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IMPLEMENTATION OF THE SURFACE MINING
CONTROL AND RECLAMATION ACT

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HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS AND RESOURCES

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

OVERSIGHT—TO REVIEW THE IMPLEMENTATION OF PUBLIC
LAW 95-87, THE SURFACE MINING CONTROL AND RECLAMATION
ACT

SEPTEMBER 11, 1978

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IMPLEMENTATION OF THE SURFACE MINING CONTROL AND RECLAMATION ACT

MONDAY, SEPTEMBER 11, 1978

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND RESOURCES,
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Office Building, Hon. Dale Bumpers, presiding.

Present: Senators Bumpers, Ford, Melcher, Randolph, and Congressman Rahall.

Also present: R. D. Folsom, counsel.

OPENING STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator BUMPERS. The hearing will come to order.

This is an oversight hearing to review the implementation of Public Law 95-87, the Federal Surface Mining Control and Reclamation Act which was signed into law on August 3, 1977. The Subcommittee on Public Lands and Resources of the Senate Energy and Natural Resources Committee has oversight responsibility in this case.

In the past few months, the Office of Surface Mining has circulated a draft of proposed permanent regulations to State and Federal agencies and to the public. The proposed permanent regulations are scheduled to be published in the Federal Register on September 15. The permanent regulations are scheduled to be published in December after comments have been received. The regulations will probably become effective in January 1979.

Before the Office of Surface Mining begins the formal rulemaking process on the proposed regulations, this subcommittee needs to review the problems and progress of the Office of Surface Mining in carrying out its responsibilities under the Surface Mining Act.

We are looking forward to hearing from Mr. Walter Heine, Director of the Office of Surface Mining. In addition to Mr. Heine, we have called witnesses from industry, environmental groups, and the States.

I am especially pleased this morning to have Governor Jay Rockefeller of West Virginia to testify about the role of the States in implementing the Surface Mining Act. Governor Rockefeller had been scheduled to go first this morning but because of a problem he will be here a little later. Our first witness will be Mr. Heine.

Before proceeding, does a committee member have an opening statement?

Senator FORD. I have no opening statement but I certainly have some questions.

STATEMENT OF HON. JOHN MELCHER, A U.S. SENATOR FROM THE STATE OF MONTANA

Senator MELCHER. Mr. Chairman, I think it is entirely appropriate that the committee review the Office of Surface Mining proposed regulations with comments from the public, industry, and environmental groups. I compliment you on scheduling hearings. I would note as the bill differentiates or has different applications in critical areas of the West as compared to the East, particularly the areas involving the protection of water, it is not to be hamstrung, it is not against strip mining in the West but it would definitely mean some of the areas in the West will not be strip mined.

We will have a particular interest in that phase of the regulation. As to the East, I am informed by my friend on my left, Senator Ford from Kentucky, that prior to the adoption of the bill it was sought to alleviate some of the costly front-end preparations for the mining permit for strip mining in Kentucky and other Eastern States.

We find the law is so tight that the regulations imposed on those applications for mining permits was too much front-end cost for the mining producers. Perhaps it will be some comfort to those strip miners in Appalachia, in Kentucky, and other States in Appalachia, to know there is one member of this subcommittee that I am willing to look at modifications on those front-end costs, for preparing an application, for mining permit, as how much cost to get proper waterwork done and some of the other front-end costs.

That is all I have to say at this point.

Senator BUMPERS. Before proceeding at this point I want to welcome Congressman Rahall. We are glad to have him with us this morning.

STATEMENT OF WALTER N. HEINE, DIRECTOR, OFFICE OF SURFACE MINING, RECLAMATION, AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY PAUL REEVES, ACTING DEPUTY DIRECTOR, OFFICE OF SURFACE MINING, AND WILLIAM EICHBAUM, ASSOCIATE SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. HEINE. Mr. Chairman, members of the committee, my name is Walter Heine. I am the Director of the Office of Surface Mining. I am pleased to be able to appear before you today to describe the process we are using to translate a very complicated statute into a set of regulations. We are now a long way into that process and I am delighted to report that we are where we planned to be at this point. Barring unforeseen mechanical problems, proposed rules will be published in either the September 15 or 18 Federal Register.

We believe the process we are using is unique in Federal rulemaking. This is true because of the complexity of the rulemaking—the regulations actually implement eight separate programs. It is unique in the extent of open public involvement we are providing; and because we need to complete the process before the upcoming State legislative season.

Let me summarize how we have handled these unique features. Our primary objective is to carry out the intent of the Congress as it passed

the very complex Surface Mining Act. In order to do this, we have set a goal of adopting regulations that can provide complete and coherent guidance to the variety of interested parties: The industry; the States; the environmental organizations; and the unorganized groups of citizens for whom various protections are offered by the law.

In order to best deal with the resultant technical and legal complexities, we have tried to obtain as many suggestions from interested parties as time allowed as well as the views of other Federal agencies. We have carefully searched the literature in the field and the records made by the Congress while considering the legislation in an attempt to capture the meaning of provisions which lend themselves to alternative interpretation.

The experience that the Federal and State inspectors have secured during the course of the enforcement of the interim program since May 3, has also given us added knowledge about the practical effects of some of our approaches. This experience was supplemented by the wealth of material presented to the district court which upheld substantially all of the December 13, 1977, regulations in its decision of August 25.

As I mentioned, the act and our regulations are actually a complex of programs which are to be carried forward compatibly and essentially on a single schedule. By this I mean that the same act provides (a) a program for regulation of the surface or strip coal mining industry; (b) a program for regulation of the underground coal mining industry; (c) a program for the designation of lands as unsuitable for coal mining; (d) a program for the regulation of coal exploration activities; (e) a program for the certification of personnel engaged in blasting in coal mining operations; (f) a program for regulation of coal mining on Federal lands; (g) a program for development, approval, and funding of State regulatory authorities; and (h) a program for establishing Federal regulatory authorities in those States which elect not to regulate coal mining.

Those eight programs will be covered by the proposed rules. Separately, we have published or will publish regulations for an interim regulatory program, a small operator assistance program, a mining and mineral resources institutes program, and an abandoned mine reclamation program.

The second area I want to highlight is the degree of open public involvement we are trying to obtain. Under section 501(b) of the act, we are required to publish proposed rules, allow 30 days for public comment, and hold one hearing before final rules are published. We believe the spirit of the act and reasonable Federal rulemaking as well as a recent Executive order require much more. Our objectives have been to provide as much time as possible for public comment and to do so in a totally open manner. No closed meeting have or will be held with any segment of the public.

Our process for obtaining involvement involves two distinct stages. The first stage has been completed; we think, successfully. The second stage will start when the proposed rules are published this week.

Our first step was to publish in later July a preproposed draft of the regulations for public review. This whole step is not required by law but rather was an effort to describe preliminary views and elicit comments on them. We distributed about 2,500 copies of this draft.

Unfortunately, the time we could allow for review on this draft was closer to the 30 days required by section 501(b) than to the 60 days we would have liked to allow. During this time, we also held six public meetings around the country which were fully transcribed.

I may add 173 people testified at those hearings around the country.

Notwithstanding the complaints that we and the Congress received about the short time allowed, we feel this step was very beneficial. We received and considered almost 2,000 pages of comment. I was disappointed that the material received from the industry was rather limited. Several States and citizens' groups did provide very thoughtful and helpful comments.

The impact of this unusual step in the rulemaking process will be evident when our proposed rules are published. While we have not attempted to do a side-by-side comparison for the preproposed draft and the current version, I can tell you now that virtually every section and paragraph has been changed; many quite substantially, as a result of the comments received and our continuing analysis.

Senator FORD. Would you repeat that statement?

Mr. HEINE. I can tell you virtually every section of the preproposed draft we have circulated have been changed in the proposed regulations that will be coming out.

Senator FORD. Every one you submitted for prior consideration before you submitted your permanent regs, every one has been changed?

Mr. HEINE. Substantially all. Not every line, but substantially every section. For example, let me give you some examples. We have included in the proposed rulemaking what we characterize as a "State Window." By that we mean when the States submit their program plans later next year, in those program plans they can set forth alternatives that are necessary in their view to identify the peculiarities of their regions. This would in effect, ask for changes in the manner in which the State will operate to take in those peculiar characteristics.

Senator FORD. Mr. Heine, you have changed every word in substantially all of this? And all of this? These are the two documents you have submitted. You have changed substantially both of them?

Mr. HEINE. We have made substantial changes.

Senator FORD. This means the States are back to square one. When you submitted on September 15 or 18, the squares—the States are back to square one.

Mr. HEINE. No, there have been many changed concepts in there as a result of the comments we received. This is a preproposed draft. A draft we did not have to submit but we did it so we would have these comments. Now when the proposed rulemaking comes out we have the input of the people who testified. We think it will be a much better proposal.

We have made changes to the head of hollow fill areas. Essentially we are coming very close to adopting the West Virginia head of hollow fill, under most circumstances; the sedimentation basins in steep slope areas; and, in response to the concern that basins that are too large that they might create dangers or in constructing those basins more environmental damage would be caused, for a while we will consider and allow the States to consider those factors in looking at State regulations on sedimentation basins.

In the deep mine bonding area, we have made substantial changes in that the bonding now will cover essentially those surface effects of

the deep mine in a comparable manner to surface mines and mining. We have precluded at this point, bonding of long-term discharges from the mines as being an unworkable way of going at this time.

Our next stage of rulemaking is that normally used by Federal agencies. We will again be going much further than is required by statute through such actions as:

Publishing a comprehensive preamble that not only gives the reasons for the proposal, but also responds to many public comments received and identifies alternatives considered or under consideration;

Allowing 60 days for comment rather than 30;

Holding six 4-day hearings rather than one;

Making both our regional and headquarters staffs available for open meetings with the public on a request basis; and

Publishing, more or less concurrently, draft EIS and draft regulatory analysis which should help the public understand the options we have considered.

I point with pride to our record of serious considerations of comments received on the interim program from people affected by the regulations. We plan to follow the same course for our proposed regulations and our willingness to change our mind when better ideas are presented is a matter of record.

The final unique feature of this rulemaking is the need to complete the process in time for the individual States to consider and prepare their proposed programs. As the members of this committee recognize so well, we must complete these regulations by January to give time to States which require legislation to authorize their programs. We have literally had people working around the clock in order to stay on an acceptable schedule.

Before I conclude, I believe I should comment on one criticism about our regulations I have heard and I am sure you have heard. They are long. They are long because there are many complex programs to be implemented in one rulemaking. Second, they are long because we have tried diligently to provide separate parts for underground mining and surface mining because the industry has frequently told us this made them much easier to use. This is in response to industry requests for "separate packets" for different segments of OSM's constituency. Third, they are long because many different groups must use them. Almost every commenter seemed to ask for at least minor and sometimes major additions in order to clarify intent or meaning or to be sure that the authorities of the act are not abused. The commenters recognize, as we do, that fair rules must not only control those regulated, but also control the regulator. Our process is designed to keep the regulations from being arbitrary and capricious; the content, in many cases, also keeps regulators from the same offense.

I thank you very much. I have with me Associate Solicitor William Eichbaum on my left, and Acting Deputy Director Paul Reeves on my right. We also have several other members of my staff who will be happy to participate in answering any questions.

Senator BUMPERS. Mr. Heine, thank you. Before we continue, I would like to acknowledge the presence of our distinguished chairman of the Public Works Committee, Senator Jennings Randolph, who has a deep and abiding interest in these regulations.

Senator Randolph, we would be happy to hear any comments you might have before we start the questioning.

**STATEMENT OF HON. JENNINGS RANDOLPH, A U.S. SENATOR FROM
THE STATE OF WEST VIRGINIA**

Senator RANDOLPH. Mr. Chairman, I am appreciative, of course, of your continuing courtesy to me and more importantly to accommodation I expressed to you for the undertaking that you have addressed yourself to in what I call a crucial and vital review of proposed interim regulations.

This statement will be very brief, and then I would like, as opportunity comes, with other Senators, including, of course, yourself as chairman, to question Mr. Heine. As you know, Mr. Chairman, I strongly supported the 1977 act. I participated actively in its development. The State of West Virginia and many surface mining operators in our State worked very carefully, sometimes even cautiously but always diligently, to bring this legislation into being. It is our belief West Virginia has an effective and fair surface mining law.

I stop at this point. Mr. Heine, do you also feel this is true?

Mr. HEINE. Yes; I feel you have a very good law.

Senator RANDOLPH. We endeavored during that period I mentioned to insure the program, national in scope, which was developed, would require that all States meet basic standards in surface mining operations and reclamation activities. Mr. Chairman, I am certain you understand we, in West Virginia, not just the Governor—his interest is intense and he will express himself later, and Representative Rahall, who is present—but we have a deep concern when reports come from our State officials and these operators I mentioned who help to draft and develop the act, that the regulations go well beyond the law, that the intent of the Congress has been misinterpreted and some even feel subverted. I will not use that word myself except to say there are those who use it. And, that more importantly, Mr. Heine, in many respects the interim regulations are unworkable.

During the development and passage of the act, we, in West Virginia, were convinced we would be able to very quickly implement the surface mining and reclamation programs that had come into being under Federal law even though we had a strong State law. That objective, I regret to say for myself and others, has not been achieved.

I am also advised by those in whom I have confidence that it would be virtually impossible due to the unreasonable position that has been taken by the Office of Surface Mining. If I speak too strongly it is only because there is a real concern in West Virginia as to what is being done, in fact, to injure an industry which is very vital to our State, and the industry, of course, a cooperative industry in the development of the national bill.

Our surface mining operators, they have worked cooperatively with your office on the passage of the act and then the development of what we would hope would be fair and effective regulations.

The effort has included, I know, conferences and conferences. We have had these conferences constantly. I have attended these meetings. In fact, I called two of them into session. It is an understatement, but I make it, to say we are keenly disappointed in the currently status of the program. Now, Mr. Chairman, I am gratified again you have given our Governor the opportunity to testify during this hearing. I am confident as I have interviewed our Governor and Representative Rahall and other Representatives, that the testimony he will give

here today will contain a forthright explanation of the problems that have been unnecessarily created in a State like West Virginia.

Mr. Chairman, I thank you. Later I shall have questions of the witnesses.

Senator BUMPERS. Governor Rockefeller, have a seat. We will get to you.

Senator FORD. Yes. Get comfortable.

Senator BUMPERS. They said you were outraged; I said anybody who doesn't have the capacity to be outraged, irate, or indignant doesn't have any business running for public office. [Laughter.]

I am going to ask a couple of questions and then I will ask my colleagues to limit their questions to 10 minutes. If that is not enough, we will go round robin and I will give everybody a chance to go again. But we do have a number of witnesses. I hope we can stay within that time frame.

Mr. Heine, one of the things that I think probably has the industry more concerned than anything else, and maybe it is not possible—I am not prejudging this, and I confess I have not read your proposed regulations—but consistently, particularly in the title V, there is the mandate from the Congress the Secretary shall promulgate these regulations which shall be concise and written in plain, understandable language in accordance with the procedures in section 501(a).

Is it your opinion you have complied with that request from Congress?

Mr. HEINE. Let me answer that two ways, sir. First of all, the document we have voluntarily circulated, I must stress, is a draft. It was never intended to be anything but a draft to get initial input from the public and the industry. Our proposed rulemaking comes out on Friday.

As far as writing in plain and clear English, I think they do accomplish that. Each part sets forth, No. 1, the authority for that regulation. In other words, what section of the act authorizes that particular regulation. The regulation then sets forth quickly the scope of the regulation and the responsibilities of the parties involved. It then goes on to state what the regulation is. We think in terminology most people are knowledgeable about the mining industry will understand.

Senator BUMPERS. As a followup question then, Mr. Heine, for example, in talking about soil or dirt, your regulations use these words, like "aguic"—a-g-u-i-c?

Mr. HEINE. Those are regulations that are not our regulations. What we have included in the first draft, which are not going to be in the final proposed rules, is the definition of prime farmlands as is used by the Department of Agriculture Soil Conservation Service. That rather long, complex explanation is a very technical description of prime farmlands. It is not our language. It is the language of the Department of Agriculture.

In addition, as I have said, we have deleted that from our regulations other than we use it is a reference.

Senator BUMPERS. You are telling me all of those words will not be in the final regulations?

Mr. HEINE. They will not be in our regulations and they are not ours, in effect. They are technical terms used by the ASCS, by the SECS actually, and they are not ours.

Senator BUMPERS. Do you see any way you could make 400 to 500 pages of regulation more concise? It was our thought we should not necessarily impede—we want a minimum of direction, and their concern, and I am sure Governor Rockefeller is going to comment on this in a few moments, they wanted a minimum of regulations.

Mr. HEINE. We could reduce the regulations somewhat by cross-referencing throughout, which makes the documents a very difficult document to use. We have all seen regulations where you think you are getting into the meat of what it says and then it refers you to something 800 pages or a completely different document.

We have tried to avoid that. For example, in our underground mining regulations, rather than where underground mining and surface mining is similar—in some areas it is—rather than just cross reference, we repeated the surface mining portion of the regulation under the deep mining packet, so ultimately we can take that deep mining packet, have it published, or the States can do that, and they will have a separate booklet they can hand out to deep mine operators. There are eight separate distinct programs which we had regulations on in the act and then in addition there are four peripheral areas, which is the whole abandoned mine program. That is a very large program as you all know. Each requires separate regulations all by itself. So it is a very complex act with a lot of facets to it. That is why it took a lot of words to describe it.

Frankly, I think you can all compare it with smaller, other acts or other size, and I think you will find we are not out of line at all.

Senator BUMPERS. Mr. Heine, I am sure we will be having additional hearings. This subcommittee was not really prepared today, the industry was not most anxious to have an opportunity to be heard today; I felt before we adjourned this Congress and before we got any of this written in stone, perhaps we ought to give everybody a chance to come in and vent some of their venom about the way this thing is going.

But the most classic and traditional complaint that every Senator and Congressman is getting when he goes back home is that the bureaucracy is thwarting the will of the Congress.

One of the reasons I agreed to go ahead and hold these hearings today is because we have been remiss in a lot of areas in not holding oversight hearings before these regulations are promulgated. Then some of the damage has already been done. We ought to do more oversight hearings before these regulations are finalized to make certain Congress' will is not thwarted, and this mandate of clear and concise regulations is met.

I will have to excuse myself for a few minutes. Senator Ford, you are vice chairman, if you will take over and carry out the rule I set of 10 minutes.

Senator FORD [presiding]. Then I will set the 10-minute rule on myself. Mr. Heine, you have already stated you are going to change substantially the whole—this was the original proposed regulatory program, I think, if I am correct. I have tried to study it. I feel sorry for the small operator. This was the supplement to the draft regulations. All of that now is substantially changed. I still think you are putting the States back to square one to try to come with regulations.

Am I correct in the statement you are about a month late in promulgating the rules and regulations?

Mr. HEINE. We are more than 1 month late.

Senator FORD. You are about 3 months late, aren't you?

Mr. HEINE. The final rules by law were to be completed on August 3. We may be into January before they are final. They will probably be published in December.

Senator FORD. So you will be more like 5½ months late, won't you?

Mr. HEINE. Yes. That is right.

Senator FORD. Why haven't you been back up here to ask us for an extension of time or to allow us to help you adjust or let those people out there who have to comply adjust to your delay?

Mr. HEINE. I would say primarily because we were not sure what the effect of the delay in our funding would have. We did get out the interim program regulations. Those are the ones now operable and the ones—

Senator FORD. Aren't you harsher on the interim standards than you will be on the regular standards? You just state flatly you can't do anything. Yet when you get your regulations out later on, the States and those who are operating will be able to do something different, isn't that true? Interim standards, you have no give at all, no variance at all.

Mr. HEINE. The interim standards are enforced by us and the States.

Senator FORD. I think you have been doing more enforcement than the States. You come down with your people and say: "No, you can't."

Mr. HEINE. So far, 80 percent of our inspections have been joint inspections with the State people.

Senator FORD. But 20 percent of them have been the harsh ones with no give at all. Do you deny that?

Mr. HEINE. I think that—as a matter of fact what we focused on in our inspection program were the big problems. That is to say, if in fact a mine was polluting, for example, or if a mine did not have proper sedimentation control, or if it was backed up on its backfilling, we would take enforcement action.

If a person was in violation of major items, and, if at the time there were some minor violations at the same time, then we would put those all in the same violation letter so people could learn what they were supposed to be doing. But we never undertook an enforcement action against a company for small—if you want to call them "nitpicking"—violations. We only included those "nitpicks" if they had a major violation in addition.

Senator FORD. Let me ask you this. Are the States still held to their deadline as the legislation set out?

Mr. HEINE. As of this moment, that is correct.

Senator FORD. As of this moment, the States are?

Mr. HEINE. Yes, sir.

Senator FORD. With you 5½ months late?

Mr. HEINE. Yes, sir.

Senator FORD. Somehow I thought legislation was supposed to be—it seems to me you are legislating by regulation those things your people did not get in the legislation that you were defeated on. Let me see if I am correct in this. I believe it is February the 3d—my memory is not as good as it ought to be—but I believe it is February 3 the States must notify you whether they think their statutes are adequate or not to comply with the Federal legislation; is that correct?

Mr. HEINE. That is correct.

Senator FORD. Then in December, I guess, is the date you said you are going to tell the States what the final regulations are going to be?

Mr. HEINE. That is correct.

Senator FORD. How in the world, if you are 5½ months late and you are going to make the States comply February 3, how can they do that when they haven't seen any final regulations?

Mr. HEINE. The act provides that if a State requires a change in its legislation, it can have up to 6 months extension of time from that February date, so they could, in fact, have up until August to get in their programs.

Senator FORD. What if a State does not have a legislature in session? How much are you then—how much cost are you laying on the State's back that doesn't have a legislature in session? It means you have to call a special session.

Mr. HEINE. If the State does not have a legislative session scheduled for January or February, this early winter, then even if the regs were on the street permanent right now they could not correct or improve their legislation.

Senator FORD. That is right. You would prevail. The State would not have any ability to take over.

Mr. HEINE. That is the way the law is written. Whether or not we were late, it would require a special legislative session to correct that.

Senator FORD. The law was written for you to get it in, too, on August 3 and now you say you can't get it in, you are 5½ months late, and the poor old States have to come in with hundreds of thousands of dollars of cost. You won't give the States any leeway, but you are late and yet you say to the States you have got to comply with X date, and if you can't do it, we are going to take over, and our rules and regulations will apply, and we are going to tell you what to do.

Mr. HEINE. Again, our judgment was we are about 5 months late and since the act allows a 6-month extension of time, that would take care of all of our 5 months delay. So we felt that was a reasonable thing.

Senator FORD. You thought that was reasonable. Did you check on the States who would not have legislatures in session and how much it would cost them? I don't think you gave any thought to it. What about the States who do not have a legislature in session next year to comply statutorily to your regulations and you are 5½ months late, and you give them 6 months, June or July of next year. That is still 6 months before the legislature goes into session or an extra cost on those States. Isn't that true?

Mr. HEINE. Yes, sir. But again, if we had been out right on time the same situation would prevail.

Senator FORD. But the States would only have 18 days to review the regulations. The way it is going now, the States would have 18 days to review the regulations, if we come down to January 15 and the February 3 date, to comply. Now how in the world do you expect those States to get back—

Mr. HEINE. Sir, when our regulations come out—

Senator FORD. How flexible will you be?

Mr. HEINE. As far as—

Senator FORD. On extensions.

Mr. HEINE. As far as the States going beyond the mandated date of what will be a 6 months' extension of the February date which brings us into August, I believe—how flexible can we be? I do not know. That is a matter for our legal people to look at and for us perhaps to come back to you and ask you how flexible we should be.

Senator FORD. Why didn't you come back on the 5½ months' delay?

Mr. HEINE. Because the 6 months' extension date for the States was allowed in the act.

Senator FORD. So that makes you come out even, you think? That only gives them 18 days to comply, in the 6 months' extension, 18 days is all you are giving the States. I would get some legal advice, too, if I were you, Mr. Heine. My 10 minutes are about up, but I have a lot of questions for you.

What is your role at the Department if the States do comply?

Mr. HEINE. When the States come in and their State programs are reviewed and approved by us, they then take over the enforcement, as you know, in their State. Our role then is to recede back to an oversight mode, occasional inspections, review of reports, to see the act is being complied with and carried out correctly by the States.

Senator FORD. Are you going to cut back on your staff then?

Mr. HEINE. That may happen.

Senator FORD. Shoot. I can see it. That is in the record. May and shall are two very small words that mean a whole lot and they are very different. I want to see how well you comply with what the people want by pulling back for a little oversight bureaucratic inspection.

How much do you think it is going to cost a State to prepare the documents for approval or disapproval of your Department when they submit their request to take over?

Mr. HEINE. It would depend on whether they go to an outside consultant to do it for them or whether they do it internally. We are setting forth in our regulations the procedures for a State to do that and, in fact, I did not say it in my opening statement, but we have reduced, to some extent, the requirements of the State to come in to get this program approved. So we have reduced what they have to give to us. A dollar and cents figure—I have no idea.

Senator FORD. It is going to cost millions per State to get it done.

Mr. HEINE. To prepare a State plan?

Senator FORD. Yes, sir. I have not found a State yet that claims it will cost them very little to get it done. Let me ask you another question, this is my final question but I am going to submit some to you in writing—and I want it back in 10 days, and see if you can comply with that deadline—

Mr. HEINE. All right.

Senator FORD. If a surface owner has a contract with an operator to return that land to level land rather than the approximate original contour which puts it back to the hilly, to the degree it was, what position is your Department going to take when that surface owner has a contract with the operator that he wants some flat land rather than put it back according to the regulations?

Mr. HEINE. I assume the contractor is a coal miner who is going to be mining?

Senator FORD. The operator with the surface owner who is going to be mining. We have the surface owner and the operator who is going

to be taking the coal out. It is a contract before the regulations were issued or will become statutory, mandatory.

Mr. EICHBAUM. I have discussed that issue, Senator, as you know, with the Solicitor in the Department of the Interior.

Senator FORD. You ought to identify yourself.

Mr. EICHBAUM. I am Bill Eichbaum, Associate Solicitor, Division of Surface Mining. Our view is, in those situations where the act requires a return to approximately original contour, that would prevail over that contract for future mining.

Senator FORD. Don't you think you have a very substantial legal problem as it relates to voiding a contract?

Mr. EICHBAUM. Not with that exercise of the police power regulation.

Senator FORD. Police power regulation, is that what I understood you to say?

Mr. EICHBAUM. It is an exercise of the police power authority—

Senator FORD. Exercise of police power authority.

Mr. EICHBAUM. That would be required in a legal sense, and would not have that problem, I believe, no.

Senator FORD. Is the police power the basis of the act?

Mr. EICHBAUM. It would be by the States in most situations. They are the ones doing the regulating.

Senator FORD. I am glad that you brought out police power. I think that has become the attitude. Do you intend to follow the intent of Congress as closely in all instances as you argue you have with respect to the variance, and if a congressional committee of jurisdiction goes on record and indicates to you a regulation does not conform to the intent of Congress, will the regulation be changed?

Mr. EICHBAUM. If you want me to answer that as a lawyer, responsible for reviewing these regulations and primarily making that determination, the answer is yes. We will be guided by the language of the statute, be guided by the legislative history, and their subsequent expression by the Congress—if there is subsequent expression by the Congress we will be guided by that.

Senator FORD. I hope you will be guided by something other than police power. I have some other questions. I will hold those. Senator Melcher?

Senator MELCHER. I want to put this in proper perspective. Mr. Heine, you are from Pennsylvania; we don't want to get you mixed up with Heinz.

Senator FORD. He's got 57 varieties, and I think that is what we are getting here. [Laughter.]

Senator MELCHER. The facts are the Office of Surface Mining appropriations was not available until rather late.

Mr. HEINE. Middle of March.

Senator MELCHER. Until they were available you were not in a position to hire enough personnel to draft the regulations?

Mr. HEINE. That is correct.

Senator MELCHER. Prior to accepting this position, as a Director of the Office of Surface Mining, you were employed by the State of Pennsylvania, were you not?

Mr. HEINE. Yes, sir, that is correct.

Senator MELCHER. You were operating a program of surface reclamation for the State of Pennsylvania, and also the permitting process that was involved, is that correct?

Mr. HEINE. That is correct, sir.

Senator MELCHER. You had intimate knowledge of this legislation during the past, let's say, 7 years, during the time it was being drafted in the House and in the Senate, the various times it went up to the Hill and back down from the Hill—I believe it was vetoed twice—and all during that time during consideration here in Congress you were involved somewhat with the bill itself?

Mr. HEINE. I was involved now and then. I received phone calls, I would come down to testify on certain technical aspects of the bills from about 1972 on.

Senator MELCHER. That is 6 years?

Mr. HEINE. Yes.

Senator MELCHER. Six years now. In fact, I think perhaps one or two of those calls, or maybe half a dozen, was instigated by myself to get some answers on how it worked in Pennsylvania, and what could be done in that area.

Mr. HEINE. That is correct, sir.

Senator MELCHER. Under Pennsylvania law, could Pennsylvania meet these regulations as you have been drafting them, without additional legislative action for adopting State law in Pennsylvania to implement them under their own program?

Mr. HEINE. They were able to do the interim program without additional legislation. I would think they would need legislation to implement a permanent program; although I am not an attorney, I am not positive.

Senator MELCHER. Will it be difficult for them?

Mr. HEINE. I don't think so.

Senator MELCHER. Will it involve protracted hearings in the Pennsylvania State Legislature, angry debates, a real traumatic situation in adopting whatever State law they need to meet the regulations?

Mr. HEINE. I don't think so, Senator. Essentially, Pennsylvania has had to meet the performance standard, many of the performance standards that are in the act. Certainly the permanent applications of the act are much more extensive than what Pennsylvania requires, so in that area they will have to get up speed to meet the Federal act.

Senator MELCHER. I want to separate the balance of my questions in the case of eastern operators as compared to western operators. First of all, eastern operators, is there a problem that you have detected now with small operators in the East of being able to comply with the act in terms of front-end money, in terms of bonding, in terms of necessary water, in terms of necessary planning, in terms of necessary detail that goes into developing a good sensible application for a permit?

Mr. HEINE. I think again that the application permit requirements of the act, and those are spelled out in the act, are quite extensive. They will require much more up-front money than what is required under most State laws. Now, whether or not that can be mitigated somehow by individual States in their State programs through what I characterize as the State window, that remains to be seen.

Certainly the hydrologic studies which are quite extensive—

Senator MELCHER. And costly.

Mr. HEINE. Which appear to be costly.

Senator MELCHER. And repetitious in many instances.

Mr. HEINE. That is financed for small operators in the act. We think through our cooperative effort with USGS and many of the State geologic survey groups, we will eventually get that down to a science where there would be much less need for repetition in those studies. We will soon learn where all those streams are, what they are about, and learn about the hydrology of the areas.

Senator MELCHER. To the key points of the small operators in Kentucky, I discussed these matters with in conjunction with Congressman Carl Perkins of Kentucky, stressed the fact the hydrology requirements in the permitting process were often repetitious, were very costly, and the second point they made was the requirement for bonding which could be quite costly for a small operator, and I think this is 10-year bonding, is it not?

Mr. HEINE. No, 5 years. It needs to be 5 years.

Senator MELCHER. It needs to be at least 5 years? As a matter of fact, that is 5 years from the time you put a shovel in which, as a matter of fact, is about 7 or 8 years from the time you start drafting the permit application, is it not?

Mr. HEINE. I can understand the concern of the bonding as we had expressed it in our first draft for underground miners. Again, a great deal of that has been modified. As regards the mining of surface areas, I have not heard from the operators that the bonding scheme set forth in the Federal act is too much different than what is required in many of the States.

It does raise the limit to \$10,000 minimum. But from a bond standpoint, that isn't all that much.

Senator MELCHER. Can we rely on your office to provide us with some insight on what specific problems may be for small operators as they describe it and then have the opportunity for front-end money, front-end requirement, in permitting, is so costly and detailed they find themselves having an extremely tough time getting a permit application worked up. Can we rely on your office to get that insight and specific recommendations for alleviation of that problem?

Mr. HEINE. We would be glad to, Senator.

Senator MELCHER. Turning to the West and all of the operators out there, I guess, that are operating now, are described—all but one or two—as big operators, I had a rather strong letter from one of the managers of the larger operations in Montana to the effect he felt the whole process would be turned around getting a permit approved. I found that difficult to believe so I asked him some specifics. It is my understanding Montana law will virtually comply with the Federal law, that any of the operators there can go through the process right now, today's, can start developing their application for a new permit for mining and proceed right along for the next 6 to 8 months, however long it takes them, with the State officials; am I correct on that or not?

Mr. HEINE. I think you are correct. In my recent discussion on that, I have had several with Leo Berry of your State, the requirements of Montana are quite stringent. Incidentally, we have essentially come together now in a cooperative agreement for mining on Federal lands for the State to be doing most of the regulating in that.

Essentially as you know, the Western problems are that of hydrology and revegetation in general. The grading problems are not really all that much.

We think the existing Montana laws in regard to both of those principal aspects are quite similar to what the Federal law requires.

Senator MELCHER. What about the permitting process?

Mr. HEINE. The permitting process is also similar. I am not that intimately familiar with Montana's permitting process offhand, but I think you have substantial public involvement. As you know, the Federal act involves the public to a great extent. I think other than that, they are quite similar.

Senator MELCHER. It would seem to me under the terms of the act and the conditions of the act, that your regulations would not in any way have to interfere with the State regulatory procedure until the State has had sufficient time to modify the necessary State statutes. Does your counsel find that leeway within the act?

Mr. EICHBAUM. As I understand the question, Senator, there would be adequate time. There is the 6-month discussion held earlier for the States and we do not do anything other than implement the interim program with the State during that framework and we do not go into a State that applies and fails to get the program until mideighties, so there is substantial delay.

Senator MELCHER. First of all, the fact you have virtually completed an agreement with the State of Montana to operate a program on Federal land, I presume that means Federal land. When you say Federal land, are you talking about Federal coal where the surface is owned by either the State or private individuals?

Mr. HEINE. That is correct, yes.

Senator MELCHER. That is about all of the coal or 60-some percent of the coal that is there.

Mr. HEINE. Yes.

Senator MELCHER. As far as the interim regulations are concerned, you are in a position to tell me today you feel Montana law adequately provides by their State statutes sufficient regulation over the surface reclamation so you can sign that cooperative program?

Mr. HEINE. That is correct.

Senator MELCHER. So that would follow probably all of the State statutes in Montana in place now comply with whatever your final regulations are going to be?

Mr. HEINE. Whether they will completely comply with all of the final regulations, that I cannot say offhand. In my preliminary discussions with some of your people, it appears it will in most cases. It appears there may be a need for some fine tuning.

Senator MELCHER. Is the status of the cooperative Wyoming agreement about the same as Montana?

Mr. HEINE. Yes.

Senator MELCHER. Virtually wrapped up?

Mr. HEINE. Virtually wrapped up, yes.

Senator MELCHER. That is all of the questions I have, Mr. Chairman. If I understood you right, Mr. Heine, that between now and 1980 the operators there can go ahead and prepare their plans, prepare their applications to be submitted in the same way they got their original application granted for a permit from the State of Montana?

Mr. HEINE. If the State program is approved before June 1980, then the requirements of the permanent regs will take place as soon as that State program is approved and the State takes over regulation. If nothing happens by June 1980, then we have to put in a Federal program.

Senator MELCHER. I do have one more question, one more observation, perhaps, but I will pose it as a question. Isn't it true the States that are involved in strip mining during the past several years being quite familiar with this act can readily tell if they have got some blank spot in their State law they should be in a position, very shortly, after January 1979, when all of these legislatures meet, to know if they have got some blank spots they are going to have to enact a State statute or several of them in order to comply and the drawing of the regulations that implement those State statutes would normally follow along the same process you are following with Federal law?

Mr. HEINE. I think that is true, sir. In fact, for the next several months, until those legislatures meet in January, we will be working with the States, probably putting an attorney almost full time in most of the State capitals to help prepare whatever legislation is necessary. In addition, we are working to come out with a model bill that could be used by the States if everything else fails.

Senator MELCHER. Our firm intent is to regulate reclamation and the whole permitting process by the State of Montana, by their own people. We have no intention whatsoever of being lax to the point of having to force your office in there with your own personnel as regulators.

Mr. HEINE. Fine, sir.

Senator FORD. I might make the comment there are several legislatures that do not convene in January and this does create some problem. If those who made an effort last time, based on what knowledge they had, in order to provide State statutes to comply, if they do not comply now they either have to let the Feds do it or they have to call a special session.

Senator MELCHER. Is Kentucky one of them?

Senator FORD. Kentucky is one of them. Senator Randolph, would you care to question Mr. Heine?

Senator RANDOLPH. Thank you, Mr. Heine, for giving me the opportunity, not to participate in confrontation—I noticed Senator Melcher called you Walter, so it seems to be softening up the process here—but I hope you will not misunderstand when I repeat what I said in West Virginia a few days ago in talking with those intensely interested in doing the right job in carrying forward the provisions of the Surface Mining Control and Reclamation Act, and one of them said to me the long regulations helped the paper industry and the legal industry but it doesn't do too much to help the coal industry.

I guess you would not agree to that statement, would you? At least that is the way he put it, perhaps very bluntly.

Mr. HEINE. Senator, having come from a State that had to be subjected to Federal programs, I often thought from that end, that perspective, the same way. It seemed a lot of paper shuffling. I hope that can be minimized. I will continue to strive to do that. I was a little aghast myself, frankly, that the act having so many complexities in it did legally and in every other way require some interpretation. It does generate a lot of paper to describe what all of that means.

I hope that we have done that in an effective way and in a clear way.

Senator RANDOLPH. There are, Mr. Heine, approximately 30 West Virginians in this room today. They are the individuals, the citizens of our State who during a long period of years, frankly, and months, aided constructively in the development of the act as it passed the Congress of the United States.

I, therefore, speak for them, without having been asked to be their spokesman. Not even with our able, knowledgeable Governor who is spokesman for them. But we are here with an actual impact of an inadvisable, unworkable program as it affects West Virginia which has a good law.

I repeat, these citizens of our State have come, more than 30 of them, and are in no wise obstructionists. They have been supporters of the effort to draft and to place in cooperation a law that could permit them and our State to develop a strong surface mining and reclamation program and do it with what we call a balance of environmental considerations which certainly they and you understand.

I ask you specifically what is being the effect of the interim regulations on the rate issuance of surface mining permits? That would be question No. 1.

Mr. HEINE. Under the act in the interim program the Office of Surface Mining has not issued permits. Permitting is still continued in the States. I really do not know other than secondhand knowledge that I may have received from phone calls from various States whether or not their permitting has slackened or hastened.

Senator RANDOLPH. I thought you might know that or have had contact to check it out.

Mr. HEINE. Again, I have had a variety of responses from different States. Many States are actively issuing permits which contain the interim regulations. There are other States, and I am afraid maybe West Virginia is one of them, that has hesitated to issue permits because it perhaps needed more guidance than what was provided in portions of the application.

Monitoring I know has been a problem. Again, if we had had our full staff out there in Charleston some time ago, maybe some of this could have been avoided. We are going to try to correct that as soon as possible. I think there are some technical communications on some of those applications.

Senator RANDOLPH. I think this is a proper second question. Does the Office of Surface Mining intend to compile the statistics? You have not said that except to indicate you were going to check it out. Do you not feel in view of the Federal law that that is a program you could well address yourself to in the immediate future if you have not done it to date?

Mr. HEINE. I think all of our district offices and regional offices, when they get manned up, will be in a position to get that kind of communication from the States and will have a better hand on the pulse of the States' problems so we can aid the States in those cases. Certainly I agree with you we should do that and we will be doing that.

Senator RANDOLPH. We appreciate that. We feel although you are not mandated to do that job, it will help you to better understand the problems out there as you attempt to cope with them with regulations,

interim or the long-range regulations, here in Washington; would that be correct?

Mr. HEINE. Yes, sir.

Senator RANDOLPH. Congress mandated, as you know, Mr. Heine, in the act, the rules and regulations would be written in clear, concise, and understandable language. Congress does not always do that itself, I will admit. We certainly are deficient at times. But we realized this was a very unique situation, very complex, very detailed. That is why we have wondered as you have published 400 pages, if I am correct, of regulations, whether you had difficulty in laying out 400 pages of regulations or you were stimulated to believe perhaps you should step them up and give us more in the way of regulations.

Mr. HEINE. Again, the length of the regulations addresses several things. We tried first of all to set forth citation of the authority for those regulations, what they mean, the scope of them, the authorities in them. That takes time to say those words in a regulation but we think it makes for better reading of the regulation.

Second, we aimed to minimize the cross-referencing so they are much easier to read. That I think we have done. The act is a complex act and goes into many facets, some that are even on the periphery of coal mining, if you will. Certification of blasters, regulations had to be written for each of those programs. It is not simply how you backfill a strip mine.

Actually, 12 various programs that are included in that act. So it will require a lot of words and a lot of paper. We think ultimately, for example, the deep miner does not have to know all of those words of what is in there. The surface miner does not have to know it all. The regulations written in the State only cover a fraction of those Federal regulations. The State regulations won't deal with mineral institutes, for example; so there are a lot of things that will not be relevant to the States.

Senator RANDOLPH. So you are saying in effect, Mr. Heine, you are beginning to realize—perhaps realized this before but did not have a handle on it—that there is a need to be more concise and more clear in reference to the regulations, is that correct?

Mr. HEINE. We certainly will be looking at that as we get comments on our proposed rulemaking that will be going out on Friday. Yes, sir.

Senator RANDOLPH. The poet has said: "Words are very wondrous things used by commoners and kings." I guess that would be regulatory bodies like yourselves that would be included. Now several States, and West Virginia, which is the State with which I am most familiar, these States have complained they cannot understand the regulations; that is, the persons within the States and even within the departments, some of the officials within the departments have told me this personally within the last 10 days. They cannot understand because there is no discretionary power that the States can exercise because you have, at least they think, stripped them of that flexibility.

What would be your comment?

Mr. HEINE. My comment, sir, would be this. Congress did not intend that these regulations under the act, created by the language of the act would be written so every State, in effect, could write its own ticket without any overview or without any commonality among the States. If it wanted to do that, it would not have written the law in

the first place. The purpose of the act was to get a minimum standard throughout the country. I feel that West Virginia has a very fine program. I have often said that.

There are some few legal problems, perhaps some language in some of the regulations. Those are the kind of things we can work out with them, I am convinced. I think most important is that, now, we are issuing proposed permanent rulemaking with flexibility for the State to come in in its State program. If, in fact, it can show us, show the public, that there are peculiarities, geology, topography, water—what have you—in that particular State that would warrant some changes in the manner in which that State complied with our regulations, they could do so.

So we think some flexibility, some significant flexibility is being built into our regulations through that.

SENATOR RANDOLPH. If you are doing that, I commend you, of course. We did not ask "vulnerability" be the word, but "flexibility" be the word. I can assure you, I am certain of this, there is not the desire of those who are in the industry in our State and those who regulate within the State under West Virginia law to in anywise fail to observe the law under regulations that are understood.

Now in our congressional mandate on this act, we indicated I believe the record will show that we were interested in those minimum guidelines—if it is possible to use the word "minimum"—rather than to develop what we call maximum guidelines. Would you comment on that statement?

MR. HEINE. Yes, it is true. The act does anticipate minimum guidelines. Minimum regulations would be better than guidelines. So far it would appear in our regulations that we have followed this. The U.S. district court has clearly upheld us in saying we have not gone beyond the intent of the act, so we feel we are on the right track.

SENATOR RANDOLPH. During a visit within the last week in the southern counties of West Virginia, they are very important coal producing counties, both the operations of surface and deep mining, there was the feeling, and I think it was a very intense feeling, by smaller operators who talked with me. They said they found it increasingly difficult to understand what they use as an expression, "technical language," too technical for them really to grasp exactly what you were thinking of in terms of standards of guidelines.

Would you have any comment as to their feeling?

MR. HEINE. I had not heard that about our regulations. I presume they mean our interim regulations because there are no other regulations on the books right now. I have not heard that they have been termed complex. I think most of the State administrators certainly understand what they mean—what the language means.

I don't think we got carried away with very technical terms with the exception of the ASCS regulation describing prime farmland. If a person is going to mine Appalachia on steep slopes he has some difficult problems. No question about it. Incorrect mining on those steep slopes can cause terrible problems. I think if a person is going to stay in the business, and this is a business like any other, and many of them are fruitful businesses, I think they are going to have to get people who understand technical terms in order to survive.

It is not easy to say that. But the fact remains, this is a big business. Even the small operators are dealing in a valuable product and will get their just profit from it. But I think they are going to have to, like in any business, have men learn what the business is all about technically.

Senator RANDOLPH. Mr. Chairman, how much time did I use? I did not check my watch.

Senator FORD. A little over 10.

Senator RANDOLPH. I will come back later.

Senator FORD. Congressman, do you care to make a statement or question Mr. Heine?

Mr. RAHALL. I wonder if I might go a little further than our good Senators and simply call you Walt?

Senator FORD. You started off harsh and have got it down where it is easy.

Mr. RAHALL. I am quite encouraged and see a little ray of hope in your testimony this morning, the fact you have stated virtually every section of the preproposed regulations are going to be changed and the proposed set of regulations perhaps more clear and concise language. Senator Bumpers had earlier expressed concern with definitions of soil and dirt and consonance of language there. I can think of one instance where we have had a five- or six-line definition of a raindrop also in those preproposed regulations.

So I look forward to those regulations when they come out and in the desire for oversight hearings I also share. I put the question to you: Would you agree oversight hearings would be a proper forum for us to discuss the proposed regulations?

Mr. EICHBAUM. Representative, I do not know the answer to the question but once the regulations are out in proposed form, it is then a formal rulemaking procedure which does have certain limitations. I have not examined the question of whether there is any legal relationship at all to oversight hearings that would get into the detailed discussion of the regulations in that because of the formality of that process, but we can certainly examine it and let you know what the answer is from a legal perspective.

Mr. RAHALL. Then perhaps a better question would be: What forum is open for comment once those proposed regulations come out?

Mr. HEINE. The comments on regulations can be done several ways. First of all, we will be holding public hearings around the country on those proposed rules. Second, we will be entertaining requests for meetings if representatives of the industry or States or environmental groups or anybody who wants to come in and talk to us and point out their problems with the regulations—offer specific, substantive changes and support data for those changes. Then we are prepared to sit down with anybody on a scheduled basis to talk about that. These meetings will be posted. As a matter of fact, if there is a meeting to take place, those will be posted and that means anyone can attend. Furthermore, the record of the meeting will become part of the administrative record on the regulations and will be reachable by anybody, the public, who wants to know what went on at that meeting. Finally, we do receive written comments.

Mr. RAHALL. I wonder if at this point you could give us an estimate of how many pages would be involved in these proposed regulations

so we might be in better shape to advise those interested what they can look forward to?

Mr. HEINE. Our problem is we have had it run off our computer, double spaced, big pages. It is a little hard to get a grip on that. Again, it pertains to a lot of different programs, some of which industry folks and others may not be interested in certain portions of it, but it is hard to relate again what we have now to the final size.

I think it will probably be because some additional programs will be cranked into it, other than what we had in our preproposal. It may be shorter.

Mr. RAHALL. You say it may be shorter? Like you may be cutting back on the staff?

Mr. HEINE. Yes, the rules should be shorter. I might add we will have a regulatory analysis with it. That is the old economic impact analysis that will be available, and an environmental impact statement will be available ultimately. This is when we go final and the preamble is a very key thing. The preamble is an explanation as concisely as we can write about why we came down on certain issues the way we did; the alternatives we considered, background, technical information, will all describe how we came down with our decision on those regulations. You will see there was an extensive amount of hard work put into it. That is a big, fat document but that is a crucial thing for somebody who really wants to evaluate those regulations.

Obviously when the final regulations go out for use, the preamble will not accompany it at all times.

Mr. RAHALL. I have one last question, Mr. Chairman, if I might. That concerns the small operator portion of this program. As you are aware, the President has recently signed into law a bill increasing the amounts that are available to the small operator to meet the compliance requirements of this law. Can you give us a rough estimate, and I know your office does not issue the permits, but how much it will cost the small operator from the first time he makes application to go through the entire process?

Mr. HEINE. Any guess I would make would probably be inaccurate. It would be just that, a guess right now. First of all, we don't even have our final regulations drafted. We do not know between now and final rulemaking how much of the application requirements would still be in there. It may be substantial areas that are removed or added. Who knows? So with that far away, it is difficult to come down with a cost at this point anyway. I think what we would like to do is to contract with someone, which I think we will try to do, to use the regulations, the application requirement portions to draft a typical mine application, if you will, so we will come out with perhaps a typical southern Appalachia application and some of the information we would need and set it forth like it was an actual application.

This could, we think, be useful as guidance for a lot of small operators to see how we think some of the questions should be responded to in a typical mine. So we are going to look at that.

Mr. RAHALL. Thank you. Thank you, Mr. Chairman.

Senator FORD. We are delighted to have you, to show the cooperation between the Senate and the House. Since you have been gone, Mr. Chairman, we have gone around the horn here for about an hour and a half with Mr. Heine. We are running out of time. I have two quick

questions I would like to ask and I would like to submit other questions for the record.

I would like to ask, Mr. Heine, how long could you give us answers to the questions, within 10 working days?

Mr. HEINE. I think so, sir.

Senator FORD. My quick question is: Are those who operate under 20 degrees excluded from these regulations? Or what provision in the law does it relate to, under 20 degrees?

Mr. HEINE. The specific requirements for those operating under 20-degree slopes are a little different. For example, putting the controlled spoil. If you are operating on less than 20 degrees, you can put controlled spoil down the slope.

Senator FORD. What percentage of the coal mined in Pennsylvania is under 20 degrees?

Mr. HEINE. I was asked that question about 5 years ago—

Senator FORD. You were asked that now and remember you are on the record.

Mr. HEINE. I think it was 80 percent.

Senator FORD. I think it was 80 percent—80 percent of the coal mined in Pennsylvania you cannot put spoil on the slope. I have been concerned about small operators. You are going to put them out of business. We have tried to fund the front-end of those small operators. How many people have you employed for small operator assistance programs? How many have you employed to administer the small operators assistance program?

Mr. HEINE. I cannot answer that, sir. I don't think we have—

Senator FORD. Hired anybody. That is correct, you have not hired anybody to help the small operator, and I think that is a shame. Mr. Chairman, I have questions I will submit. I will put them in a package and direct them to Mr. Heine.

Senator RANDOLPH. Mr. Chairman, I know Governor Rockefeller and others waiting to testify should not be kept waiting by a second round of questions. Other questions I have, if it is agreeable, may be made a part of the written record with response from Mr. Heine.

Senator BUMPERS [presiding]. It certainly is.

Senator RANDOLPH. Before the hearing was set, Chairman Bumpers, we had in our office arranged for a conference, a hearing in effect, not a committee or subcommittee hearing, but for Thursday of this week at 10 a.m. I believe, Mr. Heine, you are ready to meet with some of our operators from West Virginia at that time, is that correct?

Mr. HEINE. I understand I have a meeting in your office. I was not sure who it was with.

Senator RANDOLPH. It will be with operators from West Virginia, those who are interested. We thank you for your cooperation.

Senator BUMPERS. Thank you, Mr. Heine. I had intended to ask you to hang around until Governor Rockefeller testified. But considering the fact you have been here now for almost 2 hours, we will excuse you with the understanding we may have another oversight hearing if we don't get satisfactory answers today. Governor Rockefeller, I want to thank you for your indulgence and your patience. We are, of course, honored to have you with us this morning and look forward to hearing from a Governor of such a vital State.

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, GOVERNOR, STATE OF WEST VIRGINIA, ACCOMPANIED BY PATRICK B. BOGGS, DEPUTY DIRECTOR, DEPARTMENT OF NATURAL RESOURCES, AND RAYE T. HALL, ASSISTANT CHIEF DIRECTOR OF RECREATION

Governor ROCKEFELLER. Thank you, Mr. Chairman. I will try to be brief and synopsize what I have got here. First of all I want to say I supported and do support and worked hard, as Senator Randolph knows, and Representative Rahall, and you, too, sir, for passage of the act. I consider my own background, and I think it is for the purpose of perspective of what I am about to say, to be strongly environmental. It was not very many years ago I was an outright abolitionist for the total elimination of the practice of surface mining because I felt at that particular time it was not being reclaimed in the State of West Virginia in the manner which was appropriate and proper. I so stated. And along with that and several other things that happened, our State laws were strongly increased and I think we now have at least what the OSM people tell us is the best regulation program in Appalachia.

I cannot comment on others but that is what we have been told. I do not find, therefore, fault with the act itself; I find fault with the efforts of OSM to implement it.

Senator Randolph, in regard to the question you asked, sir, whereas it is the practice of West Virginia for our people to issue about four or more permits a week, we have issued two in the last 6 weeks. It cost the average person who is an operator trying to get ready for a permit, get ready to the production stage, so to speak, it costs him about \$20,000 just to go through the engineering and the research and the types of work that has to be brought to the point where he can get a permit.

We have not only issued just two permits in the last 6 weeks, at the very time the President, the Congress, the Nation is calling for a doubling of our coal capacity of which 58 percent in this Nation is mined by strip mining of coal, but we also have a 70 permit backlog right now because we are simply unable because of our inability to understand what it is the Office of Surface Mining really wants from us. We are simply unable to process that. Plus the fact our front office staff, made up of some of the gentlemen you see before you and others, are spending up to 60 and 70 percent of their time working on problems of rules and regulations and interpretation which they simply cannot make head or tail of.

We are in a sense stymied. We have come to a halt in West Virginia on doing what we think we can do well. We have in the act the very clear statement the primary Government responsibility for developing, authorizing, enforcing regulation for—subject to this act—should rest with the States.

We think we should be a State that regulates our program and the OSM program should give us that authority because we think our program is good. We have been selling our coal at approximately \$5 more per ton for enough years now that we have been taking a beating because we have been putting more money into reclamation in our State, for operating. We have, as far as we can find, only one citation against us, in the last year or so which had to do with blasting. But we

had a whole variety of what we call nuisance violations. I call trivial enforcement actions.

I might say, Senator Randolph, a number of those which have been recalled, vacated, or eliminated by OSM itself. Such things as failure to stockpile and adequately mark topsoil when it is perfectly common knowledge you do not need to stockpile topsoil when you are using haulback, which is primarily used, particularly in the southern part of our State.

OSM has cited us for the failure to have perimeter markings. Perimeter markings, mind you, stakes and things, which are provided for under our laws which they say is inadequate, when our system of markers is in compliance with our State law which the rules and regulations requires takes precedence in this case. Still we are cited. So we have to go work on it. We have to do things which strike us as not being useful.

What I am wondering, Mr. Chairman, whether the Office of Surface Mining, has as part of its intention to follow the congressional act and that is to those States which are doing the job properly in reclamation, whether or not they really want to turn over regulatory responsibility to those States. I am not so sure they want to. I am not so sure they want to, they want to hold onto that regulatory authority and deny the States to have that opportunity. Because in a sense it feeds the purposes of the environmental integrity supposedly of a Federal bureaucracy if they do not have to give that to a State.

Specifically, mountain top removal and postmining land use requirements. I have four basic objections that I boil this down to. The act says very clearly that the applicant shall provide a plan that will be "practicable with respect to private financial capabilities for completion of the proposed use." "Practicable," a key word. I underlined it twice. That is when your mountaintop removal that you, under the act as passed by Congress, should have a practicable approach with respect to private financial capabilities.

Now, the regulation, however, says that "specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment."

Letters of commitment; an entirely different affair than practicable. In those two words may not be very much difference to the casual observer, but to the person who is trying to conduct mountaintop removal mining, it is a fatal difference.

No developer in this country is going to make a letter of commitment for housing or for other types of things which need to go in southern West Virginia on flattened land, 3, 4, 5 years in advance. Anybody who thinks not only the 2 years required to work yourself up to the point of a permit sometimes, but the 3 or 4 years that may be involved in conducting mountaintop removal, there is no way there will be letters of commitment.

I ask myself is this OSM, in which there were a number of people who fought to the bitter end to keep mountaintop removal from getting into the legislation, is this their way of trying through rules and regulations, which is not to take precedence over the law, is this their way of trying to bring mountaintop removal to a dead halt. I suspect it is.

Why do I care that much about mountaintop removal? Because those of us who live in Appalachia, particularly the steep slope, and 60 percent of our slopes in southern West Virginia approximately, or more, are over this steepness level, because housing does not exist adequately. In the history of Appalachia and condemned land, held by private companies in Mingo County, because there is no possibility for housing to be placed in that county or most other southern West Virginia counties where if you say 5 percent of the land is flat you are probably exaggerating.

The Coal Conversion Act, which I hope the Congress will finally pass, includes most specifically, and most happily in my judgment, section 601 in which the Congress specifically addressed itself to the need for housing in the coal fields, by virtue of condemnation power in consultation with Federal FmHA. I care, because you can't expect Appalachia to do its part in producing coal for the Nation and particularly strip coal when there is no place to put present miners much less the increase in miners that we are anticipating if they are allowed to mine coal.

So we care about that. In a telefax, mind you not a regular letter, but a telefax, from Mr. Heine, whom I respect and I will say more about that, I do not think he is allowed to run his department, we are not allowed to get the grant that we need in order to hire the people to go out and work on the deep mine problems because Mr. Heine says here we have to adjust to the initial regulations in terms of postmining land use requirements, which means we can't adjust and we won't adjust.

We told him we would not take that money which we need, we will not bow to what is a forced cessation of mountaintop removal because, one, it denies the country coal, and second, because it denies the only opportunity we have to give our miners housing. That is example No. 1.

Example No. 2, the requirement ground water monitoring systems be established by each operator. Mr. Heine spoke to that. I believe he speaks in good faith. But the fact of the matter is whereas in the West, and I don't know the West well, but if you oversimplify maybe one or two stratas of water that underlie flatlands, whereas in Appalachia there is a whole variety of water, crisscross formation. Our operators--our State government has no idea how to monitor this type of water situation, drilling wells all over the place. We can't possibly do it. It is a silly regulation. It is a wrong regulation and one that I hope will be obliterated in the new rules and regulations.

Nevertheless, we are told we must monitor these streams. Never mind how. But we have to do it.

No. 3, an ancient struggle with OSM which Mr. Heine indicates now will be alleviated over the valley fill or head of hollow fill regulations. This is very typical of our present problems. We have a valley fill system which we think is better and stronger and environmentally sounder than the one OSM has tried to make us do.

We were given verbal assurance by OSM that our way of doing it, Senator, was good. They said it was acceptable. But when the Federal regulations went into effect, OSM suddenly made an about-face. We had to go to court, Mr. Chairman. We had to go into Federal court to

get back the right to do valley fill operations. The way we know is better. In the course of that study was done which essentially said West Virginia's way was better, and now I understand with new regulations coming out this week we may be allowed to do that. But the frustration of taking their system, which is essentially unworkable on steep slopes and our system which drains properly, correctly, accurately, and which has worked and with which we have not had problems, that is giving us major frustration.

My final example, my second example, has to do with haul roads. The regulations say haul roads will not be overtopped by storm runoff, water runoff over the road.

Senator BUMPERS. What does it mean it will not be topped by?

Governor ROCKEFELLER. It means it will not pass over the road, overtopped. Now, we share this concern. We have a program of our own in which we not only—see what the Federal people do, they require you to put big culverts in so the water shoots right through down into the stream—but it makes no allowance whatsoever for sedimentation control which when you get into steep slopes becomes absolutely fundamental stuff.

So we think we have a more protective environmental quality which is safer, much more applicable to Appalachia which has been working for a number of years without fault, and we are not allowed to do it.

My final example, there is a prohibition of strip mining operations within certain distances. That is 300 feet of public buildings and private dwellings, which to anyone who knows Appalachia, is a pretty far reaching law. Into this law the Congress bill which was passed included a grandfather clause whereby those persons who had made a substantial legal or financial commitment prior to January 4, 1977, were specifically exempted. That is in the law. I will be glad to read it. It is right here.

OSM policy came along with rules and regulations—which I will be glad to read because that is right here—and they said only those persons with valid permits issued on or before August 3, 1977, which happens to have been when the law came into effect, only those people with valid permits were exempted from the requirements of that section.

This interpretation is not supported and is in direct contravention to the legislative history of the act. And, I might say, it is not even supported in writing by OSM, which, Mr. Chairman, is one of our main problems. We get nothing in writing. We get everything by words, by phone calls; but we get nothing in writing. We cannot even argue effectively. They tell us: Show us where it says that. And they haven't. We get it in words but not in writing. We cannot deal with them.

Those are the end of the specifics, but I would make a comment that I would welcome new rules and regulations that were responsive to some of the realities in Appalachia. I have severe doubt at this point on two counts. One is that some of the people who are making up these rules and regulations really don't know much about strip mining and reclamation in Appalachia. In any event, that their background and experience do not necessarily lend them to have the kind of specific knowledge which is necessary for that.

I exempt from that Mr. Heine because I think he is an expert and he is a professional, but as I mentioned in the beginning it is not clear to us in the State of West Virginia that he has the full freedom to run that department, that they may be coming from slightly higher up or around him as certain rules and regulations, influences, pressures, things of that sort, which do not allow him to do the professional work which he can do.

I am finally, Mr. Chairman, Chairman of the President's Commission on the Future of Coal. And 58 percent of the coal produced in this Nation today is done by strip mining. I can assure you of two things. One, that I will proceed in good and balanced environmental faith. That is good balance between protection of the environment and production of coal. I will proceed not only as Governor of the State of West Virginia but to follow through and monitor very closely precisely what is being done in terms of rules and regulations to reflect the will of the Congress in a bill which I consider to be good. Second, as Chairman of the Coal Commission, I will use every opportunity where I see that will of the Congress being subverted by Federal regulators to make that tremendously clear.

It would be my hope the Office of Surface Mining would formulate a task force composed of representatives of OSM, representatives of State agencies, and the interstate mining compact to rewrite these regulations, depending on how they come out. Our information is the rules and regulations are going to be about 9,990 pages long. Senator Ford, that is what my understanding is.

Senator FORD. That is twice as many as we have now.

Governor ROCKEFELLER. I don't think these things should be allowed to become permanent until the States have had specific direct and precise input into them. The OSM people come in and they take away our surface mining experts at much higher salaries and I cannot argue with that and then don't use their knowledge. The decisions are being made at a level that is much higher up.

Mr. Chairman, I will be glad to respond to any questions. But I think the State of West Virginia deserves to be the regulatory authority for strip mining in the State of West Virginia. The OSM knows it and should give us that authority.

Senator BUMPERS. Senator Ford has to be on the floor shortly.

Senator FORD. I want to take 60 seconds, Governor. I want to compliment you on your statement today. This is what I have been trying to tell people over at OSM what is going on. Second, my staff was told by certain people—can't get anything in writing, you may win it here in the conference committee but you will lose it when the regulations come out.

Now we are seeing legislation by regulation from the Office of Surface Mining. In effect, I assure you, your efforts are not to give the State the opportunity to run this program, they want a Federal program which will exclude you, Kentucky, and other States, from having the opportunity to run this program and know something about it, and they are not using the expertise and they are not accepting the influence from the States which are trying to do a job that I think is very effective.

I think you are to be complimented here today. Mr. Chairman, I thank you for those 60 seconds.

Senator BUMPERS. I would like to echo what Senator Ford has said, a very cogent and persuasive argument. In all fairness I think it ought to be said, No. 1, I was one of the original seven sponsors of this legislation and I felt at the time that a lot of the complexities in the bill ought to be renewed. As far as I was concerned when we finally passed it, it still was flawed. I think the bill itself probably has a lot of areas that can be corrected. Maybe only experience will give us the insight into specifically what kind of corrections ought to be made. You have made some very cogent points.

I remember specifically the financial commitment phrase we debated at length here and for OSM, of course, to say valid permits are the only thing they will accept as a substantial commitment will be totally inconsistent with the interpretation we had at the time.

This can take a number of forms. I think there ought to be some discretion from OSM as to what they accept. One of the things that interested me about your testimony, that is on mountaintop removal. I want to read the specific language to you and ask you what, in your opinion, would be a suitable method of handling this. The law says in cases where you have industrial, commercial—do you have a copy of the bill in front of you?

If you will turn to page 493: (3) In cases where an industrial, commercial, agricultural, residential, or public facility—including recreational facilities—use, and I remember, Senator Ford fought hard for the 70-yard football field in Kentucky and West Virginia—is proposed or the postmining use of the affected land, the regulatory authority may grant a permit for a surface mining operation of the nature described in subsection (c) (2) where—and then go down to subsection (B)—the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be—and then go down to subparagraph (v)—practicable with respect to private financial capability for completion of the proposed use.

It occurs to me, Governor, what we have done there is to give OSM considerable license in what they will require and it says the applicant, if it presents specific plans for the proposed postmining land use, regardless of what that may be and I quote “appropriate assurances that such use will be—(v) practicable with respect to private financial capability for completion of the proposed use.”

That gets very tenuous in there. What would you suggest that the criteria OSM use in getting appropriate assurances that whatever they are planning to do with it after it is mined is really practicable from a financial standpoint? Of course, I think first that this is a requirement that goes utterly beyond the pale. If I were an operator I would think twice before I undertook a lease in the mining of coal if I had to meet such a requirement as this.

I think it is one thing to reclaim the land and put it back as close to the original contour as possible but any other proposed use of it, to show it is financially capable of being a viable entity, that goes beyond the pale. But as long as that is in the law, what would you suggest?

Governor ROCKEFELLER. OSM suggested one thing which I think shows the difference—

Senator BUMPERS. You said they asked for letters of commitment. Nobody is going to give a letter of commitment on such a project.

Governor ROCKEFELLER. That is correct. I think they recognize down deep this is not possible. At least I think some of the more sensible

people do. We had a call from one official. I asked a specific question to them, the same as your question to me: What do you suggest we do with this situation? The answer was: Put it into hay and pasture. Put it into grass and pastureland. Put it down for agriculture use. Then let it ride for a while. Then when the need comes along, you can respond to that need.

However, when we get turned down for our State program which they would have given us had I agreed to this letter of commitment thing, they said you have got to go—Mr. Heine does—go exactly according to the first regulations. Now to me it does not make a whole lot of sense. I would frankly not be very happy if I felt the future of housing planning, public facilities planning, school planning, and recreational planning were in the hands of coal operators of the State of West Virginia because that is not what they are in business to do. They don't have experts to do that, they don't think about those things beforehand. This, essentially, in the law puts pressure on the public-private process to come up with, as you said, a practicable way of going at it. But it does not pin it down entirely.

We would in most instances in West Virginia where we do mountaintop removal, if we are, in fact, able to do it, we would probably want to put land into hay and pasture for a while in order to let the growth of housing develop in an orderly process where private developers become interested, where they see the land and they can relate to the land, where the State department of highways has a chance to look at access roads to the land.

But I think there is a perfectly orderly way of doing that which is allowed for in this law. I agree with you it is wrong to try to get operators to do all of that planning, be responsible for that planning. Even the State cannot predict what requirement might be for mountaintop removal 10 or 15 years from now.

Some of it may have no public use, no further use other than create open public space, which is valuable. But I think this can be handled under the law. I don't see any reason to change the law.

But we are brought to a dead halt by the rules and regulations. If I am evasive, sir, please indicate that to me.

Senator BUMPERS. I think the answer is fairly satisfactory. As long as the financial commitment has to be made, you are going to have problems with this.

Governor ROCKEFELLER. Between six and seven I think it is generalized enough. We will see. That is why I do not think the rules and regulations can be one whit tighter than this language. Let's see what happens. If it becomes unworkable, maybe we have to come back to the law. But I think we can work with this—the law, that is.

Senator BUMPERS. You mentioned a while ago something about markers. I don't understand the coal mining business so I didn't understand what you were talking about with the markers.

Governor ROCKEFELLER. This was perhaps nitpicky on my part a little bit, but we have been cited for it. We have to spend time arguing about, it, going out and defending ourselves. In the rules and regulations, it says the perimeter of markers, perimeter of the permit area, shall be clearly marked—and easily recognized markers or by other means approved by the regulatory authority.

Regulatory authority in this case is the State of West Virginia. We have an entirely adequate marking system. The OSM people

found, evidently, during a couple of visits during the summer the markers not to be adequately visible. We have them everywhere. We have them for blasting. We have them for outer perimeter markings; we have them for all kinds of things. We have that in our State. We do that in our State.

We were cited, and a number of the citations were then withdrawn because they were seen to be frivolous. As an example of simply the lack of communication between OSM and State inspectors, nobody knows what they are meant to be doing. You are meant to indicate the boundaries, for example, of a strip permit by markers.

Senator BUMPERS. Aren't most permits. I know most coal leases or all of the coal leases I have seen, of course, are based on legal land descriptions. Are permits not similar?

Governor ROCKEFELLER. Under our State laws and rules and regulations here, actual physical markers are called for, and I think properly so. They protect people from venturing too close to blasting markers, blasting activity which is a whole separate type of marking—

Senator BUMPERS. Your blasting markers are entirely different from the permit area?

Governor ROCKEFELLER. That is another kind. But it gives the public fair warning—the markers do—of where they are coming into a permit area. I do not consider that unreasonable. It is not hard to do.

Senator BUMPERS. Are markers required to delineate the area of blasting?

Governor ROCKEFELLER. There are blasting and topsoil markers, perimeter markers.

Senator BUMPERS. You think that is OK?

Governor ROCKEFELLER. I don't mind the markers. They don't cost anything and we stick them all over the place. I have no problem with markers. But I get angry when somebody comes in and cites us for a violation on markers. I think it is nitpicking. It is like going after bingo when you should be going after organized crime.

Senator BUMPERS. Some of these things indicate the operators are criminals, they are to be monitored sunup to sundown, and everybody is going to operate in bad faith, take advantage where they get an opportunity. What is the reason these regulations—and as I say, in my belief, my reading of the bill, it goes too far. It is regulatory, and I am an environmentalist. My environmental concerns are strong. That is the reason I fought hard with Senator Metcalf to get this bill passed. It has things in it which I think are outrageous, but we politicians think a lot of things are outrageous.

I think my 10 minutes are up. Senator Melcher.

Senator MELCHER. Thank you, Mr. Chairman. Governor, I listened to most of your testimony but I was also going over some of the testimony submitted to us by Ben E. Lusk, president of the Mining and Reclamation Council of America. Some of the operators with his council, the first operator is G. B. Frederick, president of Capital Fuels, Charleston, W. Va.

My concern on this bill has been primarily how it affects strip mining operations in the West, and particularly in my home State of Montana, but I have always had a concern for the fact, of the effect it might have on what we call small operators. I know nothing of Mr.

Frederick's company, and perhaps a few years ago he would not be called a small operator, but now in comparison to the operations in my home State, their tonnage would probably be construed as small, probably from any one particular mine.

I see from this critique which is a very pointed criticism of the regulations based on the bill, that my fears for "small operators in Appalachia" were well-grounded. Now, he makes the point, Mr. Frederick makes the point compared to the regulations for the permit requirements are being drafted—using his term exactly, "mere"—what is now required to obtain a permit in the western mine that might be producing 10 million tons a year over a 30-year period from one mine. And, of course, it reflects the fact coal in our country would probably be a vein 50-foot thick. You get a permit for a half section and then you are there for a long time, several years, mining just that amount in a half section. However, Mr. Frederick's operation in West Virginia would be looking at perhaps a 40-acre permit or a 70- or 80-acre permit and perhaps from a vein that is not very thick, perhaps anywhere from 4 to 8 foot in thickness.

So there is a tremendous difference in the whole procedure for such a permitting application for this Frederick's type of mine as compared to Peabody asking for a permit in Montana on a 40-foot vein of coal. Mr. Frederick has zeroed in on several points. I will run through those points with you.

He says there is no flexibility in the proposed regulations to modify the standards to meet the local needs, ignoring completely the size of the operation. Now, one of the reasons we wanted this program to be a State-Fed program was to allow for flexibility in a region or a particular State. I judge you have exactly the same criticism.

Now, what about this cost of permitting? For Peabody to spend \$30,000 or \$60,000 on a permitting application where they are going to mine for the next 6 or 7 years is one thing, but for an operator to spend rather than the \$4,000-plus it has been averaging in West Virginia, to have to spend up to \$20,000 or \$25,000, there is a great deal of difference.

What can we do in Congress to alleviate that tremendous front-end cost? That is one of my prime concerns in the bill as it affects eastern mining. And I am not expert. Don't ask me anything about mountain-top or steep slope or anything. I have for 6 years had one consistent position: I don't know anything about it.

I want to get at the permitting process because I think I can understand that. What can we do here in Congress to alleviate these tremendous front-end costs of an applicant asking for a mining permit.

Governor ROCKEFELLER. I am not sure how effectively I can answer that, Senator. I do suspect even if a whole variety of problems are reduced or eliminated in the new set of rules and regulations, that the cost of working up to a permit is going to be very, very extensive and expensive. It is going to be much more than it has in the past just by virtue of the law, much less the rules and regulations, to comply with it.

Senator BUMPERS. If the Senator will yield. Cost of permitting, I would assume, would depend to some extent on the topography of the permit area, would it not?

Governor ROCKEFELLER. If, for example, you have to draw wells, like in monitoring your water systems, if you have got to be drilling wells

every several yards to figure out where your water streams are, obviously—and that all becomes a part of the process leading up to permit, that becomes enormously expensive. If you take that out, it becomes less expensive.

Mr. Boggs, would you have a comment on that?

Mr. Boggs. It would probably be mining closer to 20 inches than 4 feet. Congress had the foresight to have a financial assistance program built into the act and funded to help with water, chemistry, and other aspects of geological survey, analysis, this type of thing.

Senator BUMPERS. That is not what Senator Ford referred to as the small operators assistance program is it? Is that the same thing?

Mr. Boggs. Yes. The Congress had the foresight to provide for a smaller operator in that respect. The problem may be where the line has been drawn, what constitutes a small operator, as indeed you have pointed what may be a small operator in the West is perhaps a large one in Appalachia.

Senator MELCHER. Where is the line? Maybe that is part of my question. Maybe the line could be defined.

Mr. Boggs. The line as I recall it is 100,000 tons a year.

Senator MELCHER. From one mine?

Mr. Boggs. All of the mines of one company.

Senator MELCHER. It looks like we have not zeroed in on it then. That is not much company if the company happens to be operating four mines. That would only be 25,000 tons per year from the small mines. We would indeed call that a small mine in our country.

I notice Williams Bros. Engineering out of Tulsa, which is a very fine engineering firm, has given an estimate that it would require at least \$25,000 for a permit. Indeed, if it is a permit for a 20-inch vein of coal, that is a hell of a cost. Now, Mr. Frederick says the bonding requirements are such that it looks very tough, including a minimum of \$1 million for mine fire damage for 5 years after a mine closing. That is underground mining, not strip mining. Is there anything in the West Virginia law that alleviates or mitigates the cost for bonding for a small company?

Mr. Boggs. The \$1 million you are referring to, Senator is what I understand to be in the proposed permanent program regulations. We in West Virginia have not seen copies of those regulations at this point. There was a rough draft submitted some time ago. We were advised by OSM not to pay any attention to them because they were withdrawing them and revising them substantially. So I would have difficulty in responding to you on bonding requirements.

Senator MELCHER. I see, when the permanent regulations are proposed. Now the ground water, we have covered this partly before. It seems to me absolutely foolish to require a repetitious finding on ground water or underground water in an area that is only a 40- or 70-acre permit. Have you advised the Office of Surface Mining your feelings on that? I hope that is correct.

Governor ROCKEFELLER. If we haven't—we have, and if we haven't, I surely hope it got through today.

Senator MELCHER. I am amazed to find this requirement here. I did not know we required to file a plan on wildlife enhancement in order to get a permit. That permit is only for 40 acres or 70 acres, I don't know what you do or what anybody does to enhance wildlife unless

it is a vegetation program that has nothing to do with farming, or cattle, or sheep, or anything.

Have you advised OSM of some ideas on practical management on that?

Governor ROCKEFELLER. No, we have not.

Senator MELCHER. One other point I would like to make. That occurs not in Mr. Frederick's testimony but in the testimony of a small operator, I will put that again in quotes "small operator" because it may be a fairly sized operation. Ron Sanders of Madisonville, Ky. He speaks again of hydrology as it affects a permit application. It is no secret as Mr. Sanders points out when we passed this act there was a very profound lack of professional hydrologists available to do underground water studies. If this is going to be a stringent requirement in the permitting process, I think it might become an impossible hurdle to overcome. We have difficulty finding hydrologists to advise us in the West where water is our lifeblood. I cannot believe since we passed the act we suddenly have enough expert hydrologists.

I think this is an area where Congress may have to step in. We would like to have your advice if we do. As to the Clean Air Act amendments which were amended substantially in 1977, in order to meet those requirements in the permitting process, not in the actual performance but in the permitting process, to ascertain whether or not the dust, the captured dust can be controlled and will not infringe on other laws of the Clean Air Act, Mr. Sanders says, requires 1 year's monitoring.

If that is true, this is a serious handicap for a small operator.

Senator BUMPERS. We are under a 1 o'clock deadline here. I think we will be lucky to get through with Governor Rockefeller by 1 o'clock.

Senator RANDOLPH. Mr. Chairman, I will use only approximately 90 seconds. I am appreciative, Governor Rockefeller, of your testimony. It is factual. It has been strong and it will be helpful as this hearing progresses to bring out some order out of chaos in the surface mining industry. I listened to you very carefully when you said the Office of Surface Mining is hiring away the expertise of personnel that has been used in West Virginia in our program. You said you could understand that, and so forth. Then you said you felt the knowledge they had gained in West Virginia was not being used here in Washington, D.C.

So would you just say why the OSM is not utilizing this manpower?

Governor ROCKEFELLER. Senator Randolph, I believe the people they are employing from the States know the problems but are simply not in policymaking positions. In my own view, there are a few people around who are, I consider to be a most professional and excellent Director, that is Walt Heine, who really do not necessarily believe as is stated in the findings and policies of Public Law 95-87 that there should be effective and reasonable regulation to protect the environment but also to help the coal industry expand. There may be a sort of secret agenda of abolition by rules and regulations. I am not sure that does not extend perhaps just slightly above Mr. Heine himself. I do not believe Mr. Heine does, because he is a professional, but I do not believe he has full policy control as he should have.

I do not believe Secretary Andrus is fully aware of some of these things that are going on, Senator Randolph. I feel if he were it would be different.

Senator RANDOLPH. You set forth in your statement as I recall five recommendations. I support you in those recommendations. I believe they are well reasoned. I think the members of the committee here also feel that. I wonder if you have discussed those recommendations through your office or personally with the task force in the Office of Surface Mining and what response you may have had.

Governor ROCKEFELLER. We have done that only by virtue of what I have said today. I hope this will come because I am afraid, Senator Randolph, we are going to have a proposed set of Government regulations in the public hearings process which is going to last all of the way somehow up to 1980 and our legislature is going to have to come to session—which it will this January—and try to respond to the Federal law, to rules and regulations which we may not be able to at that time understand.

It is a very dangerous, treacherous process. The sadness is the law is clear, the law is good. Here we had a perfect opportunity to make rules and regulations in specific fashion that really do work. That effort has failed in my judgment. In the last 2 weeks in the largest coal-producing region in the Nation we have issued only two permits.

Mr. RAHALL. Governor Rockefeller, I congratulate you on excellent testimony this morning. You have touched lightly on the history of West Virginia in regard to surface mining laws and I think it shows a record that is concerned for preserving the beauty of our mountains and it is a record that dates back before this particular Member of Congress was born. I share with your thoughts our surface mining laws are adequate, that they should be approved by the Office of Surface Mining, and the administration of this program should be conducted certainly by our State anyway.

I know during the conference committee, there was a particularly tough point in the mountaintop removal which Senator Bumpers and Senator Melcher referred to. We made that exception for return of original contour in mountaintop removal. There were other exceptions that were made. It was Senator Randolph's compromise language we adopted in the conference committee that provided for inception for return to original contour in cases of better or more productive use of our land could be found, such as housing developments, recreational developments, projects of this nature which we know, and you have mentioned in your testimony, clearly exists in southern West Virginia and many of our Appalachian States.

So it is this exception, and in addition to mountaintop removal exception, that shows there are unique features in Appalachia that should warrant our State given the administration, provided we meet the Federal law—which I believe we do. I am hopeful the Office of Surface Mining will realize these unique features and will show there is no fear, by their approving the State programs will show there is no fear of allowing the States to administer this program.

You mentioned they felt they wanted to keep it on a Federal level. The Office of Surface Mining was fearful of turning it over to the States.

I hope by your testimony this morning and the specifics you have mentioned we can indeed instill that in the OSM. Once again, I commend you for your testimony.

Governor ROCKEFELLER. Thank you, Congressman. I make one small point. Any time Senator Randolph and yourself are instrumental in getting in this fundamental mountaintop removal section which is the

only way our coal miners are going to be able for the long time future really be able to develop good housing. Any time OSM decides a State is failing to comply, even after they have given regulatory authority to the State, they can bring it back.

Senator RANDOLPH. A very good point.

Senator BUMPERS. Governor Rockefeller, one point. Did I understand you in your original statement, West Virginia, because of your reclamation laws, has been having to sell your coal for \$5 a ton more?

Governor ROCKEFELLER. That is correct. Others will testify we have been selling our coal more expensively because it costs operators more under West Virginia's reclamation laws to do the reclamation of the land. They have been competing at a competitive disadvantage for a number of years. That is one reason we looked forward to this law, to equalize.

Senator BUMPERS. Uniformity would at least restore your competitive equilibrium, if not an advantage and remove the disadvantage under which you are operating now.

One other thing. Senator Melcher raised the question of hydrologists, which is a very legitimate one. There is \$10 million appropriated, or authorized, under the bill, under that small operators assistance program which by definition would be available to a small operator to get the kind of expert help that he would need to make some of those—

Mr. RAHALL. We passed a law that upped that to \$25 million.

Senator BUMPERS. I had forgotten about that. So there will be that money available to the small operators, 100,000 tons or less. Incidentally, that is not so small. In 1971, my first year as Governor in my State, my own county produces about 60 percent of all of the coal produced in my State and I might say I can see coal dumps in all directions from my home, and that is one reason I am vitally interested in this bill. But 100,000 tons, that is not small potatoes in my hometown.

Thank you very much, Governor Rockefeller, for your testimony.

We probably will have a second day of hearings, and if we do, we will allow you to elaborate further. I do not want you to feel you have been cut short.

[The prepared statement of Governor Rockefeller follows:]

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, GOVERNOR, STATE OF WEST VIRGINIA

Mr. Chairman, I appear here today on a matter of concern for the State of West Virginia.

Public Law 95-87, and the interim program required under the Act, can have a beneficial impact on our coal industry and importantly, upon our ability to protect the environment in West Virginia. We in West Virginia welcome this legislation and its benefits.

Mr. Chairman, the problem to be addressed here today is not the Act, Public Law 95-87. Rather, the problem to be addressed is the manner in which the Office of Surface Mining has attempted to implement the Act. I believe that I speak not only for West Virginia, but for most of the coal-producing states, when I say that the intent of Congress has not been achieved, is not being achieved, and shows no immediate prospects for being achieved, unless something is done.

The lack of positive policy determination, efficient administration, effective communication and a general common-sense approach toward the implementation of the interim program required by Public Law 95-87 has resulted in the deterioration of what was once a sound reclamation program in West Virginia. The present confusion and chaos created by federal delay and indecision has tied up our staff with red tape, and the industry with questions, so that an unacceptable situation has resulted.

It can take the industry up to two years to get a surface mine permit application under ordinary circumstances, to the point where production is ready to begin. But the industry at this stage is reluctant to look to new investments, because its leaders are not getting direction, answers, leadership, guidance and common sense. Responsible operators—those who want to do a good job—are confused and uncertain. Our own people in government are uncertain as to what is legal and what is illegal. This has practically brought our coal-mining permit process to a halt.

In the past six weeks in West Virginia, only two surface mining permits have been issued. We normally would be processing four or more mining permits a week. We also have more than seventy applications backlogged because we simply do not know what requirements the industry must meet. Perhaps just as important is the unknown number of applications we have not received. Since the industry cannot get answers to its questions, its leaders do not know what to submit in their applications. And this at a time when we are meant to be doubling coal production in the U.S.

Now, I want to talk specifics. Section 101(f) of the Statement of Findings and Policy of the Act states, and I quote: "Because of the diversity in terrain, climate, biologic, chemical and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States."

There has never been a citation issued by OSM for any environmental problems in the State of West Virginia. There have been the citations in other Appalachian States.

Why? Because we do a good job on our own. That's why we should have the right to run our own program. OSM people have told us we have the best reclamation program in Appalachia. The frustration of all of this is that we cannot get on with doing the job we want to do because we have to spend all our time reacting to frivolous violation notices and voluminous regulations.

Instead of our experienced reclamation personnel having any input into the federal regulations, and instead of our experienced staff having primary enforcement authority as mandated by the Congress, we have had to experience the insult of a series of minor, and trivial, enforcement actions by OSM in West Virginia in recent months. Interestingly, a number of these have been immediately withdrawn or vacated. Some of these violations are for failure to keep proper records . . . failure to stockpile and adequately mark topsoil (when it is known that stockpiling is not possible in haulback operations) . . . and failure to have perimeter markers above and below operations which are visible from one to the other, when our system of markers is in compliance with our State law, which the Feds say is binding. The most ridiculous of the enforcement activities, however, is with regard to the failure to have the required underground water monitoring system. No one in OSM has told us, or the industry, what is an acceptable groundwater monitoring system, or how the data collected by such a system is to be used. Yet, enforcement actions are being taken.

Again, I would like to make one point particularly clear at the outset, and that is that the Congress, in passing PL 95-87, produced a law which is practical, logical and workable—and which has the potential to produce great benefits.

We in West Virginia, and I personally, gave strong support to the bill when it was before Congress. I would remind the Committee that my own background is that of an abolitionist, and that I am determined environmentally. We in West Virginia looked with great anticipation to the benefits of equalization of reclamation performance standards among the states, and secondly, the creation of the funding mechanism through Title IV of the Act, which would allow the states to reclaim lands ravished years ago.

My people and I have serious question whether the staff at the highest levels of OSM is a staff consisting of people with competency in reclamation. These people make decisions that affect the health of a major American industry and the welfare of our environment, as well as our citizens. I think it would be helpful for the Congress to look into the backgrounds and philosophies of those with these responsibilities. I say this, not to cast aspersions on any one person's motives, but from the standpoint of suggesting that it might be beneficial for the Congress to inquire as to whether those working at OSM really do have a commitment, or not, to carrying out what Congress intended.

Just last week, I joined several of my fellow governors for a White House meeting with President Carter. At that meeting, he told us he is dead serious about cleaning up the rules and regulations mess and maze that exists in the

government bureaucracy—that rules and regulations must contain a great deal of common sense and plain language. I know all of you share that goal. What I suggest is that if we—the President, the Congress, the Governors—are all serious about solving this problem, this is the place to start.

Again, I repeat: Section 101(f) of the Act stands as a mandate of the Congress which recognizes the important role of the individual states. OSM, however, by and through the rulemaking process, has failed to adhere to that mandate.

OSM has consistently failed to benefit from the expertise existing in the states. They have promulgated regulations which fail to recognize the differences between the various regions of the country and differences between regions within the particular states. Instead, they are attempting to thrust a maze of complicated regulations upon the states, and take over all regulatory control.

Another example. The federal rules and regulations are written to preserve aesthetics. Our approach is to preserve aesthetics. But we also want to make the land valuable and useable in a mountainous terrain. One of our most significant problems in Appalachia is developing land in our southern coalfields for housing and other uses as we enter a new growth period in the coal industry. We want to leave the land in such a condition as to make that land not only aesthetically pleasing, but also productive and useful for our people.

Of all the land in southern West Virginia, only about five per cent—if that much—is flat land. So you can see the problems we face in searching for housing sites. We need to develop flat land sites, above the flood plain—and to carry that out, the mountaintop removal process is critical to our success.

But we face a situation regarding mountaintop removal where the rules and regulations of OSM are much more restrictive than the law itself.

Our biggest problem with the regulations concerning mountaintop removal relates to the post-mining land-use requirement. A comparison of the language in Section 515(c) (3) of the Act and 30 CFR, part 715.13(d) (3) and (4) of the regulations, reveals a subtle change in language which, coupled with the presently deaf ears of OSM, will result in frustrating housing and other developments on mountaintop removals.

Among other requirements with which we have no argument, the Act requires in Sub (IV) that the applicant shall provide a plan that will be “practicable with respect to private financial capabilities for completion of the proposed use.” However, the regulation requires “specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment.”

The addition of the requirement of financial letters of commitment will thwart our needed development. No lending institution in the country will make a financial commitment to a project that is a minimum of two years, or perhaps a maximum of eight years away. How does this misdirected use of the Act help the environment in West Virginia? It doesn't.

Another example is the requirement that groundwater monitoring systems be established by each operator. While this requirement is being demanded by OSM for all existing and new permit operations, no one at the Office of Surface Mining, from the inspector who writes the violation notice to the acting regional director, can tell the states or the industry what constitutes an acceptable groundwater monitoring system. Nor can they say for what purpose it is to be used. In effect, OSM has written, and is enforcing, a regulation which they themselves do not understand and cannot or will not interpret.

Some of the water monitoring regulations were written for Western states, where—if I can simplify this—you have one, or very few, underwater streams, so to speak, and everything and everyone, more or less, depends upon that underground stream or streams. But in West Virginia there is not one underground “stream”—there are many at different depths, scattered throughout the underground strata of thousands of mountains. This situation in Appalachia is totally different from that out West. Yet, we are told we have to “monitor” these underground streams, not how or why—but simply that we must.

When we ask OSM to define for us exactly how to monitor groundwater they can't tell us. Ironically, they are citing our operators for not having such a system, yet there's no indication from them of what that system should be.

I don't know what this tells you, but I'll tell you what it says to this governor: It tells me there's a lot of inexperience at OSM and that we are suffering because of it. Mr. Chairman, I do not think this is what the Congress intended.

Another example: The history of our struggle with OSM over the valley, or head or hollow, fill regulation is representative of our present problems.

Before the interim federal regulations were promulgated, we were told that our valley fill design criteria were acceptable. Based upon the verbal assurance from OSM we did not comment upon the federal valley fill regulations. When the federal regulations went into effect, OSM made an about-face, and verbally rejected our regulations. We then attempted to negotiate with OSM. When that failed, our Attorney General filed suit in Federal Court. In the final analysis, it took court action to budge OSM from its position. The court essentially told OSM to reconsider its valley fill regulations in light of new evidence from a professional study done on valley fills. Ironically, this new evidence confirmed that West Virginia's approach was better. All of this could have been resolved in timely fashion had OSM chosen to cooperate with West Virginia at the outset. After all, our valley fill design has been in use for many years without one failure or problem. The same cannot be said of theirs. OSM has not to this day approved our valley fill design. But our experts cannot, in good conscience, permit OSM's design in southern West Virginia's steep slope areas.

Another example is 30 CFR, part 715.17, which requires, in essence, that haulroads would not be overtopped by storm runoff. While we share this concern, the large ten-year, twenty-four-hour storm culverts specified in the regulations are designed to pass water directly downstream without any time to retain the sediment that is passed directly to receiving stream. In West Virginia, we have had a requirement of not only the large culvert, but a series of small catch basins, spaced according to the grade of the road, complete with overflow stand pipes that cause retention of the runoff water allowing sedimentation to be trapped and not passed downstream.

We have received any official acceptance of this plainly more protective requirement, although OSM has verbally indicated that our regulations in this respect are as good, if not better, than theirs.

Another example of OSM unreasonableness and over reaching its authority in violation of 101(f) of the act involves 522(e) of the federal act which prohibits mining operations within certain distances of public buildings and private dwellings. The Congress provided for a "grandfather clause" whereby those persons who had made a substantial legal or financial commitment prior to January 4, 1977, were specifically exempted from 522(e). OSM, however, has required the states to revise all permits issued on or after August 5, 1977 with a view toward prohibiting mining in certain areas in spite of the above-noted exemption in 522(a)(6) of the Act. OSM by policy has stated that only those persons with valid permits issued on or before August 3, 1977, were exempted from the requirements of 522(e). This interpretation is not supported by the legislative history of the Act, nor is it supported in writing by OSM.

I am not an attorney but I certainly know there is a considerable difference between having a permit and having a valid existing right to mine. This arbitrary policy by OSM will give rise to time consuming and expensive litigation in our courts. We can better spend our time and money on more important things than trying to enforce this arbitrary policy of OSM.

Additionally, and on another front, I think it pertinent to point out that the Office of Surface Mining has relentlessly pursued the recruitment of our experienced staff, further negating our environmental efforts. To date, six state employees have taken jobs with OSM with an increase in average salary of approximately \$6,000. This represents one-fifth of our entire staff. OSM is today seeking to hire away five more of our people.

Mr. Chairman, we do not wish to deny these people their chance to advance. We do, however, want to be able to staff our program adequately. But if we are that good, then let us be the regulatory authority for our own State. We know what we are doing.

Without adequate staffing, we cannot qualify for final program approval. Without final program approval for the State of West Virginia, OSM will have to administer the interim program in West Virginia.

Mr. Chairman, we are now faced with the prospect of a new set of regulations for the permanent program. It has been reported to me that in volume, these regulations will exceed 900 pages in the Federal Register. Not only is the sheer volume of these regulations beyond comprehension, the draft copies indicate that these regulations will lead to ever more chaos and confusion. It is obvious that the states will not have adequate time to react rationally to these proposed regulations. It is also obvious from our past experience that the Office of Surface Mining will pay little heed to the pleas and suggestions of experienced resource managers at the state level, even if we have an adequate opportunity to respond to these permanent regulations.

It would be patently unfair for me to offer these criticisms without also offering a suggested course of action to bring rationality to the subject.

I call on the Federal Office of Surface Mining, and I ask this committee for support of the following recommendations:

1. That the Office of Surface Mining revise the inflexible timetable for the proposed permanent program regulations.
2. That the permanent program regulations, which are scheduled for publication in the next few days, be discarded.
3. That the Office of Surface Mining formulate a Task Force composed of representatives of OSM, representatives of state agencies and the Interstate Mining Compact, to rewrite these regulations so that they are practical, logical, workable, effective and acceptable to the states which will implement them.
4. I ask that the Office of Surface Mining establish an effective system of communication so that policy matters both from the states and from the industry can be answered in a timely fashion.
5. I ask that the above-reference Task Force be charged with the responsibility of amending the interim regulations now in effect in such a way as to remove those provisions which are unduly restrictive without redeeming environmental benefits and to write them in plain concise and simple language.

I make these recommendations so that the further crippling of the state agencies and the industry can be avoided. These recommendations are premised upon the assumption that OSM's goal is to assist the states in developing a strong and effective program and to assist in bringing stability and predictability to the industry and environmental integrity to the mining of coal.

At one point, 6-8 years ago, reclamation practices in West Virginia were bad that I was an abolitionist myself. But we all decided to quit building barriers between us, and all interests got together and started to break those barriers down. We pulled together—identified the problems and went to work on them. And what was the result? Now, we have the toughest surface mining laws in the country. And they are vigorously enforced.

Mr. Chairman, we built our program through years of pain and experience. Step by step. Building block by building block. Word by word. Law by law. Now, we're having trouble carrying it out.

And the irony of all this is that the federal program was modeled, in large part, after West Virginia's program; after the West Virginia experience.

And now the federal program is so confused that the state which was the model for the program is stymied in its efforts to carry out that program—and the new program (the federal one) may collapse, I fear, from its own bureaucratic weight and indecision.

We must not let that happen.

Senator BUMPERS. Mr. Lusk.

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

Mr. LUSK. Mr. Chairman, my name is Ben E. Lusk, president of the Mining and Reclamation Council of America, a national trade organization representing the surface coal-mining industry. The council is comprised of individual companies and affiliated State and regional associations representing over 3,000 companies involved directly and indirectly in the surface mining of coal in the United States.

On behalf of the council, I would like to extend our sincere appreciation to Senator Bumpers for recognizing the need for such a hearing and scheduling it at this late date on the Senate calendar. We realize what a busy time this is for you and your colleagues and are encouraged that you are concerned enough about the serious and immediate problems facing the surface mining industry.

With me today are three mine operators representing the two top coal-producing States, West Virginia and Kentucky. Each will present specific problems they are facing with the implementation of the Surface Mining and Control Reclamation Act of 1977.

But first I would like to touch on some general areas of concern over several critical problems that have developed during the implementation process of Public Law 95-87 by the Interior Department's Office of Surface Mining. These include areas where, in our opinion, OSM has gone beyond the intent of Congress, especially with the preproposed rules for the permanent regulatory program and overall administration of surface mine enforcement.

The first obvious problem is with the preproposed rules and regulations. Overall, we do not believe OSM has achieved Congress original intent as stated in section 501(a) of the Surface Mine Control and Reclamation Act of 1977. It states that regulations for the act "shall be concise and written in plain, understandable language."

Congressman Morris Udall, chairman of the House Interior Committee, at the January 19, 1978, oversight hearings on surface mining, stated seven times in 2 days while addressing Mr. Heine, the Director of OSM, that the rules and regulations are to be written in concise, plain, and understandable language. On one occasion he stated:

There has been a great outcry in this country against lawyers and over technical regulations, particularly against language that is not concise, plain, and simple. As you draft and redraft these things, I hope you [Mr. Heine] will keep in mind the admonition that there is a simple, plain way of saying things.

Congressman Santini of Nevada followed that later by saying:

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 * * * 87 pages here, which I would submit, that a monk in a monastery working for 2 years with a microscope would have difficulty translating.

Chairman Udall responded to Mr. Santini by saying: "I am with my colleague on his revulsion against unnecessary and burdensome and complicated language."

Mr. Chairman, I do not want to belabor the point, but these comments and many more were directed against the interim rules and regulations prepared by the OSM. Obviously ignoring the mandate of the act and the advice of your colleagues in the House, OSM published the preproposed permanent rules which far exceed the interim regulations in their complexity. In a taped interview with Chairman Udall last month when asked how he felt about the newly published preproposed regulations, he said:

There are many places in here where I could sit down at a typewriter and write something a little more clear. This one on page 18 talks about defining different types of soil. It says, "Soil that is aquatic, udic, or xeric moisture regime" or whatever. I do not understand those words. I do not have the foggiest idea what they mean, and if I were a "little ole" coal operator in some town, I would drop my hands when I got to that point.

Mr. Chairman, I submit to you that on Friday when the preproposed rules came out with the 2,000 pages of technical regulations, justifications, and explanations that are rumored, that "little ole" coal operator is going to do just that.

And, if he does not give up just by looking at the size of the document, he certainly will after he reads what is inside.

Another area where OSM has ignored the mandate of Congress is its failure to meet every statutory deadline mandated by Congress in the

act. OSM was 11½ months late publishing the interim regulations, and they will be almost 6 months late in publishing the final rules. Ironically, while they have ignored the deadlines set by Congress, the industry and the States have been forced to meet their deadlines for compliance with the program. These delays and being forced to comply with programs that were not completely formulated, has led to confusion, if not total chaos, in the State agencies, as well as unequal, hit-and-miss enforcement throughout the industry.

The most harmful byproduct of these delays will come in early 1979, with its impact on State programs. OSM now plans to publish its final rules on January 15, 1979, which again is nearly 6 months later than Congress mandated. The States, however, are required by the act to submit their programs for approval on February 3. This gives the States 18 days to prepare their programs instead of 180 days that Congress mandated. Obviously, this deadline must be extended.

The legislative history of Public Law 95-87 establishes without a doubt that OSM's prime responsibility is to provide minimum guidelines for the States to follow in enforcing the law. Section 101(f) of the act clearly specifies that :

Because of the diversity of terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this act should rest with the States.

After a thorough review of the draft regulations and listening to comments of State agencies during recent hearings on the draft, we have grave doubts that any State will be able to administer the act.

From the beginning, Mr. Heine has said this would be a "State led" program, with OSM acting only in an overview capacity. But a review of the agency's early draft reveals voluminous, unnecessary, duplicative redtape and bureaucratic limitations that are designed to take this program away from the States, directly ignoring the intent of Congress.

Because of the differences in terrain from State to State, Congress recognized the importance of each State having the flexibility to write design criteria that would be applicable to its particular area. Again, I think the legislative history clearly documents that Congress wanted OSM to develop general performance standards, which the States could use as a guideline. Realizing this, it is difficult to comprehend how the agency could justify submitting over 460 pages of detailed specifications and design criteria for a program whose prime enforcement responsibility lies with the States.

In a letter to Congressman Udall on January 12, 1978, Interior Secretary Cecil Andrus warned that if OSM did not receive its appropriation soon, the States would have difficulty in developing programs for permanent State assumption of enforcement responsibility. "Without the State grant funds, States are holding off on hiring the additional staff they need."

That was 9 months ago and a majority of the States still do not have grants even though OSM got the appropriation it asked for shortly after Secretary Andrus' appeal.

Instead of helping the States increase staff and develop programs, OSM in effect is raiding the States by hiring away much needed per-

sonnel, withholding grant funds and placing the States under impossible time constraints forcing them to meet deadlines that are not only impossible to meet, but deadlines that OSM itself could not meet.

I think it is significant to note that West Virginia, long recognized as having one of the Nation's finest State programs, recently turned down OSM's enforcement grant because of disagreement on design criteria and discrepancy concerning who is going to enforce this programs. Indiana has sued OSM to try to regain control of its program, and several other States are now considering such litigation.

I would like to bring up one point Governor Rockefeller mentioned. Mountaintop removal is almost impossible in these areas. We have an operator in southern West Virginia who has on several occasions received mountaintop removal permits and has done a tremendous job in reclaiming land, in developing housing for the areas around Mingo and Logan Counties. He got a permit recently to do the same thing and the environmental groups, in submitting for the permit he had to show financial ability. Fortunately, the State did issue the permit. Unfortunately, this company will probably not be able to mine that land.

I must strongly restate our concern about the small operator, another problem area recognized by Congress, but ignored by OSM in the draft regulations. The permit requirements require what would normally be needed for a large operation in the West or Midwest and have absolutely no relevance for small permits in the Appalachian area of smaller coal mining States. There is no justification for the detailed studies, surveys and other requirements in the great majority of smaller permits. If these requirements remain in the rules, literally thousands of these permits will be terminated.

Attached is a letter (appendix A) to President Carter from Mr. George Malone, president of Facts About Coal in Tennessee, a State trade association representing the surface mining industry. Mr. Malone is also a small surface mine operator and has joined many of his colleagues who have decided to throw up their hands and go out of business. The sad thing, Mr. Chairman, is that this company really does not have to go out of business, nor does it have to put its 55 employees on the growing rolls of the unemployed. Even sadder, Mr. Chairman, is that those men won't be alone.

In editorializing about the Tennessee situation, the Knoxville Journal summed it up best: "Give the regulators a free hand, and they'd shut down everyone and everything." That, Mr. Chairman, I know was not the intent of this committee, you, or Congress.

In an attempt to avoid unnecessary shutdowns and help bring about smoother compliance, our Council requested a 6-month delay of the May 3 implementation date for enforcement because at the time, the agency had not established regional offices, their first 29 inspectors were still in training and only a skeleton staff was on board in the Washington headquarters. However, OSM said a delay was not necessary, and in an April 11 letter to Congressman Morris Udall, Interior Secretary Andrus said that delays in staffing "will mean a de facto delay in Federal enforcement."

Mr. Heine assured us that shutdown notices would be written only for imminent hazard violations and that the interim program would

provide a period of time for OSM inspectors to get acquainted with the State inspectors and mines in their areas.

Gentlemen, during the first 4 months of the interim program, OSM personnel have issued well over one-half million dollars in fines and totally shut down 52 coal operations, and this with only about 25 percent of the inspection force that will eventually be on staff.

I would like to print out that the law and the regulations are as new to these inexperienced inspectors as they are to the industry and considering the technical nature of the program, it is reasonable to assume both sides would benefit from a transition period. Unfortunately, OSM has chosen the extreme rather than the reasonable route, and the current regulatory attitude certainly does not meet our definition of "de facto" enforcement.

As I stated earlier, there are many problems that should be discussed but time does not allow us to cover them all today. I am going to relinquish the remainder of my time to three coal operators who can better discuss some of the specific problems facing them in the field. However, before I leave I would like to make several recommendations to this committee.

1. Since Congress clearly intended for the States to enforce this act, we think additional oversight hearings should be scheduled no later than January 1979, giving all State agencies an opportunity to come in and discuss their problems with OSM.

2. This committee should urge OSM to eliminate unnecessary specificity and detail, in terms of procedural requirements and design criteria from the regulations before they are put into final form, which I understood to be this Friday.

In section 503(a) (7), the act specifies that rules and regulations for State programs should be "consistent" with regulations issued by OSM, not identical. I am afraid OSM is interpreting this to require the States to develop regulations that are identical to the Federal requirements. OSM must allow the States the necessary discretionary opportunities they need in order to better implement their programs on a regional basis taking into consideration the diversity of terrain, climatic and biologic conditions from State to State.

3. It is absolutely necessary that the February 3 deadline for submitting State programs be extended at least 6 months, to insure that each State has a fair opportunity to gain primacy for enforcement.

4. During the January oversight hearings, OSM's economic impact analysis of the regulations should receive careful study, and if such a review reveals that they have underestimated the impact, the committee should be prepared to demand significant changes in the regulations to reduce the adverse economic impacts.

5. And, finally, a senatorial investigation should be initiated to determine the reasons behind the overzealous enforcement policies and hiring practices currently being used by OSM in an attempt to help avoid further unnecessary shutdowns.

Mr. Chairman, contrary to what some people may want you to believe, this great country of ours needs coal for energy and needs jobs for people. With what is going on in the coal fields today, our Nation may lose both. Thank you.

[The attachments to Mr. Lusk's statement follow:]

[APPENDIX A]

FACTS ABOUT COAL IN TENNESSEE,
Knoxville, Tenn., August 29, 1978.

PRESIDENT JIMMY CARTER,
1600 Pennsylvania Avenue,
Washington, D.C.

DEAR PRESIDENT CARTER: In 1974, I made the decision to go into the business of mining coal by the surfacing mining method in Scott County, Tennessee. Since this time I have seen the price of coal go up and down according to the supply and demand at the time.

I consider my company, M-A-S-H, Inc., a reputable mining operation which attempts to the best of its ability to conform to all of the laws of the land to mine coal in an environmentally acceptable manner, knowing full-well that in most instances the environmental demand was much greater than the results it would achieve. The coal industry in Tennessee and throughout the country, particularly in the steep slope areas of Appalachia, are facing a slow, but certain death. No longer can the small coal operator cope with the maze of bureaucratic red tape, and the daily boondoggling which accompanies typical bureaucratic behavior. The sad parallel of the whole situation, Mr. President, is that neither you as our country's Chief Executive Officer nor the Congress of the United States are no longer in control of the governmental agencies which supposedly attempt to carry out your mandate.

Two agencies with which I am familiar are the Federal Office of Surface Mining and the Environmental Protection Agency. (As you know, the Congress enacted legislation, and you enthusiastically signed it, imposing new and stringent requirements on the coal industry: The Surface Mining Control and Reclamation Act of 1977.

You and the Congress lost control of accomplishing the purposes set out in the Act when you left it in the hands of a group of surface mining abolitionists to write the rules and regulations in conformity with the intent of the Act. These individuals, many of who can easily be identified with documented proof as being surface mining abolitionists, are neither achieving the overall results you desired in the Act or are taking into consideration the feelings of the vast majority of the American public who must ultimately bear the consequences of their actions. Unfortunately the minorities of this country are now in complete control.

It is my sincere hope, Mr. President, that the people of this country who are tired of increasing electric rates and over regulation will let their voices be heard.

The Surface Mining Control and Reclamation Act of 1977 will take its toll of mine operators.

This letter is to inform you that its first victim in Tennessee is my company. After about eight weeks to clear up unfinished business, I will no longer remain in business.

My regret is not only to my employees and their families, but the fact that you and Congress would give such overwhelming authority to an agency of our government which will in time eliminate the extraction of one of the world's greatest natural resources—coal.

With the attitude that now prevails in Washington, there is no possible way in the foreseeable future that our country can reach the energy goals you have outlined.

On behalf of fifty-five men who will soon lose their jobs, I plead to you and to the Congress to reconsider your actions.

Thank you for your time.

Sincerely,

GEORGE MALONE.

[From the Knoxville Journal, Aug. 31, 1978]

REGULATORS RUNNING WILD

On a nationwide scale that closing of a mining operation in Scott County because of what the operator believes to be excessive regulatory standards may not rank as an earthshaking event. If the eco-nuts have their way, however, it could prove to be a harbinger of more drastic things to come.

George Malone's mining business was not the biggest. But it employed 55 persons in an area not overly blessed with jobs and had a weekly payroll of \$15,000 in a county where money doesn't exactly grow on trees. And he shipped 225,000 tons of coal each year for use in the production of electricity, another commodity which has been limited in quantity at various times in recent years.

Some other operation may come along to fill the gap, to provide jobs, payrolls and much needed fuel. Then, on second thought, anyone would have to be a little on the crazy side to jump into the business after Mr. Malone's experience.

The last straw for him was a \$10,500 fine levied by the U.S. Office of Surface Mining—part of the more than \$100,000 in fines handed out by OSM in the past five months in this area—for four violations of the new federal strip mine standards. What did he do wrong? Not all surface water ran into sediment ponds. Not all topsoil was kept in separate piles from subsoil. Some dirt and other material was washed off the roads into a stream.

Apply those same standards to, say, subdivision development and there probably would not be a new home built—legally—anywhere in the country! That's not even to mention the collective disruption of the land and sedimentation of streams attributable to such outlandish practices as farming.

Give the regulators a free hand and they'd shut down everyone and everything.

APPENDIX B

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 11, 1978.

HON. MORRIS K. UDALL,
*Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives, Washington, D.C.*

DEAR MO: I am also concerned about the smooth implementation of the Surface Mining Control and Reclamation Act. The May 3rd deadline will be soon upon us and the Office of Surface Mining has only recently received its budget. Despite this, I believe that no postponement of the May 3rd date is needed and that OSM, the States and the industry can successfully manage the transition period.

Because of budget delays, by May 3rd OSM will have only a portion of its inspection force hired, trained and equipped. We had hoped to have 30% by then; now we project about 20%. Another group of inspectors will be hired, trained and equipped by mid-June, and a high priority will be to staff up completely by the end of the summer.

This delay in staffing, while unfortunate in some respects, will mean a de facto delay in Federal enforcement. Because of understaffing, OSM will likely use the first and second group of inspectors to deal mainly with violations that create imminent hazards and leave routine inspections to the States. Thus, the most dangerous and environmentally harmful violations will be corrected while the operator who is making an effort to shift his mining to comply with the new standards will have as a practical matter extra time after May 3rd before he is subject to Federal inspection.

In addition, OSM regulations allow operators to apply for and State regulatory authorities to grant up to six months beyond May 3rd to bring preexisting, non-conforming structures into compliance with the interim standards. Thus, if he needs it, an operator may gain the summer and early fall construction season to adjust his operations.

Finally, while imminent hazards will be dealt with promptly, there is flexibility in the enforcement powers and obligations in the Act to allow for transition to the new standards. For instance, the period of abatement of violations can be up to 90 days; this in itself creates a great deal of flexibility.

The initial regulations place a duty on operators to do additional technical work with respect to the mines. The States must review and approve some of this work. We are presently working with the States to assure they are effectively able to manage this task.

Our goal continues to be wise development of our coal resources in a human and environmentally sound manner. With Walter Heine's leadership, I am confident that OSM will be reasonable, as well as effective, as the May 3rd deadline arrives and enforcement begins.

Sincerely,

CECIL D. ANDRUS,
Secretary.

APPENDIX C

MINING AND RECLAMATION COUNCIL OF AMERICA

Please complete and return immediately to the above address:

1. In your opinion, what is the biggest problem(s) facing the surface mining industry today?

	Percent
Surface Mining Control and Reclamation Act of 1977.....	89
Coal Mine Health and Safety Act.....	22
Clean Air Act.....	32
Clean Water Act.....	14
Office of Surface Mining.....	59
Federal coal leasing.....	8
Other.....	11
Unstable labor situation.....	19
Capital expenditures.....	11
Manpower.....	6
Equipment.....	3
Transportation.....	11
Market conditions.....	38

3. How will your company's tonnage be affected in 1978 as a direct result of this Act?

Projected tonnage for 1978, 3,241,125 as compared to tonnage for 1977, 4,946,508.

6. What effect will enforcement of the Act have on your company's long range plans?

	Percent
None that can be foreseen at present.....	17
Layoffs and cutback of production.....	39
Sell out.....	19
Possible shutdown.....	31
Inevitable shutdown.....	22

APPENDIX D

MOUNTAIN STATE SURVEYING CO.,
Kingwood, W. Va., August 28, 1978.

(The objective of this paper is to familiarize those persons not having background experience at the "grass roots level" with the cost of preparation of a surface mine permit application in northern West Virginia.)

Calculated average cost for preparation of a 100-acre surface mine permit in northern West Virginia

(To comply to "public review draft proposed permanent regulation surface mining control and reclamation act of 1977.")

Part 778 was not cost evaluated since there has been no forms prepared for a permit and it would appear that most of the information required would have already been acquired by the operator.

Part 779 Surface mining permit applications—minimum requirements for information on environmental resources in the permit and adjacent areas:

779.11	General requirements.....	\$750
779.12	General environmental resources:	
	Information:	
	Hydrology report.....	1000
	Geology report.....	1000
779.14	Climatological data.....	150
779.15	Vegetation data.....	50
779.16	Fish and wildlife resources.....	250
779.17	Analysis of selected overburdened topsoil mixtures.....	150
779.18	Land use description.....	150
779.19	(B) Maps, plans and cross sections:	
	Field surveys.....	1000
	Office.....	500
	(C thru C9) Maps, plans and cross sections.....	600

Part 779—Continued

779.19—Continued

(C10) Maps, plans and cross sections/slopes 10 acres per day at 24×10 days equals:

Surveying ----- \$2400
Office ----- 600

(D) Maps, plans and cross sections ----- 50

Part 780 Surface mining permit application—minimum requirement for reclamation and operation plan

780.11

(A) Narrative ----- 1250

(B) Blasting plan ----- 175

(C) Maps, plans, cross sections ----- 1875

(E, F, G) Not applicable in this area (areas west of 100 meridian, only)

(H) Fish and wildlife plan ----- 150

780.13 General requirements for reclamation plan ----- 225

780.14 Protection of hydrologic balance ----- 1250

780.15 Land uses ----- 150

780.16 Dams and impoundments ----- 1450

780.17 Surface mining near underground mining ----- 250

780.18 Augering operations ----- 50

780.19 Protection of public parks and historic places ----- 150

780.20 Relocation or use of public roads ----- 1000

780.21 Plans for spoil and waste disposal ----- 800

¹ Total calculated average cost ----- ² \$17,425

¹ For permits with only minor problems involved, charges could be somewhat reduced, possibly to an approximate figure of \$13,000, however, for mining permits requiring excessive planning, the total cost could be as much as \$26,000.

² Part 779 and part 780 as relates to drilling and sampling was not tabulated in the above costs due to a wide variety of charges between laboratories and drilling companies which appear to be changing constantly. However, one cost of drilling given by Dr. Manavel of the office of surface mining in May of this year was estimated to be \$18,000.00 for each small operator's permit.

Mr. Robert White of Northeast Land Surveying Company, Kingwood, West Virginia, has projected the cost of preparation of a "bare bones" permit with these same exceptions to be \$10,000, with no problem areas involved. He commented that my anticipated cost of an average permit was realistic.

In reviewing the cost of preparing permit applications for comparable acreages prior to the implementation of the Federal Surface Mine Act of 1977 rules and regulations, I offer the following comparisons:

March 1977, 92 acres ----- \$4,287.75

July 1977, 125 acres ----- 4,642.75

February 1978, 78 acres ----- 4,895.00

FLOYD R. STILES,
Mountain State Surveying Co.

Senator BUMPERS. Mr. Frederick.

**STATEMENT OF G. B. FREDERICK, PRESIDENT, CAPITAL FUELS, INC.,
CHARLESTON, W. VA.**

Mr. FREDERICK. Mr. Chairman, my name is G. B. Frederick. I am president of Capital Fuels, Inc., headquartered in Charleston, W. Va. Our company operates both surface and underground coal mines. I am appearing today on behalf of the board of directors of the Mining and Reclamation Council of America to discuss some specific problems with OSM's preproposed regulations.

Senator BUMPERS. Before we go any further, How many tons of coal did Capitol Fuels mine last year?

Mr. FREDERICK. Approximately 700,000 tons, sir.

Senator BUMPERS. Thank you. Go ahead.

Mr. FREDERICK. First of all, we are gravely concerned about OSM's permitting procedures and say with without hesitation that these requirements alone will force some small operators out of business. The act sets forth only general requirements for permit procedures. However, the proposed regulations mandate exhaustive and detailed permit requirements. The best correlation I can make is that the proposed permit requirements almost exactly mirror what is now required to obtain a permit for a large western mine—one that might produce 10 million tons per year over a 30-year period. OSM is requiring this same information for a 40-acre permit in southern Appalachia. It is obvious to us that this type of detailed background information is simply not necessary for the majority of small permits.

The same type of detailed language has also been written into the sections of revegetation, review processes, and bonding. The States have been given no flexibility to modify the standards to meet local needs and these rigid requirements ignore the size of the operation, mining methods being used, and other important factors that must be taken into consideration.

Since Congress began the serious debate over surface mining legislation 7 years ago, the industry has continuously expressed concern over the potential costs of such regulation. We have not yet had time to quantify the total cost impact because we have not had enough experience. However, we can provide some good estimates of permit and engineering costs which should be of interest to this committee.

Appendix D of our presentation is a recent survey conducted by several land surveyors in northern West Virginia of the estimated costs for preparing an "average" 100-acre permit in compliance with OSM's preproposed rules. The survey reveals a total of \$17,425 for a permit under the interim program, compared to a cost of \$4,287 for a similar size permit prepared last year. I would point out this includes only engineering and mapping and does not include the cost of any of the numerous premining surveys required to establish the environmental baseline.

Also, I would like to note that this does not include the costs for overburden drilling, which OSM's Dr. David Maneval has estimated to be \$18,000 for even a small permit.

Senator BUMPERS. Is the overburden drilling something that has not always been done? There is nothing new about that, is there?

Mr. FREDERICK. In relation to establishment of reserves there is nothing new to it, Senator. We generally core drill to establish the amount of our reserve but not as extensive as would be required for a permit to establish a strata in the overburden.

Senator BUMPERS. That might be an area where we could change the regulations. Are you saying the regulations require more drilling to determine reserves than a good, prudent operator would normally drill?

Mr. FREDERICK. The drilling is not to establish reserves but to establish the type of strata or overburden overlying the coal. We would not do that in the normal course of our operation at all.

Senator BUMPERS. I see the distinction. Go ahead.

Mr. FREDERICK. Williams Bros. Engineering, a mine engineering firm from Tulsa, Okla., submitted the following figures to us. The average cost of a 70-acre permit completed by their company was

\$5,000 prior to April 1978. Since the interim program went into effect on May 3, the cost for the same size permit has jumped to an \$8,000 minimum with \$15,100 maximum. After reviewing the preproposed draft, the firm estimates the cost for a small permit will rise to \$25,000 under the permanent program in 1979.

I seriously question whether the technology, the equipment, or the human resources are available to comply with these regulations. If every company were required at the same time to seek the same professional services—the people are simply not available.

Equally devastating cost increases will be incurred due to OSM's restrictive bonding requirements. The act requires, in section 509, that all coal mining operations be bonded and sets the minimum bond at \$10,000. It does not address the amount of these bonds or the duration for which they will be required. However, OSM has drafted extensive, punitive bond requirements that will be difficult to meet, including:

1. \$5,000 an acre for underground mine subsidence, half of which must be held for 25 years and half held for 50 years.

Senator BUMPERS. Is that regulation OSM has drafted, extensive punitive bond requirements including a \$5,000 an acre bond?

Mr. FREDERICK. Yes, sir.

Senator BUMPERS. Underground mine subsidence, half of which must be held for 25 years and half held for 50 years?

Mr. FREDERICK. Yes, sir.

Senator BUMPERS. OK.

Mr. FREDERICK. 2. A minimum of \$1 million for mine fire damage for 5 years after mine closing.

Senator BUMPERS. Is that for everybody? A minimum of \$1 million bond for mine fire damage for 5 years after mine closing?

Mr. FREDERICK. Yes, sir.

Senator BUMPERS. What would it cost your company to put up \$1 million bond if you bought it from USF & G?

Mr. FREDERICK. We pay approximately for our bonding requirements right now, Senator, I think our premiums are about \$12 a thousand rate. The question is, Will we write this sort of insurance? Will bonding companies be willing to take on this obligation is what I question.

Senator BUMPERS. I think it is debatable, whether or not you could get a bond like this.

Mr. FREDERICK. Yes, sir, it is.

Senator BUMPERS. Go ahead.

Mr. FREDERICK. These requirements present many problems. First of all, it is highly questionable whether surety companies will write bonds for 25 and 50 years because there is no precedent or experience for such bonds. If they do write them, the cost will be enormous. The difficulty in getting bonds and the cost will have the biggest impact on the small operators because of their low volume. Several studies on costs have not yet been completed, but it will likely cost a small company as much as \$1.50 per ton just for bonding. We believe these minimum bond amounts should be eliminated or significantly reduced, and the authority for setting bonds given back to the State agencies that can evaluate each permit on a case-by-case basis and set the bond accordingly.

Finally, I would like to discuss some other premining monitoring requirements that should not always be required, and in many cases, should never be required. Ground water monitoring is totally unnecessary when mining occurs above the water table. In mountainous areas, particularly Appalachia, the overwhelming majority of operations lie above water tables but still they are forced to monitor ground water by the regulations, adding significantly to costs and delays in production.

Operators are required to file a wildlife enhancement plan on every permit, in addition to wildlife monitoring programs prior to mining. If an operator has an approved postmining land use plan for farming, he still has to provide for wildlife enhancement that would likely have a detrimental impact on the farming. Another requirement that falls into this same category is mandatory subsidence monitoring when there are no structures on the surface and even in the cases where the nearest structure may be miles from the mine area.

Now, I will agree that there is a statutory predicate for requiring this type study and monitoring but that predicate is fairly general in nature and these studies should only be required when needed. However, OSM, in writing the regulations has taken every possible opportunity referred to in the act, and stretched its authority to the statutory limit without regard to whether the studies will provide any environmental benefit or not. We believe that these very extensive site-specific studies required by OSM, in every case, were not intended by Congress and that they are not always consistent with the best mining and reclamation practices.

Again, I appreciate the opportunity to be here today. I will be happy to answer any questions you may have.

Senator BUMPERS. Mr. Sanders.

**STATEMENT OF RON SANDERS, DIRECTOR OF ENGINEERING,
KELCO, INC., MADISONVILLE, KY.**

Mr. SANDERS. My name is Ron Sanders, director of engineering and safety for Kelco, Inc., Madisonville, Ky., and also serve in that capacity for five additional companies in five different States. I am a graduate of Memphis State University with a degree in physics and math and am presently a director of the Kentucky Independent Coal Producers Association, secretary-treasurer of the Western Kentucky Coal Operators Association, Inc., and a member of the Society of Explosives Engineers.

Our company has active mining operations in Kentucky, Indiana, Ohio, Alabama, and Arkansas, and is currently permitting areas in Oklahoma and New Mexico. I am here on behalf of the Mining and Reclamation Council of America.

I got my copy of the preproposed review draft from the Mining and Reclamation Council of America. My company pays over \$300 dues to them and has since their inception. Upon repeated requests from OSM, none of our five mining companies got a copy of these from OSM. I would like to point out also we have paid over \$250,000 in severance money to OSM. We can't even get so much as a copy of the draft. He was complaining industry had not responded to the draft. I know everyone has had a lot of difficulty getting copies.

The act authorizes the regulatory authority to regulate the use of explosives to prevent injury to persons or damage to property but makes only one numerical limitation, section 522(e)(5), precludes mining "within 300 feet from any occupied dwelling, unless waived by the owner * * *"

However, OSM chose to expand this in the regulations to 1,000 feet unless a waiver is signed by the landowner.

Senator BUMPERS. Wait a minute. Are you saying section 522 precludes mining within 300 feet and OSM has expanded that to 1,000 feet?

Mr. SANDERS. Yes, sir.

Senator BUMPERS. OK.

Mr. SANDERS. We believe we have the technology in the blasting industry now to mine 300 feet without causing damage. In fact, we have one permit to go within 180 feet of an occupied dwelling and we will be mining down to a depth of about 75 feet. We expect no problem.

Senator BUMPERS. Is that an arbitrary thing OSM has in its regulations that they prohibit all explosives within 1,000 feet?

Mr. SANDERS. Yes, sir.

Senator BUMPERS. Unless a waiver is signed?

Mr. SANDERS. Yes.

Senator BUMPERS. Is Mr. Heine still here? Or is anybody from OSM still here? Ed, would you like to comment on that?

Mr. ROVNER. I don't have a set of the regs with me now. I believe they conform to the statutory requirements. I can get you the information, Senator.

Senator BUMPERS. Do you have the statute and the regulations in front of you?

Mr. SANDERS. If I can find it.

Senator BUMPERS. Section 522(e)(5).

Mr. SANDERS. It states 1,000 feet of any building used as a dwelling, school, hospital, nursing facility, unless a lesser distance may be approved with submission to the regulatory authority or a waiver signed by the landowner.

Senator BUMPERS. Wait just a minute. Now what does the regulation say?

Mr. SANDERS. The regulation states 300 feet and is contained in section 522(e)(5).

Senator BUMPERS. No; you are quoting the statute.

Mr. SANDERS. I was quoting the regulation.

Senator BUMPERS. The statute says:

After the enactment of this act and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this act shall be permitted—and one of them is (5) within 300 feet from any occupied dwelling, unless waived by the owner thereof.

Mr. SANDERS. That is correct.

Senator BUMPERS. This is the law I am stating here. You said in your testimony OSM has expanded that to 1,000 feet.

Mr. SANDERS. We are now required by OSM to obtain a waiver under the proposed regulations of mining within 1,000 feet.

Senator BUMPERS. What I am asking you is, do you have the regulation?

Mr. SANDERS. Yes; it is section—page 251, at the top of the page.

Senator BUMPERS. I promise you that will be corrected.

Mr. SANDERS. Yes, sir. The blasting regulations also exceed the intent and scope of the act by:

1. Discriminating against handicapped or partially disabled persons.
2. Requiring massive mailings even when no change of blasting plans or schedules are involved.
3. Requiring excessive noise levels to be produced so that persons outside the blast area can be annoyed by sirens, horns, et cetera.
4. Making requirements within the jurisdiction and current regulation of MSHA. I would like to add it infringes on States rights and responsibilities, and parts of it I believe will be proven unconstitutional.
5. Arbitrarily reducing minimum millisecond delay interval from the explosives industry standard of 8 MS to 17 MS. This will avoid the advanced technology afforded with the sequential blasting machines and, in many cases, double the number of blasts, thus doubling the potential for accident and injury, doubling production losses due to idled equipment during blasting, and substantially increasing costs.
6. Arbitrarily reducing the explosives industry accepted threshold of damage of 2 inches per second peak particle velocity to 1 inch per second. This combined with the 17-MS requirement would, in many cases, cause the number of blasts to more than quadruple.

The regulations also establish specific numerical standards and design criteria that must be applied nationwide, ignoring State and regional differences. An example is the sediment standards for reclaimed areas which are more stringent than natural runoff and applicable EPA standards.

Additionally, OSM has drafted design criteria in the regulations that is more stringent than necessary to meet the performance standards established in the act. One prime example is sediment control. Section 515(b) of the act permits the use of water impoundments for sediment control, but specifies that the size and type of structure need to be approved by the regulatory authority.

Now, let's see how the regulations interpret this section of the act. Part 816.15(b) (1) mandates that sediment ponds be used to handle all surface mine drainage, which the act does not require, and part 816.15 (f) which specifies sediment pond volume requirements. So where the act says that ponds may be used, with the size to be approved by the regulatory authority, the OSM regulations mandate that ponds be used and even dictate how large the structures will be.

I cannot point out in more graphic terms than this how OSM is overreaching its realm of authority. By limiting the operator to use the use of ponds, they discourage the use of other means of proven technology that is capable of controlling sedimentation.

It does not make any difference if the Federal Government gives the industry \$100 million if the hydrologists are not available to do the required studies. In order to satisfy the premining hydrologic requirements for a permit, it will take approximately 1 year to gather the extensive background data necessary. Without even addressing the costs and the questionable need for such studies, professional hydrologists have told us that these studies may not provide a truly representative picture of the hydrology of the area. They have told us that available hydrologic information for most areas has been developed

gradually over 15 to 20 years. In contrast, a 1-year study such as required by the regulations may not reflect the true hydrologic picture, if it happens to be a particularly wet or dry year. Based on this, we believe that available hydrologic information would not only be less costly and more readily available but probably more reliable.

This requirement is further complicated by the excessive costs and the acute lack of professional hydrologists available to do these studies.

In terms of fugitive dust control, the act requires that operators show in the reclamation plan how they will comply with air quality laws, and in section 702(a), that nothing in the act be "construed as superseding, amending, modifying, or repealing * * * the Clean Air Act." However, the regulations specify in at least seven separate areas extensive air quality review, monitoring and control procedures which duplicate if not conflict with current State and Federal air quality standards. Again, OSM has stopped far beyond the intent of the act, and has draft regulations which could prevent the opening of many large surface mines. These rules should be eliminated or at the very least significantly modified.

The coal industry favors realistic, fair environmental standards. I do not think any of these regulations promote these. Again, I appreciate the opportunity to be here today. I would be happy to answer any questions you have.

Senator BUMPERS. Mr. Sanders, I thank you very much for your fine testimony, your enlightening testimony.

[Subsequent to the hearing, the following information was submitted for the record:]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF SURFACE MINING,
Washington, D.C., September 14, 1978.

HON. DALE BUMPERS,
Chairman, Subcommittee on Public Lands and Resources,
U.S. Senate, Washington, D.C.

DEAR SENATOR BUMPERS: This is to amplify my response to your question to me during the oversight hearings. In Ron Sanders' testimony, he confused the provision in Section 522(e) (5) prohibiting mining within 300 feet of an inhabited building without a waiver by the landowner with limitations set by OSM on blasting. The Congressional mandate regarding mining within 300 feet without landowner waiver is repeated in the Interim Regulations. Our Interim Regulations provided that blasting within 1,000 feet of an inhabited building requires approval of the Regulatory Authority. This provision was challenged in a lawsuit and the Regulation was upheld by the court.

In our Pre-Proposed Regulations dealing with blasting, the provision inadvertently said the landowner rather than the Regulatory Authority, must approve. We caught this error before the hearing on Monday and corrected it in the Proposed Regulations sent to the Federal Register. The reason for my confusion was that I did not have a copy of the statute available when you posed your question and could give you only my impression that wherever specific numbers appear in the statute, they are repeated faithfully in OSM Regulations. Blasting Regulations have no statutory numbers. OSM relied on experts such as the Bureau of Mines for guidance and the court confirmed that judgment.

I hope that this answers your questions. If not, please let me know and I will try to get for you any additional information you may find helpful.

Sincerely,

EDMOND F. ROVNER,
Chief, Congressional Liaison.

Senator BUMPERS. I am going to go ahead and violate the Senate rules while we are at it and let Mr. Keating make his statement also.

STATEMENT OF DWIGHT KEATING, BARBOUR COAL CO.,
CLARKSBURG, W. VA.

Mr. KEATING. Mr. Chairman, my name is Dwight Keating. I am with Barbour Coal Co., in West Virginia, and I am here today representing the Mining and Reclamation Council of America.

A critical issue which may need additional legislation but which can be mollified to some degree if OSM is reasonable in its regulations, concerns the rights of the surface-land owner.

My company has been in business over 35 years. We have had to lease the surface on most of coal which we have mined. As such, we have dealt with hundreds of landowners, mainly farmers. From a practical standpoint, we know what is needed to please the farmer. We must do a good job of reclamation and leave his farm in an equal or better condition than before we mined it. If we did bad reclamation, the word would get out and we would not be able to get additional properties, and we would be out of business.

My concern is principally with the stringent regulations concerning mountaintop removal and the variance from approximate original contour in which benches remain after the high wall is covered. Both of these methods of mining are environmentally sound and do not cause any unusual danger to the health and safety of the public. Furthermore, these methods of mining are not cheaper to do. In many instances they can be more expensive. Mountaintop removal is 3 to 10 years longer. If a bank wrote a commitment, I think the Comptroller of the Currency would be down on that bank's shoulder for making such a ridiculous commitment.

On the variance from approximate original contour, the Randolph language was adopted in the last day of the conference bill. As such, in the turmoil to break for the Fourth of July, was not included in the interim program. A company has come along in Kentucky, it has a contract to lease 35 acres of usable land for the farmer. All of a sudden OSM is saying, well, you cannot do that, it is not part of the OSM program. It is an environmentally sound method the same as mountaintop removal is environmentally sound. If the States want us to implement an environmentally sound program even though OSM is 6 months late, and if OSM was up to speed, and came in with a permanent program August 3, there would not be this problem today with the landowner and the property rights of this landowner.

I think OSM should concentrate on more important things than harassing the State of Kentucky on this, sending it up to the Supreme Court and harassing the landowner.

In conclusion, these two mining methods were adopted by Congress which recognized the need for usable flatland in Appalachia—if it could be done in an environmentally sound manner and which would not damage the health and safety of the public. OSM should write regulations in that light and not add requirements which are unrealistic and which deny the property rights of landowners.

We have proved we can do it in an environmentally sound way. Why doesn't it let OSM write the regulations in that light and not requirements which are unrealistic and which deny the property rights of landowners.

Senator BUMPERS. I have one question of all of you. That is, I want to get back to this drilling. First of all, let me say to you oper-

ators we always get more definitive, realistic information from the people who have to live with these than we do from any other source, and I appreciate your testimony. It has been extremely helpful to me personally.

On this drilling we talked about, I think it was in your testimony, Mr. Frederick, do you do the same kind of core drilling to determine your reserve as you do to get the kind of geological information that might be required by a State?

Mr. FREDERICK. Essentially yes, sir.

Senator BUMPERS. I am curious as to what kind of regulations you are going to be subjected to, what kind of geological information are you going to have to furnish, the purpose of it and why does it require more holes for that than it does for the kind of drilling you do to determine the extent of your reserves?

Mr. FREDERICK. I think basically for the segregation of the material above the coal seam, say you are in a place where they're pyritic above the coal seam and that has to be segregated and buried. I think one could identify that with much less drilling, once a material has been proven to have a pyritic material.

Senator BUMPERS. What does that mean, is that a chemical content in the soil?

Mr. FREDERICK. Acid bearing.

Senator BUMPERS. Acidity, is that the same thing?

Mr. FREDERICK. Yes. To identify this area it must be able to establish where in the overburden did it exist, then it has to be segregated from the other material. So the question is how much of that is necessary to establish what type of overburden you had.

Senator BUMPERS. As a ballpark estimate, how much more drilling would you estimate is going to be required to make those kind of determinations than you would normally make, just as a prudent operator, to establish the reserves?

Mr. FREDERICK. Substantially, Senator.

Senator BUMPERS. Are there requirements you drill every so many feet?

Mr. FREDERICK. In a delineated, permitted area—

Senator BUMPERS. In applying for your permit, you have to furnish this information in your application. My question is how do they define the adequacy of your application relating to the geological information you give them in the strata of the overburden?

Mr. FREDERICK. In the preproposed regulations?

Senator BUMPERS. Yes.

Mr. SANDERS. It basically depends on the particular area you are in and what geological information is readily available and the acceptance of it. It has been proposed as much as one hole per acre in some areas, particularly steep slope areas where you have some changes in rock formation or whatever as opposed to whatever—which will vary. There is nothing we can put our finger on to say it will take x number of holes per acre. It will depend on the particular area and the way OSM interprets.

Senator BUMPERS. I can see why it would require, of course, more drilling.

Mr. FREDERICK. There is one important point, if I may. In southern West Virginia, coal seams lie above the water table. We generally prospect with what we call a dozer on the outcrop, which does not require any core drilling whatsoever. In other words, a piece of machinery ex-

poses the coal from the surface which would preclude any drilling whatsoever of the overburden, once your reserve has been established.

For other purposes we would do no core drilling whatsoever.

Senator BUMPERS. Of course, this is just an area where there may be a very sound public purpose served in some of this information but this is a case where OSM is apparently about ready to abuse its discretion and it is an area we will inquire into.

I have found these hearings very interesting this morning. I am interested because my county has two or three—I say “my county”—virtually all of it around my section of the county—two or three drag lines operating all of the time. I have seen the devastation surface mining unattended can reap. But the bill is designed, as is often the case, and we may have overdone it.

There was some trepidation about holding these hearings. My personal feeling is that oversight hearings ought to be held before the fact. Often a lot of irreparable economic damage has been done to people when it is not done beforehand. I thank all of you. We will schedule another day for these hearings. I apologize to the witnesses who sat here patiently all morning waiting to testify who will not be allowed to. Because of the natural gas bill, objection has been made to waiver of the Senate rules which normally require a Senate committee may meet no longer than 2 hours past the time the Senate comes in.

This morning the Senate came in at 11. Normally, we would be required to adjourn at 1. They may put me in the slammer now, Senator Randolph, going 15 minutes over. Again, I apologize to the witnesses who did not get a chance to testify.

I thank Senator Randolph and Congressman Rahall for coming to join us. There are members of the committee who have strong interest in this.

Senator RANDOLPH. Senator, may I use 30 seconds? I am very conscious as in the committee I Chair for the need for impartiality and the opportunity for persons to testify. It is your purpose, those who did not testify, that their testimony although not given orally will be printed in the record?

Senator BUMPERS. I would rather schedule another day of hearings and let them come back. If they cannot return, then, of course, we would be happy to have their testimony submitted for the record.

Senator RANDOLPH. I think you have stated the case properly. They would have the opportunity in another hearing or the opportunity to be included in the written testimony.

Senator BUMPERS. Our staff will be in touch with those witnesses who did not testify.

Senator RANDOLPH. In the testimony of Ben Lusk and those on the panel, Mr. Frederick, Mr. Sanders, and Mr. Keating, these individuals are known to us in our congressional delegation, they have not been in a sense obstructionist; they have been cooperative individuals representing their firms, and of course, their industry. I think it is an important point to say when Mr. Frederick indicates a processing of a permit can move from \$5,000 to \$25,000, that is testimony that we need to hear. Is that figure correct?

Mr. FREDERICK. Yes.

Senator BUMPERS. Thank you. The hearing is adjourned.

[Whereupon, at 1:20 p.m., the hearing was adjourned, subject to the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF DONALD ASKINS, ON BEHALF OF THE APPALACHIAN COALITION

Mr. Chairman and gentlemen of the Committee, my comments are made on behalf of the Appalachian Coalition, a non-profit public-interest organization composed of citizens groups in six of the coal-producing states of Appalachia. The coalition works daily with individual citizens who are adversely affected by stripmining impacts, and over the years we have consistently supported, on both the state and federal levels, legislation that would eliminate these effects. During 1977 we worked closely with the House and Senate subcommittees which were drafting H.R. 2 and S. 7 to encourage the passage of a strong bill that would eradicate the social and environmental abuses of strip mining. Since then, we have monitored implementation of the Act by the Office of Surface Mining. Thus, our remarks are made from the context of a longstanding practical experience of strip mining as it affects people and an intimate acquaintance with the Surface Mining Control and Reclamation Act of 1977.

The speakers who appeared before this committee on September 11 were severely critical of the Office of Surface Mining and its initial efforts to implement Public Law 95-87, some even calling for what amounts to a dismantling of the Office. The general basis for the criticism seems to have been what Governor Rockefeller described in his remarks as a "subversion of the intent of Congress." Both Governor Rockefeller and Senator Ford fear that OSM regulations and policy will make it difficult for the states to assume primacy as the enforcement authority under the Act.

We would remind the Committee that while the Act provides for state primacy, that provision is conditional, not absolute; ultimate authority for exercising "the full reach of Federal constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations" is vested in the Secretary of Interior acting through the Office of Surface Mining. The language of section 503 of the Act, which establishes the criteria under which a state may assume primacy, clearly does not intend that the states automatically be considered the primary regulatory authority. Basically, a state's assumption of "exclusive jurisdiction over the regulation of surface coal mining and reclamation operations" is conditional upon its "capability of carrying out the provisions of this Act and meeting its purposes."

In Appalachia, the record of environmental degradation and human suffering as a result of stripmining impacts shows undeniably that the states have lacked this capability in the past. In fact, it was the demonstrated inability of the states to effectively regulate the stripmining industry that effected passage of P.L. 95-87. Whether state agencies can and will upgrade their programs to achieve the purpose of the Act is debatable; but until they have convincingly done so, the Office of Surface Mining is clearly operating within the legislative mandate when it insures "the protection of the public interest through effective control of surface coal mining operations."

Our concern is that the intent of Congress (that strip mining be effectively controlled to protect the public interest) will indeed be subverted, not through OSM's requiring the states to meet the stipulations of the Act, but through lax enforcement of flabby regulations brought about by industry pressure exerted on OSM, largely through governmental channels such as this committee and governors' offices.

On the other hand, we have our own problems and disappointments with OSM's implementation of the Act. People whose homes are flooded and their lives en-

dangered by streams which have never in memory overflowed their banks find it difficult to understand why notices of violation and orders of closure are issued then vacated; people who know an operator is involved in several companies running several hundred thousand tons of coal per year are disillusioned when that operator receives a small operator exemption; people who see their environment being destroyed before their eyes care little for paper technicalities that prevent an OSM inspector from issuing a cessation order.

Our criticism of OSM focuses on what has sometimes been a hesitancy to act or an indecisiveness in action, an occasional failure to stand unflinchingly by a policy statement, a willingness to compromise in some situations where compromise is detrimental to achieving the intent of the Act. These traits are leading many people who live in the shadow of strip mines to fear that OSM is merely a national version of the state agencies in which they long ago lost confidence.

In spite of our fear, which is natural to those who have been the victims of so many unfulfilled promises in the past, we recognize in OSM our last hope for the effective control of an industry that has been largely unregulated and which, as a result, has brought immeasurable human suffering and environmental destruction to Appalachia. In our interaction with the Office during this interim period of implementing the Act, we have been convinced that in general OSM personnel are seriously concerned about carrying out the Congressional mandate. Protection of the public interest demands that they be allowed to do so. Without a strong federal presence in the coal fields, the Congressional intent of PL95-87 will indeed be subverted, as have the stated intention of so many state laws in the past.

STATEMENT OF JOHN PAUL, VICE PRESIDENT FOR PUBLIC AFFAIRS, AMAX COAL CO.,
REPRESENTING THE NATIONAL COAL ASSOCIATION/AMERICAN MINING CONGRESS

Good morning Mr. Chairman and members of the Committee. I am John Paul, Vice President for Public Affairs of AMAX Coal Company, headquartered in Indianapolis, Indiana. I am appearing today on behalf of the Joint National Coal Association/American Mining Congress Committee on Surface Mining Regulations to present industry views on the development of permanent program regulations required by the Surface Mining Control and Reclamation Act of 1977.

The Joint Committee is comprised of the coal company members of both the American Mining Congress and the National Coal Association, as well as representatives from the state coal associations and other coal companies. Thus, the Joint Committee membership represents every type of coal mining operation, as well as every mining region in this country.

While we have many serious concerns about the draft OSM regulations for the permanent program, at this time we would specifically like to address three major problems that cut across the entire spectrum of the OSM regulatory process. These three problem areas are:

(1) The extremely adverse impact of the regulations on the Congressional commitment to development and implementation of state programs—not only because of OSM's lengthy delay in developing permanent program regulations, but also because of the excessively burdensome requirements imposed on the states by the regulations themselves;

(2) The manner in which OSM is developing the environmental impact statement for the permanent regulations required by NEPA as well as section 702(d) of the Surface Mining Act.

(3) Our concerns as to whether a thorough and accurate analysis of the economic impacts of the permanent regulations will be made as required by Executive Order 12044.

With regard to state programs, throughout the Surface Mining Act and the lengthy deliberations behind it, there is the consistent thread of Congressional commitment that the states will ultimately become the regulatory authorities for surface mining within their borders if they are capable of meeting the state program requirements of section 503 of the Act. The Congress very carefully structured the Act to provide the states with enough time within which to make the necessary improvements and adjustments in their preexisting state regulatory programs to meet the requirements of section 503.

Specifically, Congress mandated that OSM finalize its permanent program regulations by August 3, 1978; and further provided that the states would have six months from August 3—that is until February 3, 1979—to submit state programs to the Secretary of Interior for review.

Since OSM currently projects that the permanent program regulations will not be finalized until January 15, 1979, the states will have hardly any time before the February 3, 1979, deadline to cope with the final regulations in order to properly develop and submit a state program.

This result is clearly contrary to the Congressional endorsement of the state lead concept contained in the Act. Therefore, we believe it is imperative that the statutory schedule set forth in the Surface Mining Act for state program submission and review be thoroughly reexamined with the view of passing emergency remedial legislation to provide the states with additional time more reasonably tied to the final promulgation of the permanent regulations.

We are gravely concerned that unless remedial legislation is passed before adjournment of the 95th Congress, the result will be confusion and uncertainty as to whether the states or OSM constitute the regulatory authority for surface mining. This problem has already occurred during the interim period, and if it continues to exist, will adversely impact not only the ability of the states and OSM to properly carry out their regulatory responsibilities, but also the industry's ability to plan for compliance with the permanent regulatory program.

If there is any doubt as to the severity of this problem, and the confusion existing in the state governments, it is respectfully urged that this Committee expeditiously conduct an additional public hearing to hear the views of the various state reclamation agencies on this critical matter.

As for the substantive content of the draft state program regulations, they apparently have been designed to impose a virtual obstacle course of procedural requirements which will make it extremely difficult—if not impossible—for any state to obtain approval of individual state programs. As drafted, the regulations take an approach, which at the first procedural misstep by a state, imposes a federal program.

It seems to us that rather than throwing every conceivable stumbling block into the paths of the states, OSM instead should be making every attempt to assist the states in their efforts to have programs approved—particularly since at least six months of delay has been introduced into the process because OSM has missed the August 3, 1978, statutory deadline.

With regard to the environmental impact statement for the permanent regulations, section 702(d) of the Act specifically provides that adoption of the permanent program regulations is a major federal action under NEPA. We find it extremely troublesome that while OSM has been on notice by virtue of section 702(d) of the Act since at least August 3, 1977, that an environmental impact statement for the permanent regulations would be required, preparation of the EIS seems to be *ex post facto* to important major agency decisions regarding the substantive content of the permanent regulations. Specifically in late July, 1978, OSM released almost 470 single-space pages of draft regulations, unaccompanied by any draft EIS.

In our view, the purpose of an environmental impact statement is to provide agency decisions makers and the public with an assessment of the effects of proposed federal rules on the environment. We believe that NEPA requires that environmental impact statements be available to agency decision makers and the public for consideration as early as possible, once the likelihood of a major federal action has been determined.

It would appear, however, that this is not the way OSM is preparing the EIS for the permanent regulations. Rather it appears that OSM is preparing regulations and conducting an appraisal of their environmental ramifications *after the fact* of basic agency decision making. We respectfully suggest that such a procedure is totally contrary to the spirit and intent of NEPA.

We have similar concerns about OSM's analysis of the economic impact of the permanent regulations. We believe that Executive Order 12044, entitled "Improving Government Regulations", and issued by the President on March 23, 1978, clearly requires an early and meaningful analysis of the economic impacts of Federal regulations. Once again, however, it is our understanding that OSM's appraisal of the economic ramifications of the permanent program regulations is occurring only after the fact of basic agency decision making regarding the the substantive contents of the regulations.

Furthermore, if the Surface Mining Act is to achieve its stated purpose of assuring "that the coal supply essential to the Nation's energy requirements, and to its economic and social well-being is provided" an striking "a balance between protection of the environment . . . and the Nation's need for coal as an essential source of energy", then it is extremely important that the cost of these regulations to the coal mining industry and to the American consumer be thoroughly and

accurately evaluated. We have grave reservations as to whether the OSM approach toward analysis of the economic impacts of these regulations will achieve these important results.

In closing, we would like to express our appreciation to the Subcommittee for affording us the opportunity to testify here today. The Surface Mining Act has imposed monumental burdens on the federal government, state governments and especially the mining industry. I think all parties are working hard to fulfill the obligations imposed on us by the Act. If the Act is to work—we need your help right now to ensure that the states have the opportunity and time to meet the state program standards mandated by section 503 of the Act.

Thank you.

STATEMENT OF EDWARD GRANDIS, DIRECTOR, CITIZENS COAL PROJECT, ENVIRONMENTAL POLICY INSTITUTE, ACCOMPANIED BY L. THOMAS GALLOWAY, CENTER FOR LAW AND SOCIAL POLICY, COUNSEL FOR ENVIRONMENTAL POLICY INSTITUTE

I am Ed Grandis, director of the Environmental Policy Institute's Citizen Coal Project, 317 Pennsylvania Avenue, S.E., Washington, D.C. With me is our counsel, L. Thomas Galloway, an attorney with the Center for Law and Social Policy in 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.

We appreciate the invitation today to participate in these hearings. We are strong supporters of congressional oversight and we believe that strong congressional oversight is 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.

The invitation to testify stated that the focus of these hearings was the draft pre-proposed permanent regulations, and that the purpose of the invitation was to allow EPI to state its position on the pre-proposed permanent regulations.

There are two aspects to the pre-proposed regulations—the substantive regulations themselves and the procedures utilized by OSM in the rule making process.

We believe that it would not be worthwhile to comment on the substance of the draft pre-proposed permanent regulations. As this committee is aware, these drafts have undergone substantial revision since they were released to the public. Thus, any criticism or support of particular provisions would be a waste of time. Events have overtaken the early drafts. If the committee is interested in our position on the issues raised by the permanent regulations, we would be happy to submit materials we have prepared outlining our stand.

We do however, have several comments on the procedural aspects of the rule making.

Section 501(b) establishes through § 501(a) the procedures Congress intended OSM to follow in promulgating the permanent regulations. Section 501 requires that the Secretary publish the proposed regulations in the Federal Register and allow interested parties at least thirty (30) days to comment.

The Secretary has gone beyond these minimum requirements in an attempt to expand public participation in the rule making process of the permanent regulations. He is allowing sixty (60) days, instead of the minimum thirty (30) for comment, and he has made provision for six public hearings at various locations in the country to receive public input. In addition to the provisions for public input during the formal stages of the rule making, the Secretary established procedures for public input prior to proposal. These procedures provided for submission of written comments, public hearings, and public meetings with OSM officials at the request of any interested party.

EPI and various other citizen and environmental groups participated in the pre-proposal stage of the rulemaking. Despite very limited resources, citizen and environmental groups analyzed the draft regulations, participated in the public hearings, requested public meetings with OSM/DOI officials to make detailed presentations, and submitted written comments on the pre-proposed regulations. Twenty-eight environmental and citizen groups participated and submitted hundreds of pages of comments in all important areas of the regulations. Nor was industry absent; almost 100 representatives of all facets of the mining industry participated in the public hearings or submitted comments.

In describing the extent of citizen group involvement, we do not mean to imply that these groups could not have used more time. In most cases, more time would have been beneficial. For example, many groups had to postpone substantive comment until after the public hearings because these were scheduled too soon after the release of the second set of pre-proposed regulations. Also, in several areas in which comments were submitted, because of time pressures groups were unable to submit draft language or support their positions as fully as they could have with more time.

However, the rule making is not over. The proposed regulations will be published shortly and all interested parties will have sixty (60) days to analyze the regulations and submit comments. This is certainly ample time for industry with its resources to have adequate input on the proposed regulations. The environmental and citizen groups with far less resources will be pressed far harder but the groups to which we have talked believe they can meet the sixty (60) day deadline.

Industry's dissatisfaction with OSM rule making procedures is not new. Industry bitterly criticized OSM for its procedures in promulgating the interim regulations, and then challenged the procedures on several grounds in litigation. The court rejected the challenges to the department's basic rule making approach.

In short, all concerned could have used more time to study, and comment upon the pre-proposed regulations. However, there is still ample opportunity for public evaluation and input in the formal rule making process. The permanent rule making should be allowed to continue on course.

There are many issues and areas not connected with the permanent regulations that are appropriate for serious congressional oversight. We regret that we have had only four days' notice, including the weekend, to prepare testimony on such issues for the committee's consideration. We would have liked the committee to take a serious look at numerous areas such as the use, or lack thereof, of enforcement powers by inspectors, the claims of industry that the act would cause substantial drops in production, and OSM's efforts to encourage public participation, to mention only a few pertinent areas.

Because of the short time, we would like to bring to the committee's attention two areas of OSM activity, the small operator exemption program and the state grant program. We choose these programs because, by their nature, they already have been implemented, and will pass into history without scrutiny if they are not examined now.

SMALL OPERATOR EXEMPTION

Citizen groups have attempted, despite limited resources, to analyze the small operator exemption program. Their preliminary findings are very disturbing. For example, one operator with interests in over 10 companies with production approaching three-fourths of a million tons received an exemption. Another operator applied for and received an exemption, despite interior records showing its control by a company owning 15 operations with 27 mines producing two million tons of coal. In neither instance did the operator disclose the true extent of his coal interests.

In many cases, OSM granted exemptions although it was clear from the application itself that the operator did not meet his burden of showing eligibility. For example, OSM would send out a letter saying an application was incomplete and then later grant the exemption although no response was ever received. In still other cases, very serious questions, raised by citizen groups, or apparent from interior records, concerning the failure of operators to attribute coal, were ignored by OSM.

A random survey of OSM files on the small operator exemption revealed that at least one in two exemptions in the files examined was improperly granted. We would be happy to furnish the committee with a copy of the survey and the grounds for the above statement.

In short, the preliminary evidence is that the small operator exemption program was abused by numerous operations and sloppily administered by OSM.

STATE GRANTS

The second issue of concern to us and to citizens groups in the various states is the administration of the state grants programs (part 725—interim program). We are concerned that the office of surface mining has not met its own

regulatory responsibilities under the act and the interim regulations. Section 725.11(a) of the interim regulations plainly requires that for a state to be eligible for reimbursement it must assume "responsibility for enforcement of the initial regulatory program including:

(A) "Issuing permits and inspection and enforcement . . . to insure compliance with the initial performance standards . . ." (§ 710.4(b) of the interim regulations) and,

(B) Incorporating "terms in [such] permits that comply with those standards." (§ 720.12 of the interim regulations)

While we agree that such grants "encourage the states to build strong reclamation and enforcement programs" (§ 725.2(b) of the interim regulations), to do so when it is unclear that a state has the legal authority to implement and enforce the initial regulatory program is, we feel, a contradiction of what the act envisioned—the development of "a nation-wide program to protect society and the environment from the adverse effects of surface coal mining operations". (§ 102(a) of the act). To date several states have been awarded grants where, in fact, the regulatory authority did not have the legal authority to require compliance with the initial regulatory program.

To resolve these fundamental legal problems by a letter from the state's attorney general or by the state's obtaining memorandums of understanding from individual coal operators is neither adequate or satisfactory. Putting the legal issues aside, we question the policy of reimbursing a state where its general assembly or governor is not supportive of the initial regulatory program. As a practical matter, a state regulatory authority cannot carry out its responsibilities under the act without support from the governor and state legislature.

CONCLUSION

In summary, we do not believe that the failures of the small operator exemption program and the state grant program necessarily reflect fatal administrative flaws in the OSM structure. We do believe, however, that OSM should be made aware of its failures, so that they do not recur in other, ongoing administrative areas.

To highlight a breakdown in administration, such as occurred in the small operator exemption program, should not detract from OSM's administrative and substantive successes. The interim regulations were promulgated under tight time deadlines and heavy pressures, by a small and over-worked staff. Given these limitations, OSM distinguished itself by conducting an open and fair rule making. The ultimate success of the rule making process can be judged by the decision of the U.S. District Court in the District of Columbia in upholding the vast majority of the regulations as consistent with the act and its legislative history in the face of a stiff industry challenge.

In short, OSM has a very difficult job. Its performance to date has had both high and low points. But in our judgment, OSM should be allowed to continue with its rule making on the permanent regulations without congressional intervention.

Thank you for the opportunity to appear and testify before the committee.

CENTER FOR LAW AND SOCIAL POLICY.

Washington, D.C., October 9, 1978.

Re Submission of the Environmental Policy Institute for the record of the oversight hearings on the Surface Mining Control and Reclamation Act of 1977

HON. DALE BUMPERS,

Chairman, Subcommittee on Public Lands and Resources, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your Subcommittee invited the Environmental Policy Institute ("EPI") to present testimony during the Oversight Hearings held by the Subcommittee on September 11, 1978. EPI submitted a short written statement but was unable to present its views orally because of time limitations.

Subsequently, the Subcommittee decided not to hold further hearings, but did

hold the record open until October 9 to accept written statements.¹ EPI now wishes to submit the following comments for the record.

As EPI already has indicated to the Subcommittee, it believes that active Congressional oversight of major federal programs, such as surface mining regulation, is a vital function. EPI welcomes and encourages serious Congressional inquiry into the administration and enforcement of the surface mine program. However, as the Subcommittee is already aware, EPI believes it inappropriate to conduct oversight hearings into the substance of regulations which are part of an ongoing rulemaking.

EPI does wish to focus the Subcommittee's attention on one major facet of the surface mine program that now is appropriate for Congressional oversight, namely, enforcement. Prior to, during, and after the September 11th hearings, there has been much comment concerning harsh enforcement, stringent sanctions, and consequent adverse impact on coal operators and on coal production. Governor Rockefeller emphasized this point, as did members of the Subcommittee. Since the hearing, similar charges have been leveled at OSM by coal operators, state officials, and legislators.

It was, and is, EPI's opinion that these charges are baseless and unsubstantiated, and that any serious analysis of enforcement would reveal this. Despite their limited resources, citizen groups decided to conduct an analysis of OSM enforcement actions since August 3, 1977, to determine how the enforcement sanctions were being used and to determine their impact. Over 60 pieces of data were gathered on each and every enforcement action taken by OSM from August 3, 1977 until September 8, 1978. The form used to collect the data is attached.

The persons working on the project tried mightily to collect the data, collate and analyze it, and then prepare a written statement by the October 9th deadline. Unfortunately, this has proven impossible, given the limited resources available and the desire of the citizen groups to do a comprehensive and thorough analysis. As of this date, all the data has been collected, that is, all enforcement files have been reviewed and the data drawn from them, and the data has been collated. It remains to analyze it carefully and to prepare a written analysis.

While it would be inappropriate to discuss the findings at this stage in any detail, it is fair to say that enforcement has been anything but stringent and unfair to coal operators.

We expect the analysis to be completed by November 1, 1978. We would be happy to meet with Subcommittee staff to discuss the findings and present the data on which the findings are based.

We would emphasize that no one, not OSM, not the states, and not the coal operators, has analyzed enforcement in any systematic, comprehensive or defensible way. Despite this lack of analysis, numerous serious charges have been made. We believe it incumbent upon the Subcommittee to look at our data, our analysis, and our methodology carefully. We believe that it is critical, in areas such as enforcement which are central to the surface mine program, that analysis and careful study be substituted for strident charges based on inadequate, and in some cases distorted, information.

In addition to the OSM enforcement activity study, we have, as previously indicated to the Subcommittee, conducted a survey of OSM's administration of the small operator exemption program. Since the September 11th hearings, we have made a detailed written submission of our findings to OSM. A copy of the letter is attached for your information.

Sincerely,

EDWARD S. GRANDIS,
Environmental Policy Institute.
L. THOMAS GALLOWAY,
Counsel for Environmental Policy Institute.

Attachments.

¹ EPI supports the decision of the Subcommittee not to hold further hearings on the substance of the permanent regulations until they are promulgated in final form.

Permittee/Operator: _____ (File No.: _____)

Mine: _____

State Permit No.: _____

MSHA ID NO.: _____

State/Region: _____

CITATION: NOV/CO # _____ (Inspection: _____)

ISSUED _____ VACATED _____ MODIFIED _____ TERMINATED _____

REASONS VACATED OR MODIFIED: _____

§521(a)(3) NOV: Violation: _____

Description: _____

Action/Steps: _____

Area Affected: _____

Time (Original/Extension): _____

CO, if any: _____

CO: Underlying NOV: _____

Failure to Abate: Violation _____ Step _____

Affirmative Obligations: _____

Area Affected by Cessation: _____

Area Affected by Obligations: _____

§521(a)(2) CO: Environmental Harm _____ Imminent Danger _____

Violation(s), if any: _____

Description: _____

Affirmative Obligations: _____

Area Affected by Cessation: _____

Area Affected by Obligations: _____

EFFECT Production/Noncompliance: _____

REVIEW Minesite (date/citizens/action): _____

Formal: _____

ASSESSMENT1. INITIAL (Formula)

Criteria: History: _____

Seriousness-Probability: _____

Extent: _____

(Records, etc.): _____

Negligence: _____

Good Faith: _____

Total Points/Penalty: _____

Separate Daily Violations: (days/amount) (considerations)

§521 (a) (3): _____

Continuing: _____

Over 70 points: _____

Total Assessment: _____ (Due: _____)

Failure to make mandatory assessment (reasons): _____

2. WAIVER (amount/reasons): _____3. DISCRETIONARY (amount/reasons): _____4. PAYMENT PRE-CONFERENCE (date/amount): _____5. CONFERENCE: Date of Request: _____

Date of Conference: _____

Citizen Attendance: _____

Assessment: _____

Reduction Approval: _____

6. PAYMENT POST-CONFERENCE (date/amount): _____7. PAYMENT IN ESCROW (date/amount): _____8. HEARING (decision date/amount): _____9. APPEAL (decision date/amount): _____10. OVERDUE: (date/amount): _____

(action): _____

NOTES: _____

Re Small operator exemptions.

Mr. WALTER HEINE,
Director, Office of Surface Mining,
U.S. Department of the Interior,
Washington, D.C.

DEAR WALTER: The Council of the Southern Mountains, Inc. ("Council") hereby requests, pursuant to 30 C.F.R. § 710.12(j), that show cause orders be issued to certain operators granted exemptions under § 502(c) of the Surface Mining Control and Reclamation Act of 1977 ("Act") to show why these exemptions should not be revoked. The Council also requests that a complete review of all operations be undertaken. The grounds for these requests and the companies affected are set forth below.

The errors in the granting of exemptions fall into two major categories. First, it is quite apparent that OSM made no serious attempt to check on coal attribution figures, or the lack thereof, in many small operator exemption applications. Even where information was brought to the attention of OSM by outside groups, exemptions were issued unless it was patently obvious that production was well over 100,000 tons. The inevitable result was that numerous operators improperly received exemptions, having failed to attribute coal production as required by the Act and the regulations. The Council, working with information it has developed and with data developed by other citizen groups, has reviewed a select number of exemption applications for operators in Virginia. The results of the Council's work are contained in this letter.

Because of its limited resources, and because of restrictive state laws and policies which prevent access to crucial information concerning stock ownership, the Council was able only to scratch the surface of the attribution problem. Despite these constraints, however, the Council was able to develop enough information to bring into serious question the basic integrity of OSM's inquiry into the attribution of coal production to those applying for exemptions.

The second major failing of the approval process was that many exemptions were granted on the basis of inadequate information, or despite the presence of information showing ineligibility. 30 C.F.R. § 710.12(g) (1) states that an exemption should not be granted unless "the permittee has satisfied his burden of proof by demonstrating eligibility for the exemption." OSM repeatedly violated this regulation in granting exemptions.

The Council conducted a random survey of approved small operator exemption applications. The survey, the results of which are discussed in Part II of this letter, showed over half of all applications approved did not meet the burden of proof standards set forth in the Secretary's regulations. 30 C.F.R. § 710.12 (b), (c), and (e). The failings in the survey sample include:

1. Lack of federal mine identification numbers and/or state permit numbers, as required by 30 C.F.R. § 710.12(e) (2), making it difficult to investigate the existence of other holdings and to know the extent of exemptions granted.
2. Lack of information, required by 30 C.F.R. § 710.12(a) (2), as to dates of issuance, renewal, and/or expiration of state permits.
3. Permits issued or renewed after August 2, 1977, despite the requirements of § 502(c) of the Act and 30 C.F.R. § 710.12(b) (2).
4. Inadequate information as to ownership and control, as required by 30 C.F.R. § 710.12(e) (1), inhibiting inquiry into attributable coal production.
5. Formation of coal mining concerns after May 1, 1977, contrary to § 502(c) of the Act and 30 C.F.R. §§ 710.12(c) (2) (ii), or failure to provide formation dates as required by 30 C.F.R. § 710.12(e) (3).
6. Failure to provide 1977 tonnage figures or to estimate 1978 production, as required by 30 C.F.R. § 710.12(b) (4).
7. Failure to include necessary copies of severance tax returns, as required by 30 C.F.R. § 710.12(e) (5).
8. Failure to include proof of publication to inform citizens of pending applications, as required by 30 C.F.R. § 710.12(e) (6).
9. Presence in the OSM exemption file of MESA tonnage figures indicating attributable production in excess of 100,000 tons.

There is simply no way that the burden of proof requirement can be met in the absence of such information or an exemption approved properly in the face of information indicating a failure to meet the regulations' requirements.¹

The evidence is overwhelming. The small operator exemption program was sloppily administered and poorly run, and numerous operators received and retain exemptions to which they were and are not entitled.

On the basis of the above discussion and the information contained below, the Council asks that a show cause order be issued to the coal companies listed in the following section of this letter, and that they be given no more than ten days to show why their exemptions should not be revoked.²

I. SELECTED SMALL OPERATOR EXEMPTIONS TO BE REVIEWED

A&B Coal Co., Grundy, Va.; Boshell Coal Co., Grundy, Va.; and, Mabo Coal Co., Grundy, Va.

All three companies are owned in whole or in part and/or controlled by Harry E. Boshell. See MSHA Controlling Company Index No. C 2874. All three have small operator exemptions. Ownership, as reflected by exemption forms, is as follows: A&B—H. E. Boshell, and Stuart Adair; Boshell—Harry Boshell; Mabo—Harry Boshell, David Marynard, and, Willis Boshell.

The incorporators of each corporation, according to local county records is as follows:

A&B—H. E. Boshell, Stuart E. Adair, and N. D. Street.

Boshell—H. E. Boshell, Mary Boshell, and N. D. Street.

Mabo—H. E. Boshell, David M. Maynard, and Willis J. Boshell.

On none of the separate applications is the existence of the other companies disclosed. Nor do the applications disclose the coal interests, if any, of the various individuals cited as incorporators. N. D. Street for instance, also is an incorporator of the United Coal Companies. See discussion of *United, Infra*.

Mr. Boshell separately attributes the same 43,164.35 tons to each of these operations for the year ending July 31, 1977. The MSHA Controlling Company Index (C 2874), by contrast, shows Mr. Boshell's total production of 1977 as 218,973 tons. Moreover, the index shows that on May 30, 1978, Mabo Coal Company acquired a subsidiary by the name of Maynard Coal Company, Inc. By Mr. Boshell's own estimate, finally, each of the three companies for which he received an exemption will produce 50,000 tons of coal in 1978, for a total of 150,000 tons.

Given these facts, and Mr. Boshell's failure to divulge them, OSM should issue a show cause order to the three companies to show why their exemptions should not be revoked.

A & D Coal Co., P.O. Box 7, Prater, Va.; Triple D Coal Co., P.O. Box 7, Prater, Va.

Small operator exemptions were granted both of the foregoing companies, although each of the exemption applications failed to attribute the coal produced by the other company. The "Controlling Official" listed for each company is Nubern Deel, and while each company is described as a partnership, neither application discloses the identity of the other partner(s) or any other coal interests which they may own or control.

In addition to A & D and Triple D, Nubern Deel also is the "Controlling Official" in a "Partnership" known as the Black Gold Coal Company, P.O. Box 7, Prater, Va. See MESA Controlling Company Index No. C 3959. Nubern Deel applied for separate exemptions for each of this company's two mines. The application for Mine No. 3 was rejected on grounds of late filing. The status of the application for Mine No. 2 is unclear from OSM's files and list of exemptions.

The MSHA Controlling Company Index shows the following "Controller Names":

¹ This request does not address the legality of the OSM decision to grant exemptions to operators in Kentucky and Virginia even though their permits had been renewed by action of the respective State Legislatures in clear violation of 30 C.F.R. § 710.12(b)(2). In our judgment, if OSM had followed its own regulations contained in 30 C.F.R. § 710.12(a)(2) and (b)(2), all small operator exemptions in Kentucky and Virginia would have terminated automatically, no later than midnight, August 2, 1978. OSM did not see fit to follow these regulations. For purposes of the survey, we have not cited No. 3 above with respect to Kentucky and Virginia operations.

² In setting out information on various coal companies, please note that in several cases we rely on data showing certain individuals as incorporators or members of the Board of Directors, rather than actual stock ownership. The reason for this is quite simple; we do not have access to stock ownership figures. OSM does.

Certainly it is a reasonable assumption that in a region where most coal companies are closely held that the incorporators and/or members of a small Board of Directors hold more than a 5% stock interest. At the very least, it raises a serious question which OSM should pursue. In such cases, we ask that OSM require the company to divulge stock ownership information. Citizens have gone as far as they can in the research, and OSM must take the next step and issue a show cause order requiring the release of such information.

In other situations, this problem does not arise, notably where the individual or company concerned is listed as a controlling company in the Mine Safety and Health Administration Index.

A & D—Nubern & William Deel, Alvin & Wilburn Blankenship (C 6013).

Triple D—Nubern & William Deel (C 5716).

Black Gold—Nubern Deel et al. (C 3959).

A 1977 MESA Controlling Company Index shows the owner of Triple D and Black Gold as "Nuburn Londo & William Deel-Jerry Yates" (C 3959). There appears, therefore, to have been a recent change in ownership in Triple D. A & D, on the other hand, was not listed then because, as stated on the A & D exemption application, the A & D partnership was not even formed until November 1977. On these grounds alone, neither of these companies is entitled to an exemption. 30 C.F.R. § 710.12(c) (2) (iii).

Nuburn Deel also filed an exemption application as "President" of the Ivy Branch Coal Co., Inc., P.O. Box 7, Prater, Va., for that corporation's No. 13 mine.³ The application does not give the owners or controllers of Ivy Branch, nor does it attribute production from any other companies. OSM rejected the application on the basis of tonnage, although the application on its face shows tonnage well within the requirements of the law.

Combined tonnage for these companies is extremely high. It is estimated by MSHA that A & D will produce 25,000 tons in 1978. (C 6013) MSHA also shows Triple D's 1977 production as 31,482 tons (C 5716) and Black Gold's 1977 production as 102,178 tons.

For Ivy Branch, Deel cites production for the year ending July 31, 1977, as 53,525 tons, and he estimates 1978 production at 50,000 tons. In all likelihood, therefore, the coal attributable both to A & D and to Triple D, by virtue of common ownership or control of the four companies, exceeds 100,000 tons. OSM should require full disclosure of related coal interests and entitlement, and issue a show cause order to this effect.

C & H Coal Co., Inc., P.O. Box 467, Keen Mountain, Va.; Dorothy Mae Coal Co., P.O. Box 467, Keen Mountain, Va.; and Kennedy Coal Corp., P.O. Box 120, Oakwood, Va.

Ownership of these three companies is stated on the exemption forms as follows:

C & H—Kendris Harman, James E. Harman, Teresa M. Harman, and Judy H. Honaker.

Dorothy Mae—James Harman.

Kennedy—Raymond Jackson.

According to the MSHA Controlling Company Index (C 4095), Dorothy Mae Coal Company is controlled by Kendris Harman.

Despite a clear inter-relationship between C & H and Dorothy Mae, neither company attributed any coal production from the other company. All of Dorothy Mae's production should be attributed to C & H, and an indeterminate amount (without knowledge of stock ownership) of C & H production should be attributed to Dorothy Mae.

Dorothy Mae estimates its 1978 production at 40,000 tons. C & H estimates its 1978 production for VA Permit No. 1808 as 55,000 tons, and does not include any reference to or production for VA Permit Nos. 2088 and 2165, which it also holds.

These production figures do not square with MSHA production figures, which show a combined 1977 production of 111,518 tons (C & H—61,518 tons/DM—50,000 tons) and an estimated 1978 production total of 125,064 tons (C & H—50,908 tons/DM—74,156 tons). MSHA Index No. C 4095.

Given the MSHA figures, it is clear that C & H is not entitled to an exemption, also unlikely that Dorothy Mae is entitled to an exemption, since attribution of since all of Dorothy Mae's production is attributed for a total of 125,064 tons. It is roughly 50% of C & H's production will result in excessive tonnage for Dorothy Mae.

Additionally, the relationship of Kennedy Coal Corporation to C & H and Dorothy Mae should be clarified. The incorporators of C & H are: Emory Cox, Ruby Ellen Cox, Kendris Harman, and Dorthy Mae Harman.

The incorporators of Kennedy Coal Corporation are: Emory Cox and Raymond Jackson.

Kennedy estimates 1978 production at 52,396 tons of coal, some of which apparently should be attributed to C & H and Dorothy Mae, through Emory Cox as a controlling person.

³ The application for A & D, and perhaps the other Deel enterprises, was mailed in an Ivy Branch envelope.

C & H and Dorothy Mae production, likewise, should be attributed to Kennedy. All of Dorothy Mae coal is attributable to C & H for a total of 125,064 tons. In turn, the share of C & H attributable to Emory Cox's ownership or control is attributable to Kennedy, in addition to Kennedy's own 52,396 tons. Thus, some explanation of corporate ownership or control, together with reliable tonnage figures, should be required of Kennedy Coal Corporation.

There may be other coal production, as well, in which Emory Cox or Raymond Jackson have an interest. For example, Raymond Jackson and Bill Ratliff have incorporated RBJ Coal Corporation. A Bill Ratliff, also, has incorporated B & R Coal Co., Inc.

Scott Fuel Co., Inc.

According to OSM's exemption list, an exemption has been granted to Scott Fuel Company, Inc. The application form lists the following owners: Rual Fuller, Bill R. Scott, Harry Scott, and David Scott.

Incorporation documents show that Rual Fuller was an incorporator and/or on the Board of Directors of at least the following coal companies: Alcoal, Inc.; Atomic Fuel Coal Co.; Centennial Coal Co., Inc.; Fuller Fuels, Inc.; Hi-Heat Coal Co., Inc.; Mountain Empire Coal Co., Inc.; National Energy Corp.; Rex Coal Co., Inc.; Russell Prater Land Co.; and, Scott Fuel Co., Inc.

Numerous Virginia permits have been issued in Rual Fuller's name, including but not limited to active permits for the following coal companies;⁴ Alcoal, Inc.; Atomic Fuel Coal Co.; Centennial Coal Co., Inc.; and Russell Prater Land Co.

OSM's own exemption files contain applications not only from Scott Fuel but also from Atomic Fuel, Fuller Fuels, and Little Byrd Coal Company, all of which bear the name of "Rual Fuller." According to these applications, Rual Fuller is the sole owner (in excess of 5%) of Atomic Fuel and Little Byrd, and a part owner (together with Ervine Fuller) of Fuller Fuels. OSM has found that Rual Fuller also has an interest in Russell Prater Land Company.⁵

The 1977 tonnage for these various coal operations where Rual Fuller is listed as "Controller", according to MSHA records, is 840,928. This includes only Alcoal, Atomic Fuel, Fuller Fuels, Little Byrd, National Energy, and Scott Fuel production.

OSM, moreover, denied exemptions to Atomic Fuel and Little Byrd (as well as Russell Prater) on the grounds of coal production over 100,000 tons attributable to those companies. Regardless of the status of the Russell Prater case, therefore, OSM should revoke the exemption previously granted Scott Fuel Co., Inc., which itself estimates 1978 production at 78,000 tons.

Aside from attribution problems, Scott Fuel was not in existence until October 1, 1977, (MSHA Index No. C 0799) and therefore, is not eligible for an exemption. 30 C.F.R. § 710.12(c) (2) (iii).

Big Ten Corp., Clintwood, Va.

A small operator exemption was granted Big Ten on the basis of an application showing ownership by William Elkins and Troy L. Elkins, with an estimated 1978 tonnage of 85,000.

The MESA Controlling Company Index (C 1091) in August 1977 showed Big Ten as owned by Elkins-Kendrick Enterprises, Inc., a corporation with a 1977 production of 2,213,801 tons, owning 15 operations with 27 mines:

Big Ten Coal Corp.	K-E-MO Mining Co.
Elkins Coal Corp.	Oliver Coal Co.
Julia N Coal Co., Inc.	Hursel H Coal Co., Inc.
Tom V Mining, Inc.	WM R Coal Co.
Monahan Mining, Inc.	Ron K Coal Corp.
Sylvia Ann Coal Co., Inc.	Norma A Coal Corp.
Big C Coal Corp.	Jim K Mining, Inc.
Double E Coal Corp.	

⁴ Alcoal—Nos. 2125, 2385; Atomic—Nos. 1195, 1475, 1671, 1849, 1902, 1979, 2087, 2334, 2352, 2414; Centennial—2489, 2523; Russell Prater—2464.

⁵ OSM, on that basis, revoked the exemption granted the Russell Prater Land Company, and the revocation has been appealed, IBSMA 78X66. Counsel for the company maintains that Rual Fuller "transferred his interest" in the company to two daughters on April 23, 1977 (ten days prior to the cut-off date). Assuming there was a transfer of ownership, it is highly probably that Rual Fuller has retained either direct or indirect control of the operation. Note, for instance, that the companies exemption application is signed by Redford R. Hatfield, who also signed the application to exempt the Little Byrd Coal Company, as Rual Fuller's agent.

If that ownership information is correct, therefore, Big Ten cannot be entitled to an exemption, on the grounds of attributed excess tonnage.

The 1978 MSHA listing, however, shows William T. Elkins as controller of Big Ten, (C 5985). If corporate control or ownership indeed has changed since August 1977, then Big Ten cannot be entitled to an exemption on those grounds. 30 C.F.R. § 710.12(c) (2) (iii).

Assuming no corporate change has taken place and that William T. Elkins and Troy L. Elkins in fact are the owners of Big Ten, the exemption still must be revoked, due to the coal production which should have been attributed to Big Ten.

The incorporators of Big Ten, in addition to William T. Elkins, are: Charles C. Elkins and Cossie Elkins.

These individuals also are among the incorporators of at least the following coal operations:

Charles C. Elkins

Double E Coal Corp.
Monahan Mining, Inc.
Tilden Coal Corp., Inc.
Jim-K Mining, Inc.
Susan J Coal Corp.
Elkins Enterprises
John H Coal Corp.
Julia-N Coal Corp.
Elkins-Kendrick Enterprises, Inc.
Hursel H Coal Co.
Elkins Coal Corp.
Ron-K Coal Corp.

Big C Coal Corp.
Oliver Coal Corp.
Crystal Coal Corp.
Double E Energy Corp.
Dale Energy Corp.
Elkins Energy Corp.
Elkins & Mullins Land Corp.
Ella Mae Coal Corp.
Kerri Energy Corp.
Julian Coal Corp.
Tom V Mining Co.
Sylvia Ann Coal Co.

Cossie Elkins (all included above)

Double E Coal Corp.
Tilden Coal Corp.
Elkins Enterprises
Hursel H Coal Corp.

Elkins Coal Corp.
Big C Coal Corp.
Elkins Energy Corp.

According to MSHA records, the known 1977 production directly attributed to Charles C. Elkins as "controller" is over 2,052,418 tons (MSHA Index No. C 1091). This figure does not include many of the above-cited operations and/or does not include a tonnage figure for them, and it does include some operations that are not shown above.⁶ None of these corporations, nor coal production at-

	1977 (tons)
Big K Mining Corp.-----	
Tilden Coal Co., Inc.-----	
Rhonda Lou Energy Corp.-----	54, 684
Julia N Coal Co., Inc.-----	
Big C Energy Corp.-----	227, 363
Dale Energy Corp.-----	72, 803
Elkins Energy Corp.-----	323, 258
K-E-MO Energy Corp.-----	225, 000
Double E Coal Corp.-----	82, 258
Tom V Mining Inc.-----	
K-E-MO Mining Co.-----	466, 128
Hursel H Coal Co., Inc.-----	93, 534
Sylvia Ann Coal Co., Inc.-----	84, 539
Elkins Coal Corp.-----	422, 841
Total -----	2, 052, 418

tributable through them, was reported on the Big Ten application.⁷

William T. Elkins and Troy L. Elkins, themselves, moreover, are incorporators of various coal mining concerns, including but not limited to:

William T. Elkins: Elro Coal Corp., Susan J Coal Corp.,⁸ Elkins Enterprises,⁸ John H Coal Corp.,⁸ and Dale Energy Corp.⁸

Troy L. Elkins: Peacock Coal Co. and Cardinal Coal Co.

These, too, lead to other coal mining concerns whose production should be attributed to Big Ten, particularly to Charles C. Elkins, whose vast holding are

⁶ The name of Charles C. Elkins takes the place of Elkins-Kendrick Enterprises, Inc. as C 1091 in the 1978 MSHA Index. His holdings are listed as follows:

⁷ See Attachment following this section for coal corporations related to Big Ten through these companies.

⁸ Records only show William Elkins, so it may refer to another individual, William R. Elkins. See Attachment.

cited above.⁹ Big Ten's exemption clearly should be revoked, since only 15,000 tons of coal attributable from these operations is required for Big Ten to exceed production limitations.¹⁰

Maco Coal, Inc., Wise, Va.; Habco, Inc., Wise, Va.; and Indian Mountain Coal Co., Inc., Wise, Va.

1. Maco Attribution

Maco Coal, Inc., received an exemption on the basis of an application estimating 1978 production at 67,000 tons¹¹ and listing the following individuals as owners: Bufford Mullins, Harold Mullins, and Paul D. Adkins.

Maco attributed coal only to its state permit No. 2192. It holds at least three other permits which may be actively mined.¹²

Aside from any question regarding Maco production, any coal produced by other related operations should have been attributed to Maco. These other operations are related through Bufford Mullins and Paul D. Adkins.

a. Bufford Mullins, together with Fred R. Linkous and Edward O. Blankenship, owns South Fork Mining Co., which holds an active state permit (No. 1750) in his name. MESA Controlling Company Index No. C 3831. Blankenship and Linkous, in turn, own B and L Coal Co., Inc., MESA Controlling Company Index No. C 3903.¹³

All B and L coal (1977—20,730 tons) must be attributed to South Fork, and South Fork production, in proportion to Bufford Mullins' ownership and control must be attributed to Maco. (No MSHA tonnage figures exist for South Fork).

b. Paul D. Adkins, another owner of Maco, is one of the incorporators of Hadco Coal, Inc., along with Robert R. Adkins and Frank Horsman. Robert R. Adkins is listed in the MESA Controlling Company Index (C 3828) as Hadco's controlling company. Hadco's permits, meanwhile, are held in the names: Doug Adkins and D. L. Boggs.

Both of these individuals appear to have other coal interests.

(i) Doug Adkins, is one of the incorporators of Indian Mountain Coal Co., Inc., which has received a small operator exemption. The other incorporators are Bobbie Adkins, Kenneth Ray Baker, and Doris Baker. Indian Mountain's exemption application lists its owners as Kenneth Baker, Earl Pally, and Owen Bolling (MESA's Controlling Company Index (C 3503) cites only Kenneth Baker as owner). These individuals also may have other coal interests.

(ii) D. L. Boggs, meanwhile, is one of three incorporators of Habco, Inc., the others being Charles W. Harris and Rita Harris. Habco also has received a small operator exemption, and its application forms show D. L. Boggs and C. W. Harris as owners. (MESA Controlling Company Index No. C 0738 shows only C. W. Harris).

D. L. Boggs and C. W. Harris also are incorporators of Tacoma Fuel Co., along with James W. Robinson. Tacoma's permit is held in the name of Steve Mullins.

Finally, C. W. Harris is "controller" of Harris and Ingram Contracting, Inc. (C 0738).

The coal production attributable to Maco through Paul D. Adkins, therefore, appears to be considerable. Some of Harris and Ingram's coal is attributable to Tacoma and Habco, through C. W. Harris. Some of Tacoma's and Habco's coal is attributable to Hadco through D. L. Boggs. Likewise, some of Indian Mountain's coal is attributable to Hadco through Doug Adkins. Hadco's coal, in turn, is

⁹ Elro: Incorporators: Avery Rose, Samuel T. Elkins; Controller: Avery Rose (C 3359), Tonnage: 1977—174,889.

Susan J: Incorporators: Charles C. Elkins, Oliver Kendrick, Jr.; Controller: John Hayes (C 5320); Tonnage: 1977—22,350.

Elkins Ent.: Incorporators: Charles C. Elkins, Hursel Elkins, and Cossie Elkins.

John H: Incorporators: Charles C. Elkins, and Hursel Elkins.

Dale: Incorporators: Charles C. Elkins, Kenneth Laddage; Controller: Charles C. Elkins (C 1091); Tonnage: 1977—72,803.

Peacock: Incorporators: James T. Monahan and William R. Monahan.

Cardinal: Incorporators: James T. Monahan, William R. Monahan, and Tom E. Cook. Naturally, these individuals lead to still other coal corporations. See attachment.

¹⁰ Big Ten estimates 1978 production at 85,000 tons.

¹¹ Maco's 1977 tonnage according to the MSHA Controlling Company Index was 66,168 tons (C 3104).

¹² Virginia permit Nos. 2398, 2575, 2514.

¹³ A third incorporator of B & L is Kyle Beverley. B & L's permits are in the names of Lloyd Beverley.

attributable to Maco, in proportion to the ownership or control of Paul D. Adkins. Tonnage (1977) for these companies is as follows:

	<i>Tons</i>
Harris and Ingram-----	
Tacoma-----	
Habco-----	39,974
Indian Mountain-----	15,030
Hadco-----	62,500
Maco-----	66,168

Given the questions surrounding the production by Maco itself, and the extent of tonnage potentially attributable to Maco through apparently related coal operations, Maco's exemption should be revoked unless Maco can carry its burden of proving entitlement.

2. *Habco attribution*

Habco, Inc., also received a small operator exemption, based on estimated 1978 production of 90,000 tons, on permits nos. 1502 (50,000 tons) and 2329 (40,000 tons). According to Virginia state records Habco holds permit nos. 1460, 1502, and 1925, while Cardinal Mining Ltd. holds permit no. 2329. Habco attributes no production, therefore, to two permits (1460, 1925) which may or may not be actively mined. This should be checked.

Habco, meanwhile, does attribute production to another coal operation's permit. According to a letter in the OSM file on Habco, from a citizens' group entitled Save Our National Forest, Permit No. 2329 was purchased by Habco after the May 1, 1977, cut-off date established by § 502(c) of the Act and 30 C.F.R. § 710.12 (c) (2) (iii) regarding changes in ownership or control.¹⁴ Habco's own exemption application shows the date of acquisition as May 16, 1977. Operations on permit area 2329, therefore, should not, in any event, be exempted from the Act's coverage, although tonnage from such operations would be attributable for determining eligibility for an exemption on the other permit area(s).

Assuming Habco's estimate of 90,000 tons in 1978 is accurate, it is likely that its exemption should be revoked. The interrelationship of companies, described above under Maco Attribution, equally applies to Habco, and almost surely would increase attributable coal by more than 10,000 tons.

All B and L coal is attributable to South Fork. Bufford Mullins' share of South Fork is attributable to Maco. Paul D. Adkins' share of Maco is attributable to Hadco, as is Douglas Adkins' share of Indian Mountain, D. L. Boggs' share of Hadco, as well as his share of Tacoma, finally, is attributable to Habco. Likewise, production from Harris and Ingram is directly attributable to Habco, through C. W. Harris, co-owner of both corporations.

3. *Indian Mountain attribution*

Indian Mountain Coal Co., Inc., also received a small operator exemption, although it made no estimate for 1978 tonnage. It attributes production to only two out of five permits it holds, for an approximate tonnage of 13,500 on the year ending July 31, 1978.¹⁵

Indian Mountain, moreover, attributes no coal from the related companies described above under Maco Attribution. All B and L coal is attributable to South Fork. Bufford Mullins' share of South Fork is attributable to Maco. Paul D. Adkins' share of Maco is attributable to Hadco. Also attributable to Hadco are D. L. Boggs' shares of Tacoma and Habco (which includes coal attributed to them from Harris and Ingram through C. W. Harris). Finally, Douglas Adkins' share of Hadco is attributable to Indian Mountain.

Given these facts, Indian Mountain should be required to justify retention of its exemption.

Triple E Coal Corp., Grundy, VA and Baldwin Coal Co., Grundy, VA

These two operations were granted a small operator exemption. Both applications show Ellis Baldwin as owner, as does the MSHA Controlling Company Index (C 2682).

Neither application disclosed or attributed production to the other company. MSHA records show a combined 1977 tonnage for Ellis Baldwin of 64,022 (Triple E: 38,524/Baldwin: 25,498); however, Mr. Baldwin estimates 1978 production for Triple E at 60,000 tons and apparently makes no estimate for Baldwin.

Given these attribution problems, Mr. Baldwin should be required to establish reliable tonnage figures for both operations in order to retain these exemptions.

¹⁴ Permit No. 2329 was the only permit held by Cardinal Mining, Ltd.

¹⁵ Permits 1960 and 2102. It also holds permits 1233, 1310, and 1606. MSHA shows 1977 production of 15,030 tons. (C 3053).

This is particularly true, given circumstantial evidence connecting him with United Coal Companies. See United discussion following.

The "United Coal Companies" Connection: Blankenship & Compton Coal Corp., Grundy, Va.; Duty Coal Co., Grundy, Va.; Little Rock Coal Co., Grundy, Va.; Ramey Coal Co., Grundy, Va.; (A & B Coal Co., Grundy, Va.); (Boshell Coal Co., Grundy, Va.); (Mabo Coal Co., Grundy, Va.); (Triple E Coal Corp., Grundy, Va.); and (Baldwin Coal Co., Grundy, Va.)

All nine of the above-cited operators have received exemptions. Five of the operations (in parentheses) have been discussed already as posing attribution problems independently of any United connections which may exist. We believe that the evidence connecting all of them, while largely circumstantial, justifies an OSM investigation and issuance of show cause orders.

United Coal Companies (as it appears on its stationery) or United Coal Corporation (as it appears in MSHA records) is not only a large operation in its own right but also part of a huge coal empire. According to MSHA records, United's "controller" is James W. McGlothlin, who controls 6 operators with 41 mines (C 0875). McGlothlin's 1977 tonnage is approximately 1,771,722 and the estimated 1978 tonnage figure is 2,183,440. This does not include figures for Thimble Coal Corporation, which is 50% owned by United and of which McGlothlin is President. (C 4141). Thimble produced 275,000 tons in 1977.¹⁶

Likewise, the tonnage figures for United do not reflect the various companies which appear to be related to United.¹⁷ If any of the above-listed operators is related to United, then attribution of United's coal clearly will be fatal to their exemption.

The nine operators listed above filed exemption applications which were: (1) apparently filled out by the same individual, although separately signed (for example, state permit numbers are missing on all applications); (2) typed on the same script typewriter; (3) notarized by the same individual; (4) advertised in the same publication; and/or (5) mailed in "United Coal Companies" envelopes. OSM actually addressed many responses to "United Coal Companies" and/or mailed them to United's address at Box 901 in Grundy, Va., and the various applicants apparently received them.

There is other circumstantial evidence which seems to connect the operators with United.

1. Blankenship & Compton, Duty, Little Rock, and Ramey, according to Virginia state permit records, all are located at Box 901 in Grundy, Va. Duty Coal Company, on its exemption application, actually gave its mailing address as c/o United.

2. Blankenship & Compton and Little Rock, according to exemption applications are owned by Paul Fletcher and Mrs. Lawson Ramsey (see C 3357 and C 0912). We note that Dennis Compton was one of United's incorporators, as was Burton Fletcher. We also note that, according to its application, Ramey is owned by Dennis A. Ramey. OSM should determine the relationship, if any, of these various individuals, for purposes of beneficial ownership or indirect control.

3. One of the incorporators of A & B and Boshell also incorporated United. (N.D. Street).

We recognize that none of this evidence conclusively establishes a failure to attribute coal production as required by the regulations; however, we believe it is sufficient, taken as a whole, to justify reopening the exemption files on these operators and requiring an explanation of these "coincidences."

II. RANDOM SURVEY OF SMALL OPERATOR EXEMPTION FILES

The second major failing in the program concerns the granting of exemptions when the operator had not met his burden of proof. The Council conducted a random sampling of OSM files and it revealed that over half were improperly granted.

The sample chosen for the survey of OSM's small operator exemption files, quite simply, was those applications filed under the letter "A". This amounted to

¹⁶ Of that figure, 200,000 tons were produced at one mine after June 1, 1977. (C 4141).

¹⁷ United Coal Companies, Box 901, Grundy, Va.; Incorporators: James W. McGlothlin, Dennis Compton, Burton Fletcher, F. B. Fowler ("Controller" of Fowler and Chaney Coal Co., C 1416), Alfred Moore ("Controller" of Little Bear Coal Corp., C 0342), Nick Street, Sherdon Stacy, Clarence (illegible), H. A. Street, and Woodrow McGlothlin.

Permits: F. B. Fowler, Peter G. Marozzi (Permittee for Valley Coal Corp., Box 901, Grundy, Va.), Burton Fletcher, Lowell Copeland ("Controller" of Copeland Coal Co., Inc. C 5171).

Same Address: Woodyard Bros., Inc. (C 5405).

There may be many other related coal companies. See text.

a total of 40 files, and the survey was done by two persons in less than three hours' time. Determinations were made *solely* on the basis of the contents of those files. The "administrative burdens", of review, therefore, are not overwhelming for the OSM staff.¹⁸

The overall breakdown of action of these files is as follows: 25 full or partial exemption approvals; 12 full exemption rejections¹⁹; and 3 voided samples.²⁰

Of the 25 full or partial exemption approvals, the survey showed, on the basis of information submitted or other materials already in the files, that 15 of the approvals are improper (60%). As noted in the text of the letter, approval is improper due to lack of required information and/or information indicating failure to meet the regulations' specifications, in the following areas:

1. Lack of federal mine identification numbers and/or state permit numbers, as required by 30 C.F.R. § 710.12(e) (2), making it difficult to investigate the existence of other holdings and to know the extent of exemptions granted.
2. Lack of information, required by 30 C.F.R. § 710.12(e) (2), as to dates of issuance, renewal, and/or expiration of state permits.
3. Permits issued or renewed after August 2, 1977, despite the requirements of § 502(c) of the Act and 30 C.F.R. § 710.12(b) (2).
4. Inadequate information as to ownership and controls, as required by 30 C.F.R. § 710.12(e) (1), inhibiting inquiry into attributable coal production.
5. Formation of coal mining concerns after May 1, 1977, contrary to § 502(c) of the Act and 30 C.F.R. § 710.12(c) (2) (ii), or failure to provide formation dates as required by 30 C.F.R. § 710.12(e) (3).
6. Failure to provide 1977 tonnage figures or to estimate 1978 production, as required by 30 C.F.R. § 710.12(b) (4).
7. Failure to include necessary copies of severance tax returns, as required by 30 C.F.R. § 710.12(e) (5).
8. Failure to include proof of publication to inform citizens of pending applications, as required by 30 C.F.R. § 710.12(e) (6).
9. Presence in the OSM exemption file of MESA tonnage figures indicating attributable production in excess of 100,000 tons.

These 15 operators are listed on the next page, together with the problems associated with their applications.²¹

While the remaining 10 exemption approvals are proper on the face of the applications themselves, several are sufficiently irregular to prompt further inquiry.²²

¹⁸ Given a total of 1,140 exemption files, one qualified person working normal hours easily could make the same determinations with respect to all applications in one month's time. With respect to the 783 approvals, far less time would be required to review the files.

¹⁹ Of the 12 full rejections, 2 were on procedural grounds (late filing) and 9 were on substantive grounds (2 for tonnage, 7 for permit dates). These are: Adams Coal Enterprises, Allen, Ky.; F. E. Adams Trucking Co., Scottdale, Pa.; Adkins Coal Co., Langley, Ky.; M. E. Ansell, Scottdale, Pa.; Paul Adams Coal Co., Jackson, Oh.; Allied Coal Sales & Leasing; Patriot, Oh.; American Coal Co., Morgantown, W. Va.; AMY Coal Co., Inc., Summersville, W. Va.; A & S Coal Co., Summersville, W. Va.; Apache Mining, Logan, W. Va.; Ashland Mining Corp., Ashland, W. Va.; Atomic Fuel Coal Co., Haysi, Va.

²⁰ These were 3 A Mining Co., Phyllis, Ky.; Ajax Mines, Inc., Pikeville, Ky.; and Ardel Natural Resources, Inc., Somerset, Pa. OSM's exemption application lists for Kentucky and Pennsylvania do not contain these companies, nor do the individual files reflect any action taken with respect to them. Ajax Mines, Inc., moreover, is improperly filed together with Ajax Mining Co., Inc., of Natural Bridge, Alabama.

²¹ We note that OSM frequently requested the missing information yet later approved the application without receiving it.

²² A & A Coal Co., Inc., Hurley, Va. Application was mailed in an envelope with a return address to Lester Coal Co., Inc., Hurley, Va.

A & J Coal Co., Richlands, Va. The original application stated that severance taxes were not levied on A & J's production. OSM nonetheless requested copies of such tax returns, and the operator complied.

Altmire Brothers Coal Co., Apollo, Pa. We note that the application of Altmire Bros., with owners listed as Mack and Fred Altmire, bears a striking resemblance to that filed by A & C Coal Co., Inc., Apollo, Pa., listing owners as Harold and Altmire and Veda Cass.

Both applications are the same form, typed on the same typewriter, notarized by the same person on the same day, and appear to have been signed by the same hand. Moreover, the A & C file contains the last sheet of a MESA Controlling Company printout showing that "Altmire Brothers Coal Co., Inc." (C 0160) owns a number of coal operations with a total 1977 production of 118,105 tons. (A & C also was approved improperly on other grounds).

Avonmore Enterprises, Avonmore, Pa. This application bears a striking resemblance, at least in form and type, to the A & C and Altmire Bros. applications.

The other exemption approvals apparently proper on their face or on the basis of their own files' contents are: Ajax Mining Co., Inc., Natural Bridge, Alabama; Alexander Brothers, Inc., Mineral City, Ohio; Allegheny Mineral Corp., Kittanning, Pennsylvania; American Mining Co., Rockwood, Pennsylvania; AH-RS Coal Corp., Bruin, Pennsylvania; AC Coal Co., Inc., Annullie, Kentucky.

15 operators improperly granted exemptions ¹	Problem areas (keyed to list in text)								
	1	2	3	4	5	6	7	8	9
A & B Coal Co., Grundy, Va.			X						
A & C Coal Co., Inc., Apollo, Pa.				X					X
A & D Coal Co., Prater, Va.					X			X	
AMC Mining, Inc., Pikeville, Ky.					X	X	X		
Advanced Fuel Co., Elkhorn City, Ky.							X		
Bobby Joe Akers, d/b/a Hite Preparation Co., Dona, Ky. ² ...	X	X		X					
Alpha Environmental Mining Corp., Corsica, Pa.				X					
Alvarez Coal Co., Clarksburg, W. Va.							X		
Ancient Sun, Inc., Shippenville, Pa.				X					
Andray Mining Co., Arcadia, Pa.				X					
Apollo Corp., Charleroi, Pa.									X
Appalachian Pochontas Coal Co., Flat Top, W. Va.				X			X		
Arkansas Coals, Inc., d/b/a Hite Preparation Co., Drift, Ky. ² ...									X
Art Minds Coal Co., Inc., Ramey, Pa.				X					
Ayers Coal Co., Barton, Md. ³		X							

¹ Kentucky and Virginia operators were not cited for problem area No. 3, the area affected by OSM's decision to honor Kentucky and Virginia statutes automatically renewing permits.

² A printout of MESA Controlling Co. Index No. C0031, found in the Arkansas file shows "Ivle Moore" (the name appears on one of Arkansas' severance tax returns) as controlling company of Arkansas Coals, Inc., d/b/a Hite Preparation Co., and White Deer Coal Co., d/b/a/ Hite Preparation Co., with a combined 1977 tonnage of 164,803 tons.

³ It is possible that Maryland permits, as is true with Pennsylvania permits, do not expire until an operation is completed. Ayers is cited here because OSM requested expiration dates but granted approval without receiving the information.

On the basis of this survey, the Council respectfully requests that a show cause order be issued to the companies who did not meet their burden of proof requirement pursuant to 30 C.F.R. § 710.12(g) (1). Because the findings of the random survey reveal such a high number of improperly processed applications, the Council also asks that OSM reopen its files, and assign OSM officials not directly connected with the initial review process to review all grants by small operators.

The preliminary indications were overwhelming that the program was sloppily administered, and that numerous exemptions were improperly granted.

Respectfully submitted,

L. THOMAS GALLOWAY
J. DAVITT McATEER
*Attorneys for The Council of the
Southern Mountains, Inc.*

ATTACHMENT 1

INCORPORATORS OF VARIOUS RELATED COMPANIES (NOT INCLUDING CHARLES C. ELKINS, COSSIE ELKINS, WILLIAM T. ELKINS, AND TROY L. ELKINS, PREVIOUSLY NOTED)

Hursel Elkins

Double E Coal Corp.	Elkins Kendrick Ent.
Tilden Coal Corp.	Hursel H Coal Co.
Big K Coal Corp.	Elkins Coal Co.
Elkins Enterprises	Ron K Coal Co.
John H Coal Corp.	Big C Coal Corp.
K-E-MO Energy Corp.	Elkins Energy Corp.
K-E-MO Mining Co.	

William R. Elkins

Big K Coal Corp.	Julia N Coal Corp.
Susan J Coal Corp. ¹	Elkins Coal Corp.
John H Coal Corp. ¹	Ron K Coal Corp.
Dale Energy Corp. ¹	Double E Energy Corp.
Elkins Enterprises ¹	Hursel H Coal Corp.

Oliver Kendrick, Jr.

Monaham Mining, Inc.	Elkins Kendrick Ent.
Jim K Mining, Inc.	Double E Energy Corp.
Susan J Coal Corp.	K-E-MO Mining Corp.
Julian N Coal Corp.	Big C Coal Corp.
Hursel H Coal Corp.	Oliver Coal Co.

James T. Monaham

Monaham Mining, Inc.	Peacock Coal Co.
Triple M Coal Corp.	P M & M Coal Inc.
A & M Coal Company, Inc.	Cardenal Coal Co.

¹ These may be related to William T. rather than William R. Elkins.

Kermit R. Elkins

Big K Coal Corp.
Double E Coal Corp.
Hursel H Coal Corp.
Tilden Coal Corp.

Kenneth Laddage

K & E-MO Energy Corp.
Dale Energy Corp.
Ron K Coal Corp.
Big C Coal Corp.
Elkins & Mullins Land Corp.
Kerri Energy Corp.

Dale Meade

Elkins Coal Corp.
Ron K Coal Corp.

Avery Rose

Elro Coal Corp.
Rita Ann Coal Corp.

Jimmy Rose

Jim-K Mining Inc.

Wilburn K. White

Kerri Energy Corp.
Ron K Coal Corp.

Donald Kindrick

Ron K Coal Corp.

Tom E. Cook

Cardinal Coal

Jess R. Davis

Ron K Coal Co.

Glen T. Sturgill

Ella Mae Coal Corp.

Larry L. Lambers

Ron K Coal Corp.
Big C Coal Corp.

Clifton W. Counts

Big C Coal Corp.

Kenneth R. Laddage

Little John Coal Corp.

Paul R. Belcher

Big C Coal Corp.

N. B. Lambert

Oliver Coal Corp.

Brady Lyall

Tilden Coal Corp.

John A. Elkins

Little John Coal Corp.

Freddie E. Mullins

Elkins & Mullins Land Corp.

Ella Mae Coal Corp.

Beulah Mullins

Ron K Coal Corp.

Edward K. Artrip

Ron K Coal Corp.

Samuel Elkins, Jr.

Ron K Coal Corp.

Norma Kindrick

K-E-MO Mining Co.

Connected to James T. Monahan—see name above

William R. Monahan

Trip M Coal Co.

A & M Coal Company, Inc.

Peacock Coal Co.

Cardinal Coal Co.

Avery McCoy

A & M Coal Co., Inc.

PM & M Coal Co., Inc.

Troy Elkins

Peacock Coal Co.

Cardinal Coal Co.

James E. Monahan

Triple M Coal Co.

Joseph Porter

PM & M Coal Co.

Tom E. Cook

Cardinal Coal²

²This information was compiled by the Virginia Citizens for Better Reclamation (VCBR) and previously transmitted to your office on June 22, 1978. We do not understand why no action was taken.

ALLEGHENY MINING CORP.,
Mount Storm, W. Va., September 12, 1978.

Senator DALE L. BUMPERS,
U.S. Senate,
6243 Dirksen Senate Office Building,
Washington, D.C.

DEAR MR. BUMPERS: Being present at your OSM proposed permanent regulations Senate oversight hearing in room 3110 Dirksen Bldg., Monday, September 11, 1978, I would like to add a couple of items for clarification. I was present with The Mining & Reclamation Council of America group of which I am a director.

I am president of Allegheny Mining Corporation operating nine (9) small surface mine jobs in Grant and Mineral Counties each of which produce 5000 to 6000 tons a month. We have been in business fourteen (14) years. Our coal seams vary in thickness from 18" to 36", our permits run from 10 to 150 acres mostly leasing from small farmers.

One example of the cost of these new proposed regulations and also the temporary regulations is the Core Drilling cost of overburden and the analysis of the core. All of the drilling we have done has been by rotary air drills we own. Our average cost is approximately \$1.00 per foot of drill hole where as to get a core drill would cost \$10.00 to \$20.00 per foot of drill hole depending on type of material and total footage to get a core drill moved in for a few holes on a small permit is cost prohibitive.

The analysis that the OSM regulations require on the separate layers of the strata could run from \$8.50 per layer sample at the State University lab and

\$25.00 per sample at a private lab. In our area we would have from 10 to 20 different layers of the strata which could cost \$85.00 minimum to \$500.00 per hole for these analysis.

We think the Department of Natural Resources of West Virginia has enough information in most areas to know which strata is acid producing without all this cost.

Enclosed, you will find the rates quoted our company for Geological & Hydrological services which are \$30.00 per hour plus expenses which are extensive due to distance from Morgantown. Usually these Hydrology studies take days, the cost on small permits are prohibitive.

We feel most of this information could be available either through the Soil Conservation Service or the Dept. Natural Resources or Geological Survey rather than each operator having to duplicate the information on each permit when sometimes permits adjoin each other.

Enclosed you will find quoted rates for doing the samples from Independant Consultants.

Even though we only produce small tonnage from each permit, we are not classed as a small operator and can get no help on these studies.

There are many other areas we think should be clarified and if there is any further information you might need, please feel free to call on us.

Sincerely,

LAWRENCE A. STREETS, *President.*


**Black Rock
Test Labs**

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 Route 7, Box 22A ♦ Eastgate Plaza ♦ Morgantown, WV 26505

and Geological Consultants

Colorimetric or Wet Method Analyses

Acidity				Oxygen Demand	
Inert	4.00			biochemical (BOD)	
Alkalinity				5 days	14.00
total	3.50			20 days	20.00
Arsenic (As)	13.50			chemical (COD)	14.00
Bicarbonate (HCO ₃)	3.50			Oxygen, Dissolved (DO)	7.00
Boron (B)	12.00			pH	3.00
Bromide (Br)	6.00			Phenol	
Carbonate (CO ₃)	3.50			extractions	10.00
Chloride (Cl)	4.50			distillation	20.00
Chromium (Cr)				distillation and extractions	30.00
Cr(VI)	5.50			Phosphorous	
CrT	8.00			Phosphate-P	
Color, Apparent	2.50			hydrolyzable	6.00
True	10.00			ortho	5.00
Spectrophotometric	18.00			total	7.00
Cyanide (CN)				Relative Stability	10.00
Free	8.00			Selenium (Se)	12.00
(W distill.)	18.00			Solids (Residue)	
Total	22.00			Total Dissolved (TDS)	5.50
Detergents (anionic)	10.00			Non-filterable, total (TSS)	5.50
Fluoride (F)				Total and volatile, non-filt.	11.00
Electrode	6.00			Total Residue (TS)	5.50
SPANDS	5.00			(m/cw TSS & TDS)	
Hardness, Total	4.25			Total and volatile residue	11.00
Ca Hardness	4.25			Settleables	3.50
Mg Hardness	4.25			Specific Conductance	4.00
Hydrazine	6.00			Specific Gravity	11.50
Hydroxide (OH)	3.50			Sulfate (SO ₄)	5.00
Iron, Total (Fe)	7.00			Sulfide Total S	10.00
Dissolved	7.50			Sulfite (SO ₃)	4.00
Fe (II)	6.00			Tannin and Lignin	6.00
Fe (III)	8.00			Thiocyanate	6.00
Nitrogen (N)				Turbidity	5.00
Ammonia, electrode (NH ₃ -N)	8.00				
Ammonia (distil. (NH ₃ -N)	15.00				
Kjeldahl, Total TKN	18.00				
Nitrate (NO ₃ -N)	7.00				
Nitrite (NO ₂ -N)	6.00				
Odor					
Qualitative	2.50				
Oil and Grease	10.00				

 If your testing requirements are not listed here—
 please inquire.

Please inquire for preservative information.

Submission of Government reports:

\$10.00 per hr. based on single test requirement.

 \$20.00 per hr. based on multiple tests requiring
 compilation of results.



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and Geological Consultants

Additional Services

- I. **Geological Consulting**—ranges up to \$30.00 per hour (4-hour minimum) plus expenses or by contractual agreement. Geological consulting includes but is not limited to: (1) program planning and operation for drilling/coring; (2) coal-geology evaluation of properties; (3) coal exploration; (4) coal petrography/petrology; (5) geological-reserve calculations; (6) oil- and gas-reserve projects; and (7) hydrology services.
- II. **Additional Services Available Upon Request:**
 A. Mineral-preparation engineering
 B. Mining engineering
 C. Land-use planning
- III. **Testing Outside Normal Business Hours** (requested by the customer and for his convenience):
 From 12 noon Saturday to 8 a.m. Monday—150% of analysis price plus \$10.00 per hour lab fee if lab is used 3 hours or more on a job.
- IV. **Transportation**—20¢ per mile.
7.5 mi to Morgantown



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Water-Sampling Charges

- I. *Sampled by Customer, Picked Up by Black Rock*—\$7.50 per hour plus 20¢ per mile transportation.
 - B. If non-routine—\$10.00 per hour plus 20¢ per mile transportation.
- II. *Sampled by Black Rock:*
 - A. If on a permanent routine basis—\$5.00 per hour plus 20¢ per mile transportation (unless other arrangements are made).
 - Note: Sample containers and preservatives are available upon request at no additional charge.



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Soil Samples

Acid Digestion	\$ 9.00	Fusion	\$15.00
Cation exchange capacity	25.00	Lime Requirements	15.00
% base saturation	35.00	Loss on Ignition	9.00
Elemental Analysis		Moisture	7.50
(see water price list)		Organic Matter	15.00
(Digestion and/or fusion extra)		Soil pH	3.00

ALLEGHENY MINING CORP.,
Mount Storm, W. Va., October 9, 1978.

Senator DALE L. BUMPERS,
U.S. Senate,
6243 Dirksen Senate Office Bldg., Washington, D.C.

DEAR SENATOR BUMPERS: Please find enclosed our comments on OSM's "Regulatory Analysis" and on the proposed final regulations.

Please realize, we do not have the facilities or the staff to do an in depth study of the "Regulatory Analysis". These are only estimates.

I would like to take this opportunity to thank you for your concern and interest in this matter. I am sure we would both like to see a good working and understandable relationship between OSM and the coal mining industry.

I would also like to assure you that Allegheny Mining and its employees will cooperate with you and OSM as much as is humanly possible.

Sincerely,

HAROLD D. JUNKINS, *Engineer.*

SPECIFIC COMMENTS, PROPOSED FINAL REGULATIONS, OSM, OCTOBER 3, 1978,
LAWRENCE STREETS, PRESIDENT, ALLEGHENY MINING CORP.

764.19(b) Within [60] 30 days after completion of the public hearing, or if no public hearing is held within [12 months] 30 days after receipt of the complete petition . . .

Justification.—Time limits must be shortened to reduce the lag between the date of permit application and the date of the issuance of the permit.

778.13(f) Delete.

Justification.—MSHA identification numbers are not available until after a surface mining permit has been issued.

779.14(b) (1) Test borings and or core samples from the mine plan area.

Justification.—Core samples aren't necessary in areas where mining has been conducted on particular seams with good success.

779.16(a) Each permit application shall set forth surface and groundwater information including the location of all streams, lakes, ponds, wells, and domestic springs [and descriptions of existing surface and underground drainage patterns throughout the year] within the mine plan area and adjacent areas.

Justification.—Domestic springs only, should be located. Other springs are of no significance. After talking with a geologist, I learn that describing underground drainage patterns is virtually impossible to do with any accuracy.

779.18(d). Delete.

Justification.—This information is rarely available on a local basis.

779.23(a) Maps, plans and cross-sections included in a permit application which are required by section 779.25 shall be prepared by a qualified registered professional engineer, professional geologist, licensed land surveyor, or other approved person.

Justification.—Many individuals are better qualified to do this type of work than many RPEs, due to more experience and certification and training through state programs.

779.20(a) The permit application shall contain a statement of the results of a study of the [populations of fish and wildlife species within the mine plan area and adjacent areas] potential adverse effects of the operation on fish and wildlife habitat.

Justification.—An accurate assessment of the populations of various types of wildlife would be virtually impossible.

779.25(d) Location and extent of sub-surface water, if encountered, within the proposed mine plan area or adjacent areas, including, but not limited to: aquifers and [piezometric surfaces thereof through essential variations, the flow patterns of such subsurface water,] and the estimated elevations and contours of ground-water tables:

Justification.—Too extensive, too costly, and too time consuming.

779.25(j) (5) Contour lines shall be based on intervals of a maximum of [5] 20 feet where the slope of the land is twenty degrees or less and a maximum of [10] 40 feet where slopes are greater than 20 degrees.

Justification.—All contour maps are 20 or 40 foot intervals. Making the interval smaller would create a lot of unnecessary work and one would not be able to see anything on the map except lines.

780.11(b) (8) Water [and air] pollution control facilities.

Justification.—Surface mining is not a point source of air pollution.

780.13(c) The following shall be shown and, for subparagraphs, 5, 6, 10, and 13 of this paragraph the maps and plans shall be prepared by, or under the direction of, and certified by a qualified professional geologist, registered professional engineer, licensed land surveyor, or other approved person.

Justification.—See 779.23(a)

780.14 Delete.

Justification.—Surface mining is not a point source of air pollution.

780.25(b) (1) Add—or other approved person.

Justification.—See 779.23(a)

787.11(3) Delete.

Justification.—A copy of the permit application is not available at the time of advertisement. Ad is placed in the newspaper prior to the filing of an application.

805.13(b) In addition to the requirements of paragraph (a) of this section, liability under the bond for revegetation shall continue for a period of [5] 2 full years after the . . .

Justification.—5 years is entirely too long to hold vegetation bond, especially if it is a good site.

816.46(g) Delete.

Justification.—This is impossible unless the structure is empty when the precipitation event begins.

816.46(i) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a 25-year 24-hour precipitation event, or larger event as specified by the regulatory authority, but in no case shall it be necessary for the spillway to be larger than the receiving stream, itself.

Justification.—It is completely unnecessary to construct a spillway to drain a small portion of the water shed which is larger than the receiving stream, which drains the entire water shed.

816.65(g) (1) [1,000 feet] 300 feet of any building used as a dwelling, school, church, hospital, or nursing facility;

Justification.—This goes beyond scope of the law.

816.65(j) Change 1 inch per second to two inches per second.

Justification.—Two inches per second has been used for a number of years and works very well based on our past experience with seismograph.

816.65(n) Change one-half to 1 inch per second.

Justification.—See 816.65(j).

816.67(a) See 816.65(j).

816.67(b) See 816.65(j).

816.101(a) (1) Contour mining. Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,000 linear feet unless otherwise authorized by the director.

Justification.—At times it may be necessary to lengthen the time or the footage to facilitate drainage.

816.101(a) (3) See 816.101(a) (1).

816.116(b) (1) (i) Each year of a period of [5] 2 full consecutive years after the last of augmented seeding, fertilizing, irrigation, or other major work. . . .

Justification.—See 805.13(b)

816.116(d) Change 5 to 2 consecutive years.

Justification.—See 805.13(b).

816.116(d) (1) See 816.116(d).

816.116(d) (2) See 816.116(d).

816.117(a) See 816.116(d).

816.117(a) (1) (i) Change 3 to 2 years.

Justification.—See 805.13(b).

816.117(b) (2) Change 5 or 10 to 2 or 5 years responsibility period.

Justification.—See 805.13(b).

816.117(b) (3) See 816.117(b) (2).

EVALUATION—INCREMENTAL COST INCREASE/TON

OSM's regulatory analysis shows West Virginia in Central and Southern Appalachia, which is probably true for the greater portion of the state, but our operations seem to be more of the class of Northern Appalachia, i.e. dragline, contour; or dragline, area.

At Allegheny Mining we have neither the staff or the necessary time to do an in-depth incremental cost analysis. We have attempted to make as accurate an estimate as humanly possible. It is very difficult to estimate costs of a program, in which we have not had very much experience.

OSM says the average thickness of seams in Northern Appalachia are 40''. The average seam in our area is 24'' or 26''. OSM says the average overburden ratio is 15:1. The average overburden ratio on our operations is about 17:1. OSM says the average coal heat value is 13,000 BTus. Our average would be more like 11,000 BTus.

It seems to me that OSM has made several assumptions that really do not apply in all cases.

SECTION 816.46 VOLUME AND DETENTION TIME FOR SEDIMENT BY SEDIMENTATION PONDS

In West Virginia we may be able to use alternative 10, in which case there will be no increase in incremental cost/ton. If one of the other alternatives must be used, the increase in incremental cost/ton could range as high as 42 cents a ton.

SECTION 816.59 MAXIMUM COAL RECOVERY

First, an 85 percent recovery rate is absolutely out of the question in our area. Depending on the alternative used the increase in incremental cost/ton may range from 0 to \$1.27/ton. (based on mining to 100' of cover)

SECTION 779.20 FISH AND WILDLIFE RESOURCES

Alternative 1 would be impossible to implement in Appalachia, because of the diverse species of wildlife. Depending on which of the remaining alternatives that must be used the cost of carrying our permit conditions under such a plan, i.e., planting new and diverse species of flora which may or may not do well on a particular site. The final cost/ton could range as high as 5 cents a ton. If wildlife monitoring is necessary who knows how high the cost may go.

SECTION 78014 AIR POLLUTION CONTROL PLAN FOR SURFACE MINING

Again, depending on the alternative used, the cost may vary somewhat. Granted, the cost of drawing up an air pollution control and monitoring plan will be relatively cheap (1 cent or less/ton), but the cost of implementing such a plan could be prohibitive. Again, OSM has failed to mention or consider implementation cost. Our estimate of cost of implementation/ton ranges from 10 cents to 50 cents/ton, depending on what is required.

SECTION 816.95 FUGITIVE DUST CONTROLS BY SURFACE MINING

Depending on the alternative our estimated cost could range up to 25 cents/ton.

SECTION 710.11 (D) (2) COMPLIANCE PERIOD FOR PRE-EXISTING, NON-CONFORMING STRUCTURES

Depending on the alternative used, the cost could range up to 23 cents/ton.

SECTION 771.25 CALCULATION OF PERMIT FEES

Depending on the alternative used the cost may range up to 12 cents/ton. We will not argue this section with OSM. It is my hope that they know more about their administrative cost of implementing their program than I do.

SECTION 816.31-816.35 ROAD CONSTRUCTION STANDARDS FOR SURFACE MINES

Using either alternative, 2 or 3, our estimated cost will be around 7 cents/ton.

SECTION 816.67 TO 817.67 MEASURING THE EFFECTS OF BLASTING

If alternative 1 is used, our estimated cost will be at 3 to 5 cents/ton. If alternative 2 is used our cost could be 5 to 7 cents/ton.

I have not taken the liberty to analyze the cost of valley fills due to our relative lack of experience in this area.

We have only attempted to estimate the situation. We have no way of knowing what the new regs are going to do to our incremental cost/ton.

Costs could range as high as \$2.98/ton. Our costs will probably be in the range of \$2.00 to \$2.25/ton. Compare this with OSM's figure of \$.37/ton. It is my belief that OSM may be nearly correct with their figures as to the cost of presenting these plans, but they have failed to realize the cost of implementing these programs.

STATE OF MARYLAND,
EXECUTIVE DEPARTMENT,
Annapolis, Md., October 4, 1978.

Mr. WALTER HEINE,
Director, Office of Surface Mining,
U.S. Department of the Interior, Washington, D.C.

DEAR MR. HEINE: I am responding, in part, to the recent request of Mr. Charles A. Beasley for a review of the Proposed Regulations for the Permanent Regulatory Program, pursuant to the Surface Mining Control and Reclamation Act of 1977. Detailed comments on the proposed regulations will be forthcoming from the Maryland Department of Natural Resources; however, I am taking this opportunity to express my overall dissatisfaction with these regulations and the process employed to promulgate them.

There apparently is a wide variance between the stated commitment of the Office of Surface Mining to a cooperative intergovernmental effort in this instance and the actions of your Office as witnessed by Maryland mining officials. If I correctly interpret Governor Rockefeller's remarks of September 11, 1978 before the Senate Energy and Natural Resources Committee-Subcommittee on Public Lands, other coal-producing states seem to be of the same opinion.

Section 101(f) of Public Law 95-87 states that because of regional diversity, "primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States." Section 501(b) requires the Secretary of the Interior to promulgate regulations "which shall be concise and written in plain, understandable language. . . ." The initial program regulations adopted December 13, 1977 and the Proposed Rules for the Permanent Regulatory Program printed in the September 18, 1978 Federal Register appear to violate both of these Congressional mandates. The regulations have been drafted in such detail that they preclude State management flexibility in prescribing the practices or means by which the underlying environmental objectives of the Act are to be achieved. Consequently, there is only a perfunctory opportunity for State participation.

The promulgation process employed by your agency also gives us cause for concern. During July, 1978, several hundred pages of preproposed draft regulations were announced as available for public review and comment. The September 18 Federal Register states that these draft regulations were made available on July 3 and July 21. However, it was our experience that they were not actually available until one week before the public meetings held in early August. Now, approximately one month after the public meetings, the Office of Surface Mining has promulgated the Proposed Rules for Permanent Regulatory Program without including the Environmental Impact Statement, the Regulatory Fiscal Analysis, and the Preamble to the Regulations.

It is inconceivable that the states will have less than sixty days to evaluate and provide comment on nearly 2,000 pages of regulations and related documents. Furthermore, the entire process of issuing initial program regulations and the proposed permanent regulations has created considerable confusion for Maryland's mining regulation effort and our coal industry.

The problem is compounded when one considers that Public Law 95-87 required the Secretary of the Interior to draft regulations within one year (August 3, 1978) of the date of enactment, and required the states to submit proposed programs within eighteen months (February 3, 1978) of the date of enactment. The Office of Surface Mining has missed its August 3, 1978 deadline and will probably not adopt final regulations before January 1, 1979. However, the Office of Surface Mining has indicated that it cannot relax the February 3, 1979 deadline imposed upon the states for submission of their programs.

On September 14, 1978, Maryland joined representatives from the States of Kentucky, Indiana, Pennsylvania, Virginia, and West Virginia, and the Executive Director of the Interstate Mining Compact in meetings with Congressman Morris Udall and yourself. We requested (1) the full six-month period envisioned under the Act to allow the states to prepare and submit proposed regulatory programs,

and (2) the creation of a Federal-State task force to formulate permanent program regulations and revise the initial program regulations. Congressman Udall indicated that it was "too late" to amend the Act to provide the states six months from the date of adoption of the Federal Regulations to submit their proposed programs. You indicated that it was "too late" to hold up publication of the Federal Register containing the proposed permanent program regulations and that it would not be possible to establish a joint task force.

Consequently, I am of the opinion that the actions of the Office of Surface Mining in implementing Public Law 95-87 will not ensure a cooperative Federal-State surface mining effort that will balance the protection of the environment and the production of coal. Maryland's experienced mining and reclamation personnel are of the opinion that in certain areas the Proposed Rules for Permanent Regulatory Program will degrade rather than protect Maryland's environment. When insult is added to injury, in view of the efforts of the Office of Surface Mining to recruit Maryland's mine reclamation personnel, we fail to observe any true efforts on the part of the Federal government to cooperate with us.

The Surface Mining Control and Reclamation Act is too important a piece of legislation to allow its implementation to create confrontation, chaos and confusion between the Federal government and the state regulatory agencies. I strongly advise that serious consideration be given to Governor Rockefeller's recommendations on this matter included in his remarks to the Senate Subcommittee, particularly with respect to the formation of a Federal-State task force to rewrite clear, workable surface mining regulations.

Sincerely,

BLAIR LEE III, *Acting Governor.*













