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STATEMENT OF  
MICHAEL GRYSZKOWIEC, ASSOCIATE DIRECTOR  
RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION  
BEFORE THE  
HOUSE SUBCOMMITTEE ON ENVIRONMENT, ENERGY,  
AND NATURAL RESOURCES  
COMMITTEE ON GOVERNMENT OPERATIONS  
ON THE  
GRANTING OF MINING PERMITS TO OPERATORS HAVING  
OUTSTANDING MINING VIOLATIONS IN ANOTHER STATE

Mr. Chairman and Members of the Subcommittee:

We are glad to be here today to discuss the work we have performed in response to your August 10, 1984, letter requesting us to develop information on the issuance of permits by states to coal mine operators with outstanding violations of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). As you know, under Section 510(c) of the act, coal mining permits should be denied to any surface coal mining operation, owned or controlled by an applicant, who is currently in violation of



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this act unless the applicant submits proof that the violation has been corrected or is in process of being corrected.

#### Kentucky/West Virginia Comparison

After discussions with your staff we decided to limit our initial detailed work to two states because of the uncertainties involved in reviewing state records. We selected Kentucky and West Virginia for review because they are the largest coal mining states in terms of both the number of permitted operators and coal production. These states were also selected because (1) they share a common border and a contiguous coal field and (2) Kentucky maintains a computerized list of coal mining companies and their principal owners.

To carry out our work, we interviewed state surface mining regulatory officials in Kentucky and West Virginia, and Office of Surface Mining (OSM) officials in Washington, D.C., and West Virginia. We examined records of West Virginia SMCRA violators and Kentucky permit applicants and reviewed permit files in both West Virginia and Kentucky. We also contacted, by telephone, state surface mining regulatory officials in Alabama, Colorado, Illinois, Indiana, Kansas, New Mexico, Ohio and Pennsylvania. We selected these states because they represent both large and small states in terms of coal mining permit applications processed.

Our work was primarily directed at determining whether individuals with unabated coal mining violations in West Virginia were being granted permits to operate mines in Kentucky.

Because OSM has not specifically defined the term "owned or controlled by" as used in Section 510(c), our comparison was limited to those individuals listed as owners, officers, or agents in the permit applications. We were not able, however, to readily compare individuals having unabated violations in West Virginia with persons subsequently receiving mining permits in Kentucky. The basic information needed to make a positive comparison is not readily available in the states' records.

West Virginia, for instance, does not maintain a summary list of unabated violators. Instead it maintains a chronological list of each violation by company name as it is received in the state office. Thus, our first step was to develop a list of companies that had unabated violations using West Virginia's manual records. By preparing this list we identified 1,099 companies that had unabated federal and/or state violations.

Next we examined West Virginia's records for 499 of these companies in order to determine individuals who were listed as owners, officers or agents and identified a total of 1,104 individuals. Our review included 27 companies with unabated federal violations, 392 companies with bond forfeitures, 49 companies with unabated state violations, and 31 companies with delinquent abandoned mine land fees. By comparing these 1,104 individuals with those listed on Kentucky's computerized permit list, we identified 57 individuals who were identified as owners, officers, or agents of 43 companies, as potential matches.

West Virginia's records, however, did not always contain full names and home addresses or other positive identifiers such as social security numbers or dates of birth, and Kentucky's listing of companies and individuals included only limited permit information. Therefore, we reviewed West Virginia and Kentucky files and other sources, such as solicitors' office records, to obtain additional information that would more fully identify the 57 individuals. Such information might include a middle initial or a full name rather than a nickname or more specific information on the individual's address. In addition, we checked the files to determine whether or not a permit was issued in Kentucky after the violation had occurred in West Virginia.

This additional information eliminated all but 6 individuals as potential matches. The others were eliminated for the following reasons:

- 30 individuals either were not the same as those subsequently receiving a mining permit in Kentucky; or they were not owners, officers, or agents of the West Virginia company at the time of the violation, and
- 21 individuals either never received a Kentucky mining permit, although they had submitted an application, or were issued a permit when there were no unabated West Virginia violations.

Of the 6 potential matches, we found that 5 which were officers of 1 company having 17 unabated mining violations in West Virginia subsequently received, as officers of 2 different Kentucky companies, 15 Kentucky mining permits. These unabated violations included such things as a failure to seed disturbed land in the proper season and a failure to construct a drainage system before beginning mining operations.

We were unable to positively identify the sixth individual as the same person who subsequently received a Kentucky mining permit because we were unable to obtain from Kentucky and West Virginia records positive identifiers such as a social security number, exact date of birth, or full home address.

Kentucky and West Virginia surface mining officials told us that their offices did not check with other state regulatory authorities to determine if a company and/or owners have unabated violations in other states. One Kentucky official told us that such checks were not done because (1) the state did not have the resources to do them, (2) companies did not report violations issued by other states, and (3) the Office of Surface Mining had not required that such verification be done.

Kentucky and West Virginia do not appear to be the only states not checking for mining violations in other states before issuing permits. On the basis of our telephone discussions with officials in 8 other states, 7 do not routinely check with other

states before issuing a mining permit. Kansas authorities told us that they do check for other state-issued violations, but the verification is generally limited to neighboring states.

#### OSM Actions

In April 1983 OSM began providing states with a list of companies that had unabated federal violations in their state. On June 6, 1984, OSM distributed to the states a nationwide list of companies with unabated federal violations. However, according to OSM, this was a one-time effort with limited information.

On October 15, 1984, the Interior and Justice Departments entered into a settlement agreement with counsel for the plaintiffs in Save Our Cumberland Mountains, Inc., et al. v. William P. Clark, et al. One of the provisions of the agreement calls for OSM to develop a system to see that permits are withheld from those applicants having unabated and uncontested federal violations or who have failed to pay uncontested federal civil penalties. OSM has requested \$2.2 million in a fiscal year 1985 supplemental budget request to augment existing systems so that permit applicants can be matched against those who have unabated federal violations or unpaid civil penalties.

However, the system being developed is geared strictly to federal violations that represent a small part of the enforcement problem under SMCRA. For example, OSM's 1984 annual reports for primacy states reported that OSM issued 131 federal violations; whereas the states during this same time period issued 13,799 violations. OSM's Acting Assistant Director for

Program Operations and Inspections, told us that although there has been much discussion about the tracking of state violators and adding this function to the federal violator tracking system, no decision has been made to do this.

In addition, OSM is preparing rules to clarify the definition of "owned or controlled by" as used in Section 510(c). According to OSM, this should assist both OSM and the states in resolving situations in which an individual associated with one operation with unabated violations is also associated with another applicant who is seeking a permit.

In summary, Section 510(c) of the Surface Mining Control and Reclamation Act states that coal mining permits should not be granted to applicants who have unabated mining violations. Our work revealed that without complete and accurate permit data, including positive identifiers, it is very difficult and time consuming to attempt to positively identify owners and officers of companies with unabated SMCRA violations with individuals attempting to obtain new coal mining permits. OSM has not developed an overall system to inform state officials of violations occurring in other states, and state officials we contacted told us they do not generally conduct such checks. As a result, we do not believe there is any assurance at this time that violators in one state are not receiving permits to mine in another state. In view of the large number of state violations as they relate to the SMCRA program, it is important that OSM

consider the impact of state violations in developing their violator tracking system.

This concludes my statement, Mr. Chairman. We will be glad to answer any questions.