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8:00 AM - Senior White House Staff Meeting
Monday, May 19, 1975

SNIP Munis - Boris Neward

Social Security

Food stamps

Auto Exemption - in policy
talk w/ Jim Lynn

~~Steve~~
~~du~~

No later than
June 30 -

Jed Shubert

Meet on Title IX
w/ Cap

from Jim
Wickert 4/20/75

(1974)
(1974?)
(1974)

* Chinn message

* McCall to Zork

* Bald - put tax schemes



1) Public Statements

2) Veto Message

3) Letters to a) Leader
b) Members



THE WHITE HOUSE

WASHINGTON

DECISION

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON
SUBJECT: STRIP MINING BILL

H.R. 25, the Surface Mining Control and Reclamation Act, passed the Senate on May 5 by voice vote and the House on May 7 by a vote of 293-115.

This memorandum briefly describes the bill, compares it to the one you proposed on February 6, identifies the impacts on coal production and other economic considerations, lists arguments for and against approval, and presents recommendations of your advisers as to signing or vetoing the bill.

See Tab A for Jim Lynn's enrolled bill memorandum which will provide more detail on the bill and agency positions.

The Bill

Briefly, the principal features of the bill:

- Establish environmental protection and reclamation standards for surface mining activities.
- Establish immediate Federal regulatory programs in all States as an interim measure.
- Call for State regulatory and enforcement activities, with permanent Federal regulation and enforcement if States do not act.
- Places an excise tax of 15-35¢ on each ton of coal to create a trust fund for use in reclaiming public and privately owned abandoned mined lands, and paying other facility and service costs in areas affected by energy development.
- Provides funds for State mining and mineral institutes.

Background

The Executive Branch proposed bills in 1971 and 1973 to establish environmental and reclamation standards for

surface and subsurface mining of coal and other minerals. The Congress passed a tough bill covering surface coal mining in December 1974.

On February 6, 1975, you transmitted a new bill which followed the wording of the vetoed bill except for eight changes identified in your letter (Tab B) as critical to overcome the problems that led to your veto and 19 other changes which were designed to reduce the coal production losses and make the bill more workable.

Context for Current Objections

It is important to note that (a) your February 6 proposal represented a substantial compromise from earlier Administration positions, and (b) some of the objections to the Enrolled Bill also apply, but with somewhat less force, to the February 6 bill. For example, the February 6 bill:

- . would have created a Federal-State regulatory system.
- . reflected the fact that the Executive Branch had given up after numerous attempts to obtain less rigorous restrictions on steep slope mining and post-mining uses. (Objections coming from Appalachian states are directed toward these provisions.)
- . would have involved coal production and job losses, which are roughly estimated as follows for the first full year:

		<u>Million Tons</u>	<u>Jobs</u>
. Vetoed bill	-	48-186*	11-31,000
. Your bill	-	33-80	7-18,000
. Enrolled bill	-	40-162	9-36,000

*Recent Interior Revision

Enrolled Bill Compared to February 6 Compromise Bill

Tab C summarizes the progress made in the Enrolled Bill on specific changes requested in your compromise position.

Briefly, the Enrolled Bill makes changes in six of the eight areas you identified as critical in your February letter to Congress, including the narrowing of citizen suits and eliminating special unemployment provisions.

However, the Enrolled Bill also creates three important new problems, involving State control over Federal coal lands, restrictions on mining in alluvial valleys and a change in water rights.

Arguments in Favor of the Enrolled Bill

- . It is an environmentally sound solution to the problem of strip mining. Furthermore, it will reclaim the acres of abandoned lands that now exist and help reduce water pollution.
- . A reasonable compromise between the position you took when you vetoed last year's bill and the position of the bill's sponsors. This argument is especially persuasive because you are clearly on record as supporting an environmentally sound strip mining bill as long as it does not unnecessarily impact your energy independence goals.
- . Your Administration is beginning to develop a negative environmental record due to your previous pocket-veto of the strip mine bill, your proposed Clean Air Act Amendments in connection with your Energy Independence Act, your decision not to propose a land use bill this year and your nomination of Governor Hathaway.

For additional arguments in favor, see memorandum from Russ Train at Tab D.

Arguments Against the Enrolled Bill

- . This is a badly drafted bill which goes way beyond its laudable environmental goals and creates an unnecessary Federal and State regulatory system and bureaucracy, and because of ambiguities, it will invite years of litigation thus unnecessarily constraining coal production.
- . The February 6 compromise was a good faith attempt to get a bill which assumed that Congress would act on an energy plan that would move us significantly toward energy independence. There has been no meaningful action on such a plan.
- . It will cause unnecessary loss of coal production and jobs, increase oil imports, dollar outflow, and electric rates. (Details at Tab E).
- Coal Production Losses. Interior and FEA estimate losses between 40 to 162 million tons (6 to 24% of expected 1977 production of 685 million tons). This does not include losses for reasons which cannot be quantified, such as court challenges and surface owner rights. The range cannot be narrowed because of ambiguities in the bill.

Production losses are particularly important because (a) correct estimates for 1977 are already running

65 million tons below the 750 million ton forecast for Project Independence planning, and (b) 48 million tons of additional coal is needed to convert utilities from oil and natural gas.

- Oil Imports. Production losses will likely result in an increase in oil imports of between 139 and 559 million barrels in 1977 involving dollar outflows from \$1.5 to 6.1 billion.
- Job Losses. Interior and FEA have estimated that direct and indirect job losses will range between 11,000 and 36,000. These will be partially offset by lower productivity due to tighter restrictions and after some years, expanded underground mining.
- Consumer Prices. In addition to the impact of using higher priced oil, price and tax increases include: excise taxes of about \$150 million a year; higher strip mining production costs of about \$175 million a year and about \$90 million for Federal and State government implementation.

- States have already taken effective action, therefore all that is required at the Federal level is assistance with reclamation funding. Eleven of the twelve leading surface mining states -- which account for about 87% of 1973 surface coal mining in the Nation -- now have their own surface mining laws. Since 1971, when Federal legislation began to be considered, 21 states -- including eleven of the twelve leading surface coal producers -- have enacted or strengthened their surface mining laws. In addition, a survey conducted by CEQ indicates that most leading coal producing states have tightened up their regulations and increased their regulatory staffs. However, except for Montana, the programs are not as rigorous as H.R. 25 would require. Concerns for the environment do not depend solely on Federal legislation.

Legislative Outlook

Last day for your action on the Enrolled Bill is May 20.

Max Friedersdorf and Jack Marsh believe that you could possibly sustain a veto in the House. According to Max, the situation has recently improved and the latest whip check and GOP leadership analysis shows that there is a 50-50 chance of sustaining.

RECOMMENDATIONS

The following recommend that you sign H.R. 25:

Russ Train	Strongly recommends that you sign; good compromise - close to your February 6 proposal; no job losses or adverse impact on coal production.
Department of the Interior	Although the bill has serious defects, in balance, you should sign because some legislation is desirable.
Russ Peterson Department of Commerce Department of the Army Tennessee Valley Authority	

The following recommend that you veto H.R. 25:

Bob Hartmann	Key veto message to lack of progress in Congress on energy proposals.
Max Friedersdorf	Our Congressional supporters are in favor of veto. This is a bad bill and a veto is consistent with your position last year.
Frank Zarb	Unacceptable production losses which will have to be made up, in the near-term, by increasing oil imports.
Jim Lynn	Veto unless the Congressional Leadership publicly commits itself to support amendments if the Act works badly.
Phil Buchen Jack Marsh Jim Cannon Bill Simon Bill Seidman Alan Greenspan Federal Power Commission	

DECISION

Sign H.R. 25 and prepare appropriate message _____
(see draft attached to enrolled bill memo)

Veto H.R. 25 and prepare appropriate message _____
(see draft at Tab F)

Set up meeting with me and key advisers _____

TAB A



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAY 15 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 25 - The Surface Mining Control
and Reclamation Act of 1975
Sponsor - Rep. Udall (D) Arizona and 24 others

Last Day for Action

May 20, 1975 - Tuesday

Purpose

Establishes a Federal-State system of regulation of surface coal mining operations including reclamation, and provides for the acquisition and reclamation of abandoned mines.

Agency Recommendations

Office of Management and Budget

Disapproval (unless leadership commits itself to support amendments if the Act works badly)

Federal Energy Administration
Federal Power Commission
Department of the Treasury
Department of the Interior
Department of Commerce
Department of Agriculture
Council on Environmental Quality
Environmental Protection Agency
Tennessee Valley Authority
Department of the Army
Department of Justice

Disapproval (Informally)
Disapproval
Disapproval
Approval
Approval
Approval
Approval
Approval
Approval
Defers to Interior
Defers to other agencies

Discussion

The Executive Branch submitted to both the 92nd and 93rd Congresses legislation that would have established reasonable and effective reclamation and environmental protection requirements for mining activities. The Administration worked with the Congress to produce a bill that strikes a reasonable balance between reclamation and environmental protection objectives, and the need to increase domestic coal production. These efforts in the 93rd Congress failed to produce an acceptable bill.

On December 30, 1974, you pocket-vetoed S. 425, the Surface Mining Control and Reclamation Act of 1974. The principal grounds for the veto were that the bill did not strike a reasonable balance and, therefore, would have had an unacceptably adverse impact on our coal production. The potentially large loss of coal production would have unduly impaired our ability to use the one major source of energy over which the United States has total control, restricted our choices on energy policy, and increased our reliance on foreign oil. In addition, the bill would have produced excessive Federal expenditures and an inflationary impact on the economy. It also contained numerous other deficiencies. (See Tab A for the enrolled bill memorandum and Memorandum of Disapproval, S. 425.)

On February 6, 1975, you proposed a compromise coal surface mining bill which followed the basic framework of the vetoed legislation changed only (a) to overcome eight critical objections which you identified as the key elements in your veto, (b) to reduce further the potential for unnecessary production losses, and (c) to make the legislation more effective and workable (see Tab B). In transmitting the bill, you reiterated that your energy program contemplates the doubling of our Nation's coal production by 1985 and that this will require the opening of 250 major new coal mines, the majority of which must be surface mines.

The enrolled bill would establish Federal standards for the environmental protection and reclamation of surface coal mining operations. Briefly, the bill:

- covers all coal surface mining operations and surface effects of underground coal mining;

- establishes minimum nationwide environmental and reclamation standards;
- establishes immediately a Federal regulatory program in all States during the interim period (up to 30 months);
- calls for eventual State regulation and enforcement with Federal administration when States fail to act;
- requires each mining operation to (a) have a mining permit before mining can proceed and (b) comply strictly with the provisions of the permit throughout the mining and reclamation process;
- creates a reclamation program for previously mined lands abandoned without reclamation, and finances infrastructure costs in areas affected by coal development. The program would be financed from a Federal fund whose income would be derived from an excise tax of 15-35¢ on each ton of coal mined; and
- creates a new 50-50 matching Federal grant program for State mining and mineral institutes.

Federal outlays under the bill are estimated at \$25 million in fiscal year 1976 and \$51 million in 1977, while receipts, mainly from the excise tax, are estimated at \$80 million and \$150 million in those two years. Federal personnel requirements are estimated to be 600 in 1976 and 1,000 in 1977.

As the conference committee notes in its report on H.R. 25, the enrolled bill satisfactorily deals with six of the eight objections which you identified as critical in your February letter to the Congress. Nine out of nineteen other important changes that you had requested have also been made. Tab C summarizes the changes in H.R. 25 compared to your compromise bill.

Difficult questions of interpretation of certain provisions of the enrolled bill, however, create three significant new problems:

- H.R. 25 would allow the States to establish performance standards which are more stringent than Federal standards and provides that such State standards must apply to all lands in the State, including Federal lands. Although Senate floor debate indicates that this provision can be construed to permit States to ban surface coal mining on Federal lands, House floor debate indicates that such a result is not intended. The conference report is silent on this issue.
- H.R. 25 could substantially limit western mining operations in alluvial valley floors. As noted below, this provision is largely responsible for the extremely wide range of possible coal production losses under the bill, and it could also lockup major coal reserves in the West.
- H.R. 25 requires mine operators to replace water used for agricultural or other activities in cases where it is adversely affected or interrupted as a result of mining. Although the conference report uses the word "compensation", suggesting the possibility of monetary compensation in lieu of replacement in kind, this interpretation is doubtful. This provision could result in effectively banning mining in parts of the West.



COAL PRODUCTION LOSSES
(1st full year of implementation -- millions of tons/year)

	<u>S.425 (Vetoed)</u>	<u>Administration Bill*</u>	<u>H.R.25*</u>
Small mines	22- 52	15-30	22- 52
Steep slopes, siltation and aquifer provisions	15- 68	7-38	7- 44
Alluvial valley floor provisions	<u>11- 66**</u>	<u>11-12</u>	<u>11- 66</u>
<u>TOTAL LOSS</u>	<u>48-186**</u>	<u>33-80</u>	<u>40-162</u>
Percent of expected CY 1977 production (685 million tons)	7% to 27%	5% to 12%	6% to 24%

* Tab D sets out Interior's assumptions underlying the designated production loss estimates.

** Interior has recently advised OMB that its December 1974 estimate for alluvial valley floor coal production losses of 11-21 million tons/year under S. 425 was too low. It should have had an upper range of 66 million tons -- the above table has been revised to correct this error.

As these coal production loss data clearly indicate, the alluvial valley loss component is critical to an assessment of total losses. Interior's high estimate of loss assumes a total ban on surface mining in western alluvial valleys. Yet, on this point, the conference report states:

"The House bill contained an outright ban of surface mining on alluvial valley floors west of the one hundredth meridian west longitude. The Senate amendment specified that a permit or portion thereof should not be approved if the proposed mining operation would have a substantial adverse effect on crop lands or hay lands overlying alluvial valley floors where such crop lands or hay lands are significant to ranching and farming operations.

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

"There has been considerable discussion on the potential geographical extent of this provision. For example, estimates have ranged up to nearly 50 percent, of the land over the strippable coal in the Powder River Basin being included under this provision. The conferees strongly disagree with such interpretations noting that specific investigations of representative portions of the Powder River Basin in the Gillette area, indicate that only 5 percent or so of the lands containing strippable coal deposits appeared to be alluvial valley floors. It should also be noted that the Department of the Interior advised the conferees that 97 percent of the agricultural land in the Powder River Basin is undeveloped range land, and therefore excluded from the application of this provision."

If operating experience produces a loss near the lower end of the range, the bill's total impact could be well within the range of the Administration bill. On the other hand, if the higher end of the range is realized, then an unacceptable loss could result. The enrolled bill is replete with ambiguous or difficult-to-define terms and in using the coal production loss estimates, it is essential to recognize the large uncertainties in them.

Arguments in Favor of Veto

1. Because coal currently is the only major energy source over which the United States has total control, we should not unduly impair our ability to use it. The loss of significant coal production would be inconsistent with the Administration's objective of doubling coal production by 1985 as part of our energy independence goal. The risk of experiencing large production losses should not be taken. The United States must import foreign oil to replace domestic coal that is not produced. At the high end of estimated production loss, this could mean additional oil imports of at least 550 million barrels in the first full year of the bill's implementation. The net oil replacement cost could be as much as \$3.7 billion at the current prices of foreign oil and domestic coal.

2. The economic consequences of such a production loss and higher oil imports could be severe:

- Utility fuel costs could increase as much as 18%. H
- Unemployment could increase by 36,000 in the coal fields and in industries that could not obtain replacement fuel sources.
- Small mine operators could be put out of business.
- Additional pressure would be brought on the dollar in international markets because of outflows of as much as \$6.1 billion for the higher level of oil imports.
- Higher costs of fuel, strip mining, reclamation, and Federal and State administration could impair economic recovery.

3. In the future, a significant amount of our national coal reserves would be locked up because of restrictions on surface mining in alluvial valleys and national forests. In the "worst case" situation, this could amount to over half of total reserves potentially mineable by surface methods.



4. An elaborate Federal-State regulatory system would be created, requiring substantial numbers of Federal personnel and containing the possibility of a Federal takeover of the regulation of strip mining and reclamation in the event of a State's failure to develop and carry out a program meeting the bill's standards.

5. A State could exercise control over mining of federally owned coal on Federal lands. Under one interpretation of the bill, a State could ban such mining.

6. Federal legislation may be unnecessary, because during the past four years all major coal producing States have enacted new laws on strip mining or strengthened existing laws. In most cases State legislation now appears adequate. Although in some cases enforcement has been lax, it may be too early to reach a final judgment because many State laws were recently enacted. If a veto is sustained, it appears likely that there will be a period of a year or more to re-evaluate the situation before new legislation is considered by the Congress.

7. Because of the ambiguities in H.R. 25 and the extensive litigation that would result, many coal companies believe that no Federal legislation would give greater certainty to their production in the short run than would the bill.

8. In addition to the arguments noted above, the enrolled bill contains other significant objections, but not identified as critical in your February letter: (a) surface owners would have the right to veto mining of federally owned coal, or could realize a substantial windfall; and (b) the Abandoned Mine Reclamation Fund would provide grants to reclaim private lands and finance local public facilities and related costs incurred because of coal development in the area; i.e., an impact aid program. (In limiting the use of the fund to areas directly affected by coal mining but permitting its use for a wide variety of purposes, this bill could influence future congressional action on the use of revenues from leasing on the Outer Continental Shelf.)

Arguments in Favor of Approval

1. The enrolled bill is landmark environmental legislation establishing minimum Federal reclamation standards, eliminating damaging strip mining practices, and providing for reclamation of abandoned strip mined lands. Although the major coal producing States have enacted new or strengthened laws, their quality is uneven and adequate enforcement is at best doubtful.

2. Estimates of coal production loss that might result from the bill are highly uncertain and speculative. The range of possible loss is so wide as to cast substantial doubt on their public defensibility. The high end of the range (162 million tons in the first full year of implementation) is clearly a "worst case" situation which assumes that all the bill's ambiguities will be resolved in a manner that maximizes restraints on production. Statements by the bill's proponents and in the conference report support a more reasonable interpretation of the bill's potential restrictions on production than does a "worst case" analysis. The lower end of the range of estimated loss (40 million tons) is well within the range of loss estimated for the Administration's compromise legislative proposal (33-80 million tons).

3. Peak production loss would probably occur in the first full year of implementation. Once the bill's ambiguities are overcome by regulation and litigation, the industry will have environmental groundrules and standards governing its operations, thereby providing a certain basis for future expansion of production to meet market demand.

4. The Congress gave extensive consideration to Administration proposed changes to the bill vetoed last December. Six of the Administration's eight critical objections are satisfactorily dealt with in H.R. 25, and a number of other recommended improvements were adopted. Although the enrolled bill still contains deficiencies, it is probably the best legislation on strip mining obtainable from this Congress. If unacceptably large coal production losses should result -- and this is highly uncertain -- the Administration could seek corrective legislation. Senator Jackson has publicly agreed to work swiftly to resolve such problems if they arise.

5. A veto would be portrayed by the bill's supporters as an anti-environment move by an Administration unwilling to accept a serious effort by the Congress to compromise and to achieve a reasonable trade-off between energy and environmental objectives.

Other Considerations

Opinion is divided as to whether a veto can be sustained in the House, but there is no doubt that it would be overridden in the Senate:

- The Senate passed S. 7 by 84-13 and the conference report on H.R. 25 by a voice vote.
- The House passed H.R. 25 by 333-86 and the conference report by 293-115. The negative votes on the conference report were 22 short of the 137 necessary to sustain a veto. If the entire House votes, 146 votes would be needed.

OMB Recommendation

On the merits (coal production losses, impact on federalism, legal ambiguities), this bill should be vetoed. The bill falls short of the kind of legislation we would write, if we were beginning anew.

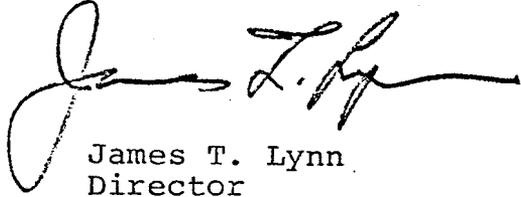
However:

- The proposals submitted to the Congress in February by the Administration did not insist upon certain deletions or changes in provisions that contribute to production losses and deal inappropriately with the roles of the Federal Government and the States.
- The major ambiguities in the language and legislative history of the bill make highly uncertain the real, quantifiable impact of the bill.
- The bill's potential impact on production is extremely difficult to attribute specifically to the failure of Congress to make recommended changes in the earlier vetoed bill.
- There is a very significant possibility that a veto would be overridden.

OMB, therefore, recommends that:

- I. You meet with the congressional leadership that produced the bill, to:
 - A. Share with them your concerns about the bill.
 - B. Indicate your willingness to sign the bill if, and only if, (1) they will agree to support modification of the law if, as it is implemented, your concerns are realized, and (2) they are prepared to state their agreement publicly.
- II. You veto the bill if the congressional leaders refuse this approach.

In accord with our recommendation, we have prepared, for your consideration, both a draft veto message and a draft signing statement. The signing statement notes your intent to seek corrective legislation from the Congress should significant coal production losses develop as a result of the bill.



James T. Lynn
Director

Enclosures

TAB B

THE WHITE HOUSE

WASHINGTON

February 6, 1975

Dear Mr. Speaker:

Our Nation is faced with the need to find the right balance among a number of very desirable national objectives. We must find the right balance because we simply cannot achieve all desirable objectives at once.

In the case of legislation governing surface coal mining activities, we must strike a balance between our desire for environmental protection and our need to increase domestic coal production. This consideration has taken on added significance over the past few months. It has become clear that our abundant domestic reserves of coal must become a growing part of our Nation's drive for energy independence.

Last December, I concluded that it would not be in the Nation's best interests for me to approve the surface coal mining bill which passed the 93rd Congress as S. 425. That bill would have:

- Caused excessive coal production losses, including losses that are not necessary to achieve reasonable environmental protection and reclamation requirements. The Federal Energy Administration estimated that the bill, during its first full year of operation would reduce coal production between 48 and 141 million tons, or approximately 6 to 18 percent of the expected production. Additional losses could result which cannot be quantified because of ambiguities in the bill. Losses of coal production are particularly important because each lost ton of coal can mean importing four additional barrels of foreign oil.

- . Caused inflationary impacts because of increased coal costs and Federal expenditures for activities which, however desirable, are not necessary at this time.
- . Failed to correct other deficiencies that had been pointed out in executive branch communications concerning the bill.

The energy program that I outlined in my State of the Union Message contemplates the doubling of our Nation's coal production by 1985. Within the next ten years, my program envisions opening 250 major new coal mines, the majority of which must be surface mines, and the construction of approximately 150 new coal fired electric generating plants. I believe that we can achieve these goals and still meet reasonable environmental protection standards.

I have again reviewed S. 425 as it passed the 93rd Congress (which has been reintroduced in the 94th Congress as S. 7 and H.R. 25) to identify those provisions of the bill where changes are critical to overcome the objections which led to my disapproval last December. I have also identified a number of provisions of the bill where changes are needed to reduce further the potential for unnecessary production impact and to make the legislation more workable and effective. These few but important changes will go a long way toward achieving precise and balanced legislation. The changes are summarized in the first enclosure to this letter and are incorporated in the enclosed draft bill.

With the exception of the changes described in the first enclosure, the bill follows S. 425.

I believe that surface mining legislation must be reconsidered in the context of our current national needs. I urge the Congress to consider the enclosed bill carefully and pass it promptly.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harold R. Ford". The signature is written in dark ink and is positioned above the typed address.

The Honorable
The Speaker
U.S. House of Representatives
Washington, D.C. 20515

SUMMARY OF PRINCIPAL CHANGES FROM S. 425 (S. 7 and H.R. 25)
INCORPORATED IN THE ADMINISTRATION'S
SURFACE MINING BILL

The Administration bill follows the basic framework of S. 425 in establishing Federal standards for the environmental protection and reclamation of surface coal mining operations. Briefly, the Administration bill, like S. 425:

- covers all coal surface mining operations and surface effects of underground coal mining;
- establishes minimum nationwide reclamation standards;
- places primary regulatory responsibility with the States with Federal backup in cases where the States fail to act;
- creates a reclamation program for previously mined lands abandoned without reclamation;
- establishes reclamation standards on Federal lands.

Changes from S. 425 which have been incorporated in the Administration bill are summarized below.

Critical changes.

1. Citizen suits. S. 425 would allow citizen suits against any person for a "violation of the provisions of this Act." This could undermine the integrity of the bill's permit mechanism and could lead to mine-by-mine litigation of virtually every ambiguous aspect of the bill even if an operation is in full compliance with existing regulations, standards and permits. This is unnecessary and could lead to production delays or curtailments. Citizen suits are retained in the Administration bill, but are modified (consistent with other environmental legislation) to provide for suits against (1) the regulatory agency to enforce the act, and (2) mine operators where violations of regulations or permits are alleged.

2. Stream siltation. S. 425 would prohibit increased stream siltation -- a requirement which would be extremely difficult or impossible to meet and thus could preclude mining activities. In the Administration's bill, this prohibition is modified to require the maximum practicable limitation on siltation.
3. Hydrologic disturbances. S. 425 would establish absolute requirements to preserve the hydrologic integrity of alluvial valley floors -- and prevent offsite hydrologic disturbances. Both requirements would be impossible to meet, are unnecessary for reasonable environmental protection and could preclude most mining activities. In the Administration's bill, this provision is modified to require that any such disturbances be prevented to the maximum extent practicable so that there will be a balance between environmental protection and the need for coal production.
4. Ambiguous terms. In the case of S. 425, there is great potential for court interpretations of ambiguous provisions which could lead to unnecessary or unanticipated adverse production impact. The Administration's bill provides explicit authority for the Secretary to define ambiguous terms so as to clarify the regulatory process and minimize delays due to litigation.
5. Abandoned land reclamation fund. S. 425 would establish a tax of 35¢ per ton for underground mined coal and 25¢ per ton for surface mined coal to create a fund for reclaiming previously mined lands that have been abandoned without being reclaimed, and for other purposes. This tax is unnecessarily high to finance needed reclamation. The Administration bill would set the tax at 10¢ per ton for all coal, providing over \$1 billion over ten years which should be ample to reclaim that abandoned coal mined land in need of reclamation.

Under S. 425 funds accrued from the tax on coal could be used by the Federal government (1) for financing construction of roads, utilities, and public buildings on reclaimed mined lands, and (2) for distribution to States to finance roads, utilities and public buildings in any area where coal mining activity is expanding. This provision needlessly duplicates other Federal, State and local programs, and establishes eligibility for Federal grant funding in a situation where facilities are normally financed by local or State borrowing. The need for such funding, including the new grant program, has not been established. The Administration bill does not provide authority for funding facilities.

6. Impoundments. S. 425 could prohibit or unduly restrict the use of most new or existing impoundments, even though constructed to adequate safety standards. In the Administration's bill, the provisions on location of impoundments have been modified to permit their use where safety standards are met.
7. National forests. S. 425 would prohibit mining in the national forests -- a prohibition which is inconsistent with multiple use principles and which could unnecessarily lock up 7 billion tons of coal reserves (approximately 30% of the uncommitted Federal surface-minable coal in the contiguous States). In the Administration bill, this provision is modified to permit the Agriculture Secretary to waive the restriction in specific areas when multiple resource analysis indicates that such mining would be in the public interest.
8. Special unemployment provisions. The unemployment provision of S. 425 (1) would cause unfair discrimination among classes of unemployed persons, (2) would be difficult to administer, and (3) would set unacceptable precedents including unlimited benefit terms, and weak labor force attachment requirements. This provision of S. 425 is inconsistent with P.L. 93-567 and P.L. 93-572 which were signed into law on December 31, 1974, and which significantly broaden and lengthen general unemployment assistance. The Administration's bill does not include a special unemployment provision.

Other Important Changes. In addition to the critical changes from S. 425, listed above, there are a number of provisions which should be modified to reduce adverse production impact, establish a more workable reclamation and enforcement program, eliminate uncertainties, avoid unnecessary Federal expenditures and Federal displacement of State enforcement activity, and solve selected other problems.

1. Antidegradation. S. 425 contains a provision which, if literally interpreted by the courts, could lead to a non-degradation standard (similar to that experienced with the Clean Air Act) far beyond the environmental and reclamation requirements of the bill. This could lead to production delays and disruption. Changes are included in the Administration bill to overcome this problem.

2. Reclamation fund. S. 425 would authorize the use of funds to assist private landowners in reclaiming their lands mined in past years. Such a program would result in windfall gains to the private landowners who would maintain title to their lands while having them reclaimed at Federal expense. The Administration bill deletes this provision.
3. Interim program timing. Under S. 425, mining operations could be forced to close down simply because the regulatory authority had not completed action on a mining permit, through no fault of the operator. The Administration bill modifies the timing requirements of the interim program to minimize unnecessary delays and production losses.
4. Federal preemption. The Federal interim program role provided in S. 425 could (1) lead to unnecessary Federal preemption, displacement or duplication of State regulatory activities, and (2) discourage States from assuming an active permanent regulatory role, thus leaving such functions to the Federal government. During the past few years, nearly all major coal mining States have improved their surface mining laws, regulations and enforcement activities. In the Administration bill, this requirement is revised to limit the Federal enforcement role during the interim program to situations where a violation creates an imminent danger to public health and safety or significant environmental harm.
5. Surface owner consent. The requirement in S. 425 for surface owner's consent would substantially modify existing law by transferring to the surface owner coal rights that presently reside with the Federal government. S. 425 would give the surface owner the right to "veto" the mining of Federally owned coal or possibly enable him to realize a substantial windfall. In addition, S. 425 leaves unclear the rights of prospectors under existing law. The Administration is opposed to any provision which could (1) result in a lock up of coal reserves through surface owner veto or (2) lead to windfalls. In the Administration's bill surface owner and prospector rights would continue as provided in existing law.
6. Federal lands. S. 425 would set an undesirable precedent by providing for State control over mining of Federally owned coal on Federal lands. In the Administration's bill, Federal regulations governing such activities would not be preempted by State regulations.

7. Research centers. S. 425 would provide additional funding authorization for mining research centers through a formula grant program for existing schools of mining. This provision establishes an unnecessary new spending program, duplicates existing authorities for conduct of research, and could fragment existing research efforts already supported by the Federal government. The provision is deleted in the Administration bill.
8. Prohibition on mining in alluvial valley floors. S. 425 would extend the prohibition on surface mining involving alluvial valley floors to areas that have the potential for farming or ranching. This is an unnecessary prohibition which could close some existing mines and which would lock up significant coal reserves. In the Administration's bill reclamation of such areas would be required, making the prohibition unnecessary.
9. Potential moratorium on issuing mining permits. S. 425 provides for (1) a ban on the mining of lands under study for designation as unsuitable for coal mining, and (2) an automatic ban whenever such a study is requested by anyone. The Administration's bill modifies these provisions to insure expeditious consideration of proposals for designating lands unsuitable for surface coal mining and to insure that the requirement for review of Federal lands will not trigger such a ban.
10. Hydrologic data. Under S. 425, an applicant would have to provide hydrologic data even where the data are already available -- a potentially serious and unnecessary workload for small miners. The Administration's bill authorizes the regulatory authority to waive the requirement, in whole or in part, when the data are already available.
11. Variations. S. 425 would not give the regulatory authority adequate flexibility to grant variances from the lengthy and detailed performance specifications. The Administration bill would allow limited variances -- with strict environmental safeguards -- to achieve specific post-mining land uses and to accommodate equipment shortages during the interim program.
12. Permit fee. The requirement in S. 425 for payment of the mining fee before operations begin could impose a large "front end" cost which could unnecessarily prevent some mine openings or force some operators out of business. In the Administration's bill, the regulatory authority would have the authority to extend the fee over several years.

13. Preferential contracting. S. 425 would require that special preference be given in reclamation contracts to operators who lose their jobs because of the bill. Such hiring should be based solely on an operators reclamation capability. The provision does not appear in the Administration's bill.
14. Any Class of buyer. S. 425 would require that lessees of Federal coal not refuse to sell coal to any class of buyer. This could interfere unnecessarily with both planned and existing coal mining operations, particularly in integrated facilities. This provision is not included in the Administration's bill.
15. Contract authority. S. 425 would provide contract authority rather than authorizing appropriations for Federal costs in administering the legislation. This is unnecessary and inconsistent with the thrust of the Congressional Budget Reform and Impoundment Control Act. In the Administration's bill, such costs would be financed through appropriations.
16. Indian lands. S. 425 could be construed to require the Secretary of the Interior to regulate coal mining on non-Federal Indian lands. In the Administration bill, the definition of Indian lands is modified to eliminate this possibility.
17. Interest charge. S. 425 would not provide a reasonable level of interest charged on unpaid penalties. The Administration's bill provides for an interest charge based on Treasury rates so as to assure a sufficient incentive for prompt payment of penalties.
18. Prohibition on mining within 500 feet of an active mine. This prohibition in S. 425 would unnecessarily restrict recovery of substantial coal resources even when mining of the areas would be the best possible use of the areas involved. Under the Administration's bill, mining would be allowed in such areas as long as it can be done safely.
19. Haul roads. Requirements of S. 425 could preclude some mine operators from moving their coal to market by preventing the connection of haul roads to public roads. The Administration's bill would modify this provision.

The attached listing shows the sections of S. 425 (or S. 7 and H.R. 25) which are affected by the above changes.

TAB C

SUMMARY RESULTS - ENROLLED BILL

A. Action on changes from vetoed bill identified as "critical to overcome objections".

<u>Subject & Proposed Change</u>	<u>Enrolled Bill</u>
1. <u>Citizen Suits</u> Narrow the scope	Adopted
2. <u>Stream Siltation</u> Remove prohibition against increased siltation	Partially adopted (Cost problem remains)
3. <u>Hydrologic Balance</u> Remove prohibition against disturbances	Partially adopted (Cost problem remains)
4. <u>Ambiguous Terms</u> Specific authority for Secretary to define	Not adopted but other changes make this much less important
5. <u>Abandoned Mine Reclamation Fund</u> . Reduce 35¢-25¢ to 10¢ . Limit use of fund to reclamation	Fee reduced on some coal Broadened, more objectionable
6. <u>Impoundments (Dams)</u> Modify virtual prohibition on impoundments	Changed enough to be acceptable
7. <u>National Forests</u> Allow mining in certain circumstances	Rejected
8. <u>Special Unemployment Provisions</u> Delete as unnecessary and precedent setting	Adopted

B. Two new problems created in this year's bill

1. Senate floor debate indicates that the language of the bill can be constructed to permit states to ban surface coal mining on Federal lands. The House took the opposite view in floor debate. Not dealt with in the Conference report. Believed to be a major problem.
2. The Conference adopted a provision prohibiting location of a mining operation in an alluvial valley floor which may prevent expected production and lock up major coal reserves in the West.

3. Requirements to compensate for interrupted water supplies off-site may make it difficult or impossible for mining operators to obtain bonds at reasonable costs.

C. Action on changes from vetoed bill identified as "needed to reduce further the potential for unnecessary production impact and to make the legislation more workable and effective".

<u>Subject & Proposed Change</u>	<u>Enrolled Bill</u>
1. <u>Antidegradation</u> Delete requirements	Adopted
2. <u>Abandoned Mine Reclamation Fund</u> . Require 50/50 cost sharing . Eliminate grants for privately owned lands	Rejected Uses broadened; more objectionable
3. <u>Interim Program Timing</u> . Reduce potential for mining delays . Allow operations under interim permit if regulatory agency acts slowly	Rejected Partially adopted
4. <u>Federal Preemption</u> Encourage states to take up regulatory role	Rejected (aggravated by report language)
5. <u>Surface Owner Consent</u> Rely on existing law	Rejected
6. <u>State Control over Federal lands</u> (Now a serious problem - discussed in B.1, above)	
7. <u>Funding for Research Centers</u> Delete as unnecessary	Rejected
8. <u>Alluvial Valley Floors</u> (Now a serious problem - discussed in B.2, above)	
9. <u>Designation of areas as unsuitable for mining</u> Expedite review and avoid frivolous petitions	Partially adopted, but still a problem

<u>Subject & Proposed Change</u>	<u>Enrolled Bill</u>
10. <u>Hydrologic Data</u> Authorize waiver in some cases where unnecessarily burdensome	Rejected, but some changes made in report
11. <u>VariANCES</u> Broaden variances for certain post-mining uses and equipment shortages	Rejected
12. <u>Permit Fee</u> Permit paying over time rather than pre-mining	Adopted
13. <u>Contracting for reclamation</u> Delete requirement that contracts go to those put out of work by bill	Adopted
14. <u>Coal Sales by Federal Lessee</u> Delete requirement that lessee must not deny sale of coal to any class of purchaser	Requirement softened
15. <u>Appropriations Authority</u> Use regular appropriations authority rather than contract authority	Rejected
16. <u>Indian Lands</u> Clarify to assure no Federal control over non-Federal Indian land	Adopted
17. <u>Interest Charge on Civil Penalties</u> Adopt sliding scale to minimize incentive for delaying payments	Adopted
18. <u>Mining within 500 feet of active mines</u> Permit where it can be done safely	Rejected
19. <u>Haul Roads</u> Clarify restriction on connections with public roads	Adopted

FAB D



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 9 1975

OFFICE OF THE
ADMINISTRATOR

Dear Mr. President:

Ten years ago, in March of 1965, Congress recognized the mounting adverse environmental and social impacts of strip mining when it enacted the Appalachian Regional Development Act. A national study resulted which concluded that the adverse impacts are serious and growing and recommended to the Congress a national regulatory program to control all surface mining.

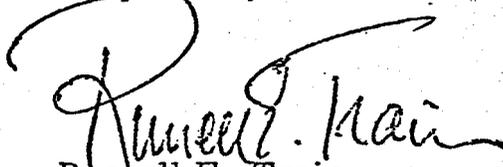
During years of debate the Congress has never seriously questioned the need for strip mining legislation. However, the requirements have been, as you are very much aware, the subject of heated debate. Throughout this period these requirements have been thoroughly analyzed and in almost every instance workable solutions have been found. We have worked hard for further improvements to the bill that you vetoed last December. These efforts have been successful in improving most of the critical issues and many other less significant ones. The bill before you, in my opinion, now represents an effective balance between the Nation's need to develop our vast coal energy resources while assuring the necessary protection to our environment and maintaining a strong economy.

While it is difficult for me to question the estimated impacts that this bill would have on coal production and employment, I must point out that there has been considerable challenge and debate both within the Administration and by the Congress and the public on the accuracy of the estimates. More important, however, is the clear fact that in the State of Pennsylvania, which has reclamation requirements similar to the proposed bill, production continues to increase along with the number of mines and employment. I am also encouraged by yesterday's announcement by the Tennessee Valley Authority, the largest single purchaser of coal in the United States, that they support the legislation and will recommend that you sign the bill.

The environmental problems associated with the mining of coal continue to grow at an unacceptable pace. More than two million acres of land and 11,000 miles of streams have already been despoiled by exploitative strip mining. The impending surface mining of 1,700 acres and more every week to meet the present demand for coal is greatly compounding the problem. This pace will rapidly intensify with the Nation's increasing dependence on coal as the dominant source of energy. The need for Federal legislation at this time is great.

Mr. President, I would not argue that the bill before you is perfect. But I strongly believe that there comes a time when one must resolve an issue and move on to other concerns. The bill before you goes a long way towards meeting the objection you articulated in December. Its merits far outweigh its deficiencies. I strongly recommend that you sign it into law.

Respectfully,



Russell E. Train
Administrator

The President
The White House
Washington, D. C. 20500

IMPACT OF THE ENROLLED BILL ON COAL PRODUCTION,
RESERVES, OIL IMPORTS, DOLLAR OUTFLOW,
JOBS AND HIGHER COSTS

Enrolled
Bill

1. Loss of coal production during first full year of application -- based on expectation of 330 million tons of strip production and 685 million tons of total production if there were no bill. Estimates do not cover potential losses for provisions that cannot be quantified, e.g., delays due to litigation, restrictive interpretation of ambiguous provisions, surface owner consent, state control over Federal lands.

In millions of tons:

. Small Mines	22-52
. Restrictions on steep slopes, siltation, aquifers	7-44
. Alluvial valley floor restrictions	<u>11-66</u>
Total - 1st full year of application	40-162
(% of production-estimated at 685 million tons.)	6-24%

(Notes: A. Administration bill would also have impacted coal production -- in the range of 33-80 million tons.) By way of contrast, the vetoed bill involved a potential production loss of 48-186 million tons and the Administration's bill could reduce expected production by 33-80 million tons. B. If oil prices stay up and the market works, coal price increases should help stimulate production which, after a few years, would offset losses. This assumes that new coal production areas can be opened up.

2. Increased oil imports and dollar outflow - assuming 80% of lost coal production was replaced by oil and 20% from underground mining.
- | | |
|---|---------|
| . million barrels per year (4.3 barrels
per ton of coal) | 139-559 |
| . dollar value (\$11 per barrel) - <u>billions</u> | 1.5-6.1 |

Enrolled
Bill

3. <u>Job losses*</u> - assuming 36 tons per day per miner and 225 work days per year; and .8 non-mining jobs per miner:	
. direct job losses -	to 20,000
. indirect job losses -	to <u>16,000</u>
<u>Total</u>	to 36,000

*Note: Some of these losses may be offset by job increases due to (a) lower productivity per man in strip mining, or (b) possible increases in underground mining which probably will occur to offset part of the strip mining production loss. Employment gains for underground mining will be some years off due to time required to expand such mining.

4. <u>Consumer prices</u> - In addition to higher cost foreign oil -- would include (in millions). Assumes 60 million tons strip mining loss.	
. Fee for reclamation fund	\$145 to \$155
. Higher strip mining production and reclamation costs (estimated at 60-80¢ per ton)	\$162 to \$216
. Costs of Federal and State program administration (not including unemployment compensation)	\$90

5. <u>Lock up of coal reserves.*</u> The U.S. demonstrated reserve base which are potentially mineable by surface methods is 137 <u>billion</u> tons. Estimate reserve losses are (<u>billion</u> tons):	
. Alluvial valley floor provisions (includes losses from national forest provisions of 6.3 billion and surface owners provisions of 0-14.2 billion)	22.0-66.0
. National forest (outside alluvial valleys)	.9-.9
. Other provisions (e.g., steep slopes)	<u>0-6.5</u>
<u>Total - billion tons</u>	22.9-73.4

*Note: Remaining strippable reserves would be many times expected annual production.

TAB F

DRAFT VETO STATEMENT

Today I have returned to Congress, without my approval, the proposed Surface Mining Control and Reclamation Act of 1975, H.R. 25.

I cannot sign this bill into law because it would unnecessarily make it more difficult for this Nation to achieve its goal of energy independence by 1985. Also, while meeting valid environmental objectives which I continue to fully endorse, the bill would impose an unacceptable burden on our Nation's economy by needlessly increasing consumers' electricity bills and adding to unemployment.

I have supported responsible legislation to control surface mining and reclaim damaged land. I understood that this would result in making coal production more difficult and would add to the cost of the coal we did produce. The bill I submitted to Congress on February 6, 1975, struck a proper balance between our energy and economic goals on the one hand and our important environmental objectives on the other. Unfortunately, H.R. 25 does not strike such a balance.

Congress has not acted on my proposed comprehensive energy plan and thus I have nothing against which to judge the negative energy impact of this bill. Without Congressional action on my energy proposals I do not know how much additional leeway the Nation might have in balancing our energy and environmental objectives. We need immediate Congressional action on my energy conservation and accelerated production proposals. H.R. 25 only makes the goal of energy independence more elusive and this will ultimately increase the sacrifices required of all Americans.

Certainly, I cannot now accept more burdensome obstacles in the path of our energy objectives than I was willing to accept at the beginning of the year. The absence of Congressional action on a comprehensive energy program requires that I be more prudent and careful than ever. Although I still believe that the Nation can have environmental safeguards for strip mining comparable to the proposal I submitted in February, it is clear that we cannot accept stricter penalties on production of this critical energy resource.

It is with a deep sense of regret that I find it necessary to reject this legislation. My Administration has worked hard with the Congress to try to develop an acceptable bill. Unfortunately, the Congress did not accept the compromise measure I proposed even though it satisfied all

the key environmental objectives of the bill passed by the Congress last session. A fair and objective evaluation of the record will show that my Administration went more than half way towards the objectives of those who sponsored H.R. 25.

The following are my key objections to this bill.

First, with respect to coal production, H.R. 25 will result in a substantial loss in coal production above and beyond the loss that I felt was acceptable under the legislation I proposed. The Department of Interior and the Federal Energy Administration advise me that H.R. 25 would result in lost production of 40 to 162 million tons a year.

The bill that I urged the Congress to pass in February would have also had production losses. I am told by the experts that my proposal would have ranged in production losses between 33 up to 80 million tons a year. That's as far as I could go at a time when I could assume that Congress would speedily enact my energy program. But because of the delay on my energy program, I know now that it will be more difficult to achieve our energy objectives and therefore I cannot accept additional coal production losses.

These production loss numbers are only based upon those provisions for which an estimate can be developed. I understand that H.R. 25, in fact, will probably result in losses on the high end of this range. Furthermore, this analysis does not include the potential impact of many ambiguous provisions of the bill for which estimates cannot be developed. This estimate is, therefore, conservative.

Second, the reduction in coal production will mean that the Nation will have to import more foreign oil. This will mean our dependency will be increased and we will lose more U.S. dollars and thus jobs. To demonstrate how serious this problem can be, if every 50 million tons of lost coal is replaced by foreign oil, we will increase our imports by 215 million barrels of oil a year at a cost of \$2.3 billion. The lack of Congressional action on my comprehensive energy program is reason enough for alarm at our growing energy dependency. I believe it would be irresponsible to further increase this dependency by signing into law H.R. 25.

Third, H.R. 25 will result in an increase in unemployment and costs to American consumers. Job losses because of coal production cut backs cannot be offset in increased reclamation and other activities financed under this bill. The simple fact is that there would be a major increase in unemployment because of H.R. 25 and this could not come at a worse time. Furthermore, the bill would increase