Now, over a long period of time, our company has managed to pull ourselves up by the bootstrap and build a successful company employing 600 miners, and we pay good wages—and I have a couple behind me here—and good benefits. And they are the right kinds of benefits and the right kinds of wages. And we would be putting those people in jeopardy if we are forced to pay this reachback, maybe not this year, but in time. Just the same as the BCOA argued that you are putting the funds in jeopardy by imposing this reachback, you are putting a lot of good hard working people in jeopardy as well. There needs to be some equity in this whole debate.

Mr. PICKLE. When we passed the legislation last year, we made the prophecy a lot of the small companies would now be asked to pay for this, and we did not know who they were or to what extent they were involved. That search is now under way by the administration, to find out who would be covered. We have already found from your testimony that several of your companies out here are involved.

Would you all make a guess for me how many companies would be brought into this request for meeting these premium payments? How many, do you think, are companies out there?

Mr. WEINZIERL. I would believe that there are in excess of 100 small companies, just judging by the experience in our small county in Pennsylvania.

I know of at least six family owned companies that have not been signatory for many years that will be drawn into this. If our county is representative, it tells me there may be hundreds out there.

Mr. PICKLE. Are you all at the panel generally in agreement with that statement?

Mr. FALTIS. Yes, it is.

Mr. PICKLE. I want to leave the record open for any member of this committee to submit questions for answering to you other companies and for the administration and also ask the record to be kept open for any company to submit a statement to us that might be affected. I want to get the record as complete as we can.

I can't tell you what we will do on this because the purpose of this meeting today was to conduct a hearing in order to have you in and on the record, with the facts and figures about how companies are affected; and that is what our purpose has been today.

If any of you have additional statements you want to make, I would be glad to receive them.

I see Mr. Weinzierl wants to make a statement now.

Mr. WEINZIERL. Yes. I would like to address the question that you posed to Mr. Miercort about a definition of a small company.

Mr. PICKLE. Yes.

Mr. WEINZIERL. I think any coal company who has fewer than 25 employees is a small coal company, or any coal company with revenues of less than $2 million a year is a small coal company by any definition.

Mr. PICKLE. I noticed that was your statement earlier, and I am glad to have you repeat it. I don't know what the definition would be, but we would need to try to establish that.

I will say once more that each of your statements will be submitted to the administration and the various departments for some re-
spose. The response today was not very encouraging. They do not want to open this up in any respect. I think the problem is bigger than just the benefits for the coal miners. This is a national issue that is going to get more frustrating and more painful to settle if we don't try to reach some kind of better solution for it. I am hoping we will be able to do that, but I am not sure how we will proceed.

I do appreciate the testimony of each of you people that came here today; and if you have any additional statements for the record, we would be glad to receive them.

Mr. Payne do you have any other questions?

Mr. PAYNE. No, sir.

Mr. PICKLE. Well, again, I want to thank you again for your testimony. It has been very helpful, and we are glad to have it in the record.

The committee will now stand adjourned.
[Whereupon, at 3:50 p.m., the hearing was adjourned.]
[Submissions for the record follow:]
WRITTEN STATEMENT OF
MICHAEL D. GLASS
SUBMITTED TO THE HOUSE WAYS AND MEANS COMMITTEE
ON BEHALF OF
BARRICK GOLD EXPLORATION INCORPORATED

September 9, 1993


As set forth more fully herein, the Coal Act should be amended to provide employers, such as Barrick, with a refund, offset, or credit for their payments of contractual withdrawal liability under the National Bituminous Coal Wage Agreement of 1988 ("1988 NBCWA"), and their payments of "transition rule" contributions under Section 9704 (i) of the Act, since the denial of such refunds, offsets, or credits does not achieve any legitimate legislative objectives and, instead, is a wholly arbitrary penalty.

I. Factual Background

The Coal Act's impact on employers such as Barrick is particularly harsh and irrational. To fully appreciate this impact, however, it is necessary to understand the relationship between the Coal Act and the factual circumstances which make employers such as Barrick unique.

A. Barrick

Barrick is an Ohio corporation headquartered in Crown City, Ohio. Barrick is a former operator of bituminous coal mines where the hourly employees were represented by the United Mine Workers of America ("UMWA").

Barrick operated its mines under several National Bituminous Coal Wage Agreements ("NBCWAs") negotiated by the UMWA and the Bituminous Coal Operators' Association, Inc. Barrick's first coal mine opened in 1975 and the first NBCWA it signed was the 1974 NBCWA. Most recently, Barrick was bound by the 1988 NBCWA; however, Barrick permanently ceased covered operations in October, 1988.

B. NBCWA Obligations

The NBCWAs since 1978 contractually obligated signatories to maintain "Individual Employer Plans" which, among other things, provided health benefits to their own Retirees; however, for employers that permanently ceased operating during the term of the 1988 NBCWA, such as Barrick, this obligation was to end when the 1988 NBCWA expired at 11:59 p.m. on February 1, 1993. Thereafter, their Retirees were to receive health benefits from the 1974 Benefit Plan. See e.g., In Re: Chataugua Corporation, 945 F.2d (2d Cir. 1991), Cert. denied, 112 S.Ct. 1167 (1992).

The NBCWAs also contractually required signatories to contribute to the 1950 and 1974 Benefit Plans. The contributions were based on the hours worked by their classified employees, the tons of bituminous coal produced by their classified employees, and under certain circumstances, the tons of coals they procured or
acquired from other producers. Therefore, when an employer permanently ceased operating, it permanently ceased having an obligation to contribute to those Plans, a point which was specifically determined as to Barrick in Connors v. Barrick Gold Exploration, Incorporated, 745 F.Supp. 747 (D.D.C. 1990), aff'd, 946 F.2d 1564 (D.C. Cir. 1991).

The 1988 NBCWA significantly altered the aforesaid arrangement. For the first time, the NBCWA required an employer that permanently ceased to have an obligation to contribute to the 1950 and 1974 Plans to make an additional, lump sum payment to each Plan. These lump sum payments known as "contractual withdrawal liability" payments, were patterned after the withdrawal liability payments required by the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), 29 U.S.C. Section 1381 et seq.

Barrick paid a substantial amount in contractual withdrawal liability, despite operating a mere nine months under the 1988 NBCWA. Specifically, Barrick paid an additional $3,284,042.84 to the 1950 and 1974 Benefit Plan.

C. The Coal Act's Impact

The Coal Act has a uniquely harsh impact on employers such as Barrick to the extent it denies them a refund, offset, or credit for their payments of contractual withdrawal liability and "transition rule" contributions. This impact is illustrated below.

1. Contractual Withdrawal Liability

The Coal Act imposes financial burdens on thousands of former and current NBCWA signatories. Relatively few of those employers, however, are subjected to the dual burden of paying both contractual withdrawal liability and the financial obligations imposed by the Coal Act. Of the approximately 5,600 employers that have been identified with beneficiaries in the 1950 and/or 1974 Plans, and the 933 employers that have been identified as 1988 Agreement operators under the Coal Act, only 25 have paid contractual withdrawal liability. Further, the Coal Act expressly released many 1988 NBCWA signatories from any obligation to pay the same contractual withdrawal liability. Those 1988 NBCWA signatories that were still operating on February 1, 1993, when the 1950 and 1974 Benefit Plans were merged into the Combined Fund, should have permanently ceased to have an obligation to contribute to those Plans and thereby incurred contractual withdrawal liability under the 1988 NBCWA; however, the Coal Act expressly released them from that obligation by providing that the merger "shall not be treated as an employer withdrawal for purposes of any 1988 Coal Wage Agreement." See 26 U.S.C. Section 9702(a)(2).

Thus, while Barrick must pay both contractual withdrawal liability and the obligations imposed by the Coal Act, countless other employers never were exposed to contractual withdrawal liability, or were released from that obligation by the Act itself.

2. "Transition Rule" Contributions

The Coal Act contemplates that the Combined Fund's beneficiaries will be allotted to "assigned operators" by October

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1 Although Barrick paid $5,132,230.50 in contributions to the 1950 and 1974 Benefit Plans for hours worked and tons of coal produced or acquired, no retiree under said Plans ever worked for Barrick.

2 The payment was to be the product of the total number of hours worked by the employer's classified employees during the 60 months preceding the date of withdrawal, multiplied by the contribution rate in effect at the time of the withdrawal.
1, 1993, and that those operators will pay annual premiums to fully compensate the Combined Fund for all of the administrative and benefit costs it incurs after February 1, 1993. Specifically, the assigned operators will pay an annual premium for the plan years beginning October 1, 1993 and each October 1 thereafter, as well as a retroactive annual premium for the initial eight month plan year of February 1, 1993 through September 30, 1993. See 26 U.S.C. Sections 9703(g)(1) and (1)(3) 9704, and 9706.

Congress supplemented this scheme with a transitional scheme. Congress required all 1988 NBCWA operators to front the Combined Fund’s costs for the initial plan year (February 1, 1993 through September 30, 1993), i.e., to pay the Combined Fund’s costs until the "assigned operators" could be identified and annual premiums, including the retroactive annual premium for the initial plan year, could be assessed. See 26 U.S.C. Section 9704(i)(1)(A).

To avoid overpayments by 1988 NBCWA operators, Congress established a refund arrangement. Specifically, 1988 NBCWA operators that have beneficiaries in the Combined Fund (and therefore become "assigned operators" and are assessed annual premiums) may credit their "transitional rule" payments against their superseeding obligations to pay annual premiums (including, but not limited to, their retroactive annual premium). See 26 U.S.C. Section 9704(i)(1)(D)(1).

Nevertheless, Barrick and certain other 1988 NBCWA signatories will not receive a similar refund of their "transition rule" contributions. Employers that do not have any beneficiaries in the Combined Fund, such as Barrick, will not be assessed any annual premiums. Therefore, since crediting "transition rule" contributions against annual premiums is the only means of recovering one’s "transition rule" contributions, employers such as Barrick will be deprived of a refund, credit, or offset for their payments.

The denial of a refund, credit, or offset for these employers’ "transition rule" contributions will result in an overpayment to the Combined Fund. The retroactive annual premiums to be paid by assigned operators (including the credits given to 1988 agreement operators that made "transition rule" contributions) will fully compensate the Combined Fund for all of its costs during the initial plan year. Thus, once the retroactive premiums are assessed, the "transition rule" contributions of 1988 NBCWA signatories that have no beneficiaries necessarily will constitute a payment over and above that needed to fully reimburse the Combined Fund for its initial plan year costs.

Moreover, this overpayment will become a windfall for the employers that do have beneficiaries in the Combined Fund. Under Section 9704(e)(3) of the Coal Act, surpluses, such as that resulting from these overpayments, will be used to reduce the assigned operators’ annual premiums.

II. There is no rational justification for denying a refund, offset, or credit to employers, such as Barrick, for their payments of contractual withdrawal liability and "transition rule" contributions.

A. Contractual Withdrawal Liability

No legitimate legislative objective is rationally furthered by the Coal Act’s patently unfair denial of a refund, credit, or offset for payment of contractual withdrawal liability. First, the Coal Act does not depend on payments of contractual withdrawal to achieve its objectives since it contains a wholly separate means for funding the benefits to be provided. Second, a refund, offset, or credit for payments of contractual withdrawal liability would
not interfere with the Coal Act's provision and protection of benefits since the Trustees of the Combined Fund easily can recover the refunds, offsets, or credits from all contributing employers under the Coal Act's present funding scheme. Third, it is wholly irrational to deny a refund, offset, or credit for the payment of contractual withdrawal liability, but yet simultaneously exempt hundreds of other employers from the obligation to make such payments based solely on the fortuitous fact that they still were in operation on February 1, 1993.

Thus, the Coal Act's denial of a refund, offset, or credit for payments of contractual withdrawal liability cannot reasonably be characterized as anything other than a grossly arbitrary penalty for those few who, like Barrick, had the misfortune to both become bound by the 1988 NBCWA and cease operating prior to February 1, 1993.

B. "Transition Rule" Contributions

Congress rationally could require 1988 agreement operators to, in the first instance, pay "transition rule" contributions. Nevertheless, there is no rational justification for later denying those employers without any beneficiaries in the Combined Fund, such as Barrick, a refund, offset, or credit for their contributions since doing so simply generates an arbitrary overpayment to the Combined Fund.

First, the retention of such an overpayment is contrary to the Coal Act's stated legislative objectives. The Senate's Conference Report concerning the Coal Act show that Congress sought to avoid any overpayments by 1988 agreement operators:

During this [interim] period the 1988 NBCWA signatory will pay all of the Combined Fund's costs. Amounts will be paid based on the percentage of the total of each company's contributions to the UMWA 1950 and 1974 Benefit Plans made during the term of the 1988 Agreement. The statute makes provision for adjustments during the following plan year should a company under-pay or over-pay its actual obligations during this eight month period. (Emphasis added.)

138 Cong. Rec. Senate S.17605 (daily ed. Oct. 8, 1992.) Therefore, since employers such as Barrick ultimately have no "actual obligations during this eight month period," i.e., will not be assigned a retroactive annual premium for that period, it plainly follows that they have overpaid their obligations and should receive a corresponding refund, credit, or offset for that overpayment.

Second, the denial of a refund, offset, or credit for the "transition rule" contributions of employers such as Barrick is wholly arbitrary. Congress rationally chose to provide a credit to 1988 Agreement operators that are assessed retroactive annual premiums to avoid a double payment for the same costs. The denial of a refund offset, or credit for Barrick's "transition rule" contributions, however, results in a virtually identical double payment. Ultimately, both Barrick and some non-1988 agreement operators that are assessed retroactive annual premiums will together, make a double payment for the same costs. Therefore, given the Congressional determination that the operators that are

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3 For example, the refund, offset, or credit could be recovered as part of all 1988 agreement operators' deficit reduction contributions, 26 U.S.C. Section 2604(1)(1)(b), and/or as part of all assigned operators' annual premiums, 26 U.S.C. Section 9704(a).
assigned beneficiaries from the Combined Fund ultimately should be held liable for all of the Fund’s costs, there is no legitimate reason not to avoid this double payment and provide employers that have no beneficiaries in the Combined Fund, such as Barrick, with a refund, offset, or credit for their "transitional rule" contributions. Thus, as with payments of contractual withdrawal liability, the denial of a refund, offset, or credit for the payments of transition rule contributions by employers such as Barrick cannot reasonably be characterized as anything other than a grossly arbitrary penalty for those employers who, like Barrick, have no beneficiaries in the Combined Fund.

IV. Conclusion

The Coal Act must be amended to remedy its harsh and unfair impact on unique employers such as Barrick. First, the Coal Act must be amended to provide them with a refund, offset, or credit for their payments of contractual withdrawal liability. This amendment is needed to equalize them with the thousands of employers that have not paid contractual withdrawal liability, or have been exempted from that obligation by the Act itself. Second, the Coal Act must be amended to provide them with a refund, offset, or credit. Simply put, the Coal Act must be amended in these respects to avoid the grossly unfair and harsh impacts which it presently has on certain unique employers such as Barrick.
STATIONMENT OF
CANTERBURY COAL COMPANY
AVONMORE, PA

A. INTRODUCTION

Canterbury Coal Company ("Canterbury") strongly believes that the retroactive assessment of retiree health benefits enacted as part of the Coal Industry Retiree Health Benefit Act of 1992 ("the Coal Act") is an unwarranted and inequitable intrusion into the highly-competitive bituminous coal market. Other statements before this Committee will detail the gross inequities of this legislation. Bestowing a $130 million annual windfall on the coal companies that are members of the Bituminous Coal Operators Association ("BCOA") can hardly be called fair, particularly when the actual costs necessary to provide health insurance benefits to retirees in the coal industry are dramatically below the projections that spawned this legislation. While the reachback provisions of the Coal Act will benefit the large foreign-owned coal producers, who negotiated themselves into the current funding crisis, the legislation will immediately force several small to mid-size coal companies into bankruptcy.

Canterbury does not intend to expound on these arguments. Others testifying and presenting written statements will review these issues in greater detail. What Canterbury intends to demonstrate is the impact that this legislation will have on a medium-sized, privately-owned company that competes on a day-to-day basis with the "big boys" of the BCOA who are the direct beneficiaries of the reachback provision.

B. CANTERBURY COAL COMPANY - PRE-1989

Canterbury began mining coal in the early 1960's. Prior to 1989, it was owned by a succession of large, foreign-owned energy corporations. Those owners included Elf Aquitaine of France and Canada Development Corporation ("CDC"). In September, 1988, CDC was acquired by Nova Corp. of Alberta, Canada. Along with CDC's vast Canadian oil and natural gas reserves, Nova acquired Canterbury and its surface mining sister company, K & J Coal Company. Canterbury and K & J were always the step-children of the foreign-owned conglomerates. As early as the late 1970's, efforts were made to sell Canterbury and K & J. Those efforts were unavailing.

Canterbury had been a member of the BCOA through the 1978 National Bituminous Coal Wage Agreement ("NBCWA"). In 1981, Canterbury withdrew from the BCOA, but signed a "me-too" agreement. Shortly before the 1981 NBCWA expired on September 30, 1984, Canterbury lost a long-term contract with its major customer, the Keystone Power Plant. This forced Canterbury to sell its coal on the "spot market" and caused Canterbury to re-evaluate its position in its upcoming negotiations with the United Mine Workers of America ("UMWA") dramatically.

Thus, when negotiations for the 1984 NBCWA began, Canterbury chose to attempt to bargain a new agreement with the UMWA that would enable Canterbury to remain competitive in the bituminous coal market. After 19 negotiating sessions over a ten-month period, however, Canterbury and the UMWA were unable to reach a new labor agreement. Faced with mounting losses, Canterbury implemented its last, best and final offer. There ensued a lengthy and bitter strike which was settled in January 1989. In early 1989, Canterbury lawfully withdrew its recognition of the UMWA as the collective bargaining representative of its employees.

C. CANTERBURY - POST-1989

In February, 1988 George Desko was hired as President of Canterbury. In March 1989, George Desko and his wife Janet purchased the assets of Canterbury from Nova. Canterbury is now a Subchapter S corporation wholly-owned by George and Janet Desko. The Deskos are both natives of Western Pennsylvania. They have invested significant financial and personal capital into Canterbury. The remarkable turnaround of the Company since being purchased by the Deskos is truly an American success story.

In 1984, the last full year of production at Canterbury before the UMWA strike, Canterbury employees mined 2.57 tons of coal per man hour and the Company shipped
565,845 tons of coal. By comparison, in 1992, approximately the same number of employees mined an average of 4.95 tons of coal per man hour and the Company shipped 1.37 million tons of coal. Canterbury managed this dramatic increase in productivity without the technological advantages of the long wall mining process utilized by so many of the BCOA companies with whom it competes.

In addition to being more productive, the Canterbury mines are much safer. The accident incident rates for Canterbury in 1983 and 1984 were 19.86 and 18.14 respectively. In 1992, that accident incident rate on a company-wide basis was 8.26. This compares to a national average of approximately 12.0. Canterbury is part of the Kiski Tri-County Council for the purpose of calculating safety records. Canterbury accounts for approximately 60% of the man-hours in the Tri-County Council. The Kiski Tri-County Council has placed first in safety records for every year since 1988 in its group in Pennsylvania and, in 1988 and 1989, it placed first nationally.

Canterbury currently employs 149 employees. In addition, three subcontractors employ a total of 60 employees who work at Canterbury full-time. None of these employees would be employed at Canterbury today had Canterbury continued on its collision course with bankruptcy in 1984. The employees are well-paid. The average annual income per hourly employee at Canterbury is $46,000. This employee enjoys twelve days paid vacation, ten paid holidays, seven personal days, 100% family health insurance coverage, employee life insurance equal to approximately $40,000 per employee and a 401k retirement plan with employer contributions of 3% of the employee’s gross salary.

Canterbury is also active in the local community. It supports youth athletic programs, local schools, volunteer fire and rescue companies and other special community events.

Canterbury’s payroll costs, including taxes, are over $10 million per year. Canterbury generates approximately $22 million annually into the local economy. In addition to the 149 Canterbury employees and 60 employees employed by subcontractors, it is estimated that seven additional jobs for each Canterbury job are generated in related services in the local community. Canterbury is no longer the ugly step-child of a large, foreign-owned energy conglomerate. Rather, it is a viable, meaningful employer in a part of Western Pennsylvania that has seen better economic times.

D. THE IMPACT OF THE COAL ACT ON CANTERBURY’S OPERATIONS

Canterbury cannot tell this Committee that the enactment of the Coal Act will put it in dire and immediate threat of bankruptcy. What the Coal Act will do is place Canterbury at a distinct economic disadvantage with the major BCOA companies, and create the potential for a downward economic slide.

Canterbury’s chief competitors include Consol, Cyprus Energy, Peabody, U.S. Steel and Rochester & Pittsburgh Coal Company. These companies have a major technological advantage over Canterbury in that they have the capability to employ the highly-productive long wall mining method. When faced with this competition, Canterbury must rely on the creativity of its management and the hard work of its employees to survive and prosper.

Often, however, this is not enough. Each of the above companies, except R & P, has recently taken orders from Canterbury customers including Cleveland Electric, New York State Electric & Gas, Niagara Mohawk, Rochester Gas & Electric, Philadelphia Electric, and Metropolitan Edison. In addition, these BCOA companies have limited Canterbury’s contractual coal shipments to Pennsylvania Power & Light, and they compete directly for local business at the Keystone, Conemaugh and Homer City Power Plants.

1 The accident incident rate is an industry-wide standard. The rate is equal to the number of lost time or restricted duty accidents multiplied by 200,000 and divided by the total number of man hours worked.
As discussed above, these large BCOA companies, many of whom are foreign-owned, have distinct technological advantages over Canterbury. George Desko was aware of this when he purchased Canterbury. However, Mr. Desko also made certain other basic assumptions in 1989. One of those assumptions was that contractual provisions of the NBCWA provided that Canterbury's prior owners, and thus the new owners, had no contractual obligation to provide retiree health insurance benefits after Canterbury was no longer covered by the NBCWA. This was true even if Canterbury remained in the coal business. The Fourth Circuit Court of Appeals established this clear legal precedent in the Royal Coal case (District 29, UMWA v. UMWA 1974 Benefit Plan and Trust, 826 F.2d 280 (4th Cir. 1987), cert. denied, 108 S. Ct. 1111 (1988)).

Shortly after the Deskos purchased Canterbury, Judge Ziegler ruled in UMWA v. Nobel, 720 F. Supp. 1169 (W.D. Pa. 1989), aff'd., 902 F.2d 1558 (3d Cir. 1990) cert. denied sub nom., 111 S.C. 1102 (1991), that the 1972 Benefit Plan and Trust was obligated to provide health care benefits to retirees where the retirees last signatory employer was no longer a party to the NBCWA. The individual plaintiffs in the Nobel case specifically included Canterbury retirees. Judge Ziegler also noted in his opinion that during the 1988 negotiations, UMWA negotiators expressed skepticism that agreed upon contribution rates into the 1974 Benefit Plan would be sufficient to provide the required level of benefits. The BCOA responded that, "since they were guaranteeing the benefits, the UMWA should not be concerned about the contribution rate, and that additional money would be forthcoming as necessary." 720 F. Supp. at 1178. The Royal Coal and Nobel decisions were a logical reading of the NBCWA and made common sense given Canterbury's contributions over the years it was covered by the NBCWA. Although time constraints prevented a thorough calculation, a fairly accurate estimate of the amount paid by Canterbury to the UMWA Funds to cover its retirees is $15 million. The obligation to continue providing retiree health insurance benefits, however, ended with the expiration of the 1981 Agreement.

What George Desko did not assume was that Congress would overrule the Royal Coal and Noble cases and retroactively impose a substantial and ongoing liability on Canterbury and similarly situated companies. The "additional money" that Judge Ziegler found the BCOA guaranteed the 1974 Benefit Fund in the 1988 negotiations will now come in part from the "reachback" companies. The Act not only provides the BCOA companies an annual $130 million windfall, as described by former BCOA President Joseph P. Brennan in a letter to the BCOA membership, but also puts an additional production cost on Canterbury. It is anticipated that Canterbury's additional costs under the Coal Act, assuming an average cost of $2400 for each of Canterbury's 220 assigned retirees, will be $528,000. This cost, when averaged over Canterbury's total sales, will result in an increased production cost of $39 for each ton of coal that Canterbury sells. In a highly competitive bituminous coal market, this seemingly small difference can mean the difference between getting orders and not getting orders; between a successful year and a year incurring losses; and, over the long haul, between economic viability and financial disaster. In short, the Coal Act is a double whammy for Canterbury. It provides the BCOA companies, who negotiated the financial disaster that now faces the UMWA Benefit Trusts, a massive windfall for costs that they will not have to pay. It places an additional cost per ton burden on Canterbury and other "reachback" victims competing with the BCOA companies.

E.

CONCLUSION

The fact that the "reachback" provision of the Coal Act creates a reverse "Robin Hood" effect of giving to the rich and forcing many smaller companies into bankruptcy has been well-chronicled in testimony before this Committee. Beyond that, many small to medium-sized coal companies, such as Canterbury, who are locally owned and provide an enormous economic benefit to the local community, will be dramatically effected by the reachback provision. It is difficult to believe that this was one of the intended results of the Coal Act.
STATEMENT OF
CLEVELAND-CLIFFS INC
to the
COMMITTEE ON WAYS AND MEANS
on
SECTION 19143 OF THE ENERGY POLICY ACT OF 1992
(Provisions Relating to Health Benefits of Retired Coal Miners)
September 9, 1993

This written statement for the printed record of the public hearing on Section 19143 of the subject Act is being submitted on behalf of Cleveland-Cliffs Inc and its consolidated subsidiaries ("Cleveland-Cliffs") by M. Thomas Moore, who is Chairman and Chief Executive Officer of Cleveland-Cliffs Inc.

Section 19143 affects Cleveland-Cliffs, an iron ore mining and management company, solely as a so-called "reachback" company. Our exposure is brought about by prior activities and transactions of and related to a subsidiary which was acquired by Cleveland-Cliffs in 1986 for its iron ore businesses. It is our view that all health benefit obligations of this acquired subsidiary to coal retirees and their beneficiaries have previously been fulfilled and that Cleveland-Cliffs should not retroactively, and with no knowledge at the time of acquisition, be required by law to pay reachback assessments.

Insufficient factual information regarding benefit costs and associated beneficiaries prevents us from accurately calculating the exposure of Cleveland-Cliffs to liability under Section 19143, but preliminary calculations indicate that our initial annual cost could be one-half million dollars or more, with escalation expected in future years. In any case, due to intense global competition and downward pressure on iron ore prices, Cleveland-Cliffs can ill-afford any coal-related costs of this type. We and our domestic managed operations, with approximately 3,600 active employees and 7,200 of their dependents in our health care program, are providing increasingly costly health care coverage for more than 4,300 of our own retirees and dependents.

Not only do we question federal mandates to solve financial problems arising from private contracts, but we believe that forcing prior signatory operators no longer in the coal business to subsidize the cost of benefits inadequately funded by signatories to subsequent coal wage agreements sets a terrible legislative precedent.

Prior to acquisition by Cleveland-Cliffs, the aforementioned company was engaged through its related entities in the production of bituminous coal in Kentucky; and two of its subsidiaries were formerly signatories to wage agreements with the United Mine Workers of America (UMWA). One subsidiary ceased producing coal in 1982 and the other ceased doing business in 1985. The latter never produced coal for its own account, but only as manager for others. Apart from our other objections, we consider it most unfair to retroactively tax under this new statute a company which had no economic interest in the coal it produced.

These two companies made no contractual promise to provide lifetime health benefits to any UMWA retiree. Under applicable law when they were operating, they had no obligation to provide health benefits to retirees beyond the term of the wage agreement; and no such obligation was contemplated. As a result, they did not and could not take the cost of providing these future health benefits into account during their operating years. Further, they have long since ceased producing coal; and there is no coal revenue to fund these costs today. Now, Section 19143 imposes on Cleveland-Cliffs an obligation to fund from iron ore and other miscellaneous revenues health benefits for life to UMWA retirees who, presumably, were last employed by these companies, as well as their widows and dependents. Even more shocking is the requirement to provide funding of such benefits for retirees who were never employed by these acquired entities.

It is our understanding that retiree health benefit funds, established by agreement of member companies of the Bituminous Coal Operators Association ("BCOA") and the UMWA, were solvent until 1988, when a new and dramatically reduced funding scheme was adopted pursuant to a new pattern wage agreement established with the UMWA. This background information is particularly disturbing to Cleveland-Cliffs because none of our acquired subsidiaries was a signatory to a 1988 wage agreement with the UMWA.
We have also been advised that the objectionable "premiums" under Section 19143 may be in violation of the Contracts Clause, the prohibition against ex post facto laws, and the due process requirements of the United States Constitution. We trust that the Committee on Ways and Means will feel it has an obligation to seek expert advice on these constitutional issues of fairness and consider alternative, less troublesome, approaches.

While we find the reachback provisions in their entirety to be fundamentally bad legislation, we must also point out that the definition of "related persons" creates an inequitable, and most likely unintended, result under certain joint venture arrangements. The clear intent of the statute is to hold liable all persons or entities that actively participated in the ownership and operation of a business arrangement within the coal industry, but the Act does not extend to a former coal venturer that was not within the same controlled group as the signatory operator.

In our judgment, the Committee should also take into account the considerable momentum that already exists for national health care reform and the likelihood that a much broader, comprehensive, federal statute could make irrelevant Section 19143, which covers only a small fraction of the population in need of health care protection.

We recognize that BCOA and the UMWA may have precipitated a serious problem with respect to inadequate funding for health benefits, commencing with the 1998 wage agreement; but we also understand that there is considerable uncertainty about the existence and magnitude of estimated fund deficits in the future after required transfer payments are made from overfunded UMWA pension funds and following a reasonable period of claims experience. Consequently, it is not possible to determine whether supplemental funding of any type is really necessary; but there is substantial support to conclude in the negative.

Because 19143 as it pertains to reachback companies is grossly unjust and categorically not the answer to whatever problem does exist, we ask that all provisions of the Act requiring premium payments by entities not party to a 1988 coal wage agreement be repealed. As a secondary alternative, we propose that commencement of premiums be statutorily deferred until your committee has had an opportunity to thoroughly review the facts and develop appropriate amending legislation to properly cure the above-mentioned deficiencies and inequities.
FLORENCE MINING COMPANY
P. O. Box 51, New Florence, PA 15944
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September 7, 1993

U. S. House of Representatives
Committee on Ways and Means
Ms. Janice Mayo
Chief Council and Staff Director
1102 Longworth House Office Building
Washington, DC 20515

Representatives:

The Energy Policy Act of 1992 (P.L. 102-486 at Section 19143) imposed on various coal mining companies liabilities to provide lifetime health care benefits to currently retired and other eligible miners. Companies such as Florence Mining Company, which were signatory to the 1988 National Bituminous Coal Wage Agreement (1988 NBCWA), were statutorily required to maintain existing coverage not only for its own retired miners, but Florence was made liable for "orphan" retirees of other employers.

The impact of these provisions is substantial and endangers the financial survival of Florence Mining. The requirement to provide benefits to Florence's own retirees is the least troubling. As a signator to the 1988 NBCWA, Florence provided these benefits to its own retirees; and when Florence ceased operations, there was a calculation to make a one-time payment to transfer our retirees' liability to the 1974 Benefit Trust. While the Act is significantly more expensive than the Agreement mechanism, obvious problems with the mechanism indicated that some adjustment would be necessary in the next Agreement. The Act made that adjustment arbitrary rather than waiting for the collective bargaining process.

However, the Act also obligated the 1988 NBCWA signatories to pay for other companies' employee benefits through first year costs of the 1992 Welfare Fund and continuing contributions thereafter. Those costs are significant, cannot be quantified, and may place an unbearable burden on Florence. Our share of the first year cost of providing benefits to retirees other than our employees—determined in accordance with the Act—was approximately $700,000.

These payments were to be refunded after the "reach back" operators were identified and billed for the cost of providing benefits to their retired employees. Into the future the "reach back" operators would be obligated to continue coverage for their retirees just like the 1988 NBCWA signatories. In addition, each 1988 NBCWA signator and "reach back" operator was also made responsible for a percentage of the cost of providing benefits to those retirees whose last employer no longer exists. Florence Mining Company has stopped producing coal. Its only coal supply contract terminated in 1992; and because of high costs, it could no longer compete in the marketplace. After operations had been finished and plans had been laid to satisfy the remaining obligations of Florence Mining Company, the Act imposed additional liabilities of as much as $40 million, most of which are for other companies' employees.
The retroactive imposition of other employers' life-time obligations on Florence Mining Company is unreasonable. If the national policy of the United States is best served by imposing a cost on the shareholders of each coal company of providing health benefits which cannot be factored into contracts that have expired, the shareholders of all coal companies should bear that cost. There is no reason to exclude metallurgical coal producers, exporters of coal, lignite producers, or producers who are no longer active in the coal business. If there is any narrowing of base by excluding certain current or former employers, the amount of Florence's liability will increase—hastening the day when Florence may be unable to provide any benefits.

If the National Policy of the United States is to provide these benefits, then the base from which collections are made has to be as wide as possible. An expansion of the base would be more appropriate than any effort to reduce the companies required to contribute.

Very truly yours,

Ralph Woods
President

RW: ow: usreps. may
Mr. Chairman and Members of the Committee, thank you for the opportunity to submit this written statement.

My name is J. Eugene Kidd. I live in Lynchburg, Virginia, and I am Vice President of Industrial Maintenance & Fabricating, Inc., a small company located in Campbell County, Virginia. Industrial Maintenance & Fabricating, Inc., known locally as "IMF," provides crane and rigging services, steel erection services, and installs and does maintenance work on water and sewer pumping stations.

This statement is submitted to urge you to change a law enacted last year known as the Coal Mine Retiree Health Act ("Coal Act"). The Coal Act helps guarantee the medical insurance benefits of retired UMWA coal miners. I am not opposed to the general purpose of the Coal Act, nor the majority of its provisions. What I am seeking is a change in the way the Coal Act helps pay for these retirees' benefits. In particular, I want to plead for elimination of the so-called "reachback" provisions of the Coal Act. If these are not eliminated, IMF will be forced into bankruptcy, and its employees will be put out of work.

IMF was started in 1979 by a group of individuals in the Lynchburg, Virginia, area. I came to work for IMF in 1986. In 1988, we realized that we needed money to help fund IMF's expanding business. A former coal mining company, Milburn Colliery Company, provided these funds by acquiring IMF and establishing a working capital loan. Current management was retained to run the business.

IMF has struggled to survive in difficult economic times. I think all of you are aware of the construction recession which has penalized construction firms over the past 4 years. Despite recent losses, Milburn has continued to support IMF, and our company appears to be on the way to a turnaround in 1993. We have worked hard to reach this point and, as of last week, had 27 people at work. Now, however, because of the "reachback" provisions of the Coal Act, we're going to lose the company.

The reason is because our company's parent company, Milburn Colliery Company, operated a UMWA coal mine from 1957 until 1984. Milburn ceased producing coal in 1984 due to economic reasons but, nevertheless, continued to meet all of its mine reclamation, Federal Black Lung and West Virginia Workers' Compensation obligations. According to the Trustees of the UMWA Benefit Plans, Milburn has 118 beneficiaries whom Milburn will have to pay for under the Coal Act. At $2,000 per beneficiary per year, this is nearly $250,000 per year before any "orphan" beneficiaries get added on.

Milburn Colliery Company will not be able to survive this expense. Copies of the company's financial statements have been provided to Congressman Payne's office. Because IMF is owned by Milburn, we will go down the drain, too.

This result is not right and not fair. IMF and its employees have never had anything to do with the UMWA Benefit Plans. IMF has never been in the mining business and never
signed a UMWA contract. At the time Milburn invested in IMF, Milburn had been out of the mining business for over three years and, under the law as it stood then, had satisfied all of its obligations to the UMWA Benefit Plans. The Coal Act completely reversed the law. It imposed on Milburn a liability Milburn never had before, and it will sink IMF and all IMF's employees in the process.

IMF does not stand alone here. Milburn also invested in another business, Cogar Mine Supply, Inc., which is based in Congressman Rahall's district in West Virginia. Cogar also faces bankruptcy if the "reachback" provisions are not changed. Lowell Cogar, President of the Cogar Mine Supply, is scheduled to testify before your Committee.

What is gained at the expense of IMF, Cogar and Milburn? What is gained by completely reversing the law and imposing an incredible financial burden on Milburn and its affiliates out of the clear blue? Senator Rockefeller insists that we are gaining insurance for the provision of medical benefits to UMWA retirees. But Milburn, IMF and Cogar won't help because they will be financially unable to do so.

What really happens is that the responsibility for paying those retiree benefits gets shifted from the big, foreign-owned BCOA companies, who guaranteed the benefits in the 1988 National Wage Agreement, and who can afford them, to smaller companies who left BCOA before the 1988 Agreement and did not guarantee the benefits. The big BCOA companies, Peabody, Consol, Ashland -- mostly foreign owned -- get a windfall estimated at $130 million a year, and IMF in Campbell County, Virginia, goes broke and all its employees go jobless.

I don't believe this is what Congress intended in the Coal Act. I don't think Congress wants to send small, American businesses down the tube in order to save money for big, foreign-owned coal companies. I am asking for my job and the jobs of my employees. Please fix the injustice in the Coal Act by eliminating the "reachback" provisions. Alternatively, please enact an exemption from the "reachback" provisions for small companies like ours which won't be able to contribute and which will go bankrupt if forced to.

Thank you so much for providing the opportunity to present this written statement. I am confident that you will act to correct this horrible injustice which will cost American jobs without any corresponding benefit whatsoever.
STATEMENT OF DAVID H. HOAG
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
LTV STEEL COMPANY
Before
The House Ways and Means Committee
September 9, 1993

LTV Steel, the nation's third largest steel producer, was formed by the corporate mergers of Jones & Laughlin Steel, Youngstown Sheet & Tube and Republic Steel. Either directly or through subsidiaries, LTV Steel owned numerous coal mines whose employees were represented by the United Mine Workers of America (UMWA). Over the years, LTV Steel either sold these mines as on-going concerns or ceased the operations at these properties. The last collective bargaining agreement with the UMWA entered into by a LTV-related Company was the 1984 Wage Agreement which terminated on January 31, 1988.

In July, 1986, The LTV Corporation and 66 of its subsidiaries including LTV Steel and its coal mining subsidiaries filed petitions for reorganization under Chapter 11 in Bankruptcy Court in the Southern District of New York. One of the main forces driving LTV to seek Bankruptcy Court protection was its immense retiree obligations, both pension and health care. Through the mergers and subsequent rationalizations, LTV Steel was faced with a retiree to active employee ratio of greater than 3:1.

In late 1987, LTV notified the BCOA, the UMWA and the UMWA Benefit Trusts that it was going out of the coal mining business and therefore would not be a party to the 1988 negotiations round. Since the obligation to provide retiree insurance terminated with the labor agreement, the 1974 UMWA Benefit Trust was apprised that effective February 1, 1988, the LTV-related retirees' benefits were payable from that Trust. The Trust refused to honor its obligation forcing LTV to resort to litigation. While the case was pending in court, LTV sought and obtained authority from the Bankruptcy Court to continue to fund these retiree benefits, even though the Trust clearly had the legal obligation to do so. In August, 1988, the Bankruptcy Court ruled that LTV's obligation to provide retiree benefits terminated with its bargaining agreement on January 31, 1988, and that the 1974 UMWA Benefit Trust was legally obligated to provide such benefits. This decision was upheld in the District Court, Court of Appeals for the Second Circuit and review was denied by the Supreme Court.

During the course of the nearly seven years of operating in Chapter 11, LTV saw four of its major pension plans terminated by the PBGC and subsequently three of them restored after much complex litigation culminating in a case decided by the Supreme Court. After restoration of the Pension Plans, a precedent-setting agreement was reached with the PBGC which provided for a 30-year flexible funding schedule with an initial contribution of nearly $1 billion. Retiree health benefits were also restructured through (1) collective bargaining with the USWA under the auspices of the Bankruptcy Court with a $1113 contract rejection proceeding pending, and (2) an agreement reached with a committee of salaried retirees, under $1114 to modify retirees' benefits. Further, the Company took action with its salaried-active employee benefit program and is implementing a new program of benefits for its active USWA employees per its labor agreement.

LTV Steel restructured its retiree benefit obligations to more manageable proportions allowing it to reorganize and emerge from Chapter 11 as a strong competitor in the steel marketplace. As the Company puts the
"Finishing touches" on the final Plan of reorganization, Congress passed the Coal Industry Retiree Health Benefits Act. The Act serves to impose upon LTV a retiree health benefit obligation of $16,000,000 annually or in other words, presents a net present value liability of $138,000,000. LTV is already responsible for providing retiree health care benefits for 100,000 retirees (or retirees and dependents) at a cost in 1992 of $150,000,000! LTV carefully restructured and negotiated its retiree health benefit obligation in reliance upon the judicial determinations that it was relieved of its collective bargaining obligations to its UMWA retirees, having fully complied with its contract and having lawfully exited from the bituminous coal mining industry.

This Act’s new premium obligations impose much greater burdens upon LTV than those agreed to by LTV when it was a party to the subject collective bargaining agreements.

It must be remembered that LTV had no role at all in creating the crisis which was the genesis of the Act. The UMWA Benefits Funds had Surplus of over $33 million when LTV exited the bituminous coal mining industry. Thus, the Act serves to reach-back to the pre-1988 signatories and impose upon these companies a plan to cure the problems that they had no role in creating. Indeed, the reach-back companies such as LTV are no more responsible for the status of the coal mine retirees' benefit funding than society at large.
Statement of Maxus Energy Corporation
Committee on Ways and Means
U.S. House of Representatives

Hearing on Provisions Relating to the
Health Benefits of Retiree Coal Miners

September 9, 1993

Maxus Energy Corporation is an independent oil and gas exploration and production company, headquartered in Dallas, Texas. Until 1987, when the refining and marketing operations of our company were spun off to our shareholders we were known as Diamond Shamrock Corporation. Prior to 1987, Diamond Shamrock was involved in a number of businesses including coal operations.

Our coal business included mining operations in Kentucky, West Virginia, Utah and Pennsylvania. Our last active coal mine, the Gateway Mine in Green County, Pennsylvania, was closed in May 1990 and reclamation activities were substantially completed by the end of 1991. Maxus acquired the Gateway Mine from two steel companies, both of which became bankrupt and as a result of bankruptcy were relieved of contractual obligations to purchase coal from the Gateway Mine. Without these contracts, the mine could no longer be operated profitably and consequently failed. Even counting its recoveries as a creditor in bankruptcy, Maxus has lost in excess of $100 million on the Gateway Mine.

We submit this statement in opposition to the so-called "reachback" provisions of "The Coal Industry Retiree Health Benefits Act of 1992." Under that Act, Maxus will be assessed monies to provide benefits for miners who were totally unrelated to Gateway Coal Company or any of our mining operations. We believe that such a retroactive assessment is in violation of our contractual rights and a "bail out" for the broken commitments of others.

During the time of operating the Gateway Mine, UMWA health benefits were provided as specified by the labor contract to which we were a party. Currently, the Gateway retirees receive health care benefits which are more comprehensive than the retirees or employees of Maxus Energy Corporation. There is no charge for premiums and these retirees provide about $150 per year in co-payments according to the union's specifications. Additionally, Maxus recently paid in excess of $5,180,000 into the appropriate union benefit fund as contractual withdrawal liability. We feel that we have provided all of these benefits in good faith, and we continue to comply with the provisions of our contract.
During debate on the bill we brought to the attention of the Congress many of the inequities and the harsh impact of the bill on our company. At that time, we were assured that the Congress would revisit this law and examine what in short appears to be a "retroactive tax" on our company. In Maxus' case, the real retroactive effect of this legislation is that Maxus could have closed the "failing" Gateway Mine in 1988 and not incurred contractual withdrawal liability, had it known of the inequities of this legislation. To avoid this retroactive tax and harsh treatment, we believe it is important that the Congress address the "reachback provision." If this provision is not addressed, it provides dangerous precedent for industries such as the airlines, automobiles, and others that may have to be bailed out because they cannot meet their retiree health benefits promises. Certainly, Maxus Energy Corporation has fulfilled its legal and moral obligations to its employees and we object to this unprecedented reachback provision that would force us at tremendous financial costs to pick up the obligations of others.

Thank you for your consideration.
The Honorable Dan Rostenkowski
Chairman, Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Rostenkowski:

On September 9 your committee held a hearing on provisions of the Energy Policy Act relating to the health benefits of retired coal miners. In the hearing notice preceding the hearing the committee requested testimony on several specific proposals including H.R. 1443, introduced by Rep. Boucher and others, which would provide a tax credit for certain metallurgical coal production.

At the hearing, several witnesses testified regarding the present state of the metallurgical coal industry in the United States. Enclosed for the committee’s consideration is background information on the status of the metallurgical coal industry from a domestic and export perspective.

Since 1980, metallurgical coal production for domestic use has declined by 50 percent. Over the same period the U.S. metallurgical coal industry’s share of the world metallurgical coal market has declined from approximately 50 percent to 35 percent. As a consequence, a number of mines have either been forced to reduce production or close prematurely and hundreds of miners have lost employment. While decreased economic activity on a global level is partially responsible for the decline in U.S. metallurgical coal production, whether the U.S. can gain the market back will be a function of two factors: competitiveness in the market and the availability of production capacity. To realize this objective, the U.S. must level the playing field with our international competitors. Some form of tax credit for U.S. metallurgical coal would seem to be in order.

Please contact me if additional information would be helpful.

Sincerely,

Richard L. Lawson

cc: Rep. Bill Archer
Ranking Minority Member
Rep. Rick Boucher
Committee Members

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Coal production has increased 20 percent since 1980 rising from 830 million tons to a peak of 1.029 billion tons in 1990. Production has remained at close to the billion ton mark since. This growth has been due to an increase in demand for steam coal, the coal used by industry and by utilities to generate some 57 percent of this nation's electricity. The metallurgical coal industry, however, has not experienced the growth that the steam coal industry has enjoyed and, indeed, met coal production has declined from 130 million tons in 1980 to 91 million tons in 1992. Met coal production in 1993 is likely to be even lower at an approximate 80 million tons.

Metallurgical coal is the high quality coal (high Btu, low sulfur, low ash with the agglomerating characteristics that allow the coal to soften when heated to form a hard coke) that is sold to steel mills for the production of coke. The met coal produced in this country is sold for export to steel companies around the world.

Metallurgical coal reserves are found in the East Kentucky, Virginia, Southern West Virginia area, in parts of Pennsylvania, in Alabama, Illinois and — in the west — in Utah and Colorado. Very small reserves are found in several other states, Ohio, Oklahoma, Tennessee, but these reserves are not being mined at present.

As pointed out, U.S. metallurgical coal production has declined sharply over the past decade, a decline that has caused a significant shift in production patterns and a significant decline in employment — especially in those mines that were dedicated to the domestic market where the drop in demand has been most severe. At its peak, during the 1950's, met coal production approximated 150 million tons: 40 million for export and 110 million for domestic uses. In 1980, met production was 130 million tons: 66 million for domestic and 63 million for export. In 1992, met production was 91 million tons: 60 million for export and 31 million for domestic. (See Chart One). The domestic and export markets are discussed separately due to the outlook for each market which is markedly different.

**Domestic**

Since 1980, metallurgical coal for domestic use has declined by 50 percent. In 1980, met coal mines serving the domestic market were found in 10 states, today met coal is mined in quantity for domestic use in eight states. In those eight, production in Alabama has declined by 58 percent, in Colorado by 96 percent, in Illinois by 81 percent and in Pennsylvania by 80 percent all when comparing 1980 and 1992. (See Chart Two). Only the East Kentucky, Virginia, Southern West Virginia met production fields have shown a smaller percentage drop with a 31 percent — or 11 million ton — production decline.

This decline in demand for met coal coupled with sharp technology driven increases in productivity, has caused the loss of at least 14,000 jobs in the mines: 1,000 in Alabama,
1,100 in Colorado, 1,000 in Illinois; 4,500 in the combined East Kentucky, Virginia, South West Virginia area and almost 6,000 in Pennsylvania.

The prime reason for the decline in domestic demand for coking coal has been the change in the structure of the domestic steel industry which in turn has caused a decline in the use of coke. Since reaching an all-time high of 151 million tons in 1973 raw steel output fell to recession year low of 75 million tons in 1982. It has since rebounded to approximately 90 million tons but in the interim, uneconomic facilities have closed and U.S. production capacity for raw steel production has been reduced from 170 million tons in 1977 to approximately 110 million tons today.

Rationalization of the steel industry has caused the patterns of steelmaking to shift significantly. Basic oxygen furnaces have completely replaced less efficient open hearth furnaces, and even more directly related to the drop in demand for coke (and met coal) is the increase in the use of electric furnaces which use no coke. Today, almost 40 percent of raw steel production is electric furnace production. (This in turn has resulted in an increase in steam coal for electricity but from different mines.)

Coke oven capacity has declined in direct proportion to the decline in the demand for coke and increasingly stringent environmental regulations. Today the steel industry can not use over 35 million tons of met coal per year for coke. Under existing environmental regulation new coke ovens will not be built within the United States. At present any demand for coke beyond capacity limits is, and will be, met by an increase in imports which have fluctuated over the past decade from less than 500,000 tons to almost three million tons. At this level, some 5 tons of domestic met coal is displaced, tons which would create jobs for almost 1,200 miners.

Other technological changes, such as the use of a new "pulverized coal injection" process to make coke further reduces demand for met coal as this process can make use of lower quality steam coals. Thus the outlook for an increase in demand for met coal is linked to economic growth and increased demand in the steel and foundry industries.

Export

On the export side, however, the potential is somewhat different. Total shipments of U.S. met coal have varied from a high of 65 million tons to a low of 50 million tons since 1980. U.S. coals have provided a bright spot in our overall trade picture adding some 4 billion dollars to the positive side of our balance of payment ledger. Demand for U.S. met coal on the world market depends upon a number of factors: economic activity, demand for steel, the move to PCI technology and most importantly, the competitiveness of U.S. coals vis a vis our main competitors.

Over the past decade, the U.S. met coal has lost a share of the world met market to Australia and to Canada. In 1980, the U.S. supplied almost half the approximate 135 million
tons of met coal traded in the world market. In 1992 the U.S. market share had declined to just over 35 percent of a 170 million ton market.

Since 1980 the markets for U.S. coal have shifted from one dominated by the Japanese to one dominated by Europe. U.S. exports of met coal to Japan have declined from 22 million tons in 1980 (31 percent of the Japanese market) to less than 10 million tons in 1992 (when the U.S. held just over 13 percent of the Japanese market). Total Japanese imports of met coal have increased from 68 million tons to 83 million tons over the same period with the increases going primarily to Australia.

Total European take of U.S. met coal has increased since 1980, going from 26 million tons to a high of 36 million in 1991 before dropping back off due to a recession in Europe. The U.S. has been able to roughly maintain exports of met coal to Korea and Brazil over the past decade.

In 1993, U.S. met coal exports will decline again from 1991’s 64 million ton level and 1992’s 59 million ton level to about 48 to 50 million tons. With this approximate 10 million ton decline goes over 2000 jobs. Much of the experience of the last two years has been directly related to worldwide economic conditions but whether the U.S. can gain the market back — when economic conditions improve — depends on two factors: competitiveness in the market and availability of production capacity.

Mines cannot stay open without a steady market and once closed may not reopen. The latest decline in our export sales may mean a permanent loss of met production capacity unless assistance is given to make these mines more competitive.

The world met market has always been very competitive with sales turning on a very small margin. The U.S. coal producer has maintained the position it has because the average f.o.b. port value has declined from $51.00 per ton in 1980 to approximately $44.00 today in current dollar terms. All the reduction in price has been taken at the mine. Reductions have not been in transportation costs.

Simultaneously, however, other countries have also lowered prices. Currency fluctuations (all sales in the world market are denominated in dollars) have oft times worked against the U.S. producers. Finally, the U.S. producer has been required to meet environmental and other standards which are more costly than competitors (which are sometimes subsidized directly by governments).
Chart Two

Metallurgical Coal Production for Domestic Use - By State

Thousand Tons

Alabama | Colorado | Illinois | E.Ky/W.Va/W.Va | Pennsylvania | Utah | Oklahoma

1980 | 1992
CHART ONE

Metallurgical Coal Production
Domestic/Export

Thousand Tons

Export

Domestic

Ms. Janice Mays  
Majority Chief Counsel  
U. S. House of Representatives  
House Ways and Means Committee  
1102 Longworth House Office Building  
Independence & New Jersey Avenue, S.E.  
Washington, D.C. 20515

Mr. Philip Mosely  
Minority Chief of Staff  
U. S. House of Representatives  
House Ways and Means Committee  
1106 Longworth House Office Building  
Independence & New Jersey Avenue, S.E.  
Washington, D.C. 20515

Dear Ms. Mays and Mr. Mosely:

We were informed on the day of the House Ways and Means Committee hearing by Congressman Douglas Applegate’s office that we would be allowed to submit written testimony for the record for two weeks following that date. Today we learned from your office that the record was closed on September 9, 1993.

Enclosed is an additional copy of our letter to the Honorable Dan Rostenkowski, as well as other members of the House Ways and Means Committee.

As The Ohio Valley Coal Company considers this to be a very important matter, hopefully our concerns, which we could not communicate on the day of the hearing, will be made known to, and discussed by, the members of the House Ways and Means Committee.

Very truly yours,

THE OHIO VALLEY COAL COMPANY

Thomas T. Holmes  
General Counsel

TTH:pm

Enclosure
September 23, 1993

Mr. Philip Mosely
Minority Chief of Staff
U. S. House of Representatives
House Ways and Means Committee
1106 Longworth House Office Building
Independence & New Jersey Avenue, S.E.
Washington, D.C. 20515

Dear Mr. Mosely:

With regard to the recent hearing conducted by the Ways and Means Committee of the United States House of Representatives relating to health benefits of certain retired coal miners, as covered in Section 19143 of the Energy Policy Act of 1992 (P.L. 102-486), please consider the enclosed information.

The Ohio Valley Coal Company, which I serve as General Counsel, has, since its inception on May 25, 1988, paid $15,610,063.11 into the United Mine Workers of America Health and Retirement Funds. However, only $8,242,609.06 was contributed for Ohio Valley employees. The remaining $7,367,454.05 was involuntarily paid to cover other employees of other coal companies which have dumped their bona fide liabilities on the United Mine Workers Health and Retirement Funds and other coal companies.

Again, let me emphasize that $7.4 million, or 47%, of our payments to the United Mine Workers of American Health and Retirement Funds were contributed to cover obligations of other coal companies for people who never worked for Ohio Valley or its predecessor. Yet, these companies have the audacity to claim that their obligations for their former employees are no longer theirs, and they had gotten away with it until the situation was corrected by Section 19143 of the Energy Policy Act of 1992.

Ohio Valley is a small, independent coal mining company. Yet, multi-billion dollar corporations have testified before your Committee that our small company should pay their liabilities as a result of their legal maneuverings, "corporate veils", and other shenanigans. The proposal to exempt so-called "reach-back" companies or companies which export coal from their liabilities under the Act is not fair to Ohio Valley or to any small, independent mining company.
Page 2
September 23, 1993

Hopefully, for the economic survival of Ohio Valley and other coal mining companies such as ours, the House Ways and Means Committee will immediately truncate any further consideration of a modification to Section 19143 of P.L. 102-486, the Energy Policy Act of 1992. This current law is about the best possible solution to this problem.

Very truly yours,

THE OHIO VALLEY COAL COMPANY

[Signature]
Thomas T. Holmes
General Counsel

TTH:pm
The Private Benefits Alliance ("PBA") is a coalition of 200 separate coal companies which never have participated in the United Mine Workers of America ("UMWA") Health Benefits program. The PBA is comprised of large, mid-sized, and small coal companies. Our member producers are located in all coal mining regions of the United States. Some have collective bargaining agreements with unions other than the UMWA while others operate as non-union entities. PBA was formed three years ago. Its express purpose was to oppose any proposal which would have required companies that had never been signatory to a labor agreement with the UMWA to finance a fringe benefit program established and maintained under the UMWA national labor agreement, and limited solely to UMWA members.

The issue arose when those companies which had retiree health care obligations to UMWA-represented employees sought financial relief from their collective bargaining commitments. Rather than provide the lifetime health benefits promised to their retirees and to orphans (retirees of companies once signatory but no longer in the coal mining business or otherwise without current contribution obligations), the signatory companies sought legislative relief.

The concept of an industry-wide tax which appeared in early versions of the Energy Policy Act of 1992 (PL 102-466). For this we are gratified. It was a pernicious and unprecedented effort by one segment of an industry to foist the cost of its benefit programs onto uninsured companies which had acted and continue to act responsibly in the implementation and control of their own benefit programs.

PBA's submission in this proceeding reiterates its strong objection to any changes in the Energy Policy Act. PBA likewise would object to any legislation which would have the result, directly or indirectly, of imposing any obligation to finance the UMWA's welfare programs on the hundreds of non-UMWA coal industry employers who have managed their own benefit programs judiciously. Although the PBA submits that no changes should be made, we comment below on questions and considerations which should be raised in light of the legislative changes being urged at these hearings.

The Abandoned Mine Land Fees

Although Section 19143 of the Act does not impose a direct tax on non-UMWA companies, it does require the PBA Companies and others to provide an indirect subsidy to the UMWA signatory companies' collective bargaining promises. The legislation provides that up to $70 million a year in interest earned on the fees all coal producers pay to the Abandoned Mine Land Reclamation Trust Fund will be diverted to finance health care benefits for retired UMWA miners. The framers of the existing Act diverted the AML funds in order to bring an end to the controversy created by the signatory companies' over continuing with retirement coverage for UMWAs. But, a disproportionate amount of the AML money comes from companies like those in PBA which were not responsible for causing the dispute, and thus fought vigorously against inclusion in the solution. Likewise, the PBA will vigorously oppose any further change in the law which would increase the amount of AML money already being diverted to subsidize this special interest program. PBA would also oppose any change in the law which would increase the so-called "unassigned" beneficiary group, since that could lead to backdoor method of siphoning off more AML money. Moreover, we would object to any legislative changes which would weaken the financing mechanism now in place, thus making it easier for the signatory companies to renew their efforts for legislative relief and argue for additional AML money to pay for their contractually obligated benefit programs. No proposal for limitations or exemptions which in any way shifts the burden to the AML fund or to those companies which have no current or past collective bargaining obligation to pay UMWA retiree health care should be considered.

The Small Operator Exemption

The PBA understands that one concept under consideration would exempt small operators from making financial contributions to the Plan. Without a specific proposal for review and analysis, PBA does not take a position other than to reiterate strongly that no changes which might impact on the obligations or competitive position of the non-signatory companies, whether small operators or not, should be considered. In this connection, however, we raise several questions which we feel are essential to realistic and equitable assessment of a small operator exemption.
1. Any exemption must bear some rational relationship to the financial hardship faced by particular operators. In this regard a solution similar in concept to Section 4225 of the Multiemployer Pension Plan Amendments Act of 1981, 29 U.S.C. § 1405, may be relevant. This Section, and Section 4209 (De Minimis Rule), focus more on the financial condition of the company than the size of the company. The burden of financing the Plan could be unnecessarily exacerbated if healthy small companies are excluded from the payment mechanism, imposing an even greater burden on mid-size companies that might be in poor financial condition.

2. Although, as stated, the PBA does not support any modifications, to the extent any carve-out is considered, it must be carefully drawn to insure that exemption does not become the rule. During the Congressional debates concerning the UMWA Retiree Health Benefits, it was PBA's experience that efforts to modify the legislation in order to accommodate legitimate interests were nearly always thwarted because of the pressure to expand exemptions to cover ever larger and/or non-deserving groups of employers. Such pressures will occur in any current debates regarding the exemption of small operators. The PBA would oppose any exemption that threatens to destabilize the Plan and, sooner or later, lead to renewed efforts to force the non-involved companies to pay for this benefit program.

3. We believe that there is simply not enough information available at this time to assess the impact of any exemption proposal. Estimates of how specific proposals would impact on the current and projected funding needs of the UMWA Combined Fund is a necessary prerequisite. Consideration of any such proposals must occur in conjunction with revision of CBO estimates regarding the resultant financial impact on the UMWA Combined Fund, and on the remaining operators who would be required to pick up the full burden.

**Tax Credits and Deductions for Reachbacks**

With no specific legislative proposal to analyze, PBA cannot ascertain the full impact of legislative changes intended to ease the financial burden on certain companies obligated to make payments under current law. We understand that some companies urge that tax credits be given for certain bargaining agreements requiring payments into the UMWA Funds, but which have such an agreement in the past ("reachback companies"). It is difficult to assess exactly which companies would benefit from this proposal and how the entire current funding mechanism might be affected. Regarding Congressional consideration of such changes, the PBA makes the following observations:

1. The retiree health care obligations which underlie the legislation were voluntarily assumed by the signatory companies and were the product of good faith collective bargaining. Those companies have already vigorously sought and received legislative relief notwithstanding their contractual commitments. That relief is already embodied in Section 1914 of the Energy Policy Act. That Act should be given an opportunity to work before changes are effected. In any event, any legislative change which comes about through a tax credit must not provide a further benefit to companies already advantaged by the current law. No legislation should permit those companies which promised certain benefits to shift the cost of their obligation to the taxpayers through some generalized tax credit.

2. Signatory companies have already realized a tremendous financial advantage by virtue of enactment of the statute. Any newly created tax credit would convey a further benefit on those same entities. Surely, Congress would not intend to bestow an additional windfall to signatory companies which not only created the obligation in the first place, but also have gained significantly from the passage of the Act.

3. No tax credit or deduction scheme should be considered without first obtaining financial analyses and cost projections from independent parties, such as the Congressional Budget Office. Congress must have accurate information regarding the cost of such credits or deductions, and should have a good assessment of which segments of the coal industry would gain or lose as a result of such legislative changes.
Export Tax Credit

These is also pending a proposal for legislation to provide a tax credit for all exported coal. While the language which PBA has been shown does not specifically mention UMWA retiree health care, the proposal under consideration arose in connection with, and is being considered at a hearing designed to address, that issue. Accordingly, the PBA asks the committee to consider the following:

1. Exactly which companies would actually benefit from such a tax credit? Are they signatory companies? Are they reachback companies?

2. Would passage of such an export credit unfairly advantage signatory producers over nonsignatory producers? Which companies get a competitive advantage? Which do not?

3. Is there a corollary between the amount of the recommended tax credit and signatory or reachback production at the expense of nonsignatory production?

4. After hearing the testimony at the hearing of the proponent of this tax credit concept, PBA may well have additional input with regard to this issue.

General Remarks

The legislation at stake was enacted less than a year ago. It has not had an opportunity to work; its impact has not been ascertained. The crucial changes envisioned by the drafters have not yet been implemented because the legislation built in time for the administrative allocation of beneficiaries.

This legislation embroiled the entire coal industry in a major legislative battle less than 12 months ago. It necessarily upset settled expectations, and the industry likely has not yet fully absorbed the resulting changes. It would be, at a minimum, premature and potentially quite destructive for the Congress to initiate yet another round of confusion and conflict in the coal industry before the consequences of last year’s legislation have been fully digested. Accordingly, PBA is of the view that the legislation should not be revisited at this time.
Testimony of

SENATOR CHARLES S. ROBB

before the
WAYS AND MEANS COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
regarding a
METALLURGICAL COAL MINING TAX CREDIT

Thursday, September 9, 1993
Washington D.C.

Mr. Chairman, I want to thank you, the Ranking Minority Member, and the members of this distinguished panel for convening this hearing today to examine the provisions of last year's National Energy Policy Act relating to the health benefits of retired coal miners. I appreciate having the opportunity to contribute testimony to this important hearing.

Earlier this year, I sponsored legislation in the Senate to protect jobs in the metallurgical coal industry endangered by temporary difficulties in the metallurgical export market. This measure, S. 1060, would create a tax credit for companies which mine substantial amounts of metallurgical coal and make payments into the United Mine Workers of America Combined Benefits Fund. The credit will allow metallurgical coal producers to recoup a portion of fund payments they make pursuant to the Coal Industry Health Benefits Program, authored by Senator Rockefeller and included in last year's energy bill. This legislation would in no way undermine the Rockefeller provisions or adversely affect the soundness of the benefits fund.

Originally drafted as a companion bill to Representative Rick Boucher's legislation, S. 1060 would counter the additional financial burden placed as a result of the Coal Industry Health Benefits Program on companies that compete in international metallurgical coal markets. Because of the decline of domestic steel and its demand for metallurgical coal, most of the metallurgical coal mined in the U.S. is exported. In fact, according to 1991 statistics, coal is, in terms of value, the fourteenth largest commodity exported by this country.

Since the international coal market is highly competitive and price sensitive, additional costs cannot be passed on as they can be in domestic markets. Consequently, any added costs of producing metallurgical coal will drive down sales in international markets and ultimately worsen our nation's balance of trade. Should this occur, we will likely see closures of metallurgical coal producing mines, lower production volumes, and increased unemployment in the coal and ancillary industries. Simply put, this tax credit will allow metallurgical coal producers dependent on the export market to compete in global markets and stay in business.

It is important to remove the competitive disadvantage Congress inadvertently placed on our metallurgical coal export industry. This credit will eliminate this unintended burden, enhance the viability of coal exporting companies, and save jobs for workers who depend, both directly and indirectly, on the coal industry for their livelihood.

Of the workers who rely indirectly on coal exports, perhaps the most notable are those who work at our nation's ports. Coal is by volume the largest commodity transported through Virginia ports. Should this volume drop off appreciably, port workers would likely face layoffs of a serious magnitude.
After I introduced S. 1060, certain senators expressed opposition to it because of its link to Combined Benefits Fund payments. These senators (including some from coal producing states) share the strong sentiment that the agreement reached last year concerning the fund should not be disturbed in any way, even if only to be used as a mere reference with which to calculate the amount of a tax credit.

Consequently, in an attempt to respond to this concern and to secure broader support, I have decided to modify the legislation so that it provides relief to the beleaguered metallurgical coal industry in general. I believe that altering the bill in this manner will better its prospects for passage while still providing some measure of job security to coal miners.

I understand that proposals to alter the Combined Fund provisions are highly contentious. I want to emphasize, however, that my tax credit legislation in no way changes those provisions. It merely recognizes that the metallurgical coal industry is facing serious difficulties due to temporary disruptions in the international metallurgical coal market and that something needs to be done to help the industry ride out these tough times. Mr. Chairman, I encourage you and your fellow committee members to support this important and worthwhile legislation.

Thank you.