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## **THE ROCKEFELLER AMENDMENT: ITS ORIGINS, ITS EFFECT AND ITS FUTURE**

DENNIS M. ABRAMS\*

### **I. INTRODUCTION**

The Rockefeller Amendment, section 3 of S. 1403, proposes to amend section 503(a)(7) of the Federal Surface Mining Control and Reclamation Act of 1977. This Amendment, named after West Virginia's Governor, would amend section 503(a)(7) of the federal mining act to require that state programs contain rules and regulations consistent only with the federal act as a condition precedent to approval. At present, section 503(a)(7) requires state programs to contain rules and regulations "consistent with" the Act and with the regulations promulgated by the Secretary of the Interior.

Congress did not define "consistent with" but the federal Office of Surface Mining (OSM) did by regulation and policy. Thus, to obtain program approval, states must prove that their regulations are no less stringent than the federal regulations and the federal Act. To many, this was interpreted as requiring state regulations "identical to" those of OSM as a condition precedent to state program approval.

S. 1403 was hailed by senators and governors from the coal-producing states because it appeared to provide much-needed flexibility. It proposed to substitute state-authored regulations in place of the federal regulations which OSM wrote to implement the Act. Opponents of the Rockefeller Amendment viewed it as a means to "gut" the federal act because, if the amendment became law, the federal regulations would not apply to mining on state lands under an approved state program. The opponents believed that section 503(a)(7) as enacted made the federal regulations mandatory guidelines regardless of whether a state-approved program exists.

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S. 1403 was passed without change by the Senate on September 11, 1979. The vote was 68 to 26, a much greater margin than anyone predicted. The bill was then sent to the House Committee on Interior and Insular Affairs, chaired by Rep. Morris K. Udall (D. Ariz.). Primarily due to lobbying efforts, the bill has yet to be considered by the committee. Faced with this delay, proponents in the Senate have threatened to append S. 1403 to another Senate bill headed for the House, thus bypassing Udall's committee.

The political stand-off continues, but by January 3, 1981, all states wishing to assume primacy over the issuance of surface coal mining and reclamation within their jurisdictions must submit a state program complete with state laws and regulations in conformity with section 503(a).

In this era of increased emphasis on coal as an energy source, issuance of permits by OSM is favored by few. Even OSM intends for the states to regulate coal mining activities under approved state programs and has conveyed this intention to the states. Many believe that state primacy over issuance of coal mining permits is essential. Those familiar with the coal industry are convinced that OSM cannot effectively run twenty-six separate coal mining permit programs. Presently OSM is budgeted and staffed to act in a supervisory capacity. It is doubtful that OSM could administer federal programs in more than a few states without massive budget and personnel increases.

The Rockefeller Amendment was believed by many to be the most direct method of re-establishing the state lead concept Congress supposedly envisioned in the Act. Its proponents attributed most of the problems with the federal act to the inflexible and unworkable regulations written by OSM. In testimony during congressional oversight hearings West Virginia officials echoed this sentiment:

The central underlying cause of virtually all of these problems [with state assumption of a Pub. L. No. 95-87 program] is the belief and policy made evident in discussion and negotiations with OSM that state laws and regulations, in order to be consistent with federal regulations, must be identical to the regulations contained in the Federal Register. If they

are not, state program disapproval is almost always threatened.<sup>1</sup>

## II. THE ORIGINS OF THE ROCKEFELLER AMENDMENT

The Rockefeller Amendment did not develop overnight. It was the product of at least one full year of states' efforts to implement the interim federal regulations and the interim provisions of the Federal Surface Mining Control and Reclamation Act. The interim regulations were promulgated by the Secretary of the Interior on December 13, 1977. They were enacted as state law in West Virginia on August 14, 1978. However, even before the August rulemaking, West Virginia officials began to experience a wide range of problems with the interim federal regulations.

According to state officials many of the interim regulations had never been field tested by the federal government, whereas similar state regulations had proven effective. Further, some interim regulations precluded use of proven design criteria and methods of operation, many of which were developed by West Virginia in the late 1960's and early 1970's. Still other interim regulations were found ill-suited to the mountainous terrain and the wet climate of the Appalachian states. When the Reclamation Division of the West Virginia Department of Natural Resources (DNR) began to implement the new regulations, more problems surfaced. For example, DNR had to determine how an operator was supposed to segregate and store specified quantities of topsoil when there was actually much less topsoil available on site. The interim regulations required monitoring of groundwater by wells but did not take into account the number of aquifers that could exist throughout any eastern mountain region. The practical means of achieving certain mandatory reclamation goals on previously mined lands were lacking. The valley fill design criteria pioneered in West Virginia's hollows and field tested for seven years were replaced by design criteria which had only been tested on the blackboards in Washington. Specific design criteria for sedimentation ponds were required by the interim regulations but the sediment ponds mandated were simply too large to fit in West Virginia hollows. Moreover, DNR officials feared that a large pond would create a potential hazard for downstream residents.

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<sup>1</sup> 125 CONG. REC. S. 12,381 (daily ed. Sept. 11, 1979).

Both OSM and the DNR have been and continue to be served with notices of intent to sue by concerned citizens. Each notice received to date cites specific examples alleging DNR's failure to administer and enforce adequately the interim regulations in West Virginia. In one such notice of intent to sue, the validity of twenty-seven mountaintop removal operation permits was questioned. A mountaintop removal operation removes the top of a mountain, extracts a seam or seams of coal, places the overburden in valleys or hollows below and levels the mountaintop, creating a flat surface. The past and present West Virginia administrations were hopeful that mountaintop operations would provide building sites for public schools, shopping centers and homes.

Reacting to the notice of suit, department officials began to apply vigorously the interim regulations to each mountaintop removal operation. During that process questions arose concerning the requirements for assuring that the proposed post-mine land use would be achieved. Operators were told to modify their permits or shut down. Some of those operators proposed to eliminate scars left by previous mining. Some of the permits involved were granted prior to the effective date of the state interim regulations and the operators had already begun to remove earth. Required financial commitments to assure housing developments as the proposed post-mine land use were virtually impossible to obtain. The DNR could not tell the operators how to comply with the interim regulations.

As a result, most of the operators changed their proposed method of mining and opted to return the land to its pre-mining contour. A year after the first notice of suit was served on DNR, only seven of the twenty-seven operators still intended to pursue mountaintop removal techniques and leave a flat surface. Recently OSM proposed changes to the interim regulations which will finally eliminate some of the problems uncovered by this notice of suit, but to date only two operators have submitted acceptable plans for mountaintop removal operations. Although Congress intended that mountaintop removal operations should be the exception to the rule, many believed that such operations would seldom qualify as exceptions because of OSM's hostility to such mining techniques.

To compound problems, most of the bonding companies which do business in West Virginia's coal fields suspended issu-

ance of reclamation bonds for coal mining operations. The suspension was prompted by the prevailing uncertainty as to how the regulations would be applied. In the face of the claims of the coal industry that it simply could not comply with some of the interim regulations, bonding companies feared a dramatic increase in bond forfeitures in the state.

Some of these problems were litigated in the first set of court challenges to the interim regulations. While most West Virginia and industry challenges of the regulations were rejected by the court, West Virginia submitted updated studies done by an Environmental Protection Agency (EPA) consultant which persuaded the court to require OSM to re-think its valley fill regulation. The industry was able to convince the court to enjoin OSM sedimentation pond design criteria generally and to exempt certain pre-existing structures from OSM's design criteria entirely.

The litigation taught West Virginia officials a valuable lesson. It took more than a year's worth of discussions, attempted negotiations, and actual litigation to get OSM to recognize the value of proven and environmentally acceptable state valley and hollow fill design criteria—criteria which predated the federal law by seven years. It wasn't until a federal consultant recommended West Virginia's fills that OSM accepted them. Thus when OSM developed what is called the "state window," a procedure through which states could obtain variances from the federal regulations, West Virginia was naturally skeptical about whether this procedure would solve its problems with the federal regulations.<sup>3</sup> The "state window" enables the states to apply for and obtain a variance from the federal regulations if the state can demonstrate that the proposed variance is consistent with federal law and regulations. The valley fill litigation taught West Virginia that "consistent with" meant "identical to." The "state window" thus appeared to be so narrow that state officials had no reason to believe they would ever produce an alternative acceptable to OSM.

To an extent, the "state window" was a product of the first year of OSM-DNR dialogue. Another product of the DNR-OSM dialogue was what has become known as the Heine/Callaghan letter. OSM and West Virginia attempted to clarify certain aspects

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<sup>3</sup> 44 Fed. Reg. 15,324 (1979); 30 C.F.R. § 731.13 (1979).

of the interim regulations in a letter of understanding. The letter was attacked from all sides once it was published. Other states, industry and environmental groups threatened suit over such things as clarification of ground water monitoring programs, drainage control structures and designation of acceptable post-mine land uses, all addressed in the letter.

After less than a year West Virginia's officials believed their experience with attempts to apply the federal regulations on a site-by-site basis demonstrated the inflexibility of those regulations.

The experiences of federal administrative law judges reaffirmed what the states found. Section 525 of the federal act affords an operator the right to appeal notices of violation, cessation orders and civil penalty assessments to an administrative law judge ("ALJ") and then to an appeals board. During these initial hearings, the ALJ's applied the interim regulations to active mining operations. Their decisions in many instances caused an uproar within the OSM regional solicitors' offices. Some of the decisions offered strained interpretations of the federal regulations simply because there was no practical way of applying the literal regulatory language to problems encountered on a particular mine site. ALJ's were called upon to determine such issues as when a haulroad was deemed to be "constructed,"<sup>3</sup> whether placement of soil downslope of one bench but upslope from another was "downslope placement,"<sup>4</sup> or whether perimeter markers had to be clearly identified and whether they had to be visible from one to another.<sup>5</sup>

Again the "unworkability" of the federal interim regulations surfaced in such areas as topsoil stockpiling, valley fill construction, location of haulroads, water monitoring and pre-August 1977 structures.<sup>6</sup> Some ALJ decisions contain statements expressing

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<sup>3</sup> Pegasus Mining Corp. v. OSM, (Docket No. CH 9-37-R) July 13, 1979.

<sup>4</sup> Black Creek Coal Co. v. OSM, (Docket No. 8-3-P) Dec. 1, 1978 and Dec. 7, 1978 (footnote to decision).

<sup>5</sup> Carbon Fuel Co. v. OSM, (Docket Nos. CH9-1-R, 9-2-R, 9-2-P, 9-3-P, and 9-6-P) Jan. 12, 1979.

<sup>6</sup> Island Creek Coal Co. v. OSM, (Docket No. CH 9-68-R) July 12, 1979; East-over Mining Co. v. OSM, (Docket No. NX 9-47-R) July 16, 1979; and Big Valley Coal Co. v. OSM, (Docket No. NX 9-33-R) Sept. 17, 1979.

dissatisfaction with the interim regulations<sup>7</sup> and frustration because the ALJ's could not change those regulations.<sup>8</sup>

The coal industry was caught between federal and state agencies and angered by the overlap of the federal and state interim regulations and policies. Even though the states were experiencing interpretive problems with the interim regulations, they were required to apply them with or without federal guidance if they wished to continue issuing mining permits. As a result many operators who had complied with state law in the past now challenged the states' position in many areas where only policy and not written regulation controlled.

The number of appeals increased as did the number of notices of violation and when figures were released by OSM showing that West Virginia led the nation in the number of federal inspections and violations, conditions worsened. These figures made little sense to West Virginia officials who believed their program to be among the best in the nation. After an injunction against OSM enforcement in Virginia had sent half of Virginia's federal inspection staff to West Virginia for six months, OSM inspectors began issuing notices of violation in addition to similar state notices. The operators did not know whose law controlled or how to comply, and neither did OSM or state inspectors.

DNR officials and many respectable operators were angered by the massive OSM presence in West Virginia in comparison to the size of OSM in neighboring states. At least one half of all the Region I inspectors were writing violations in West Virginia. This apparent inequity was also explained by the fact that OSM was able to staff its Region I Charleston-based office before the other four regions. This in itself caused another rift between OSM and DNR because one-fourth of the latter's inspection staff joined OSM.

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<sup>7</sup> *Paramount Mining Corp. v. OSM*, (Docket Nos. CH 8-7-R, CH 8-11-R) Dec. 1, 1978; *Cedar Coal Co. v. OSM*, (Docket No. CH 8-17-R) Nov. 17, 1978; *Central Utility Coal Co., Inc. v. OSM*, (Docket No. IN 9-3-P) May 1, 1978; *Fell Energy Coal Corp. v. OSM*, (Docket No. NX 9-99-R) Nov. 7, 1979.

<sup>8</sup> *Winston Ford Co., Inc. v. OSM*, (Docket No. NX 9-51-R) June 23, 1979; *United Coal Corp. v. OSM*, (Docket No. CH 9-10-R) Feb. 2, 1979; *Rhonda Lou Energy Corp. #2 v. OSM*, (Docket No. CH 9-34-R) Nov. 8, 1979; and *Carbon Fuel, supra*, note 5.



After one year of interim program experience the West Virginia Legislature passed legislation which will eliminate many provisions of existing state law and state regulation which are more stringent than applicable federal law or regulations. This legislation was a response to the problems posed by the interim program and the fear of a similar experience with the permanent program. Unfortunately the DNR now faces an uphill battle to convince the legislature that those provisions of state law which are more stringent than federal law should be left intact. Legislatures in other states have placed similar limitations on their state mining and reclamation laws being developed to comply with the federal act. Because of OSM's goal to achieve nationwide uniformity, West Virginia may well lose its more stringent enforcement tools. For example, West Virginia inspectors have cessation powers which are more stringent than the cessation powers in the federal act and state inspections must occur every fifteen days, while inspections under the federal act must occur every thirty days.

The problems during the interim program multiplied when OSM promulgated the permanent program regulations. The DNR had submitted more than 350 pages of comments on the proposed permanent regulations but state officials saw little evidence that OSM paid attention to West Virginia's expertise. For a second time state officials believed their expertise was ignored by OSM in rulemaking proceedings.

It should be noted that West Virginia was not the only state to be adversely affected by inflexible OSM regulations. In many instances, the federal regulations would work in one region of the country but not in another. They simply did not provide for state alternatives which were calculated to achieve the same result as their federal counterparts. This was a problem inherent in the interim regulations but the courts had approved the exclusive nature of many of the interim federal regulations and the permanent regulations would be similarly interpreted. Even though state alternatives were documented by substantive evidence, as long as the federal regulations were also premised upon a sound basis, the federal regulations, though exclusive in nature, would control.

In the late spring of 1979, the number of options available to a state hoping to assume primacy over permit issuance was very

limited. First, a state could adopt the permanent federal regulations verbatim and assure itself state program approval. The problems inherent in this alternative were adequately demonstrated to West Virginia after it adopted the interim federal regulations, word for word in most instances, in August 1978.

Second, a state could choose not to submit a state program and thereby pave the way for a federal program. A few states have already chosen this option. However, since OSM has yet to issue its first permit, it was feared that a federal program in West Virginia would bring coal mining to a halt.

Third, a state could attempt to establish a better dialogue with OSM. Once again prior experience indicated to West Virginia that this option was slow, uncertain and essentially unproductive because of OSM's perceived intransigence.

Finally, a state could seek legislation in Congress to achieve in law what the states had as yet been unable to achieve in fact: a true opportunity to develop, administer and enforce a program suited to local needs. West Virginia officials maintained that section 101(f) and section 201(c)(9) of the federal act both supported this option. The Congress, in section 101(f), found that:

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

In section 201(c)(9) Congress required the Secretary of Interior to:

Assist the States in the development of State programs for surface coal mining and reclamation operations which meet the requirements of the Act, and at the same time, reflect local requirements and local environmental and agricultural conditions. . . .

West Virginia asked how OSM could justify its actions and, more importantly, its regulations, in view of these explicit provisions. OSM responded by relying upon the congressional purpose announced in section 102 of the Act. It has always been OSM's position that the Act's goal of establishing a nationwide program to protect society and the environment from the adverse effects of

coal mining would be thwarted by twenty-six or so different sets of state regulations.

By early June 1979, OSM still held the upper hand and would not budge. The Secretary of Interior ultimately had the final say on state program approvals and the date for implementation of a federal program remained unchanged. At this stage in the implementation of the federal act, West Virginia officials felt their best hope was to turn to Congress. They maintained that if the state's problems with the federal regulations were indeed real, Congress would pass the Rockefeller Amendment or some variation of it. Thus the Amendment was drafted and sent to Washington.

### III. THE EFFECTS OF THE ROCKEFELLER AMENDMENT

The Amendment survived a ten to eight vote in the Senate Committee on Energy and Natural Resources, but passed by an overwhelming margin in the full Senate. The *Congressional Record* is replete with statements from senators criticizing OSM's attitude, the federal regulations, and, most of all, the way in which OSM exceeded the intent of the Congress.<sup>9</sup> In speech after speech, senators reaffirmed their intention of a state-lead concept behind P.L. 95-87. The opposition could come up with little substantive evidence to stem the tide in the Senate. An agreement had been reached by certain senators that they would only amend P.L. 95-87 to change state program submission dates and that no other amendments would be considered. The agreement was breached when section 3 was added to S. 1403. Throughout the Senate debates on S. 1403, the opponents relied upon that prior agreement and advocated defeat of section 3.

Opponents also objected to the Rockefeller Amendment because the flexibility of the federal regulations had not been tested. Some opposed it for other reasons which have resurfaced in the House. After receiving a petition signed by twenty-five of the forty-three members from his committee urging consideration of S. 1403, Representative Udall outlined the major reasons why S. 1403 should be defeated. In a letter dated October 9, 1979, Udall stated that S. 1403 was no longer necessary because its pur-

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<sup>9</sup> 125 CONG. REC. S. 12,350-389 (daily ed. Sept. 11, 1979).

pose could be accomplished through the "state window" in the permanent federal regulations. Second, S. 1403 would enable states to develop weaker regulations. Second, S. 1403 would evoke an administrative and judicial nightmare. Finally, S. 1403 would not help restore vitality to the coal industry.

For twenty-six senators Representative Udall's arguments had been highly persuasive. He was right in that some states will use S. 1403 to dilute the permanent federal regulations. There is no uniform enforcement or application of the interim regulations. S. 1403 could also shatter any hopes for total national uniformity that OSM may have for the permanent program. Udall was also right in that S. 1403 could obviously lead to litigation and could ultimately delay state program approval. However, state officials wondered whether these were valid reasons to defeat S. 1403.

S. 1403 is a state-sponsored and state-supported amendment. The states say that it does not change any of the Act's more than 115 performance standards and more importantly, S. 1403 does not dilute the power of the Secretary of the Interior to disapprove state programs. In fact, if anything, S. 1403 enhances that power. The Secretary could literally require state laws which were carbon copies of the federal law, disapprove any regulations that appeared to weaken the federal act and reject the state program. Invariably state programs also will omit segments of the federal regulations and any time this occurs the Secretary has cause to believe that the state program does not comply with the federal act. This could lead to delay in state program approvals. But the states ask whether each state has the right to make that decision for itself and risk implementation of a federal program.

According to section 504 of the federal act, if the state program is submitted by November 3, 1980, but disapproved, then the state only has sixty days in which to make the changes necessary to obtain approval. Once a state program is rejected after that sixty-day amendment period, a federal program must be implemented in that state by OSM. Thus the Act has a built-in incentive to entice the states into copying the federal regulations as often as possible and there are other safeguards built into the federal act which are left unchanged by S. 1403. The Act provides for

citizen complaints,<sup>10</sup> citizen inspections,<sup>11</sup> citizen suits,<sup>12</sup> continual federal supervision,<sup>13</sup> and provisions whereby OSM can withdraw state program approval when the state fails to regulate adequately coal mining.<sup>14</sup> These safeguards, plus S. 1403's requirement that state law and state regulations remain consistent with the federal act, should allay the concerns of those who fear S. 1403 will "gut" the federal act. Collectively and individually, criticisms of S. 1403 failed to sway a majority in the Senate.

Even under S. 1403 those states which enact weak regulations risk having their programs disapproved by the Secretary. Since litigation challenging state program disapproval does not prevent implementation of a federal program, the Secretary remains in a position to ensure national uniformity and avoid the competitive advantage of inadequate state regulation simply by disapproving state program submissions and implementing federal programs.

Passage of S. 1403 could cause an administrative or judicial nightmare, but many are convinced the "state window" process will also create such a nightmare. Either with or without S. 1403, states hoping to assure primacy quickly should make variances from the federal regulations the exception rather than the rule to ensure program approval. But variances under S. 1403 theoretically should be easier to obtain because the state is not required to justify each word in state regulations which differs from each word in the federal regulations. Of course, state regulations must still satisfy the requirements of the federal act.

S. 1403 will not increase coal production. It has been adequately demonstrated, however, that environmental regulations did not put the industry where it is today; rather, events in recent years have made an unstable market. Coal-importing countries have turned to other more stable sources of supply. Coal production has actually increased since the passage of the federal act, but there are still no markets and coal stockpiling continues. Coal conversion of utilities is still on the horizon. Moreover, concern about the pollution associated with the preparation and burning

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<sup>10</sup> Pub. L. No. 95-87 §§ 521(a)(1), 517(b)(1).

<sup>11</sup> *Id.* at § 521(a)(1).

<sup>12</sup> *Id.* at § 520.

<sup>13</sup> *Id.* at § 504(a).

<sup>14</sup> *Id.* at § 504(b).

of coal has reached international proportions. Acid rain has become a household word. The country is being educated about the thousands of lakes made sterile by rain with a ph of less than five. In the West, railroad shipping rates have recently skyrocketed. Given this background, S. 1403 supporters hoped it could lighten the burden imposed by the federal regulations to the extent that state regulations would be more attuned to local needs. Although localized state regulations may not always reduce the cost of compliance, the costs associated with the federal regulations are, according to the industry and the Carter administration, unduly excessive.

#### IV. EVENTS SINCE THE AMENDMENT WAS WRITTEN

The problems outlined above could have been resolved by now had OSM and the states been able to work together. Unfortunately, they did not really begin to cooperate until September 1979. There has now been a shift in OSM's attitude. Key staff members were replaced by persons more receptive to the concept of working with the states. OSM began to realize that many of the states' concerns are or were real. OSM staffers began to work with state technical staffs to resolve problems and develop workable alternatives. Most recently a second letter of understanding between OSM and DNR was released. That letter addresses major problems with the federal regulations such as bonding, sediment control and methods of mining. Although some of these problems affect the coal states differently because of terrain or climate, they are of national importance. The sincere attempts to resolve these problems on OSM's part has encouraged many.

There are, however, signs of concern by others that the new cooperative attitude of OSM is only a temporary reaction to the Rockefeller Amendment. They fear it will disappear as quickly as it surfaced if S. 1403 is defeated. West Virginia officials do not share these concerns. They believe the states have been vindicated. They believe that the new OSM policy lends credence to the complaints which prompted S. 1403 and that the proposals to initiate rulemaking proceedings demonstrate that many federal regulations are not responsive to local conditions.

The threat to OSM embodied in S. 1403 is still very much alive as is OSM's most recent attempt to work with the states. The Rockefeller Amendment crystalized the states' frustration

and anger over "unworkable" regulations. OSM had not adequately cured the primary cause of that frustration and anger in a manner which was satisfactory to the states. OSM had not, during its first two years, responded well to the site-specific nature of coal mining.

### CONCLUSION

Had the federal act been passed in the early 1970's, OSM's regulations may have fared better. Perhaps then the "state window" concept would have been accepted in spite of OSM's attitude. During that period this country's environmental conscience was awakened with the passage of the Clean Air and Clean Water Acts, though neither of those Acts were as specific or as exacting as the 1977 Surface Mining Act. Now however, the tables have turned. The President's proposed Energy Mobilization Board bill epitomizes the rising fear of over-regulation. S. 1403 may well be a by-product of "over-regulation."

S. 1403 may set the tone for the 1980's. The federal and state governments must work together in the future if we are to resolve our environmental problems. Both sides must begin to appreciate the value of cooperation. Unfortunately, given the deadlines set by the Act, without S. 1403 no major eastern coal-producing state may receive state program approval before 1981.

S. 1403 gives the states a quicker, more acceptable opportunity to assume primacy with regulations tailored to local conditions. It also increases the risk of federal takeover if S. 1403 is abused. S. 1403 changes the federal regulations from mandatory to optional guidelines but those regulations remain binding on federal lands and on lands in those states which fail timely to obtain state program approval. Since those regulations also represent OSM's interpretation of the federal act, they will be highly persuasive indicia of the Act's requirements and would be so applied by the federal district court judges who will preside over litigation challenging the Secretary's disapproval of state programs (with S. 1403) or rejection of "state window" alternatives (without S. 1403).

There should be much give and take on both sides and certain compromises must be made concerning language of the states' regulations. Cooperation in the field between state and federal inspectors and operators must continue to improve. Fi-

nally, it is hoped that the operators will begin to understand what the federal act requires of them in each region of the country regardless of the fate of the Rockefeller Amendment.

S. 1403 presents the Congress with an early opportunity to weigh inflation, energy needs and protection of the environment. Today Americans are continually reminded of over-regulation and federal presence. Some nationwide polls show that a majority of Americans believe environmentalists are out of touch with reality. Yet, since those same polls also demonstrate that the majority of Americans want to protect the environment and prevent further environmental degradation, environmentalists cannot be too out of touch. No one will dispute the fact that coal mining does harm our environment. There is, however, disagreement on the degree of harm coal mining causes. Furthermore, while most agree that coal is needed to meet our energy needs, many fear the environmental costs are too high. S. 1403 may precipitate a confrontation among these conflicting concerns if it is put before the full House. S. 1403 may also foreshadow what role, if any, the states will play in development of national energy and environmental policies.



