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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	Disapproval (Informally)
Federal Power Commission	Disapproval
Department of the Treasury	Disapproval
Department of the Interior	Approval
Department of Commerce	Approval
Department of Agriculture	Approval
Council on Environmental Quality	Approval
Environmental Protection Agency	Approval
Tennessee Valley Authority	Approval
Department of the Army	Defers to Interior
Department of Justice	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%.
- 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.

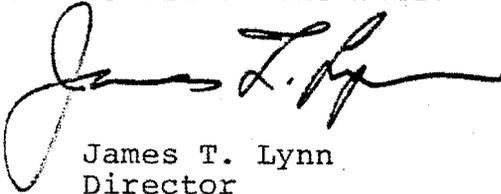
However:

- 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





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 425 - The Surface Mining
Control and Reclamation Act of 1974
Sponsor - Sen. Jackson (D) Washington

Last Day for Action

December 30, 1974

Purpose

Provides for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface coal mining operations, and the acquisition and reclamation of abandoned mines.

Agency Recommendations

Office of Management and Budget

Disapproval (Veto
message attached)

Department of the Treasury

Disapproval

Department of Commerce

Disapproval

Federal Energy Administration

Disapproval

Department of Labor

Cites concerns

Tennessee Valley Authority

No objection

Department of the Interior

Approval

Environmental Protection Agency

Approval

Council on Environmental Quality

Approval

Department of Agriculture

Approval

Department of Justice

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. Throughout this period the Administration made every effort in working with the Congress to produce a bill that strikes the delicate balance between our desire for reclamation and environmental protection and our need to increase coal production in the United States. Unfortunately, the efforts to produce a balanced bill have failed.

S. 425 would establish Federal standards for the environmental protection and reclamation of surface coal mining operations including the reclamation of orphaned lands. Under a complex procedural framework, the bill would encourage the States to implement and enforce a program for the regulation of surface coal mining with Federal administration of the program substituted if the States do not act.

Principal aspects of the bill considered objectionable by one or more of the agencies are:

- A 35¢/25¢ per ton excise tax on surface/underground coal with receipts going to a Federal fund for reclaiming orphaned strip mined land, public facilities, disaster relief, etc. (\$206 million would be produced in 1975).
- \$95 - 110 million for grants, research, and Federal regulation (includes funding for a Mineral Research Institutes program -- a similar bill was vetoed by President Nixon in 1972).
- Excessive direct Federal involvement in reclamation and enforcement programs.
- Precedent setting unemployment assistance.
- Coal production losses in 1975 of 2 to 8 percent (not counting unknown impact of provisions listed below) -- FEA estimates that by 1977, the first year after the Act would take full effect, losses could exceed 18 percent or some 141 million tons (Interior's estimates for this period are somewhat lower).

- Surface owner protection provisions that will limit access to Federal coal lands, produce windfall profits to surface owners and reduce Federal revenue from leases.
- Complex procedural requirements and standards in the lengthy bill which could involve extensive litigation and potential production impact, particularly:
 - A very broad citizens suit provision.
 - Near prohibition on mining that disturbs alluvial valley floors or water supplies in the west.
 - Limited administrative discretion.
 - Procedural requirements that could delay permits for new operations and impose a temporary moratorium on mining permits for Federal lands (including mineral rights).
 - Requirement to prevent any increase in siltation above premining conditions.
 - Designation of areas not suitable for surface mining.
 - Construction of certain impoundments prohibited.

In voting on the rule to consider the conference report on S. 425, the House vote was 198 to 129. The Senate passed the conference report by a voice vote.

Agency Views (informal)

Veto -- OMB, Treasury, FEA and Commerce (the arguments in favor of veto as shown below summarize the key points raised by the agencies).

Approval -- Interior, EPA, CEQ, and Agriculture (the arguments in favor of approval as shown below summarize the key points raised by the agencies).

In addition, Labor objects to the bill's unemployment provision, TVA does not object to approval, and Justice defers to the agencies more directly affected.

Arguments in favor of veto

1. The enrolled bill would have an unacceptable adverse impact on our domestic coal production.
2. Coal is the only basic energy source over which the United States has total control -- we should not unduly impair our ability to use it properly.
3. The Administration is currently undertaking a major energy policy review -- this bill would limit the President's freedom to adopt the best energy options for the Nation.
4. The United States must import four barrels of expensive foreign oil for every ton of coal that is lost in domestic production, yet the importation of such oil cannot long be tolerated even at present levels without continued, serious economic consequences -- S. 425 would exacerbate this problem (i.e., if 50 million tons of utility coal had to be replaced with 200 million barrels of foreign oil, the net oil replacement cost would run \$1.65 billion with utility fuel costs increasing by around 18 percent).
5. Unemployment would increase in both the coal fields and in those industries that could not obtain replacement fuel sources. Also, the undesirable unemployment assistance provision could serve as a precedent for other industries which are suffering high unemployment rates.
6. The bill provides for excessive Federal involvement and expenditures, and would have an inflationary impact on the economy.
7. S. 425 contains numerous other technical and institutional deficiencies.

Arguments in favor of approval

1. The environmental protection achieved outweighs the production loss problem (this view is not shared by those agencies recommending veto).
2. A bill next year may contain more problems than this one.
3. A strip mining bill would provide industry with environmental groundrules and standards governing future production, the lack of which is said to be presently inhibiting expansion of coal mining.

On balance, we believe the arguments cited above strongly favor veto. Accordingly, and in the event that a pocket veto is not exercised, we have prepared for your consideration a draft veto message.

Director

Enclosures

LRD: R.K.Peterson/dml 12/18/74

Veto of Surface Mining Control and Reclamation Bill

The President's Memorandum of Disapproval.
December 30, 1974

I am withholding my approval from S. 425, the Surface Mining Control and Reclamation Act of 1974.

S. 425 would establish Federal standards for the environmental protection and reclamation of surface coal mining operations, including the reclamation of orphaned lands. Under a complex procedural framework, the bill would encourage the States to implement and enforce a program for the regulation of surface coal mining with substitution of a federally administered program if the States do not act.

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. Throughout this period, the Administration made every effort in working with the Congress to produce a bill that would strike the delicate balance between our desire for reclamation and environmental protection and our need to increase coal production in the United States.

Unfortunately, S. 425, as enrolled, would have an adverse impact on our domestic coal production which is unacceptable. By 1977, the first year after the Act would take full effect, the Federal Energy Administration has estimated that coal production losses would range from a minimum of 48 million tons to a maximum of 141 million tons. In addition, further losses which cannot be quantified could result from ambiguities in the bill, forcing protracted regulatory disputes and litigation. In my judgment, the most significant reasons why such coal losses cannot be accepted are as follows:

1. Coal is the one abundant energy source over which the United States has total control. We should not unduly impair our ability to use it properly.
2. We are engaged in a major review of national energy policies. Unnecessary restrictions on coal production would limit our Nation's freedom to adopt the best energy options.
3. The United States uses the equivalent of 4 barrels of expensive foreign oil for every ton of unproduced domestic coal—a situation which cannot long be tolerated without continued, serious economic consequences. This bill would exacerbate this problem.
4. Unemployment would increase in both the coal fields and in those industries unable to obtain alternative fuel.

In addition, S. 425 provides for excessive Federal expenditures and would clearly have an inflationary impact on the economy. Moreover, it contains numerous other deficiencies which have recently been addressed in Executive Branch communications to the Congress concerning this legislation.

In sum, I find that the adverse impact of this bill on our domestic coal production is unacceptable at a time when the Nation can ill afford significant losses from this critical energy resource. It would also further complicate our battle against inflation. Accordingly, I am withholding my approval from S. 425.

In doing so, I am truly disappointed and sympathetic with those in Congress who have labored so hard to come up with a good bill. We must continue to strive diligently to ensure that laws and regulations are in effect which establish environmental protection and reclamation requirements appropriately balanced against the Nation's need for increased coal production. This will continue to be my Administration's goal in the new year.

GERALD R. FORD

The White House,
December 30, 1974.

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 "Gerald R. Ford".

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's 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.

LISTING OF PRINCIPAL PROVISIONS IN S. 425 (S. 7 and H.R. 25)
 THAT ARE CHANGED IN THE ADMINISTRATION'S BILL

Subject	Title or Section S.425,S.7,H.R.25	Administration Bill
<u>Critical Changes</u>		
1. Clarify and limit the scope of citizens suits	520	420
2. Modify prohibition against stream siltation	515 (b) (10) (B) 516 (b) (9) (B)	415 (b) (10) (B) 416 (b) (9) (B)
3. Modify prohibition against hydrological disturbances	510 (b) (3) 515 (b) (10) (E)	410 (b) (3) 415 (b) (10) (E)
4. Provide express authority to define ambiguous terms in the act	None	601 (b)
5. Reduce the tax on coal to conform more nearly with reclamation needs and eliminate funding for facilities	401 (d)	301 (d)
6. Modify the provisions on impoundments	515 (b) (13) 516 (b) (5)	415 (b) (13) 416 (b) (5)
7. Modify the prohibition against mining in national forests	522 (e) (2)	422 (e) (2)
8. Delete special unemployment provisions	708	None
<u>Other Important Changes</u>		
1. Delete or clarify language which could lead to unintended "antidegradation" interpretations	102 (a) and (d).	102 (a) and (c)
2. Modify the abandoned land reclamation program to (1) provide both Federal and State acquisition and reclamation with 50/50 cost sharing, and (2) eliminate cost sharing for private land owners	Title IV	Title III

Subject	S. 425, S. 7, H. R. 25	New Bill
3. Revise timing requirements for interim program to minimize unanticipated delays	502 (a) thru (c) 506 (a)	402 (a) and (b) 406 (a)
4. Reduce Federal preemption of State role during interim program	502 (f) 521 (a) (4)	402 (c) 421 (a) (4)
5. Eliminate surface owner consent requirement; continue existing surface and mineral rights	716	613
6. Eliminate requirement that Federal lands adhere to requirements of State programs	523 (a)	423 (a)
7. Delete funding for research centers	Title III	None
8. Revise the prohibition on mining in alluvial valley floors	510 (b) (5)	410 (b) (5)
9. Eliminate possible delays relating to designations as unsuitable for mining	510 (b) (4) 522 (c)	410 (b) (4) 422 (c)
10. Provide authority to waive hydrologic data requirements when data already available	507 (b) (11)	407 (b) (11)
11. Modify variance provisions for certain post-mining uses and equipment shortages	515 (c)	402 (d) 415 (c)
12. Clarify that payment of permit fee can be spread over time	507 (a)	407 (a)
13. Delete preferential contracting on orphaned land reclamation	707	None

Subject	S.425,S.7,H.R.25	New Bill
14. Delete requirement on sales of coal by Federal lessees	523(e)	None
15. Provide authority for appropriations rather than contracting authority for administrative costs	714	612
16. Clarify definition of Indian lands to assure that the Secretary of the Interior does not control non-Federal Indian lands	701(9)	601(a)(9)
17. Establish an adequate interest charge on unpaid penalties to minimize incentive to delay payments	518(d)	418(d)
18. Permit mining with 500' of an active mine where this can be done safely	515(b)(12)	415(b)(12)
19. Clarify the restriction on haul roads from mines connecting with public roads	522(e)(4)	422(e)(4)

Tab C



SUMMARY RESULTS - CONFERENCE BILL

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

<u>Subject & Proposed Change</u>	<u>Conference Bill</u>
1. <u>Citizen Suits</u> Narrow the scope	Adopted
2. <u>Stream Siltation</u> Remove prohibition against increased siltation	Partially adopted
3. <u>Hydrologic Balance</u> Remove prohibition against disturbances	Partially adopted
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 coa Uses broadened
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.

C. Action on changes from vetoed bill identifies 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>Conference Bill</u>
1. <u>Antidegradation</u> Delete requirements	Adopted
2. <u>Abandoned Mine Reclamation Fund</u>	
• Require 50/50 cost sharing	Rejected
• Eliminate grants for privately owned lands	Broadened
3. <u>Interim Program Timing</u>	
• Reduce potential for mining delays	Rejected
• Allow operations under interim permit if regulatory agency acts slowly	Adopted
4. <u>Federal Preemption</u> Encourage states to take up regulatory role	Rejected
5. <u>Surface Owner Consent</u> Rely on existing law	Rejected

<u>Subject & Proposed Change</u>	<u>Conference Bill</u>
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
10. <u>Hydrologic Data</u> Authorize waiver in some case where unnecessarily burdensome	Rejected
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

Subject & Proposed Change

Conference Bill

17. Interest charge on civil Penalties

Adopt sliding scale to minimize
incentive for delaying payments

Adopted

18. Mining within 500 feet of active mines

Permit where it can be done safely

Rejected

19. Haul Roads

Clarify restriction on connections
with public roads

Adopted



Tab D

TAB D

ASSUMPTIONS UNDERLYING INTERIOR PRODUCTION LOSS ESTIMATES

A. General

Interior estimates of production losses have necessarily been developed on assumptions that bear substantially on predicting the actual impact of surface mining legislation. Principal among such considerations are the following:

1. Losses are shortfalls from adjusted Project Independence projected gains. Losses are asserted as amounts by which coal production will fall short of projected increases in production called for by the Project Independence Report. Interior used a figure of 685 million tons as the amount of projected production in the first full year of implementation. This compares with 1974 production of 601 million tons. Project Independence projections are subject to other factors such as clean air restrictions, delivery system constraints, demand limitations and altered energy price projections. The Interior estimates of production could be modified by changes in these factors. In any event, such losses do not represent actual loss of production from present levels.
2. Some parts of the estimates are based on constant 1974/75 relative price levels of coal. A basic uncertainty in production

levels results from uncertainty as to coal price levels and other energy price levels. Higher coal prices than the constant relative prices assumed in the Interior analysis could mean more coal production and lower relative coal prices could mean less production. This is particularly important since the estimates of increased costs resulting from the bill are in the range of \$.50 to \$1.5 per ton. Weighted Price for surface mined coal f.o.b. mine averaged about \$11/ton in 1974, and for all coal averaged about \$15 per ton. Prices for long-term coal contracts have been rising although spot contract prices are declining. If prices of competing energy sources increase, then over time, this suggests that cost increases can be passed on with smaller production losses than have been estimated. Similarly, price declines would lead to greater production losses than have been estimated. Attached hereto is an economic elasticity analysis indicating how price changes ameliorate production losses.

3. Losses are based on assumption of currently prevailing mining methods and technology. Technological improvements in both surface and underground mining methods could marginally diminish production losses.
4. Other supply and demand constraints may be more significant to increased coal production than surface mining legislation. Coal

production is affected by the cumulative effects of constraints such as transportation, manpower, availability of equipment, clean air and other environmental requirements, and limited coal user demand. Of these, the Clean Air Act and limited coal user demand may constitute more serious independent limitations on coal production than surface mining legislation.

5. Time. In addition to the factors discussed above, the rate at which the productive system recovers and moves toward the Project Independence desired levels is dependent on the time which it will take for the industry to adjust and deal with the problem presented in the bill. This makes difficult any estimates of the coal industry's recuperative efforts beyond the first full year of complete implementation. In the short range (which could extend through the next 5 years), the industry's recuperative ability would be severely limited. But over time, the industry's ability to adapt to requirements of surface mining legislation would improve. This is not to say that production will not increase but rather that the makeup tonnage will be difficult to achieve over the short run. It should also be noted that potential losses that could result from prohibitory provisions in the proposed legislation would reduce the production base rate for the longer range.

B. Projected Production Losses from H.R. 25 as Passed

Based on these assumptions, an assessment of the final language of H.R. 25 indicates estimated potential production loss figures of from 40 to 162 million tons for the first full year of implementation. Without the Conference Report language on alluvial valley floors being available, Interior had originally projected the minimum loss figure at 51 million tons. These losses occur as a result of the bill's impact in three major areas for which the impacts are shown as follows:

	<u>H.R. 25</u>	<u>Administration Bill</u>
a. Small mines	22-52	15-30
b. Steep slopes, siltation, and aquifer provisions	7-44	7-38
c. Alluvial valley floor provisions	<u>11-66</u>	<u>11-12</u>
Total	40-162	33-80

Additional unquantifiable losses could result from other provisions, including ambiguous terms, the designation of lands suitable for mining, and the surface owner protection provisions. A lack of technical manpower and equipment immediately available and vagaries regarding permit application requirements may further hamper production.

The following methodology was employed in the analysis of the major categories of anticipated potential losses.

1. Small Mines: An examination of a large cross section of surface coal mines producing less than 50,000 tons per year and located principally in the East resulted in a determination that their ability to comply with the provisions of the bill relating to bonding and permit application was inherently limited. Specifically, the requirements for the collection of extensive hydrologic data, for preparing detailed underground maps, for strata cross section and test boring, for the preparation and presentation of highly detailed mining and reclamation plans and for the assessment of mine impact on hydrologic balance, are beyond the present capability of many of these small mines.

The best engineering estimates of potential losses which could result range from a 42 percent minimum to a 100 percent maximum loss of coal production from small mines for the first full year of implementation. Applying these percentages to the projected production figures if no bill were enacted results in a range of annual production losses from 22 million tons minimum to a 52 million ton maximum. The maximum loss stated is the total loss of production from all mines producing less than 50,000 tons per year with none of this production being otherwise replaced.

2. It is estimated that the losses from the category of steep slopes, siltation and aquifers would range from 7-44 million tons.

This figure can be separated as follows: Steep slopes (7-25 million tons), aquifers (0-9 million tons) and siltation (0-10 million tons).

In estimating potential production losses from steep slope restrictions, the total amount of surface production derived from slopes over 20°, as calculated and updated from the CEQ report of 1973 prepared for the Senate Interior Committee, was examined to see how it would be affected. Our best engineering estimates are that 6 percent to 23 percent of the estimated steep slope production during the first full year of complete implementation would be affected due to some loss of productivity from nearly every steep slope operation.

In assessing possible production losses from aquifer protection provisions, we estimated that at worst up to 9 million tons of planned production near an aquifer fed water source would be abandoned because of an adverse opinion by a regulatory authority or court. At best, regulatory authorities and courts would allow mining to continue as planned.

In estimating potential production losses from siltation inhibitions, it was estimated that up to 10 million tons of production could be lost because of operator's inability to construct the additional diversion ditches, impoundment structures and water treatment facilities required by the Act. In addition some areas might be

mined only if permanent large siltation structures were built. Under the bill large siltation structures must be removed after mining. Such removal could lead to unacceptable sedimentation. Under favorable conditions and interpretation by regulatory authorities no losses would be incurred as a result of siltation provisions.

3. Losses resulting from provisions relating to alluvial valley floors would range from 11 to 66 million tons during the first full year of implementation. To arrive at a possible loss of 66 million tons, surface mine production data were collected for 1974 production west of the 100th meridian west longitude which amounted to 63 million tons. Based on a mine-by-mine analysis it was judged that approximately 45 million tons of this production was mined from alluvial valley floors as defined in the bill or was being mined on areas that could adversely affect alluvial valley floors. Although attempts were made to exclude undeveloped rangelands from the alluvial valley floor provisions, these areas still could be interpreted as potential farming or ranching lands of significance and could thereby be excluded from mining. By projecting the ratio of 1974 production being mined in these affected areas to projected production for the first full year (90 million tons), a resulting loss of 66 million tons was derived. The possible minimum loss

figure of 11 million tons attributable to the alluvial valley floor provision was determined by examination of three key unknown factors in the present language: (1) the area that is now under intensive agriculture usage (including farming and hay meadows) is not clearly known; (2) the amount of undeveloped rangeland is not precisely known; and (3) potential farming and ranching as defined in H.R. 25 could be limited (or extensive) but cannot be clearly determined. Based on assessment of these factors and on best professional judgment of the mining activities in areas of current and potential operations as described in H.R. 25, it is estimated that approximately one-sixth (11 million tons) of the maximum production loss could be considered a minimum for the first full year of complete implementation under a very loose interpretation. There is a problem of interpretation of the Joint Conference Report language which states "that 97 percent of the agricultural land in the Powder River Basin is undeveloped rangeland and therefore is excluded from the application of this provision." This language could lower the estimated minimum production loss projections to 11 million tons for the alluvial valley floor provisions.

From an engineering viewpoint, there are contained within this language many ambiguous or difficult-to-define terms such as "significant," "substantial," and "potential," and it is impossible to develop a precise minimum figure.

C. Conclusion

Interior's estimates indicate potential serious production impacts resulting from surface mining legislation which must be weighed against the environmental and land use benefits of the bill. In using these estimates, it is essential to consider carefully the uncertainties inherent in them, the assumptions on which they are based, and where within the stated ranges are the impacts most likely to occur.

TO THE HOUSE OF REPRESENTATIVES

I am returning herewith, without my approval, H.R. 25, the Surface Mining Control and Reclamation Act of 1975.

On December 30, 1974, I issued a Memorandum of Disapproval which explained the reasons for my veto of S. 425, the Surface Mining Control and Reclamation Act of 1974. Briefly stated, I vetoed S. 425 on the grounds that it did not strike an appropriate balance between the need to increase coal production in the United States and reclamation and environmental protection. It would have had an unacceptably adverse effect on domestic coal production, which would have unduly impaired our ability to use the one abundant energy source over which we have total control, restricted our future choices on national energy policy, and increased our reliance on foreign oil. I also pointed out that S. 425 provided for excessive Federal expenditures and would have had an inflationary impact and that the bill contained numerous other deficiencies.

. . My Memorandum of Disapproval of S. 425 noted that:

"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. Throughout this period, the Administration made every effort in working with the Congress to produce a bill that would strike the delicate balance between our desire for reclamation and environmental protection and our need to increase coal production in the United States.

* * * * *

"...I am truly disappointed and sympathetic with those in Congress who have labored so hard to come up with a good bill. We must continue to strive diligently to ensure that laws and regulations are in effect which establish environmental protection and reclamation requirements appropriately balanced against the Nation's need for increased coal production. This will continue to be my Administration's goal in the new year."

On February 6, 1975, in accordance with those considerations, I proposed a coal surface mining bill which followed the basic framework of the vetoed legislation changed only (a) to overcome the critical objections which lead to the veto, (b) to reduce further the potential for unnecessary production impact, and (c) to make the legislation more effective and workable. In transmitting the bill, I reiterated that my energy program contemplates the doubling of our Nation's coal production by 1985. I further noted that this will require the opening of 250 major new coal mines, the majority of which must be surface mines.

Following submission of my bill, the Administration continued to work in every possible way with the Congress in an effort to produce surface coal mining legislation which strikes the necessary balance between environmental protection and increased coal production.

With genuine regret, I must report that our efforts to produce a balanced bill have failed.

H.R. 25, as enrolled, is similar to S. 425 (93rd Congress) in that it would establish Federal standards for the environmental protection and reclamation of surface coal mining operations, including the reclamation of orphaned lands. Under a complex procedural framework, the bill would encourage the States to develop and enforce a program for the regulation of surface coal mining with substitution of a federally administered program if the States do not act.

In its present form, H.R. 25 would have an unacceptable impact on our domestic coal production. By 1977-1978, the first year after the Act would take full effect, the Federal Energy Administration and the Department of the Interior have estimated that coal production losses could range from a minimum of 40 million tons to a maximum of 162 million tons (between 6% and 24% of expected production for that period). In addition, ambiguities in the bill could lead to protracted regulatory disputes and litigation, causing additional production losses.

As I stated in December and continue to believe today, our Nation cannot accept coal losses of that magnitude for a number of reasons:

- Coal is the one abundant energy source over which the United States has total control. We must not arbitrarily place a self-imposed embargo on an energy resource that can be the major contributing factor in our program for energy independence.
- The United States must import expensive foreign oil to replace domestic coal that is not produced to meet our needs. Substantial losses of domestic coal production cannot be tolerated without serious economic consequences. This bill could make it necessary to import at least an additional 550 million barrels of oil per year at a cost of more than \$6 billion to our balance of payments.
- Unemployment would increase in both the coal fields and in those industries unable to obtain alternative fuels--total job losses could exceed 35,000.

In addition, H.R. 25 contains a number of other serious deficiencies:

- Over 70 million tons of our national coal reserves could be locked up--this is over half of our total coal reserves potentially mineable by surface methods.
- Higher costs for fuel, for mining production and reclamation and for Federal and State administration could impair economic recovery.
- State control over mining of Federally owned coal on Federal lands could result in severe restrictions, or perhaps even a ban, on production from those lands.

- The Federal role during the interim program could
(a) lead to unwarranted Federal preemption, displacement, or duplication of State regulatory activities, and (b) discourage States from assuming an active, permanent regulatory role in the future.

- H.R. 25 would give surface owners the right to "veto" the mining of federally owned coal or possibly enable them to realize a substantial windfall.

In sum, I think it is clear that H.R. 25 would place our Nation's most abundant energy resource in serious jeopardy--this must not happen. The bill is contrary to the combined interest of consumers, industry, coal miners, and the taxpayer. Accordingly, I am withholding my approval from H.R. 25.

In doing so, I am once again sincerely disappointed that we have been unable to agree upon an acceptable bill. Considerable effort on the part of both the Executive and Legislative branches has been put forth in this effort. In light of our inability to achieve an acceptable bill, I am today directing the Energy Resources Council to initiate an overall study of the coal surface mining reclamation issue. This study will reexamine all aspects of this complex issue, including the adequacy of present State law. The Council's report and recommendations will be submitted to me within six months. I will then recommend an appropriate course of action. Over this period, I hope that the Congress will also reflect further on the many difficult issues presented by this legislation. I hope that in this way we will be able to reach a mutually satisfactory approach that assures that the Nation's environmental protection and reclamation requirements are appropriately balanced against our need for increased coal production.

THE WHITE HOUSE

May , 1975