to be here, commend you for all this oversight hearing, and we will certainly work with you in Colorado to make this thing work.

15 The CHAIRMAN. Thank you.

15 Mr. PITSENBARGER. Our next speaker will be Steve Freudenthal from the State of Wyoming.

15 Mr. FREUDENTHAL. I am Steve Freudenthal, Wyoming State Planning Coordinator, testifying today on behalf of Governor Herschler. We also appreciate the opportunity to testify here.

15 The comments offered today on behalf of the State of Wyoming will not address the technical portions of the interim regulations. They address a question which is as equally, if no more, important, from the viewpoint of the Western States, and that is the question of the implementation of the cooperative agreements on Federal land.

15 As members of this committee are well aware, the Federal strip mining bill provides for continuation of existing cooperative agreements pending the development of a State regulatory program. Upon the development of a State regulatory program and further adjustment of the cooperative agreement, a State containing Federal lands supposedly would have full authority to regulate the operation and reclamation of all coal mines within its border, subject to review and monitoring by the Office of Surface Mine Reclamation and Enforcement under the Federal act.

16 If a State cannot exercise jurisdiction throughout the entire State, a State regulatory program is a fiction in the Western States. By nature of the

interspersed holdings of Federal land and Federal coal, a State regulatory program which does not operate on both Federal land and Federal coal, as well as State and private lands, is a phantom with neither sufficient breadth of coverage nor sufficient authority to effectively implement the Federal strip mining bill.

16 I will not go into the entire history of the cooperative agreements. The written statement does. This background information is to bring up the problem of development in Wyoming and other Western States that is being caused by a proposal of the U.S. Geological Survey to amend its 211 under which the cooperative agreements were developed.

16 These proposed amendments to these regulations are put forth in such a manner as to defeat or substantially diminish the ability of Western States to operate under cooperative agreements which will insure a full State regulatory program applicable to all coal which will State. Furthermore, the proposed regulations are designed to insure the continued existence of the U.S. Geological Survey as a massive bureaucracy which will duplicate in large part the operations of the Office of Surface Mine Reclamation Enforcement, another Federal agency within the Department of the Interior.

16 In the past, coal operators and environmental interest groups have frequently criticized the multiplicity of regulations and regulatory authorities applicable to Federal coal. Prior to the Federal strip mining bill, the U.S. Geological Survey, the Bureau of Land Management, and the appropriate State authority exercised varying degrees of jurisdiction. The cooperative agreements attempted to bring these separate entities together and provide for one coordinated mechanism under which a reclamation and mining plan would be developed and approved.

16 The U.S. Geological Survey, through its proposed rules, now attempts to compound the duplicity which previously existed by adding unauthorized definitions and requirements and attempting to stake out its bureaucratic territory in opposition to that which the Federal act confers upon the Office of Surface Mine Reclamation and Enforcement.

16 Generally speaking, the proposed rules would establish the USGS as a separate permitting authority with input from the Bureau of Land Management. The Federal act establishes the Office of Surface Mine Reclamation and Enforcement as the primary Federal authority.

16 The Federal act also establishes a State regulatory authority, if it meets the requirements of the Federal act, as the primary regulatory authority within the State subject to supervision and review by the Office of Surface Mine Reclamation and Enforcement. Rather than serving to minimize duality in administration and enforcement, the proposed regulations may effectively destroy

efficient operation of the Surface Mining Control and Reclamation Act of 1977 and preclude most Western States from operating State regulatory programs as intended by Congress.

17 The written statement goes into four specific technical problems of the act. I will not go into them at this point.

17 Finally, if these regulations are adopted, they should clearly state, in each section, that all requirements can and will be delegated to qualified States by cooperative agreements. Upon first reading, especially by dutiful U.S. Geological Survey employees in the field, it appears that those requirements, that is Federal administrative penalties, plans, inspections, apply irrespective of cooperative agreements.

17 The experience of Wyoming is that Federal employees are thoroughly versed in the requirements of Federal regulations, but unaware or uninterested in the fact that the cooperative agreement made these requirements a State concern.

17 The statute has created an overly cumbersome and complex State delegation process. Numerous ambiguities exist which allow the Department of the Interior to either frustrate or encourage State implementation. The first cut of the Federal lands program - the proposed section 211 regulations - is not a favorable sign of things to come.

17 The act created a new agency, the Office of Surface Mine Reclamation and Enforcement, to regulate and administer reclamation on all lands, Federal and private. The self-injection of other Federal agencies into reclamation programs, because of their previous role in the area, is unnecessary and totally unworkable. The States must have one, and only one, Federal agency to deal with, and receive approval from, in reclamation matters.

17 If the Office of Surface Mining must coordinate its decisions with other agencies, then it must do so. But in implementing this act, and delegating authority to the States, the Federal Government must speak with one voice.

17 Once a delegation occurs, the States should not be constantly second-guessed. If a State's actions with respect to Federal coal are in compliance with the minimum standards of the act, Secretary approval should be automatic. This policy should be established early and clearly stated. Reclamation is complex and involves numerous exercises of discretion. If the delegation is to work, the State decision must be reviewed only to determine compliance with the minimum standards of the act.

17 Basically, it appears that it is necessary to indicate to the States what the minimum ground rules are. As long as the States operate within those

minimum ground rules, they should be allowed to do so. Without that authority and assurance there is no incentive to expend the effort and time necessary to implement the act.

17 In closing, I would like to join with the other State representatives in complimenting Mr. Heine and members of his staff on the excellent job they have done in involving the States. We look forward to working with them and we aim to bring our State in full compliance with the Federal legislation. Thank you.

17 Mr. SEIBERLING. Mr. Freudenthal, just for clarification, on page 5 of your statement you say the proposed regulations are unnecessary. I assume you are talking about the USGS and not the act itself?

18 Mr. FREUDENTHAL. Yes; the proposed USGS regulations.

18 Mr. SEIBERLING. If there had been no strip mining bill or act, would the USGS have had the authority under the cooperative agreements to issue these regulations?

18 Mr. FREUDENTHAL. I do not believe there would be any necessity in that mechanism.

18 Mr. SEIBERLING. I am trying to find out how they got into the act, and whether that was part of the cooperative agreements or whether they were continuing their prior activities, regardless of the cooperative agreements. I am a little confused.

18 Mr. FREUDENTHAL. I share that confusion, because it is a little vague as to why USGS feels compelled to do this at all, given the existence of the OSM.

18 Mr. SEIBERLING. This is a very important point, and we need to find that out, and we will address that to Mr. Heine when he returns to the witness table, and try to get a better picture. Thank you.

18 Mr. PITSENBARGER. Next we have Mr. William Kovacic, reclamation specialist from the State of Missouri.

18 Mr. KOVACIC. My name is William Kovacic. I work for the land reclamation program in the Missouri Department of Natural Resources.

18 My comments today will be divided into three areas: One, a report on

our activities in Missouri to meet the requirements of Public Law 95-87 as contemplated by Congress for the States; two, our general observations about the implementation of Public Law 95-87 by the Office of Surface Mining; and three, a discussion of the prime farmlands provisions which is of special importance in the Midwest.

18 (1) The performance standards of the initial Federal regulatory program exceed the authority granted by our legislature in the State reclamation law. We have prepared legislation that will authorize the Land Reclamation Commission to participate in the initial program.

18 The legislation has been filed and contains an emergency provision to become effective upon enactment so we should be on line for the provisions going into effect on May 3, 1978. The interest groups - environmental, farming, mining industry, and utilities - are all in support of the State enforcement of the Federal standards. The only opposition we anticipate is a few very conservative legislators who are opposed to "another Federal program."

18 We plan to prepare legislation to have introduced in the 1979 session of the legislature to meet the requirements of the permanent regulatory program.

18 The fact that the Federal funding to the States is maintained at not lower than 50 percent, and that the State matching share must be made up from permit fees, will help us gain the legislative support. The requirements for a system of administrative fines could be an obstacle in gaining legislative support. We are advised that no State agency currently has this authority in Missouri State government.

18 Since the enactment of Public Law 95-87, the staff of our program has been immersed in reviewing drafts of Federal rules and plans, mobilizing support for our State compliance legislation, and transferring information to constituent groups as well as the individual mining operators.

19 Because of the failure to appropriate moneys to the Office of Surface Mining, we have been unable to receive grant money to expand our staff to meet this increased workload. The result has been a cutback in our field investigations in order to evaluate and stay informed of developments associated with the Federal law. Also, we have been unable to attend some meetings where the rules were discussed with OSM, because of out-of-State travel limitations in

our budget.

19 (2) The Office of Surface Mining has been severely handicapped in implementing this act because of the lack of appropriations. I urge you and your colleagues to quickly pass the necessary appropriations. The lack of funding has delayed things at the Federal level and has interrupted the operation of our agency as well.

19 In spite of this handicap, I must commend OSM and Walter Heine, its Director, on their openness and accessibility to our States as the implementation program has developed.

19 We have not changed OSM on every issue we disagreed on, but we feel that they are taking advantage of our experience in regulating mining, and we have been able to influence some of the decisions.

19 (3) A performance standard of critical importance to mining in the Midwest is the prime farmlands provision. The provision was to be effective for new permits issued after August 3, 1977. We had several application for amendments pending when this act was signed into law.

19 Also, our permits are issued on a calendar year basis and thus expired December 31, 1977. We did not have State statutory authority to issue permits after August 3, 1977, containing the requirements for the prime farmland provision.

19 Also, the rules developed by OSM were not promulgated until December 13, 1977, and we did not actually receive these rules until an hour after the Land Reclamation Commission approved the 1978 permits at its meeting on December 23, 1977.

19 I understand that the definition of prime farmlands being developed by the U.S. Department of Agriculture is at the stage of proposed rules. Hopefully, we will be able to suggest revisions to USDA to refine their definition so that it only includes the best farmland in the country. While I am not technically qualified to comment on the soils aspect of the prime farmlands determination, we are all under the impression that it is being construed very broadly and therefore is including land which would hardly be considered good farmland.

19 If I were to suggest one revision in Public Law 95-87 at this point, it would be to change the effective date of the prime farmlands provision to May 3, 1978, with the other initial performance standards. Because of the delay in funding, in the development of the rules, and because of insufficient State authority, this provision has not been enforced for new permits issued after the date of enactment.

19 Thank you for the opportunity to comment here, and I will try to answer any questions you might have.

19 Mr. PITSENBARGER. Next, we have Robert Bell, the secretary of the Department of Natural Resources from the State of Kentucky.

19 The CHAIRMAN. Let me say to Mr. Bell and Mr. Abar, we are getting into a time bind. In about an hour we have to be done. I realize there are people who have come great distances. It is unfair to you to put time constraints on you, but it is unfair to them also. I wish we had 4 days to do all this. But I hope all the witnesses will help by trying to summarize the high points and the main thoughts that you have.

20 Mr. BELL. I am secretary of the Department of Natural Resources from the State of Kentucky. I do not have a prepared statement. I will speak very briefly. I represent Gov. Julian Carroll. Our legislature just convened 2 weeks ago, so it is necessary he be there. His presence there might be more helpful to the implementation of this act than here.

20 I think you would be pleased that he recommended in his budget message the night before last an increase from our present \$3 million in the State fund for reclamation to an increase of \$2 .2 million, which is a sizable increase in our budget. It will enable us to more than double our entire program with respect to inspections, geologists, engineers, and all the other skills needed.

20 I think most of the problems that we have been talking about here have to do with timing. I think the problem with the regulations have their roots in what I think time has shown now is a very possible mandate that the Congress gave the Department of the Interior. The mandate to produce these regulations in 60 days was, I think, impossible on its face.

20 Had that been done, the rulemaking would be in effect, but we would not have been able to consider all the large volume of comments that we received. I want to pay tribute to Mr. Heine and his colleagues, also. I think you will all find all the States are lacking authority and have a good feeling about the task force in the Department of the Interior. I think what they have done in producing these regulations, whatever their strength and weakness, has been a public administration miracle, to have done this in the amount of time they have. The 60 days created a lot of problems. There was not enough time to

draft the regulations. There was not enough time for review by the State regulatory authority or by the industry or by environmental groups out in the country.

20 Once comments were returned I do not think there was enough time for the Department of the Interior to seriously consider all those comments.

20 But in any event, on December 13 the regulations became final. I think when the Congress was considering the act there was something that was overlooked, and it is our fault as much as it is anyone's. There seems to have been a presumption that the States and the Federal Government would simply move in a dual inspection and enforcement responsibility, administering the interim program.

20 It now turns out that there is possibly no State where they can assume responsibility for administering the interim program without an act of their legislature. We had a week in Washington of 13 coal producing States, and 11 of those States said they would, in effect, have to introduce legislation to be empowered to enforce the interim regulation program.

20 So we are a few days away from the date of February 4, when the curtain goes up on this place, and at least 11 States out there have to have those legislatures pass legislation in order to be empowered to enforce the act. We do not have an Office of Surface Mining. To my knowledge, I believe Mr. Heine is the only official employee of the Office. There is a task force, and a very able one. It is a very overworked task force, faced with an impossible situation.

21 But there really is not an Office of Surface Mining. There are no field officers, no field employees. I think we are going to embark on a venture here where the States do not have the power, the legal power, at least for a short period of time, to enforce the interim program, and there will be no Federal presence.

21 I realize you have problems that may be unassociated with this committee, but the fact that these appropriations have not been made to this agency has created a very horrible situation for everyone concerned. I think it breeds some additional cynicism with respect to Federal institutions generally.

21 It has been almost impossible to provide any kind of reasonable information to the industry. We did have one meeting of over 1,000 people. Federal people came and did a very good job of interpreting the program, but they only reached maybe a fifth or a sixth of the Kentucky coal industry.

21 Your act holds out the promise that third parties which have grievances with respect to being damaged by irresponsible mining practices, that there will be a way to intervene. But without field employees or attorneys out in the field, I do not think that promise can be achieved.

21 The act has one of its major purposes to bring some uniformity. We will have the uniformity of performance conditions because section 502 of the act requires that those conditions be attached. But as we view it now, it will be many months before there is any enforcement between the States, which is the problem we have had for all these past years.

21 I am afraid we are entering into a program where there will be a lot of talk about flexibility and being pragmatic, which is what I thought the objective was, to get away from that kind of problem. I do not know what can be done with respect to the implementation dates on the State level. We would simply get the leadership of the legislatures together with the Governors and sit around the table, and there will be a bill to change the dates, and there would be an agreement not to take advantage of that. But that might be impossible.

21 I hope there could be some short-term delay in the interests of the program, because I think there is going to be a great deal of confusion and a great number of problems.

21 Finally, I hope you will consider some amendments to the act later this year.

21 I thank you for your time.

21 The CHAIRMAN. Thank you.

21 Mr. PITSENBARGER. Next we have Mr. Anthony Abar, reclamation director for the State of Maryland.

21 Mr. ABAR. My name is Anthony Abar. I am the administrator for the Maryland Bureau of Mines. Coming last on the panel, some of my comments have been addressed by previous speakers. But apologizing for it, I will go through my prepared testimony because I do believe I can read it quicker. To abbreviate my statement would be filled with pauses just to weed out the redundancy.

22 I also think that repetition for the sake of emphasis is good.

22 My name is Anthony F. Abar. I am the administrator for the Maryland Bureau of Mines. The Bureau of Mines is the principal State agency responsible for the control of coal mining and reclamation activities in Maryland.

22 Maryland is a member of the Interstate Mining Compact Commission. Last week, on January 10 and 11, 1978, the Interstate Mining Compact Commission met in Washington, D.C. Discussions at that meeting revealed that: one, only 2 or 3 of the 12 coal-producing States within the IMC possess the necessary legislation to fully implement the initial regulatory program under Public Law 95-87; two, several States require Federal grant funding as a prerequisite to fully implementing the initial regulatory program. These States cannot effectively review (a) mine status maps, (b) small operator exemption requests, (c) requests for delay in converting nonconforming structures, (d) preexisting, nonconforming structure designs and plans, and other submissions mandated by Public Law 95-87 without additional personnel, supported by anticipated Federal funding.

22 Three, most of the States regard the preexisting, nonconforming structures provisions of the section 715.11(d) and the sediment control measures provisions of section 715.17(e) as dubious environmental protection requirements.

22 Because of several events, including congressional delay in appropriating funds for the Office of Surface Mining and a delay in adopting the regulations pertaining to the initial regulatory program performance standards, combined with the time required for States to enact legislation and promulgate regulations, neither the Federal Government nor most of the State governments will possess the capability to enforce the initial regulatory program on February 4, 1978.

22 Two alternatives are available: One, informally let deadlines slide and impose the performance standards of the initial regulatory program on a case-by-case basis as Federal and/or State capability is developed; or two, acknowledge the realities of the situation and extend the deadlines across the broad until the Federal Government obtains the funds and personnel it requires and the States obtain the funds and statutory/regulatory authority they require in order to implement the initial regulatory program.

22 The Interstate Compact Commission met and these alternatives were discussed on January 11, 1978, with representatives of the Office of Surface Mining and the White House, and urged the Federal Government to adopt the second alternative. Short-run delays in implementing the initial regulatory program across-the-board are preferred to a piecemeal approach to implementation of this

program. A piecemeal approach, with no effective Federal presence and limited State authority, could quickly result in a lack of credibility that would damage the long-range implementation of an effective surface mining and reclamation program.

22 Maryland recommends a 120-day extension of the February 3 and May 3 deadlines. Hopefully, such extension of deadlines will be adequate for the Congress to appropriate funds to staff and operationalize the Federal Office of Surface Mining and to provide grants to the States to offset the marginal costs of administering the initial regulatory program.

23 The recommended extension of deadlines would also provide State legislatures time to authorize full State participation in the initial regulatory program. Finally, it is hoped that, during the same extension of deadlines, the Office of Surface Mining will review and consider amendments to those sections of the regulations it has adopted pertaining to preexisting, nonconforming structures and sediment control measures.

23 To elaborate on the last point, implementing the standards pertaining to preexisting, nonconforming structures would require the replacement of thousands of miles of haul roads and ponds throughout the coal region of Appalachia. In Maryland, as other States, these ponds were constructed in accordance with design specifications jointly developed by the U.S. Department of Agriculture, Soil Conservation Service, and the State Department of Natural Resources. We seriously question regulations which would require the relocation and/or reconstruction of these facilities with structures that would serve mining operations, in some instances, for only a matter of a few months.

23 During the comment period on the proposed regulations for the initial regulatory program, Maryland recommended that the Office of Surface Mining adopt regulations that specify the objectives but not the specific means by which the objectives - protecting the hydrologic balance - are to be obtained.

23 Therefore, we did not provide data which supported design standards for sediment ponds that were different than the design standards in the proposed regulations. Since our recommended approach was not adopted, we have subsequently analyzed and are prepared to submit data which supports different design standards.

23 Specifically, we reviewed the sampling data collected by the Maryland Water Resources Administration from ponds constructed under surface coal mining

permits issued by the State of Maryland from January 1974, to the present.

We

conclude that ponds constructed to designs currently required in the State of Maryland will achieve the effluent limitations required by the Federal regulations. Construction or reconstruction of larger ponds is not necessary to

achieve the water quality objectives. Constructing larger ponds may unnecessarily adversely impact water courses, and relocation and reconstruction

of existing ponds will unnecessarily adversely impact the environment.

23 In summary, we recommend extending the February 3 and May 3 deadlines

120 days. Our recommendation stems primarily from a motivation to have effective Federal and State regulatory programs on line in order to insure compliance with the provisions of the program.

23 We believe the loss of credibility resulting from an alternative, piecemeal approach would be of greater long-run adverse consequences to the program than the approach we recommend. However, we also recommend that during

this extension of time, the regulatory standards pertaining to sediment ponds and particularly nonconforming structures be reevaluated.

23 The CHAIRMAN. Thank you, gentlemen. I have a lot of questions, but in

light of the timeframe we are in, I think I will save most of them until tomorrow. The common theme here this morning has been the unrealistic timeframe

that we put you all in. I recognize that this poses a great difficulty. On the

other hand, it would be extremely complicated to undertake this task quickly, as

quickly as you would need, the enacting of some kind of extension through the House and the Senate. There has been a great fear expressed by many people that

if we undertake to do something of that kind there would be demands for a more

general opening of the law. Everyone would have an amendment. This would complicate things as it would encourage the few operators left - who do not want

to comply and who are now facing deadlines and believe they have to comply - to

stall and keep the act from being effective.

24 I do not want to give anyone a false sense of encouragement. I have a

strong bias against that. Maybe the best thing to do is to do the best we can

and fudge a bit on the timetable.

24 How many of you think we ought to have a 90- or a 120-day extension?

24 How many think we ought to try an extension? How many do not know, or

would be opposed? It is a difficult problem. We will talk about it today and

tomorrow.

24 Mr. ABAR. I would like to simply say, in certain cases we are going to have this extension whether we acknowledge that fact or not. I do not know about some of the other States. I know in Maryland if we have a realistic enforceable program, realistic program, we will get compliance. I venture to say we will have 100 percent compliance.

24 But we find it very difficult to enforce or even pretend to enforce. I do think an extension of time, whether passed by Congress or simply made clear that we are not going to try to piecemeal this approach, or muddle through or squeeze it in, I think we can get the right kind of compliance.

24 The CHAIRMAN. Mr. Bell made a good point in that there is enough cynicism and contempt for the Government now without having laws on the books that we are not prepared to enforce. I recognize this, but I also see the other side of this dilemma, the difficult problem we would be getting into if we were to have an extension.

24 Mr. RAHALL. I just have a quick question that refers to the point that Mr. Pitsenbarger made of increased embankments which you mentioned could be a valid point. My question is, Mr. Bell in Kentucky, are you experiencing the same problem as far as the increased height of the embankments and the threat to people below these embankments?

24 Mr. BELL. Let me say, first of all, that our sediment structures in Kentucky have not performed satisfactorily and I think the design criteria needs to be raised. If they are going to hold only an average of an inch or two after rain they will not serve the purpose they were intended for.

24 However, I think the combination of all the criteria imposed here in concert is going to create some rather severe problems for a number of companies, specifically in steep slope areas. I do not think there is any question about it. I think there will be a large number of situations in which it will in fact be impossible to mine some of these areas at all, given all these criteria, and if they are applied across the board.

24 Mr. RAHALL. Do you see possible threats to the health and safety of the public downstream below these embankments?

24 Mr. BELL. Well, I would be concerned. Of course, sometimes a dam is safer if it is larger, depending on engineering design. The problem is, if they are large and if there is property or human beings below this structure, and you are relying on enforcement and inspection that does not exist, either because

the State does not have the resources or the Federal people are not there, that would concern us a great deal.

25 The CHAIRMAN. I would like to ask you or Mr. Pitsenbarger both, it seems to me that maybe we have the phenomenon that we frequently confront in the air quality standards. You find, to get 90 percent of the stuff you can do it with \$1. But to get that next 5 percent it takes \$2 to get the next 1 percent and then it takes \$3 to get the next 1 percent and so on.

25 Is this the situation here, where if we reduced the efficiency standards, you could reduce in a large way the size of these structures you are talking about? Is there an attempt to get every bit of the sedimentation out that causes these very large structures?

25 Mr. PITSENBARGER. They have told us that they will not meet the criteria when they built these big structures. We say to the people that write the regulations, do not put us in jail until we have done it. We feel we have met the criteria. There is the MSPD permit and the Federal Government says, get out the 30 parts per million. We have been doing this for several years, and with nobody enforcing it. We think we are doing the right thing.

25 The CHAIRMAN. Sometimes in an attempt to get perfection we cause a great, great deal of expense whereas if we were to settle for a reasonably satisfactory result you would save.

25 Mr. PITSENBARGER. I think they explained it with a 10-year 24-hour retention time we pick up about 95 percent. When we retain it for 24 hours we retain the same water for 10 hours and we pickup 90 percent. So it takes up 14 hours to pickup the other.

25 The CHAIRMAN. That is it. Thank you. It has been helpful. Stay with us, if you can.

25 Our next witness is Cloyd McDowell, president of the National Independent Coal Operators Association.

25 [Prepared statements of Cloyd D. McDowell and Larry Jones may be found in the appendix.]

STATEMENT OF CLOYD D. McDOWELL, PRESIDENT, NATIONAL INDEPENDENT COAL OPERATORS ASSOCIATION, ACCOMPANIED BY CHARLES SCHWAB AND LARRY JONES

25 Mr. McDOWELL. Mr. Chairman and members of the committee, I have with me today an operator and mining engineer, Mr. Charles Schwab of the Hawkeye

Elkhorn Coal Co. and Mr. Larry Jones, of the Crawford Engineering Co.

25 Our association represents about 1,500 small- and medium-sized operators. The legal responsibility and economic burdens created by any mandatory regulations fall most heavily upon members of our association. Therefore, just consideration of our problems and appropriate assistance from the regulatory authorities are essential to our survival. Not only is the future of our segment of the industry at stake but so is the very economic life of the various small communities in which we operate.

25 Our panel, which is composed of two mining engineers, an active coal operator, and myself, will attempt to point out the concerns of our members in trying to meet the rigid requirements of those interim regulations. We have testified at previous hearings on more than one occasion in an attempt to receive some measure of relief from the timetable approach to the enforcement of certain provisions of these regulations.

26 Final regulations on the interim regulatory procedure for surface coal mining and reclamation operations were published by the Interior Department in the December 13 Federal Register - 6 weeks after November 1, the date mandated by statutes for their completion.

26 In spite of the delay in publication of these regulations there has been no extension of the date required for compliance which means that new mines must meet performance standards by February 3, 1978, and existing mines must comply with the standards by May 3, 1978.

26 Many State officials, including those of Kentucky, are of the opinion that they will have no legal authority for granting permits after February 4, 1978. In other States the small operator's exemption will only apply to those operators whose permits were granted or renewed before August 3, 1977. Many States issue annual permits, thus forcing the small operator to comply with all requirements of the interim regulations by August 3, 1978.

26 A number of legal challenges of the interim regulations by various parties, including the State of Virginia, has created a state of uncertainty among the members of our association. This situation added to the confusion that now exists due to strikes, weather conditions, and many other reasons make it imperative that the effective date for implementing these regulations be delayed for at least 9 months.

26 We believe that a better understanding of the regulations will have been achieved by then through the efforts of the Office of Surface Mining in public meetings with the operators.

26 We greatly appreciate the cooperation of OSM and we feel this is the

best way to achieve the results necessary to meet the requirements of Public Law 95-87.

26 I would like to call on Mr. Schwab to make a statement as an objective operator.

26 Mr. SCHWAB. I have submitted a prepared statement for the committee which I will not even summarize in the interest of time. I would like to make a couple of extemporaneous remarks.

26 First of all, it is obvious from the testimony that has gone forward that it is totally unrealistic to expect the industry to be able to accomplish the first requirement when it was not even possible for the OSM to reduce them within writing set forth by the Congress and something must be done, de facto or however, to accommodate these time impossibilities.

26 In no way do I mean to criticize OSM. Quite the contrary. I, for one, would like to compliment them.

26 I have been testifying on behalf of our association throughout the legislative proceeding, and the development of the interim regulations. In reviewing my testimony prior to coming here today, I found that the final regulations as published on December 13 have without exception taken into account each point on which our association testified.

26 I do not mean to imply that they did it the way we wanted them to. But the consideration given by OSM is certainly to be commended.

27 We do now have in place a set of regulations. They are certainly not perfect. They certainly will require considerable interpretation and revision as they are implemented. It seems to me that their value and their implementation is totally dependent on personnel that are brought into OSM to implement these regulations and to oversee the program. I would certainly encourage the Congress to go forward with the funding of OSM so that we can get about the business of applying the appropriate people who have the experience and talent and who can work with the industry in a way that will let us get on with the job.

27 As we work with the regulations we will find the imperfections and certainly, if we have the right kind of people in OSM and the right attitude, we will be able to work out these problems as they arise.

27 The CHAIRMAN. Very good. Thank you.

27 Mr. McDOWELL. This is Larry Jones of the Crawford Engineering Co.

27 Mr. JONES. My name is Larry R. Jones. I represent the Knott-Letcher-Perry Independent Coal Operators Association in southeast Kentucky. We greatly appreciate the opportunity to present our suggestions and views on such an important subject.

27 We live and mine coal in an area where steep slopes are the only things we see because of the mountains, so you can readily see some of the problems we face.

27 One major problem I wish to point out is section 710.5, dealing with soil segregation. Our local SCS official, Mr. Cecil Hensley of Letcher County, tells us we can expect to find only 3 to 4 inches of topsoil on ridges and a maximum of 6 to 8 inches of topsoil on the slopes. With the equipment our operators can afford we will not be able to segregate the topsoil without contaminating it extensively, even with the best of care being used in the operation. We hope you will give great thought in providing regulations that will allow the best possible and feasible substitute.

27 Section 710.12 of the regulations tells the small operator to file an application for exemption by February 3, 1978. Our operators have not seen or heard from the regulatory authorities concerning this application. This does not give the operators time to make plans or seek information requirements. We feel the entire regulatory system should be given at least 1 year of transitional allowances to give them enough time to deal with all of the applications due to the vast number of small operators and their specific problems.

27 We feel the whole system of enactment should be delayed 1 year to allow ample time for the regulatory offices to be set up for business.

27 Section 715.12 requires signs for practically every movement or stone. We feel MESA and State regulatory agencies have already taken care of the job. The average operator in eastern Kentucky already has his hands full trying to replace the signs, already required, that are pushed over, shot up, or abused by hunters, property owners, and the general public - trespassers.

27 I will limit my remarks and skip around.

27 In some regions the standards for mountaintop removal backfilling plans will not allow enough storage room for spoil or overburden. We feel that in sparsely populated areas that a safety factor of 1.5 may not be necessary. We would be able to stack material back on the area without having to disturb

otherwise uninvolved lands.

28 A wide range of problems occur in our area in the subject of sediment ponds. I, too, want to comment. Due to steep side slopes and valleys, the surface area mentioned in section 715.17, part (e), subpart (1), cannot be met without extensive construction measures such as earthmoving and blasting being done, creating more siltation problems, more problems with the nearby occupants, and unaffordable construction costs.

28 The State of Kentucky has been using a standard 1.5 feet flood storage stage requirement on all silt structures in a 100 acre or less watershed. In my opinion it has worked satisfactorily in the past and we feel it can continue to work in the future. This may lessen flood water storage in some instances and create safer conditions for people living downstream.

28 Access roads should be reseeded but not regraded. In most cases the outslopes are stabilized and vegetated. Any additional disturbance produces additional silt, a scar that takes longer to heal, and unaffordable costs on the operator.

28 Roads should also be kept off ridges because of disturbances to property lines or monuments and additional silt problems to other unaffected hollows or drains.

28 Blasting notices will be a virtual impossibility because of equipment breakdowns, weather, other regulatory authority problems, or misfirings.

28 Small operators may have problems taking seismographic readings because of the possible number required at the same time and the number of personnel involved.

28 Section 722.14 should require the regulatory authorities to send notices of noncompliance by registered mail to the president or main stockholder of the company. Notices may also be hand-delivered requiring a signature of said person. This will assure the operator that he has or will receive proper notification of all noncompliances.

28 In closing, let me say on behalf of some of the small operators in eastern Kentucky mining steep slopes that we face great problems in maintaining production to meet America's needs. What will help all concerned seems to be time and understanding of everyone's problems.

28 We definitely want to mine coal in a feasible manner and in an

environmentally protective manner. But we would like to see these changes made.

28 Thank you for the opportunity to speak.

28 The CHAIRMAN. Thank you for a constructive statement. We will question Mr. Heine on some of these things. It has been very helpful, and I really appreciate your being here.

28 We will now have Mr. Ben Lusk, who is president of the Mining and Reclamation Council of America.

28 [Prepared statement of Ben Lusk may be found in the appendix.]

 STATEMENT OF BEN E. LUSK, PRESIDENT, MINING AND RECLAMATION COUNCIL OF AMERICA

28 Mr. LUSK. Mr. Chairman, I realize the time is becoming a significant factor and most of my comments will echo the comments of the National Independent Coal Operators Association and there will be two gentlemen's testimony given after me which I think will adequately cover the technical aspects of the rules and regulations which we are extremely concerned about, in particular the size of sedimentation ponds which has already been covered, and also prime farmlands and adequate protection for small operators.

29 The one area that I want to hit on strongly today which has not been hit, and I want to get to the deadlines and the timing that the act is calling for our industry to be in compliance with. By February 3, 1978, just 10 working days from the end of these hearings, any small operator seeking an exemption from the Director must have had application into the Office of Surface Mining. Also, any request for a time extension on upgrading existing structures to the new requirement of the act must be filed by then. And of course, all new mines and permits for mining after the February 3 date must incorporate the new rules and regulations.

29 Although we all were aware of the February date last summer when Congress was completing its work on the bill, no one could have predicted the unfortunate events which followed which will make it not only impossible for the industry to comply with the February 3 date requiring all existing mines to upgrade their structures to the new law.

29 Consider, for example, the fact that although the President quickly signed the act just weeks after Congress passed it, he waited over 3 months to appoint a Director of the newly formed Office of Surface Mining. Then the Senate waited nearly 2 more months to confirm the President's selection, thus not giving the Office of Surface Mining an official Director until last month.

29 The situation being that the industry was unsure as to where to turn for guidance or to get official answers to critical problem areas until nearly 5 months after the act was signed and the industry has to be in compliance in 6 months.

29 I have to stop for a second and echo the comments and our association's position, that we have nothing but praise for the Office of Surface Mining and the task force and the fine work they have done. Someone mentioned it was a minor miracle getting the regulations out in such a short period of time. The Office has spent a considerable amount of time going to seminars and met with 2,500 operators to explain to them what the rules and regulations are all about. Our industry is extremely appreciative of all their effort.

29 The proposed regulations were published in the Federal Register on September 7, 1977, just 4 days late of the 30-day time limit set by the act and the interim regulations were published on December 13, 1977, 40 days late. Regardless of how difficult the task was, and how hard and diligently the task force and the Office of Surface Mining worked, and how genuinely qualified these individuals are, the industry still has to comply with deadlines while receiving the regulations late.

29 The act calls for the regulations to be published by November 3, 1977, giving the industry 90 days to meet the February 3, 1978, deadline. Because the publication was 40 days, it cut the industry's time by nearly one-half.

30 However, it was an impossible task which was made even more difficult when Congress failed to approve the supplemental appropriations which would have given the Office of Surface Mining a budget, a staff, and office space which it still does not have.

30 Compound all this with two unfortunate situations which no one has control over. The UMW strike which was a week old when the regulations were published on December 13 is in its second month and no end is yet in sight. This prevents the operator from even trying to upgrade his structures to meet the May 3 deadline. However, even if the mines could work, the bad weather we have been experiencing would prohibit any major activity.

30 Environmentally, for example, it would be a massacre to force the operators to rush in and upgrade siltation control structure during this wet period in the East. The earthmoving activity required would cause more

siltation than the structure is planned to prevent.

30 Also, the regulations require small operators desiring an exemption to the environmental standards to file a request with the Office of Surface Mining by February 3. Before he can do that, he must advertise for 2 weeks prior, which means tomorrow. With the regulations published in mid-December, a small operator had less than 1 month during a strike, bad weather, Christmas and New Year's to obtain a copy of the regulations, decipher what he has to do, and advertise what he is planning to do, by tomorrow to be in compliance with the law.

30 The chairman of this committee has stated many times during the 7 years of debate on the Hill that the small businessman should be protected. It is our opinion that not only is the small operator not getting a fair opportunity to stay in business, but that he will be phased out of business without the special consideration that Congress agreed to and provided for in the act.

30 If it is possible to compare this act with the 1969 Federal Coal Mine Health and Safety Act, it is our opinion that of the 2,700 small coal companies mining under 100,000 tons annually, over 1,000 will be out of business in less than 5 years.

30 In conclusion, the Mining and Reclamation Council is requesting that this committee recommend to Congress that a 6-month delay in the implementation of the rules and regulations be granted. We feel strongly that it is necessary in order to: One, prevent further disruption of the Nation's coal production, which will surely cause severe energy shortages; two, to prevent unwarranted abuse of the environment through attempts by the industry to rapidly come into compliance; three, to help bring about an orderly compliance schedule which the industry and State governments can successfully live under; four, to give the Office of Surface Mining the opportunity to get a proper budget, trained staff, and offices in order to properly enforce the act; and five, give the Surface Mining Control and Reclamation Act of 1977 the proper opportunity to successfully provide for continued coal production while at the same time protect the environment.

30 It took 7 years to pass this legislation, and we feel that if it takes 6 extra months to make it work effectively and efficiently and if a 6-month delay will avoid public criticism because the bill is not being properly enforced, then we feel Congress should at least give this short delay careful consideration.

31 Thank you.

31 Mr. Chairman, one final remark as to how we can achieve this, other than just overlooking it. I think if this committee were to support a delay through legislation, of course, with your support, I think the Congress would go along with it. I think it could pass immediately if you act as quickly as possible to get it done. I think also if the companies were to look at it strongly they would agree. Thank you so much.

31 The CHAIRMAN. I am doubly glad that we have had these hearings for all of us to focus on these problems.

31 I think the point has been made that the law ought to reflect commonsense and fairness in judgment. If it says we have to do something stupid or impossible, you can only breed contempt for the law. What Mr. Schwab said earlier about our having to find some way, formal or informal, to get out of this dilemma is important, because I do not think we have to do what the law says we have to do.

31 I appreciate your suggestions and I will be talking to different people on the ways out of this.

31 Mr. RAHALL. Mr. Lusk, I appreciate your testimony here today. I know how helpful you have been to this committee throughout our entire deliberations, and your input has been an asset.

31 I have one brief question. If the proposed extension of implementation dates that you are recommending is indeed granted, do you think there would be a result that would allow a lot of complexity and uncertainty? Do you think that this extension would give us ample time to resolve existing uncertainties and answer a lot of the questions?

31 Mr. LUSK. We heard from the National Governors' Conference that they would like to have 4 months, and the NICO wanted a 9-month delay, and we have asked for a 6-month delay. I do not think anybody knows how much time we need. I think Congress intended the Office of Surface Mining to give the industry 6 months after enactment of the bill to get into compliance.

31 Since the Office has not had sufficient appropriations, I would think possibly that one thing this committee might consider is waiting until after the Office has a budget and staff and offices and after they have received appropriations before this law becomes enacted or before the initial regulations

are promulgated.

31 Mr. RAHALL. Thank you.

31 The CHAIRMAN. Thank you.

31 Next we have the Ohio Mining and Reclamation Association.

31 [Prepared statement of Neal S. Tostenson may be found in the appendix.]

 STATEMENT OF NEAL S. TOSTENSON, EXECUTIVE VICE PRESIDENT, OHIO MINING AND RECLAMATION ASSOCIATION

31 Mr. TOSTENSON. I will deviate from my prepared testimony and try to summarize quickly some of my concerns. I think in preparing my testimony and looking at this, I looked at the purposes in the act. There is a strong need for protection of the environment. But likewise, in one or two sections the act talks about the national coal supply, its economic and social well-being.

32 So I think Congress had an intent to have a little bit of balance throughout this thing. I do not come here to praise the task force. I think the task force had some deficiencies. It was not given all the thought in the world in the composition of its members.

32 Ohio has probably one of the finest reclamation acts in the country. It is working well. The administrator who enacted and implemented our State law is a Bureau of Mines employee and the Bureau of Mines has him out in the West. He was not even involved in this complex proposal.

32 I think possibly that he had a little different makeup than the others, and they have been more reasonable in the rulings. Every time you pass a rule, there is a cost factor. I think we have to look at the cost factor for the benefits that come out. I brought with me today - there has also been talk about certain changes in these regulations.

32 In reviewing them with the operators who have to do the operating in the field, it was the coal man that was hanged. All they did was shorten the rope.

32 Going further, one of the regulations states that we must have a sign. I brought this to have a little bit of an example about when you start with these things. When you store the topsoil you have to have a sign that says topsoil storage. I question the efficacy of this. Is this to direct the inspector? If the inspector cannot tell it is topsoil, I do not think he should be hired in the first place.

32 This is a minor thing, but when you take the full volume of regulations and the enormity of all their complexity, and the ones we still have coming down the road, we have to think of the consumer. I think we ought to go through these regulations and pull out things such as this that are way out of line and are a waste of time and money and concentrate on the end product, which is restoration of the land, which is what we have back in Ohio.

32 One of the hardest problems we have to face is the consumer having to fight electricity. In Ohio, 98 percent of the electricity is generated from coal.

32 Another example, and these are small - I only use them as illustrations. One is that you have to have blasting notices. It says that you should publish them in the newspaper. Pretty soon there is going to be a newspaper page full of blasting notices. No one will read them.

32 Another one is send it to the public utilities. I do not know what Ohio Bell needs to know when we are going to blast in southeastern Ohio. That is part of the cost factor.

32 I think that is the most important thing that I can leave with this committee. We have to go back through the rules and regulations, make a cost-benefit factor for their implementation and pull out the ones that are not needed and stick with the goals that we wanted to end up with. I do not think anyone can quarrel with the goals. It is all the details that they are trying to lead us down, which people have testified to today, which are impractical.

32 West Virginia has developed a lot of good ideas in their State. We have done the same thing. I think they ought to leave the implementation of these goals to the States who know the individual problems.

33 I appreciate the time.

33 The CHAIRMAN. You make a very effective spokesman. We will look at these questions that you raised. You remind me of the story about the old farmer who had a problem with drunkards coming through his fields and shooting his cows. He painted on the side of the cows, c-o-w.

33 [Laughter.]

33 The CHAIRMAN. Our last witness is Mr. Donald Donell of Starvaggi Industries.

33 [Prepared statement of Donald R. Donell may be found in the appendix.]

STATEMENT OF DONALD R. DONELL, PRESIDENT, STARVAGGI INDUSTRIES, WEIRTON,

W.VA.

33 Mr. DONELL. Mr. Chairman, I appreciate the opportunity to appear here. I have a prepared text. However, as my predecessor, I think I will deviate from it and kind of share some thoughts that occurred to me during the testimony of the other persons here this morning.

33 The CHAIRMAN. Sometimes that is the most effective way to use the time.

33 Mr. DONELL. Thank you. If I had my way, of course, as far as the implementation was concerned, I would probably want to quote one of your predecessors and say that the government that governs the least governs best, and ask that a moratorium of 5 years be declared.

33 But I think we can accomplish what was intended by the Congress and what OSM wants to accomplish, what the industry wants to accomplish and what the operators want. We are talking immediately at the present time about the interim regulations which should reflect the congressional intent. I think we have gotten enmeshed in what we think might end up being the final regulations and I certainly do not think that was intended.

33 Also, I think if the OSM, who genuinely attempted to reflect in their rules and regulations what they believe is the true spirit and intent of the law, I would say, if they would take in this interim period and go to the States, since the committee report and the law per se says that each State varies, there are divergent situations which exist in Pennsylvania which do not occur in Kentucky or out in Wyoming, and take this interim period within which to work with the States to make sure that the basic guarantees which you have built into the law are being enforced.

33 So it is not a delay in implementation but rather the interim rules, which in the long run may be distorted. So this would enable Walter and Cloyd and everyone else to talk to Pete down in West Virginia and say, let us really take a look at this, talk to the gentleman from Wyoming, from Montana, from Missouri, who has said, we have - we believe we can comply. They would be complying with the spirit and intent. They would not per se be delaying any implementation if there in fact was an imminent danger or hazardous condition that was existing.

33 I would concur with the directors of Maryland, Ohio, or wherever it would happen to be, and say gentlemen, we have something here and we have to act. So they can utilize the forces of the State, and at the same time not have to expend money they do not have. I hope that approach would in some way alleviate the fears.

34 I was delighted to hear your comments and the gentleman from Ohio

when they praised Mr. Heine. We are a medium-sized operation, small to medium.

We operate in the States of Pennsylvania, Ohio, and West Virginia. We are in the northern panhandle. So of necessity, when we move about, we are in the middle, so we come under three sets of rules and regulations. We are quite impressed, No. 1, with the long history of Pennsylvania and with the praise justifiably that was given to Mr. Heine. I would think in addition he should be

told now, Walter, if you can make this act work the way it did in Pennsylvania, this is what we want. We want the commonsense approach.

34 I think that he should be told, if you can go down there to West Virginia, and they can prove to you that the manner in which they have done this with the valley fields and the matter of sedimentation control comply with the law, the mere fact that the Washington job has a life expectancy of 35 years - that is referred to in the committee report, is of the opinion that the sedimentation design and control they have is working and working without any reservations.

34 That should not be set up as the only method in which sedimentation control should be implemented.

34 Mr. Heine, in response to a question, was asked if there was any objection or hostility on the part of operators. I believe his response to the Honorable Congressman Seiberling was, no, he did not know of any. Let me assure you that our concern is a genuine concern and that we do not know exactly what we have to do. It is not one of hostility, it is one of frustration.

34 I have brought pictures with me which I would like to submit. I have met time and time again and they were very gracious. The question is, what is mountaintop removal? The manner in which we were operating, did it constitute mountaintop removal, or whether or not it was returned to the approximate original contour. I found some very serious deficiencies in the dialog going back and forth. We are of the opinion there is a general area of mining in our area. The mere fact that we go through a hill, however, now raises a question as to whether it is or is not mountaintop.

34 The next question that comes up is, once we have gone through it - it does blend. It in fact complements the area. I will submit this graph. Since it does blend with it, does that now go with the spirit and intent and so on of the rules and regulations and therefore, while it may be technically mountaintop, is it in fact a return to approximate original contour? I do not know.

34 When I say I do not know, we are confused, and this is what we would like to have. We did some hurried calculations on these particular areas. Let me give you an example. In the State of Ohio, they have a land reborn program where the operator is induced into going in and re-affecting the areas that have previously been mined, 20, 25, and 30 years ago, and we are given credits in the form of bond waivings, possibly on particular areas which are an inducement for us to go in and re-affect and at the same time it accomplishes the fact that the Government does not have to spend money from its abandoned reclamation fund.

35 Here we are doing two things. But we have a situation there where there is some mining during World War II. We went in and we re-affecting and in getting our permit it was determined through some dialog that the water should go in our sediment control pond. We took dialog that the water should go in our sediment control pond. We took some calculations, which I will be happy to submit, because we have now diverted that water into it, and because the State said, can you do this, because you will reduce the suspended solids. We agreed it would have to be 4 1/2 times its size. We just cannot do it.

35 The unfortunate thing about it is the manner in which the haul roads, which have the topographical conditions we have, we cannot say, we will now divert this around. We put topsoil in certain areas, subsoil in other areas. So it is a physical impossibility.

35 But again, I do not think our inability to do this would in any way thwart the intent of the implementation as long as they use a commonsense approach to it and take the rules and the committee report as you have given it.

35 Let me give you another illustration. I have been intimately involved in this process since it started. In fact, I guess it has been a year now. There was public comment on siltation. Then all of the studies on the proposed regulations. They came up with a formula, and we never had an opportunity to comment. I think that is wrong.

35 Nowhere, at least to my recollections, would the formula that they used in any way be compensated by the committee that worked with the staff - the staff members that worked with your committee in the inception and promulgation of the law that we now have. So I think this committee should be told, no, we have an interim period and a final period. I think what OSM really needs,

Congressmen, is direction. With that direction I think that a lot of our problems are going to be solved.

35 I do not think that the OSM wants to get down and tell Tom Jones, you have to quit your operation because you have not done it right or because you have not submitted your program if in fact there is not a dangerous problem. They can do it by talking to the appropriate State agency that has the expertise, has the knowledge. I am certain Walter Heine knows these people. He has worked with them from the start, from the State of Pennsylvania.

35 I would submit it is not a matter of wait-and-see attitude, as Secretary Andrus said. It may be an attitude of wait and see simply because we do not know. There are many questions which we have proposed to members of the task force that they honestly could not come out and give us a concrete answer on and so, we will give you an answer at the end of January, is what they say. We will be able to meet with you on February 8.

35 I do not mean that critically. It is humanly impossible for them to visit every State, talk to all the associations, talk to all the operators on a case-by-case basis. So any reluctance is a reluctance simply because of frustration and not knowing, not one of hostility. I would venture to say that those with an attitude of hostility, they long since have been out of the surface mining business because the State has seen to it that if they are not doing the job right they are out.

35 I would respectfully request an opportunity, and when I say you will use commonsense - I would be happy to confer tomorrow afternoon with the staff to help with any questions.

36 The CHAIRMAN. That was a very effective presentation, and you display a lot of commonsense and judgment. I have asked Mr. Heine and Secretary Andrus both to look at the sedimentation thing and maybe out of these hearings we can at least see if there cannot be some commonsense modification of that.

36 The other point that you make is very good. We appreciate your presence here today. I think it has been a very good morning.

36 We will continue tomorrow to hear other people. We will be in recess until 9:45.

36 [Whereupon, at 12:45 p.m. the subcommittee recessed, to reconvene at 9:45 a.m., Friday, January 20, 1978.]

 FRIDAY, JANUARY 20, 1978

37 The subcommittee met at 9:45 a.m., pursuant to notice, in room 1324, Longworth House Office Building, Hon. Morris K. Udall (chairman of the subcommittee) presiding.

37 The CHAIRMAN. The committee will be in session.

37 We are continuing our hearings this morning on the oversight of the implementation of the Surface Mining Control and Reclamation Act of 1977. Yesterday we heard from a variety of interested witnesses; a number of suggestions, complaints, and comments were made.

37 Today we hope to continue to get some further input from the public on different aspects of it.

37 Our initial witness is Congressman Santini, who is probably having some trouble getting here. We will reach him as soon as he arrives.

37 In the meantime, we will go on down the witness list. We have a panel from the American Mining Congress and the National Coal Association, Mr. Turner, Mr. Beach, and Mr. Paul.

37 Let me urge everyone, as I did yesterday, we have 2 hours, 2 1/2 hours at the most for a long list. We want to get to the guts and the heart of your complaints and suggestions, and so I urge the members to summarize their statements and to be as brief as possible.

37 [Prepared statements of Robin Turner, Buddy A. Beach, and John Paul may be found in the appendix.]

PANEL CONSISTING OF:

ROBIN TURNER, VICE PRESIDENT, ADMINISTRATION, NORTH AMERICAN COAL CORP.
BUDDY A. BEACH, MANAGER, ENVIRONMENTAL IMPACT REPORTS, CONSOLIDATION COAL CO.

JOHN PAUL, VICE PRESIDENT, AMAX COAL CO.

37 Mr. TURNER. We have the three of us and we each have about a 5-minute statement that we will go through as rapidly as we can. We are submitting written copies.

38 I am Robin Turner, vice president, administration, for the North American Coal Corp. With me today are Buddy Beach, manager, environmental impact reports for Consolidation Coal Co., and John Paul, vice president of public affairs for AMAX Coal Co.

38 This panel is appearing on behalf of the National Coal Association and American Mining Congress Joint Committee on Surface Mining Regulations. The joint committee is comprised of the coal company members of both of these national organizations as well as of representatives from the State coal

association and other coal companies. Thus, the joint committee membership represents every type of coal mining operation as well as every mining region in the country.

38 Since last July over 170 members of our committee have analyzed and proposed revisions for hundreds of regulations released to us by the Office of Surface Mining. Our formal written comments which were filed on October 7 consisted of over 400 pages of text addressing nearly 150 different proposed regulations. We therefore feel that the joint committee is uniquely qualified to comment on the interim regulatory program established by OSM.

38 Today I will offer a few broad comments on the interim regulatory program and conclude by addressing a few specific areas of concern. The other panel members will also provide additional comments on specific regulations of concern to industry.

38 In no way are we attempting to offer a complete and detailed analysis of all of these regulations - at this very time the technical people in our companies are still trying to accomplish this. Our comments must, of necessity, be somewhat general; but please know that the joint committee will be pleased to provide technical and analytical assistance to this committee as it continues its oversight responsibilities under the Surface Mining Act.

38 At the outset we would like to state for the record our appreciation for the treatment accorded the joint committee by the OSM task force which put these regulations together. This group has been courteous and cooperative and appears to have given close consideration to the comments and proposals of the joint committee during informal conferences as well as in the formal public comment proceedings.

38 In view of the extremely tight time constraints imposed upon them by the act and their limited staff and financial resources, their efforts have been commendable.

38 Let me pause to make certain that the record is quite clear on one important issue - the coal industry is making every effort to bring surface mining operations into compliance with the goals and standards established by the Surface Mining Act of 1977. However, we believe that the arduous working conditions facing the OSM task force identify in the final regulations.

38 I would also observe that these regulations are so voluminous and complex that even the industry experts are not certain of the full operational impacts of these new rules.

38 There is one thing that is apparent from our initial analysis and that is that in many significant areas the interim regulations impose requirements far in excess of those required by the act. Furthermore, they impose extremely unrealistic performance standards to be imposed on a nationwide basis - without regard to regional variations and site specific needs - and without adequate technological or other justification for these inflexible requirements. In several cases the final regulations published on December 13 introduced entirely new conceptual approaches which were never subjected to public comment.

39 Finally, even in those areas in which the regulations appear to accurately track the intent of the Congress, we believe that critical congressional oversight responsibility is to assure that implementation of the regulations is not done in a manner that frustrates that intent. For example, many of our proposed language changes with regard to regs pertaining to alluvial valley floors were accepted, and as a result, these regs now closely track the act's language.

39 As we all know, the congressional treatment of this issue was the product of much debate and many compromises. The final version allowed mining in alluvial valleys on undeveloped rangelands that were not significant to farming. It also provided that mining could occur on farmlands when it is determined that any interruption of that agrarian activity would have negligible impact on the farm's production. Clearly, such a determination vests considerable discretion in the regulatory authority.

39 We would urge that this committee remain attentive to these discretionary actions to make certain that the goals and purposes of the Surface Mining Act are pursued.

39 With this general introduction, I would now like to address in somewhat greater detail a few examples of these deficiencies.

39 Manganese monitoring. Unlike EPA regulation, section 715.17(b) requires operators to monitor water for the presence of manganese even in alkaline discharges. This approach fails to recognize that alkaline discharges do not contain sufficient concentration of manganese to warrant separate monitoring.

39 In spite of our un rebutted comments on this issue when the regulations were initially proposed, the final rule remained unchanged except to allow operators to increase pH levels in the tested waters to facilitate meeting the

manganese standards. We continue to perceive no stated basis for this departure from existing EPA monitoring requirements.

39 Buffer zones near streams. Section 715.17(d)(3) of the regulations imposes a ban on mining within 100 feet of perennial or intermittent streams. This protected buffer zone has no justification either by the statute or on any scientific or technical basis. The act requires operators to minimize the disturbances to the prevailing hydrologic balance at the minesite and in associated offsite areas.

39 However, the approach taken by OSM implies that the only way to minimize disturbances is to require operators to stay 100 feet away from all intermittent and perennial streams. Under this rule the existence of an intermittent stream - which is defined by the regs as one which flows for at least 1 month of the calendar year - would require a 200-foot nonmining buffer zone regardless of the stream's size or its hydrological significance. The regulatory requirement thus seriously overreaches the scope of the act's intent.

39 Although we recognize that the regulation provides for a variance to mine nearer than 100 feet, this provision leaves unaddressed the basic issue we raise. There is no justification for the buffer zone approach. When the extensive hydrological protections imposed elsewhere in the act and regs are considered, this ban amounts to regulatory overkill.

40 Mr. Chairman, you have heard comments about small operators. As we, as larger corporations, look at the technical problems, we have hundreds of people working on these regs, and to envision a smaller operator having an opportunity to survive in this atmosphere is overwhelming.

40 My last comments will refer to underground mines, and then I will defer to Mr. Beach and Mr. Paul.

40 Underground mines. Of the 6,200 coal mines in the country, 2,300 are underground mines, and they will soon be confronted with the requirements imposed by part 717 of the interim regulations to obtain surface mining permits. For the overwhelming majority of these 2,300 mines, for the State agencies, and for the Interior Department, this is going to be a totally new experience.

40 We submit that the act does not provide that underground coal mining be covered by the initial regulatory procedure. The industry recognizes its responsibility to the Nation for minimizing environmental damages that might be caused by underground coal mining.

40 We fully realize that section 516 of the act authorizes the Department

to promulgate regulations to achieve this result. However, while there does exist a vast amount of knowledge on surface mine reclamation, in proposing environmental standards for underground mines we believe that the Department has failed to recognize the fact that there does not exist this same organized knowledge on the installation, operation, and ultimate reclamation of underground mines. This problem was specifically recognized by the Congress and was addressed by requiring the Secretary in adopting rules and regulations directed toward the surface effects of underground coal mining operations to consider the distinct difference between surface coal mining and underground coal mining. Although we have specifically requested that the Office of Surface Mining provide us with the documentation demonstrating the manner and method by which the Secretary has considered this distinct difference, at this time OSM has not provided us with such documentation.

40 The act further requires that regulations pertaining to underground operations shall not conflict with or supersede any provision of the Federal Coal Mine Health and Safety Act of 1969 nor any regulation issued pursuant thereto.

40 Again, we have requested documentation from OSM showing the manner and methods by which the regulations and part 717 were analyzed to insure that there is no conflict with this other legislation. To date, OSM has been unable to furnish us with such documentation.

40 Mr. Chairman, I now defer to Mr. Beach.

40 Mr. BEACH. My name is Buddy Beach. I am a manager, environmental department, Consolidation Coal Co., headquartered in Pittsburgh, Pa. I am appearing today on behalf of the American Mining Congress and the National Coal Association to present industry views on the implementation of the Surface Mining Control and Reclamation Act of 1977.

40 One of the most serious problems proposed by the regulations is the requirement that so-called preexisting, nonconforming structures or facilities conform to the new standards by May 3. However, if it is physically impossible to bring such structures or facilities into compliance by this effective date, then operators must by February 3, submit to the regulatory authority, whoever that might be, a plan designed by a professional engineer for the reconstruction of the structure or facility.

41 While we have serious reservations as to the legality of the retroactive applicability of these regulations to preexisting structures, the practical impact of such a requirement is staggering. The impact is further compounded because of an extremely harsh winter and the fact that a major portion of the labor force is on strike.

41 Further, there is substantial confusion as to what some of these preexisting, nonconforming structures may be. We are not sure and the Office of Surface Mining, as of this date, has not shed any light on this problem.

41 Section 710.11(d) of the interim regulations does not provide adequate time for the operator to design and construct or reconstruct preexisting, nonconforming structures such as sedimentation ponds, slurry ponds, haul roads, and offsite spoil storage facilities.

41 The question then is, What is a reasonable and justifiable time period for preexisting facilities to be brought into compliance with the regulations?

41 The following are considerations in determining a reasonable time:

41 1. At what point in time will the operator be able to obtain definitive interpretations of the regulations sufficiently specific for inventories of facilities and engineering design to commence.

41 2. A reasonable time to obtain the services of a professional engineer.

41 3. A reasonable time for the engineer to prepare the design, plans and other engineering and construction data.

41 4. A reasonable time for the regulatory authority to review and approve the design.

41 5. A reasonable time for the operator to obtain cost estimates budget approval, and either let a contract or obtain equipment and personnel to commence construction.

41 6. A reasonable period of time to commence and complete construction - such factors as work stoppages, weather conditions, availability of contractors - a lot of work has to be accomplished all at once all over the country - and/or availability of labor and equipment if done in-house.

41 We suggest that the following timetable be employed:

41 May 3, 1978. Must complete inventory of preexisting structures and site surveys and commence engineering design for reconstruction of nonconforming structures.

41 November 1, 1978. Engineering design submitted for approval.

41 February 3, 1979. Approval of plan for reconstruction.

41 May 3, 1979. Reconstruction to commence no later than this date.

41 November 1, 1979. Reconstruction completed, but extensions of time may be granted for good cause shown.

41 Sedimentation ponds. The final interim regulations, section 715.17(e) (1) and (2), relating to sedimentation pond design established completely new design criteria requiring 24-hour detention time and 1 square foot of pond surface area for every 50 gallons per day of runoff entering the pond from a 10-year, 24-hour precipitation event. These standards were not proposed and interested persons did not have a chance to comment on them.

42 The total suspended solids standard set by OSM is 70 milligrams per liter which is the same as the EPA NPDES requirement. However, the EPA criteria for sedimentation control recognizes the site specific aspects of meeting this standard and its regulations require the operator to meet the standard by controlling the 10-year, 24-hour storm.

42 EPA does not spell out the specific design criteria for the ponds. The EPA approach permits the necessary flexibility to cope with the physical characteristics of the site and the spoil material as well as the size of the operation and its sediment contribution.

42 Sections 715.17 (a) and (e) and 717.17(e) of the initial regulations require that large sedimentation ponds be constructed below all disturbed areas in accordance with the following design specifications:

42 A detention time of 24 hours must be provided, and for each 50 gallons per day of inflow that results from a 10-year, 24-hour precipitation event, a pond surface area of at least 1 square foot must be provided. And, an additional sediment storage volume must be provided equal to 0.2 acre-feet for each acre of disturbed area within the upstream drainage area.

42 We believe that these design specifications are excessive and unnecessary.

42 Furthermore, it will be extremely difficult, and at times impossible, to find sites for these large sedimentation ponds in Appalachia with its narrow hollows with steep sides and steep gradients. The existence of houses, buildings, highways, and railroads compound the problem. The sedimentation pond design specifications as written in the regulations could preclude the surface mining of significant coal reserves and adversely affect many underground operations as well.

42 It is not widely recognized, but the preceding is an example of how the interim regulations impact heavily and negatively on underground mines as surface mines.

42 The regulations do not provide an opportunity to proportionally reduce the surface area and detention time requirement with the appropriate use of other erosion and sediment control methods except chemical treatment.

42 Other methods can be equally as effective as the use of chemical treatment or a sedimentation pond itself in controlling suspended solids. For this reason, we believe that other methods should be allowed for this purpose as an alternative to large sedimentation ponds.

42 The supplementary information to the initial regulations states that the requirement for providing 1 square foot of settling pond surface area for each 50 gallons per day of inflow from a 10-year, 24-hour precipitation event is based upon the objective to settle out suspended particles greater than 0.01 mm in diameter. Industry engineering calculations show that the surface area needed is only one-half of a square foot for each 50 gallons per day of inflow to settle out this size particle.

42 Lastly, we believe that the OSM task force grossly misused the data and conclusions contained in a technical paper by Willie R. Curtis entitled, "Sediment Yield From Strip Mine Watersheds in Eastern Kentucky," when it promulgated the storage volume requirement of 0.2 acre-feet per upstream acre of disturbed land. The 0.2 acre-feet volume value is very high because it was derived based on containment of the total sediment yield from a disturbed area in eastern Kentucky which was mined by the shoot and shove method - a mining method which is not allowed by the act or the initial regulations.

43 Already built into the 0.2 acre-feet is the detention time necessary to facilitate settling of the suspended solids. Also, with the 0.2 acre-feet volume recommendation by Mr. Curtis, no pond maintenance; that is removal of accumulated sediment - is contemplated. Pond maintenance is required by the interim regulations.

43 Valley and head-of-hollow fill. One problem which is of major concern is the specifics of construction of valley or head-of-hollow fills in section 715.15(b). In promulgating this rule, OSM stated that it believed that the regulations are necessary and appropriate to ensure that spoils placed in unmined areas are constructed to remain as stable as the surrounding slopes.

43 We agree that these regulations should and can establish standards to insure stable fills. However, the regulations in 715.15(b) are neither

necessary nor appropriate. Simply put, these present recipes for compaction and underdrain construction are not uniformly required. Sound, current, prudent engineering analysis has proven that compaction in 4-foot lifts is not necessary to obtain adequate long-term mass stability.

43 In addition, these method specifications are not appropriate. There are instances where these method specifications will not be sufficient to protect society and the environment. I will elaborate on this.

43 The Department went on to say in the supplementary information, "the regulations contain standards that are currently complied with by many operators and which do not prohibit the construction of head-of-hollow fills where safe and necessary." The Department should be commended for evaluating some existing technologies for their applicability in providing long-term mass stability in fills.

43 However, there appears to be no justification for not permitting alternative methods of constructing valley fills that have been demonstrated to be stable in Virginia, West Virginia, and Kentucky.

43 The coal industry and consulting engineers have conducted, and State and Federal agencies have participated in, research, experiments and demonstrations developing new technology in surface mining and reclamation. Extensive research, investigations, and literature searches have been conducted using applicable soil mechanics, technology for developing safe, economical alternatives for constructing fills.

43 Voluminous amounts of data regarding a proposed side-dump valley fill project were submitted to Interior.

43 This data substantiates that stable fills can be constructed, when properly engineered on a site specific basis, without the need for a specific lift thickness being required. These regulations should not prevent such advanced technological methods.

43 Indeed, the act in section 102(1) clearly provides for such research investigations as were submitted in support of the gravity placement method of valley fill and head-of-hollow construction.

44 We believe that in formulating this regulation the Department failed to give adequate consideration to the report on environmental research of valley fills developed for the U.S. Environmental Protection Agency by Skelly & Loy, consultants.

44 The Department also declined to acknowledge the positive recommendations made in that report on alternative valley fill construction methods. This report is one of the most extensive investigations to date on the

environmental impacts of valley fills, yet the Department chose to overlook the report's conclusion that various construction techniques can be successfully employed if adequate safeguards are provided.

44 The coal industry has conferred with the authors of that report, and they readily agree that the underdrain, compaction, and foundation requirements should be unique to each particular fill. Skelly & Loy, consultants, concur that the best approach is a site-specific approach.

44 In addition to the Skelly & Loy report on environmental aspects, Consolidation Coal Co. has assembled the most intensive research investigation in the Nation to date in the long-term mass stability aspects of valley fills. Those reports were submitted for the written record.

44 In support of my previous statements, let me summarize the engineering involved with the site-by-site investigation of a spoil deposition site.

44 A soils engineer, after a careful subsurface investigation and laboratory testing program would consider the following:

- 44 1. foundation conditions,
- 44 2. spoil material strengths,
- 44 3. internal water conditions, and
- 44 4. embankment geometry.

44 All of these items would be utilized to conduct a stability analysis to determine the safety factor of a particular embankment at a particular site. This is one aspect which subsection 715.15(b) inadequately and erroneously addresses.

44 Stability is dependent upon an adequate combination of foundation strength, fill material strength, water conditions and embankment geometry. The regulations address each of these parameters, but fail to recognize that they are site specific and must be analyzed in each instance to determine the design of any valley or head-of-hollow fill.

44 However, these regulations attempt to specify a method of achieving stability as if these variables are static and are the same at every mine site. The regulations of 715.15(b) are supposed to provide for longterm mass stability. They clearly will not provide for this in all cases. There are and will be sites where spoil material strengths or foundation strengths are such that use of the one method set out in the regulations would result in mass instability and an unsafe fill. Utilizing these regulations could result in a

slope or fill failure.

44 Ground water monitoring. Sections 715.17(h) and 717.17(h) of the initial regulations require that operators monitor the effects of mining on ground water. An effective ground water monitoring program should provide data for measuring the progress of anticipated impacts and for detecting any unanticipated environmental impacts which could magnify short-term effects or which could lead to longterm effects.

45 Before implementing such a monitoring program, a detailed study of the geologic, surface, and topographic conditions; review of regional and local climatic conditions; review of published and unpublished literature and data; inspection of mine site hydrologic conditions; and test hole drilling must be conducted so that a sensitive monitoring program can be designed. The May 3, 1978 compliance deadline for existing operations does not allow the coal operators sufficient time to conduct the necessary preplanning and to implement a ground water monitoring program.

45 First cut spoils. Section 715.15(a) of the interim regulations addresses the disposal of spoil in areas outside the mine workings in ways other than utilizing valley or head-of-hollow fills. The prime example of this type of situation is the disposal of spoil resulting from the box cut, or in other words first cut spoil, in flat or gently rolling terrain such as in Illinois or Eastern Ohio.

45 Section 715.15(a) (8) of the interim regulations states that if any portion of the fill interrupts, obstructs, or encroaches upon any natural drainage channel, the entire fill is classified as a valley or head-of-hollow fill and must be designed and constructed accordingly.

45 Small natural drainage channels are often filled when placing first cut spoil in flat or gently sloping terrain. Sound engineering and construction techniques currently exist and should be approved by the regulatory authority that assure the long-term mass stability of these fills, other than the rigid and technically questionable cookbook recipe for valley or head-of-hollow fills in the initial standards. This recipe is even questionable for steep terrain and is certainly not appropriate in flat or gently sloping terrain.

45 Furthermore, this standard is a steep slope standard under section 515(d) (1) of the act, and that section specifically exempts from its coverage flat or gently rolling terrain on which an occasional steep slope is encountered. Therefore, paragraph (8) of section 715.15(a) should be deleted.

45 Terracing. The initial regulations impose severe limitations on the use of terraces to achieve approximate original contour. The act in its definition of approximate original contour in section 701(2), makes specific reference to the use of terracing in reclamation.

45 This is a proven and accepted engineering technique which achieves

stability, while at the same time conserves soil moisture and controls erosion.
OSM appears to have ignored the vitally important function of establishing slope stability and has stated that terraces may not be used unless they are compatible with postmining land use, and almost incidentally, if they also assist in erosion control.

45 There is no technical justification for this serious limitation on terrace usage, and certainly no statutory authority for tying terracing to postmining land use.

45 Mr. PAUL. My name is John Paul. I am vice president, public affairs, of AMAX Co., headquartered in Indianapolis, Ind. I am appearing today on behalf of the American Mining Congress and the National Coal Association to present industry views on the implementation of the Surface Mining Control and Reclamation Act of 1977.

45 In addition to the problem and concerns raised by Mr. Turner and Mr. Beach, there are several other major areas of difficulty which I will briefly outline for you.

46 The prime farmland provisions contained in section 716.7 of the December 13 regulations are of key importance to the industry. At the Interior Department's public hearings on the proposed interim regulations in September and in the Joint NCA/AMC Committee's comments filed in October with the Department, we urged that this section be stricken in its entirety from the final interim regulations. The basis for our position was, and still remains, that the specific language of the act is clear that standards relating to prime farmland are not part of the initial regulatory program authorized by section 502 of the act. While it appears that certain provisions of the act relating to prime farmland became effective on the date of enactment, these provisions relate only to permitting in a limited sense and the ability to make a finding of technological capability as provided in section 510(d)(1).

46 We suggest that making a finding of technological capability is a far cry from complying with specific performance standards as contained in section 716.7.

46 We are also every concerned about the regulations relating to inspections, enforcement, and civil penalties contained in parts 720 through 723 of the regulations. These regulations have a significant impact on the fundamental rights of people and companies engaged in coal mining operations, and the implementation of these measures for the purposes of securing compliance with the law is a very serious and sensitive area.

46 To a very large degree, the manner in which these regulations are implemented and administered will determine whether or not operators can continue in business. We are gravely concerned that these regulations interpret the statute in perhaps a punitive fashion.

46 During the 93d Congress, this subcommittee sitting jointly with the Subcommittee on Mines and Mining spent many long months developing a statutory basis for initial regulatory procedures which, among other things, would insure a smooth and effective relationship between the Federal Government and the coal mining States.

46 The work of the subcommittee in the 93d Congress is largely reflected in section 502 of the act today. However, the regulations implementing the act fail in several critical areas to give sufficient guidance to the States as to their responsibility during the interim period. There is substantial confusion and divergence of opinion in the various coal mining States, for example, as to whether or not under existing State laws they will be able to issue mining permits requiring compliance with many of the interim performance standards.

46 In short, although the statute clearly requires that on and after May 3, 1978, all surface coal mining operations on lands on which such operations are regulated by the State shall comply with certain initial performance standards, what if a State refuses, regardless of the reason or the merits of its refusal, to condition the issuance of a permit upon the operator's compliance with the interim performance standards?

46 We believe that this serious problem could be somewhat alleviated if the Office of Surface Mining would work with the States and the industry in some appropriate public forum to arrive at a mutually agreeable consensus resolving this very serious issue.

47 In addition, a written policy from OSM clarifying this crucial problem is essential. As of this date, we are not aware of any effort by the Office of Surface Mining to undertake such an effort.

47 There has been discussion that the States may need legislation to implement section 502. We do not believe State legislation is needed for the interim program but assuming this is OSM's position we maintain that the regulations should spell out what is required of the States so that all interested parties can comment on such an essential aspect of the interim program.

47 The failure to do this is, we believe, a denial of procedural due

process. The coal industry as well as others are in the dark as to the State-Federal interrelationship. The inferred loss of funding support should not be used to implement any policy not based on written regulations clearly setting forth in plain language what the duties and obligations of all the parties are, and all the parties include OSM and the States.

47 Another related question revolves around the status of existing Federal-State cooperative agreements between the Department of the Interior and the States of Montana, Wyoming, Colorado, New Mexico, North Dakota, and Utah. In regulations proposed by the Geological Survey on November 29 revising coal mining operating regulations on Federal lands, the Department proposes to terminate these agreements on February 3, 1978, unless the affected States make certain modifications.

47 In our opinion, these proposed regulations are a premature and improper attempt to implement section 523 of the Surface Mining Act, and in fact, are directly contrary to recommendations made by Secretary Andrus to the Congress in April 1977 to the effect that the Federal lands program authorized by section 523 should not be implemented in full until August of 1978.

47 I might add that Secretary Andrus' recommendations were accepted by the Congress. We would further point out that these proposed modifications are clearly a major Federal action as contemplated by the National Environmental Policy Act and require an impact statement pursuant to section 102(2)(C) of that act.

47 In any event, regardless of the legal merits of the proposed modifications to the existing 211 regulations, their prematurity and piecemeal approach will result in the imposition of unreasonable and unnecessary requirements upon operators of surface coal mines which will create confusion in an area where certainty is essential for orderly and environmentally acceptable energy development.

47 Enactment of the Surface Mining Act was intended by the Congress to resolve these difficulties. Among its other far-reaching purposes, the act was clearly contemplated by Congress as a cornerstone on which to base Federal coal policy for the foreseeable future.

47 Yet the Department's proposed modifications to the 211 regulations will patently and immediately cause serious disruptions in the industry's ability to mine on Federal lands for no beneficial purpose perceived by us.

47 Under the proposed regulations, at a minimum, within a 3-month period operators of existing surface coal mines on Federal lands will be required to

adjust their operations to three different sets of mining and reclamation standards and procedures.

48 The problem is compounded when one considers that the vast bulk of this mining occurs in those States which have existing cooperative agreements with the Department.

48 Furthermore, we believe that by proposing that the existing agreements terminate on February 3, unless modified it will be impossible for the States to make such modifications in so short a time.

48 In addition, there is no hint at how such modifications are to be developed, and at present we have no way of knowing whether the existing cooperative agreements will be continued. At a minimum, clear criteria specifying State and Federal responsibilities for modifications should be enunciated, and procedures for full public involvement must be provided.

48 A couple of specific sections we would like to address. Section 715.19 of the final regulations contain an extensive program for the regulation of the use of explosives. The act itself does mandate several blasting requirements but the regulations go far beyond the apparent intent of the statute.

48 In the first place the regulations are made applicable to any blasts equivalent in size to 5 pounds of TNT. This is such a small blast size that the effect is to make every explosive detonation on a mine site subject to the stringent public notice and scheduling requirements.

48 Second, the regulations in an apparent attempt to control potential damage from air blast sets a maximum sound limit of 128 decibels to be measured one-half mile from the site. This final rule was not proposed by OSM in their formal comment proceedings, and therefore, all parties were denied the opportunity to have any input on this requirement. We frankly don't know what this limitation will or will not do with regard to air blast effect. There has been no stated technological support for this new standard.

48 Finally, OSM has introduced a severe limitation on particle velocity cutting the presently accepted 2-inch-per-second standard in half. In practical effect, what this does is sharply reduce the size of charges which can be used on mine sites.

48 We find no justification for this. The current 2-inch-per-second criterion is widely used by other Federal and State agencies and is based upon research projects conducted over a 30-year period. The new standard is reportedly based upon an unfinished and therefore unexamined new study.

48 In view of the numerous other provisions for protecting nearby property owners from blasting damage, we see no sound reason to impose what is a markedly more stringent particle velocity limit than that presently considered acceptable for such protection.

48 On December 23, 1977, GAO served notice of OSM's proposal to introduce 29 new data gathering and reporting requirements pursuant to the Surface Mining Act. The industry was invited to comment on the burden and duplication seen in the proposed forms.

48 Unfortunately, none of the forms were included in the Register notice and only OSM's estimates for compliance time were therefore available. Based upon our review of what appears to be required, it is clear that the compliance burden estimated by OSM is significantly understated.

49 However, even as projected by OSM the time required to prepare the various reports is estimated to be 254,000 man-hours for operators, 527,000 man-hours by private laboratories providing consulting services, and 144,000 man-hours for States regulatory agencies.

49 Although no cost estimates were offered, even at Federal minimum wage levels the total expense of filing these new Federal reports will run into millions of dollars. Moreover, on the very face of the proposed reporting notice, there is the flat admission that EPA presently accumulates some of the data to be required by OSM.

49 We have notified GAO that there is no statutory requirement for these reports at this time since State agencies will continue to have responsibility for administering surface mining operations for many months. We have also pointed out the massive burden imposed by the forms as well as the several areas where duplication by Federal agencies is clear.

49 Unfortunately, GAO is granted quite narrow review authority under 44 U.S.C. 3512 and OSM is left as the ultimate decisionmaker on that agency's authority to require such data.

49 Mr. Chairman, we thank you for the opportunity to present this testimony today and we will be happy to try to answer questions that you or anyone may have.

49 The CHAIRMAN. Thank you, gentlemen.

49 Those are good, comprehensive, and helpful statements. I should just

say it took longer than the 5 minutes each that had been advertised in advance.

49 We need to know now the regulations affect you and we need to know details. I must say that I was struck by the fact that in Congress we are not always wise and can't see the impact of language we write from time to time.

49 It has been my hope that maybe we could set a model with this act, that we could insist on plain and simple language that ordinary people can understand. I am going to continue to ride herd on Mr. Heine and others.

49 I had also hoped that instead of just charging off to the next fire to put out that we could take the time to come back and look at our handiwork and see where it was working well and where it wasn't and be prepared to either give advice or help down the road.

49 We will be asking Mr. Heine about some of the questions you may have.

49 I was particularly struck by the point on sedimentation ponds. I never realized that the regulations as written would require facilities to be 6, or 8, or 10 times larger than what had been contemplated. I want to address that particular problem.

49 Your testimony has been helpful. We will be asking you about some of these things as we progress.

49 Mr. RAHALL. I have no questions, just a general comment. First of all, let me express my appreciation to you for your testimony. You commented specifically, Mr. Paul, in your testimony, that we hope that OSM will be working with the industry. I think it is evident that they are doing that by conducting seminars that OSM has been holding and through these oversight hearings.

50 We will see that an effort is being made to work with the industry and work with those who want to see this bill administered fairly. I am happy to see that we do have both sides here today and are having this give and take.

50 Mr. RONCALIO. I am a little surprised that you are surprised, Mr. Paul, that the modifications were taking place and the State conflicts with the Secretary. Those were entered into at the end of one administration in the last few weeks, and afterward it was obvious that Congress was going to have a strip mining bill.

50 I was hoping that there wasn't any serious impediment. If there are any serious impediments, I suppose we should be looking at them.

50 Mr. PAUL. I think our problem, Congressman, is that again we do not believe it was ever intended that we should be doing this at the time we are now seeing new regulations being promulgated, which are an attempt at an interim program regardless of whether we feel that the interim program should be implemented or not at this time.

50 You are well familiar with the joint agreements. It has worked very well so far and now is not the time to insert another set of rules and regulations at this point in time.

50 We are trying to comply with what we don't even understand, and we are trying to get ready for the 3d of May. Now we are confronted with the February date, which will be another set of standards and procedures which we don't need at this time.

50 Congressman Rahall, I would like to respond to what you said very briefly. That is, that we recognize there has been an effort by the OSM to talk to State people. Unfortunately, we are not sure that those discussions have gotten to the point that we have raised in our testimony today and that is - I have spoken with numerous people from the State agencies in the Middle West, and in the West particularly, and I have heard from others who have had the same conversations with Appalachia, Pennsylvania agencies, that the State agencies do not know what to do.

50 We are looking at May 3 for us to come into compliance. The operators are making a sincere and honest effort to try to come into compliance. We do know we have to file for a permit after the 3d of May. The State agencies don't know what to do with them. Some say don't file with us, we don't have the authority. Send it to the OSM.

50 The statute gives no authority to us to have any permitting authority.

50 So, we don't know what to do with the permits. Even if you are in compliance, you are subject to a citation and perhaps a fine by OSM inspectors on the 3d of May because our permits will not include these provisions.

50 We need to have some public forum to sit down with OSM and State regulators and talk this out, so that all three parties understand, because May 3 is coming upon us. Either that or we need some kind of delay in the overall

implementation date of the act to comply with the intent of Congress, to have an interim program that did not impose legislative actions on the State doing that program.

51 The CHAIRMAN. We are going to try to be helpful in that regard, either de facto or otherwise. We have to work out a timetable. The law has to be commonsensical. We have to do something about it.

51 Thank you, gentlemen. We will be working with you.

51 Our next witness is the distinguished Representative from the State of Nevada, Jim Santini, who will enlighten us.

 STATEMENT OF HON. JIM SANTINI, A U.S. REPRESENTATIVE FROM THE STATE OF NEVADA

51 Mr. SANTINI. Mr. Chairman, this morning I felt like I was a resident of Alaska moving on with Sergeant Preston.

51 Mr. Chairman and fellow members of this committee, I am deeply troubled by the manner in which the Interior Department is administering the Surface Mining Control and Reclamation Act of 1977. This committee worked long and hard to develop a surface mining bill that would achieve the important reclamation goals which we wrote into the law, insure that the roles of the coal mining States would not be diminished, yet at the same time assure that the coal supply essential to the Nation's energy requirements, and its economic and social wellbeing would be maintained.

51 Section 502 of the act, establishing initial regulatory procedures for surface coal mining operations was especially aimed at achieving these purposes. I find it astonishing that the Interior Department finds it necessary to promulgate nearly 400 typewritten pages of regulations to implement only one section of the act.

51 There are those with a turn of mind that would suggest that this flies in the face of the direction and suggestion that was shared by our President of the United States last evening when he said, and I quote from page 6 of his text: "The American people are sick and tired of Federal paperwork and redtape." He alluded to the fact that he had succeeded in cutting the paper workload by 12 percent in the first year of his administration.

51 I suggest, Mr. Chairman, and this is merely a surmise on my part, if this regulation continues in the thrust that has been initiated, we may increase

the paperwork burden by 24, 36, or 48 percent by the end of this year.

51 We should keep in mind that these are only the temporary regulations, which will be superseded by more voluminous permanent program regulations scheduled for promulgation in August of this year.

51 In addition, both the interim and the permanent program regulations will require revision of State laws and regulations in all the coal producing States.

51 At the present time it is not clear to what degree of revision any given State will have to undertake, or for that matter, as the previous witness alluded to, whether they can meet the deadline specified in the act for such revision.

51 In any event, these almost 400 pages of regulations represent yet another shining, stirring example of the regulation proliferation which continues to be spawned by the executive branch. There are at least some of the 400 pages and the 87 pages here, which I would submit, Mr. Chairman, that a monk in a monastery working for 2 years with a microscope would have difficulty translating, but are not in compliance with section 501 in terms of plain, clear language, as it attempts to twist and turn the clear mandates of the Congress or comply with the mandates.

52 Section 501 of the Surface Mining Act specifically mandates that the implementing regulations be concise and written in plain, understandable language.

52 Section 201(c)(12) of the act requires the Secretary of the Interior, acting through the Office of Surface Mining and Enforcement to cooperate with other Federal agencies and State regulatory authorities to minimize duplication of inspections, enforcement, and administration of the Surface Mining Act. I have found no evidence in these regulations that the Department has complied with this requirement.

52 To the contrary, it would seem a substantial number of coal mining States are in a quandary - the previous witness included this also - as to what their responsibilities under these regulations will be.

52 With regard to water quality standards, OSM and EPA are unable to agree on whether a single permit can be issued, or whether there should be a single enforcement program of water quality standards.

52 As for the regulation of coal mining on the public lands and Indian lands, the Federal Government has a responsibility to clearly articulate which of its agencies have jurisdiction over the issuance and enforcement of

reclamation regulations.

52 At the present time, creation of the Office of Surface Mining has further muddied ongoing confusion regarding the role of the Geological Survey, the Bureau of Land Management, the Department of Agriculture, the Bureau of Indian Affairs, and other Federal agencies charged with the role of regulating the mining industry. These problems must be settled if the goals of reclamation and energy production are to be achieved.

52 The Surface Mining Act is one of the most important pieces of environmental legislation passed by the Congress. If it is to work, we must pay frequent and close attention to the manner in which the Interior Department is implementing it. Although the Office of Surface Mining has experienced more than its share of startup problems, even taking this into consideration, its track record thus far should be of concern to us all.

52 OSM is a new agency, and we must not permit it to force the States and the industry to spin wheels toward achievement of unreasonable, unnecessary, and in some instances impossible goals. The members of this subcommittee are well aware of other instances where regulations mandated by such agencies as EPA and OSHA have created such thickets of regulatory gobbledegook as to actually preclude achievement of the legislative goals mandated by the Congress. We must not allow the Office of Surface Mining to join this sad litany.

52 I thank you, Mr. Chairman, for hearing my words on the subject, and would be happy to respond to any inquiry or observation you may have.

53 The CHAIRMAN. The gentleman is as articulate and eloquent as he always is.

53 I just spent 2 months in my district traveling around and meeting with people, and I certainly would have to conclude that there is a sentiment with the people that they are overburdened with unnecessary paperwork and unnecessary regulations. I hope you join with me in cooperating to monitor this.

53 I said earlier I hope we can make this a model and come back every year for the next 2 or 3 years and hold hearings of this kind and keep the feet of the regulatory agency to the fire and make sure they carry this out. I was thinking, as I read your eloquent statement, about the unnecessary paperwork and about the Public Works Committee a few years ago when there was a witness who was from the tongue-in-cheek organization called the National Association of Professional Bureaucrats. He was decrying all this talk of unnecessary

paperwork saying that bureaucratic paperwork was a thing of beauty and that the more the better.

53 Oh, Mr. Chairman, do they count the leaves? Do they count the snowflakes in the winter? Somebody has testified that there had been 2 million pieces of paperwork. To him, these were beautiful pieces of art and should be cherished.

53 I am with my colleague on his revulsion against unnecessary and burdensome and complicated language. We clearly intended to do something with this act. We certainly intended to clear this up. We ought to keep our eyes on that goal.

53 Whatever methods are the most simple, most direct, the least burdensome, those are the ones we ought to be utilizing.

53 I think you have made a contribution in pointing that out.

53 Mr. RAHALL. I just have one question, Mr. Chairman, to our distinguished colleague. In order to take our microscope to the 400 pages of the regulations that you have produced here this morning and to wade through the gobbledegook, I think you called it, without recommending an extension of time for the enforcement, what do you recommend?

53 Mr. SANTINI. I most emphatically do recommend something. All parties concerned are going to need some additional time for understanding the definition of some of these rules and regulations. I don't think the Federal agencies themselves have clearly defined where they are at in terms of their responsibility on this thing. I sure think that suggestion makes a lot of sense.

53 Mr. RAHALL. Do you have a specific timeframe?

53 Mr. SANTINI. A hundred years. [Laughter.]

53 Certainly the balance of the year would seem to be a reasonable timeframe for everyone to get their act together. We are already wallowing. It is a staggering kind of responsibility to undertake.

53 The CHAIRMAN. I hope you will stay with us, or come back and help harass these poor overworked bureaucrats that are trying to put these regulations into effect. Part of the format of the hearing was to have Mr. Heine and his main people sit through the hearings and listen to the complaints, and then at the end we will have him back to ask him some questions.

53 So, if you can get back, please do.

54 Mr. SANTINI. I look forward to that opportunity. Thank you.

54 The CHAIRMAN. We will now hear from two State operators associations, West Virginia, Mr. Benjamin Greene, and Pennsylvania, Mr. Fran Mohney. Are the gentlemen here? Mr. Greene, are you alone?

54 Mr. GREENE. Yes.

54 [Prepared statement of Benjamin C. Greene and Franklin H. Mohney may be found in the appendix.]

STATEMENT OF BENJAMIN C. GREENE, PRESIDENT, WEST VIRGINIA SURFACE MINING AND RECLAMATION ASSOCIATION

54 Mr. GREENE. Mr. Chairman, Congressman Rahall, other members of the Subcommittee on Energy and the Environment, we appreciate the opportunity to appear here this morning, and particularly thank the subcommittee for their courtesies in the last few days in arranging our appearance.

54 I am Benjamin C. Greene, president of the West Virginia Surface Mining and Reclamation Association. We come from a snowy area where we have had 19 inches of snow since yesterday and it is still coming down.

54 I might move away from our written statement and try to highlight three or four major areas, operating within the time constraints that the good chairman has laid out.

54 The CHAIRMAN. That would be a very useful way of proceeding. I find I learn a lot more when that happens, when the witness gets to the guts of the thing and tells us what we are out to hear. We are making a permanent record and we will have your statement for that purpose, so use the time as you see fit.

54 Mr. GREENE. I have with me Mr. William Rainey, vice president of our association on my left.

54 I think a continuing theme throughout the hearing has been the timing requirements that were imposed by the act, and I refer to the February 3 and May 3 deadline, coupled with the sedimentation control criteria and point out the impossibility for the industry to comply.

54 I think you can probably see this as we move into a case history in the southern region of West Virginia. I would briefly comment on the specific exemption for small operators and would point out that I hope it is the final interpretation that those people get a deserving timespan of compliance until January 1, 1979, and the renewal interpretation as it applies to some States will not affect that exemption in West Virginia.

54 The West Virginia renewal is based upon a compliance schedule and annual review by the regulatory agency and does not in any way change the permitting, the bonding, or any of the mechanics of the applications as filed.

54 I would again touch briefly on the postmining use of land, and that basic concept that I believe is restrictive and counterproductive to encouraging the changing of the use of the area after surface mining.

54 Disposal of soil in the valley or head-of-hollow fills in West Virginia - we have been a pioneer in this and have perfected it. Another great concern coupled with the diversion and the requirement to comply with the title which then says that the water will be diverted around. Again, this is a prohibitive feature in the steep slopes of West Virginia.

55 Diversion and the concept of overland flow based upon a 10-year and 120-day design criteria again is counterproductive and does not have applicability to the steep slopes of Appalachia.

55 Sedimentation control, we will document this with four case histories. We would like to leave three case histories with the committee and focus on one here, if we might at this time.

55 I will take a surface mining operation, specifically one from Logan County, W.Va., in which an ongoing permit, since 1963, has been operating in a watershed of some 550 acres. This permit has disturbed to the present time some 204 acres of which 112 has been regraded and revegetated.

55 On several occasions, in fact some 12 documented occasions since the December 7 publication, we have been in touch with the Office of Surface Mining, and we commend them for their treatment to the West Virginia Association. But, I do not believe that the numbers that were spelled out in the sedimentation control regulation had ever been applied to the steep slopes of Appalachia. To this particular problem we have been told that we have overreacted or we do not know how to design in West Virginia.

55 In this particular case, we turned to a well-qualified, eminent authority, an environmental engineer, working with Steely & Lowey operations out of Harrisburg, Pa. We said, take these numbers and apply them to this particular area. It has - happens to be -

55 The CHAIRMAN. Let me interrupt. Mr. Rahall suggests that this was a site that we visited last year. Is that right?

55 Mr. GREENE. Yes. The committee visited this site, and, in fact, you looked at the area that is presented. At the present the drainage system for this operation is about the length of a football field, some 50 feet wide, and about 12 feet deep. Applying the numbers that have come down in the sedimentation control criteria we would require a dugout of 2,500 feet long, 300 feet wide, and 13 feet deep covering an approximate area of 40 acres.

55 Mr. Chairman, 570 feet of highwall at the back and to get the capacity necessary to merit the numbers of sedimentation control requirements.

55 Now, if you don't want to go down, your other choice is to go up. In that particular case the embankment would be 246 feet high with a capacity of 609 million gallons of water required to meet the surface area with a 24-hour retention time and 0.2 acre of sediment storage required by this particular regulation.

55 We believe certainly that the experience of working with both the Senate and the late Senator Metcalf and this good committee that it was not the intent and does not represent the best thinking of Congress as it applies to sediment control in the steep slopes of Appalachia.

55 We have been told that diversion is a possible way to meet the criteria and we have applied a diversion design of a 10-year, 24-hour storm to a part of this particular diagram. We have 100 acres of drainage coming down the left side and if you would divert - keeping in mind the average national slope is 60 percent and greater, if you would design on a 10-year, 24-hour storm, you would have a diversion of 10 feet at the bottom width of approximately 4 feet deep, and considering a one-to-one side slope, one-to-one side slope in a solid rock, which is basic to southern West Virginia, you would create a highwall of 30 feet to convey the water around, if that was a practical application, which it is not.

56 Of course, AOC, or approximate original contour, has been one of the main arguments as we proceeded through this 7-year history of this act.

56 Time marches on, of course. February 3 is around the corner. May 3 is near. Of course, there are several major areas that are confronted by the West Virginia industry. I might note that we are in a major labor contract strike now 50 days long. Our weather conditions are the most severe. The final interim regulations were some 40 days behind schedule, putting us behind schedule.

56 Of course, the Federal-State program as we know it, which is in my opinion a workable concept, is at the present time without the Federal - and I say that with the hope that Congress in its wisdom will give immediate consideration, and we certainly support the move to find this Office as soon as possible. That coupled with the overkill regulations and sediment control, diversion drainage designs, the hydrologic impact of roads, and postmining use, as well as those areas touched upon paint a very bleak and dismal picture for the State of West Virginia.

56 Mr. Chairman, we pray for relief in those areas named. Again, highlighting the fact that timing is critical and reasonable and workable hydrologic criteria certainly has to go along with any thought to the timing aspects.

56 I might point out if it was economically feasible to put in this dugout or build this the estimated cost is in the neighborhood of \$1 5 million with about a 3-year construction period, and that is with one of the larger companies. And that is S. J. Glove & Sons out of Minneapolis, Minn.

56 I think that President Carter summarized our plea when he asked for increased production, cut out the waste, and use the fuels that are so plentiful in this Nation. I think that parallels the ongoing West Virginia approach for the next years, energy with environmental protection.

56 I thank you for the time. I would be happy to respond to any questions.

56 The CHAIRMAN. Good statement, Mr. Greene.

56 Just about a year ago, in March, we visited this site you refer to. This shows the difficulty of sitting here in Washington and trying to write laws and the difficulty that Mr. Heine has in trying to spell them out and administer them. You can't cover all situations. You really can't anticipate things like this.

56 I want to say for myself I never dreamed that we were mandating the kind of structures that you are talking about. Some are as big as the major dams in the West in terms of size and all the rest.

56 There must be a sensible way we can do something about sedimentation and establish and reach a reasonable goal without going to unreasonable size. This is something I want to ask Mr. Heine about.

56 Mr. RAHALL. Mr. Greene, what is the present holding capacity of that pond on the project you have shown us?

57 Mr. GREENE. The present holding capacity is about 22 acre-feet and

that controls the front face of the valley fill. The valley fill is, of course, to the upper righthand corner under construction. This is an ongoing operation.

57 The fill contains 26 million cubic yards of material. That is coupled with a 7-million-cubic-yard fill which was near completion at the site last year.

57 I might also say, and echo my fellow friends from the National Coal Association, when the 164 feet per 50-gallon-per-day inflow was new and came into the regulations after the public hearings - it has not been workable. I think it is very obviously not applicable to the steep slopes of Appalachia.

57 It appears to us that rather than operating in a concurring opinion or a concurring view the Environmental Protection Agency has dominated in the sedimentation control and hydrologic areas and without proper application. I am sure that nobody has been through these numbers as they apply to the steep slopes.

57 Mr. RAHALL. What do you say the capacity would be if this sedimentation control regulation were in effect?

57 Mr. GREENE. Six hundred and nine million gallons of some 2,900 feet in length, 300 feet wide, or you can go up if you don't want to go down and have a dugout. You would have a structure of 246 feet high.

57 Keep in mind the average slope typifying southern West Virginia, southwest Virginia, northeast Tennessee, and Kentucky - there are very steep, rugged terrain and it is very difficult to construct. When you get into this magnitude it is prohibitive at the least.

57 Mr. RAHALL. I think the people of this area are quite concerned with the increased sediment ponds or increased water embankments that might be hanging over their heads. That is something we want to look at very closely.

57 I am also curious, Ben, if you have found any conflict between the regulations as they are written at present and other governmental agencies such as EPA, or any other agency?

57 Mr. GREENE. There seems to be a theme of overlap and duplication. Certainly I have been a regulator for many years. I can appreciate that to some degree. But somehow, someday we must come around to one-stop shopping and put someone in charge and lay out a criteria and let them be the regulators and not be dealing with the Environmental Protection Agency and MESA and the Office of Surface Mining in the State of West Virginia and those others, the Corps of

Engineers and others, because we are covering, in my opinion, many problems with a bureaucracy and not really attacking them on the ground where they need be.

57 Mr. VENTO. Mr. Chairman, I haven't read all the rules and regulation. But if you reduce the size of the mine site, would that then necessitate a smaller sedimentation pond?

57 Mr. GREENE. Of course, you have to consider the watershed of the area that you are mining in and the amount of disturbance in the watershed. But when you apply the 164 feet for every 50 gallons of inflow from a 10-year, 24-hour storm, it would have limited effect.

57 Mr. VENTO. Limited effect. So, the basic problem then is with the interim regulations?

58 Mr. GREENE. Those and the criteria that you must have a 24-hour retention, 164-hour inflow and the 1 acre-foot of storage for every 5 acres you are disturbing. This is a final design that applies to this site. Keep in mind it is an ongoing site.

58 The three permits were issued in 1973. It is about 70 million cubic yards of material in that valley and probably another 6 years of mining remaining.

58 Mr. VENTO. What would be your reaction, for instance, if the old permits were grandfathered in and then new criteria were set out for new mines with regard to this particular problem?

58 Mr. GREENE. Well, I think that certainly is a worthy consideration. I would say that if you couple that and the continuing kinds of numbers that are spelled out in 715(a) and (e), taking those two requirements together you will prohibit mining by the surface method and the same limited effect of underground mining that are also in the regulations. You will prohibit mining in the Appalachia area. It is that simple.

58 The CHAIRMAN. This is a classic example of the dilemma that well-intentioned legislatures and well-intentioned regulators get into. In the act itself it took 40 or 50 pages to provide for - we set up a performance standard in this law which says you conduct surface coal mining operations so as not to prevent the maximum possible use of the best technology currently available. You prevent additional disruption of suspended solids to the stream. But in no event shall this exclude the applicability of Federal law.

58 So, we tried not to go into too great detail. Here is a standard, prevention of sediment. Then we say to Mr. Heine, who is a good man and a reasonable man, you carry this out. He has a long requirement here, two or three pages in which he picks up this formula that they are now complaining about. It has a lot of detail language. But here is how we get into that box.

I never dreamed that we were requiring in this situation 200-foot dams and yet apparently we said - we gave them a goal to reach that perhaps you can't until you have a 280-foot dam.

58 How do you handle this? I don't know. It is a classic example of how Congress and the regulators get into this situation. So we have to go back and look at our work.

58 Mr. GREENE. Two other points before I move on. One is that this particular site has been monitored over the last year in an ongoing EPA study. And the particular operator, though it has never been a 10-year, 24-hour event, has always met the effluent guidelines as laid down with the present controls.

58 I think that goes back to the committee report from the House and the legislative history in which it says that the States will have the flexibility to strengthen the regulations where needed.

58 I think the State of West Virginia in their testimony indicated their general satisfaction with our present-day program. Yet we are being told, this won't work, you have to do this.

58 The CHAIRMAN. Thank you.

58 Is Mr. Mohney here? Maybe he was caught in the snow.

58 Mr. Norman Kilpatrick, director of the Surface Mining Research Laboratory in Charleston, W.Va. Is he here? Another casualty this morning.

59 Mr. Karl Englund, the director of the Citizens' Coal Project of the Environmental Policy Institute.

59 Mr. Englund, Mr. Galloway, welcome.

59 [Prepared statement of Karl Englund may be found in the appendix.]

 STATEMENT OF KARL ENGLUND, DIRECTOR, CITIZENS' COAL PROJECT,
ENVIRONMENTAL POLICY INSTITUTE, ACCOMPANIED BY L. THOMAS GALLOWAY, COUNSEL,
ENVIRONMENTAL POLICY INSTITUTE

59 Mr. ENGLUND. I am Karl Englund, director of the Environmental

Policy Institute's Citizens' Coal Project, 317 Pennsylvania Avenue SE., Washington, D.C.

59 The Environmental Policy Institute is an independent nonprofit research and educational organization specializing in analytical work and distribution of information relating to the environmental, economic, and social impacts of energy, water resources, and land use management policies.

59 Through the citizens' coal project, the institute is closely monitoring the implementation process of Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977. With me is our counsel, L. Thomas Galloway, an attorney with the Center for Law and Social Policy in Washington, D.C.

59 We are happy to have been invited here today to participate in the first of what we hope will be a number of hearings, held periodically to monitor the administration and enforcement of the Surface Mine Act. We believe that strong congressional oversight will be necessary if the Surface Mine Act is to achieve what we and this committee desire - responsible surface mining of coal and the effective reclamation of disturbed lands.

59 We will limit our comments here to the question of delay.

59 Industry and States have come before this committee asking for a delay in implementation of the interim standards of the act. We strongly believe this request should be rejected.

59 As this committee knows, the act has built into it, provisions for gradual implementation of the act. New mines are not required to comply until 6 months after the date of enactment; existing mines have an additional 3 months to bring their operations into compliance; and small operators have until January 1, 1979, to meet the very limited provisions that make up the interim program.

59 Congress explicitly considered the length of time for operator compliance, and developed this timetable. States have 18 months to develop their permanent State programs, unless action by the legislature is needed, in which case they have an additional 6 months. The Secretary has 6 months to approve or disapprove a State program.

59 If he rejects the program, States have an additional 2 months to resubmit their program. Upon resubmittal, the Secretary has another 2 months to approve or disapprove the program. Thus, it could be a total of 42 months, or 3

1/2 years after enactment, before a permanent program is initiated in any given State.

60 Despite the lengthy phase-in period, segments of the industry and certain States have asked this committee for yet another delay. Yesterday, the State of Kentucky called for a short-term delay; Maryland asked for a 4-month delay; Ben Lusk, of the Mining and Reclamation Council of America, asked for a 6-month delay; NICOA asked for a 9-month to 1-year delay.

60 The CHAIRMAN. Mr. Santini asked for a longer period than that.

60 Mr. ENGLUND. In asking for a delay, these groups cited two major reasons for postponement of the February 4 and May 4 implementation dates:

60 1. Physical inability to comply with the regulations by their effective dates because of such matters as strikes, bad weather, delay in promulgation of the interim regulations, and the unavailability of technical assistance to help the industry come into compliance; and,

60 2. Inability of the Office of Surface Mining to adequately enforce the interim regulations because of lack of personnel and lack of a congressionally approved budget.

60 Let us start with the request for delay of the February 4 deadline. The act requires new mines to comply with the interim regulations by February 4, 1978. Anyone opening a new mine after February 4, 1978, has known since August 4 that his operation would have to meet the limited requirements of the interim program on February 4. Such prospective operators were on notice that interim regulations would be promulgated and would go into effect on February 4. These prospective operators should have planned on this inevitable eventuality.

60 It is true that on August 4 the prospective operators did not know the particulars of the interim program. But they knew enough to plan intelligently so that they could meet the February 4 deadline.

60 Moreover, to give new mines a 3-month delay does not make sense. It does not help them and it will create confusion and compound the problems of compliance 90 days, or whatever, down the road. There is no rational reason why an operator opening a mine on February 5 would want to construct haul roads, sediment ponds, valley fills, or whatever in a manner that would violate the standards with which he must comply in 90 days. Why would he build a settling pond on February 5 that he would have to rebuild on May 5?

60 There is only one reason we can see why he would do it, and that reason is completely unjustified on its face. Giving a new operator a 3-month delay would actually give him a 6-month delay. Let me explain: Let's say the interim program is delayed for 90 days for both new and existing mines. Thus, new mines would not have to comply until on May 4 and existing mines on August 4. However, this change would mean that a new mine under the current language of the act would become an existing mine under the extension. Thus, an operator who opens a mine in mid-February would not have to comply with the interim program until August 4 - a 6-month delay.

60 Thus, granting a delay to a new mine makes no sense. Moreover, what appears to be a 90-day delay will in actuality amount up to a 6-month delay.

60 That leaves the second argument for exemption of new mines: The lack of an OSM presence in the early days of February caused by no budget and a resulting lack in staff and field personnel.

61 The lack of a fully operational OSM staff presents two major problems:
(a) inspection, and (b) technical assistance.

61 As far as inspection is concerned, the act assumes that operators will make a good-faith attempt to comply, with or without the existence of an inspector force. As Mr. Heine said yesterday, he sees a basic obligation of operators to comply with the act. We agree. Even at projected full staff for fiscal year 1978, inspection will be an infrequent occurrence, with an average inspector responsible for 35 separate surface mines.

61 As far as technical assistance is concerned, the operator can still go to his State regulatory authority. Moreover, OSM will be increasing its staff and field personnel in February and March.

61 Industry and the States have also asked for a delay in the implementation of the interim program for existing mines. The act currently requires that all existing operations comply on May 4, 1978. Their arguments center on the same two points: The Physical inability to comply because of various factors and the lack of OSM presence.

61 The argument that it is physically impossible to comply with the regulations by May 4, 1978, is of little or no substance. They argue that weather and the strike have prevented them from working on their mines in order to bring them into compliance by May 4. We assume from this that their concerns are with preexisting or nonconforming structures, such as settling ponds and haul roads now in use which do not comply with the OSM regulations but which must be upgraded to comply by May 4, 1978.

61 However, there is already in the regulations a specific exemption for these structures until November 4, 1978. Section 710.11(d)(2) of the regulations provides a mechanism whereby operators can get this 6-month exemption for all preexisting structures if they demonstrate that it is physically impossible for them to bring these structures into compliance by May 4.

61 If there is to be delay in bringing nonconforming structures into compliance because of impossibility, the way to do it is on a case-by-case basis as this regulation requires. There is every reason to require an operator to show that he has made a good-faith effort to bring his facility into compliance. There is no reason to allow those operators who can comply to be exempted; which is, of course, what an across-the-board delay would do.

61 In fact, if one looks carefully, the request for delay makes no sense for nonconforming structures. Most operators and States seem willing to accept a 4-month delay in implementation. Yet regulation 710.11(d)(2) allows a 6-month delay if they can demonstrate its necessity.

61 What we suspect is that the operators will attempt to piggyback the 120-day delay onto the 6-month delay already in the regulations. Thus, the grand total is a 10-month delay.

61 We understand there are complaints with the preexisting structure exemption as it is now contained in the regulations. Frankly, we argued against its inclusion in the regulations. However, this is a matter for the Interior Department. To the extent that there is authority for the exemption in the first place, the Interior Department, after an adequate showing, could allow more time for application and/or completion. Interior can do this, after working with this problem day after day, in a manner that would limit this exemption to those who truly deserve it.

62 The States' argument for delay differs from the industry's only in that it involves an extra administrative burden for them. Yet the States requested and obtained from this committee the lead role in the regulation of surface mining. The States have known about the implementation dates, and the corresponding administrative tasks, since, at the very least, August 1977.

62 Moreover, the States took an active role in the formulation of the interim regulations, and should be intimately familiar with their content.

62 Yesterday some of the State representatives said that their respective legislatures had to pass legislation on the interim program. According to information provided to us by the Office of Surface Mining, eight States have indicated that they have this authority under existing law. Thirteen are

actively working on passage of such legislation and only one State has expressed an unwillingness to do this.

62 We would like to make the final point concerning the request for delay. It is important for this committee to distinguish the problems the States and operators have with certain substantive regulations; and so forth, sedimentation ponds, and the supposed need for delay.

62 No 4-month delay will solve the States' and industry's problems with sedimentation ponds. That is something that the OSM, industry, the States, and citizen organizations must settle. It is not a problem that is solved or even addressed by the request for a 4-month delay.

62 We have a number of other concerns and these are addressed more comprehensively in our written statement. We thank the chairman and the committee for the opportunity to speak.

62 We will answer any questions you may have.

62 The CHAIRMAN. Very good statement and you respond clearly and specifically to the delay suggestions in a way that gives us the other side of the argument. Very effective testimony.

62 What do you think we ought to do about sedimentation ponds since you are a fair-minded environmental group? What should we do?

62 Mr. ENGLUND. First of all, I am not technically qualified to go into all the technical aspects of it. My understanding is that the Office of Surface Mining has begun to address this problem and will continue to do so in the immediate future in cooperation with the States and with the West Virginia Miners Association and with the cooperation of some of the people with whom I work who do have the technical expertise to discuss this problem with them.

62 The CHAIRMAN. Are there other ways to go at it instead of having a 280-foot dam?

62 Mr. ENGLUND. I would hope so, sir.

62 The CHAIRMAN. You are not insisting that regulations of that kind are the only way to resolve this problem?

62 Mr. ENGLUND. No, sir.

62 The CHAIRMAN. OK.

62 Mr. RAHALL. I am looking through the rest of your statement which is

quite a comprehensive testimony that you have prepared and it seems to be very well researched and documented.

63 I notice at one point you are talking about further problems - three major areas you define as problems you have with the regulations. Am I interpreting this correctly, problems with the interim regulations, issues surrounding general implementation and the others?

63 Mr. ENGLUND. Yes.

63 Mr. RAHALL. So there are concerns that you have with the present regulations?

63 Mr. ENGLUND. With the present regulations, and then concerns we think that this committee should be aware of; future concerns coming down the road and where we see the beginning of what could be problems in the near future.

63 Mr. RAHALL. These problems would relate to to the regulations?

63 Mr. ENGLUND. We have a few problems with the regulations and then we also have some problems with policy decision on the part of the Department. For example, we think the Department should immediately initiate the vigorous trade policy for alluvial valley floor lands that was worked out in conference committee so as to take the pressure off the lands and so as to preserve the West's most important agricultural resource.

63 Now the regulations allow this with no problem. We hope the Office of Surface Mining, the BLM, and the USGS will get moving on a program to identify the areas that can be traded and to go out and find those leasees and the fee coal holders, and start initiating these trades. They will be very difficult things to do.

63 The process could be very long. The language of the act is good language and allows them the flexibility, not just to deny permits but to offer someone who has the financial investments to invest in new lands.

63 This is one of the things we would like to see the Department get moving on.

63 Mr. RAHALL. Thank you.

63 The CHAIRMAN. Do you have any comments, either you or Mr. Galloway, on this basic theme that we have had for 2 days, that the regulations are too long, too complicated, the paperwork burdensome, the business is simply impossible to comply with? I have always felt that the environmental laws are going to be

repealed or seriously modified if we didn't meet these objectives or challenges.

63 What do you think? Are the regulations simple enough to suit you?

63 Mr. ENGLUND. I will ask Tom.

63 Mr. GALLOWAY. We agree completely with the need for plain and simple language and I think you would find very little disagreement on that. But I think it is also fair to say that a balance must be struck.

63 You have heard the industry repeat time and time again that their reason for wanting a delay is the uncertainty about the way certain things came forward. Certainly the regulations have a very important role to play in informing the industry of certain ways particular provisions will be enforced and certain standards with which they must comply.

63 The industry has a legitimate interest in seeing there is adequate information given to them concerning the various policies. Regulations, of course, historically are one way in which legislation is implemented. I think any fair-minded person must agree that a balance must be struck. Certainly I think regulations can be written in plain and simple language that would inform the industry of its obligation. Whether every single sentence meets that standard, I have serious doubt, as you indicated at the very beginning of the hearing yesterday.

64 I do think it is a very good effort by a severely overworked task force. And I think while there may be certain language in the regulations and certain complexities that could be removed, I think the task force generally has done a good job under difficult circumstances.

64 Mr. RAHALL. Have you found any cases where you have seen the intent of Congress as we passed the law was either exceeded or not lived up to in the writing of the regulations?

64 Mr. ENGLUND. There are a number of very, very specific problems - you get into this area and say, very broad language in the States. Then you start making decisions based on the small miners versus the big miners. We have some problems. There is a difficult problem which we address in our testimony. We think for a big Western mine the precipitation event that is exempted from the water quality standards ought to be made larger since areas with steep slopes aren't that big a problem.

64 At this time I don't know if I want to go as far as to say that the Department has undermined the act by not agreeing with our suggestions. But we

think it would have made the regulations better, and we think it would have provide an extra measure of safety in the West.

64 Mr. RAHALL. Do you think that they underscored the intent of the Congress in what you thought the bill said?

64 Mr. ENGLUND. Generally, yes.

64 The CHAIRMAN. Thank you, gentlemen.

64 Mr. Heine, will you resume the stand, please?

64 You probably have a number of things you want to respond to. Let me start off with a number of questions, if I can.

64 One of the arguments that was made yesterday in these hearings concerning the inability of the States to modify their laws was the lack of coordination with the interim standards. The argument was made that after February 3 just a number of weeks from now, States with laws that are inconsistent with the interim standards will not be able to issue a new permit.

64 Without that authority things will come to a grinding halt till the legislatures can act. Comment on that.

64 Mr. HEINE. Mr. Udall, if you wouldn't mind, Associate Solicitor Eichbaum, on my left, and I, have discussed this and I think he can provide the best answer being as it is quite legal.

64 The CHAIRMAN. I always like to hear from fellow lawyers either to clarify or obfuscate.

64 Mr. EICHBAUM. There are some theories that would say that by passage of this law the States inherently have received the power to issue permits that would include all the interim regulations. Some of the States disagree with that as a matter of State law.

64 Rather than enter into an extensive argument with the States over that issue, or, second, enter into actual litigation over that issue, we believe, and we have informed many States, that if they issue permits under their existing authority and insofar as that authority authorizes them to include the interim regulations, they also do that.

65 But where they can't do that, they make a reference that those interim regulations are a matter of Federal law applicable to that operation and that the permit is being issued.

65 Then we believe that the States will comply with the Federal law and get the permits out for a particular operation either pursuant to State law which they can then inspect and take the relevant enforcement action.

65 But if there is clearly in their opinion an inability to do that, there is notice and mandate to that operator. We can take action under Federal law if that is required, if there is a violation of a particular Federal standard.

65 The CHAIRMAN. You are prepared, I suppose, to issue opinions, have solicitor's opinions issued, or whatever necessary, to reassure States on this point with regard to the intent of the law.

65 Mr. EICHBAUM. We are trying to work with the people in the attorneys general's offices of the various States to have a clear understanding on this question; yes.

65 The CHAIRMAN. If it would help, I would be glad to assist in any way I can. If you want a letter from us stating my views as author of the congressional intent, I will. If we can informally get around this, I would be glad to help.

65 The second question I have is whether or not the act and the regulations require existing mines to comply with written standards in May and bring existing structures into compliance. We have been told here for 2 days that the thing we can foresee, the miners' strike, the bad weather may make this task difficult or impossible.

65 Is this the case? And does that justify the kind of statutory extension that has been suggested? What do we do about that problem?

65 Mr. EICHBAUM. I think the bottom line is if there are at the end of that interim period - that goes to November, some small numbers of structures that cannot comply, the question is whether or not as a matter of enforcement discretion of the agencies, we can do something that puts that structure on a schedule.

65 My experience as an enforcer of both State and Federal law over the last 7 years is that you can meet that small number of problems through the exercise of that discretion.

65 On the policy question as to whether or not there are enough of those to justify change, I think the judgment was made that there weren't, based on the information we had.

65 Mr. RAHALL. Am I correct in assuming then, you are saying that these regulations should be done through OSM administrative action rather than changes that we in this committee should make in the law?

65 Mr. EICHBAUM. That is right. OSM or the States.

65 Mr. RAHALL. Oe the States.

65 The CHAIRMAN. Let me go to the next one, which is the sedimentation standards you have heard so much about today.

65 First, do you interpret the regulations as they have been interpreted by other States? And if you do, how could we defend these huge structures we are talking about? What should we do on this problem?

65 Mr. HEINE. Let me answer it this way, Mr. Udall. I think that the example given here, and other examples that we have discussed with the West Virginia people, are very severe cases where it does not appear that they have taken certain credits that are given in the regulations that would tend to minimize the size of the ponds.

66 Very specifically, we discussed in the regulations how by use of other sedimentation control devices on the operation that certain portions of this capacity can be reduced.

66 But let me answer overall that I still think they have made some good points. I have discussed this with many operators and State people and here we have the bottom line of water quality criteria that must be met. The law clearly says that.

66 I asked a number of times to the States and operators that in our regulations as proposed, if they seem impractical in some respect, we would welcome and we implore them to come forth with alternative schemes that would help to meet those water quality standards.

66 I believe there is little question or little argument that the water quality discharge standards should be met. The argument is how should they be met and what facilities are necessary.

66 In any event, I have scheduled for the 31st of this month a field trip where the prime authors of those portions of the regulations and I and some operators and some environmental people are going to go to West Virginia, look at some of these sites, and let the industry explain clearly to us why they feel it is impossible to meet our design standards.

66 Granted, we are getting on a very short timeframe here. I think part of the problem is either incorrect interpretation of our regulations concerning sediment basins, partially perhaps a lack of clarity of our regulations, that it

might be appropriate for us to come forth after the West Virginia trip with a further clarification that could become part of a preamble or document that explains the policy matter, how we see these regulations should be interpreted.

I hope that will overcome this kind of problem.

66 The CHAIRMAN. I commend you for your open mind and your willingness to make yet another trip out into the hinterlands.

66 Mr. HEINE. With 30 inches of snow out there.

66 The CHAIRMAN. I hope that you and some of the operators can work out a clarification or simplification of some of the requirements. It may be that as you say that they have given us the worst case and the worst assumptions. But the law has to deal with the worst case, and the law has to make sense in its own terms.

66 How bad are you hurt by this D-1 controversy that is tying up your money? What would you be doing if I were to wave a wand and get your appropriation this afternoon? What would you do?

66 Mr. HEINE. If we could get the money immediately, very rapidly, we could fill those positions which we have that are ready to fill.

66 The CHAIRMAN. Do you have the people identified.

66 Mr. HEINE. We have a large number of people identified. And, of course, have not been able to make offers until we have the funds.

66 We think that is very important so that we can continue the kinds of things we are doing with our overworked staff now, and that is going to seminars and meetings throughout the country.

67 I think I indicated to you that we have met with over 2,500 operators in a very short timespan and that we think that is crucial to getting the kind of word out to the States and the operators. I am just reminded that February 16, we are holding a meeting down here where we are going to ask all the regulatory authorities of the States to come down so that we can have a day or so to discuss all the problems that they may have in implementing the act, so that they can understand our side of the issue and we can get on with the problem of implementations.

67 Mr. RAHALL. I have one question. Have you analyzed the law for discrepancies with other Federal laws or regulations? And if so, what have you found in the way of conflicts?

67 Mr. HEINE. Let me begin an answer while Mr. Eichbaum is thinking. That sounds somewhat like a legal question. The law requires concurrence by EPA, and I believe the Corps of Engineers and some other agencies on our regulations. So we have had a lot of communication with a large number of agencies where they would have the opportunity to point out places where there are conflicts between our regulations and their regulations and law.

67 I believe there are a number of areas where a lot of work will be necessary with BLM, the Geologic Survey, some Western States, in regard to actions on Federal lands and resolving those kinds of problems are of a top priority to us.

67 Mr. RAHALL. Have you not found any conflict that comes to mind at present?

67 Mr. EICHBAUM. Just from a purely legal perspective, and this is off the top of the head, I don't think that in the work we have done to date with implementing various parts of the statute there are any clear conflicts. In fact, I think the opposite is true, at least where the drafters thought there was an overlapping responsibility.

67 There are some areas where EPA with respect to water quality control - there was an effort to assure that mechanism took place so that the two agencies would come out with a rulemaking or policy that was consistent.

67 We can take a look at it again and get back to the committee.

67 The CHAIRMAN. Mr. Heine, I thank you for being here. I don't know of any new program where we picked a better man to administer it. I am glad you are young and healthy because the monkey is on your back. If you can do as well for the country as you did for Pennsylvania, you will gain the respect of the industry, as you did there, and the respect of the citizens groups that are concerned about the protection of the environment if you continue to be as fair and balanced and sensible as you have been. I hope you can be.

67 If so, you will have done for your country a great service.

67 Mr. HEINE. Thank you very much.

67 The CHAIRMAN. Also, your trip is important enough that I am going to send one of my senior staffers, Mr. Scoville, someone who will advise me. I wish I could go myself. I will send staff people.

67 Anything further before we close these hearings?

67 Mr. RAHALL. May I also commend you, Mr. Heine, for taking this trip on the 31st and offer my staff's assistance in any way we may be helpful,

logistical, or otherwise.

68 The CHAIRMAN. Thank you. The subcommittee stands in recess.

68 [Whereupon, at 11:45 a.m., the subcommittee was adjourned subject to the call of the Chair.]

68 [Prepared statements and additional material submitted for the hearing record follow:]

69 APPENDIX

69 Additional Material Submitted for the Hearing Record

69 STATEMENT OF WALTER N. HEINE, DIRECTOR, OFFICE OF SURFACE MINING, DEPARTMENT OF INTERIOR, BEFORE SUBCOMMITTEE ON ENERGY AND ENVIRONMENT, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C., JANUARY 19, 1978.

69 Good morning and thank you Mr. Chairman for the invitation to appear here today and discuss with you the implementation of the Surface Mining and Reclamation Act of 1977; specifically, significant accomplishments to date; the interim regulations, including major changes that resulted from the public comment period; and, any significant problems encountered by the Office that could interfere with the smooth implementation of the Act.

69 ACCOMPLISHMENTS

69 While the Office of Surface Mining is still in its nascent stages, a noteworthy amount of work has been completed or is underway - in part attributable to the interagency Task Force assembled by Secretary Andrus last spring.

70 Specifically, we have accomplished:

70 1. Issuance of final and/or proposed regulations for the initial program; financial interests of employees; Indian lands; and Federal lands. Regulations to be proposed for other parts of the program are now under preparation.

70 2. Conducting a large number of public meetings and hearings in four regions of the U.S. during the development of final regulations for the initial program.

70 3. Conducting and participating in meetings with State officials in developing the proposed regulations as well as other matters of implementation. These meetings are continuing.

70 4. Participating in seminars and conferences sponsored by industry groups to explain the final regulations and implementation philosophy of the Office. To date, I estimate approximately 2,500 coal operators or companies

have attended these meetings. With the current pace of several conferences per week, I expect that we will have directly reached most coal mine operators by mid-March.

70 5. Recruitment of professional staff for the Office of Surface Mining positions is continuing. To the greatest extent possible, recruitment efforts have been directed to the broadest range of potential applicants - both in and out of Federal service. This includes a concerted effort to seek out qualified minority candidates.

70 6. Establishing a new position of Associate Solicitor for Surface Mining and recruiting both Washington and field staffs for this group.

71 Most of the changes in the regulations are discussed in the preamble of the revised regulations published in the Federal Register. Both the regulations and the preamble are in the briefing notebooks provided to the Subcommittee earlier this week. The comments were extensive and I will highlight several of the major changes and areas of concern this morning.

71 The regulations for the initial program were written and revised with a number of concepts in mind including: (1) providing additional detail to the regional, State and other geographic dimensions of the Act; and (2) further delineating the phasing-in of environmental protection standards between the initial and permanent program as well as within the initial program. This phasing-in pertains not only to the presence or absence of a standard but also to the scope or degree to which the standard is defined or enforced.

71 I would like to briefly cover here five areas of concern expressed in the public comment period on the proposed Interim Regulations.

71 Sedimentation Ponds

71 The Act specifies that additional suspended solids (sediment) are to be prevented, using best technology currently available, from entering streamflow or runoff outside permit areas and in no event should such additions exceed State or Federal water quality standards. (Sec. 515(b)(10)).

71 A number of different techniques are used for sediment control. The use of sedimentation ponds is a common control technique if designed, constructed and operated properly, and represents one of the best ways of controlling sediment pollutants.

71 The proposed regulations required that ponds be designed to handle maximum flows from a 24 hour-25 year precipitation event with a 24 hour

detention time and that the operator be responsible for the discharge quality of all water handled.

72 Criticism centered on the resulting large size of structures due to the storm frequency criteria of 25 years and the responsibility to treat all up-stream water.

72 The revised regulations specify a design standard to handle a maximum flow from a 24 hour - 10 year precipitation event with a 24 hour detention time. This reduced the potential size of these ponds substantially.

72 Pond size can be further reduced by application of other on-site sediment control practices. Excluded also is the requirement to treat water diverted around the operation providing that its quality is not diminished by diversion. We estimate that this standard will achieve approximately 95 percent of the efficiency of sedimentation pond capabilities to reduce suspended solids. The regulations would allow credits for other technology in specific cases.

72 Blasting

72 The Act specifies a number of environmental standards pertaining to blasting in order to prevent off-site damage. (Sec. 515(b)(15)).

72 The proposed regulations contained in detail: warning and notice provisions; blasting schedule requirements; pre-blast survey requirements which included, assessment of underground improvements and structural fatigue of residences; and technical specifications for stemming, weight and type of explosives and a maximum peak particle velocity of 2"/second at specified locations.

73 Criticism centered on the approach taken to the technical specifications and the range of content of the pre-blast survey.

73 The final regulations retain the pre-blast survey as mandated by the Act. One of its major advantages is the increased communication between the mine operator and the public about the blasting program. The less formal requirements (assessment of structural fatigue and underground improvements are not specified) are intended to foster such communication while still meeting the specific requirements of the Act. The technical specifications were simplified by substituting a 128 linear decibel standard instead of stemming requirements and a reduction of maximum peak particle velocity of the ground motion in any direction to 1"/second at specified locations. We understand that a large percentage of blasting activities already fall under this limitation and we believe this initial standard will control activities causing the major problems.

73 Prime Farmlands

73 The Act requires for all new mining permits which include prime farmlands, the operator must show that he, "has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland . . . and can meet the soil reconstruction standards of Sec. 515(b)(7) . . ." Permits issued prior to date of enactment, or revisions or renewals thereof, are exempted from this particular test. (Sec. 510(d)). This provision became effective upon the date of enactment.

73 The proposed regulations: (1) included this provision in the initial program, (2) set criteria for defining and indentifying such lands, (3) specified the soil reconstruction standards, and (4) detailed the grandfather clause.

74 Criticism challenged each of the above points.

74 The final regulations included special provisions for prime farmland protection since the Act mandates their immediate applicability.

74 Additional guidance was provided concerning the scope of the "grandfather" clause so that this provision includes expansions of existing operations that (1) were in the original permit area or in an approved mining plan prior to August 3, 1977 or (2) are contiguous and under existing State regulations or practice would have normally been considered as a renewal or revision of a previously approved plan. The revised soil reconstruction standards include an opportunity for alternative reclamation approaches if the resulting land productivity meets the standard specified in the Act.

74 I believe the changes made in this provision provides on the one hand assurances and certainty to the operator if certain steps are followed while offering on the other a "performance standard" against which other reclamation approaches can be judged. Similarly, the revisions build on existing State practices of permit renewals and thus assure flexibility in meeting legislative intent in this regard.

74 Underground Mines

74 The Act establishes standards to protect the environment from the surface impacts of underground mines. (Sec. 516). Such impacts are included in the definition of "surface mining operations" (Sec. 702(28)) which in turn are regulated under the initial program, (Sec. 502).

74 Criticism focused on the inclusion of such mines and impacts in the initial program and the scope and extent of the standards imposed.

75 Significant revisions were made to this portion of the

regulations. Deferring the coverage of such mines to the "permanent program" was not accepted since surface impacts from such mines is included in the definition of "surface mining operations". The reference to Sec. 516 in the definition does not exclude coverage but directs the scope of the regulations to those activities referred to in Sec. 516 and to reflect the difference between surface and underground mining technologies. Secondly, the legal basis for coverage also reflects the condition that States already regulate some environmental impacts of underground mines through water pollution control legislation and similar programs. Thus, a separate part was established in the regulations to specify those standards applicable to underground mines. The number of standards included in the initial program was reduced and each were tailored to the special conditions associated with underground mines. These revised regulations reflect the initial level of control necessary to minimize environmental impacts of some activities characteristic of underground mining.

76 Pre-Existing Structures

76 Pre-existing or non-conforming structures include: haulroads, sediment ponds, spoil disposal areas, waste embankments, and other such facilities or constructions resulting from or used in mining, and which existed prior to August 3, 1977.

76 The Act does not differentiate between pre-existing or new structures with respect to meeting applicable environmental standards. All structures in use are to be brought into compliance with the standards of the Act.

76 The regulations provide: (1) identification of pre-existing structures in use; (2) submission by February 1978 of a reconstruction plan to make them conforming; (3) commence reconstruction by May 1978; and (4) complete reconstruction by November 1978. The submission of a plan with a reconstruction schedule is for those structures where it is impossible to bring into conformance by May 1978.

76 The approximate one year period, from the date of publication of the regulations to November 1978, should allow sufficient time to carry out reconstruction of such structures in an orderly manner.

76 There was wide-ranging criticism towards this provision. On the one hand some maintained that pre-existing structures were not covered under the Act and should be phased out over their remaining useful life; that it was impossible to identify and prepare reconstruction plans in the time specified; and that reconstruction could not be completed in the time specified. On the other hand, substantial criticism was focused on the extension of a specified period of conformance past dates established by statute.

77 In this instance, the basic provisions of the regulations were not changed. I believe that the administrative flexibility proposed here reflects the practical approach toward implementation of the Act.

77 IMPLEMENTATION OF THE ACT

77 With regard to the second part of your request concerning significant problems encountered by the office in the implementation of the Act, there are a few points which need to be stressed.

77 Secretary Andrus sent you, Mr. Chairman, a letter last week detailing the problems which are rapidly developing due to the lack of direct appropriations for this program. The full letter is provided here for the record. I would like to emphasize two points stressed in the letter, and I quote:

77 "Of great concern to me are indications that lack of funding and enforcement capability is encouraging some segments of the coal mining industry to take a wait-and-see attitude toward the reclamation regulations. I am also concerned over the loss of momentum in the States both with respect to State enforcement of the interim Federal regulations and the development of State programs for permanent State assumption of enforcement responsibility. Without the State grant funds included in the appropriations request, States are holding off on hiring the additional staff they need."

77 In my opinion, if this condition continues for a substantial period of time, it will be impossible to meet the entire implementation schedule included in the Act.

78 Secondly, some individuals have already proposed that the Act be amended to extend the statutory dates for compliance for a 60-90 day period to accomodate for existing and perceived delays. We do not favor this approach for several reasons:

78 1. During the period of proposing and enacting such a short-term extension, additional confusion and uncertainty will be created until all proposals are settled. This would become self-defeating if the process of change involved as much time as the extension sought.

78 2. Such an approach assumes an inflexibility of implementation and enforcement actions which we do not believe are inherent in the Act.

78 For instance, the December 16, 1977 date of applicability of the initial environmental standards for mines operating on Indian lands has

passed. Specific regulations for such mines were published on the that date. Since then, the response in the industry has been mixed. Some operators have called for the formal extension of the statutory dates, other operators have undertaken on a voluntary basis the preparation of a "compliance plan" detailing the actions and time required to bring their mines into compliance with the regulations. We have been told that these plans will be completed shortly and sent to us for review. This approach reflects the basic obligation of operators to comply with the Act. The approach also provides a working basis to move forward in the implementation of this Act. As we have previously discussed, the regulations provide for preparation of compliance plans in limited circumstances for non-conforming structures.

79 This example points out that sufficient flexibility is inherent in the Act to allow both operators and Government to diligently pursue implementation. We are prepared to take immediate enforcement action where required, for example, in those instances of "imminent danger to health and safety of public" or "significant, imminent harm to land, air and water resources." I believe that this combination of the phased and diligent approach to complying with all standards and the capability to immediately take required enforcement action is a fair but tough approach.

79 Such an approach requires sustained cooperation among all parties affected: citizens, operators, State and Federal officials. It also requires continued support from Congress and I look forward to working with you to keep that support. Thank you.

80 @%United States Department of the Interior @%OFFICE OF THE SECRETARY @%WASHINGTON, D.C. 20240 @%Honorable Morris K. Udall. @%Chairman, Committee on Interior and Insular Affairs @%House of Representatives @%Washington, D.C. 20515 @%Dear Mo:

80 As part of your oversight hearings on the surface mine program, I would like to take this opportunity to call to your attention the impacts of no currently available appropriations to implement the Surface Mining Control and Reclamation Act of 1977. The 1978 appropriations for the Office of Surface Mining Reclamation and Enforcement are contained in H.R. 9375, the supplemental appropriations bill still pending before the Congress. Both Houses have approved that protion of a Conference Committee version of the bill which contains \$6 7.5 million for the Office of Surface Mining. However, all of the issues in the bill have not been resolved, and the continuing debate may further delay Office of Surface Mining appropriations.

80 Although some of the important work of the Office of Surface Mining, including the recently released interim enforcement program regulations, continues to be carried on by a Departmental Task Force, the Office cannot be staffed until funding is available. Some delays in meeting statutory deadlines are already inevitable. For example, the Surface Mining Act requires initiation of Federal inspections for new mines on February 4, 1978. Even if funds were immediately available, initiation of inspection activities would now be delayed a minimum of 30 days

80 Of great concern to me are indications that lack of funding and enforcement capability is encouraging some segments of the coal mining industry to take a wait-and-see attitude toward the reclamation regulations. I am also concerned over the loss of momentum in the States both with respect to State enforcement of the interim Federal regulations and the development of State programs for permanent State assumption of enforcement responsibility. Without the State grant funds included in the appropriations request, States are holding off on hiring the additional staff they need.

80 An enclosed fact sheet, prepared at the request of the House Appropriations Committee Staff, provides additional information on the impact of no available appropriations.

81 Departmental representatives will be released to discuss the funding problems with other important matters relating to implementing the Surface Mining Control and Reclamation Act at the January 19 meeting.

81 Sincerely,

81 SECRETARY

81 Enclosure

82 OFFICE OF SURFACE MINING

82 FACT SHEET

82 Program Impact of Delayed Enactment of Fiscal Year 1978
Appropriations

82 Inspection and Enforcement

82 Federal Inspection - The Surface Mining Control and Reclamation Act requires initiation of a program of two annual Federal inspections to enforce interim mining practices and reclamation regulations for new mines on February 4, 1978, and for all mines on May 4, 1978. Although the final regulations for the interim period were published on December 13, 1977, their enforcement

requires hiring and training a cadre of Federal inspectors. Vacancy announcements have been issued and applications are being received for the first group of 30 inspectors. Even if appropriations were available now, the time required for hiring, training, and equipping the inspectors would delay initiating inspections by roughly one month beyond the statutory date. Lack of inspection capability also is encouraging industry to adopt a wait-and-see attitude toward compliance, and precludes responding to valid citizen complaints as required in the Act.

82 State Inspection - The Act also provides for State enforcement of the Federal interim program regulations and authorizes reimbursement of the States for the incremental costs of such enforcement. States are not expected to hire the additional mine inspectors they need to enforce Federal standards in the absence of available Federal appropriations for the reimbursements. One of the largest States has informally advised the Office it is considering a request to Congress to delay the implementation dates in the Act because of delay in getting the Office staffed to work with State personnel.

82 Permanent Regulatory Program Development - The Act provides for issuing final regulations governing permanent regulatory programs by August 3, 1978. These are the regulations under which States may apply for the Office's approval to permanently assume enforcement responsibility with matching Federal grant financing. These regulations include complex requirements for mining permits and reclamation plans and a much larger set of environmental performance standards, as well as sensitive requirements for State program approval and designation of lands as unsuitable for mining. Both environmental and economic impact statements are required prior to final rulemaking for the permanent program. Lack of appropriations is seriously jeopardizing this process in several ways:

82 - The Office cannot hire the staff needed to complete drafting of regulations or to develop the environmental and economic impact statements prior to final rulemaking. The time required for these efforts now makes it unlikely the August 3 deadline can be met.

83 - With passage of the Act, several States began planning and working with the OSM task force on development of permanent enforcement programs. In part, State efforts were based on anticipation of receiving budgeted grants for permanent program development. With the continued uncertainty over funding, and the lack of Federal staff to work with States, State efforts are already beginning to lag.

83 Beyond just delays in enforcement, inaction now may have serious future impacts on Federal staffing and budgets. In Kentucky, for example, State legislation is needed in the 1978 legislative session in order for the State to develop a permanent enforcement program for submission to the Office before the 24 month deadline in the Act, the law will require does not meet in 1979. If Kentucky fails to act, the law will require OSM to issue Federal mining permits and to make monthly Federal inspections beginning in August of 1979 and this will require 300 to 400 additional Federal inspectors in that State alone.

83 Abandoned Mine Reclamation Program

83 Fee Collection - The abandoned lands reclamation and hazard abatement programs in the Act are to be financed by fees on coal produced after October 1, 1977. The first payments are due from mine operators before February 1, 1978, and notices and forms have been mailed to roughly 9,000 operators on MESA's list of coal mines. Based in part on United Mine Workers experience, substantial non-compliance problems can be anticipated but prompt follow-up will not be possible without appropriations to hire and train fee compliance staff. A number of other related problems are anticipated:

83 - Inability to respond to other than routine inquiries from mine operators on fee provisions. Early precedents on fee policy may be established with inadequate consideration.

83 - Inability to analyze the problems of the first reporting period for future legal action on non-compliance, collection of interest and recording changes in mine status.

83 - Inability to verify coal quantities reported on even a sample basis.

83 - Inability to compile reports on the initial fee collection period including input to the first annual report required by the Congress by January 1, 1978.

83 Hazard Abatement and Abandoned Lands Reclamation Projects - States and other Federal agencies are presently identifying sites meeting the Act's criteria of representing "extreme danger" to public health and safety. These include unsafe impoundments, subsidence problems, waste bank fires, and abandoned mine shafts and tunnels. Reports are being received now, and the Office should be in a position to follow-up with appropriate staff to plan and initiate contracts for highest priority abatement work. Delays due to inaction

on appropriations increase the likelihood of disasters such as the Buffalo Creek disaster of a few years ago. At present the Secretary could not even respond to an extreme emergency under the Act's authority.

85 TESTIMONY

85 BEFORE THE SUB-COMMITTEE ON ENERGY AND ENVIRONMENT COMMITTEE ON INTERIOR AND INSULAR AFFAIRS WASHINGTON, D.C. GIVEN BY JAMES E. PITSENBARGER, CHIEF DIVISION OF RECLAMATION

85 DEPARTMENT OF NATURAL RESOURCES STATE OF WEST VIRGINIA JANUARY 19, 1978

86 MR. CHAIRMAN AND COMMITTEE MEMBERS -

86 MY NAME IS JAMES E. PITSENBARBER, CHIEF OF THE DIVISION OF RECLAMATION, DEPARTMENT OF NATURAL RESOURCES FROM THE STATE OF WEST VIRGINIA. HAVING BEEN THROUGH SEVERAL AMENDMENTS AND REGULATION CHANGES CONCERNING SURFACE MINING LAWS IN OUR STATE, I WISH TO COMPLIMENT THE DEPARTMENT OF INTERIOR ON THE PROMULGATION OF THE RULES AND REGULATIONS FOR PL 95-87 AS A JOB WELL DONE UNDER TIGHT TIME CONSTRAINTS.

86 AT THE BEGINNING, I WISH TO MAKE IT VERY PLAIN THAT THE STATE OF WEST VIRGINIA WISHES TO BE THE REGULATORY AUTHORITY FOR SURFACE MINING IN OUR STATE. WE FEEL WE HAVE THE BEST RECLAMATION LAW WITH THE BEST ENFORCEMENT IN THE UNITED STATES. FROM THE BEGINNING OF A FEDERAL SURFACE MINING BILL, WE HAVE STRESSED THAT ALL OF THE STATES NEEDED TO HAVE EQUAL RECLAMATION REQUIREMENTS. WE HAVE HAD A SURFACE MINING LAW IN OUR STATE SINCE 1939 AND HAVE, THROUGH NUMEROUS AMENDMENT, REACHED A POINT WHERE WE CAN MINE COAL AND STILL PROTECT THE ENVIRONMENT AND CONGRESS, UNDOUBTEDLY, BELIEVED THIS WHEN PL 95-87 WAS PASSED. THE FOLLOWING SECTIONS ARE THOSE IN THE REGULATIONS WHICH WE FEEL WILL BE DETRIMENTAL TO THE ENVIRONMENT.

86 710.11(D) (2) (IV) APPLICABILITY

86 THIS SECTION OF THE RULES AND REGULATIONS PLACES A HARDSHIP ON THE REGULATORY AUTHORITY IN OUR STATE. OUR OPERATORS CANNOT BEGIN TO CONSTRUCT OR RECONSTRUCT A SEDIMENT BASIN BY MAY 4, 1978 BECAUSE OF THE WEATHER CONDITIONS. IN MANY AREAS OF OUR STATE, SNOW WILL COVER THE GROUND AND IN OTHERS WE WILL HAVE A HEAVY RAINFALL AT THIS TIME OF YEAR. ANYONE WHO HAS WORKED AROUND CONSTRUCTION, MUST REALIZE THAT AN IMPOUNDMENT CANNOT BE STARTED DURING ADVERSE WEATHER CONDITIONS. JUST AS BUILDING A HOUSE, THE FOUNDATION IS THE MOST IMPORTANT PART OF AN IMPOUNDMENT.

87 715.15(B) DISPOSAL OF SPOIL IN VALLEY OR HEAD-OF-HOLLOW FILL

87 THE FIRST SENTENCE IN 715.15(B) STATES NO WASTE MATERIAL MUST BE DISPOSED OF IN VALLEY OR HEAD-OF-HOLLOW FILLS. THIS SINGLE STATEMENT PLACES A MORATORIUM ON OUR DEEP MINING COMPLEXES IN WEST VIRGINIA. IF THE WASTE MATERIALS FROM DEEP MINING CANNOT BE PLACED IN OUR VALLEYS, WHERE CAN THIS MATERIAL BE PLACED? WITH GOOD ENGINEERING, PROPER PLACEMENT, AND DRAINAGE CONTROL, THE WASTE CAN BE PLACED IN THE VALLEYS CAUSING NO ENVIRONMENTAL PROBLEMS. WITH A GOOD DRAINAGE SYSTEM AND PROPER VEGETATION, THESE FILLED AREAS CAN BE USED FOR MANY DIFFERENT PURPOSES.

87 SECTION (6) OF 715.15(B) IS CONTRARY TO METHODS TRIED AND PROVEN IN THE STEEP MOUNTAINOUS AREAS OF WEST VIRGINIA. AN UNDERDRAIN SYSTEM SUCH AS PROPOSED, HAS A USEFUL PURPOSE IN A FILL, BUT SHOULD NOT BE THE ONLY MEANS OF DRAINAGE CONTROL. WE USE THE UNDERDRAINS BUT SUPPLEMENT IT WITH A DRAIN FROM NATURAL GROUND COMPLETELY TO THE TOP OF THE FILL. THIS ALLOWS ANY SURFACE DRAINAGE TO BE PLACED BACK INTO THE NATURAL DRAINWAY AS SOON AS POSSIBLE. NATURE HAS FORMED A DRAINWAY THROUGH MANY EONS OF TIME AND MAN ASKS FOR TROUBLES WHEN HE TRIES TO MOVE THIS NATURAL DRAINWAY. IN OUR EARLY VALLEY FILL CONSTRUCTION, WE FOLLOWED SIMILAR CONSTRUCTION METHODS AS THOSE PROPOSED IN THE FEDERAL RULES AND REGULATIONS AND HAD NOTHING BUT TROUBLES. A DITCH FAILURE, AND THE WATER TENDED TO TRY TO GET BACK TO THE NATURAL DRAINWAY. SINCE THE DRAIN WAS COVERED WITH SEVERAL LAYERS OF COMPACTED FILL, THE WATER THEN STARTED ERODING THE FILL AND WE COULD FIND NO REMEDY FOR CONTROL. THUS, WE KEEP THE WATER FLOWING ON THE NATURAL DRAINWAY AND SINCE EARLY IN 1973, WE HAVE HAD NO VALLEY FILL FAILURES.

88 SECTION (8) OF 715.15 INDICATES AN OUTSLOPE OF 50 FEET IS ALLOWED BETWEEN TERRACE BENCHES ON THE FACE OF A VALLEY FILL. IF THIS HOLDS TRUE, THE STORAGE CAPACITY OF VALLEY FILLS WILL BE DRASTICALLY REDUCED CAUSING SEVERAL FILLS TO BE CONSTRUCTED ON AN OPERATION INSTEAD OF ONE LARGE FILL. THIS WILL ALSO REDUCE THE LEVEL LAND PRODUCED IN A MOUNTAIN TOP REMOVAL OPERATION. WE DO UNDERSTAND FROM THE OFFICE OF SURFACE MINING THAT THIS REGULATION WAS A MISTAKE AND WILL BE CORRECTED.

88 715.17(E) (1) SEDIMENT CONTROL MEASURES

88 THE FEDERAL BILL, WITH FEW MODIFICATIONS, FOLLOWED ALONG THE SAME LINES AS OUR STATE LAW. IN 1971, AN AMENDMENT WAS PASSED IN OUR STATE WHICH DIRECTED "A DRAINAGE SYSTEM MUST BE INSTALLED PRIOR TO MINING AND THEREAFTER MAINTAINED."

AT THIS TIME, A "DRAINAGE HANDBOOK" WAS PUBLISHED WITH THE HELP OF THE UNITED STATES FOREST SERVICE, THE SOIL CONSERVATION SERVICE AND OUR OWN ENGINEERING DIVISION OF THE DEPARTMENT OF NATURAL RESOURCES. AT THE BEGINNING, ONLY ONE TYPE OF SEDIMENT CONTROL STRUCTURE WAS INCORPORATED INTO THE HANDBOOK WHICH IS TRUE IN THE FEDERAL RULES AND REGULATIONS PROMULGATED DECEMBER 13, 1977. WITH NO EXPERIENCE IN SEDIMENT CONTROL, WE FELT AT THE TIME, THIS WAS THE BEST METHOD AVAILABLE. BUT SINCE THIS WAS A NEW FIELD (THIS SEDIMENT CONTROL ON SURFACE MINING) WE LEFT OUR WAY OPEN TO INCORPORATE NEW METHODS AS THEY WERE DEVELOPED. TO SAY THE LEAST, THIS HAS BEEN THE MOST IMPORTANT FACTOR IN THE DEVELOPMENT OF TODAY'S "DRAINAGE HANDBOOK".

89 OUR "DRAINAGE HANDBOOK" WAS USED AS A MODEL IN SEVERAL STATES TO DEVELOP THEIR DRAINAGE PROGRAMS. FROM A POCKET SIZE HANDBOOK OF 65 PAGES, WE HAVE INCREASED TO A FULL SIZE MANUAL OF 138 PAGES WITH NUMEROUS NEW METHODS FOR SEDIMENT CONTROL AND WITH NEW METHODS OF MINING BEING DEVELOPED, HAD HOPED TO ADD TO THIS MANUAL

89 NOW, ALONG COMES THE RULES AND REGULATIONS FOR PL 95-87 WITH ONLY ONE WAY TO CONTROL SEDIMENT WHICH WE ARE TOLD MAY OR MAY NOT MEET THE EFFLUENT GUIDELINES SET UP BY PL 95-87. OTHER TYPES OF SEDIMENT CONTROL MEASURES ARE MENTIONED AS CREDITS WITH NO THOUGHTS AS HOW THE CREDIT SHOULD BE CALCULATED. NONE OF THE CREDITS HAVE ANY WAY OF STORING A 10 YEAR 24 HOUR STORM WHICH IS REQUIRED.

89 CHEMICAL TREATMENT IS MENTIONED BUT WITH SO MANY UNKNOWNNS ABOUT CHEMICAL TREATMENT FOR SEDIMENT CONTROL, WE FEEL MUCH MORE EXPERIMENTATION MUST BE UNDERTAKEN BEFORE WE COULD RECOGNIZE IT AS FAVORABLE. THE STATE OF WASHINGTON HAS LONG USED CHEMICAL TREATMENT WITH GREAT SUCCESS. THE DIFFERENCE WITH THEIR STATE AND OURS IS THE LENGTH OF TIME TO MINE WITHIN A DRAINAGE AREA. THEY HAVE MINED USING THE SAME STRUCTURE FOR SEVERAL YEARS, WHERE IN MOST CASES OUR MINING ENTERS ANOTHER AREA WITHIN WEEKS.

89 OUR STATE, WANTING TO BE THE REGULATORY AUTHORITY FOR PL 95-87, STARTED IMMEDIATELY TO DESIGN THE SEDIMENT CONTROL BASIN AS THE REGULATIONS SPECIFIED, BUT IN OUR STEEP MOUNTAINS AND NARROW VALLEYS, WE HAD NOT THE ROOM FOR SUCH A STRUCTURE. OUR ONLY RECOURSE WAS TO INCREASE THE HEIGHT OF THE STRUCTURE. IN ORDER TO GET THE SURFACE AREA AS REQUIRED BY THE REGULATIONS, OUR STRUCTURES WENT FROM A MAXIMUM HEIGHT OF 15 FEET TO STRUCTURES OF 60 TO 80 FEET, WITH EMBANKMENTS COVERING ROADS AND STREAMS. IN SOME INSTANCES, ROADS COULD BE BUILT ELSEWHERE AND STREAMS COULD BE DIVERTED, BUT THE IMMINENT DANGER TO THE HEALTH AND SAFETY OF THE PUBLIC DOWNSTREAM FROM THESE STRUCTURES COULD NOT BE DENIED.

90 IF THE EFFLUENT GUIDELINES ARE BEING MET BY THE SEDIMENT CONTROL STRUCTURES NOW IN USE, WHY SHOULD WE BE REQUIRED TO CHANGE TO A "MAY WORK" SYSTEM?

90 OUR ULTIMATE GOAL IN WEST VIRGINIA IS TO MINE OUR NATURAL RESOURCE AND LEAVE THE ENVIRONMENT IN AS GOOD OR BETTER CONDITION THAN BEFORE MINING.

90 JAMES E. PITSENBARGER, CHIEF DIVISION OF RECLAMATION

91 STATE OF WEST VIRGINIA

91 DEPARTMENT OF NATURAL RESOURCES

91 CHARLESTON 25305

91 DAVID C. CALLAGHAN

91 Director

91 January 18, 1978

91 International Coal Company

91 Surface Mining Application No. 2049

91 Greenbrier County

91 2.3 inches of runoff for each acre

91 0.18 feet of runoff for each acre

91 Drainage Area = 311.32 Acres.

91 A. Determine Surface Requirement

91 $311.32 \text{ acres} \times 0.18 \text{ ft. of runoff} = 56.04 \text{ Ac.Ft.}$

91 $1 \text{ Ac.Ft.} = 325,849 \text{ Gallons}$
 $56.04 \text{ Ac.Ft.} \times 325,849 \text{ Gallons/Ac.Ft.} = 18,259,796 \text{ Gallons}$

91 $1 \text{ sq.ft.} = 50 \text{ Gallons of inflow}$
 $18,259,796 \text{ Gallons} / 50 \text{ Gallons/sq.ft.} = 365,196 \text{ sq.ft.}$

91 $43,560 \text{ sq.ft.} = 1 \text{ Acre} = 8.38 \text{ Acres}$

91 B. Storage Requirement

91 $0.2 \text{ Ac.Ft. of storage for each acre of disturbance} = 23.44 \text{ Ac.Ft.}$

91 C. Retention Time - 10 year, 24 hour 56.04 Ac.Ft.

91 Total (B+C) = 79.48 Ac.Ft.

91 Proposed Embankment Centerline Height - 80.0 ft. Top Width - 23.0 ft.

Storage - 79.48 Ac.Ft.

91 Existing Embankment Centerline Height - 19.5 ft. Top Width - 14.0 ft.

Storage - 15.60 Ac.Ft.

92 STATE OF WEST VIRGINIA

92 DEPARTMENT OF NATURAL RESOURCES

92 CHARLESTON 25305

92 DAVID C. CALLAGHAN

92 Director

92 January 18, 1978

92 Princess Susan Coal Company

92 Surface Mining Permit No. 236-73

92 Kanawha

92 1.61 inches of runoff for each acre

92 0.134 feet of runoff for each acre

92 Drainage Area = 69.3 acres

92 A. Determine Surface Requirement 69.3 acres times 0.134 feet of runoff
= 9.3 acre ft.

92 1 ac.ft. = 325,849 gallons 9.3 ac.ft. times 325,849 gals/ac.ft. =
3,030,395.7 gallons

92 1 sq.ft. = 50 gallons of inflow 3,030,395.7 gallons/50
gallons/sq.ft. =
60,608 sq.ft.

92 43,560 sq.ft. = 1 acre = 1.4 acre surface

92 B. Storage Requirement 0.2 ac.ft. of storage for each acre of
distrubance = 4.0 ac.ft.

92 C. Retention Time - 10 year, 24 hour 9.3 ac.ft.

92 Total of (B + C) = 13.3 ac.ft.

92 Proposed Embankment Centerline Height - 61 ft. Top Width - 20 ft.
Storage - 13.3 Ac.Ft.

92 Existing Embankment Centerline Height - 21.6 ft. Top Width - 14.0
ft.

Storage - 1.56 Ac.Ft.

93 STATEMENT OF STEVE FREUDENTHAL, STATE PLANNING COORDINATOR, ON BEHALF OF ED HERSCHLER, GOVERNOR OF WYOMING, BEFORE THE ENERGY AND THE ENVIRONMENT SUBCOMMITTEE, INTERIOR AND INSULAR AFFAIRS COMMITTEE, HOUSE OF REPRESENTATIVES OVERSIGHT HEARING ON THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, WASHINGTON, D.C., JANUARY 19, 1978

93 I AM STEVE FREUDENTHAL, WYOMING STATE PLANNING COORDINATOR, TESTIFYING TODAY ON BEHALF OF GOVERNOR HERSCHLER. THE STATE OF WYOMING APPRECIATES THE OPPORTUNITY TO COMMENT UPON THE IMPLEMENTATION AND ADMINISTRATION OF THE FEDERAL STRIP MINING BILL.

93 COMMENTS OFFERED TODAY ON BEHALF OF THE STATE OF WYOMING WILL NOT ADDRESS THE TECHNICAL PORTIONS OF THE INTERIM REGULATIONS. ALTHOUGH THESE TECHNICAL POINTS ARE CRITICAL IN THE IMPLEMENTATION OF THE FEDERAL STRIP MINING BILL, THERE IS AN INITIAL QUESTION WHICH IS EVEN MORE CRITICAL FOR THE WESTERN STATES: THAT IS THE QUESTION OF THE IMPLEMENTATION OF COOPERATIVE AGREEMENTS ON FEDERAL LANDS.

93 AS MEMBERS OF THIS COMMITTEE ARE WELL AWARE, THE FEDERAL STRIP MINING BILL PROVIDES FOR CONTINUATION OF EXISTING COOPERATIVE AGREEMENTS PENDING THE DEVELOPMENT OF A STATE REGULATORY PROGRAM. UPON THE DEVELOPMENT OF A STATE REGULATORY PROGRAM AND FURTHER ADJUSTMENT OF THE COOPERATIVE AGREEMENT, A STATE CONTAINING FEDERAL LANDS SUPPOSEDLY WOULD HAVE FULL AUTHORITY TO REGULATE THE OPERATION AND RECLAMATION OF ALL COAL MINES WITHIN ITS BORDER, SUBJECT TO REVIEW AND MONITORING BY THE OFFICE OF SURFACE MINE RECLAMATION AND ENFORCEMENT UNDER THE FEDERAL ACT. IF A STATE CANNOT EXERCISE JURISDICTION THROUGHOUT THE ENTIRE STATE, A STATE REGULATORY PROGRAM IS A FICTION IN THE WESTERN STATES. BY NATURE OF THE INTERSPERSED HOLDINGS OF FEDERAL LAND AND FEDERAL COAL, A STATE REGULATORY PROGRAM WHICH DOES NOT OPERATE ON BOTH FEDERAL LAND AND FEDERAL COAL, AS WELL AS STATE AND PRIVATE LANDS, IS A PHANTOM WITH NEITHER SUFFICIENT BREADTH OF COVERAGE NOR SUFFICIENT AUTHORITY TO EFFECTIVELY IMPLEMENT THE FEDERAL STRIP MINING BILL.

94 THIS GENERAL OBSERVATION CAN BE UNDERSTOOD BY REFERRING TO THE HISTORY OF THE COOPERATIVE AGREEMENTS. THE BUREAU OF LAND MANAGEMENT AND THE U.S. GEOLOGICAL SURVEY PROPOSED REGULATIONS TO GOVERN RECLAMATION OF OPERATIONS INVOLVING FEDERAL COAL. AS ORIGINALLY PROPOSED, THESE REGULATIONS GAVE NO CREDANCE OR RECOGNITION TO STATE PROGRAMS WHICH WERE ATTEMPTING TO ASSURE ADEQUATE RECLAMATION ON OPERATIONS INVOLVING FEDERAL COAL. AFTER LITIGATION AND

NEGOTIATION, COOPERATIVE AGREEMENTS WERE DEVELOPED BETWEEN THE SECRETARY OF INTERIOR AND THE GOVERNORS OF THE RESPECTIVE STATES UNDER WHICH THE STATE WOULD OPERATE THE PRIMARY PROGRAM IN CONJUNCTION WITH REVIEW AND EVALUATION BY THE FEDERAL AGENCIES AND A FINAL SIGN-OFF BY THE SECRETARY OF INTERIOR-UNDER THESE COOPERATIVE AGREEMENTS, THE STATES EXERCISED, AS THEY HAD PREVIOUSLY, AUTHORITY WITH REGARD TO OPERATIONS INVOLVING FEDERAL COAL.

95 ONE OF THE PRIMARY PURPOSES OF THE COOPERATIVE AGREEMENTS WAS TO AVOID DUALITY OF ADMINISTRATION AND ENFORCEMENT AT THE STATE AND FEDERAL LEVEL. THE COOPERATIVE AGREEMENTS WERE NOT DESIGNED TO RELAX OR MINIMIZE THE RECLAMATION REQUIREMENTS IMPOSED UPON THE COAL OPERATORS; THEY WERE DESIGNED TO MINIMIZE THE BUREAUCRATIC AND ADMINISTRATIVE PROCESS BY ELIMINATING DUAL PERMITS - THE ISSUANCE OF TWO SEPARATE PERMITS FOR THE SAME OPERATIONS BY DIFFERENT LEVELS OF GOVERNMENT. THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 GAVE RECOGNITION TO THESE COOPERATIVE AGREEMENTS AND PROVIDED THAT A STATE DURING THE INTERIM COULD CONTINUE TO OPERATE UNDER THE COOPERATIVE AGREEMENT PROVIDED IT WAS AMENDED TO MEET THE STANDARDS EMBODIED IN THE FEDERAL ACT. SIMILARLY, A FULL STATE REGULATORY PROGRAM WOULD ALSO INVOLVE A COOPERATIVE AGREEMENT TO ENABLE A STATE PROGRAM TO OPERATE EFFECTIVELY ON ALL LANDS WITHIN THE STATE.

95 HOWEVER, THE U.S. GEOLOGICAL SURVEY HAS NOW PROPOSED TO AMEND ITS REGULATIONS IN SUCH A MANNER AS TO DEFEAT OR SUBSTANTIALLY DIMINISH THE ABILITY OF WESTERN STATES TO OPERATE UNDER COOPERATIVE AGREEMENTS WHICH WILL INSURE A FULL STATE REGULATORY PROGRAM APPLICABLE TO ALL COAL WITHIN THE STATE. FURTHERMORE, THE PROPOSED REGULATIONS ARE DESIGNED TO INSURE THE CONTINUED EXISTENCE OF THE U.S. GEOLOGICAL SURVEY AS A MASSIVE BUREAUCRACY WHICH WILL DUPLICATE IN LARGE PART THE OPERATIONS OF THE OFFICE OF SURFACE MINE RECLAMATION ENFORCEMENT, ANOTHER FEDERAL AGENCY WITHIN THE DEPARTMENT OF THE INTERIOR.

96 IN THE PAST, COAL OPERATORS AND ENVIRONMENTAL INTEREST GROUPS HAVE FREQUENTLY CRITICIZED THE MULTIPLICITY OF REGULATIONS AND REGULATORY AUTHORITIES APPLICABLE TO FEDERAL COAL. PRIOR TO THE FEDERAL STRIP MINING BILL, THE U.S. GEOLOGICAL SURVEY, THE BUREAU OF LAND MANAGEMENT, AND THE APPROPRIATE STATE AUTHORITY EXERCISED VARYING DEGREES OF JURISDICTION. THE COOPERATIVE AGREEMENTS ATTEMPTED TO BRING THESE SEPARATE ENTITIES TOGETHER AND PROVIDE FOR ONE COORDINATED MECHANISM UNDER WHICH A RECLAMATION AND MINING PLAN WOULD BE DEVELOPED AND APPROVED. THE U.S. GEOLOGICAL SURVEY, THROUGH ITS PROPOSED RULES, NOW ATTEMPTS TO COMPOUND THE DUPLICITY WHICH PREVIOUSLY EXISTED BY ADDING UNAUTHORIZED DEFINITIONS AND REQUIREMENTS AND ATTEMPTING TO STAKE OUT ITS BUREAUCRATIC TERRITORY IN OPPOSITION TO THAT WHICH THE FEDERAL ACT CONFERS UPON THE OFFICE OF SURFACE MINE RECLAMATION AND ENFORCEMENT. GENERALLY SPEAKING, THE

PROPOSED RULES WOULD ESTABLISH THE U.S.G.S. AS A SEPARATE PERMITTING AUTHORITY WITH INPUT FROM THE BUREAU OF LAND MANAGEMENT. THE FEDERAL ACT ESTABLISHES THE OFFICE OF SURFACE MINE RECLAMATION AND ENFORCEMENT AS THE PRIMARY FEDERAL AUTHORITY. THE FEDERAL ACT ALSO ESTABLISHES A STATE REGULATORY AUTHORITY, IF IT MEETS THE REQUIREMENTS OF THE FEDERAL ACT, AS THE PRIMARY REGULATORY AUTHORITY WITHIN THE STATE SUBJECT TO SUPERVISION AND REVIEW BY THE OFFICE OF SURFACE MINE RECLAMATION AND ENFORCEMENT. RATHER THAN SERVING TO MINIMIZE DUALITY IN ADMINISTRATION AND ENFORCEMENT, THE PROPOSED REGULATIONS MAY EFFECTIVELY DESTROY

EFFICIENT OPERATION OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 AND PRECLUDE MOST WESTERN STATES FROM OPERATING STATE REGULATORY PROGRAMS AS INTENDED BY CONGRESS.

97 THE SPECIFIC PROBLEMS RAISED BY THE PROPOSED REGULATIONS ARE AS FOLLOWS:

97 FIRST, THE PROPOSED REGULATIONS ARE UNNECESSARY, AND IN SOME CASES, AN ILLEGAL EXERCISE OF AUTHORITY BY THE DEPARTMENT OF THE INTERIOR. THE STATED "SCOPE AND PURPOSE" OF THE PROPOSED REGULATIONS IS TOTALLY ERRONEOUS. THE DEPARTMENT OF THE INTERIOR ALLEGES THESE REGULATIONS ARE NECESSARY TO PREVENT INCONSISTENCY. PRESENTLY, THERE IS NO STATE CONTAINING FEDERAL COAL WHICH DID NOT PREVIOUSLY HAVE STATE REGULATION. THUS, THE PERFORMANCE STANDARDS OF THE SURFACE MINING CONTROL AND RECLAMATION ACT ALREADY APPLY TO THAT COAL. NEW U.S. GEOLOGICAL SURVEY REGULATIONS ARE UNNECESSARY TO OBTAIN RECLAMATION OF THOSE LANDS.

97 THE TRUE SCOPE AND PURPOSE APPEARS TO BE THE INTERJECTION OF THE U.S. GEOLOGICAL SURVEY INTO THE INTERIM REGULATORY PROGRAM, A RESULT CLEARLY NOT INTENDED BY THE FEDERAL ACT.

97 SECOND, THE REGULATIONS ARE ADOPTED PURSUANT TO THE MINERAL LEASING ACT OF 1920. 42 FED.REG. 60891. HOWEVER, THAT ACT, AND THE PREVIOUS SECTION 211 REGULATIONS, HAD JURISDICTION OVER FEDERAL COAL ONLY. NOW THESE PROPOSED REGULATIONS ATTEMPT TO EXTEND THAT AUTHORITY TO "FEDERAL LAND" WHICH UNDER THE NEW ACT INCLUDE MINERAL AND SURFACE OWNED BY THE FEDERAL GOVERNMENT. THIS RESULTS IN FEDERAL MINE PLANS FOR FEDERAL SURFACE, A NEW, DUPLICATIVE AND UNNECESSARY REQUIREMENT.

98 THIRD, SPECIFIC PORTIONS OF THE REGULATIONS, GO FAR BEYOND THE SPECIFIC PROVISIONS OF THE SURFACE MINING ACT. SECTION 211.1 ATTEMPTS TO EXPAND THE DEFINITION OF "PERMIT" TO INCLUDE A FEDERAL MINE PLAN WHEN THE ACT CLEARLY INCLUDES ONLY FEDERAL OR STATE PERMITS ISSUED UNDER THE ACT. SECTION 701(15) ALSO, SECTION 211.1 EXPANDS THE DEFINITION OF THE "REGULATORY AUTHORITY" TO INCLUDE THE U.S. GEOLOGICAL SURVEY WHEN THE STATUTE CLEARLY INCLUDES ONLY THE STATE REGULATORY AUTHORITY AND THE OFFICE OF SURFACE MINING. SECTION 701(22)

AND 201. THESE DEFINITIONS CREATE A NEW AND TOTALLY UNINTENDED LEVEL OF BUREAUCRACY. NOW AN OPERATOR MUST NOT ONLY COMPLY WITH THE REQUIREMENTS OF THE STATE AND THE OFFICE OF SURFACE MINING, BUT ALSO SUBMIT A MINE PLAN TO THE U.S. GEOLOGICAL SURVEY FOR APPROVAL. ALSO, THE STATE HAS ONE MORE ARM OF THE FEDERAL OCTOPUS WITH WHICH TO DEAL.

98 EVEN MORE SERIOUSLY, SECTION 211.75 ATTEMPTS TO PREEMPT PORTIONS OF STATE LAW WHICH ARE CLEARLY PRESERVED BY THE SURFACE MINING ACT. SECTION 505 OF THE STATUTE CLEARLY STATES THAT MORE STRINGENT STATE LAWS ARE NOT PREEMPTED. THE REGULATIONS ATTEMPT TO AVOID THE APPLICATION OF STATE LAWS THAT MAY PREVENT THE MINING OF FEDERAL COAL. SINCE THE HEART OF MOST STATE RECLAMATION REQUIREMENTS IS THE ISSUANCE OR DENIAL OF A PERMIT, THIS REGULATION AIMS AT WEAKENING THOSE STATE LAWS. CONGRESS DID NOT INTEND SUCH A RESULT AND THE DEPARTMENT OF THE INTERIOR IS IN BLATANT CONTROVENTION OF THE LAW BY PROPOSING IT

99 FINALLY, IF THESE REGULATIONS ARE ADOPTED, THEY SHOULD CLEARLY STATE, IN EACH SECTION, THAT ALL REQUIREMENTS CAN AND WILL BE DELEGATED TO QUALIFIED STATES BY COOPERATIVE AGREEMENTS. UPON FIRST READING, ESPECIALLY BY DUTIFULL U.S. GEOLOGICAL SURVEY EMPLOYEES IN THE FIELD, IT APPEARS THAT THOSE REQUIREMENTS, I.E. FEDERAL ADMINISTRATIVE PENALTIES, PLANS, INSPECTIONS, APPLY IRRESPECTIVE OF COOPERATIVE AGREEMENTS. THE EXPERIENCE OF WYOMING IS THAT FEDERAL EMPLOYEES ARE THOROUGHLY VERSED IN THE REQUIREMENTS OF FEDERAL REGULATIONS, BUT UNAWARE OR UNINTERESTED IN THE FACT THAT THE COOPERATIVE AGREEMENT MADE THESE REQUIREMENTS A STATE CONCERN.

99 THE STATUTE HAS CREATED AN OVERLY CUMBERSOME AND COMPLEX STATE DELEGATION PROCESS. NUMEROUS AMBIGUITIES EXIST WHICH ALLOW THE DEPARTMENT OF THE INTERIOR TO EITHER FRUSTRATE OR ENCOURAGE STATE IMPLEMENTATION. THE FIRST CUT OF THE FEDERAL LANDS PROGRAM - THE PROPOSED SECTION 211 REGULATIONS - IS NOT A FAVORABLE SIGN OF THINGS TO COME.

99 THE ACT CREATED A NEW AGENCY, THE OFFICE OF SURFACE MINE RECLAMATION AND ENFORCEMENT, TO REGULATE AND ADMINISTER RECLAMATION ON ALL LANDS, FEDERAL AND PRIVATE. THE SELF-INJECTION OF OTHER FEDERAL AGENCIES INTO RECLAMATION PROGRAMS, BECAUSE OF THEIR PREVIOUS ROLE IN THE AREA, IS UNNECESSARY AND TOTALLY UNWORKABLE. THE STATES MUST HAVE ONE, AND ONLY ONE, FEDERAL AGENCY TO DEAL WITH, AND RECEIVE APPROVAL FROM, IN RECLAMATION MATTERS. IF THE OFFICE OF SURFACE MINING MUST COORDINATE ITS DECISIONS WITH OTHER AGENCIES, THEN IT MUST DO SO. BUT IN IMPLEMENTING THIS ACT, AND DELEGATING AUTHORITY TO THE STATES, THE FEDERAL GOVERNMENT MUST SPEAK WITH ONE VOICE.

100 ONCE A DELEGATION OCCURS, THE STATES SHOULD NOT BE CONSTANTLY SECOND-GUESSED. IF A STATE'S ACTIONS WITH RESPECT TO FEDERAL COAL ARE IN COMPLIANCE WITH THE MINIMUM STANDARDS OF THE ACT, SECRETARY APPROVAL SHOULD BE

AUTOMATIC. THIS POLICY SHOULD BE ESTABLISHED EARLY AND CLEARLY STATED. RECLAMATION IS COMPLEX AND INVOLVES NUMEROUS EXERCISES OF DISCRETION. IF THE DELEGATION IS TO WORK, THE STATE DECISION MUST BE REVIEWED ONLY TO DETERMINE COMPLIANCE WITH THE MINIMUM STANDARDS OF THE ACT.

100 TELL THE STATES THE RULES, BUT LET THEM CALL THE BALLS AND STRIKES. WITHOUT THAT AUTHORITY AND ASSURANCE, THERE IS NO INCENTIVE FOR STATES TO EXPEND THE EFFORT AND TIME NECESSARY TO IMPLEMENT THE ACT THROUGH A STATE REGULATORY AUTHORITY.

101 STATEMENT OF WILLIAM KOVACIC, LAND RECLAMATION PROGRAM, MISSOURI DEPARTMENT OF NATURAL RESOURCES, JANUARY 19, 1978

101 My name is William Kovacic. I work for the Land Reclamation Program in the Missouri Department of Natural Resources.

101 My comments today will be divided into three areas:

101 1) A report on our activities in Missouri to meet the requirements of Public Law 95-87 as contemplated by Congress for the States.

101 2) Our general observations about the implementation of PL 95-87 by the Office of Surface Mining.

101 3) A discussion of the prime farmlands provision which is of special importance in the midwest.

101 1. The performance standards of the initial federal regulatory program exceed the authority granted by our legislature in the state reclamation law. We have prepared legislation that will authorize the Land Reclamation Commission to participate in the initial program. The legislation has been filed and contains an emergency provision to become effective upon enactment so we should be on line for the provisions going into effect on May 3, 1978. The interest groups environmental, farming, mining industry, and utilities - are all in support of the state enforcement of the federal standards. The only opposition we anticipate is a few very conservative legislators who are opposed to "another federal program".

101 We plan to prepare legislation to have introduced in the 1979 session of the legislature to meet the requirements of the permanent regulatory program.

101 The fact that the federal funding to the States is maintained at not lower than fifty percent and that the state matching share must be made up from

permit fees will help us gain the legislative support. The requirements for a system of administrative fines could be an obstacle in gaining legislative support. We are advised that no state agency currently has this authority in Missouri state government.

102 Since the enactment of Public Law 95-87, the staff of our program has been immersed in reviewing drafts of federal rules and plans, mobilizing support for our state compliance legislation, and transferring information to constituent groups as well as the individual mining operators. Because of the failure to appropriate monies to the Office of Surface Mining, we have been unable to receive grant money to expand our staff to meet this increased workload. The result has been a cut-back in our field investigations in order to evaluate and stay informed of developments associated with the federal law. Also, we have been unable to attend some meetings where the rules were discussed with OSM because of out-of-state travel limitations in our budget.

102 2. The Office of Surface Mining has been severely handicapped in implementing this Act because of the lack of appropriations. I urge you and your colleagues to quickly pass the necessary appropriations. The lack of funding has delayed things at the federal level and has interrupted the operation of our agency as well.

102 In spite of this handicap, I must commend OSM and Walter Heine, its director, on their openness and accessibility to our state as the implementation program has developed.

102 We have not changed OSM on every issue we disagreed on but we feel that they are taking advantage of our experience in regulating mining and we have been able to influence some of the decisions.

103 3. A performance standard of critical importance to mining in the midwest is the prime farmlands provision.

103 The provision was to be effective for new permits issued after August 3, 1977. We had several applications for amendments pending when this Act was signed into law. Also, our permits are issued on a calendar year basis and thus expired December 31, 1977. We did not have state statutory authority to issue permits after August 3, 1977 containing the requirement for the prime farmland provision. Also, the rules developed by OSM were not promulgated until December 13, 1977 and we did not actually receive these rules until an hour after the Land Reclamation Commission approved the 1978 permits at its meeting on December 23, 1977.

103 I understand that the definition of prime farmlands being developed by the U.S. Department of Agriculture is at the stage of proposed rules. Hopefully, we will be able to suggest revisions to USDA to refine their definition so that it only includes the best farmland in the country. While I am not technically qualified to comment on the soils aspect of the prime farmlands determination, we are all under the impression that it is being construed very broadly and therefore is including land which could hardly be considered good farmland.

103 If I were to suggest one revision in PL 95-87. it would be to change the effective date of the prime farmlands provision to May 3, 1978 with the other initial performance standards. Because of the delay in funding, in the development of the rules, and because of of insufficient state authority, this provision has not been enforced for new permits issued after the date of enactment.

104 Thank you for the opportunity to comment here and I will try to answer any questions you might have.

105 STATEMENT OF ANTHONY F. ABAR, ADMINISTRATOR, MARYLAND BUREAU OF MINES,
JANUARY 19, 1978

105 MY NAME IS ANTHONY F. ABAR. I AM THE ADMINISTRATOR FOR THE MARYLAND BUREAU OF MINES. THE BUREAU OF MINES IS THE PRINCIPAL STATE AGENCY RESPONSIBLE FOR THE CONTROL OF COAL MINING AND RECLAMATION ACTIVITIES IN MARYLAND.

105 MARYLAND IS A MEMBER OF THE INTERSTATE MINING COMPACT COMMISSION.

105 LAST WEEK, ON JANUARY 10 AND 11, 1978, THE INTER-STATE MINING COMPACT COMMISSION MET IN WASHINGTON, D.C.. DISCUSSIONS AT THAT MEETING REVEALED THAT:
(1) ONLY TWO OR THREE OF THE TWELVE COAL PRODUCING STATES WITHIN THE IMC POSSESS THE NECESSARY LEGISLATION TO FULLY IMPLEMENT THE INITIAL REGULATORY PROGRAM UNDER PL 95-87, (2) SEVERAL STATES REQUIRE FEDERAL GRANT FUNDING AS A PREREQUISITE TO FULLY IMPLEMENTING THE INITIAL REGULATORY PROGRAM. THESE STATES CANNOT EFFECTIVELY REVIEW (a) MINE STATUS MAPS, (b) SMALL OPERATOR EXEMPTION REQUESTS, (c) REQUESTS FOR DELAY IN CONVERTING NON-CONFORMING STRUCTURES, (d) PRE-EXISTING, NON-CONFORMING STRUCTURE DESIGNS AND PLANS, AND OTHER SUBMISSIONS MANDATED BY 95-87 WITHOUT ADDITIONAL PERSONNEL, SUPPORTED BY ANTICIPATED FEDERAL FUNDING, (3) MOST OF THE STATES REGARD THE "PRE-EXISTING, NON-CONFORMING STRUCTURES" PROVISIONS OF SECTION 710.11(d) AND THE SEDIMENT CONTROL MEASURES PROVISIONS OF SECTION 715.17(e) AS DUBIOUS ENVIRONMENTAL PROTECTION REQUIREMENTS. BECAUSE OF SEVERAL EVENTS, INCLUDING CONGRESSIONAL DELAY IN

APPROPRIATING FUNDS FOR THE OFFICE OF SURFACE MINING AND A DELAY IN ADOPTING THE REGULATIONS PERTAINING TO THE INITIAL REGULATORY PROGRAM PERFORMANCE STANDARDS, COMBINED WITH THE TIME REQUIRED FOR STATES TO ENACT LEGISLATION AND PROMULGATE REGULATIONS, NEITHER THE FEDERAL GOVERNMENT NOR MOST OF THE STATE GOVERNMENTS WILL POSSESS THE CAPABILITY TO ENFORCE THE INITIAL REGULATORY PROGRAM ON FEBRUARY 4, 1978. TWO ALTERNATIVES ARE AVAILABLE: (1) INFORMALLY LET DEADLINES SLIDE AND IMPOSE THE PERFORMANCE STANDARDS OF THE INITIAL REGULATORY PROGRAM ON A CASE-BY-CASE BASIS AS FEDERAL AND/OR STATE CAPABILITY IS DEVELOPED OR (2) ACKNOWLEDGE THE REALITIES OF THE SITUATION AND EXTEND THE DEADLINES ACROSS THE BOARD UNTIL THE FEDERAL GOVERNMENT OBTAINS THE FUNDS AND PERSONNEL IT REQUIRES AND THE STATES OBTAIN THE FUNDS AND STATUTORY/REGULATORY AUTHORITY THEY REQUIRE IN ORDER TO IMPLEMENT THE INITIAL REGULATORY PROGRAM. THESE ALTERNATIVES WERE DISCUSSED ON JANUARY 11, 1978, WITH REPRESENTATIVES OF THE OFFICE OF SURFACE MINING AND THE WHITE HOUSE. THE STATES URGE THE FEDERAL GOVERNMENT TO ADOPT THE SECOND ALTERNATIVE. SHORT RUN DELAYS IN IMPLEMENTING THE INITIAL REGULATORY PROGRAM ACROSS THE BOARD ARE PREFERRED TO A PIECEMEAL APPROACH TO IMPLEMENTATION OF THIS PROGRAM. A PIECE-MEAL APPROACH, WITH NO EFFECTIVE FEDERAL PRESENCE AND LIMITED STATE AUTHORITY, COULD QUICKLY RESULT IN A LACK OF CREDIBILITY THAT WOULD DAMAGE THE LONG RANGE IMPLEMENTATION OF AN EFFECTIVE SURFACE MINING AND RECLAMATION PROGRAM. A 120-DAY EXTENSION OF THE FEBRUARY 3 and MAY 3 DEADLINES IS RECOMMENDED. HOPEFULLY, SUCH EXTENSION OF DEADLINES WILL BE ADEQUATE FOR THE CONGRESS TO APPROPRIATE FUNDS TO STAFF AND OPERATIONALIZE THE FEDERAL OFFICE OF SURFACE MINING AND TO PROVIDE GRANTS TO THE STATES TO OFFSET THE MARGINAL COSTS OF ADMINISTERING THE INITIAL REGULATORY PROGRAM. THE RECOMMENDED EXTENSION OF DEADLINES WOULD ALSO PROVIDE STATE LEGISLATURES TIME TO AUTHORIZE FULL STATE PARTICIPATION IN THE INITIAL REGULATORY PROGRAM. FINALLY, IT IS HOPED THAT, DURING THE SAME EXTENSION OF DEADLINES, THE OFFICE OF SURFACE MINING WILL REVIEW AND CONSIDER AMENDMENTS TO THOSE SECTIONS OF THE REGULATIONS IT HAS ADOPTED PERTAINING TO PRE-EXISTING, NON-CONFORMING STRUCTURES AND SEDIMENT CONTROL MEASURES.

107 TO ELABORATE ON THE LAST POINT, IMPLEMENTING THE STANDARDS PERTAINING TO PRE-EXISTING, NON-CONFORMING STRUCTURES WOULD REQUIRE THE REPLACEMENT OF THOUSANDS OF MILES OF HAULROADS AND PONDS THROUGHOUT THE COAL REGION OF APPALACHIA. IN MARYLAND, THESE PONDS WERE CONSTRUCTED IN ACCORDANCE WITH DESIGN SPECIFICATIONS JOINTLY DEVELOPED BY THE U.S. DEPARTMENT OF AGRICULTURE, SOIL CONSERVATION SERVICE, AND THE STATE DEPARTMENT OF NATURAL RESOURCES. WE SERIOUSLY QUESTION REGULATIONS WHICH WOULD REQUIRE THE RELOCATION AND/OR

RECONSTRUCTION OF THESE FACILITIES WITH STRUCTURES THAT WOULD SERVE MINING OPERATIONS, IN SOME INSTANCES, FOR ONLY A MATTER OF A FEW MONTHS.

107 DURING THE COMMENT PERIOD AFTER THE PROPOSED REGULATIONS FOR THE INITIAL REGULATORY PROGRAM WERE PUBLISHED, MARYLAND RECOMMENDED THAT THE OFFICE OF SURFACE MINING ADOPT REGULATIONS THAT SPECIFY THE OBJECTIVES BUT NOT THE SPECIFIC MEANS BY WHICH THE OBJECTIVES (PROTECTING THE HYDROLOGIC BALANCE) ARE TO BE OBTAINED. THEREFORE, WE DID NOT PROVIDE DATA WHICH SUPPORTED DESIGN STANDARDS FOR SEDIMENT PONDS THAT WERE DIFFERENT THAN THE DESIGN STANDARDS IN THE PROPOSED REGULATIONS. SINCE OUR RECOMMENDED APPROACH WAS NOT ADOPTED, WE HAVE SUBSEQUENTLY ANALYZED AND ARE PREPARED TO SUBMIT DATA WHICH SUPPORTS DIFFERENT DESIGN STANDARDS. SPECIFICALLY, WE REVIEWED THE SAMPLING DATA COLLECTED BY THE MARYLAND WATER RESOURCES ADMINISTRATION FROM PONDS CONSTRUCTED UNDER SURFACE COAL MINING PERMITS ISSUED BY THE STATE OF MARYLAND FROM JANUARY, 1974, TO THE PRESENT. WE CONCLUDE THAT PONDS CONSTRUCTED TO DESIGNS CURRENTLY REQUIRED IN THE STATE OF MARYLAND WILL ACHIEVE THE EFFLUENT LIMITATIONS REQUIRED BY THE FEDERAL REGULATIONS. CONSTRUCTION OR RECONSTRUCTION OF LARGER PONDS IS NOT NECESSARY TO ACHIEVE THE WATER QUALITY OBJECTIVES. FURTHER, CONSTRUCTING LARGER PONDS MAY UNNECESSARILY ADVERSELY IMPACT WATER COURSES; AND, RELOCATION AND RECONSTRUCTION OF EXISTING PONDS WILL INNECESSARILY ADVERSELY IMPACT THE ENVIRONMENT. IN SUMMARY, WE RECOMMEND EXTENDING THE FEBRUARY 3 and MAY 3 DEADLINES 120 DAYS. OUR RECOMMENDATION STEMS PRIMARILY FROM A MOTIVATION TO HAVE EFFECTIVE FEDERAL AND STATE REGULATORY PROGRAMS ON LINE IN ORDER TO INSURE COMPLIANCE WITH THE PROVISIONS OF THE PROGRAM. WE BELIEVE THE LOSS OF CREDIBILITY RESULTING FROM AN ALTERNATIVE, PIECE-MEAL APPROACH WOULD BE OF GREATER LONG-RUN ADVERSE CONSEQUENCES TO THE PROGRAM THAN THE APPROACH WE RECOMMEND. HOWEVER, WE ALSO RECOMMEND THAT DURING THIS EXTENSION OF TIME, THE REGULATORY STANDARDS PERTAINING TO SEDIMENT PONDS AND PARTICULARLY NON-CONFORMING STRUCTURES BE REEVALUATED.

109 Statement of Cloyd D. McDowell, President The National Independent Coal Operators' Association and the Kentucky Independent Coal Producers at the Oversight Hearings on Regulations Pertaining to the Surface Mining Control and Reclamation Act of 1977 by the Committee on Interior and Insular Affairs of the United States House of Representative Washington, D.C. January 19, 1978

109 Mr. Chairman and Members of the Committee:

109 My name is Cloyd D. McDowell. My address is 403 Central Street, Harlan, Kentucky. I am President of the National Independent Coal Operators' Association with offices in Washington, D.C.; Richlands Virginia and Harlan, Kentucky. I am also testifying on behalf of the Kentucky Independent Coal Producers, a state organization affiliated with the National Association.

109 The membership of our national organization now has about 1,500 members, most of them are small and medium sized coal mine operators located chiefly in the mountainous region of Appalachia but with members in other coal producing states of the nation.

109 The legal responsibility and economic burdens created by any mandatory regulations fall most heavily upon members of our Association; therefore, just consideration of our problems and appropriate assistance from the regulatory authorities are essential to our survival. Not only is the future of our segment of the industry at stake but so is the very economic life of the various small communities in which we operate.

109 Our panel, which is composed to two mining engineers, an active coal operator and myself, will attempt to point out the concerns of our members in trying to meet the rigid requirements of those interim regulations. We have testified at previous hearings on more than one occasion in an attempt to receive some measure of relief from the time table approach to the enforcement of certain provisions of these regulations.

109 On August 17, 1977, we had the opportunity of meeting with Paul Reeves, project director, and the twelve-man task force, who at that time were preparing the regulations which we are to discuss today. We offered testimony at the Public Hearing held in Washington, D.C. on September 21, 1977, as required for the promulgation of regulations. We also offered testimony before House and Senate Committees during hearings held to consider S-7 and HR-2. We hope that our testimony today is more persuasive and will result in a more realistic approach to the implementation of Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977.

110 In Section 102, paragraph (f) of the law, we read that one of the purposes of the Act is to assure that the coal supply essential to the nation's energy requirements, and to its economic and social well-being is provided and strikes a balance between protection of the environment and agricultural productivity and the nation's need for coal as an essential source of energy.

110 In our comments today we will point out many of the reasons why this particular goal may not be achieved unless more care is exercised in promulgating reasonable regulations for the administration of the provisions of the Act.

110 Final regulations on the Interim Regulatory Procedure for Surface Coal

Mining and Reclamation operations were published by the Interior Department in the December 13 Federal Register - six weeks after November 1, the date mandated by statutes for their completion.

110 In spite of the delay in publication of these regulations there has been no extension of the date required for compliance which means that new mines must meet performance standards by February 3, 1978, and existing mines must comply with the standards by May 3, 1978.

110 Many state officials including those of Kentucky are of the opinion that they will have no legal authority for granting permits after February 4, 1978. In other states the small operator's exemption will only apply to those operators whose permits, were granted or renewed before August 3, 1977. Many states issue annual permits, thus forcing the small operator to comply with all requirements of the interim regulations by August 3, 1978.

110 Even with the exemption the small operator must comply with special performance standards that appear impossible in view of his inadequate financing necessary to purchase expensive equipment, professional services and additional reserves.

110 If this is true many small operators will find it impossible to continue in business when the present permitted acreage is worked out.

110 In the area of pre-existing, non-conforming structures or facilities while the regulation needs clarification, it appears impossible for the operator to comply within the time frame mandated by the interim regulations.

110 A number of legal challenges of the interior regulations by various parties, including the state of Virginia, has created a state of uncertainty among the members of our Association. This situation added to the confusion that now exists due to strikes, weather conditions and many other reasons make it imperative that the effective date for implementing these regulations be delayed for at least nine months.

110 We believe that a better understanding of the regulations will have been achieved by then through the efforts of the office of Surface Mining in public meetings with the operators.

110 With the cooperation of OSM, our Association has scheduled nine seminars beginning January 18, in Pikeville, Kentucky and running through February 16, with a meeting to be held in Birmingham, Alabama on February 16th. Other seminars will be held at Hazard, Kentucky on January 19; Princeton, West Virginia on January 26; Richlands, Virginia January 27; Harlan, Kentucky, on

February 1; Knoxville, Tennessee on February 2; Indiana, Pennsylvania on February 8; and Madisonville, Kentucky on February 14.

110 We greatly appreciate the cooperation of OSM and we feel this is the best way to achieve the results necessary to meet the requirements of Public Law 95-87.

111 STATEMENT OF LARRY R. JONES, R.R. CRAWFORD ENGINEERING CO., WHITESBURG, KY., JANUARY 19, 1978

111 My name is Larry R. Jones. I represent the Knott-Letcher-Perry Independent Coal Operators Association in South-East Kentucky. We greatly appreciate the opportunity to present our suggestions and views on such an important subject.

111 We live and mine coal in an area where steep slopes are the only things we see because of the mountains, so you can readily see some of the problems we face.

111 One major problem. I wish to point out is Section 710.5, dealing with soil segregation. Our local S.C.S. official, Mr. Cecil Fensley of Letcher County, tells us we can expect to find only 3 to 4 inches of topsoil on ridges and a maximum of 6 to 8 inches of topsoil on the slopes. With the equipment our operators can afford we won't be able to segregate the topsoil without contaminating it extensively, even with the best of care being used in the operation. We hope you will give great thought in providing regulations that will allow the best possible and feasible substitute.

111 Section 710.12 of the regulations tell the small operator to file an application for exemption by February 3, 1978. Our operators have not seen or heard from the regulatory authorities concerning this application. This does not give the operators time to make plans or seek information requirements. We feel the entire regulatory system should be given at least one year of transitional allowances to give them enough time to deal with all of the applications due to the vast number of "small" operators and their specific problems.

112 We feel the whole system of enactment should be delayed one-year to allow ample time for the regulatory offices to be "set-up-for-business".

112 Section 715.12 requires signs for practically every movement or stone. We feel M.E.S.A. and State regulatory agencies have already taken care of the job. The "average" operator in Eastern Kentucky already has his hands "full" trying to replace the signs, already required, that are pushed over, shot-up or abused by hunters, property owners, and the general public (trespassers.)

112 In dealing with plans for post-mining land use, Section 715.13, part d, sub-part 2 should allow a person to plan fifty or more years in advance. It has the impression that the plan is for "immediate" use. As long as it is stable, creates no pollution, and is vegetated, why not let it be done? Even if it does not fit into "today's" marketing trends.

112 In some regions, the standards for mountain-top removal backfilling plans will not allow enough storage room for spoil or overburden. We feel that in sparsely populated areas that a safety factor of 1.5 may not be necessary. We would be able to stack material back on the area without having to disturb otherwise uninvolved lands.

113 In Section 715.15 part b sub-part-2, the regulations leave us with the idea that fills will be made above the mining operation. Safety regulations prohibit this and more thought should be done in allowing fills to be placed "below operations". This is safer, cheaper, and more beneficial to land use plans.

113 A wide range of problems occur in our area in the subject of Sediment Ponds. Due to steep side slopes and valleys, the surface area mentioned in Section 715.17, part e, sub-part 1, cannot be met without extensive construction measures such as earthmoving and blasting being done, creating more siltation problems, more problems with the near-by occupants, and unaffordable construction costs.

113 The State of Kentucky has been using a standard 1.5 feet flood storage stage requirement on all silt structures in a 100 acre or less watershed. It has worked satisfactorily in the past and we feel it can continue to work in the future. This may lessen flood water storage in some instances and create safer conditions for people living downstream.

114 Access roads should be reseeded but not regraded. In most cases the outslopes are stabilized and vegetated. Any additional disturbance produces additional silt, a scar that takes longer to heal, and unaffordable costs on the operator.

114 Roads should also be kept off ridges because of disturbances to property lines or monuments and additional silt problems to other unaffected hollows or drains.

114 In Section 715.19, part b, the operator is required to conduct a pre-blasting survey of near-by buildings. This may protect a citizens right, but what happens to the operators rights? This will bring about more nuisance suits than the local courts or operators will be able to keep up with. Rumors

will spread, misconceptions arise, and tempers flare. This is just another problem and headache for both the operator and regulatory authorities.

114 Blasting notices will be a virtual impossibility because of equipment breakdowns, weather, other regulatory authority problems, or misfirings.

114 Small operators may have problems taking seismographic readings because of the possible number required at the same time and the number of personnel involved.

115 Section 717.11 part a sub-part 3 may cause 75 percent of the existing preparation plants in Eastern Kentucky to be in violation because of site locations. They will have no other choice but to tear down existing structures, scrapping millions of dollars in equipment. Operations should be granted variances or given ample time extensions to comply.

115 Section 721.13 allows citizen's names to remain anonymous when they report matters to the regulatory authorities. As mentioned earlier, nuisance suits will arise. People will be less timid to create problems for operators just to "get even".

115 Section 722 should also give operators rights to protect themselves from inspectors who overstep authority or misinterpret regulations, especially when it is connected with attempts of bribery. Provisions should include the ability to file a personal suit against the inspector. This would be in the best interest of the law.

115 Section 722.14 should require the regulatory authorities to send notices of non-compliance by registered mail to the president or main stockholder of the company. Notices may also be hand delivered requiring a signature of said person. This will assure the operator that he has or will receive proper notification of all non-compliances.

116 In closing let me say on behalf of some of the "small" operators in Eastern Kentucky mining "steep slopes" that we face great problems in maintaining production to meet America's needs. What will help all concerned seems to be time and understanding of everyone's problems.

117 STATEMENT OF BEN E. LUSK, PRESIDENT, MINING AND RECLAMATION COUNCIL OF AMERICA, JANUARY 19, 1978

117 My name is Ben Lusk, President of the Mining and Reclamation Council of America. The Council is a recently formed trade association representing companies directly and indirectly involved in the surface mining of coal in the United States.

117 The Council presented testimony in September on the proposed rules and regulations of the Surface Mining Control and Reclamation Act of 1977 and since

then has been available to the Office of Surface Mining to provide factual technical information. Also, in an attempt to bring about a better understanding of the new rules and regulations, the Council has worked in cooperation with the Office of Surface Mining in establishing seminars and workshops at various locations.

117 During these past five months, we have talked to hundreds of surface mine operators in an attempt to determine the major problem areas of the Act and its interim rules and regulations.

117 Although technically there are severe problems with provisions like the sizing of the siltation control structures in steep slope areas and adequate protection for small operators, these areas will be covered in depth in the testimony of the various state surface mining organizations tomorrow. I would like to limit my remarks to one general area which is causing a great deal of concern . . . the implementation dates for the interim rules and regulations to come into effect.

117 By February 3, 1978, just ten working days from the end of these hearings, any small operator seeking an exemption from the Director must have his application into the Office of Surface Mining. Also, any request for a time extension on upgrading existing structures to the new requirement of the Act must be filed by then. And, of course, all new mines and permits for mining after the February 3rd date must incorporate the new rules and regulations.

118 Although we all were aware of the February date last summer when Congress was completing its work on the bill, no one could have predicted the events which followed which will make it not only impossible for the industry to comply with the February 3rd date, but also the May 3rd date requiring all existing mines to upgrade their structures to the new law.

118 Consider, for example, the fact that although the President quickly signed the Act just weeks after Congress passed it, he waited over three months to appoint a Director to the newly formed Office of Surface Mining. Then the Senate waited nearly two more months to confirm the President's selection, thus not giving the office an official Director until last month. The situation being that the industry was unsure as to where to turn for guidance or to get official answers to critical problem areas until nearly five months after the Act was signed and the industry has to be in compliance in six months.

118 The proposed regulations were published in the Federal Register on September 7, 1977, just four days late of the 30-day time limit set by the Act and the interim regulations were published on December 13, 1977, 40 days late. First let me say that we consider it a minor miracle that the Surface Mining Task Force under the Chairmanship of Paul Reeves was able to have published such

a comprehensive set of rules and regulations in such a short period of time in an attempt to be in compliance with the wishes of Congress. However, regardless of how difficult the task was, and how hard and dilligently the Task Force and the Office of Surface Mining worked, and how genuinely qualified these individuals are, the industry still has to comply with deadlines while receiving the regulations late.

119 The Act calls for the regulations to be published by November 3, 1977 giving the industry 90 days to meet the February 3rd, 1978 deadline. Because the publication was 40 days late, it cut the industry's time by nearly one-half. As I mentioned earlier, I'm definately not criticizing the Office of Surface Mining, which has done a fantastic job trying to comply with the wishes of the Act. However, it was an impossible task which was made even more difficult when Congress failed to approve the supplemental appropriations which would have given the Office of Surface Mining a budget, a staff and office space which it still doesn't have.

119 Compound all this with two unfortunate situations which no one has control over. The UMU strike which was a week old when the regulations were published on December 13th is in its second month and no end is yet in sight. This prevents the operators from even trying to upgrade his structures to meet the May 3rd deadline. The operator can't be sure when he will be able to and it would be impossible for him to accurately request a time extension for the Director without knowing how long the strike is going to take. However, even if the mines could work, the bad weather we have been experiencing would prohibit any major activity.

120 Environmentally, for example, it would be a massacre to force the operators to rush in and upgrade siltation control structure during this wet period in the East. The earth moving activity required would cause more siltation than the structure is planned to prevent.

120 Also the regulations require small operators desiring an exemption to the environmental standards to file a request with the Office of Surface Mining by February 3rd. Before he can do that, he must advertize for two weeks prior which means today. With the regulations published in mid-December, a small operator had less than one month during a strike, bad weather, Christmas and New Years to obtain a copy of the regulations, decipher what he has to do and

advertise what he is planning to do by today to be in compliance with the law.

120 The Chairman of this Committee has stated many times during the seven years of debate on the hill that the small businessman should be protected. It is our opinion that not only is the small operator not getting a fair opportunity to stay in business, but that he will be phased out of business without the special consideration that Congress agreed to and provided for in the Act.

121 If it is possible to compare this Act with the 1969 Federal Coal Mine Health and Safety Act, it is our opinion that of the 2700 small coal operators mining under 100,000 tons annually over a thousand will be out of business in less than five years.

121 In conclusion, the Mining and Reclamation Council is requesting that this Committee recommend to Congress that a six-month delay in the implementation of the rules and regulations be granted. We feel strongly that it is necessary in order to: (1) prevent further disruption of the nation's coal production which will surely cause severe energy shortages; (2) to prevent unwarranted abuse of the environment through attempts by the industry to rapidly come into compliance; (3) to help bring about an orderly compliance schedule which the industry can successfully live under; (4) to give the Office of Surface Mining the opportunity to get a proper budget, trained staff and offices in order to properly enforce the Act; and, (5) give the Surface Mining Control and Reclamation Act of 1977 the proper opportunity to successfully provide for continued coal production while at the same time protect the environment. It took seven years to pass this legislation, we feel that if it takes six extra months to make it work effectively and efficiently and if a six-month delay will avoid public criticism because the bill isn't being properly enforced, then we feel Congress should at least give this short delay careful consideration.

121 Thank you.

122 Testimony of Neal S. Tostenson

122 Before the U.S. House of Representatives Interior Committee

122 Thursday, January 19, 1978

122 I am Neal S. Tostenson, executive vice president of the Ohio Mining and Reclamation Association, 41 S. High St., Columbus, Ohio. Ohio Mining and Reclamation Association is an association of coal companies operating in Ohio with a membership of over 100 coal producers.

122 The Ohio coal industry produces approximately 46 million tons of coal per year with two-thirds of the total production being produced by the surface mining method. Of the approximately 380 reporting mines in Ohio, two-thirds of the mines produce less than 50,000 tons per year, indicating that Ohio has a considerable number of small surface mine operations.

122 I am appearing before this committee to relate the views of our association relative to the issuance of regulations by the U.S. Department of Interior, Office of Surface Mining Reclamation and Enforcement and filed in the Federal Register on December 13, 1977 as they conform to the purposes and intent of the Surface Mining Control and Reclamation Act of 1977 as passed by Congress.

122 In section 102 of the Act, the purposes reveal that it is the intent of Congress that surface mining operations are to be conducted so as to protect the environment and insure that the rights of adjacent land owners are protected and that no environmental damage will happen to their properties. In addition, in section 102 F, it provides that it is the intent of Congress and the Act to assure that the coal supply essential to the nation's energy requirements and to its economic and social well being is provided and to strike a balance between protection of the environment and agricultural productivity and the nation's need for coal as an essential source of energy.

123 In reading the purposes of Congress, there are several conclusions that one could easily draw. First, the rights of adjacent property owners are protected from surface mining operations and that there is no sacrifice to environmental quality because of mining, and at the same time we assure continued production of coal as part of our national policy, and that this production, because of its close relationship to the generation of electricity, be done in an economic manner so that the consumer - the home owners - are not burdened with unnecessary and unreasonable costs.

123 With these goals in mind, it would appear that Congress' intent would be to have a reasonable set of regulations to accomplish the aforesaid.

123 With this statement in mind, I would like to turn to the federal regulations filed December 13, 1977. The first section I would like to bring to your attention is Sec. 710.11(d) 2 which provides that any pre-existing non-conforming structural facility must be brought into compliance by May 3, 1978 and if not, that on February 3, 1978, plans must be submitted by a

professional engineer bringing the facility or structure into compliance to be completed by November 4, 1978. Because of the extreme scope of this regulation and other regulations that must be interpreted in connection with this, and in reviewing Ohio mining operations, I find that there are very few sediment ponds in Ohio that meet all of the criteria set forth in section 715.17 which would make them all non-conforming structures, regardless of whether they are meeting national water standards under the water permits issued by the Ohio EPA. Because of the time of the year, possible physical locations, availability of engineers to the small operators, it will be impossible for them to comply with the deadlines.

124 On some of the large operations, the provision on haul roads to bring them into compliance with the minute details on regulations on haul roads by the targeted deadlines are virtually impossible.

124 In addition, when you consider deep mines in Ohio that may have been in existence for 15 or 20 years, with gob piles in existence for the same time, to require them within the small time frame to bring these facilities into compliance, not only will cause economic disruption to the companies, but also will bring about the strong possibility that older mines with a short economic life will be closed. This will greatly reduce the available of coal as an available resource.

124 Another fact occurring throughout the federal statute is the idea of utilization to the maximum of our coal resources during the mining process. To close a mine because of economics as a result of the operator's inability to bring existing structures into full compliance with the regulations will result in a waste of our natural resource.

124 None of these regulations are within the intent of the law which calls for a balance between protecting the environment and protecting the economics of our coal supply.

124 Proceeding further into the regulations, I would call your attention to the section relative to signs under section 715.12. There is a provision requiring that all top soil storage areas have a sign stuck on top of it indicating that it is a top soil storage area, with the sign being maintained throughout the mining operation until the pile is redistributed.

125 In Ohio, approved mine maps designate the areas to be used for top soil storage. If an inspector cannot locate it from the map and once located,

be knowledgeable enough to determine that the material is top soil, I certainly would question whether he should be an inspector in the first place. Now this particular item is not overwhelming in its cost per operation; however, as a demonstration of the minute detail that the regulations address themselves to without any reasonableness toward the end intent of the law, then it is a wasteful expense of money and time and is unreasonable under the federal law.

125 Probably the most minute section is sections 715.17 dealing with protection of the hydrologic systems. Presently all operations in this country are governed by the U.S. EPA, and in some states, such as Ohio, implemented by the state where the state has been designated as the licensing agent for the US EPA in issuing water permits.

125 Our operations are governed as to effluent limitations, flow, monitoring and other data. The U.S. EPA is a recognized agency with expertise in administering water quality; however we have regulations here issued by Dept of Interior in a relatively short period of time which assumes that they have more expertise and more knowledge about water quality, methods of obtaining water quality, sampling requirements, than the U.S. EPA, which has been in the business for many years more than the short months the task force took in writing these regulations.

125 Therefore, I would ask the committee to carefully review many of the provisions in these regulations for duplication of effort in this area, and anytime there is a regulation and a mandate there is a cost to the operator, and where there is duplication, there is a duplicate waste of money, ultimately ending up on the consumer's bill.

126 Many of the details of the regulations, such as buffer zone markings, extensive monitoring of flow, frequency of testing of the various parameters, and provisions for facilities to have the capability to cover a 100 year frequency in their application and unreasonable in cost expense to the operator.

126 The provision under section 715.17(e) 7 requiring that all ponds shall be designed and inspected under the supervision of and certified after construction by a registered professional engineer, when applied to all ponds, is unreasonable. The Soil Conservation Service of the Federal government, without this requirement, has build thousands of ponds in rural areas, which are also the mining areas of southeastern Ohio without engineers. It is understandable that on certain sized ponds there is need for additional protection; however the regulations do not recognize distinction in pond size and impose on small operators the burden of obtaining additional engineering

services, which in many cases will be difficult to do in the rural areas of the extreme southern part of Ohio.

126 In reviewing section 715.19 on the use of explosives, many provisions are already covered under state law. Here again, regulations have exceeded to a great extent the provisions of Ohio's law which has extremely high standards for mining and reclamation. There is excessive paperwork and the regulation would almost require an operator to hire a full time person to make sure they are in compliance with just the paper work aspects of the blasting provisions. An illustration is the requirement that the operator continually post notices in public newspapers and mail to local government and public utilities. An immediate question that comes to my mind is what public utilities are we talking about. Is it necessary to send a notice every time we publish a blasting notice to Ohio Bell or to the railroads, which are considered public utilities in Ohio? And if so, is that notice necessary and reasonable?

127 In proceeding further through the regulations, I would like to strongly stress that the committee review the general performance standards of underground mining in section 717. In adopting these provisions, concern must be given to the mandate of the law in section 516 which provides as follows: "that in adopting any rules and regulations the Secretary shall consider the distinct difference between surface coal mining and underground mining." Based on this mandate, prior to the adoption of any rules and regulations, what considerations did the Secretary consider in view of the fact that the first draft of the regulations were issued almost immediately after passage of the Act.

127 It would be difficult to see how much of a study had been done relative to the differences.

127 Let me point one of the differences. Underground operations normally have coal preparation plants as part of their ancillary operation at the underground location. Underground operations in southeastern Ohio have been in existence for a period of over five years and have considerable ancillary operations at the mine site. The requirements to immediately cure defects according to an abstract federal standard such as railroad spurs and sidings which cannot be immediately re-constructed without substantial loss of employment during reconstruction, or the re-location of gob pile areas which may not be causing any environmental problems but do not fall within the criteria set forth in the regulations or slurry ponds which are closed circuit ponds which do not meet the federal regulations but are not causing any environmental harm all place an extreme capital cost on the operator, regardless of the mine

life, and in many cases would not provide a balance between protection of the environment and protection of our national coal supply.

128 Throughout the regulations we have mentioned, and there are many we have not mentioned, the regulations were written to cover all situations regardless of size and financial ability of the operator to cover those costs.

Many operators in southeastern Ohio will have to close mines, decreasing production, because of inability to comply with all of the regulations, regardless of whether their operation is causing environmental harm or not.

128 It is our feeling that the regulations were written in a vacuum without the benefit of input from reasonable people knowledgeable of the conditions in the mining fields, size of operations, manner in which operations are conducted and the difference in various mining localities with the result that unreasonableness in regulations appear in many instances in their application, and without regard for the cost to the ultimate consumer.

128 As a whole, the actual provisions relative to final reclamation will not differ in Ohio under the Federal program. We are achieving high standards of reclamation and we are proud of them; however under this federal program of regulations, the cost of coal will probably increase over 20%, and many small Ohio operations will be closed down (and as I have previously mentioned 2/3 of Ohio operations produce 50,000 tons or less), causing a decline in coal supply in Ohio and contributing to the inability of the nation to meet the national energy goals of 1985.

128 We respectfully request the committee take a practical eye in reviewing the regulations in light of the purposes of the Act.

129 STARVAGGI INDUSTRIES, INC.

129 401 Pennsylvania Avenue

129 Weirton. West Virginia 26062

129 January 19, 1978

129 COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

129 HOUSE OF REPRESENTATIVES

129 WASHINGTON, D.C. 20240

129 RE: PROPOSED RULES SURFACE MINING CONTROL AND RECLAMATION ACT OF
1977

129 GENTLEMEN:

129 BECAUSE OF THE TIME LIMITATIONS IMPOSED FOR ORAL PRESENTATIONS, MY

COMMENTS SHALL BE LIMITED PRIMARILY TO PRE AND POST MINING USES AND THE PROPOSED REGULATIONS CONCERNED THEREWITH.

129 WE CAN ALL APPRECIATE THE LIMITED AMOUNT OF TIME WITHIN WHICH O.S.M. HAS BEEN MANDATED TO PROPOSED REGULATIONS WHICH REFLECTED THE LEGISLATION INVOLVED: HOWEVER, IT HAPPENS SO VERY OFTEN THAT IN ATTEMPTING TO COMBINE CLARITY AND BREVITY, THE INTENT BECOMES LOST AND THE RESULTANT REGULATIONS REQUIRE JUDICIAL REVIEW AND INTERPRETATION.

129 HOPEFULLY, THE OBSERVATIONS AND RECOMMENDATIONS CONTAINED HEREIN WILL BE ADOPTED, AND THUS OBVIATE THE NEED FOR UNNECESSARY LITIGATION.

130 THE ISSUE AS TO WHETHER OR NOT SURFACE MINING WILL BE REGULATED IS NOW MOOT ON THE NATIONAL SCENE.

130 WE WHO OPERATE IN WEST VIRGINIA, OHIO AND PENNSYLVANIA, HAVE BEEN OPERATING WITHIN THE CONTEXT OF THE FEDERAL ACT AND PERHAPS BECAUSE OF THIS WE CAN BE OF SOME AID IN THIS MATTER.

130 THE COMMENTS HEREIN ARE BASED NOT ONLY UPON EXPERIENCE, BUT UPON MY ATTENDANCE AT MOST OF THE PUBLIC HOUSE AND SENATE COMMITTEE HEARINGS IN WASHINGTON, D.C.; FIELD TRIPS TAKEN BY MEMBERS OF CONGRESS TOGETHER WITH THEIR STAFF MEMBERS CHARGED WITH H.R.2 AND S.7; CONFERENCES WITH HOUSE AND SENATE STAFF MEMBERS CHARGED WITH DRAFTING THE LEGISLATION INVOLVED; AND A COMPLETE REVIEW OF THE COMMITTEE REPORTS OF BOTH THE HOUSE AND SENATE.

130 TIME AND TIME AGAIN, IT WAS REPEATED BY CONGRESSMAN MORRIS K. UDALL, CHAIRMAN, INTERIOR AND INSULAR AFFAIRS COMMITTEE AND STAFF MEMBERS, AS WELL AS SENATOR L. METCALF AND STAFF MEMBERS OF THE SENATE COMMITTEE, THAT THE FINAL RESULTS OBTAINED BY SUCH CURRENT MINING METHODS AS MOUNTAIN TOP, AND CURRENT STEEP SLOPE METHODS OF CONTOUR MINING EMPLOYED IN PENNSYLVANIA AND WEST VIRGINIA, ALL MET THE "RETURN TO APPROXIMATE ORIGINAL CONTOUR" AS DEFINED IN THE BILL. (SEE PAGES 96 ET SEQ., REPORT OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES, APRIL 22, 1977.)

130 THUS, AS STATED BY THE COMMITTEES SO OFTEN DURING THE PUBLIC HEARINGS, ON FIELD TRIPS, AND AS WELL IN THEIR RESPECTIVE HOUSE AND SENATE REPORTS, THE REGRADING STANDARDS OF THE ACT, HAVE BEEN FORMULATED TO COVER ALL TYPES OF OPERATIONS AND CONDITIONS AND THUS IT IS, OF NECESSITY, A FLEXIBLE STANDARD WHICH CONTEMPLATES DIFFERENT MINING CIRCUMSTANCES.

131 THERE CAN BE NO DOUBT THEN, THAT IF AN OPERATOR ELECTS TO MINE BY METHODS APPROVED BY THE HOUSE AND SENATE, HE WILL HAVE MET THE RECLAMATION PLAN REQUIREMENTS, AND IS ENTITLED TO PROCEED.

131 POSTMINING USE OF LAND

131 AS WRITTEN, THIS PARAGRAPH (a) OF 715.13 HAS OMITTED THE MOST IMPORTANT GUIDELINES CONTAINED IN SECTION 508 (a) (2) (A) AND (B) OF THE ACT, WHICH ARE THAT THE RECLAMATION PLAN SHALL SET FORTH THE USES EXISTING AT THE TIME OF THE APPLICATION, AND IF THE LAND HAS A HISTORY OF PREVIOUS MINING, THE USES WHICH PRECEDED ANY MINING; AND THE CAPABILITY OF THE LAND PRIOR TO ANY MINING TO SUPPORT A VARIETY OF USES GIVING CONSIDERATION TO SOIL AND FOUNDATION CHARACTERISTICS, TOPOGRAPHY, AND VEGETATIVE COVER . . .

131 IN ADDITION, YOUR ATTENTION IS ALSO DIRECTED TO SECTION 515 (b) (2) OF THE ACT WHICH REFERS TO AND MANDATES CONSIDERATION TO USES OF WHICH THERE IS A REASONABLE LIKELIHOOD . . .

132 AS PROPOSED, THE GENERAL STATEMENT OF POLICY IN THIS SECTION OF THE PROPOSED REGULATIONS IS IN CONFLICT WITH THE CLEAR MANDATE AND INTENT OF THE LEGISLATION INVOLVED.

132 CRITERIA FOR ESTABLISHING PREMINING USE OF LAND.

132 AS WRITTEN, YOU HAVE PLACED A DETERRENT TO REAFFECTING LANDS WHICH WERE PREVIOUSLY MINED, WHETHER BY SURFACE OR DEEP MINING, AND NOT RECLAIMED TO STANDARDS SOUGHT UNDER PRESENT LEGISLATION.

132 THIS PARAGRAPH (b) SHOULD BE REDRAFTED AS FOLLOWS - "CRITERIA FOR ESTABLISHING THE PREMINING USE OF THE LAND SHALL BE THE ACTUAL CONDITION AT THE TIME THE APPLICATION IS SUBMITTED; THOSE USES WHICH THE LANDS HAVE PREVIOUSLY OR WERE CAPABLE OF SUPPORTING OR OF WHICH THERE IS A REASONABLE LIKELIHOOD OF SUPPORTING WITHIN THE MINE AREA; THE CONDITIONS AND USES OR POSSIBLE USES OF LANDS IN THE AREAS SURROUNDING THE MINE AREA. THE APPROPRIATENESS OF POSTMINING LAND USE POSSIBILITIES SHALL TAKE INTO CONSIDERATION (1) IF THE LANDS WERE PREVIOUSLY MINED AND NOT RECLAIMED TO MEET THE DESIRED STANDARDS OF THIS ACT; (2) IF THE LANDS WERE BADLY ERODED OR OVERGRAZED; (3) ARE OTHERWISE DETERMINED BY THE REGULATORY AUTHORITY TO HAVE BEEN POORLY MANAGED; HOWEVER, IF THE LANDS WITHIN THE MINE PROPERTY WERE PREVIOUSLY MINED AND NOT RECLAIMED TO THE STANDARDS OF THIS ACT, THE POSTMINING USE OF THE LAND SHALL BE EVALUATED AGAINST POSSIBLE USES COMPATIBLE WITH THE SURROUNDING AREAS, AS WELL AS THE BENEFITS ARISING FROM RECLAIMING PREVIOUSLY UNRECLAIMED LANDS OR LANDS WHICH FOR OTHER REASONS HAVE BECOME BADLY DEGRADED."

133 AS REWRITTEN, THIS WOULD ENABLE THE REGULATORY AUTHORITY TO FACE FACTUAL, EXISTING CONDITIONS AND PROCEED FROM THAT POINT.

133 IT WOULD PROVIDE THE FLEXIBILITY MANDATED BY THE ACT, AS PREVIOUSLY CITED, AND ENABLE THE REGULATORY AUTHORITY TO REALISTICALLY APPRAISE EACH SITUATION AND INDUCE OPERATORS TO REAFFECT AREAS PREVIOUSLY UNRECLAIMED AND

RETURN THE SAME TO CONDITIONS COMPATIBLE TO ALL CONCERNED - AND NOT AT THE EXPENSE OF THE PROPOSED RECLAMATION FUND.

133 IN THIS REGARD, YOU ARE RESPECTFULLY REQUESTED TO LOOK AT OHIO'S "LAND REBORN" PROGRAM OR TO THE STATES OF PENNSYLVANIA AND WEST VIRGINIA WHERE REALISTIC APPROACHES ARE TAKEN TO RECLAIM LANDS TO A USEFUL CONDITION.

133 SUCH AN APPROACH WILL INDEED ACCOMPLISH THE AIM SET FORTH ON PAGE 94 OF THE HOUSE COMMITTEE REPORT; NAMELY, THE OPPORTUNITY TO RESHAPE THE LAND SURFACE TO A FORM AND CONDITION MORE SUITABLE TO MAN'S USES. THE SENATE AND HOUSE COMMITTEES BOTH RECOGNIZED THAT RETURN TO APPROXIMATE PREMINING CONDITIONS MAY NOT ALWAYS BE THE MOST DESIRABLE GOAL OF RECLAMATION.

133 THE OTHER CRITERIA CONTAINED IN THE COMMITTEE REPORT, AND WHICH IS CONSPICUOUSLY ABSENT FROM THE PROPOSED REGULATIONS, IS THAT THE STATE IS BEST ABLE TO EXERCISE DISCRETIONARY MATTERS SUCH AS THE PRE AND POSTMINING USES AND SUCH FLEXIBILITY MUST BE PRESENT IN THE REGULATIONS IF IT IS TO REFLECT THE AIM AND INTENT OF THE ACT.

134 AS PROPOSED, THE REGULATIONS DIVEST THOSE STATES OF THE TREMENDOUS PROGRESS MADE CONCERNING PROBLEMS INDIGENOUS TO THEIR RESPECTIVE ENVIRONS.

134 AS A PERSONAL NOTE, I RESPECTFULLY SUBMIT A SET OF PHOTOGRAPHS FOR YOUR INSPECTION AND WHICH SITES HAVE BEEN VISITED BY MEMBERS OF THE CONGRESSIONAL DRAFTING STAFF AS WELL AS MEMBERS OF CONGRESS, ALL OF WHOM, WITHOUT EXCEPTION, WERE IMPRESSED AND IN AWE OF WHAT WAS ACCOMPLISHED.

134 WE SUBMIT, HOWEVER, THAT IF THE PROPOSED REGULATIONS ARE ADOPTED IN PRESENT FORM, THESE LANDS WOULD NOT HAVE BEEN APPROVED FOR THE FOLLOWING REASONS: (1) WE WOULD NOT HAVE BEEN ABLE TO PROVE THE FINANCIAL ABILITY TO CONTINUE TO FARM; OR (2) WE WOULD NOT HAVE BEEN ABLE TO PLAN 25-30 YEARS IN ADVANCE; OR (3) WE WOULD NOT HAVE BEEN PERMITTED TO RETAIN OUR FARM PONDS (WATER QUALITY SHOULD CATTLE DISTURB THE SAME WHILE WATERING OR THEY WOULD HAVE HAD TO BE THREE TIMES THE SIZE IF PORPOSED METHOD OF CALCULATING SIZE IS RETAINED).

134 THE AREAS ENCOMPASSED IN SOME OF THE PHOTOGRAPHS WERE PREVIOUSLY DEEP MINED OR SURFACE MINED 25-30 YEARS BEFORE WE OBTAINED THE PROPERTY.

134 SOME OF THE AREAS WERE RECLAIMED TO CATTLE FARMS, WHERE UPWARDS OF 700-900 HEAD OF BEEF CATTLE WERE RAISED FOR YEARS, ONLY TO BE CHANGED BECAUSE OF THE POOR BEEF MARKET AND ON WHICH ALFALFA IS NOW PRIMARILY GROWN, CUT AND PELLETIZED FOR SALE.

135 IN ADDITION, HUGE TRACTS HAVE BEEN SOLD FOR STEEL COMPANY GENERAL OFFICES, RESEARCH AND DEVELOPMENT CENTERS, CHURCHES, HIGH SCHOOLS, GRADE SCHOOLS, BANKS, MOTELS, SHOPPING CENTERS, HOME DEVELOPMENTS, PROFESSIONAL OFFICES, AIRPORTS, INDUSTRIAL DEVELOPMENTS, AND ON AND ON AD INFINITUM.

135 MANY OF THE PRESENT USES CAME INTO BEING SOME 25-30 YEARS AFTER THE AREAS HAD BEEN SURFACE MINED AND RECLAIMED; BUT THE KEY IS THAT THE LANDS HAD THE CAPABILITY OF SUPPORTING MANY USES, WHICH ONLY TIME WOULD TELL.

135 THIS GENTLEMEN, IS WHAT THE PROPOSED REGULATIONS OMIT. THEY ARE DEVOID OF IN FUTURE PLANNING, AND CONCERNED ONLY WITH HERE AND NOW - THIS, IT IS SUBMITTED, IS WHERE THE PROPOSED REGULATIONS DO NOT REFLECT THE LEGISLATION.

135 THE PROPOSED REGULATIONS CONFUSE AN IMMEDIATE POSTMINING USE, WHICH AN OPERATOR MAY PROPOSE IN HIS APPLICATION AND RECLATMATION PLAN, WITH THE USES WHICH ARE REASONABLE.

135 SPECIFICALLY, SECTION 715.13(D) STATES THAT "PROPOSALS TO REMOVE AN ENTIRE COAL SEAM RUNNING THROUGH THE UPPER PART OF A MOUNTAIN, RIDGE, OR HILL MUST ALSO MEET THESE CRITERIA IN ADDITION TO THE REQUIREMENTS OF 716.13 OF THIS CHAPTER."

136 IT THEN GOES ON TO SET FORTH THE NEED FOR THE APPLICANT TO PRESENT SPECIFIC PLANS, FINANCIAL COMMITMENTS, ETC.

136 THE ERROR HERE, IS THAT THE PROPOSED REGULATIONS HAVE RESTRICTED THE REMOVAL OF COAL VIA THE MOUNTAIN TOP METHOD WHERE THE APPLICANT AGREES TO RETURN IT TO THE APPROXIMATE ORIGINAL CONTOUR OR IF THE APPLICANT PROPOSES A SPECIFIC POSTMINING USE, OTHER THAN RETURN TO APPROXIMATE ORIGINAL CONTOUR, IMMEDIATELY FOLLOWING RECLAMATION, USES SUCH AS AGRICULTURE, INDUSTRY, RECREATION, COMMERCIAL HOUSING DEVELOPMENT, ETC., THE PLANS, APPROPRIATE APPROVALS AND COMMITMENTS MUST BE SUBMITTED AT THE SAME TIME. IT IS SUBMITTED THAT THE INTENT OF THE LEGISLATION WAS TO APPROVE THE MOUNTAIN TOP METHOD AND THE RESULTS THEREFROM WOULD BE CONSIDERED AS A RETURN TO ORIGINAL CONTOUR: HOWEVER, IF THE APPLICANT SPECIFICALLY PROPOSES ANY OF THE SPECIFIC LAND USE CATEGORIES, AS ABOVE MENTIONED, THEN APPROPRIATE APPROVALS AND COMMITMENTS WOULD HAVE TO BE SUBMITTED.

136 THIS WAS PLACED IN THE ACT TO EMPHASIZE AND INSIST THAT STATE PROGRAMS SHALL INCLUDE PROCEDURES PURSUANT TO WHICH THE REGULATORY AUTHORITY MAY PERMIT SURFACE MINING OPERATIONS FOR SUCH POSTMINING USES AS SET FORTH IN SEC. 515(C) (3) RATHER THAN MAKE SUCH SUBJECT TO A VARIANCE PROCEDURE.

136 IT WAS NOT INTENDED OR DESIGNED TO RESTRICT MOUNTAIN TOP REMOVAL, OR PROHIBIT IT UNLESS THE POSTMINING USES WERE AS CONTAINED IN 515.(c) (3).

137 IT IS SUBMITTED THAT CONFUSION WILL BE AVOIDED BY ELIMINATING THE LAST SENTENCE OF PROPOSED REGULATION 715.13(D).

137 DEFINITIONS

137 IN KEEPING WITH OUR GENERAL RECOMMENDATIONS, IT BECOMES NECESSARY
TO
REDEFINE THE DEFINITION OF PREMINING LAND USE AS PROPOSED. AS CONTAINED THE
DEFINITION IS, "PREMINING LAND USE MEANS THE HIGHEST AND BEST USE OF THE LAND
WHICH COULD HAVE BEEN ACHIEVED, TAKING INTO ACCOUNT THE LOCALLY ACCEPTED BEST
LAND MANAGEMENT PRACTICES, PRIOR TO ANY MINING".

137 SHOULD BE DEFINED AS "THE USES OF THE LANDS WHICH WERE IN
EXISTENCE,
OR COULD HAVE BEEN ACHIEVED, TAKING INTO ACCOUNT THE LOCALLY ACCEPTED LAND
MANAGEMENT PRACTICES, PRIOR TO ANY MINING".

137 RESPECTFULLY, DONALD R. DONELL PRESIDENT STARVAGGI INDUSTRIES, INC.

138 Joint NCA/AMC Committee on Surface Mining Regulations

138 Coal Building, 1130-17th St., N.W., Washington, D.C. 20036

138 STATEMENT OF

138 ROBIN TURNER

138 VICE PRESIDENT OF ADMINISTRATION NORTH AMERICAN COAL CORPORATION

138 REPRESENTING THE

138 NATIONAL COAL ASSOCIATION/AMERICAN MINING CONGRESS JOINT COMMITTEE
ON
SURFACE MINING REGULATIONS AT HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE
OVERSIGHT HEARINGS ON THE IMPLEMENTATION OF SURFACE MINING CONTROL AND
RECLAMATION ACT OF 1977

138 WASHINGTON, D.C.

138 JANUARY 20, 1978

139 Good monring Mr. Chairman, and members of the Interior Committee.

I
am Robin Turner, Vice President-Administration for the North American Coal
Corporation. With me today are Buddy Beach, Manager, Environmental Impact
Reports for Consolidation Coal Company and John Paul, Vice President of
Public
Affairs for AMAX Coal Company.

139 This panel is appearing on behalf of the National Coal Association
and
American Mining Congress Joint Committee on Surface Mining Regulations. The
Joint Committee is comprised of the coal company members of both of these
national organizations as well as of representatives from the State coal
association and other coal companies. Thus, the Joint Committee membership
represents every type of coal mining operation as well as every mining region
in
the country.

139 Since last July over 170 members of our committee have analyzed and

proposed revisions for hundreds of regulations released to us by the Office of Surface Mining. Our formal written comments which were filed on October 7 consisted of over 400 pages of text addressing nearly 150 different proposed regulations. We therefore feel that the Joint Committee is uniquely qualified to comment on the interim regulatory program established by OSM.

139 Today I will offer a few broad comments on the interim regulatory program and conclude by addressing a few specific areas of concern. The other panel members will also provide additional comments on specific regulations of concern to industry.

140 In no way are we attempting to offer a complete and detailed analysis of all of these regulations - at this very time the technical people in our companies are still trying to accomplish this. Our comments must, of necessity, be somewhat general, but please know that the Joint Committee will be pleased to provide technical and analytical assistance to this Committee as it continues its oversight responsibilities under the Surface Mining Act.

140 At the outset we would like to state for the record our appreciation for the treatment accorded the Joint Committee by the OSM Task Force which put these regulations together. This group has been courteous and cooperative and appears to have given close consideration to the comments and proposals of the Joint Committee during informal conferences as well as in the formal public comment proceedings. In view of the extremely tight time constraints imposed upon them by the Act and their limited staff and financial resources, their efforts have been commendable.

140 Let me pause to make certain that the record is quite clear on one important issue - the coal industry is making every effort to bring surface mining operations into compliance with the goals and standards established by the Surface Mining Act of 1977. However, we believe that the arduous working conditions facing the OSM Task Force may well have contributed to many deficiencies which we can now identify in the final regulations. I would also observe that these regulations are so voluminous and complex that even the industry experts are not certain of the full operational impacts of these new rules.

141 There is one thing that is apparent from our initial analysis and that is that in many significant areas the interim regulations impose requirements far in excess of those required by the Act. Furthermore, they impose extremely unrealistic performance standards to be imposed on a nationwide basis - without regard to regional variations and site specific needs - and without adequate

technological or other justification for these inflexible requirements. In several cases the final regulations published on December 13 introduce entirely new conceptual approaches which were never subjected to public comment.

141 Finally, even in those areas in which the regulations appear to accurately track the intent of the Congress, we believe that a critical Congressional oversight responsibility is to assure that implementation of the regulations is not done in a manner that frustrates that intent. For example, many of our proposed language changes with regard to regs pertaining to alluvial valley floors were accepted, and as a result, these regs now closely track the Act's language. As we all know, the Congressional treatment of this issue was the product of much debate and many compromises. The final version allowed mining in alluvial valleys on undeveloped range lands that were not significant to farming. It also provided that mining could occur on farmlands when it is determined that any interruption of that agrarian activity would have negligible impact on the farm's production. Clearly, such a determination vests considerable discretion in the Regulatory Authority. We would urge that this Committee remain attentive to these discretionary actions to make certain that the goals and purposes of the Surface Mining Act are pursued.

142 With this general introduction, I would now like to address in somewhat greater detail a few examples of these deficiencies.

142 MANGANESE MONITORING

142 Unlike EPA regulation, Section 715.17(b) requires operators to monitor water for the presence of manganese even in alkaline discharges. This approach fails to recognize that alkaline discharges do not contain sufficient concentration of manganese to warrant separate monitoring. In spite of our un rebutted comments on this issue when the regulations were initially proposed, the final rule remained unchanged except to allow operators to increase pH levels in the tested waters to "facilitate meeting the manganese standards." We continue to perceive no stated basis for this departure from existing EPA monitoring requirements.

142 BUFFER ZONES NEAR STREAMS

142 Section 715.17(d) (3) of the regulations imposes a ban on mining within 100 feet of perennial or intermittent streams. This protected buffer zone has no justification either by the statute or on any scientific or technical basis. The Act requires operators to "minimize the disturbances to the prevailing

hydrologic balance at the minesite and in associated offsite areas. . . . " However, the approach taken by OSM implies that the only way to "minimize disturbances" is to require operators to stay 100 feet away from all intermittent and perennial streams. Under this rule the existence of an intermittent stream - which is defined by the regs as one which flows for at least one month of the calendar year - would require a 200' non-mining buffer zone regardless of the stream's size or its hydrological significance. The regulatory requirement thus seriously overreaches the scope of the Act's intent.

142 Although we recognize that the regulation provides for a variance to mine nearer than 100 feet, this provision leaves unaddressed the basic issue we raise. There is no justification for the buffer zone approach. When the extensive hydrological protections imposed elsewhere in the Act and regs are considered, this ban amounts to regulatory overkill.

142 SMALL OPERATORS

142 There can be no question but that the Congress was quite sensitive to the problems of complying with the Act faced small coal mining operations. The 18 month extension in time for compliance reflects this intent. However, it is equally clear that this sensitivity for the small operator has not been evidenced by the regulation writers. For example, we have brought the entire technical expertise of our company to bear on an interpretation of these regulations - and our personnel have been actively involved in the Joint Committee effort for six months and are not approaching these requirements cold. Even with this effort, we are not confident that (1) we understand the problems and (2) we have the resources to meet the compliance deadlines. Small operators irrespective of the 18 month extension are simply not going to be able to cope with the massive and highly technical requirements set down in the regulations.

144 UNDERGROUND MINES

144 Of the 6200 coal mines in the country, 2300 are underground mines, and they will soon be confronted with the requirements imposed by Part 717 of the Interim Regulations to obtain surface mining permits. For the overwhelming majority of these 2300 mines, for the state agencies, and for the Interior Department, this is going to be a totally new experience. We submit that the Act does not provide that underground coal mining be covered by the initial regulatory procedure. The industry recognizes its responsibility to the Nation for minimizing environmental damages that might be caused by underground coal mining. We fully realize that section 516 of the Act authorizes the Department

to promulgate regulations to achieve this result. However, while there does exist a vast amount of knowledge on surface mine reclamation, in proposing environmental standards for underground mines we believe that the Department has failed to recognize the fact that there does not exist this same organized knowledge on the installation, operation, and ultimate reclamation of underground mines. This problem was specifically recognized by the Congress and was addressed by requiring the Secretary in adopting rules and regulations directed toward the surface effects of underground coal mining operations to consider the distinct difference between surface coal mining and underground coal mining. Although we have specifically requested that the Office of Surface Mining provide us with the documentation demonstrating the manner and method by which the Secretary has considered this distinct difference, at this time OSM has not provided us with such documentation.

145 The Act further requires that regulations pertaining to underground operations shall not conflict with or supersede any provision of the Federal Coal Mine Health and Safety Act of 1969 nor any regulation issued pursuant thereto. Again, we have requested documentation from OSM showing the manner and methods by which the regulations and Part 717 were analyzed to insure that there is no conflict with this other legislation. To date, OSM has been unable to furnish us with such documentation.

146 JointNCA/AMC Committee on Surface Mining Regulations

146 Coal Building, 1130-17th St, N.W., Washington, D.C. 20036

146 STATEMENT OF BUDDY BEACH MANAGER ENVIRONMENTAL DEPARTMENT
CONSOLIDATION
COAL COMPANY REPRESENTING THE NATIONAL COAL ASSOCIATION/AMERICAN MINING
CONGRESS
JOINT COMMITTEE ON SURFACE MINING REGULATIONS AT HOUSE INTERIOR AND INSULAR
AFFAIRS COMMITTEE OVERSIGHT HEARINGS ON THE IMPLEMENTATION OF SURFACE MINING
CONTROL AND RECLAMATION ACT OF 1977

146 WASHINGTON, D.C.

146 JANUARY 20, 1978

147 MY NAME IS BUDDY BEACH. I AM A MANAGER, ENVIRONMENTAL DEPARTMENT,
CONSOLIDATION COAL COMPANY, HEADQUARTERED IN PITTSBURGH, PENNSYLVANIA. I AM
APPEARING TODAY ON BEHALF OF THE AMERICAN MINING CONGRESS AND THE NATIONAL
COAL
ASSOCIATION TO PRESENT INDUSTRY VIEWS ON THE IMPLEMENTATION OF THE SURFACE
MINING CONTROL AND RECLAMATION ACT OF 1977.

147 ONE OF THE MOST SERIOUS PROBLEMS PROPOSED BY THE REGULATIONS IS THE
REQUIREMENT THAT SO-CALLED "PRE-EXISTING, NON-CONFORMING STRUCTURES OR
FACILITIES" CONFORM TO THE NEW STANDARDS BY MAY 3. HOWEVER, IF IT IS
PHYSICALLY

IMPOSSIBLE TO BRING SUCH STRUCTURES OR FACILITIES INTO COMPLIANCE BY THIS EFFECTIVE DATE, THEN OPERATORS MUST BY FEBRUARY 3, SUBMIT TO THE REGULATORY AUTHORITY, WHOEVER THAT MIGHT BE, A PLAN DESIGNED BY A PROFESSIONAL ENGINEER FOR THE RECONSTRUCTION OF THE STRUCTURE OF FACILITY.

147 WHILE WE HAVE SERIOUS RESERVATIONS AS TO THE LEGALITY OF THE RETROACTIVE APPLICABILITY OF THESE REGULATIONS TO PRE-EXISTING STRUCTURES, THE PRACTICAL IMPACT OF SUCH A REQUIREMENT IS STAGGERING. THE IMPACT IS FURTHER COMPOUNDED BECAUSE OF AN EXTREMELY HARSH WINTER AND THE FACT THAT A MAJOR PORTION OF THE LABOR FORCE IS ON STRIKE.

147 FURTHER, THERE IS SUBSTANTIAL CONFUSION AS TO WHAT SOME OF THESE PRE-EXISTING, NON-CONFORMING STRUCTURES MAY BE. WE ARE NOT SURE AND THE OFFICE OF SURFACE MINING, AS OF THIS DATE, HAS NOT SHED ANY LIGHT ON THIS PROBLEM.

147 SECTION 710.11(d) OF THE INTERIM REGULATIONS DOES NOT PROVIDE ADEQUATE TIME FOR THE OPERATOR TO DESIGN AND CONSTRUCT OR RECONSTRUCT PRE-EXISTING, NON-CONFORMING STRUCTURES SUCH AS SEDIMENTATION PONDS, SLURRY PONDS, HAUL ROADS, AND OFF-SITE SPOIL STORAGE FACILITIES.

148 THE QUESTION THEN IS, "WHAT IS A REASONABLE AND JUSTIFIABLE TIME PERIOD FOR PRE-EXISTING FACILITIES TO BE BROUGHT INTO COMPLIANCE WITH THE REGULATIONS?"

148 THE FOLLOWING ARE CONSIDERATIONS IN DETERMINING A REASONABLE TIME:

148 1. AT WHAT POINT IN TIME WILL THE OPERATOR BE ABLE TO OBTAIN DEFINITIVE INTERPRETATIONS OF THE REGULATIONS SUFFICIENTLY SPECIFIC FOR INVENTORIES OF FACILITIES AND ENGINEERING DESIGN TO COMMENCE.

148 2. A REASONABLE TIME TO OBTAIN THE SERVICES OF A PROFESSIONAL ENGINEER.

148 3. A REASONABLE TIME FOR THE ENGINEER TO PREPARE THE DESIGN, PLANS AND OTHER ENGINEERING AND CONSTRUCTION DATA.

148 4. A REASONABLE TIME FOR THE REGULATORY AUTHORITY TO REVIEW AND APPROVE THE DESIGN.

148 5. A REASONABLE TIME FOR THE OPERATOR TO OBTAIN COST ESTIMATES, BUDGET APPROVAL, AND EITHER LET A CONTRACT OR OBTAIN EQUIPMENT AND PERSONNEL TO COMMENCE CONSTRUCTION.

148 6. A REASONABLE PERIOD OF TIME TO COMMENCE AND COMPLETE CONSTRUCTION - SUCH FACTORS AS WORK STOPPAGES, WEATHER CONDITIONS, AVAILABILITY OF CONTRACTORS (A LOT OF WORK HAS TO BE ACCOMPLISHED ALL AT ONCE ALL OVER THE COUNTRY) AND/OR AVAILABILITY OF LABOR AND EQUIPMENT IF DONE IN-HOUSE.

149 WE SUGGEST THAT THE FOLLOWING TIME-TABLE BE EMPLOYED: MAY 3, 1978 -

MUST COMPLETE INVENTORY OF PRE-EXISTING STRUCTURES AND SITE SURVEYS AND COMMENCE ENGINEERING DESIGN FOR RECONSTRUCTION OF NON-CONFORMING STRUCTURES.

149 NOVEMBER 1, 1978 - ENGINEERING DESIGN SUBMITTED FOR APPROVAL.

149 FEBRUARY 3, 1979 - APPROVAL OF PLAN FOR RECONSTRUCTION.

149 MAY 3, 1979 - RECONSTRUCTION TO COMMENCE NO LATER THAN THIS DATE.

149 NOVEMBER 1, 1979 - RECONSTRUCTION COMPLETED, BUT EXTENSIONS OF TIME MAY BE GRANTED FOR GOOD CAUSE SHOWN.

149 SEDIMENTATION PONDS

149 THE FINAL INTERIM REGULATIONS (SEC. 715.17(e) (1) and (2)) RELATING TO SEDIMENTATION POND DESIGN ESTABLISHED COMPLETELY NEW DESIGN CRITERIA REQUIRING 24-HOUR DETENTION TIME AND 1 SQUARE FOOT OF POND SURFACE AREA FOR EVERY 50 GALLONS PER DAY OF RUNOFF ENTERING THE POND FROM A 10-YEAR, 24-HOUR PRECIPITATION EVENT. THESE STANDARDS WERE NOT PROPOSED AND INTERESTED PERSONS DID NOT HAVE A CHANCE TO COMMENT ON THEM.

149 THE TOTAL SUSPENDED SOLIDS STANDARD SET BY OSM IS 70 MILLIGRAMS PER LITRE WHICH IS THE SAME AS THE EPA NPDES REQUIREMENT. HOWEVER, THE EPA CRITERIA FOR SEDIMENTATION CONTROL RECOGNIZES THE SITE SPECIFIC ASPECTS OF MEETING THIS STANDARD AND ITS REGULATIONS REQUIRE THE OPERATOR TO MEET THE STANDARD BY CONTROLLING THE 10-YEAR, 24-HOUR STORM. EPA DOES NOT SPELL OUT THE SPECIFIC DESIGN CRITERIA FOR THE PONDS. THE EPA APPROACH PERMITS THE NECESSARY FLEXIBILITY TO COPE WITH THE PHYSICAL CHARACTERISTICS OF THE SITE AND THE SPOIL MATERIAL AS WELL AS THE SIZE OF THE OPERATION AND ITS SEDIMENT CONTRIBUTION.

150 SECTIONS 715.17(a) & (e) and 717.17(e) OF THE INITIAL REGULATIONS REQUIRE THAT LARGE SEDIMENTATION PONDS BE CONSTRUCTED BELOW ALL DISTURBED AREAS IN ACCORDANCE WITH THE FOLLOWING DESIGN SPECIFICATIONS:

150 A DETENTION TIME OF 24 HOURS MUST BE PROVIDED, AND FOR EACH 50 GALLONS PER DAY OF INFLOW THAT RESULTS FROM A 10-YEAR, 24-HOUR PRECIPITATION EVENT, A POND SURFACE AREA OF AT LEAST 1 SQUARE FOOT MUST BE PROVIDED, AND AN ADDITIONAL SEDIMENT STORAGE VOLUME MUST BE PROVIDED EQUAL TO 0.2 ACRE-FEET FOR EACH ACRE OF DISTURBED AREA WITHIN THE UPSTREAM DRAINAGE AREA.

150 WE BELIEVE THAT THESE DESIGN SPECIFICATIONS ARE EXCESSIVE AND UNNECESSARY.

151 FURTHERMORE, IT WILL BE EXTREMELY DIFFICULT, AND AT TIMES IMPOSSIBLE, TO FIND SITES FOR THESE LARGE SEDIMENTATION PONDS IN APPALACHIA WITH ITS NARROW

HOLLOWS WITH STEEP SIDES AND STEEP GRADIENTS. THE EXISTENCE OF HOUSES, BUILDINGS, HIGHWAYS AND RAILROADS COMPOUND THE PROBLEM. THE SEDIMENTATION POND DESIGN SPECIFICATIONS AS WRITTEN IN THE REGULATIONS COULD PRECLUDE THE SURFACE MINING OF SIGNIFICANT COAL RESERVES AND ADVERSELY AFFECT MANY UNDERGROUND OPERATIONS AS WELL.

151 IT IS NOT WIDELY RECOGNIZED, BUT THE PRECEDING IS AN EXAMPLE OF HOW THE INTERIM REGULATIONS IMPACT HEAVILY AND NEGATIVELY ON UNDERGROUND MINES AS WELL AS SURFACE MINES.

151 THE REGULATIONS DO NOT PROVIDE AN OPPORTUNITY TO PROPORTIONALLY REDUCE THE SURFACE AREA AND DETENTION TIME REQUIREMENT WITH THE APPROPRIATE USE OF OTHER EROSION AND SEDIMENT CONTROL METHODS EXCEPT CHEMICAL TREATMENT. OTHER METHODS CAN BE EQUALLY AS EFFECTIVE AS THE USE OF CHEMICAL TREATMENT OR A SEDIMENTATION POND ITSELF IN CONTROLLING SUSPENDED SOLIDS. FOR THIS REASON, WE BELIEVE THAT OTHER METHODS SHOULD BE ALLOWED FOR THIS PURPOSE AS AN ALTERNATIVE TO LARGE SEDIMENTATION PONDS.

151 THE SUPPLEMENTARY INFORMATION TO THE INITIAL REGULATIONS STATES THAT "THE REQUIREMENT FOR PROVIDING ONE SQUARE FOOT OF SETTLING POND SURFACE AREA FOR EACH 50 GALLONS PER DAY OF INFLOW FROM A 10-YEAR, 24-HOUR PRECIPITATION EVENT IS BASED UPON THE OBJECTIVE TO SETTLE OUT SUSPENDED PARTICLES GREATER THAN 0.01 MM IN MEAN DIAMETER." INDUSTRY ENGINEERING CALCULATIONS SHOW THAT THE SURFACE AREA NEEDED IS ONLY ONE-HALF OF A SQUARE FOOT FOR EACH 50 GALLONS PER DAY OF INFLOW TO SETTLE OUT THIS SIZE PARTICLE.

152 LASTLY, WE BELIEVE THAT THE OSM TASK FORCE GROSSLY MISUSED THE DATA AND CONCLUSIONS CONTAINED IN A TECHNICAL PAPER BY WILLIE R. CURTIS ENTITLED, "SEDIMENT YIELD FROM STRIP MINE WATERSHEDS IN EASTERN KENTUCKY" WHEN IT PROMULGATED THE STORAGE VOLUME REQUIREMENT OF 0.2 ACRE-FEET PER UPSTREAM ACRE OF DISTURBED LAND. THE 0.2 ACRE-FEET VOLUME VALUE IS VERY HIGH BECAUSE IT WAS DERIVED BASED ON CONTAINMENT OF THE TOTAL SEDIMENT YIELD FROM A DISTURBED AREA IN EASTERN KENTUCKY WHICH WAS MINED BY THE "SHOOT AND SHOVE" METHOD - A MINING METHOD WHICH IS NOT ALLOWED BY THE ACT OR THE INITIAL REGULATIONS.

152 ALREADY BUILT INTO THE 0.2 ACRE-FEET IS THE DETENTION TIME NECESSARY TO FACILITATE SETTLING OF THE SUSPENDED SOLIDS. ALSO, WITH THE 0.2 ACRE-FEET VOLUME RECOMMENDATION BY MR. CURTIS, NO POND MAINTENANCE (I.E., REMOVAL OF ACCUMULATED SEDIMENT) IS CONTEMPLATED. POND MAINTENANCE IS REQUIRED BY THE INTERIM REGULATIONS.

153 VALLEY AND HEAD-OF-HOLLOW FILL

153 ONE PROBLEM WHICH IS OF MAJOR CONCERN IS THE SPECIFICS OF CONSTRUCTION

OF VALLEY OR HEAD-OF-HOLLOW FILLS IN SEC. 715.15(b). IN PROMULGATING THIS RULE, OSM STATED THAT IT BELIEVED ". . . THAT THE REGULATIONS ARE NECESSARY AND APPROPRIATE TO ENSURE THAT SPOILS PLACED IN UNMINED AREAS ARE CONSTRUCTED TO REMAIN AS STABLE AS THE SURROUNDING SLOPES." WE AGREE THAT THESE REGULATIONS SHOULD AND CAN ESTABLISH STANDARDS TO ENSURE STABLE FILLS. HOWEVER, THE REGULATIONS IN 715.15(b) ARE NEITHER NECESSARY NOR APPROPRIATE. SIMPLY PUT, THESE PRE-SET RECIPES FOR COMPACTION AND UNDERDRAIN CONSTRUCTION ARE NOT UNIFORMLY REQUIRED. SOUND, CURRENT, PRUDENT ENGINEERING ANALYSIS HAS PROVEN THAT COMPACTION IN 4 FOOT LIFTS IS NOT NECESSARY TO OBTAIN ADEQUATE LONG-TERM MASS STABILITY.

153 IN ADDITION, THESE METHOD SPECIFICATIONS ARE NOT APPROPRIATE. THERE ARE INSTANCES WHERE THESE METHOD SPECIFICATIONS WILL NOT BE SUFFICIENT TO PROTECT SOCIETY AND THE ENVIRONMENT. I WILL ELABORATE ON THIS.

153 THE DEPARTMENT WENT ON TO SAY IN THE SUPPLEMENTARY INFORMATION, "THE REGULATIONS CONTAIN STANDARDS THAT ARE CURRENTLY COMPLIED WITH BY MANY OPERATORS AND WHICH DO NOT PROHIBIT THE CONSTRUCTION OF HEAD-OF-HOLLOW FILLS WHERE SAFE AND NECESSARY." THE DEPARTMENT SHOULD BE COMMENDED FOR EVALUATING SOME EXISTING TECHNOLOGIES FOR THEIR APPLICABILITY IN PROVIDING LONG-TERM MASS STABILITY IN FILLS. HOWEVER, THERE APPEARS TO BE NO JUSTIFICATION FOR NOT PERMITTING ALTERNATIVE METHODS OF CONSTRUCTING VALLEY FILLS THAT HAVE BEEN DEMONSTRATED TO BE STABLE IN VIRGINIA, WEST VIRGINIA AND KENTUCKY. THE COAL INDUSTRY AND CONSULTING ENGINEERS HAVE CONDUCTED, AND STATE AND FEDERAL AGENCIES HAVE PARTICIPATED IN, RESEARCH, EXPERIMENTS AND DEMONSTRATIONS DEVELOPING NEW TECHNOLOGY IN SURFACE MINING AND RECLAMATION. EXTENSIVE RESEARCH, INVESTIGATIONS AND LITERATURE SEARCHES HAVE BEEN CONDUCTED USING APPLICABLE SOIL MECHANICS TECHNOLOGY FOR DEVELOPING SAFE, ECONOMICAL ALTERNATIVES FOR CONSTRUCTING FILLS.

154 VOLUMINOUS AMOUNTS OF DATA REGARDING A PROPOSED SIDE-DUMP VALLEY FILL PROJECT WERE SUBMITTED TO INTERIOR.

154 THIS DATA SUBSTANTIATES THAT STABLE FILLS CAN BE CONSTRUCTED, WHEN PROPERLY ENGINEERED ON A SITE SPECIFIC BASIS, WITHOUT THE NEED FOR A SPECIFIC LIFT THICKNESS BEING REQUIRED. THESE REGULATIONS SHOULD NOT PREVENT SUCH ADVANCED TECHNOLOGICAL METHODS. INDEED, THE ACT IN SECTION 102(1) CLEARLY PROVIDES FOR SUCH RESEARCH INVESTIGATIONS AS WERE SUBMITTED IN SUPPORT OF THE GRAVITY PLACEMENT METHOD OF VALLEY FILL AND HEAD-OF-HOLLOW CONSTRUCTION.

155 WE BELIEVE THAT IN FORMULATING THIS REGULATION THE DEPARTMENT FAILED TO GIVE ADEQUATE CONSIDERATION TO THE REPORT ON ENVIRONMENTAL RESEARCH OF VALLEY FILLS DEVELOPED FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY BY SKELLY AND LOY CONSULTANTS. THE DEPARTMENT ALSO DECLINED TO ACKNOWLEDGE THE POSITIVE RECOMMENDATIONS MADE IN THAT REPORT ON ALTERNATIVE VALLEY FILL CONSTRUCTION

METHODS. THIS REPORT IS ONE OF THE MOST EXTENSIVE INVESTIGATIONS TO DATE ON THE ENVIRONMENTAL IMPACTS OF VALLEY FILLS, YET THE DEPARTMENT CHOSE TO OVERLOOK THE REPORT'S CONCLUSION THAT ". . . VARIOUS CONSTRUCTION TECHNIQUES CAN BE SUCCESSFULLY EMPLOYED IF ADEQUATE SAFEGUARDS ARE PROVIDED. . . ." THE COAL INDUSTRY HAS CONFERRED WITH THE AUTHORS OF THAT REPORT, AND THEY READILY AGREE THAT THE UNDERDRAIN, COMPACTION AND FOUNDATION REQUIREMENTS SHOULD BE UNIQUE TO EACH PARTICULAR FILL. SKELLY AND LOY CONSULTANTS CONCUR THAT THE BEST APPROACH IS A SITE-SPECIFIC APPROACH.

155 IN ADDITION TO THE SKELLY AND LOY REPORT ON ENVIRONMENTAL ASPECTS, CONSOLIDATION COAL COMPANY HAS ASSEMBLED THE MOST INTENSIVE RESEARCH INVESTIGATION IN THE NATION TO DATE ON THE LONG-TERM MASS STABILITY ASPECTS OF VALLEY FILLS. THOSE REPORTS WERE SUBMITTED FOR THE WRITTEN RECORD.

155 IN SUPPORT OF MY PREVIOUS STATEMENTS, LET ME SUMMARIZE THE ENGINEERING INVOLVED WITH THE SITE-BY-SITE INVESTIGATION OF A SPOIL DEPOSITION SITE. A SOILS ENGINEER, AFTER A CAREFUL SUBSURFACE INVESTIGATION AND LABORATORY TESTING PROGRAM WOULD CONSIDER THE FOLLOWING: (1) INTERNAL WATER CONDITIONS; (2) SPOIL MATERIAL STRENGTHS, (3) INTERNAL WATER CONDITIONS; AND (4) EMBANKMENT GEOMETRY. ALL OF THESE ITEMS WOULD BE UTILIZED TO CONDUCT A STABILITY ANALYSIS TO DETERMINE THE SAFETY FACTOR OF A PARTICULAR EMBANKMENT AT A PARTICULAR SITE. THIS IS ONE ASPECT WHICH SUBSECTION 715.15(b) INADEQUATELY AND ERRONEOUSLY ADDRESSES.

156 STABILITY IS DEPENDENT UPON AN ADEQUATE COMBINATION OF FOUNDATION STRENGTH, FILL MATERIAL STRENGTH, WATER CONDITIONS AND EMBANKMENT GEOMETRY. THE REGULATIONS ADDRESS EACH OF THESE PARAMETERS, BUT FAIL TO RECOGNIZE THAT THEY ARE SITE SPECIFIC AND MUST BE ANALYZED IN EACH INSTANCE TO DETERMINE THE DESIGN OF ANY VALLEY OR HEAD-OF-HOLLOW FILL.

156 HOWEVER, THESE REGULATIONS ATTEMPT TO SPECIFY A METHOD OF ACHIEVING STABILITY AS IF THESE VARIABLES ARE STATIC AND ARE THE SAME AT EVERY MINE SITE. THE REGULATIONS OF 715.15(b) ARE SUPPOSED TO PROVIDE FOR LONG-TERM MASS STABILITY. THEY CLEARLY WILL NOT PROVIDE FOR THIS IN ALL CASES. THERE ARE AND WILL BE SITES WHERE SPOIL MATERIAL STRENGTHS OR FOUNDATION STRENGTHS ARE SUCH THAT USE OF THE ONE METHOD SET OUT IN THE REGULATIONS WOULD RESULT IN MASS INSTABILITY AND AN UNSAFE FILL. UTILIZING THESE REGULATIONS COULD RESULT IN A SLOPE OR FILL FAILURE.

157 GROUND WATER MONITORING

157 SECTIONS 715.17(h) and 717.17(h) OF THE INITIAL REGULATIONS REQUIRE

THAT OPERATORS MONITOR THE EFFECTS OF MINING ON GROUND WATER. AN EFFECTIVE GROUND WATER MONITORING PROGRAM SHOULD PROVIDE DATA FOR MEASURING THE PROGRESS OF ANTICIPATED IMPACTS AND FOR DETECTING ANY UNANTICIPATED ENVIRONMENTAL IMPACTS WHICH COULD MAGNIFY SHORT-TERM EFFECTS OR WHICH COULD LEAD TO LONG-TERM EFFECTS. BEFORE IMPLEMENTING SUCH A MONITORING PROGRAM, A DETAILED STUDY OF THE GEOLOGIC, SURFACE AND TOPOGRAPHIC CONDITIONS; REVIEW OF REGIONAL AND LOCAL CLIMATIC CONDITIONS; REVIEW OF PUBLISHED AND UNPUBLISHED LITERATURE AND DATA; INSPECTION OF MINE SITE HYDROLOGIC CONDITIONS; AND TEST HOLE DRILLING MUST BE CONDUCTED SO THAT A SENSITIVE MONITORING PROGRAM CAN BE DESIGNED. THE MAY 3, 1978 COMPLIANCE DEADLINE FOR EXISTING OPERATIONS DOES NOT ALLOW THE COAL OPERATORS SUFFICIENT TIME TO CONDUCT THE NECESSARY PRE-PLANNING AND TO IMPLEMENT A GROUND WATER MONITORING PROGRAM.

157 FIRST CUT SPOILS

157 SECTION 715.15(a) OF THE INTERIM REGULATIONS ADDRESSES THE DISPOSAL OF SPOIL IN AREAS OUTSIDE THE MINE WORKINGS IN WAYS OTHER THAN UTILIZING VALLEY OR HEAD-OF-HOLLOW FILLS. THE PRIME EXAMPLE OF THIS TYPE OF SITUATION IS THE DISPOSAL OF SPOIL RESULTING FROM THE BOX CUT, OR IN OTHER WORDS FIRST CUT SPOIL, IN FLAT OR GENTLY ROLLING TERRAIN SUCH AS IN ILLINOIS OR EASTERN OHIO. SECTION 715.15(a) (8) OF THE INTERIM REGULATIONS STATES THAT "IF ANY PORTION OF THE FILL INTERRUPTS, OBSTRUCTS, OR ENCROACHES UPON ANY NATURAL DRAINAGE CHANNEL, THE ENTIRE FILL IS CLASSIFIED AS A VALLEY OR HEAD-OF-HOLLOW FILL" AND MUST BE DESIGNED AND CONSTRUCTED ACCORDINGLY. SMALL NATURAL DRAINAGE CHANNELS ARE OFTEN FILLED WHEN PLACING FIRST CUT SPOIL IN FLAT OR GENTLY SLOPING TERRAIN. SOUND ENGINEERING AND CONSTRUCTION TECHNIQUES CURRENTLY EXIST AND SHOULD BE APPROVED BY THE REGULATORY AUTHORITY THAT ASSURE THE LONGTERM MASS STABILITY OF THESE FILLS, OTHER THAN THE RIGID AND TECHNICALLY QUESTIONABLE, COOKBOOK RECIPE FOR VALLEY OR HEAD-OF-HOLLOW FILLS IN THE INITIAL STANDARDS. THIS RECIPE IS EVEN QUESTIONABLE FOR STEEP TERRAIN AND IS CERTAINLY NOT APPROPRIATE IN FLAT OR GENTLY SLOPING TERRAIN. FURTHERMORE,

157 THIS STANDARD IS A STEEP SLOPE STANDARD UNDER SECTION 515(d) (1) OF THE ACT, AND THAT SECTION SPECIFICALLY EXEMPTS FROM ITS COVERAGE "FLAT OR GENTLY ROLLING TERRAIN ON WHICH AN OCCASIONAL STEEP SLOPE IS ENCOUNTERED." THEREFORE PARAGRAPH (8) OF SECTION 715.15(a) SHOULD BE DELETED.

158 TERRACING

158 THE INITIAL REGULATIONS IMPOSE SEVERE LIMITATIONS ON THE USE OF TERRACES TO ACHIEVE APPROXIMATE ORIGINAL CONTOUR. THE ACT IN ITS DEFINITION OF

APPROXIMATE ORIGINAL CONTOUR IN SECTION 701(2), MAKES SPECIFIC REFERENCE TO THE USE OF TERRACING IN RECLAMATION. THIS IS A PROVEN AND ACCEPTED ENGINEERING TECHNIQUE WHICH ACHIEVES STABILITY, WHILE AT THE SAME TIME CONSERVES SOIL MOISTURE AND CONTROLS EROSION. OSM APPEARS TO HAVE IGNORED THE VITALLY IMPORTANT FUNCTION OF ESTABLISHING SLOPE STABILITY AND HAS STATED THAT TERRACES MAY NOT BE USED UNLESS THEY ARE COMPATIBLE WITH POSTMINING LAND USE, AND ALMOST INCIDENTALLY, IF THEY ALSO ASSIST IN EROSION CONTROL.

159 THERE IS NO TECHNICAL JUSTIFICATION FOR THIS SERIOUS LIMITATION ON TERRACE USAGE, AND CERTAINLY NO STATUTORY AUTHORITY FOR TYING TERRACING TO POSTMINING LAND USE.

160 Joint NCA/AMC Committee on Surface Mining Regulations

160 Coal Building, 1130-17th St., N.W., Washington, D.C. 20036

160 STATEMENT OF JOHN PAUL VICE PRESIDENT OF PUBLIC AFFAIRS AMAX COAL COMPANY

160 REPRESENTING THE NATIONAL COAL ASSOCIATION/AMERICAN MINING CONGRESS JOINT COMMITTEE ON SURFACE MINING REGULATIONS AT HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE OVERSIGHT HEARINGS ON THE IMPLEMENTATION OF SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

160 WASHINGTON, D.C.

160 JANUARY 20, 1978

161 My name is John Paul. I am Vice President, Public Affairs, of AMAX Coal Company, headquartered in Indianapolis, Indiana. I am appearing today on behalf of the American Mining Congress and the National Coal Association to present industry views on the implementation of the Surface Mining Control and Reclamation Act of 1977.

161 In addition to the problems and concerns raised by Mr. Turner and Mr. Beach, there are several other major areas of grave difficulty which I will briefly outline for you.

161 The prime farmland provisions contained in Section 716.7 of OSM's December 13 regulations are of key importance to the industry. At the Interior Department's public hearings on the proposed interim regulations in September and in the Joint NCA/AMC Committee's comments filed in October with the Department, we urged that this section be stricken in its entirety from the final interim regulations. The basis for our position was, and still remains, that the specific language of the Act is clear that standards relating to prime farmland are not part of the initial regulatory program authorized by Section

502 of the Act. While it appears that certain provisions of the Act relating to prime farmland became effective on the date of enactment, these provisions relate only to permitting in a limited sense and the ability to make a finding of "technological capability" as provided in Section 510(d)(1). We suggest that making a finding of "technological capability" is a far cry from complying with specific performance standards as contained in Section 716.7.

162 We are also very concerned about the regulations relating to inspections, enforcement and civil penalties contained in parts 720 through 723 of the regulations. These regulations have a significant impact on the fundamental rights of people and companies engaged in coal mining operations, and the implementation of these measures for the purposes of securing compliance with the law is a most sensitive area. To a very large degree, the manner in which these regulations are implemented and administered will determine whether or not operators can continue in business. We are gravely concerned that these regulations interpret the statute in a punitive fashion.

162 During the 93rd Congress, this Subcommittee sitting jointly with the Subcommittee on Mines and Mining spent many long months developing a statutory basis for initial regulatory procedures which, among other things, would ensure a smooth and effective relationship between the federal government and the coal mining states. The work of the Subcommittee in the 93rd Congress is largely reflected in Section 502 of the Act today. However, the regulations implementing the Act fail in several critical areas to give sufficient guidance to the states as to their responsibility during the interim period. There is substantial confusion and divergence of opinion in the various coal mining states, for example, as to whether or not under existing state laws they will be able to issue mining permits requiring compliance with many of the interim performance standards. In short, although the statute clearly requires that on and after May 3, 1978, all surface coal mining operations on lands on which such operations are regulated by the state shall comply with certain initial performance standards, what if a state refuses, regardless of the reason or the merits of its refusal, to condition the issuance of a permit upon the operator's compliance with the interim performance standards? We believe that this serious problem could be somewhat alleviated if the Office of Surface Mining would work with the states and the industry in some appropriate public forum to arrive at a

mutually agreeable consensus resolving this very serious issue. In addition,
a
written policy from OSM clarifying this crucial problem is essential. As of
this date, we are not aware of any effort by the Office of Surface Mining to
undertake such an effort.

163 There has been discussion that the states may need legislation to
implement Sec. 502. We do not believe state legislation is needed for the
interim program but assuming this is OSM's position we maintain that the that
the regs should spell out what is required of the states so that all
interested
parties can comment on such an essential aspect of the interim program. The
failure to do this is a denial of procedural due process. The coal industry
as
well as others are in the dark as to the State-Federal interrelationship.
The
inferred loss of funding support should not be used to implement any policy
not
based on written regulations clearly setting forth in plain language what the
duties and obligations of all the parties are.

164 Another related question revolves around the status of existing
federal-state cooperative agreements between the Department of Interior and
the
states of Montana, Wyoming, Colorado, New Mexico, North Dakota and Utah. In
regulations proposed by the Geological Survey on November 29 revising coal
mining operating regulations on federal lands, the Department proposes to
terminate these agreements on February 3, 1978, unless the affected states
make
certain modifications.

164 In our opinion, these proposed modifications are a premature and
improper attempt to implement section 523 of the Surface Mining Act, and in
fact, are directly contrary to recommendations made by Secretary Andrus to
the
Congress in April, 1977 to the effect that the Federal Lands Program
authorized
by section 523 should not be implemented until August of 1978. I might add
that
Secretary Andrus's recommendations were accepted by the Congress. We would
further point out that these proposed modifications are clearly a major
federal
action as contemplated by the National Environmental Policy Act and require
an
impact statement pursuant to section 102(2)(c) of that Act.

165 In any event, regardless of the legal merits of the proposed
modifications to the existing 211 regulations, their prematurity and
piecemeal
approach will result in the imposition of unreasonable and unnecessary
requirements upon operators of surface coal mines which will create confusion
in
an area where certainty is essential for orderly and environmentally
acceptable
energy development.

165 Enactment of the Surface Mining Act was intended by the Congress to

resolve these difficulties. Among its other far-reaching purposes, the Act was clearly contemplated by Congress as a cornerstone on which to base federal coal policy for the foreseeable future. Yet the Department's proposed modifications to the 211 regulations will patently and immediately cause serious disruptions in the industry's ability to mine on federal lands for no beneficial purpose perceived by us.

165 Under the proposed regulations, at a minimum, within a three-month period operators of existing surface coal mines on federal lands will be required to adjust their operations to three different sets of mining and reclamation standards and procedures. The problem is compounded when one considers that the vast bulk of this mining occurs in those states which have existing cooperative agreements with the Department.

166 Furthermore, we believe that by proposing that the existing agreements terminate on February 3, unless modified it will be impossible for the States to make such modifications in so short a time. In addition there is no hint at how such modifications are to be developed, and at present we have no way of knowing whether the existing cooperating agreements will be continued. At a minimum, clear criteria specifying State and Federal responsibilities for modifications should be enunciated, and procedures for full public involvement must be provided.

166 BLASTING

166 Section 715.19 of the final regulations contain an extensive program for the regulation of the use of explosives. The Act itself does mandate several blasting requirements but the regulations go far beyond the apparent intent of the statute.

166 In the first place the regs are made applicable to any blasts equivalent in size to 5 pounds of TNT. This is such a small blast size that the effect is to make every explosive detonation on a mine site subject to the stringent public notice and scheduling requirements.

167 Secondly, the regulations in an apparent attempt to control potential damage from air blast sets a maximum sound limit of 128 decibels to be measured one half mile from the site. This final rule was not proposed by OSM in their formal comment proceedings, and therefore, all parties were denied the opportunity to have any input on this requirement. We frankly don't know what this limitation will or will not do with regard to air blast effect. There has been no stated technical support for this new standard.

167 Finally, OSM has introduced a severe limitation on particle velocity cutting the presently accepted 2-inch per second standard in half. In practical effect, what this does is sharply reduce the size of charges which can be used on mine sites. We find no justification for this. The current 2 inch second criterion is widely used by other Federal and State agencies and is based upon research projects conducted over a thirty-year period. The new standard is reportedly based upon an unfinished and therefore unexamined new study. In view of the numerous other provisions for protecting nearby property owners from blasting damage, we see no sound reason to impose what is a markedly more stringent particle velocity limit than that presently considered acceptable for such protection.

168 PROPOSED REPORTING REQUIREMENTS

168 In the December 23, 1977. Federal Register, GAO served notice of OSM's proposal to introduce 29 new data gathering and reporting requirements pursuant to the Surface Mining Act. The industry was invited to comment on the burden and duplication seen in the proposed forms. Unfortunately, none of the forms were included in the Register notice and only OSM's estimates for compliance time were therefore available. Based upon our review of what appears to be required, it is clear that the compliance burden estimated by OSM is significantly understated. However, even as projected by OSM the time required to prepare the various reports is estimated to be 254,000 man hours for operators, 527,000 man hours by private laboratories providing consulting services and 144,000 man hours for state regulatory agencies. Although no cost estimates were offered, even at federal minimum wage levels the total expense of filing these new federal reports will run into millions of dollars. Moreover, on the very face of the proposed reporting notice, there is the flat admission that EPA presently accumulates some of the data to be required by OSM.

168 We have notified GAO that there is no statutory requirement for these reports at this time since State agencies will continue to have responsibility for administering surface mining operations for many months. We have also pointed out the massive burden imposed by the forms as well as the several areas where duplication by federal agencies is clear. Unfortunately, GAO is granted quite narrow review authority under 44 USC 3512 and OSM is left as the ultimate decision-maker on that agency's authority to require such data.

170 STATEMENT OF THE HONORABLE JIM SANTINI BEFORE THE SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT

170 I am deeply troubled by the manner in which the Interior Department is administering the Surface Mining Control and Reclamation Act of 1977. This Committee worked long and hard to develop a surface mining bill that would achieve the important reclamation goals which we wrote into the law, ensure that the roles of the coal mining states would not be diminished, yet at the same time assure that the coal supply essential to the nation's energy requirements, and to its economic and social well-being would be maintained.

170 Section 502 of the Act, establishing initial regulatory procedures for surface coal mining operations was especially aimed at achieving these purposes. I find it astonishing that the Interior Department finds it necessary to promulgate nearly 400 type-written pages of regulations to implement only one section of the Act. And we should keep in mind that these are only the temporary regulations, which will be superceded by more voluminous permanent program regulations scheduled for promulgation in August of this year. In addition, both the interim and the permanent program regulations will require revision of state laws and regulations in all the coal producing states. At the present time it is not clear as to what degree of revision any given state will have to undertake, or for that matter, whether they can meet the deadline specified in the Act for such revision.

170 In any event, these almost 400 pages of regulations represent yet another example of regulation proliferation, which continue to be spawned by the Executive Branch as it attempts to twist and turn the clear mandates of the Congress

171 Section 501 of the Surface Mining Act specifically mandates that the implementing regulations "be concise and written in plain, understandable language." I have a great deal of difficulty in finding any plain, understandable language in this tremendous maze of regulations.

171 Section 201(c)(12) of the Act requires the Secretary of the Interior, acting through the Office of Surface Mining and Enforcement to cooperate with other federal agencies and state regulatory authorities to minimize duplication of inspections, enforcement, and administration of the Surface Mining Act. I have found no evidence in these regulations that the Department has complied with this requirement. To the contrary, a substantial number of coal mining states are in a quandry as to what their responsibilities under these regulations will be. With regard to water quality standards, OSM and EPA are unable to agree on whether a single permit can be issued, or whether there should be a single enforcement program of water quality standards.

171 As for the regulation of coal mining on the public lands and Indian

lands, the federal government has a responsibility to clearly articulate which of its agencies have jurisdiction over the issuance and enforcement of reclamation regulations. At the present time, creation of the Office of Surface Mining has further muddied ongoing confusion regarding the role of the Geological Survey the Bureau of Land Management, the Department of Agriculture, the Bureau of Indian Affairs, and other federal agencies charged with the role of regulating the mining industry. These problems must be settled if the goals of reclamation and energy production are to be achieved.

172 The Surface Mining Act is one of the most important pieces of environmental legislation passed by the Congress. If it is to work, we must pay frequent and close attention to the manner in which the Interior Department is implementing it. Although the Office of Surface Mining has experienced more than its share of start-up problems, even taking this into consideration, its track record thus far should be of concern to us all. [*]

173 STATEMENT OF BENJAMIN C. GREENE, PRESIDENT, WEST VIRGINIA SURFACE MINING AND RECLAMATION ASSOCIATION, JANUARY 20, 1978

173 WITH THE AUGUST 3RD SIGNING OF THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977, THE WEST VIRGINIA SURFACE MINING AND RECLAMATION ASSOCIATION BREATHED A SIGH OF RELIEF AND LOOKED FORWARD WITH ANTICIPATION TO A BROAD BASED SET OF ENVIRONMENTAL STANDARDS FOR ALL STATES. WEST VIRGINIA'S SURFACE MINING INDUSTRY WOULD ONCE AGAIN BECOME COMPETITIVE AND REGAIN ITS RIGHTFUL PLACE IN TODAY'S COAL MARKET. THE HIGH STANDARD OF ENVIRONMENTAL ACHIEVEMENT REFLECTED IN PUBLIC LAW 95-87 PARALLELED THE WEST VIRGINIA PROGRAM AND ON NUMEROUS OCCASIONS, LEGISLATIVE HISTORY SPECIFICALLY CITED WEST VIRGINIA EXAMPLES FOR MOUNTAIN TOP REMOVAL, STEEP SLOPES, "CONTROLLED PLACEMENT" AND RETURN TO ORIGINAL CONTOUR METHODOLOGY AS RECOGNIZED EXAMPLES OF ACHIEVABLE BALANCE.

173 WITH THE INITIAL PROMULGATION OF THE INTERIM REGULATIONS ON SEPTEMBER 7, 1977, THE DREAM HAD SUDDENLY ENDED, AND 100-YEAR FLOOD PLAIN, "OVERKILL" SEDIMENT CONTROL AMONG OTHER UNREALISTIC REQUIREMENTS WERE PROPOSED. SINCE THAT TIME, THE ASSOCIATION HAS DIRECTLY CONTACTED THE OFFICE OF SURFACE MINING ON TWELVE SPECIFIC OCCASIONS, INCLUDING THE PRESENTATIONS OF 22 WITNESSES AND SEVERAL HUNDRED PAGES OF TESTIMONY DURING PUBLIC HEARINGS IN CHARLESTON, WEST VIRGINIA ON SEPTEMBER 20-22, 1977. OSM TASK FORCE PERSONNEL HAVE VISITED WEST VIRGINIA, EXTENSIVE CASE HISTORY DOCUMENTATION HAS BEEN SUBMITTED AND COMMITMENTS MADE FOR YET ANOTHER FIELD VISIT BY DIRECTOR WALT HEINE, AND ENVIRONMENTAL PROTECTION AGENCY PERSONNEL HAVE BEEN TENTATIVELY SCHEDULED FOR LATER THIS MONTH.

174 TODAY, I WILL SET FORTH OUR MAJOR AREAS OF CONCERN AS THEY RELATE TO THE DEPARTMENT OF INTERIOR'S REGULATIONS AND THE PROHIBITION OF A MOST IMPORTANT INDUSTRIAL ACTIVITY.

174 AREAS OF PROHIBITION WHICH ARE AND HAVE BEEN EXTENSIVELY DOCUMENTED SPECIFICALLY INCLUDE:

174 710.11 - APPLICABILITY - OPERATION ON ALL LANDS

174 THE REQUIREMENTS TO UP-GRADE PRE-EXISTING, NONCONFORMING STRUCTURES OR FACILITIES IN CONCERT WITH THE SEDIMENT CONTROL CRITERIA OF 715.17(e) - SEDIMENT CONTROL MEASURES, BY MAY 3, 1978, OR TO FOLLOW THE LIMITED EXEMPTION BY FEBRUARY 3, 1978, IS IMPOSSIBLE TO COMPLY WITH DUE TO A NUMBER OF CRITICAL AND UNCONTROLLED FACTORS.

174 THE SEVERE ECONOMIC DEMANDS PRESENTED BY THE REQUIREMENTS OF 715.17(a) AND (e) WILL PROHIBIT THE CONTINUATION OF PRESENT SURFACE MINING OPERATIONS, WHILE PROJECTING NO ENVIRONMENTAL BENEFIT. THIS ECONOMIC CONSTRAINT IS FURTHER COMPOUNDED BY THE PHYSICAL LIMITATIONS OF TOPOGRAPHICAL CONDITIONS IN WEST VIRGINIA, WHICH PREVENT COMPLIANCE WITH THIS SECTION OF THE REGULATIONS.

174 FOR SPECIFIC REFERENCE AS TO SUGGESTED LANGUAGE, WHICH WOULD MORE DIRECTLY RECOGNIZE CURRENT MINING PRACTICES, ENVIRONMENTAL PROTECTION MEASURES, AND CONDITIONS IN THE EASTERN COALFIELDS, I REFER TO OUR ORIGINAL COMPOSITE TESTIMONY SUBMITTED TO THE OFFICE OF SURFACE MINING OCTOBER 7, 1977.

175 710.12 - SPECIAL EXEMPTION FOR SMALL OPERATIONS ON STATE LANDS

175 SECTION 502(c) OF THE ACT PROVIDES FOR THE EXEMPTION OF SMALL OPERATORS FROM CERTAIN ASPECTS OF THE FEDERAL REGULATIONS UNTIL JANUARY, 1979. CONGRESS DESIGNATED THIS EXEMPTION TO APPLY TO ALL PERMITS ISSUED PRIOR TO THE AUGUST 3, 1977 DATE OF ENACTMENT. THE INTENT IS CERTAINLY CLEAR AS ONE REVIEWS THE LANGUAGE OF THIS SECTION.

175 NEVERTHELESS, THE REGULATIONS, IN SECTION 710.12, EXCLUDE PERMITS FROM THIS EXEMPTION WHICH HAVE BEEN RENEWED AFTER THE DATE OF ENACTMENT. THE ACT MAKES NO REFERENCE WHATSOEVER TO RENEWED PERMITS - IT SPEAKS ONLY TO ISSUED PERMITS.

175 THE PROBLEM WITH THIS REGULATION IS TWOFOLD. FIRST, THERE IS A DEFINITE INEQUITY AMONG THE DIFFERENT STATES AS TO THE FREQUENCY WITH WHICH PERMITS MUST BE RENEWED. IN WEST VIRGINIA, IT IS ANNUAL, PROVIDING A REGULATORY

REVIEW, THE PAYING OF A RENEWAL FEE, AND THE ACKNOWLEDGEMENT THAT THE OPERATION IS IN COMPLIANCE WITH ALL STATE LAWS AND REGULATIONS, WITH NO CHANGES IN THE ORIGINAL PLAN OF OPERATION OR AREA OF BONDING. SECOND, IF THE REGULATIONS ARE PURSUED, THE CONGRESSIONAL EXEMPTION OF SMALL OPERATORS WOULD FALL FAR SHORT OF THE INTENDED TIME PERIOD. FOR INSTANCE, IF A WEST VIRGINIA PERMIT WAS ISSUED ON AUGUST 4, 1976, IT WOULD BE SUBJECT TO A RENEWAL ON THE SAME DATE IN 1977. THIS WOULD ELIMINATE IT FROM THE EXEMPTION. THAT IS 16 MONTHS SHORT OF CONGRESS' JANUARY, 1979 TIME PERIOD. IN OTHER WORDS, THE LONGEST EXEMPTION IN WEST VIRGINIA WOULD EXTEND ONLY UNTIL AUGUST 2, 1978. IS THIS WHAT WAS INTENDED?

176 THIS ENTIRE PROBLEM IS ACCENTUATED BY THE FACT THAT YOU, AS A COMMITTEE, REPEATEDLY RECOGNIZED OPERATIONS IN WEST VIRGINIA AS REPRESENTATIVE MODELS OF THE INTENT OF PUBLIC LAW 95-87, AND THE EXEMPTION WILL NOT AFFECT AN OPERATOR'S RESPONSIBILITY TO COMPLY WITH THAT EXISTING STATE LAW. CONSEQUENTLY, THERE WILL BE NO REDUCTION IN THE QUALITY OF THE OPERATION OR THE PRODUCT OF RECLAMATION. IF THE REGULATIONS ARE IMPLEMENTED AS WRITTEN, CONGRESSIONAL INTENTION TO RECOGNIZE THE SMALL OPERATORS OF THIS NATION WILL BE SEVERELY RESTRICTED AND IN SOME CASES, ELIMINATED.

176 AS I HAVE STATED, THIS IS MORE IMPORTANT RELATIVE TO COMPLIANCE WITH THE FEDERAL REGULATIONS THAN WITH THE ACT SINCE THE ACT IS SO SIMILAR TO THE PRESENT WEST VIRGINIA PROGRAM. FOR THE SMALL OPERATORS, WHO ARE SUCH AN INTEGRAL PART OF THIS NATION'S ENERGY PROGRAM, IT COULD MEAN THE DIFFERENCE IN OPERATION OR ELIMINATION.

176 715.13 - POST-MINING USE OF LAND

176 THOUGH WE RECOGNIZE THE LEGISLATIVE HISTORY BEHIND THE CRITERIA SPECIFIED FOR THE POST-MINING USE, I MIGHT AGAIN NOTE THE RESTRICTIVE AND COUNTERPRODUCTIVE REQUIREMENTS USED WHEN CHANGING LAND USES FROM THE PRE-MINING TO THE POST-MINING STAGES.

176 IT IS OUR RECOMMENDATION THAT ENCOURAGEMENT, WITH BUILT-IN INCENTIVES, SHOULD BE PROVIDED TO FURTHER AND ENCOURAGE AN INCREASED AND IMPROVED POST-MINING LAND USE. PRESENTLY, THE REGULATIONS REQUIRE FUTURE GUARANTEES FOR SUCH A DEFINITE FINAL USE. ALSO, THE REGULATIONS ESTABLISH A PROCEDURE FOR JUSTIFYING IMPROVED POST-MINING LAND USE, WHICH IS PENAL, BOTH FROM A FINANCIAL AND TIMING STANDPOINT. IN ADDITION, THE ENTIRE CONCEPT OF ESTABLISHING POST-MINING LAND USE PRIOR TO THE INITIATION OF MINING OPERATIONS DISREGARDS THE INTENT OF LANDOWNERS. IN MANY INSTANCES, THE OPERATING COMPANY IS NOT THE CONTROLLING PARTY OR OWNER OF THE LAND TO BE MINED. THE PROCEDURES AND

GUARANTEES FOR FUTURE LAND USE WOULD BE IN DIRECT CONFLICT WITH THE BASIC RIGHTS OF THE RECORDED PROPERTY OWNER. IN ESSENCE, THE CUMBERSOME AND MISDIRECTED REGULATIONS GOVERNING POST-MINING LAND USE ARE NOT PRACTICABLE, POSSIBLE OR REASONABLE IN HELPING TO ACCOMPLISH THE INTENT OF THE ACT.

177 715.15(b) - DISPOSAL OF SPOIL IN VALLEY OR HEAD-OF-HOLLOW FILLS

177 THOUGH CERTAIN DESIGN CRITERIA ARE OBVIOUSLY IN ERROR AND WILL BE CHANGED, TO COMPLY WITH ITEM (10) OF THIS SECTION, WHICH REQUIRES THE DIVERTING OF ALL SURFACE DRAINAGE FROM THE UNDISTURBED AREA ABOVE THE FILL, WOULD REQUIRE THE CONSTRUCTION OF HUGE AND ELABORATE DIVERSION DITCHES WHICH ARE IMPOSSIBLE TO BUILD IN THE STEEP SLOPES OF APPALACHIA. THIS WOULD MEAN THE ELIMINATION OF MANY ONGOING OPERATIONS THROUGHOUT WEST VIRGINIA AND THE REGION.

177 AGAIN, WEST VIRGINIA HAS SEVERAL YEARS OF OPERATIONAL EXPERIENCE IN VALLEY-FILL CONSTRUCTION. WE ARE RECOGNIZED AS THE PIONEER AND PERFECTOR OF VALLEY-FILL CONSTRUCTION WITH SUCH INNOVATIONS AS THE "ROCK CHIMNEY" DRAINWAY AND REGULAR INTERVAL FILL BENCHES, AMONG OTHERS. PORTIONS OF OUR PRESENT VALLEY FILL DESIGN REQUIREMENTS WERE DERIVED FROM THE MORE DEPENDABLE AND TECHNICALLY RELIABLE FACETS OF THE INTERSTATE HIGHWAY CONSTRUCTION PROJECTS. THE REMAINDER WERE ADAPTIVES BASED ON SOUND ENGINEERING PRINCIPLES WHICH HAVE BEEN PRACTICED IN THE GEOLOGY AND TERRAIN OF THE STEEP SLOPED EASTERN UNITED STATES. OVERALL, WE DO NOT FEEL THE HIGHWAY EXPERIENCE PROVIDES A RELIABLE BASE FOR THE ESTABLISHMENT OF SURFACE MINING GUIDELINES. TO IGNORE WEST VIRGINIA'S DOCUMENTED EXPERIENCES WOULD SURELY BE A STEP IN REVERSE. WE STRONGLY FEEL THAT WEST VIRGINIA'S PRESENT DESIGN CRITERIA ARE MORE STRINGENT AND MUST BE RECOGNIZED AND ACCEPTED AS SUCH.

178 715.17(c) - DIVERSION AND CONVEYANCE OF OVERLAND FLOW AWAY FROM DISTURBED AREAS

178 USING DESIGN CRITERIA OF 10 AND 100-YEAR PRECIPITATION EVENTS WITH APPLICATION TO ANY SLOPE IN EXCESS OF 50 PERCENT, WHICH PREVAILS THROUGHOUT WEST VIRGINIA, WOULD AGAIN PROHIBIT SURFACE MINING. IN MORE THAN 17 YEARS OF EXPERIENCE, I HAVE NEVER SEEN DIVERSION APPLICATION OF SUCH DESIGN APPLIED TO SURFACE MINING ANYWHERE IN THE COUNTRY WHERE THE ORIGINAL SLOPES EXCEED 50 PERCENT.

178 DURING A RECENT CONFERENCE IN WASHINGTON, MY OBSERVATIONS WERE FURTHER SUPPORTED BY POLICY LEVEL OFFICIALS OF THE EPA AND OSM TASK FORCE. THEY READILY ADMITTED THAT THEY HAD NEVER SEEN SUCH DIVERSION DITCHES CONSTRUCTED IN AREAS OF GREATER THAN 2:1 SLOPES. YET, THE REGULATIONS SET FORTH SUCH REQUIREMENTS.

179 715.17(L) - HYDROLOGIC IMPACTS OF ROADS

179 COMPLIANCE WITH THE REQUIREMENT THAT ALL ACCESS AND HAULROADS WHICH ARE TO BE MAINTAINED FOR MORE THAN ONE YEAR, PROVIDE WATER CONTROL STRUCTURES TO HANDLE A 10-YEAR, 24-HOUR PRECIPITATION EVENT IS NEITHER PRACTICAL NOR NECESSARY.

179 IN RECENT YEARS, WEST VIRGINIA HAS REPEATEDLY BEEN RECOGNIZED FOR THEIR SOPHISTICATED AND ADVANCED HAULAGEWAY DRAINAGE CONTROL, AND CONSTRUCTION METHODOLOGIES. WE RECOMMEND STATE REGULATORY AGENCIES BE GRANTED FLEXIBLE DESIGN CRITERIA TO PROVIDE FOR STANDARDS THAT PARALLEL THE ESTIMATED LIFE OF THE PROPOSED HAULAGEWAY. I.E., TWO-YEAR ROAD, TWO-YEAR, 24-HOUR PRECIPITATION EVENT.

179 715.17(a) AND (e) - SEDIMENTATION CONTROL

179 SECTION 515(B)(10) OF THE ACT ESTABLISHES REALISTIC OBJECTIVES FOR CONTROLLING SEDIMENTATION FROM SURFACE MINING OPERATIONS. THE APRIL 22, 1977, REPORT OF CONGRESSMAN UDALL'S COMMITTEE FURTHER CLARIFIES THE INTENT OF CONGRESS.

179 I QUOTE FROM PAGE 110 OF THE REPORT . . . "IT IS ANTICIPATED THAT THE STATE REGULATORY AUTHORITIES WILL STRENGTHEN SUCH PROVISIONS AND REQUIRE WHATEVER ADDITIONAL MEASURES ARE NECESSARY TO MEET LOCAL CONDITIONS."

180 THIS RECOGNIZES THE COMPLEXITY AND MAGNITUDE OF THIS MOST IMPORTANT PROBLEM, WHICH IS FURTHER COMPLICATED BY THE IMMENSE PHYSICAL VARIATIONS AMONG THE STATES. THIS IS AS IT SHOULD BE!

180 WE, IN WEST VIRGINIA, ARE CERTAINLY NOT AGAINST THE STRICT CONTROL OF SEDIMENTATION. AFTER ALL, WE HAVE BEEN OPERATING, SINCE 1971, WITHIN A STATE THAT HAS ONE OF THE MOST RECOGNIZED, ADVANCED, AND COMPREHENSIVE DRAINAGE CONTROL PROGRAMS OF ANY IN THE NATION. WE RECOGNIZED THE PROBLEM AND HAVE EFFECTIVELY ADDRESSED IT!

180 AS A RESULT OF SUCH EXPERIENCE, THERE HAVE BEEN NOTABLE TECHNOLOGICAL ADVANCEMENTS MADE IN ADAPTING THE CONTROL SYSTEMS TO THE SPECIFIC OPERATIONS AND CONDITIONS. THE DEPARTMENT OF THE INTERIOR, OFFICE OF SURFACE MINING, HAS NOW TOLD US "THAT IS ALL WRONG." IN THE REGULATIONS, THERE IS NO CONSIDERATION GIVEN TO THESE ADVANCEMENTS. TO THIS WE RAISE OBJECTION AND EXPRESS SINCERE CONCERN!

180 THE OFFICE HAS SET FORTH NOT ONLY SPECIFIC EFFLUENT CRITERIA, BUT VERY RESTRICTIVE PRESCRIPTIONS AS TO THE MINIMUM SIZE FOR SEDIMENTATION STRUCTURES. THESE DICTATES HAVE NO REGARD FOR THE REGION OR ITS PHYSICAL PROBLEMS. EVERYONE, EVERYWHERE MUST MEET THESE THREE SIZING REQUIREMENTS. THIS "TELLING US HOW" CONCEPT NEGATES THE TECHNICAL IMAGINATION OF THE INDUSTRY WHICH HAS BEEN SO SUCCESSFUL IN MAKING WEST VIRGINIA'S PROGRAM A WORKABLE APPROACH. AFTER ALL, IF THE EFFLUENT GUIDELINES ARE BEING MET, WHY SHOULD SPECIFIC DESIGN CRITERIA BE REQUIRED?

181 EVEN WORSE IS THE FACT THAT THESE "IN HOUE" SIZE PRESCRIPTIONS HAVE NO SPECIFIC FOUNDATION AND ARE REQUIRED WITHOUT ANY WARRANTY THAT THEY WILL ENHANCE COMPLIANCE WITH THE ULTIMATE DISCHARGE CRITERIA. TO DEVELOP REGULATION FOR THE ENTIRE NATION BASED ON ONE CASE HISTORY IN THE STATE OF WASHINGTON SEEMS VERY SHORTSIGHTED AND CONTRARY TO THE INTENT OF THIS COMMITTEE AND CONGRESS.

181 MORE SPECIFICALLY, OUR CONCERN RELATES TO THE METHODS OF TREATING WATER TO PREVENT SEDIMENTATION TO OFF-SITE AREAS. COMMON SENSE DICTATES THAT IT IS MORE EFFECTIVE TO CAPTURE SEDIMENT WITH CONTROLLING STRUCTURES AS NEAR THE SOURCE AS POSSIBLE, NOT SEVERAL HUNDRED OR THOUSAND FEET DOWNSTREAM.

181 PUBLIC LAW 95-87 CONTINUALLY ADDRESSES THE PROBLEMS OF HAZARDS AND IMMINENT DANGERS. THIS IS GOOD: NOW I ASK, "IS AN 80-FOOT HIGH DAM, IMPOUNDING 163 MILLION GALLONS OF WATER, LOCATED ABOVE A MAJOR U.S. HIGHWAY AND SMALL COMMUNITY IN ONE OF THE CHARACTERISTICALLY NARROW HOLLOWES OF WEST VIRGINIA AN ACCEPTABLE AND SAFE APPROACH TO CONTROLLING SEDIMENTATION. WITH THE MEMORIES OF BUFFALO CREEK, THE GRAND TETON AND GEORGIA'S RECENT EXPERIENCE, COULD YOU JUSTIFY TO THE RESIDENTS OF CAMPBELL'S CREEK WHY SUCH A STRUCTURE IS NEEDED? KEEP IN MIND THAT ALL OF THIS CONSTRUCTION WOULD NOT SIGNIFICANTLY INCREASE THE QUALITY OF THE DISCHARGE FROM THE PRESENT DRAINAGE CONTROL POND. I DO NOT SPEAK FROM EMOTION OR CONJECTURE. I OFFER TO YOU FOUR CASE STUDIES REPRESENTATIVE OF THE IMPACT THE PRESENT REGULATIONS WILL HAVE ON THE PRESENT DRAINAGE PROGRAM IN STEEP SLOPED WEST VIRGINIA. THESE ARE SUPPORTIVE OF OUR CONCERN AND OBJECTION.

182 WE WILL MEET DISCHARGE CRITERIA. WE HAVE AND ARE MEETING IT. IF WE DO NOT, THEN THERE IS SUFFICIENT ENFORCEMENT MACHINERY WITH JUDICIAL SUPPORT TO PENALIZE AND REMEDY THOSE NONCOMPLYING OPERATIONS. HAVING LABORED SO LONG AND SO HARD TO ATTEMPT TO REMOVE THE ENVIRONMENTAL HAZARDS AND PERSONAL DANGERS FROM

SURFACE MINING, WE, IN WEST VIRGINIA, ARE SIMPLY ASKING, "WHY IS IT NECESSARY TO CONSTRUCT SUCH IMPOUNDMENTS WHEN THEY HAVE NO PROVEN BENEFIT AND WILL NOT ASSURE AN IMPROVED DISCHARGE?"

182 IT SEEMS THAT EPA HAS BEEN GIVEN A MAJOR POLICY MAKING ROLE IN THE ENTIRE SCHEME OF RULE-MAKING. THIS SEEMS ENTIRELY CONTRARY TO THE CONCURRENCE ROLE THEY WERE TO PLAY PURSUANT TO SECTION 501 OF THE ACT. THE IMPETUS OF THEIR INVOLVEMENT IS ILLUSTRATED BY THE FREQUENT EXPLANATION THAT OUR OPINIONS AND ARGUMENTS ARE WITHOUT FOUNDATION, SOUND DATA OR DOCUMENTED EXPERIMENTS. THE TROUBLE IS THEY CONTINUALLY DEPEND ON OUTDATED DEMONSTRATIONS PERFORMED UNDER THE JURISDICTION OF THE EPA, WHICH WERE SHORT-SIGHTED AND INCOMPLETE RELATIVE TO REPRESENTATIVE SAMPLING AND APPLICABILITY. WE FEEL OUR DOCUMENTED EXPERIENCES ARE AS VALID, AND MORE SO RELATIVE TO SURFACE MINING IN APPALACHIA THAN THOSE CONTINUALLY REFERRED TO BY EPA AND OSM.

182 IN RECENT WEEKS, IT HAS BEEN SAID MANY TIMES "THAT THE WEST VIRGINIA SURFACE MINING INDUSTRY OBJECTS TO THE FEDERAL SURFACE MINING LAW." THAT IS BY NO MEANS TRUE. PUBLIC LAW 95-87 AND THE PROMULGATED REGULATIONS WILL, IN NO WAY, ALTER OR IMPROVE THE QUALITY OF RECLAMATION IN OUR STATE. WE HAVE OPERATED UNDER A MOST STRINGENT, ENVIRONMENTALLY ORIENTED LAW FOR SEVEN YEARS AND FOR THAT WE ARE PROUD. WE HAVE NO INTENTION OF CHANGING OUR LEVEL OF ACHIEVEMENT, WHICH HAS BEEN RECOGNIZED BY MANY, INCLUDING THE INTERIOR CONFERENCE COMMITTEE AND THE OSM TASK FORCE, AS THE MODEL FOR WHAT IS NEEDED AND INTENDED.

183 WHAT WE DO OBJECT TO IS THE RESTRICTIVE PRESCRIPTIONS SET FORTH BY THE DEPARTMENT OF THE INTERIOR IN THE REGULATIONS. THEY ARBITRARILY SET FORTH UNWORKABLE AND UNFOUNDED SCENARIOS FOR REACHING THE SAME GOALS. THE MEANS TO ACHIEVE THESE ENDS MUST CERTAINLY BE CONTROLLED, BUT THEY HAVE BEEN STRICTLY MONITORED IN WEST VIRGINIA, WITH OUTSTANDING "IN OPERATION" ENVIRONMENTAL PROTECTION MEASURES. THIS WAS ACCOMPLISHED BY IMPLEMENTING A FLEXIBLE GUIDELINE WITH BROAD BASED CRITERIA AND SPECIFIC OBJECTIVES. OSM HAS ESTABLISHED A "TUNNEL VISION" APPROACH WHICH IS NOT SUPPORTED BY SPECIFIC DEMONSTRATIONS OR STUDIES AND WITH NO INDICATION THAT THE CONTROL WILL BE ANY BETTER.

183 THE INDUSTRY IS CHARACTERIZED BY PROFESSIONAL TECHNICIANS, WITH YEARS OF EXPERIENCE IN WEST VIRGINIA MINING. IS IT PROPER TO DISREGARD THEIR TECHNICAL COMPETENCE AND INNOVATION IN FAVOR OF THE OPINIONS OF THE OSM TASK FORCE, MANY OF WHICH HAVE NEVER BEEN TO WEST VIRGINIA? WE WILL MEET THE CRITERIA AND OBJECTIVES OF THE ACT WITH ENTHUSIASM, BUT WE MUST HAVE THE LATITUDE TO ADOPT METHODS AND MEANS WHICH ARE WORKABLE AND FEASIBLE, BOTH PHYSICALLY AND ECONOMICALLY.

184 TIME MARCHES ON: FEBRUARY 3, 1978 IS NEAR; MAY 3, 1978 IS RAPIDLY

APPROACHING. WHERE DOES THE SURFACE MINING INDUSTRY STAND IN INITIAL IMPLEMENTATION OF THE INTERIM REGULATIONS PROGRAM. WE WILL FALL. WHY?

184 1. MAJOR LABOR CONTRACT STRIKE NOW 50 DAYS LONG.

184 2. CLIMATIC CONDITIONS FOR CONSTRUCTION MOST SEVERE OF THE 12-MONTH CYCLE

184 3.FINAL INTERIM REGULATIONS 42 DAYS BEHIND THE LEGISLATIVE MANDATE.

184 4. LATE CONFIRMATION OF DIRECTOR WALT HEINE.

184 5. FEDERAL-STATE PROGRAM WITHOUT THE "FEDERAL" AS THE OFFICE OF SURFACE MINING AND REGIONAL PERSONNEL NECESSARY FOR TECHNICAL ASSISTANCE, GUIDANCE OR GENERAL REGULATION HAVE NEITHER BEEN FUNDED NOR LOCATED.

184 6. OVERKILL REGULATION IN SEDIMENTATION CONTROL, DIVERSION DITCH DESIGN, HYDROLOGIC IMPACT OF ROADS, VALLEY FILL DESIGN AND POST-MINING USE.

184 WE DO NOT FEEL THERE IS ANY REASON TO FALL. THE SURFACE MINING INDUSTRY IN WEST VIRGINIA HAS FOUGHT MANY BATTLES OVER THE PAST SEVERAL YEARS.THE MAJORITY OF THESE WERE DEDICATED TO INCREASING THE ENVIRONMENTAL ACCOUNTABILITY OF OUR OPERATIONS. YOUR COMMITTEE AND THE OSM TASK FORCE HAVE OBSERVED THE PRODUCT OF THESE EFFORTS. WE ARE PROUD OF THEM. KEEP IN MIND, HOWEVER, THAT THEY WERE ONLY POSSIBLE AS A RESULT OF REASONABLE AND PRACTICAL REGULATION GOVERNED BY FLEXIBLE BUT THOROUGH LAWS WHICH ADDRESSED THE PROBLEMS WHILE LEAVING THE SOLUTIONS TO THOSE WHO WERE MOST FAMILIAR WITH THE COAL, THE LAND, AND THE AREA. WE ASK YOU FOR THAT CONSIDERATION IN EVALUATING THE PROMULGATED RULES. AS AN OBJECTIVE THIRD PARTY, INTERESTED IN THE SUCCESSFUL IMPLEMENTATION OF PUBLIC LAW 95-87, YOU CAN PROVIDE THIS IMPORTANT CONSIDERATION.

185 AS WE HAVE PREVIOUSLY OFFERED TO THE DEPARTMENT OF THE INTERIOR, THE CONFERENCE COMMITTEE, TO OTHER INTERESTED PARTIES, AND NOW TO THE HOUSE OVERSIGHT COMMITTEE, THE WEST VIRGINIA SURFACE MINING INDUSTRY STANDS READY TO ASSIST IN ANY WAY THAT MIGHT ENHANCE THE INITIATION OF A SUCCESSFUL PROGRAM OF NATIONWIDE SURFACE MINING RECLAMATION.

185 ANY CONSIDERATION ON BEHALF OF THE OVERSIGHT COMMITTEE TO REMEDY THE AFOREMENTIONED AREAS OF MAJOR CONCERN WOULD BE GREATLY APPRECIATED.

185 THANK YOU:

186 JANUARY 20, 1978

186 HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT STATEMENT OF FRANKLIN H. MOHNEY PRESIDENT, PENNSYLVANIA COAL MINING ASSOCIATION

186 Mr. Chairman and Members of the Committee:

186 I am Franklin H. Mohney, President to the Pennsylvania Coal Mining Association, an association of independent surface mining operators located in and mining in Pennsylvania. Appearing with me today is Steven L. Friedman, Counsel. The Association and its individual members has previously testified before this Committee and the Department of the Interior. A copy of our prior testimony is attached hereto as Exhibits "A" and "B".

186 The Pennsylvania statutory and regulatory system, developed through decades of regulatory experience, has repeatedly proved itself. The Surface Mining Control and Reclamation Act of 1977 ("Act") has been proclaimed by Congress as a vehicle to bring the rest of the nation up to Pennsylvania's standards. Unfortunately, in their present state, the Interior Department's interim regulations are at best an inflexible effort to codify uniform, detailed regulations for different coal fields with strikingly different climates, terrain, and hydrology. Instead of establishing workable, environmental protection and reclamation standards for the Nation's coal fields, these proposed regulations will unnecessarily increase the cost of coal production by at least 20% in Pennsylvania. However, it is clear that the regulations must be changed so as to preserve Pennsylvania's effective regulatory program. Indeed, without substantial changes, the national interim regulations will severely curtail Pennsylvania's coal production.

187 The regulations are the key to success or failure of the federal strip mining scheme. The economic impact of these regulations, which are misdrafted and contrary to the legislative mandate of the Act, is tremendous. These burdensome, unnecessary, and unclear regulations, as promulgated, will add millions of dollars to the cost of coal production and will severely curtail coal production with significant adverse impact on the national economy. This curtailment is in direct conflict with one of the major purposes of the Act. In Section 102(f), Congress declared that the purpose of the Act is to:

187 "[Assure] that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided and strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy."

187 The Congressional sponsors of the Act repeatedly declared their desire to preserve and maintain Pennsylvania's successful and effective reclamation program.

188 Our comments today are therefore directed at flaws in the regulations and at flaws in the Act itself. We address those clear instances where the

regulations have exceeded or conflicted with the express language or intent of Congress and those instances where the Act and regulations have ignored the reality and economics of surface mining in Pennsylvania and the Nation by imposing burdensome, costly, irrational and environmentally unnecessary requirements and procedures.

188 I. THE REGULATIONS

188 1. Lack of Time Limit for Permit Application Review

188 Sections 510(a) and 514(b) of the Act only require the regulatory authority to approve or deny a permit application "within a reasonable time" as set by the regulatory authority. Nor are there any time limits imposed on the regulatory authority to review permit applications in the regulations. Such a time constraint is tantamount to no time constraint at all. We suggest that the Act and the Regulations be amended to require the regulatory authority to review and act upon a mining application and reclamation plan within 120 days of their submission, unless the regulatory authority can demonstrate in writing that it needs more time to complete the approval process. Otherwise, the unnecessary bureaucratic delay in reviewing such applications will be costly to the operator and will jeopardize an operator's right to mine coal depending on the terms and conditions of any lease or prospective lease for the mineral rights. The record established during legislation consideration of the Act and consideration of the interim regulations confirmed the tremendous adverse economic impact of delay on coal operators and the retardation of coal production resulting from delay. There must be imposed a statutory and regulatory time limit imposed in order to insure expeditious review of permit applications.

189 2. Section 710.11(d) (2).

189 This section makes the regulations applicable to all operations conducted after the effective date of the regulations notwithstanding the fact that existing operations comply with already promulgated Environmental Protection Agency guidelines as well as Pennsylvania's stringent strip mining laws. In addition to the fact that there is no authority in the Act for such a provision, the provision is irrational since the reconstruction of pre-existing, non-conforming structures will result in more environmental harm than will result if such structures are permitted to operate under existing, applicable federal and state regulatory programs which adequately protect the environment.

Finally, such reconstruction will be so expensive to carry out that many small operators may be forced out of business.

190 3. Section 715.13 - Postmining Use of the Land

190 During the Act's legislative consideration, Congress clearly decided that the Act was not a national land use planning bill. However, Section 715.13(b) of the regulations, concerning post-mining land uses, inflexibly requires consideration of a pre-mining use of the land that occurred before the current use of the land, if the pre-mining use of the land was changed within five years of the beginning of mining. This unrealistic reference to the "historic" use of the land is of absolutely no utility or value for appropriate consideration by the regulatory authority concerning a permit application. Instead, it improperly involves the regulatory authority in land use planning roles, which are neither authorized nor serve the legitimate purposes of the Act. Section 715.13(b) should be deleted.

190 In the same vein, section 715.13(d)(1) requires that, an operator secure "[a] written statement of the views of the authorities with statutory responsibilities for land use policies." This is a superfluous request which will indefinitely delay the coal mining process. It is not conceivably helpful to secure any data from the land use policy agencies other than the legal zoning status of the land. As in the case of 715.13(b), subsection (d)(1) improperly seeks to move the regulatory authority into the area of broad land use planning. In addition, any state regulatory authority will necessarily have to possess the technical expertise to pass on mine permit applications. Finally, subsection (d)(1) exceeds the legislative authority of the Act. Accordingly, subsection (d)(1) also should be deleted. In the alternative, if subsection (d)(1) is not deleted, it must be amended so as to require the local land use authority to submit their written comments within 15 days of the operator's request for approval. This is essential to prevent inordinate and costly delay to the permit application process by typically understaffed and undermanned local zoning or planning bodies.

191 4. Section 715.14(j)(3) - Use of Waste Materials as Fill

191 This section requires that before coal preparation wastes or coal conversion facility wastes may be used in backfilling and grading operations conducted on a mine site, they must be chemically and physically analyzed. This is an absurd requirement since waste from a coal preparation or conversion facility practically must be replaced in the strip mined area, regardless of the waste's chemical content. In other words, operators must be allowed to return to the mine site those materials, obviously other than coal, which are removed

during the mining process.

192 5. Section 715.17 - Protection of the Hydrologic System

192 This section unrealistically grafts upon Pennsylvania coal production conditions which at best are only relevant to coal production west of the 100th meridian west longitude.

192 Section 715.17(b) sets up an extremely onerous and costly surface monitoring requirement. It unnecessarily requires either an extremely expensive automatic sampling device to cover all discharge points at a cost of at least \$24,000 per operation, or the use of a laboratory for daily samples at a cost of at least \$18,800 per operation, per year. Thus, for an operator mining 150,000 tons of coal per year to monitor daily four (4) separate discharge points, would add at least fifteen cents to a ton of coal. In addition, the quality of discharges from Pennsylvania's properly conducted mining operations are not so variable that the use of continuous monitoring equipment is warranted. Grab samples of water quality which are later analyzed in laboratory provide adequate water quality data. Finally, under the National Pollutant Discharge Elimination System of permits administered by the EPA, operators are only required to gather samples on a monthly basis and report on a quarterly basis. 40 C.F.R. @ 125.26(3) (1976).

193 Section 715.17(e) requires the costly construction of sedimentation ponds that must serve both treatment and settlement functions and must be maintained during the entire mining operation whether or not the immediately adjacent areas are actually being mined. Thus, this section is contrary to section 515(b)(10) of the Act which requires only that the disturbance to the prevailing hydrologic balance be minimized, and does not prescribe the use of sedimentation ponds.

193 Furthermore, since the operator is required to meet Federal and State effluent standards and limitations by Section 715.17(a), there is little need in specifying treatment schemes or design technique. In fact, the present language of Section 715.17(e) unduly restricts the use of engineering judgment in the solution of engineering problems and could in fact require unnecessarily large settling ponds and discourage the use of more sophisticated treatment schemes. It is suggested that section 715.17(e) be amended so as to allow other sediment control methods to be used as approved by the regulatory authority. The proposed change acknowledges that sedimentation ponds are not the only competent means of sediment control; that there are alternative design

techniques for sedimentation ponds; and that as newer more sophisticated design and treatment techniques are developed they can be used.

193 Finally, the sedimentation ponds, required by the effluent standards and frequency intervals would have to be inordinately large in size, in relation to the mining area, adding great expense to the production process and significantly reducing the available coal producing acreage in a site. The section also assumes ideal topographical conditions. If the surface permit area is divided by a highway or is located on hilly terrain, the number of additional affected acres could increase significantly, further retarding coal production and increasing bonding costs. In fact, in many cases it will be impossible to comply with this section since the required sedimentation ponds are much wider than existing valleys in which such ponds can be physically placed and, are, when combined with the rest of the surface mining operation, too large to physically fit within the boundaries of the land over which an operator has control.

194 Section 715.17(h) (1) addresses the "recharge capacity of reclaimed lands." This is clearly a concern for arid conditions in the western coal fields, where rainfall is scarce and far below 26 inches a year. In the Eastern Appalachian regions such as Pennsylvania, with an annual rainfall of approximately 40 inches, recharge capacity is never in question. We therefore recommend that section 715.17(h) (1) be stricken or made expressly applicable west of the 100th meridian west longitude.

195 Section 715.17(h) (3) sets up unnecessarily costly and environmentally unsound groundwater monitoring standards. The requirement of monitoring existing wells or new wells drilled for monitoring purposes (where existing wells are inadequate to measure long-term changes) is environmentally unsound and creates dangerous and unnecessary risks of ground-water contamination of different enclosed groundwater zones. In addition, well monitoring can be very inaccurate, since well locations may reveal only very local unrepresentative fractures and conditions. Furthermore, well monitoring during the mining process has been rejected in Pennsylvania. The successful Pennsylvania experience has found monitoring of discharge points and receiving streams to be a more accurate barometer of groundwater conditions. Again, the well monitoring standards may be appropriate and necessary for Western arid mining conditions, but certainly not for Eastern Appalachian mining. These standards should be made applicable to the Western region or made discretionary with the regulatory authority.

195 6. Section 715.19(e) (1) (vii) (A) & (B)

195 Section 715.19(e) (1) (vii) (A) & (B) unrealistically and without any support in the Act proposes blasting distance limitations of 1,000 feet from a residence, school, church, or hospital, etc., and 500 feet from various facilities. These distances far exceed those which our Pennsylvania experience have found necessary. We strongly recommend revising subsection (vii) (A) to "300 feet" of "any building used as a residence, school, church, hospital, etc." Subsection (vii) (B) must be amended to allow blasting within any right of way area of facilities such as municipal water storage facilities, fluid transmission pipe lines, water and sewage lines, etc. These facilities are surrounded by a minimum 20 feet of a right of way. Furthermore, we recommend a minimum blasting distance of 125 feet from any oil or gas well facility. These practices again have been long followed in Pennsylvania without any adverse public or private harm. Finally, retention of the larger distance limitations will unnecessarily turn millions of tons of otherwise mineable coal reserves into unmineable coal reserves, thereby further unnecessarily retarding Pennsylvania coal production.

196 7. Section 721.12(a) - Right of Entry

196 Section 721.12(a) allows an authorized representative of the Secretary to have a right of entry onto the surface coal mining area "without a search warrant." Since any entry may result in the securing of evidence which is the basis for criminal proceedings or civil penalty proceedings or other sanctions, this clearly violates the Fourth Amendment to the United States Constitution. This section should be deleted. *M Marshall v. Barlow's, Inc.* 41 OSHC 1887 (D.Idaho), probable jurisdiction noted, 45 U.S.L.W. 3690 (1977).

197 8. Section 721.14 - Failure to Give Notice and Lack of Reasonable Belief

197 We request that this section be deleted entirely. First, the regulation exceeds the legislative authority of the Act. See Section 517. Second, it is manifestly unfair to impose upon an operator a notice of violation or cessation order, if the regulatory authority initially did not have sufficient information to create a reasonable belief that a violation had occurred.

197 9. Section 722.17(a) & (b) - Inability to Comply

197 Section 722.17(a) & (b) should also be deleted entirely as it exceeds the legislative authority of the Act. Section 521 of the Act neither explicitly nor implicitly precludes taking into account a showing of an inability to comply in determining whether to vacate a notice of violation or a cessation order, or in determining whether an operator has shown good cause for

not suspending or revoking a permit.

197 II. THE ACT

197 1. Section 507(b)(11) and Section 510(b)(3)

197 These sections require an applicant for a permit to determine the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site. We suggest that both sections be amended only to require such a determination where specifically requested by the regulatory authority. This is due to the fact that, since only the Western coal mining activities are in areas which have critical shortages of water supplies, a determination of hydrologic consequences of mining in those areas are most necessary. Eastern coal operations often do not involve hydrologic problems over a wide spread area and, in addition, extensive information is available to the regulatory authority concerning the hydrologic conditions in the Eastern mined areas rendering such information redundant and only further adds to the cost of mining in the Eastern states.

198 2. Section 508(a)(8) and 515(b)(2)

198 These sections require that each reclamation plan contain a statement of "the consideration which has been given to making the surface mining and reclamation operations consistent with surface owner plans, and applicable State and local land use plans and programs," and that each operator restore the land affected by mining to a land use that is not deemed to be inconsistent with applicable land use policies or plans. These sections, in conjunction with section 715.13 of the regulations which we have previously discussed, represent a severe and unwarranted federal regulatory incursion upon the traditional power of State and local governments to regulate land use planning. Federal land use planning has been repeatedly rejected by Congress and should not be indirectly implemented through the Act and regulations.

198 III. NEED FOR VARIANCE PROCEDURES

199 The regulations seek to achieve the impossible. They inflexibly impose a detailed uniform set of regulations concerning numerous surface mining operations that are, in fact, conducted in different coal fields throughout the country with strikingly different climates, terrain, geography, hydrology and other factors. It is simply unworkable to suggest that a uniform set of regulations can be promulgated to respond to the strikingly different logistical, operational and environmental problems that arise in these different coal mining regions.

199 This creates a compelling need for a variance procedure to insure that the different situations can be fairly and effectively regulated. Variance procedures have been included in the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. @ 1311(c) as well as the Clean Air Act Amendments of 1970, 42 U.S.C. @ 1857(c)-(5) (a) (3). Without such variance procedures, the impossible mandate of these regulations - uniform minimum national standards - will create gross injustices, economic hardship, unnecessary curtailment of coal production, without serving the legislative purposes of the Act or legitimate environmental concerns.

200 IV. CONCLUSION

200 In our testimony today, we have reiterated our concerns that we have previously presented before this and other Congressional committees and before the Department of the Interior through oral presentations and extensive written presentations. Our concerns are the same now as they were before. As we have pointed out, certain provisions of the Act and certain sections of the regulations are simply too inflexible. Therefore, we respectfully request you to amend the Act and regulations in order to prevent unnecessary interference with vital coal production in Pennsylvania as well as other coal producing states. The Act mandates that coal production is essential to the Nation's energy requirements and economic stability. Congress must insure that this vital mandate is obeyed and fulfilled.

200 Thank you.

201 HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS SUBCOMMITTEE ON ENERGY
AND THE ENVIRONMENT FEBRUARY 25, 1977

201 STATEMENT OF STEVEN L. FRIEDMAN COUNSEL FOR THE PENNSYLVANIA COAL MINING ASSOCIATION

201 Mr. Chairman and members of the Committee:

201 I am Steven L. Friedman, counsel for the Pennsylvania Coal Mining Association, an association of independent surface mining operators located and mining coal in Pennsylvania. Appearing with me today is Vincent Marino, Clearfield, Pennsylvania, Executive Director, Pennsylvania Coal Mining Association.

201 At a time when there is an increasing consensus for energy independence, Pennsylvania's surface mining operators are seeking to increase production and to tap our extensive surface mining coal reserves in the face of increased regulatory costs. Surface mining operators confront not only

environmental and reclamation regulation, but a labyrinth of federal and state water quality laws, standards under the Coal Mine Health and Safety Act, and most significantly rapidly escalating costs of coverage for liability under the Federal and State Black Lung Acts.

201 Pennsylvania operators have proudly mined coal under the strictest environmental and reclamation standards of any state in the nation. Pennsylvania, as you are all aware, has had a surface mining law since 1941, which was amended as recently as 1973. Perhaps the most significant amendment was in 1963 when retention of vertical highwalls was prohibited. Other amendments have required preservation and replacement of topsoil, and the determination of bond amount based on the "cost of reclamation." Other provisions of Pennsylvania's water quality laws require minimal spoil on downslopes to control erosion and siltation.

202 The Pennsylvania regulatory scheme admittedly works. The approximately 40,000 acres mined, backfilled, and reclaimed pursuant to current Pennsylvania law, end up more stable and productive than prior to any mining. Significantly, Pennsylvania law specifically authorizes the re-mining of areas previously mined under environmentally lax standards with exposed highwalls and spoil piles. Once re-mined under current Pennsylvania law, these areas are reclaimed into stable, attractive, and productive areas. The Pennsylvania regulatory system not only preserves and enhances the quality of virgin land, mined for the first time, but restores and reclaims thousands of acres of land previously mined and degraded under environmentally lax standards.

202 To quote a prominent Southern philosopher, "if it ain't broke, don't fix it." The Pennsylvania statutory and regulatory system, developed through decades of regulatory experience, has repeatedly proved itself. HR. 2 is proclaimed by you as a vehicle to bring the rest of the nation up to Pennsylvania standards. Unfortunately, its rhetoric falls woefully short of these worthy goals. As presently drafted, HR. 2 is at best an inflexible effort to codify uniform, detailed regulations for different coal fields with strikingly different climate, terrain, and hydrology. Instead of establishing workable, environmental protection and reclamation standards for the nation's coal fields, HR. 2 will strait jacket and hamper Pennsylvania's effective and proven program.

203 We have carefully reviewed HR. 2 and respectfully submit to the Committee the attached specific amendments to preserve the present Pennsylvania regulatory program, which is a vivid example of effective state governmental action. Pennsylvania does not need HR. 2. HR. 2 will unnecessarily interfere with Pennsylvania's present program. Indeed, without substantial amendments to its law, Pennsylvania's present program cannot even be certified pursuant to

Section 503 of HR. 2 to continue its effective environmental protection and reclamation efforts.

203 Without these amendments which we respectfully submit to you today, HR. 2's inflexibility will destroy Pennsylvania's present program. As presently drafted, HR. 2 imposes unnecessary mandatory procedures on Pennsylvania's present program, when in fact these procedures may only be justified in western coal fields. HR. 2 also provides for mandatory hearing procedures at every stage of the permit process thereby inviting unnecessary delay and it contains numerous other administrative and drafting problems which must be amended to provide the administrative flexibility which is necessary for Pennsylvania to continue its present excellent regulatory program.

204 I. REGULATORY INFLEXIBILITY

204 HR. 2 imposes inflexible uniform minimum environmental protection and reclamation standards for the entire nation without regard for the different conditions and needs of the two general coal mining regions with totally different seams of coal, terrain, climate, and ground water and sub-surface water conditions, namely: (1) the Eastern or Appalachian coal fields; and (2) the Western coal fields.

204 In the West, average annual rainfall is generally less than 26 inches and surface mining in these generally arid regions may have impact on diminished surface and ground water supplies vitally needed for grazing and agriculture. However, in the Eastern Appalachian region, including Pennsylvania, average annual rainfall is in the range of 40 or more inches per year, and surface mining does not deplete or diminish surface or ground water flow or supply.

204 Within the Appalachian coal fields, there are three distinct mining areas - the northern Appalachian (Pennsylvania, Ohio and western West Virginia), the central Appalachian (eastern West Virginia, Kentucky), and the southern Appalachian (parts of Tennessee and Alabama). These three regions differ substantially in terms of coal seams, terrain, nature of the overburden, and climate. In spite of these environmentally significant regional differences, HR. 2 has inflexibly imposed inappropriate uniform standards.

205 HR. 2 automatically requires each applicant for a permit to perform the costly study of the hydrologic consequences of mining and to include such a study in the reclamation plan. Sec. 507(b) (11); Sec. 507(b) (14); Sec. 510(b) (3). This hydrological imbalance study may only be necessary in the arid western regions, where surface mining may deplete ground waters. The proposed amendment limits this mandatory requirement to the western region, making it discretionary with the regulatory authority in the eastern region.

205 To conform HR. 2 to Pennsylvania law, we have also suggested amendments which give the regulatory authority the discretion to require or

waive other studies, data, or information, which are necessary in Pennsylvania only under special circumstances. For example, chemical analysis of the overburden is presently required in only a small percentage of Pennsylvania applications. Properly, the Pennsylvania regulatory authority has the discretion to decide when it needs to require this information. Unfortunately, Sections 507(b) and 508(a)(11) of HR. 2, inflexibly require a chemical analysis of the overburden in each application and reclamation plan. Usually, a review of the drill hole logs combined with other geologic data is sufficient to analyze the overburden. Clearly, the regulatory authority must have the discretion to determine whether or not to require this costly chemical analysis. The proposed amendments to Sections 507(b) and 508(a)(11) will conform HR. 2 to current Pennsylvania law.

206 Pennsylvania law specifically authorizes permit amendments when additional documentation is filed which would have been sufficient if filed as part of the original application. HR. 2, in contrast, requires a totally new application and a "revised reclamation plan" for any permit revision except those involving "incidental boundary revisions." Section 511(a)(3). To avoid unnecessary burden on the operator and the regulatory authority, we have suggested an amendment requiring a new application and reclamation plan only in those instances involving "significant alterations to the reclamation plan." This is consistent with HR. 2's current limitation of hearing and notice requirements to those amendments "involving significant alterations in the reclamation plan." Section 511(a)(2).

206 Another critical element of Pennsylvania law is incremental bonding which allows an operator to permit an area and then bond it in parts. This allows necessary flexibility to the operator who may be in the process of securing mineral rights from several adjoining landowners. While HR. 2 implicitly refers to incremental bonding in Section 509, amendments to Section 507(b)(8)-(9) and Section 519 were necessary to insure that this necessary and environmentally sound Pennsylvania practice is permitted.

207 In a similar vein, an amendment has been proposed to Section 509 concerning the amount of bond conforming this provision with Pennsylvania law and eliminating the burdensome and unnecessary "two independent estimates." In addition, the minimum bond amount is proposed to be reduced from \$10,000 to \$5,000 to conform with Pennsylvania law and prevent discrimination against small operators.

207 HR. 2 has also imposed an unworkable restraint on the release of bonds, allowing bond releases to be held up if there is contribution of any suspended solids to streamflow or runoff "above natural levels under seasonal

flow conditions as measured prior to any mining." Section 519(c)(2). Clearly, any land disturbance, even farming, contributes suspended solid solids to streamflow or runoff above "natural levels." Furthermore, the section as drafted requires a measurement of such seasonal conditions for a year prior to mining. The amendments eliminate this ridiculously burdensome requirement and allow denial of bond release only for contributions of suspended solids in excess of the applicable state or federal discharge standards.

207 HR. 2 not only materially and significantly conflicts with Pennsylvania's reclamation requirements but fails to recognize environmentally sound reclamation techniques long permitted in Pennsylvania. Pennsylvania law specifically authorizes the terracing method of backfilling and reclamation of sites previously mined under the environmentally lax pre-1963 standards. There is no specific provision for terracing in Section 515(b)(3). This invaluable and environmentally sound reclamation technique must be specifically authorized or else Pennsylvania could lose a means of reclaiming thousands of acres.

208 II. PROCEDURAL CONFUSION

208 HR. 2 creates a morass of procedures accompanying permit applications and operations and release of performance bonds. HR. 2 provides mandatory hearing procedures for every phase of a permit from initial application to final release of bond. Such mandatory hearing procedures at every stage of operations could add tremendous legal and administrative expenses to the cost of mining without environmental justification. The proposed amendments make the decision to grant a hearing discretionary with the Secretary or regulatory authority, allowing spurious and frivolous objections to permits and operations to be resolved without the unnecessary expense of a hearing. See Amendments to Sec. 513(a)(b).

208 On the other hand, HR. 2 gives the Secretary the power to order cessation of operations in Sec. 521(a)(2) without notice or hearing or any time limit defined within which a post-cessation hearing must be held. The proposed amendment to Sec. 521(a)(2) would require a hearing within 72 hours of the cessation order at or near the site and is essential to prevent an ill-considered unsubstantiated closure order from putting an operator out of business.

209 HR. 2 has arbitrarily limited permits to 5 years. See Section 506(a).

This arbitrary limit does not serve any legitimate environmental purposes. If the permittee is operating in compliance, the permit should continue. Furthermore, there is likewise no environmental necessity to require any successor in interest to reapply for a permit and secure approval of a reclamation plan if the successor has secured bond coverage and continues to operate in accord with the already approved permit and reclamation plan. The proposed amendments to Section 506(b) eliminate the arbitrary 5 year time limit and the guarantee the right to successor to continue the permit thus conforming Section 506(b) with Pennsylvania law.

209 III. OTHER PROBLEMS

209 The proposed amendments attempt to resolve numerous other administrative and drafting defects in HR. 2. In light of the strikingly different mining conditions and regulatory authorities of the various coal fields, it is essential that coal operators and the heads of regulatory authorities have an institutionalized input into the process of promulgating regulations. The proposed amendment to Section 501 provides for an Advisory Committee on Environmental Protection and Reclamation Standards which shall include operators and heads of state regulatory authorities. Furthermore, if a regulation specifically affects three states or less, than the Advisory Committee reviewing those regulations must include operators and heads of regulatory authorities from those states.

210 The excessive regulatory burden imposed on small operators by the state and federal black lung acts, OSHA, and the federal and state water quality laws is only heightened by the reclamation fee imposed by Section 401. Further, the bill as drafted imposes a 35 cent fee for surface mining as opposed to a 15 cent fee for deep mining. The amendment allows for a credit of the reclamation fee against the cost of coverage of liability under the black lung acts and equalizes the fee for surface and deep mining. The proposed amendments also increase the contributing state's allocation from 50% to 80% to properly reflect Pennsylvania's reclamation needs and tonnage. Section 401(e).

210 In order to avoid protracted delay in the permit and reclamation plan approval process, the proposed amendments have inserted time limits to insure prompt action by the regulatory authority. Section 510(a) has been amended to require action on a permit and reclamation plan within ninety (90) days of submission to the regulatory authority. Section 513(b) has been amended to include a thirty (30) day time limit to hold a hearing, if necessary, on any objections to a permit application.

210 IV. CONCLUSION

210 HR. 2 does not codify the already proven environmentally sound Pennsylvania law. Instead, it inflexibly subjects Pennsylvania to standards

suited, if at all, for other regions of the country. It requires burdensome and environmentally unnecessary submissions of data by operators and deprives the operators of the necessary flexibility so vital to insure environmentally sound and efficient coal production. In summary, HR. 2 as drafted will destroy the strictest most effective regulatory system in the country. The proposed amendments are essential to avoid such a regulatory fiasco which can only jeopardize our vitally necessary coal production.

211 I am available for questions. Thank you.

212 PENNSYLVANIA COAL MINING ASSOCIATION

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212 UNITED STATES DEPARTMENT OF THE INTERIOR, HEARINGS ON PROPOSED SURFACE MINE REGULATIONS

212 SEPTEMBER 20, 1977

212 STATEMENT OF FRANKLIN H. MOHNEY

212 PRESIDENT, THE PENNSYLVANIA COAL MINING ASSOCIATION

212 Mr. Chairman and Members of the Committee:

212 I am Franklin H. Mohney, President of the Pennsylvania Coal Mining Association, an association of independent surface mining operators located in and mining coal in Pennsylvania. Appearing with me today is Steven L. Friedman, Counsel, Pennsylvania Coal Mining Association. Today we will present our initial analysis of the September 7th proposed regulations. We will submit detailed amendments for your consideration by October 7, 1977, and look forward to timely meeting with you to review these amendments to conform these proposed regulations to our proven and acclaimed Pennsylvania reclamation program.

212 Today when there is an increasing consensus for energy independence, Pennsylvania's surface mining operators are seeking to increase production and to tap our extensive surface mining coal reserves in the face of increased regulatory costs. Surface mining operators confront not only environmental and reclamation regulation, but a labyrinth of federal and state water quality laws, the Coal Mine Health and Safety Act standards, and most significantly rapidly escalating costs of coverage for liability under the Federal and State Black Lung Acts.

213 Pennsylvania operators have mined coal under the strictest environmental and reclamation standards of any state in the nation. Pennsylvania, as you are aware, has had a surface mining law since 1945, which was amended as recently as 1973 and eliminated vertical highwalls in 1963. We also require preservation and replacement of topsoil, and the determination of bond amount based on the "cost of reclamation." Other provisions of Pennsylvania's water quality laws require minimal spoil on the downslopes to control erosion and siltation.

213 Most importantly, Pennsylvania's regulatory scheme admittedly works. The approximately 40,000 acres mined, backfilled, and reclaimed pursuant to current Pennsylvania law, end up more stable and productive than prior to any mining. Significantly, Pennsylvania law specifically authorizes the re-mining of the areas previously mined under environmentally lax standards with exposed highwalls and spoil piles. Once re-mined under current Pennsylvania law, these areas are reclaimed into stable, attractive, and productive areas. The Pennsylvania regulatory system not only preserves and enhances the quality of virgin land, mined for the first time, but restores and reclaims thousands of acres of land previously mined and degraded under environmentally lax standards.

213 The Pennsylvania statutory and regulatory system, developed through decades of regulatory experience, has repeatedly proved itself. The Surface Control and Reclamation Act of 1977 ("Act") has been proclaimed by Congress as a vehicle to bring the rest of the nation up to Pennsylvania's standards. Unfortunately, as presently drafted, the Interior Department's proposed regulations are at best an inflexible effort to codify uniform, detailed regulations for different coal fields with strikingly different climates, terrain, and hydrology. Instead of establishing workable, environmental protection and reclamation standards for the nation's coal fields, these proposed regulations unnecessarily increase the cost of coal production by at least 20% in Pennsylvania. However, it is clear that the proposed regulations must be amended to preserve Pennsylvania's effective regulatory program. Indeed, without substantial amendments these approved regulations will ruin Pennsylvania's program.

214 We presented detailed analyses of both HR. 2 and S. 7 before Congressional committees, and have effective reclamation experience and our Pennsylvania program has been acknowledged as the nation's best program.

214 The proposed regulations are the key to success or failure of the federal strip mining scheme. The economic impact of these regulations, if misdrafted or contrary to the legislative mandate of HR. 2, is tremendous. These burdensome, unnecessary, and unclear regulations as drafted will add millions of dollars to the cost of coal production and will severely delay coal production with significant adverse impact on the national economy. We are

respectfully putting the Department of the Interior on notice that we strongly disagree with its clearly erroneous and unfounded determination that these regulations do not require submission of an economic impact statement under Executive Order 11821.

215 The Congressional sponsors of the Act repeatedly declared their desire to preserve and maintain Pennsylvania's successful and effective reclamation program.

215 Pennsylvania's Governor Shapp repeatedly called for a reduction in "bureaucratic" and "duplicate" requirements which only add unnecessary cost to producing coal. The Governor also noted that 50% of Pennsylvania's 800 surface mine operators mine less than 50,000 tons a year and only 47 operators mine over 200,000 tons.

215 On February 8, 1977, Governor Shapp told the House Interior and Insular Affairs Committee that:

215 "We in Pennsylvania can surface mine coal cleanly, efficiently, and relatively inexpensively with proper environmental safeguards. We have been doing this for 13 years in Pennsylvania. In Pennsylvania we have found the cost of backfilling of surface coal mine operators may add anywhere from 35 cents to 50 cents a ton to the cost of producing coal . . . This has been our experience, though Pennsylvania's strip mining law is the nation's strongest and our present regulations and enforcement are probably more stringent than will be the case for many other coal states under the proposed federal law."

216 Secretary of the Interior Andrus also testified on February 8, 1977 before the House Subcommittee on Energy and Environment that:

216 "I want to see a bill which will make for an effective and efficient program without an undue burden on the economy. More specifically the following principles should govern:

216 No arbitrary imposed losses of coal production should result from the program.

216 No substantial consumer impacts should result.

216 No unreasonable administrative burdensome and governmental costs should be imposed."

216 However, the proposed regulations unnecessarily violate the express mandate as well as the spirit and intent of the Act. They must be corrected to

conform to Pennsylvania's present, admittedly successful regulatory process. Our preliminary comments today are therefor directed at an overview of major flaws in the proposed regulations. They will be supplemented by more definite comments before October 7, 1977. Today we address preliminarily:

216 1. Those clear instances where the regulations have exceeded or conflicted with the express language or intent of Congress;

216 2. Those instances where the regulations have ignored the reality and economics of surface mining in Pennsylvania by imposing burdensome, costly, irrational and environmentally unnecessary requirements and procedures.

217 I. EXCEEDING LEGISLATIVE AUTHORITY

217 1. Section 715.17(c) (3)

217 This section proposes an unrealistic "zero-degradation" standard for contribution of suspended solids from diversions or embankments. Yet, this "zero-degradation" standard, originally contained in an earlier version of Section 515(b) (10) (B) (ii) of HR. 2, was expressly rejected by Congress and replaced by a standard which incorporates existing federal and state law and requires use of best available technology. As presently written, Section 715.17(c) (3) clearly exceeds the limits of the Act, and is invalid and void.

217 2. Section 710.12

217 Congressional supporters of this legislation repeatedly assured members of Congress of the Act's inherent reasonability by pointing to the special exemption for coal operators under 100,000 tons from compliance with the initial interim environmental protection and performance standards until January 1, 1979. This exemption clearly operates as a matter of law. The Act clearly provides in Section 502(c) that any operator "whose total annual productions does not exceed 100,000 tons shall not be subject to the provisions of this subsection until . . . January 1, 1979." This determination is clearly ministerial in nature with no legislative authority for the Secretary to establish public notice and hearing procedures.

218 However, the proposed regulations (see @ 710.12) without any support in the Act, establish totally unnecessary, time consuming and burdensome public notice and hearing procedures.

218 II. BURDENSOME AND UNNECESSARY REQUIREMENTS

218 The proposed regulations not only exceed and conflict with the Act, as previously discussed, but also impose many unnecessarily burdensome, costly, and environmentally unsound requirements that serve no legitimate legislative

purposes. These requirements will cripple the effectiveness of Pennsylvania's present program.

218 1. Post Mining Uses and Comments of Local Zoning Bodies

218 During the Act's legislative consideration, Congress clearly decided that HR. 2 was not a national land use planning bill. However, Section 715.13(b) of the proposed regulations, concerning post-mining land uses, inflexibly requires consideration of a pre-mining use of the land that occurred before the current use of the land, if the pre-mining uses of the land were changed within five years of the beginning of mining. This unrealistic reference to the "historic" use of the land is of absolutely no utility or value for appropriate consideration by the regulatory authority concerning a permit application. Instead, it improperly involves the regulatory authority in land use planning roles, which are neither authorized nor serve the legitimate legislative purposes of HR. 2.

219 In the same vein, proposed regulation 715.13(d)(1)-(2) requires that the regulatory authority secure "[a] written statement of the views of the authorities with statutory responsibilities for land use policies." This is a superfluous request which will indefinitely delay the coal mining process. This proposed regulation seeks to improperly move the regulatory authority into an area of broad land use planning. This is not legislatively authorized nor does it serve any legitimate purposes of surface mining regulation. Pennsylvania's Department of Environmental Resources, not amorphous land use authorities, possesses the technical expertise to pass on mine permit applications.

219 2. Blasting

219 The proposed blasting regulations in Section 715.19 require an unreasonable and impossible submission of information by the coal operator.

219 The proposed regulation requires the coal operator to make impossible predictions about blasting schedules as well as to make impossible predictions about the precise effect of every single charge. For example, work stoppages, thunder-storms, late delivery trucks, late arrival of blasting materials, all, almost daily, require changes in blasting schedules. Additionally, the proposed regulations require a costly pre-blast survey (involving many different and costly professional skills) which adds tremendous cost to the coal production process without serving any legitimate purposes.

220 For example, the preblasting survey required by Section 715.19(b)(3)

calls for a report that "shall specify the recommended weights of individual charges that would prevent damage to the structures examined in the area and state, if applicable, the effects repeated blasting will have on structural fatigue." This very language would require the costly and unnecessary efforts of a civil engineer, a structural engineer and an architect to attempt to make the unrealistic predictions and structural analyses called for in this proposed regulation.

220 Long standing, present Pennsylvania practice, which has effectively protected the public, includes in a blasting survey the results of a joint inspection of the residence by the operator and the resident. This joint inspection records existing conditions by photographs and in writing. The proposed report also requires an absurd and impossible analysis of "preblasting condition of wells and other water systems. . . ." It is physically impossible to secure this data. Usually, the only available data in most cases is the physical data on the drilling of the well-diameter, casing, etc. An inflexible hydrological analysis of all wells before blasting would unnecessarily cost thousands of dollars and in many cases be impossible to achieve.

221 The proposed regulation completely ignores the required expertise which is required of anybody licensed to blast under state law. Present Pennsylvania legal requirements are sufficient to insure that the planned blasting must be designed to prevent structural damage and damage to buildings and nearby wells.

221 Section 715.19(c) imposes unreasonable and impossible demands on public notice of blasting schedules. The newspaper notice which must precede blasting by at least 10 days, requires such impossible predictions as the "[proposed] weight and type of the explosives to be detonated at one time." It is impossible to predict, in other than a short time, the advance size and weights of charges. The blast holes cannot be drilled until shortly before blasting and the weight of the charge is determined by the size of the hole and the nature of the overburden. Not only is it impossible to plan the weight and type of charge 10 days in advance, but it is clear that publication of such information would not aid the general public.

221 Section 715.19(e) (1) (vi) unrealistically requires 2.6 feet of stemming for every inch of borehole diameter. The uniformly widespread practice long established in the industry is stemming sufficient enough to prevent air blast but in no event to exceed 1.3 feet of stemming. This proposed unrealistic 2.6 feet requirement adds erroneous and unnecessary expense and time to the blasting process.

222 Similarly, Section 715.19(a) (1) (vii) (A)-(C), unrealistically and

without any support in the Act proposes blasting distance limitations of 1,000 feet from a residence, school, church, or hospital, etc., 500 feet from various facilities and 500 feet from an underground mine. These distances far exceed those, which our Pennsylvania experience have found necessary. We strongly recommend revising subsection (vii) (A) to "300 feet" of "any building used as a residence, school, church, hospital, etc." Subsection (vii) (B) must be amended to prevent blasting within any right of way area of facilities such as municipal water storage facilities, fluid transmission pipe lines, water and sewage lines, etc. These facilities are surrounded by a minimum 20 feet of a right of way. Furthermore, we recommend a minimum blasting distance of 125 feet from any oil or gas well facility. These practices again have been long followed in Pennsylvania without any adverse public or private harm.

222 Finally, the prohibition of mining within 500 feet of an underground mine in subsection (vii) (C) will severely and unreasonably restrict coal production in Pennsylvania. There are many coal rich areas in western Pennsylvania literally dotted with inactive underground mines. Approved surface mining operations have been conducted within a distance of less than 500 feet of these inactive mines without any adverse environmental harm or injury. We would therefor recommend that subsection (vii) (C) be changed to read "within 500 feet of an active underground mine."

222 Finally, upon examination of the formula for the weight of explosives set forth in subsection (e) (2) (v), we note that the formula is incorrectly stated and explained. "W" should be expressed in terms of "the weight of explosives in pounds per delay of eight or more milli-seconds." "D" should be expressed in terms of "the distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building not owned by the operator." The first comment, of course, corrects a mathematical error in the formula. The second comment recognizes that many Pennsylvania operators own the land they mine, and clearly have the right to determine how they are going to perform blasting.

222 3. Section 715.17-Protection of the Hydrologic System

222 This section unrealistically grafts upon Pennsylvania coal production conditions which at best are only relevant to coal production west of the 100th meridian west longitude.

222 Section 715.17(a) (1) contains a minimum standard for being subjected

to the effluent standards of a "25-year 24-hour frequency event." This standard is completely unreasonable and disregards rainfall conditions in Pennsylvania and the Appalachian states, as well as years of Pennsylvania coal mining experience. While this standard may be appropriate for the western states where rainfall is scarce, far below 26 inches per year, it is completely inappropriate for the Appalachian and Eastern region. Based on the Pennsylvania experience, the appropriate standard is a "10-year 24-hour frequency event."

224 The effluent limitations in Section 715.17(a) are in conflict with the recently promulgated Coal Mining Point Source Category Regulations of the Environmental Protection Agency ("EPA"), published in the Federal Register on April 26, 1977. The Point Source Regulations only require the "[average] of daily values for 30 consecutive days." The proposed Regulations, Section 715.17(a), unrealistically requires "[average] daily values for 30 consecutive discharge days" thus imposing artificially high standards not called for by the Act, and are in direct conflict with EPA's already existing Point Source Regulations. We suggest that @ 715.17(a) be made consistent with the EPA standard.

224 Section 715.17(b) sets up an extremely onerous and costly surface monitoring requirements. As drafted, the regulations unnecessarily require either an extremely expensive automatic sampling device to cover all discharge points at a cost of at least \$2 0,000 per operation, or the use of a laboratory for daily samples that may cost in excess of \$2 2,000 per operation per year. Under the National Pollution Discharge System and regulations promulgated by EPA, samples are only required once a month and reports must only be filed quarterly. Again, the proposed regulation must be amended consistent with the EPA standards.

225 Section 715.17(e) requires the costly construction of diversion areas and settlement ponds that must serve both treatment and settlement functions and must be maintained during the entire mining operation whether or not the immediately adjacent areas are actually being mined. The regulations improperly lump together and confuse treatment ponds and settlement or sedimentation control ponds.

225 Furthermore, the settling ponds, in order to satisfy the effluent standards and frequency intervals, would have to be inordinately large in size, in relation to the mining area, adding great expense to the production process and reducing the potential mining area and coal production without any justification. Subsection (e) must be eliminated. Attached hereto as Exhibit "A" is the Pennsylvania formula for pond construction and pond size that has

been proven effective.

225 Furthermore, Section 715.17(e) (8) requires the construction of every pond to be inspected and certified by a registered professional engineer. This is unnecessary and will add tremendous costs to the coal production process for any ponds less than 1 acre and a depth of less than 15 feet.

226 Section 715.17(h) addresses the "recharge capacity of reclaimed lands." Again, this is clearly a western concern, where rainfall is scarce and far below 26 inches a year. In the Eastern Appalachian regions such as Pennsylvania, with an annual rainfall of approximately 40 inches, there is never any question about re-establishing re-charge capacity. Likewise, in Section 715.17(i), the proposed regulation ignores the impossibility of restoring the ground water system to effect premining conditions with the same density and permeability of the soils.

226 While the proposed regulation may be necessary in the western dry region, in light of its flat terrain and scarcity of ground water, it clearly is unnecessary and impossible to accomplish in the east. We therefore recommend that both subsections (h) and (i) either be stricken or made expressly applicable west of the 100th meridian west longitude.

226 Section 715.17(k) sets up unnecessarily costly and environmentally unsound groundwater monitoring standards. The requirement of monitoring existing wells or new wells drilled for monitoring purposes (where existing wells are inadequate to measure long-term changes) is environmentally unsound and creates dangerous and unnecessary risks of groundwater contamination of different enclosed groundwater zones. 227 In addition, well monitoring can be very inaccurate, since well locations may reveal only very local unrepresentative fractures and conditions. Furthermore, well monitoring during the mining process has been rejected in Pennsylvania. The successful Pennsylvania experience has found monitoring of discharge points and receiving streams to be a more accurate barometer of groundwater conditions. Again, the well monitoring standards may be appropriate and necessary for western arid mining conditions, but certainly not for eastern Appalachian mining. These standards should be made applicable to the western region or made discretionary with the regulatory authority.

226 4. Backfilling

226 Section 715.14 is contrary to the clearly expressed legislative intent to liberally construe the requirement to "restore the original approximate contour." Section 715.14(a) requires the surveying, measuring, and recording of

ten (10) slopes or more prior to mining for purposes of restoring the original approximate contour. These cross-sections will add tremendous and unnecessary expense to the permit process. For a typical Pennsylvania operation, it will conservatively cost \$3 00 a day for 5 days to conduct slope measurements, plus at least \$1 ,000 to plot the results. Since the procedure must be done both before and after mining, this costs a minimum of \$8 ,000 an operation regardless of size. Pennsylvania's experience has shown that a topographical map or aerial photography combined with visual inspection insures a reasonably accurate and environmentally sound restoration of approximate original contours. Pennsylvania initially required a similar analysis of 4 or 5 slopes per operation, and abandoned this requirement as unnecessary and costly. Section 715.14(a) as proposed is completely contrary to the clearly expressed legislative intent to liberally construe this requirement. Indeed, the Act contains expressed exceptions to restoring original approximate contour for mountaintop removal and steep slope mining.

226 5. Civil Penalties

226 Section 723.12 sets up an elaborate and unreasonable point system for assessing civil penalties based on present and prior violations. However, the elaborate point system is grossly unfair since it is made implicitly applicable to coal mine operators, and not to separate operations. As a result, a large operator with 50 operations active in one year may have only 25 violations at separate operations (no more than one or two per operation) while a smaller operator may have only one operation with 10 violations. Yet, under the point system, the larger operator whose numerous operations have been superior in terms of compliance will be punished because of size and number of operations. Section 723.12 must be amended to eliminate this point system.

229 6. Need for Variance Procedures

229 The proposed regulations seek to achieve the impossible. They inflexibly impose a detailed uniform set of regulations concerning numerous surface mining operations that are, in fact, conducted in different coal fields throughout the country with strikingly different climates, terrain, geography, hydrology and other factors. It is simply unworkable to suggest that a uniform set of regulations can be promulgated to respond to the strikingly different logistical operational and environmental problems that arise in these different coal mining regions.

229 This creates a compelling need for a variance procedure to insure that

the different situations can be fairly and effectively responded to. Variance procedures have been included in the Federal Water Pollution Control Act of 1972, 33 U.S.C. @ 1311(c) as well as the Clean Air Act Amendments of 1970, 42 U.S.C. @ 1857(c)-(5) (a) (3). Without such variance procedures, the impossible mandate of these regulations - uniform minimum national standards - will create gross injustices, economic hardship, unnecessary curtailment of coal production without serving the legislative purposes of the Act or legitimate environmental concerns.

230 CONCLUSION

230 Our testimony today has only outlined some of our concerns. We will offer these and other specific amendments before October 7th, and look forward to meeting with you as soon as possible.

230 Our Pennsylvania regulatory system works, and we respectfully request you to amend your regulations consistent therewith to prevent unnecessary interference with Pennsylvania's vital coal production.

230 Thank you.

231 COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF MINES AND MINERAL INDUSTRIES

231 Enclosed you will find a detailed description of the method used by this Department to determine the amount of run-off from any given strip mine area. The volume found, in cubic feet, is the minimum volume of each settling basin.

231 The data sheets enclosed are to be completed and three (3) copies submitted with the settling basin plans.

231 The minimum slope ratio for the sides of the settling basins will be 1:1. The basins shall be rectangular in design, with a minimum width and length ratio of 2:3.

231 The location of the neutralizing device shall be ahead of the two (2) settling basins.

231 Division, Mine Drainage Control

231 "EXHIBIT A"

232 Design Basis for Settling Basins

232 Primary Basin

$$232 V = (A I C) + (A I C/3)$$

232 V = Volume in cubic feet

232 A = Area in square feet

232 I = Rainfall (inches) per 24 hours x detention time (6 hours)

232 C = Constant = % of rainfall not absorbed by soils (runoff)

232 A = 1. Maximum area of open pit at any one time (1500)

232 2. Maximum area between the highwall and the surface water diversion ditch

232 3. Maximum area at that portion of stripped area that is backfilled and drains to strip cut

232 I = Four inch (4") rainfall over a twenty-four (24) hour period times (X) the detention time in days or parts of a day (0.25 of a day minimum detention time)

232 C = Refers to A in that each of the areas are multiplied by the following factors:

232 1. Open pit - 0.50 -

232 2. Area above highwall - 0.30 -

232 3. Backfilled area - 0.25 -

232 Volume of each basin shall be increased by one-third (1/3) to allow for sludge storage

232 Secondary Basin

$$232 V = (A I C) + (A I C/5)$$

232 Same as Primary Basin except that volume of Secondary Basin shall be increased by one-fifth (1/5) of its total volume for sludge storage.

233 [SEE ILLUSTRATION IN ORIGINAL]

234 [SEE ILLUSTRATION IN ORIGINAL.]

235 DATA TO BE SUBMITTED FOR SETTLING BASIN CAPACITY

235 1. Maximum length of open cut

235 2. Maximum width of cut

235 3. Maximum area between the highwall and surface water diversion ditch

235 4. Maximum area of that portion of stripped area that will drain to strip cut

236 STATEMENT OF KARL J. ENGLUND, DIRECTOR, CITIZENS COAL PROJECT, ENVIRONMENTAL POLICY INSTITUTE; AND L. THOMAS GALLOWAY, COUNSEL, ENVIRONMENTAL POLICY INSTITUTE, JANUARY 20, 1978

236 I am Karl England, Director of the Environmental Policy Institute's Citizen Coal Project, 317 Pennsylvania Avenue, S.E., Washington, D.C. The Environmental Policy Institute is an independent non-profit research and educational organization specializing in analytical work and distribution of information relating to the environmental, economic and social impacts of energy, water resources and land use management policies. Through the Citizens Coal Project, the Institute is closely monitoring the implementation process of Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977. With me is our counsel, L. Thomas Galloway, an attorney with the Center for Law and Social Policy in Washington, D.C.

236 We are happy to have been invited here today to participate in the first of what we hope will be a number of hearings, held periodically, to monitor the administration and enforcement of the Surface Mine Act. We believe that strong Congressional oversight will be necessary if the Surface Mine Act is to achieve what we and this Committee desire - responsible surface mining of coal and the effective reclamation of disturbed lands.

236 Since the Act was passed and signed by President Carter on August 3, 1977, numerous events and issues have arisen which merit this Committee's attention. The most important of course was the proposal and promulgation of the interim regulations. In this period, the President nominated and the Senate confirmed Mr. Walter Heine as Director of the Office of Surface Mining. We believe Mr. Heine to be eminently suited to head this important office.

237 EPI participated in the rulemaking process, and while we have certain disagreements with the regulations as promulgated, we wish to commend the Interior Department on the manner in which the rulemaking was conducted. The Department's process was characterized by openness and equal access for all interested parties. Industry, states, trade associations and citizens groups had a full and fair opportunity to discuss their views, and present their ideas, in both formal and informal sessions, prior to the proposal of the regulations. Early drafts of the regulations (prior to the formal proposal of regulations)

were circulated to industry, states, trade associations and citizens groups, including EPI. In the formal rulemaking, the Department considered the voluminous comments submitted by the various interested parties. In this process of deliberation, the Department demonstrated a refreshing willingness to admit error.

237 Whatever may be the disagreement over particular substantive points, there can be little question that the Department conducted its first major action under this Act, the promulgation of interim regulations, in an open and fair manner.

237 As noted, EPI participated formally in the rulemaking process and has closely monitored other actions of the new office since the passage of the Act. We believe it too early to draw definitive judgments about how well the Act will work, how adequate the enforcement effort will be, whether all states will produce acceptable plans, and so forth. But we have certain views which we have gleaned from our involvement in the beginning stages of the implementation of the Act. We would like to share these views with this Committee.

238 Perhaps our greatest concern thus far is not with substantive provisions of the Act or regulations or with the performance of the Department of the Interior, but with the attitude and actions of major parts of the industry and certain coal producing states. Much of the industry has approached implementation of the Act in the same manner that they dealt with it while it was before Congress - they are fighting it tooth and nail. Rather than accept the reality that the Act exists and work with, rather than against, the Department in promulgating the necessary regulations, they are, by and large, fulminating against excessive regulations, predicting doom for certain portions of the industry, forecasting higher costs to the consumer, demanding delays in the implementation of the Act, and raising the spectre of massive litigation. They have severely criticized the personnel at Interior, characterizing them as ignorant, naive, or, that most pejorative of terms, environmentalists.

239 We do not deny the industry and states the right to object, nor do we come before this Committee to criticize the entire coal industry and all coal-producing states. Rather, we criticize those segments of the industry and those states that have offered, in public testimony before this Committee and before the Department of the Interior, outlandish suggestions for regulation, delay and non-enforcement. We criticize those who have not made a good faith effort to provide their technical expertise, but who continue in their fight to weaken the law and delay its implementation.

239 In the rulemaking on the interim program, segments of the industry took a number of unreasonable positions.

239 The NCA/AMC Joint Committee on Surface Mining Regulations asked for elimination of specific standards for the size of terraces; elimination of specific standards for burial of toxic materials; and no inspections by a qualified professional specialist of valley fills. There were public comments received by OSM demanding that operators be allowed to leave highwalls; some operators wanted to redefine the statutory definition of steep slopes, and operators wanted to be exempted from all standards if they re-affected mined areas. A portion of the industry has already filed suit in federal court to enjoin enforcement. This suit in many ways characterizes the industry approach to the Act and its implementation. The suit alleges that at least seven provisions of the Act violate the Constitution. The suit challenges at least 35 parts of the regulations.

240 Certain portions of the suit are rather silly; they challenge the definition of imminent danger in the regulations as outside the power of the Secretary, but do not seem to realize the definition in the regulations comes word for word from the Act. The operators also argue that the Secretary cannot delegate his power to impose affirmative obligations on operators to abate dangers to his authorized representative. Secretary Andrus is going to be a busy man, shuttling to and fro imposing affirmative obligations on the nation's almost 3,000 surface mines.

240 Industry and the states are now bringing a variety of complaints to this Committee:

240 (1) Delay In Implementing The Act

240 Industry and states have come before this Committee asking for a delay in implementation of the interim standards of the Act. We strongly believe this request should be rejected.

240 As this Committee knows, the Act has built into it, provisions for gradual implementation of the Act. New mines are not required to comply until six months after the date of enactment; existing mines have an additional three months to bring their operations into compliance; and small operators have until January 1, 1979 to meet the very limited provisions that make up the interim program. Congress explicitly considered the length of time for operator compliance, and developed this time table. States have eighteen months to develop their permanent State program, unless action by the legislature is needed, in which case they have an additional six months. The Secretary has six months to approve or disapprove a State program. If he rejects the program, states have an additional two months to resubmit their program. Upon

resubmittal, the Secretary has another two months to approve or disapprove the program. Thus, it could be a total of 42 months, or 3 and 1/2 years after enactment, before a permanent program is initiated in any given State.

241 Despite the lengthy phase-in period, segments of the industry and certain states have asked this Committee for yet another delay. Yesterday, the State of Kentucky called for a "short term delay"; Maryland asked for a four month delay; Ben Lusk, of the Mining and Reclamation Council of America, asked for a six month delay; NICOA asked for a nine month to one year delay. In asking for a delay, these groups cited two major reasons for postponement of the February 4 and May 4 implementation dates:

242 1. Physical inability to comply with the regulations by their effective dates because of such matters as strikes, bad weather, delay in promulgation of the interim regulations, and the unavailability of technical assistance to help the industry come into compliance; and,

242 2. Inability of the Office of Surface Mining to adequately enforce the interim regulations because of lack of personnel and lack of a congressionally approved budget.

242 Delay of February 4 Deadline For New Mines

242 Let us start with the request for delay of the February 4 deadline. The Act requires new mines to comply with the interim regulations by February 4, 1978. Anyone opening a new mine after February 4, 1978 has known since August 4 that his operation would have to meet the limited requirements of the interim program on February 4. Such prospective operators were on notice that interim regulations would be promulgated and would go into effect on February 4. These prospective operators should have planned on this inevitable eventuality.

242 It is true that on August 4 the prospective operators did not know the particulars of the interim program. But they knew enough to plan intelligently so that they could meet the February 4 deadline.

243 Moreover, to give new mines a three month delay does not make sense. It does not help them and it will create confusion and compound the problems of compliance ninety days, or whatever, down the road. There is no rational reason why an operator opening a mine on February 5 would want to construct haul roads, sediment ponds, valley fills or whatever in a manner that would violate the standards with which he must comply in 90 days. Why would he build a settling pond on February 5 that he would have to rebuild on May 5.

243 There is only one reason we can see why he would do it, and that reason is completely unjustified on its face. Giving a new operator a three month delay would actually give him a six month delay. Let me explain: Let's say the interim program is delayed for 90 days for both new and existing mines.

Thus, new mines would have to comply on May 4 and existing mines on August 4. However, this change would mean that a new mine under the current language of the Act would become an existing mine under the extension. Thus, an operator who opens a mine in mid-February would not have to comply with the interim program until August 4 - a six month delay.

243 Thus, granting a delay to a new mine makes no sense; moreover, what appears to be a 90 day delay will in actuality amount up to a six month delay.

244 That leaves the second argument for exemption of new mines: the lack of an O.S.M. presence in the early days of February caused by no budget and a resulting lack in staff and field personnel.

244 The lack of a fully operational O.S.M. staff presents two major problems: (a) inspection, and (b) technical assistance.

244 As far as inspection is concerned, the Act assumes that operators will make a good faith attempt to comply, with or without the existence of an inspector force. As Mr. Heine has said, he sees "a basic obligation of operators to comply with the Act." We agree. Even at projected full staff for FY 1978, inspection will be an infrequent occurrence (see infra), with an average inspector responsible for 35 separate surface mines.

244 As far as technical assistance is concerned, the operator can still go to his state regulatory authority. Moreover, O.S.M. will be increasing its staff and field personnel in February and March.

244 Delay Of May 4 Deadline For Existing Mines

244 Industry and the states have also asked for a delay in the implementation of the interim program for existing mines. The Act currently requires that all existing operations comply on May 4, 1978. Their arguments center on the same two points:

245 1. Physical inability to comply because of various factors.

245 2. Lack of O.S.M. presence.

245 The argument that it is physically impossible to comply with the regulations by May 4, 1978, is of little or no substance. They argue that weather and the strike have prevented them from working on their mines in order to bring them into compliance by May 4. We assume from this that their concerns

are with pre-existing or non-conforming structures, such as settling ponds and haul roads now in use which do not comply with the O.S.M. regulations but which must comply by May 4, 1978. However, there is already in the regulations a specific exemption for these structures until November 4, 1978. Section 710.11(d) (2) of the regulations provides a mechanism whereby operators can get this six-month exemption for all pre-existing structures if they demonstrate that it is physically impossible for them to bring these structures into compliance by May 4. If there is to be delay bringing non-conforming structures into compliance because of impossibility, the way to do it is on a case-by-case basis as this regulation requires. There is every reason to require an operator to show that he has made a good faith attempt to bring his facility into compliance. There is no reason to allow those operators who can comply to be exempted; which is, of course, what an across-the-board delay would do.

246 In fact, if one looks carefully, the request for delay makes no sense for non-conforming structures. Most operators and states seem willing to accept a four month delay in implementation. Yet regulation 710.11(d) (2) allows a six month delay if they can demonstrate its necessity. What we suspect is that the operators will attempt to piggy-back the 120 day delay onto the six month delay already in the regulations. Thus, the grand total is a ten month delay.

246 We understand there are complaints with the pre-existing structure regulations as is now contained in the regulations. Frankly, we argued against its inclusion in the regulations. However, this is a matter for the Interior Department. To the extent that there is authority for the exemption in the first place, the Interior Department, after an adequate showing, could allow more time for application and/or completion. Interior can do this, after working with this problem day after day, in a manner that would limit this exemption to those who deserve it.

246 The states' argument for delay differs from the industry's only in that it involves an extra administrative burden for them. Yet the states requested and obtained from this Committee the lead role in the regulation of surface mining. The states have known about the implementation dates, and the corresponding administrative tasks, since, at the very least, August 1977. Moreover, the states took an active role in the formulation of the interim regulations, and should be intimately familiar with their content.

247 We would like to make the final point concerning the request for delay. It is important for this Committee to distinguish the problems the states and operators have with certain substantive regulations, i.e., sedimentation ponds, and the supposed need for delay.

247 No four month delay will solve the states' and industry's problems

with sedimentation ponds. That is something that the O.S.M., industry, the states and citizen organizations must settle. It is not a problem that is solved or even addressed by the request for a four month delay.

247 (2) Alluvial Valley Floor/Prime Farmland

247 The industry has also complained bitterly against the inclusion of the provisions designed to protect alluvial valley floors in the West and prime farmlands into the interim program. Again, we find their complaints completely unfounded. Both provisions of the Act, Section 510(b)(5) for valley floors and Section 519(d) for prime farmlands, give explicit instructions to the Secretary of the Interior to implement these sections upon the date of enactment.

248 For alluvial valley floors, Section 510(b)(5) of the Act provides for the limited prohibition of mining on valley floors and then "grandfathers" "those surface coal mining operations which in the year preceding the enactment of the Act (I) produced coal in commercial quantities, and were located within or adjacent to alluvial valley floors or (II) had obtained specific permit approval by the State regulatory authority to conduct surface coal mining operations within said alluvial valley floors." The statute could not be more specific. Only those mines either producing coal or permitted by a State as of the date of enactment, August 3, 1977, are grandfathered. Any mine opening after the date of enactment must comply with the provisions of Section 510(b)(5). In their regulations, the Department has recognized this and has essentially repeated the language of the Act.

248 For prime farmlands, the language of the statute is again very clear. Section 510(d) states that any mine operator on prime farmlands must demonstrate that he "has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland . . ." The grandfather provision for prime farmlands reads: "Nothing in this subsection shall apply to any permit issued prior to the date of enactment of this Act, or to any revision of renewals thereof or to any existing surface mining operations for which a permit was issued prior to the date of enactment of this Act." Again, only those mines operating or permitted on the date of enactment are to be grandfathered. All mines opening after August 3, 1977 must comply.

249 (3) Surface Effects Of Underground Mining

249 The industry complaints against the inclusion of the surface effects of underground coal mining are also unsupported by the language of the Act.

Section 502 of the Act mandates that the interim program apply to "surface coal mining operations." Section 701 of the Act defines that term to include the surface effects of underground mining "subject to the requirements of Section 516." Section 516 mandates that the Secretary "accommodate the distinct difference between surface and underground coal mining. The Secretary shall promulgate such modifications in accordance with the rulemaking procedure established in Section 501 of this Act."

249 This is exactly what the Department of the Interior has done. While several of the organizations with whom I work have complained that the requirements for underground mines do not go far enough, there is certainly ample authority for the Secretary to issue interim regulations for the surface effects of underground mines.

250 (4) Enforcement

250 The industry has attacked virtually all the enforcement provisions in the interim regulations. Not surprisingly, there is a common thread to their objections. They believe the enforcement provisions should be weakened. It appears that both large and small operators are four-square for mild and friendly enforcement. They believe the fines will be too high; they believe the closure provisions are too tough; they believe the citizen rights regulations are too broad, and give the citizen too much power. The list is practically endless.

250 The industry advanced many arguments against the enforcement part of the regulations in the course of the Department's rulemaking process. The objections are without merit. The industry has expended considerable effort in attacking the concept of "significant, imminent, environmental harm." They believe the definition set out in the regulations is too broad. Such is not the case. The provision tracks the legislative history of section 521(a)(2) of the Act and establishes workable guidelines for those who must comply with or administer the Act. It establishes a clear three step approach to determine whether to issue the cessation order. The industry is concerned because a cessation order may be issued when the harm is not capable of being "immediately reparable." The President of Carter Oil wanted the harm to be "permanent" before a cessation order could be issued. The AMC/NCA Committee took a similar position, arguing that the harm should be irreparable before the Order could be issued. Industry did not do its homework. Congress considered the irreparability argument and wisely rejected it. The Senate Report clearly states: "When determining a significant imminent environmental harm, the fact that the hazard to the environment is physically capable of being repaired should not preclude a cessation order." S.Rep.No. 95-128 at 91.

251 Industry also attacked the civil penalty program set up by @ 518 and Part 723 of the regulations. Industry is almost unanimous in claiming the penalties would be far too high. But is this true? Assume an operator with 3 past violations violates a requirement of the Act. Assume that the violation was of such a nature that harm from the violation was likely to occur and that the damage would extend outside the permit area. Assume further that the violation was caused by the negligence of the operator. The fine would be approximately \$6 00. Surely this is not an excessive or unreasonable fine for such a violation.

251 It is true that the fines under the Strip Mine Act will be higher than has been the case in the past under the 1969 Mine Safety Act. But the level of mine safety fines - \$80- \$1 00 for very serious violations - has been almost universally criticized by both Houses of Congress, by GAO, in the press and in internal Interior Department studies. With the new 1977 mine safety Amendments, mine safety fines will rise to a point where they can achieve their goal of deterrence. The Interior Department has promulgated a rational and fair system for civil penalties for surface mine violations which is squarely based on @ 518 of the Act.

252 What does industry propose instead of the Department's system - it is almost laughable. The industry would not let OSM assess a civil penalty unless OSM found that a violation was serious, that the operator was negligent, and that the operator derived an economic benefit. Thus, even where an operator grossly violated the law and caused extensive damage, he could not be fined unless O.S.M. could prove that the operator also derived economic benefit - such a system will hardly deter violations. Even in this case, the penalty would not be mandatory.

252 The states' position on fines is not much better. For example, the State of Kentucky, speaking through its top surface mining lawyer, criticized the civil penalty procedures as too complicated. He then proposed a system of dealing with each violation on its own merits, an absolutely unworkable system assuming any significant volume of penalties.

253 To turn to some of our objections: They fall into three major areas - problems with the interim regulations, issues surrounding general implementation of the program, and Congressional-executive relationships in the implementation of the program. We will deal with each in turn. But we wish to emphasize before

turning to particular points, that we believe that the Department has made and is making a good faith effort under difficult circumstances. We hope that many of the concerns we will express will be allayed as the program develops.

253 1. Interim Regulations

253 a) Part 715.17(a)(1) states that, "Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than a 10 year, 24 hour frequency event will not be subject to the effluent limitations" of the regulations.

253 We have proposed to the Department that this exemption be for a larger rainfall event for larger mines. For example, a mine in the West with a 40 year life expectancy should be required to build its settling ponds to hold the run-off caused by a 40 year 24 hour frequency event.

253 We feel the Department should have adopted a sliding scale for the size of the rainfall event against the size of the mine, with the 10 year 24 hour frequency event the smallest one for which run-off is exempted. This would have provided much more protection in the area of large mines, while not causing an undue hardship on small operators.

254 (b) Section 715.14 requires the operator to bury toxic-forming, acid-forming and combustible material under four feet of non-toxic-forming, non-acid-forming and non-combustible materials. We had requested that this requirement be increased for Western operations where there is a serious problem of saline or alkaline materials seeping up to the surface. Current Montana strip mining regulations have a burial requirement of 8 feet based on evidence that this amount is sufficient to prevent saline seep. Unfortunately, the Department chose to adopt vague language allowing the regulatory authority to increase this amount where warranted.

254 2. General Implementation of Program

254 (a) Enforcement - We are seriously concerned with both the number of enforcement personnel who will be available in the interim program and with the adequacy of their training.

254 Both points are absolutely critical to effective implementation of the Act, yet the problem has received very little public notice. The 1978 appropriation calls for the hiring of 158 inspectors. This figure includes line and supervisory inspectors for both surface mines and the surface effects of underground mines.

254 The breakdown we have been given by O.S.M. for Fy 1978 is as follows:

255
FISCAL YEAR 1978

	Total	INSPECTORS		MINES	
		Surface	Under-ground	Surface	Under-ground
ground					
District Office					
London, Ky.					
Field Offices					
Pikesville, Ky.	6		2	4	69
161					
Prestonburg, Ky.	5		3	2	75
91					
Phelps, Ky. 3	2		1	69	40
Whitesburg, Ky.	3		1	2	21
66					
Barbourville, Ky.	8		7	1	191
51					
Harlan, Ky. 4	2		2	59	72
Hazard, Ky. 6	4		2	105	97
District Office					
Madisonville, Ky.					
Field Offices					
Madisonville, Ky.	2		2		44
20					
Beaver Dam, Ky.	2		2		44
7					
District Office					
Knoxville, Tenn.					
Field Office					
Knoxville, Tenn.	7		5	2	146
63					
District Office					
Birmingham, Ala.					
Field Office					
Birmingham, Ala.	8		7	1	212
49					
District Office					
Zanesville, Ohio					
Field Offices					
St. Clairsville, Ohio		2	2		47
9					
Cadiz, Ohio 4	4			117	10
New Lexington, Ohio	2		2		53
6					
Wellston, Ohio	2		2		53
7					
District Office					
Evansville, Ind.					
Field Office					
Vincennes, Ind.	2		2		42
2					
District Office					
Wikes-Barre, Pa.					

Field Offices				
Wilkes-Barre, Pa.	3	3		78
1				
Schuylkillhaven, Pa.	3	2	1	61
45				
Shemekin, Pa. 4	3	1	79	32
District Office				
Johnstown, Pa.				
Field Offices				
Washington, Pa.	5	4	1	107
30				
Kittenning, Pa.	4	4		125
8				
Indiana, Pa. 4	3	1	91	39
Johnstown, Pa.	5	4	1	125
50				
Clearfield, Pa.	4	4		130
6				
District Office				
Charleston, W.Va.				
Field Offices				
Morgantown, W.Va.	4	3	1	90
51				
Clarksburg, W.Va.	4	3	1	93
33				
Mt. Hope, W.Va.	5	3	2	82
88				
Montgomery, W.Va.	3	2	1	42
54				
Summersville, W.Va.	3	2	1	56
54				
Princeton, W.Va.	3	1	2	38
70				
Pineville, W.Va.	4	1	3	20
138				
Madison, W.Va.	2	1	1	30
49				
Logan, W.Va. 5	2	3	51	123
District Office				
Bristol, Va.				
Field Offices				
Norton, Va. 8	5	3	154	133
Richland, Va. 8	4	4	111	177
District Office				
Springfield, Ill.				
Field Offices				
Benton, Ill. 2	2		39	14
Hillsboro, Ill.	1	1		17
6				
District Office				
Kansas City, Mo.				
Field Office				
Kansas City, Mo.	1	1		27
2				
District Office				
Tulsa, Okla.				
Field Offices				

Tulsa, Okla.	1			17		
McAlester, Okla.		1		1		37
1						
District Office						
Denver, Col.						
Field Offices						
Denver, Col.	1		1	10		12
Craig, Col.	1		1	26		
Grand Junction, Co.	1			1	3	38
Casper, Wyom.	1		1	18		4
Billings, Mont.		1		1		17
TOTAL	158		113	45		

258 These 158 individuals will have the responsibility for insuring compliance with the Act's provisions at 3940 surface mines and 2562 underground mines (figures from O.S.M.). This averages 1 inspector for every 35 surface mines and 1 for every 56 underground mines. The situation will not improve much in Fiscal Year 1979. For Fiscal Year 1979, O.S.M. estimates that the ratio of inspectors (including supervisory inspectors) to mines will be 1 to 30 for surface mines and 1 to 50 for surface effects of underground mines.

258 We do not believe that this inspection force is anywhere close to adequate. The regulations require a complete inspection of each mine every six months. In addition, O.S.M. must respond to citizen requests for inspections, institute an inspection wherever there are two consecutive state inspection reports indicating a violation of the Act, and conduct follow-up inspections to abate notices of violations of Orders of Cessation.

258 The training of the inspectors is just as important as the number. MESA has been plagued with inconsistent inspector performance, both in terms of technical knowledge and in terms of knowledge of their enforcement powers. If inspectors are not adequately trained, enforcement will be inconsistent and often arbitrary. This justifiably outrages operators and undermines the public credibility of the program. Very high priority should be given to both the technical and legal side of inspector training.

259 (b) Alluvial Valley Floors Trading Policy

259 There is an immediate need for the Department to implement a vigorous trading policy for alluvial valley floors pursuant to Section 510(b)(5), the Wallop amendment which provides the Secretary with the authority to trade for existing leases or fee coal on valley floors. By instituting such a trading policy, the Department can take some of the pressure off these areas of greatest agricultural productivity in the Northern Plains. Certainly, the mechanics of such a trade are difficult. No two leases are exactly alike and the process

will undoubtedly entail long and difficult negotiations between the Department and the mining company holding an existing lease or the owner of fee coal. Thus, it is vitally important to get this program moving very quickly.

259 (c) Permitting Requirement

259 The requirement for permitting mines on alluvial valley floors and prime farmlands appears to be an additional problem for the interim program. These two sections, as discussed earlier, have been included rightfully in the interim program. However, without the other requirements of Section 510 of the Act, the Department is in an unusual legal position of having jurisdiction over the permitting of mines only on valley floors and prime farmlands. Hopefully, this can be worked out with the affected state regulatory authorities. Unfortunately, some of these states have already indicated their lack of desire to cooperate with the Department.

260 (d) Effective Communication

260 Finally, the Department must communicate with the citizens of the coal fields and the operators. While the Department has made a major effort to educate the operators as to the requirements of the Act and their obligations pursuant to the Act, it has done little to educate the citizens. As this Committee knows, the Act grants citizens affected by surface mining significant new rights. Given the small number of inspectors the Office of Surface Mining will have in the interim program, effective citizen monitoring of surface mining operations is critical. Yet despite the importance of the role of the citizen, very few citizens affected by mining have a complete understanding of their new rights under the Act. The Department must reach out to these people, just as it must reach out to the operators, and educate them as to the provisions of the Act.

260 3. Congressional-Executive Relations

260 Finally, there are two things over which Congress has direct control that must be addressed immediately. There has already been significant discussion on the problems caused by the lack of a budget for the Office of Surface Mining. We know that this Committee will do whatever it can to insure that Congress, in cooperation with the Department, will pass this budget as soon as possible.

261 Another concern with the budget is the lowering of the grade of the Director of the Office of Surface Mining in the budget as passed by the Conference Committee. As this Committee knows, the decision to make the Director an executive level IV was a conscious one made to signify to the Department that this is a special program for which special compensation is to be given. The action by the Conference Committee to lower this compensation to an executive level V ignores the intent of the authors of this legislation.

261 Thank you for the invitation to appear and testify before this Committee.

262 SURFACE MINING RESEARCH LIBRARY

262 BOX 5024

262 CHARLESTON, WEST VIRGINIA 25311

262 Norman Kilpatrick, Director

262 TESTIMONY AT OVERSIGHT HEARINGS ON H.R. #2, THE FEDERAL STRIP MINE LAW, BEFORE THE HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT

262 January 20, 1977

262 On February 16, 1977 I testified, at the invitation of Congressman Rahall and Congressman Udall, before this Subcommittee, in support of H.R. #2.

I was, then, pleased to see it approved by both the House and by President Carter. I believed that, as written, the law was a reasonable compromise between national energy needs and our nation's environment. I am concerned, however, that certain specific aspects of the regulations prepared to enforce this law go beyond the intent of Congress, which I believe was to require all surface coal mining to conform to the high state of the art in virtually all instances. I would add, however, that the final regulations are a vastly more realistic approach to surface coal regulation than were initial efforts by the drafting task force.

262 The parts I refer to are contained in Section 715.17, Sediment Control Measures, items #1, 2, and #9 and in Section 715.18, Dams item #8, of the Rules and Regulations printed in The Federal Register on December 13, 1977. I believe

I understand how these excesses came into being, but I feel it is not good environmentally or economically to allow them to stand as published.

262 The "sediment control measures" listed under E-1 and E-2 point to construction of large silt ponds near surface mined areas. While this may be a reasonable way to control silt in flatland areas, it is a step backward in steep

Appalachian areas. Companies such as Carbon Fuel Company and Princess Susan Coal Company in West Virginia and Mears Coal Company in Pennsylvania, to name a few, have demonstrated that surface mines can be designed so as to avoid any need for silt ponds or structures below the mined area. This is the high state of the art in Appalachia and I suggest that it is a major oversight for the regulations not to clearly offer such techniques as an alternatives to the "sedimentation ponds" requirement for the vallies and hollows of Appalachia.

262 These ponds also (E-9) must be removed in most cases. Building them, cleaning them, and removing them requires disturbance of valley areas by heavy equipment. Their very construction raises fears in the hearts of the people downstream. Needless fears, perhaps, but fears nevertheless. And I can not forget, back in 1974, standing on the bank of a well constructed sedimentation pond while a boy who had been drawn to the cool water by the hot August weather, drowned only 6 feet from me, hidden by the silt and alge in the water of the pond. Fences and "keep out" signs can never end this problem; ponds on the strip bench can.

263 I have been on and under modified block cut and haulback jobs which trap all water in the pit, haul road and small settlement ponds inside the haul road. I have seen them during heavy rains and just afterwards. No gravity drainage (thus no siltation) is allowed by some. Others, keeping barriers between haul road, pit and the downslope, still allow some gravity discharges, but only after the water has passed through small silt ponds on the bench. I have taken the director of the Sierra Club down below one such job, the day after a heavy rain in Kanawha County, West Virginia, and he agreed no silt was found either on the downslope or in the stream below. These techniques demonstrate total control over sediment; ponds in vallies do not.

263 The coal operator can afford to spend extra money leaving a barrier on the edge of his outslope, pumping or loading water out of his pit after a rain, grading his road back toward his backfill and diverting water from above his mine (if necessary), if he can save the bonding, road building and earth moving expenses created by the ponds. I believe the pond requirement was a product of a series of events that effected the thinking of the Task Force members last year; heavy floods in Central Appalachia, coal industry insistance that no stripping contributed to flooding and insistance by one West Virginia State official that all strip mining contributed to flooding. Thus, the Task Force may have overlooked the fact that West Virginia's Kanawha Valley had no flooding while flood waters from Virginia and Eastern Kentucky were wiping out Williamson, West Virginia. Flooding was encouraged in the Tug Valley by

siltation from orphan surface mines and current stripping in Virginia and Eastern Kentucky that allows spoil down the steep mountain sides. I think the Task Force did not clearly understand the extreme difference between the West Virginia "haulback" jobs and the "shoot and shove" methods allowed in the other states. Thus, they forgot that the performance standards of the new bill will end forever the kind of mining practices now going on in Kentucky and Virginia, while the bill's orphan land's reclamation fund money will allow vast improvement in existing mined lands problems in all three states.

263 Clearly, then, the extreme protection offered by the large silt pond requirement (for ponds in a watershed that is fairly large) is not needed when the high state of the art and the bill's performance standards for steep slopes are in effect. It is important for the final regulations to clearly offer operators an alternative to the watershed silt pond idea promoted by the current regs and to indicate keeping the silt on the bench during a storm is the preferred method!

263 A similar problem exists, I feel, with E-9 and 715.18 - item #8 which require all dams to be removed. A member of the Task Force announced earlier this week this was intended to prevent "another Buffalo Creek." Now the Buffalo Creek flood was caused when a small barrier of coal waste broke and hit a larger barrier of coal waste, some of which was burning, which then exploded and released a wall of water in a narrow hollow. Neither barrier was constructed with any planning and thus such a situation will never be allowed to exist under H.R. #2 and other sections of its regulations. Thus, I urge this Subcommittee to see that the rules are modified to require that large silt dams that might be constructed be permanently drained when mining is finished, but not require their removal.

264 One aspect of the proposed permanent regulations also could, I feel, use some clear showing of Congressional intent. That is Section #507-B-11 of the Act itself. This section seems to require major hydrologic studies for each permit application. Surely this makes sense for certain Western areas, and even a few Appalachian areas, where little surface mining has gone on in the past. Surely, however, the states should be allowed to waive requirements of a separate study for permits requested in watersheds with a history of surface mining. We know for example, almost exactly what hydrologic impacts mining in West

Virginia's Coal River watershed produces, and it changes really only depending on what mining technique is used. In areas with a history of information in Tennessee, Alabama, Kentucky, and Virginia, the operator may wish to show a minimized impact due to the performance standards he now must meet, but this section surely is not intended to burden small and large Appalachian operators the way mandatory studies for every permit will.

264 In support of this testimony I submit photos I have taken comparing steep slope mining in West Virginia, Eastern Kentucky, and Virginia. I also submit the study by David Brown, of Charleston, which demonstrates the enormous siltation differences between watersheds mined with "shoot and shove" techniques and those mined without spoil on the downslope. The unmined, control watershed, clearly is not greatly superior to the area mined since the 1971 West Virginia strip mine law stopped spoil placement down steep mountainsides and required backfilling and head-of-hollow fills instead. I consider this study a valid one that, unfortunately, was not available to the Task Force when it was developing its approach to siltation under H.R. #2.

264 Your consideration of these points is greatly appreciated.

265 ES 640 REPORT

265 DAVID C. BROWN

265 16 DEC. 1975

265 Grade: A+

265 PUBLIC WORKS DIRECTOR

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265 The following report is on two small watersheds located in Boone County, West Virginia. The report is a limited look at the physical and chemical effects that strip mining had on the two watersheds. The only major difference between the two watersheds is that one was mined under the 1967 Surface Mining Act and the other watershed was mined under the 1971 Surface Mining Act.

265 Brown Mining Corporation of Cambridge, Ohio was the operator which strip mined the two watersheds. The company operated as a subcontractor for Big

Fountain Coal Company of Prenter, West Virginia. I was a major stockholder in Brown Mining Corporation and supervised the operations at Prenter. I had mining operations in Prenter from 1967 to 1973.

265 The coal seam is known locally as the Upper Five Block seam. It is one of the Kittanning coal seams in the Allegheny series of the Pennsylvania period. The Upper Five Block seam is a medium quality bituminous coal with a heat value of approximately 12,000 BTU per pound. The coal is low sulfur, approximately 0.6%. The main market is the electric utilities. Most of the production was sold to Duke Power Company in North Carolina, and American Electric Power Company in West Virginia.

266 The Keith watershed was mined from November 1969 to October 1970. The total disturbed area was approximately 80 acres. From this area 229,591 tons of coal was produced. The Keith watershed is 534 acres in size.

266 The Frozen Hollow watershed was mined from June 1971 to June 1972. The total disturbed area was approximately 75 acres. From this area 193,401 tons of coal was produced. The Frozen Hollow watershed is 376 acres in size.

266 The watershed referred to as School House Hollow is an area in Logan Fork where no mining has occurred. See the 7 1/2' quadrangle map for the location. This watershed was used as a base for comparing the chemical effects of strip mining in Keith and Frozen Hollow watersheds.

266 All three watersheds have the same geological structure with respect to coal seams, rock strata, steepness of slopes, and original vegetation cover. They are also within a few miles of each other, so hopefully hydrological factors like the amount of rainfall and storm intensity will be similar.

266 Figure #1 shows the general strata associated with the Upper Five Block seam in the Prenter area. With the exception of certain areas, the overlying rock is not toxic to plant life. The exception to this is the gray shale rock which can be toxic to vegetation because it has pH of less than 4 in some areas.

267 [SEE ILLUSTRATION IN ORIGINAL]

268 In the Keith watershed the original planting was done by the Guyana Soil Conservation District. Prior to 1971, if I signed a contract with the Soil Conservation District to plant the disturbed area, Brown Mining Corporation was released from being responsible for growth. In 1971 that was changed to make the person who held the permit responsible for the vegetation growth. After 1971 Brown Mining

Corporation became responsible. At that time a hydroseeder was purchased and all new disturbed areas were seeded using the recommended seed and fertilized mixtures. This is the reason for the difference in the vegetation cover in the two watersheds.

268 Figure #2 shows the results of the water analysis from the three watersheds. Lead, zinc, and cadmium were chosen because Mr. Kelly of Standard Laboratories, Charleston, West Virginia, said he could obtain very accurate values for those metals. The Atomic Absorption Spectrophotometric method was used. Not surprisingly, Keith watershed had the greatest concentration of heavy metals, but none of the levels exceeded the United States Public Health Service drinking water standards. (Ref. 1) Frozen Hollow had metal levels so close to School House Hollow, that pollution by the heavy metals zinc, lead, and cadmium did not occur from mining Frozen Hollow watershed.

268 However in Frozen Hollow the total acidity increased enough to lower an already low pH. The original pH was 5.5 and now the pH is 5.20. The reason for the lower than average pH before mining is not known, except that the source of the water with the low pH comes from the right hand fork of Frozen Hollow.

269 [SEE ILLUSTRATION IN ORIGINAL]

270 In Keith watershed the pH remained the same, probably because alkalinity increased along with the acidity enough to maintain a constant pH.

270 Environmental Protection Agency (Ref. 2) analyzed a water sample from Boone County in 1974. The sample was from impounded water in a coal pit. The water had a pH of 4.5, total acidity of 15 mg/l and 0.3 mg/l zinc. They did not check for lead or cadmium.

270 I did not have the means to measure the actual sediment from the mined areas in each watershed. Instead I walked each watershed to check what changes siltation had made. I thought the areas which had been silted up were easily distinguishable from the normal erosion process. From this I made measurements of the areas to obtain a tonnage figure. Admittedly this is a crude measurement and does not provide any information for the sediments that passed out of the watershed, but with the pictures one can obtain a rough idea of the siltation problem from strip mining.

270 I have numbered the pictures #1 to #54. No. 1 to No. 30 are in the Keith watershed and No. 31 to No. 54 are in the Frozen Hollow watershed. The

following is a description of what the pictures are trying to show.

- 271 1. Start of haul road from Prenter road.
- 271 2. Haul road along a 1968 stripped area.
- 271 3. Outslope in Keith watershed.
- 271 4. Slide in "C" area.
- 271 5. Slide in "A" area.
- 271 6. Toe of "A" slide in hollow bottom.
- 271 7. Filled log silt dam below slide "A".
- 271 8. Close up of slide material, note rocky nature of slide material.
- 271 9. 100' downstream from slide area, note log dam by the pine tree.
- 271 10. Silt captured by a large rock, the rock is from the strip mine above.
- 271 11. 200' downstream from slide, note rock in picture # 10.
- 271 12. Looking downstream from where picture # 11 was taken, note rock from strip area above.
- 271 13. Junction of "A" watershed with main Keith branch, looking toward "B".
- 271 14. Looking up main hollow from where # 13 was taken.
- 271 15. Main creek between "A" and "B", strip mine rock.
- 271 16. Erosion channel from slide "B".
- 271 17. Siltation in main Keith hollow below "B" area.
- 271 18. 50' downstream from area in picture # 17.
- 271 19. Siltation in main channel below area "D".
- 271 20. Erosion channel from area "D".
- 271 21. Siltation in main channel below area "D".
- 271 22. 50' downstream from area in picture # 21.
- 271 23. Siltation behind old slag dump located between area "D" and "E".
- 272 24. Area upstream behind slag dump, also location of Keith water sample.

- 272 25. Looking up Keith Hollow from slag dump, note strip mine.
- 272 26. Looking up side hollow from "E".
- 272 27. Junction of side hollow at "E" with main creek.
- 272 28. Where main creek flows into Keith.
- 272 29. Erosion channel through large slag pile in the left hand
branch
of Keith creek.
- 272 30. Main creek beside house in picture # 28.
- 272 31. Strip bench in Frozen Hollow near area "A".
- 272 32. Same
- 272 33. Outslope in area "A".
- 272 34. Standing in Frozen Creek in area "A" looking up at the toe of
the
outslope.
- 272 35. Same
- 272 36. Looking downstream from area "A", note rocks from strip area.
- 272 37. Close up of one of the rocks with part of a drilled blast
hole.
- 272 38. Frozen Creek in "B" area.
- 272 39. Same
- 272 40. Frozen Creek in "C" area.
- 272 41. Close up of creek bottom, note moss covered rocks.
- 272 42. Side hollow at area "C".
- 272 43. Looking in sediment dam from area "C".
- 272 44. Principal spillway inlet with anti-vortex device.
- 272 This sediment dam was built by Brown Mining Corporation in May
1971.
- 273 45. Several hundred feet up right hand fork of Frozen Creek
from
the dam at "D".
- 273 46. Emergency spillway, note rock rip-rap.
- 273 47. Overall view of back of sediment dam at "D".

273 48. Downstream from sediment dam looking at the outlet from the principal spillway.

273 49. Several hundred feet downstream from sediment dam in Frozen Creek. The creek was channelized so it could be used as a road to construct the dam and to provide the gas company with access to two gas wells near the dam.

273 50. Side hollow at "E", looking up from Frozen Creek.

273 51. Frozen Creek below "E", location of water sample.

273 52. Crib dam on Lavinia Fork, about 1000' downstream from where Frozen Hollow joins Lavinia Fork. Dam was built in 1972 by Big Mountain Coal Company. They are presently mining several hundred acres in the Lavinia Fork watershed.

273 53. Side view of crib dam.

273 54. Lavinia Fork 100' downstream from crib dam. Note the turbidity in the water.

274 In the Keith watershed there were four slides which caused local siltation in the creek, plus the siltation behind the slag dam. From data sheet number one, the total siltation is 14,500 cubic yards or 10.86 tons per acre watershed per year. This is actually the bed material load and not the total sediment. The wash load or colloidal material is gone and cannot be measured. But it is probably small compared to the bed load tonnage due to the stoney nature of the spoil material.

274 In Frozen Hollow there was no major siltation in the creek, however there was some siltation behind the sediment dam and a number of large rocks in the creek. From data sheet number one the total estimated siltation is 200 cubic yards or 0.35 tons per acre watershed per year.

274 The lack of slides in Frozen Hollow is the reason for the greatly reduced siltation. This lack of slides and siltation is probably the results of the following:

274 (1) Brushing and terracing the area where the outslope material was spoiled.

274 (2) Avoiding spoil placement on slopes greater than 33 degrees, which interestingly enough was easily accomplished by rigorously performing the first item. On slopes greater than approximately 28 degrees the dozers start having problems backing up. So by placing spoil only on brushed areas, the slope never exceeds approximately 25 degrees to 30 degrees.

275 (3) No water was discharged over the outslope. During the active mining phase, storm water was pumped out of the pits and discharged below the toe of the outslope. After the bench area was regraded, the water was channeled to a sediment pond on the bench and discharged to a natural drainway.

275 (4) Outslope areas were seeded within 90 days after being disturbed. This seeding was performed by a hydroseeder using quick growing annual grass. In the spring and summer lovegrass and foxtail millet were used. In the fall, ryegrass was used. Also at the same time, perennials like seruca and Kentucky 31 tall fescue with black locust seeds were planted. One year later additional lime, fertilizer and seed was placed on all regraded areas. Most of the grass in the Frozen Hollow pictures is seruca, the fescue and locust are not high enough to be seen, particularly since the locust have lost their leaves.

275 What is normal siltation in this type of a watershed? One report (Ref. 3) talks of a sediment yield of 6 tons per acre of watershed (per year?) in unmined watersheds, and 10 tons per acre in watersheds with mining. Also some individual mine sites have a net sediment yield of 400 to 600 tons per acre of mined area. Assuming the sediment yield is per year for several years after mining, then the Keith value is as expected, 10.86 tons per acre per year over a five year period and 363 tons per acre mined.

276 From data sheet two, using values for Coal River at Tornado, West Virginia, the sediment yield for the watershed is 1.23 tons per acre of watershed per year. This, and information on Frozen Hollow, would indicate the value of 6 tons per acre per year of watershed in which there was no mining is high.

276 From data sheet three and four an equation (Ref. 4) to estimate sediment yield as a function of mean yearly flow, resulted in a value of 0.24 tons per acre watershed per year for Frozen Hollow and Keith Creek. This sediment yield is for no mining in the watershed. For Coal River at Tornado, the value is 0.40 tons per acre per year. I think these values are realistic for an undisturbed watershed in the Prenter area.

276 What is the likely duration of the siltation in the Keith watershed? In the Stanford Report (Ref. 3) they state, "Even when untreated, many physical processes from strip mining (i.e. erosion, sediment, etc.) decrease by half their immediate postmining values in about 5 to 10 years. Although a return to premining levels often requires from two to four times the half life value."

276 Keith watershed will probably require another fifteen years to return

to the premining sediment yields. Frozen Hollow watershed has already returned to a premining sediment level in my opinion.

277 What happened in Keith watershed is not very likely to happen again, since the new 1971 surface mining laws went into effect. After Frozen Hollow was mined, the regulations were again changed in 1973. Now the haul back method of strip mining is about the only way to meet the new slope requirement. The Department of Natural Resources requires the final outslope to be less than 50% or 26 degrees. This requirement in effect eliminates the outslope below the coal seam for two reasons. One, if the slope is greater than 26 degrees, there is no possible way to place a fill area on the existing slope and have a final slope of 26 degrees. Two, if the slope is greater than approximately 20 degrees, the net storage volume for the spoil material is very small. The cost of preparing the slope and grading the final outslope is not worth the benefits from spoiling over the hill. Therefore, the only place to spill material is the existing bench from the coal pit and valley fills. However, the valley fills are also affected by the 50% slope requirement. So with one regulation, the state has almost eliminated outslopes and highwalls from new mining.

277 Therefore in summary, the expected form of water pollution from strip mining the Upper Five Block coal seam in the Prenter area under the present laws will be excessive colloidal turbidity during, and for a couple of years after, mining a watershed.

278 Each person will have to judge for himself how much the pollution in Keith and Frozen Hollow watersheds has cost society. The value of the coal mined from the two study watersheds by strip mining, at \$1.00 per million BTU's, is \$1 0,152,000. This is equivalent to \$65,000 per disturbed acre.

279 Siltation in Keith watershed:

Area	Volume in Cubic Yards
A	8,000
B	1,000
C	1,000
D	1,500
Slag Dam	3,000
	14,500 yards ³
Total	or 29,000 tons

279 Yield for five years (1970 to 1975) for watershed:

279 29,000 tons/five years (534 acre) = 10.86 tons per acre per year.

279 Yield per acre mined:

279 $29,000/80 = 363$ tons per care.

279 Siltation in Frozen Hollow watershed:

	Area	Volume in Yards
Dam	200	3
Total	200 yards	3 or 400 tons

279 Yield for three years (1972 to 1975) for watershed:

279 400 tons/three years (376 acres) = 0.35 tons per acre per year.

279 Yield per acre mined:

279 $400/75 = 5.34$ tons per acre

280 Coal River at Tornado, West Virginia (Ref. 5) Drainage Area 861 square miles

280 For water year 1974:

\$00		
Mean flow	1634 CFS	January 11.
Maximum flow	26,900 CFS	1974
	596,308	
Total Discharge	CFS-Day	
Total Suspended		
Sediment	677,205.4 tons	
Sediment Discharge		January 11,
(max.)	106,000 tons	1974

280 Sediment yield for watershed in the water year of 1974:

280 $677,205.4$ tons/861 square mile (640 acre/square mile) = 1.23 tons per acre per year

281 Big Coal River at Ashford, West Virginia (Ref. 6)

\$00	393 square
Drainage Area	miles
52 year average	
discharge	509 CFS
Water year 1969	428 CFS
	468 CFS
	Average
Water year 1970	Discharge
Water year 1974	761 CFS

281 52 year average discharger for watershed

281 509 CFS/393 Square miles = 1.295 CFS/Square Mile

281 Check using Drawdy Creek near Peytona, West Virginia which is located in Coal River watershed. My assumption is that the discharge from smaller

watersheds is proportional to the ratio of their size to the larger watershed, which contains them, for which runoff information is available. However, this assumption will only hold for a watershed which is not too large and is homogeneous. This is why I used Ashford flow information, instead of the Tornado flow data.

281 Six year average discharge for Drawdy Creek is 10.4 CFS from a 7.75 square mile watershed or 1.34 CFS/square mile. The assumption checks out because Drawdy Creek's average missed the dry spell in the 1950's and 1960's which is in the Coal River average. Keith Watershed:

281 Wean Discharge = 1.295 (.834 square miles)

281 $Q_k = 1.08$ CFS

281 Frozen Hollow:

281 Mean Discharge = 1.295 (0.59 Square miles)

281 $Q_f = 0.764$ CFS

282 Sediment yield of a water hed using $Q_s = aQ_n$ (13-6), "Hydrology for Engineers" by Linsley, Kohler & Paulhus (Ref. 4).

282 For mixed broadleaf and coniferous vegetable cover:

282 $M = 1.02$ $a = 117$

282 $Q =$ Mean annual discharge in CFS

282 $Q_s =$ Annual suspended sediment load in tons

282 Tornado:

282 $Q_s = 117 (1,634) 1.02 = 221,668$ tons or 0.40 tons per acre per year

282 Keith:

282 $Q_s = 117 (1.08) 1.02 = 127$ tons or 0.24 tons per acre per year

282 Frozen Hollow:

282 $Q_s = 117 (0.764) 1.02 = 88.9$ tons or 0.24 tons per acre per year

282 [*

282 1. "Water Treatment Plant Design" by American Water Works Association Inc., New York, N.Y. 1969

282 2. United States Environmental Protection Agency, John F. Martin, "Quality of Effluents from Coal Refuse Piles", paper presented at the First Symposium on Mine and Preparation Plant Refuse Disposal, October 22, 1974, at Louisville, Ky.

282 3. "Final Report - A Study of Surface Coal Mining in West Virginia",
Stanford Research Institute, Menlo Park, California 94025

282 4. Ray Linsley, Max Kohler, and Joseph Paulhus, "Hydrology for Engineers", McGraw-Hill, Inc.

282 5. "1974 Water Resources Data for West Virginia", United States Geological Survey.

282 6. "Water Supply Papers No. 2108", United States Geological Survey.

283 STANDARD LABORATORIES, INC. 6414 MacCORKLE AVENUE, S.E. CHARLESTON,
WEST VIRGINIA 25304

283 Telephone 304/925-0695

283 Lab. No. 3666

283 Date Rec 11-5-75

283 FOR American Mobile Clean, Inc.

283 P.O. Box 589

283 Charleston W.Va. 25322

283 Sample ID 1 Keith

\$00

pH Units	6.00
Total Alkalinity, mg/1 CaCo 3	26.30
Total Acidity, mg/1 CaCo 3	28.75
Total Lead, mg/1	0.05
Total Zinc, mg/1	0.22
Total Cadmium, mg/1	0.01

284 STANDARD LABORATORIES, INC.

284 6414 MacCORKLE AVENUE, S.E.

284 CHARLESTON, WEST VIRGINIA 25304

284 Telephone 304/925-0695

284 Lab. No. 3667

284 Date Rec 11-5-75

284 FOR American Mobile Clean, Inc.

284 P.O. Box 589

284 Charleston, W.Va.

284 Sample ID 2 Frozen Hollow
pH Units 5.20
Total Alkalinity, mg/1 CaCo 3 18.60
Total Acidity, mg/1 CaCo 3 9.60
Total Lead, mg/1 0.01
Total Zinc, mg/1 0.13
Total Cadmium, mg/1 0.01

285 STANDARD LABORATORIES, INC.

285 6414 MacCORKLE AVENUE, S.E.

285 CHARLESTON, WEST VIRGINIA 25304

285 Telephone 304/925-0695

285 Lab. No. 3668

285 Date Rec. 11-5-75

285 FOR American Mobile Clean, Inc.

285 P.O. BOX 589

285 Charleston, W.Va.

285 3 School House Hollow

285 Sample ID
pH Units 6.10
Total Alkalinity, mg/1 CaCO 3 19.15
Total Acidity, mg/1 CaCO 3 4.25
Total Lead, mg/1 0.01
Total Zinc, mg/1 0.11
Total Cadmium, mg/1 0.01

286

DOW CHEMICAL U.S.A.
January 19, 1978
1800 M STREET, N.W.

286 WASHINGTON, D.C. 20036

286 202 457-1700

The Honorable Morris K. Udall
Chairman
Subcommittee on Energy and the Environment
U.S. House of Representatives
Washington, D.C. 20515
Re: Oversight Hearing for the Implementation of the Surface Mining Control
and
Reclamation Act of 1977
Dear Mr. Udall:

286 Please find enclosed the comments of The Dow Chemical Company
concerning the captioned subject. Will you please give consideration to the
same and include these comments in the hearing record.

286 Any assistance you could give us in bringing about modifications of the rules as requested will be greatly appreciated.

286 Very truly yours,

286 D. R. Trigg

286 Environmental Director

286 Lignite Department

286 DRT/mah

286 Enclosure

287 Statement

287 In December of 1973 our company made the decision to enter into the rapidly developing lignite surface mining industry in the states of Texas and Louisiana. Historically, the fuel requirements for our Texas Division and our Louisiana Division plants have been based on oil and gas resources. At that time we commenced exploration operations in search of lignite resources across the south, central and northeast portions of Texas and northwestern Louisiana.

287 We have a substantial interest in lignite resources in these areas and within the next 10 years we hope to convert from petroleum base boiler fuels to lignite resources under President Carter's energy program. Nearly all of the lignite resources at the present time will be consumed for power generation. During this period we will also be involved in seeking other coal and lignite resources which will serve to complete our replacement of the oil and gas resources currently being used.

287 Our company has actively supported surface mining legislation recently enacted in both the State of Texas and the State of Louisiana because we are committed to the principle that all legislation and regulations thereunder should have well conceived provisions for environmental protection, while at the same time containing provisions to strike a balance with sound mining practices. Where we are of the opinion that the proposed state legislation or rules thereunder were impractical or too costly or not ecologically sound or too difficult to understand, we oppose them. In our opinion, both Texas and Louisiana now have legislation and reasonable regulations thereunder that are both economically and ecologically sound.

288 On August 3, 1977, the President signed Public Law 95-87, Surface Mining Control and Reclamation Act of 1977. This Act calls for interim rules to be enacted no later than November 3, 1977, as set forth in @ 502(c) of the Act.

These eight subsections all apply to the environmental protection performance standards. Due to the short time allowed by Congress, it is inconceivable to our company that Congress intended for detailed interim regulations to be enacted covering these eight subsections, and clearly the Act does not authorize many of the regulations which were promulgated by the Office of Surface Mining.

288 There are many instances where the rules as presently written prevent the use of good engineering practices and advanced technological methods. They should be modified to allow the states to develop final rules and regulations consistent with and incorporating the regional differences in each state.

288 We respectfully submit our comments concerning the following specific final interim regulations which we believe should be modified for the reasons stated.

288 @ 715.13(b) (3) - This Section requires an operator seeking a permit to determine the pre-mining history of the land involved for the 5 years prior to mining This places an undue burden on the permittee and has no reasonable relation to the purpose of the Act.

289 @ 715.16(a) (1) - This regulation requires the regulatory authority to limit the size of the area, notwithstanding the fact that an operator who is competent of performing surface mining operations should be allowed freedom to exercise his judgment in determining the amount of topsoil to be removed at any one time.

289 @ 715.17(e) (6) - This Section should be deleted in its entirety for the reason that subsection (7) which follows is sufficient regulation on this subject and allows site specific construction for the terrain involved.

289 @ 716.7(a) (1) - This Section defines "historically intensive" as used in the Act to mean land that has been used for the production of cultivated crops for at least five of the previous twenty years prior to mining. The period of years used in the proposed regulation is an arbitrary period and is not based on any scientific data. The Office of Surface Mining must consider the historic intensive agricultural uses of the lands involved on a reasonable basis in order to comply with the provisions of the Act and the Congressional intent. The criteria, unless changed as suggested, cannot be applicable to each farming community because of the variations in farming practices in each region throughout the country, and unless changed would be arbitrary and unworkable.

289 @ 716.7(d) (1) - Contains the same objectionable definition of

"historically intensive." For the same reason, the period of years used in the proposed regulation is an arbitrary period and is not based on any scientific data.

290 @ 721.13(b) (2) - This Section expressly states that any person accompanying an authorized representative of the Secretary shall have the right to enter upon land being mined or reclaimed by a mining operator. We believe that any liability for injury to such a person while accompanying such authorized representative should be at the cost, risk and expense of that person and the Office of Surface Mining and Reclamation, and such regulation should so provide.

290 @ 721.13(c) - This Section requires notification of an investigation to be made to the person making the complaint. It does not provide that the person being charged with the violation should receive a copy in writing of the results of such investigation.

291 @WESTMORELAND COAL COMPANY @Big Stone Gap, Virginia 24219 [*] 703-523-4000 @January 18, 1978 @Chairman @Subcommittee, @Energy and Environment @Congress of the United States @House of Representatives @Washington, D.C. 20515 @Dear Mr. Chairman:

291 In view of the new regulations covered under the Surface Mining Control and Reclamation Act of 1977, we find ourselves faced with a difficult, if not impossible situation. For reasons you will find given within the following report, we would like to have our objections entered into public record.

291 We strongly feel the regulations, if rigidly adhered to as currently written, could have serious effects on coal production for underground, as well as, surface mine facilities. In an era of "energy awareness" as we are experiencing, the consequences are far reaching. For the state of West Virginia the economic results could cause severe hardships.

291 The enclosed report addresses sections of the regulations which we feel most greatly affect underground mining. We have attempted to point out that some areas of the regulations could totally eliminate mining and in other cases, the regulations as now stated, would create hazardous situations.

291 Your consideration and support in bringing these areas to the attention of the Congressional Committee would benefit not only Westmoreland Coal Company, but the entire mining industry, in the state of West Virginia.

291 Sincerely,

291 R. J. McNeely Preparation Engineer

291 RJMcN: csm

291 cc: H. H. Frey, President H. W. Meador, Jr., VPEO

292 Surface Mining Control and Reclamation Act of 1977

292 I. Section 710.11(2)(ii)

292 Compliance with meeting the schedule for submitting plans and completing construction of structures and facilities would be a near impossible task following the guidelines given in this section. The February 3, 1978 date is unattainable due to the magnitude of data required to comply. It will take a minimum of six months to complete the detailed plans and an additional six months to begin construction, as to the completion date, this would depend on the size of the structure or facility.

292 II. Section 717.14(e)

292 "covering coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill. . . . or any other waste (waste means material separated from coal during preparation process, Part 710.5) materials . . . used, or produced during underground mining and which are deposited on the land surface shall, after placement in accordance with 717.15 of this part, be covered with a minimum of four (4) feet of non-toxic and non-combustible material; or, if necessary, treated to neutralize toxicity, . . .

292 How will Westmoreland comply with this section?

292 1. We could cover the refuse with topsoil. In West Virginia, due to the steep slopes and previous timbering practices, soil is very shallow. On the average we could expect soil depth to be 21 inches (from A-1 to B-2 horizon).
n1
To remove soil below the B-2 horizon would create severe revegetation problems.
For example: In order to cover a thirty (30) acre refuse facility, four (4) feet deep, we would need to strip 68.6 acres of all vegetation, remove the soil and place it upon the refuse. We would then need to revegetate 98.6 acres. It would cost approximately \$325,000 to complete the above project.

292 n1 Soil Survey Report, Fayette and Raleigh Counties, West Virginia.

292 We have a great deal more than thirty (30) acres (of refuse), to

cover. Our Triangle Mine alone involves more than 150 acres. The devastation to West Virginia forests would be enormous.

293 Surface Mining Control and Reclamation Act of 1977

293 II. Section 717.14(e) continued.

293 2. We could cover the refuse with limestone or flyash, or both. Both methods are still experimental.

293 In order to cover thirty (30) acres with limestone, four (4) feet deep we would need to purchase 287,000 tons of limestone, at \$4 0 per ton, delivered. The total cost would be approximately \$11,500,000.

293 In order to cover thirty (30) acres with flyash we would need to truck the material from the nearest plant (Nitro, W.Va.). Trucking costs alone would be close to \$3,000,000.

293 The use of four (4) feet of material for covering waste and other material is questionable from the standpoint that a slip would be more likely to occur. A study must be made prior to the regulations becoming mandatory to determine if four (4) feet of material is practical, for economic and safety reasons.

293 The prohibitive cost of trucking material, for purposes of either covering or mixing for neutralization, is such to warrant using other methods. As you can see from previous statements, the most economical approach would be to deforest large areas of West Virginia.

293 III. Section 717.15

293 Disposal of excess rock and earth materials on surface areas, as stated in this section, "excess rock and earth materials produced from an underground mine and not disposed in underground workings or used in backfilling and grading operations shall be placed in surface disposal areas in accordance with requirements of 715.15." Section 715.15(b) states, "waste material must not be disposed of in valley or head-of-hollow fills."

293 Allowing the intent of this section being to restrict the use of valley and head-of-hollow fills, then it should be deleted or worded for clarification of meaning and scope of detail. The disposition of waste material should be done in valleys in accordance with prudent engineering practices.

294 Surface Mining Control and Reclamation Act of 1977

294 III. Section 717.15 continued.

294 The alternative to disposing in valley or head-of-hollow fills would be the use of hillside structures. There are two basic factors that must be considered when using hillsides. From a safety standpoint hillside structures would create a greater hazard, as the likelihood of slipping would become more possible. In addition, hillside structures would require greater land use, the approximate ratio being, ten acres hillside to one acre valley fill.

294 Disposition of waste material without using valley and head-of-hollow fills would be an impossible task due to the topography of the Appalachian Region and the tremendous volume of waste material produced from normal mining practices. As a result of this section (717.15), 90 to 95% of Westmoreland operations could not exist as the regulation is now stated.

294 IV. Section 717.17(e) (1)

294 This section, as others, is impractical due to the terrain of West Virginia and the Appalachian Region. This would not be a problem to operations in the West or Midwest, but for mountainous terrain it is a serious problem. The section should be rewritten to read, "sediment ponds must provide at least twenty-four (24) hour detention time for peak flow, for a ten (10) year, twenty-four (24) hour, precipitation event."

294 Section 717.17(e) (2)

294 This section should be deleted entirely, as it is covered by 717.17(e) (1).

294 Section 717.17(h)

294 Ground Water Systems should be monitored on an individual mine basis. The effect a mining operation has on the ground water is directly related to the rock strata and the depth to the coal seam. If the rock strata contains only porous layers (sandstone, etc.), generally the mining operation will lower the ground water table level. If the rock strata contains impervious layers (shale), most likely there will be little or no effect.

295 Surface Mining Control and Reclamation Act of 1977

295 IV. Section 717.17(h) continued.

295 The regulation should include an allowance for evaluation of each mine in terms of rock strata and depth. Those mines which have impervious layers

within the above strata and are sufficiently deep, should be submitted as being incapable of effecting ground water.

295 Those mines having porous layers and/or are close to surface level will require a ground water monitoring plan. The plan would consist of a series of shallow bore holes used to monitor the water level and quality.