



UNITED STATES SENATOR JOHN D. ROCKEFELLER IV

**A Record of Achievement for West Virginia:
Energy and Environment Issues**

LEGACY MEMO

TO: Senator Rockefeller
FROM: Laura Chambers and Megan Ciarolla
DATE: May 30, 2014
RE: Legacy on Energy, Environment and Coal Miners

Senator, this memo details your many contributions to federal policy as it relates to energy, environment, coal miners and mine safety. It was drafted with reliance on files from your current and former staff, records of legislation you introduced and statements you gave, committee reports, statements from other Senators, books, press articles and other materials detailing the many legislative debates you participated in and led.

Individuals interviewed for the purpose of this memo include: Paul Joffe (Legislative Assistant 1988-1993), Drew Fields (Legislative Assistant 1991-1998), John Richards (Legislative Assistant 1998-2007), Pat Bond (Legislative Assistant 2009-2013), Tom Dower (Senior Climate Advisor 2009-2012), Wes Holden (Deputy State Director/Director of Constituent Services 1985-present), Ellen Doneski, and Bill Banig (Government Affairs for the United Mine Workers of America).

Throughout your public service career, you have been a champion for coal miners and their families; fought to keep abundant coal resources an energy source even in a carbon constrained economy; worked to protect West Virginia's scenic landscapes, and been engaged in most of the critical energy debates facing our state and country – now and in the past.

Memo Overview

This memo will begin with a timeline of your work as it relates to environment, energy and coal miners. The timeline begins with highlights of some of the major issues and accomplishments during your time as the 29th Governor of West Virginia. Then, the timeline details your many accomplishments as Senator. Following the timeline, the memo provides detailed accounts of each of the events mentioned by issue area.

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Timeline

1 GOVERNOR YEARS, 1977-1985

1970s	In the 1972 Gubernatorial Race , incumbent Arch Moore won the election. You believed your stance on strip mining influenced your poor showing in the coal counties in the southern part of the state, and later altered your position. You became West Virginia's 29th governor in 1977.
1977	Congress passed the 1977 Surface Mining Control and Reclamation Act to make strip operators put land back, as best they could, the way it was before they mined it. You testified in favor of strip mining during a Congressional hearing that same year.
1977-1978	Bituminous Coal Strike of 1977–1978: During the Bituminous Coal Strike of 1977–1978, a 111-day national coal strike in the United States led by the UMWA and AFL-CIO, you refused to call upon the National Guard to suppress the miners' strike.
1978	President's Commission on Coal: At the conclusion of the 111-day coal miners' strike in March of 1978, President Carter appointed you to head up the first major federal study of coal mining in America in three decades, becoming chairman of the President's Commission on Coal.
1978	Willow Island Disaster: On April 27, 1978, the collapse of a cooling tower under construction at Willow Island, West Virginia killed 51 men.

1980	<p><i>A Solvent Refined Coal Plant</i> to produce synthetic oil was slated to be built in Morgantown, WV: You announced a \$500 million coal liquefaction demonstration plant for Solvent Refined Coal (SRC) that was slated to be built in Morgantown. The project was later canceled.</p>
1980	<p><i>Ferrell Coal Mine Disaster in Boone County</i> <i>November 7, 1980:</i> A deadly explosion occurred at Westmoreland's Ferrell No. 17 mine in Boone County. Five men were removing track in a portion of the mine when the explosion occurred.</p>

2 UNITED STATES SENATE, 1985 – 2014

1985	<p>During your first year in the Senate, you introduced both the <i>Black Lung Benefits Amendments Act of 1985</i> and legislation to require the Department of Labor to hire additional Administrative Law Judges to hear cases under the Black Lung Benefits Act.</p>
1985-1987	<p><i>Member of the Energy and Natural Resources Committee:</i> You were a member of the Energy Committee in the 99th Congress, from 1985-1987.</p>
1985-1986	<p><i>National Park Service and West Virginia:</i> You, along with Senator Byrd, introduced legislation to authorize the acquisition of land for construction of a New River Gorge Administrative Headquarters, Visitor's Center, and maintenance facility in Glen Jean, WV.</p>
1986	<p><i>Emergency Planning and Community Right to Know</i></p>

	<p>Act (EPCRA): You voted in favor of the Superfund Amendments and Reauthorization Act (SARA) of 1986, which included this EPCRA. SARA was signed into law by the president on October 17, 1986. EPCRA establishes requirements and a framework to make certain that EPA, state and local governments, and the private sector will work together to control and respond to releases of hazardous chemicals to the environment.</p>
1986	<p>Protection of the Black Lung Trust Fund: You consistently worked to preserve the Black Lung Trust Fund while protecting coal mining jobs, leading the fight against a 50 percent increase in coal taxes, which had been proposed by the Reagan Administration as a way to add funds to the Black Lung fund. You worked with the UMWA and the Bituminous Coal Association on an alternative compromise detailed later in the memo.</p>
1987	<p>Supported the Clean Water Act 1987: You voted to override President Reagan's veto of the Water Quality Act of 1987, the most recent amendment to the Clean Water Act of 1972.</p>
1987	<p>Funding for the Little Kanawha River Basin Study: Included in the Fiscal Year 1988 Appropriations was an amendment you introduced to fund the Little Kanawha River Basin Study.</p>
1988	<p>Alternative Motor Fuels Act of 1988: In July of 1987 you introduced the Alternative Motor Fuels Act of 1988, designed to promote the use of methanol and other new automotive fuels that could reduce dependency on foreign oil while simultaneously reducing pollution. The</p>

	bill was signed into law on October 14, 1988.
1988	<i>West Virginia National Interest River Conservation Act of 1987:</i> This bill was introduced by yourself and Congressman Rahall for the conservation of three scenic-river segments in West Virginia, the New River, the Gauley and the Bluestone. The bill was signed into law on October 26, 1988.
1989-1991	<i>Member of the Energy and Natural Resources Committee:</i> You again served on the Energy Committee in the 101 st Congress.
1989	<i>Harpers Ferry National Park Addition:</i> You were an original cosponsor of legislation introduced by Senator Byrd, and presided at the Energy Subcommittee hearing, to enable the National Park Service to accept a donation of private land to expand the boundaries of the Harpers Ferry National Park. The legislation was enacted and the park was successfully expanded.
1989-1990	<i>Resolving the Pittston Strike:</i> To respond to the problems facing retired miners and their families during the 1989 Pittston coal strike, you introduced legislation designed to protect and strengthen the United Mine Workers' health benefits trusts. Your efforts played a pivotal role in encouraging both sides to reach a settlement in the long, terrible strike.
1989	<i>Coal Industry Health Benefit Stabilization Act of 1989:</i> In response to the Pittston strike, you introduced this legislation that would have transferred surplus pension funds in the 1950 UMWA Pension Trust to the UMWA Benefit Trust to insure the financial stability of the health

	benefits program for retired miners.
1990	<i>Oil Pollution Act of 1990:</i> You supported and were one of 15 cosponsors of the Oil Pollution Act (OPA), signed into law in August 1990, in response to the Exxon Valdez incident. The OPA established provisions expanding the federal government's ability, and providing the money and resources necessary to respond to oil spills. The OPA also created the national Oil Spill Liability Trust Fund, which is available to provide up to one billion dollars per spill incident.
1990	<i>Clean Air Act Amendments of 1990:</i> You were one of five Democrats and six Republicans to vote against the legislation, including Senator Byrd. You and Senator Byrd were concerned some of the provisions in the bill disproportionately affected West Virginia.
1990	<i>Research and Development Program for the non-fuel use of Coal:</i> During the debate of the National Energy Policy Act (NEPA) of 1990, you were able to get an amendment included to authorize \$20 million for a three-year research and development program for the non-fuel use of coal.
1990	<i>The Cranberry Wilderness boundary in the Monongahela National Forest:</i> You successfully included an amendment in the Department of the Interior and Related Agencies Appropriations Act of 1991 to modify the Cranberry Wilderness boundary in the Monongahela National Forest. This amendment removed a few acres from the existing wilderness boundaries so that an acid neutralization and liming

	<p>project could be constructed to enhance the fish population in the Cranberry River.</p>
<p>1992</p>	<p><i>Waste Technologies Industries waste incinerator in East Liverpool, Ohio:</i> You were engaged in the debate surrounding the location of a waste incinerator located in the floodplain of the Ohio River in East Liverpool, OH, directly across the river from Chester, WV. Built in a low-income residential neighborhood, it is located within 1,100 feet of an elementary school and 320 feet from the nearest home.</p>
<p>1992</p>	<p><i>Passage of The Coal Act:</i> One of your most important accomplishments on behalf of coal miners was the passage of your Coal Act in 1992. This legislation was a part of the Energy Policy Act of 1992. The bill prevented the imminent termination of health care benefits for more than 115,000 retirees and dependents. You first introduced legislation to fix this problem in 1989 after several coal operators successfully evaded their obligations to provide retirees with health care benefits through bankruptcies and other legal actions. In 1992, after being vetoed once by President H.W. Bush as part of a broader tax bill, your Coal Act was signed into law.</p>
<p>1993</p>	<p><i>Testifying in front of House Ways and Means Committee in September 1993:</i> You testified before the Committee in defense of the Coal Act. In your testimony, you emphasized that the Coal Commission concluded the retirees were entitled to health benefits and that the Coal Act was necessary to prevent companies from dumping responsibility for their former employees on others.</p>

<p>1994-1995</p>	<p><i>Kammer Power Plant and EPA Regulations:</i> In 1994, you helped convince the EPA to suspend sulfur emission rules for American Electric Power’s Kammer power plant. The plant’s main supplier was Consol’s Shoemaker mine in West Virginia, employing over 300 West Virginians directly, and some 3,000 jobs indirectly.</p>
<p>1995</p>	<p><i>Protecting the Coal Act of 1992:</i> In 1995, you protected the Coal Act by using procedural maneuvers to prevent the Republican Budget Reconciliation process from weakening your bill.</p>
<p>1995</p>	<p><i>You were named as an honorary member of the UMWA</i> because of your tireless efforts on behalf of the UMWA over the years.</p>
<p>1996</p>	<p><i>Safe Drinking Water Act Amendments:</i> You voted in support of legislation to update the Safe Drinking Water Act giving states more flexibility to concentrate on the most urgent health needs and supply aid to communities that need financial help to comply.</p>
<p>1998</p>	<p><i>Testifying in Support of the Coal Act:</i> You testified before a Senate Committee on Governmental Affairs hearing to review the Coal Act of 1992 in response to the Supreme Court decision that relieved Eastern Enterprises from its obligations to retired miners and their widows. During that testimony, you insisted Congress and the federal government had an obligation to secure health benefits for retired miners in West Virginia and across the country.</p>
<p>1999</p>	<p><i>The Clean Water Act and Mountaintop Mining:</i> In 1999 you cosponsored an amendment with Senator Byrd</p>

	<p>relating to surface mining permit issues. You worked on the issue after Chief Judge Haden of the Southern District of West Virginia ruled that the dumping of mining rock and dirt into the streams and valleys of Appalachia was a violation of the Clean Water Act. While the amendment came to a vote, it was not ultimately signed into law. However, Judge Haden’s ruling was later overturned.</p>
2000	<p><i>Coal Miners and Widows Health Protection Act:</i> You introduced the Coal Miners and Widows Health Protection Act of 2000, calling for \$455 million in new, mandatory federal funding for miners’ benefits.</p>
2000	<p><i>Emmons Water Project:</i> You dedicated the Emmons Water Project, a waterline extension providing the community with drinkable water. You worked with, and acknowledged the hard work of, the West Virginia American Water Company to make the extension a reality.</p>
2000	<p><i>Conservation and Reinvestment Act of 2000:</i> You, along with a bipartisan coalition of Senators, pushed for the passage of the Conservation and Reinvestment Act of 2000 (CARA). The bill was unable to pass the Senate but funding for many important conservation programs was ultimately included in the budget as a result.</p>
2001	<p><i>Arsenic out of Drinking Water:</i> You joined your colleagues in insisting that the Bush Administration keep in place the 10 parts-per-billion (ppb) drinking water standard for arsenic. The 10ppb standard was ultimately upheld.</p>

2001	<i>Working to Clean-up Brownfields:</i> You cosponsored the Brownfields Revitalization and Environmental Restoration Act of 2001 to provide assistance for cleanup of contaminated or abandoned industrial and commercial sites throughout the U.S. The bill was signed into law in January 2002.
2001	<i>Demonstration Drug Program for Retired Miners 2001:</i> You brokered an agreement to establish a three-year Medicare demonstration project to help miners maintain the benefits they were promised.
2002	<i>Inclusion of Mine Safety Amendment for Mine Inspectors in 2002 energy bill:</i> You offered an amendment to the 2002 energy bill to improve safety for coal miners in West Virginia and across the country by requiring the hiring of additional mine inspectors.
2002	<i>Black Lung Benefits Survivors and Equity Act:</i> You and Congressman Rahall introduced companion legislation, the Black Lung Benefits Survivors and Equity Act to streamline the black lung benefits process for coal miners and their spouses by allowing them to continue to receive benefits without re-filing claims or having to prove their spouse died as a result of black lung disease. Unfortunately, this bill never left committee. Ultimately, these provisions were included in the Affordable Care Act and were referred to as the “Byrd Amendments”.
2004	<i>Harpers Ferry National Historic Park Revision Act 2004:</i> You joined Senator Byrd in introducing this legislation which expanded the boundary for Harpers Ferry and authorized the National Park Service (NPS) to

	acquire the added acreage by purchase, donation, or exchange. The bill was signed into law in September 2004.
2005	<i>Energy Policy Act of 2005:</i> You voted in favor of this legislation and strongly supported the package of clean coal incentives included in the bill.
2005	<i>Demonstration Drug Program for Retired Miners 2005:</i> In 2005 you were again successful in extending the Medicare demonstration project for retired coal miners and their families for two years.
2006	<i>The Sago and Aracoma Mine Disasters in January 2006:</i> In January 2006, West Virginia saw both the Sago and Aracoma mine disasters. The Sago disaster occurred on January 2, taking the lives of 12 miners and Aracoma shortly thereafter on January 19, taking the lives of two miners.
2006	<i>Mine Improvement and New Emergency Response (MINER) Act:</i> After the 2006 Sago and Aracoma mine disasters, you helped write the MINER Act, which was the most significant mine safety legislation in 30 years. The bill was signed into law by the President on June 15, 2006.
2006	<i>The Abandoned Mine Land Reclamation legislation, 2006:</i> You introduced your bill, the Abandoned Mine Land Reclamation Reform Act, in the First Session of the 109th Congress on April 28, 2005. Ultimately, you joined with Senator Santorum on legislation, the Surface Mining Control and Reclamation Act Amendments, which passed in 2006 and included significant increases in Abandoned

	Mine Reclamation funding for West Virginia as well as funding for miner health benefits.
2006	<i>Mine Safety Tax Incentives Act:</i> You and Senator Byrd were able to include this legislation in the year-end tax package, the Tax Relief and Health Care Act of 2006. The included credits were the Mine Rescue Team Training Credit and the Election to Expense Advanced Mine Safety equipment. Over the years, these credits have been extended a number of times, but have yet to be extended for this year.
2006	<i>Preserving Retired Miners Health Benefits as part of the 2006 Surface Mining Control and Reclamation Act Amendments (SMCRA):</i> The SMCRA Amendments of 2006, which you cosponsored with Senator Santorum (and were included as part of the Tax Relief and Health Care Act of 2006), also included funding for coal miner retiree health benefit plans. The bill allows transfers of interest earned from the Abandoned Mine Land funds and payments from the General Fund of the U.S. Treasury to make certain that the UMWA health benefit plans are sufficient to pay retired coal miners their health benefits.
2006	<i>Pushing back against Climate Deniers:</i> In 2006 you joined Senator Snowe in calling on Exxon to end its funding of a climate change denial campaign.
2007	<i>Energy Independence and Security Act:</i> You voted in favor of this legislation, designed to increase energy efficiency and the availability of renewable energy. The legislation was originally introduced by Congressman

	Rahall on the House side. It was signed by the president and became public law on December 19, 2007.
2008	<i>Future Fuels Act of 2008:</i> This legislation was your first comprehensive package to expand incentives for the development of clean coal technologies, establish incentives to capture highly explosive methane gas to keep coal miners safe, and create a low-cost coal-to-liquid program to develop transportation fuels. Given the significant environmental concerns, 2008 was the last time you worked on Coal-to-Liquids legislation.
2008-2010	<i>Cap and Trade Legislation:</i> Also known as the American Clean Energy And Security Act of 2009, this bill was agreed to in the House, yet the Senate never acted upon it.
2009	<i>Wild Monongahela Act 2009:</i> The Wild Monongahela Act was signed into law in 2009. Congressman Rahall took the lead in the House and you, along with Senator Byrd, took the lead in the Senate. This bill established three new wilderness areas on the Monongahela: Big Draft, Spice Run and Roaring Plains West. It also expanded three existing wilderness areas: Cranberry, Dolly Sods and Otter Creek.
2009	<i>National Miners Day:</i> You joined with Congressmen Rahall, Mollohan, Congresswoman Capito, and Senator Byrd to introduce legislation to support the commemoration of a National Miner's Day. The resolution passed the Senate on December 2 and National Miner's Day is celebrated on December 6.
2009	<i>Searching for new ways Black Lung hurdles can be</i>

	addressed: You released a Government Accountability Office report that you had requested regarding the persistent barriers miners and their families face when trying to secure benefits through the federal Black Lung Benefits Program.
2009-2011	<i>Carbon Capture and Sequestration Demonstration Project:</i> American Electric Power (AEP) and Alstom began operating the Mountaineer Plant Carbon Capture and Sequestration Demonstration Project. AEP ultimately decided not to go forward with Phase 2 of their project in 2011.
2010	<i>Stationary Source Regulations Delay Act:</i> In March 2010, you introduced legislation to suspend potential Environmental Protection Agency (EPA) regulation of greenhouse gases from stationary sources for two years. Congressman Rahall introduced companion legislation in the House of Representatives.
2010	<i>Upper Big Branch Mine Disaster on April 5, 2010:</i> : On April 5, 2010 the United States suffered its worst mining disaster in 40 years, when 29 miners were killed in an explosion at the Upper Big Branch mine in Montcoal.
2010	<i>The Robert C. Byrd Mine and Workplace Safety and Health Act 2010:</i> In response to the horrific incident at Upper Big Branch, you introduced the Robert C. Byrd Mine and Workplace Safety and Health Act to further strengthen workplace safety. While this bill has yet to be enacted, you have reintroduced it, with modifications, in the 112 th (2011) and 113 th (2013) Congresses.
2010	<i>Hearings following the Upper Big Branch Disaster</i>

	<p>2010: Following the Upper Big Branch (UBB) disaster, you attended two congressional hearings which discussed UBB.</p>
2010	<p><i>Mine Safety Information in the Dodd-Frank Bill:</i> Because of your efforts, an amendment was included in the Dodd-Frank Wall Street Reform and Consumer Protection Act to require any publicly-traded mining company to disclose critical mine safety information in the quarterly and annual reports they file with the Securities and Exchange Commission.</p>
2010	<p><i>Senator Murkowski’s Resolution of Disapproval on EPA findings:</i> In June 2010, you supported Senator Murkowski’s resolution on EPA endangerment findings on greenhouse gas emissions.</p>
2010	<p><i>Coal Accountability and Retired Employee (CARE) Act:</i> In July 2010, you first introduced this legislation designed to transfer excess funds from the Abandoned Mine Reclamation Program to the UMWA pension fund to prevent its insolvency and make certain that retirees and their families receive benefits. While this bill failed to leave committee, you have reintroduced it in the 112th (2011) and 113th Congresses (2013).</p>
2010	<p><i>The Affordable Care Act and Black Lung:</i> After years of fighting, Congress passed legislation to make it easier for long-term miners and their widows to automatically qualify for Black Lung benefits through the “Byrd Amendments”.</p>
2010	<p><i>Carbon Capture and Sequestration Deployment Act of 2010:</i> You and Senator George Voinovich introduced</p>

	<p>this legislation seeking to encourage a massive federal investment in clean coal research in an effort to help position West Virginia as a global leader in clean fuels, while protecting and creating coal jobs.</p>
2011	<p><i>EPA Stationary Source Regulations Suspension Act:</i> Similar to your legislation from the previous year, this sought to suspend some EPA greenhouse gas regulations for two years. Ultimately, your amendment was not agreed to by a vote of 12 – 88 when industry backed the McConnell-Inhofe proposal that would have scrapped the rules altogether.</p>
2011	<p><i>Speaking out against Big Oil Tax Subsidies:</i> In June, you spoke on the Senate floor about the need to end tax breaks for big oil companies and voiced support for Senator Menendez’s bill, the Repeal Big Oil Tax Subsidies Act. You had recently attended a hearing regarding this issue.</p>
2012	<p><i>Measure to Modify 45Q Tax Credit:</i> You joined Senators Conrad and Enzi in introducing a bill to modify and improve the operation of the Section 45Q, carbon sequestration credit. This bill was not passed before the end of the 112th Congress.</p>
2012	<p><i>Vote on Overturning New Pollution Standards:</i> In June 2012 you took to the floor to oppose the Inhofe Resolution of Disapproval. This measure would have blocked the Environmental Protection Agency’s Mercury and Air Toxics Standards (MATS or Utility MACT) rule which gives existing coal fired power plants three years to meet the new standards for mercury and other toxic air</p>

	pollution covered by the rule.
2013	<i>Black Lung Health Improvements Act of 2013:</i> As part of your longstanding commitment to protect miners from the debilitating and deadly disease, you introduced this legislation in June 2013.
2014	<i>Freedom Industries Chemical Spill in Charleston January 9, 2014:</i> The spill occurred at Freedom Industries on the Elk River in Charleston when a storage tank failed causing two chemicals, crude MCHM and PPH, to leak into West Virginia American Water's intake.
2014	<i>Response to Freedom Industries Chemical Spill:</i> In response to the spill, among several other efforts, you, along with Senators Manchin and Boxer, introduced the Chemical Safety and Drinking Water Protection Act that would require regular state inspections of chemical storage facilities. You also cosponsored two bills with Senator Schatz of Hawaii that would hold companies like Freedom Industries accountable when spills of non-hazardous substances occur, and provide state and federal governments with access to increased funding to help cover the costs associated with cleaning up a chemical spill.

Governor Years, 1977-1985

1 INTRODUCTION

“I have deep beliefs about the future of West Virginia—strong feelings about the people of West Virginia—about how we want to live—about what we need to do. I believe we can have a state in which every man, woman and child lives in safe neighborhoods—in decent housing—with clean air to breathe and clean water to drink. I believe we can have a state in which outstanding health care for our people—from the newborn child to the senior citizen—is within the reach of every West Virginian, in the communities where they live and work.”

Speech given to the West Virginia Federation of Democratic Women, September 1980

While serving as the 29th Governor of West Virginia, you dealt with one of the worst economic periods in West Virginia’s history, the Bituminous Coal Strike of 1977–1978, heavy snowfalls across the state, the Willow Island disaster, a fatal mine explosion and rampaging floods. During this time you began your long history of standing beside West Virginia’s miners and working to secure a future for coal.

During the energy development boom in the 1970s, the West Virginia counties that focused heavily on mining enjoyed an

economic surge. However, when the recession hit in the 1980s, these mining counties suffered tremendously. Energy prices fell and employment in the mines rapidly declined. By 1983 the state's unemployment rate had risen to 21% as its manufacturing base also slumped. The mining counties fared worse than the state average on a range of factors, such as earnings and personal income growth, population growth, and employment. Today, these counties have higher poverty rates, lower median incomes, and worse health outcomes than the state average.¹

This section of the memo will outline some of the major issues related to coal, coal miners, and the environment that you faced while you were Governor.

2 SURFACE MINING CONTROL & RECLAMATION ACT OF 1977

In the early 1900s, West Virginia led the nation in the underground mining of bituminous coal. By mid-century, coal miners no longer had to tunnel under the earth. Technological advances made it possible to extract coal by removing the earth's surface. Strip mining required less labor than underground mining and generated higher profits.

During the 1950s and 1960s, strip mining in West Virginia increased dramatically as did the unemployment rate. In 1970,

¹ O'Leary, S., & Boettner, T. Booms and Busts: The Impact of West Virginia's Energy Economy . *West Virginia Center on Budget & Policy*.

56.2 percent of American coal production came from underground mines, but the percentage slipped to 29.9 percent by 1980. Strip mining also took an environmental toll in the form of erosion and water contamination.²

According to the Congressional Research Service, the 1972 Buffalo Creek flood in Logan County was highlighted by Congress as reinforcing the need for the regulation of coal mining in the United States to prevent or mitigate the environmental impacts of surface mining. Despite regulations forbidding the practice, the Pittston Coal Company had been allowed to build the dam at Buffalo Creek with strip mine refuse.

The Buffalo Creek flood was merely one example of the challenge of promoting enough coal production to meet the nation's energy needs while attempting to mitigate the environmental impacts of surface mining. These concerns ultimately led to the passage of the 1977 Surface Mining Control and Reclamation Act (SMCRA).

SMCRA 1977 created two programs: one for regulating active coal mines and a second for reclaiming abandoned mine lands. SMCRA also created the Office of Surface Mining (OSM), an agency within the Department of the Interior, to promulgate regulations, to fund state regulatory and reclamation efforts, and to certify consistency among state regulatory programs. SMCRA was the first time the federal government addressed mountaintop removal. The law allowed for mountaintop removal with certain post-mining mitigation controls.

² Time Trail, West Virginia, January 1998 Programs (Time Trail, West Virginia, January 1998 Programs)
<http://www.wvculture.org/history/timetr/ttjan.html>

Like most environmental statutes passed in the 1960s and 1970s, SMCRA uses a cooperative federalism approach under which states are expected to take the lead in regulation while the federal government oversees their efforts. Under SMCRA, the federal government can approve a program, which gives the state the authority to regulate mining operations. However, the state must demonstrate that it has a law at least as strict as SMCRA, and a regulatory agency with the wherewithal to operate the program.

Congress debated the federal strip mining law for years. The measure was opposed by coal operators, and twice vetoed by President Ford. President Carter signed SMCRA into law on August 3, 1977. Lawmakers bickered repeatedly over whether operators should be allowed to conduct mountaintop removal mining at all. In old-time strip mining, machines chipped away at the sides of hills to slice off coal reserves. In mountaintop removal, much bigger machines shave off entire tops of mountains.

You had opposed strip mining during your first bid for governor in 1972, but spoke out in favor of mountaintop removal during a 1977 Congressional hearing before the U.S. Senate Subcommittee on Energy and Natural Resources. At the time, you were advocating for greater control by West Virginia in implementing SMCRA in the state through the state Department of Environmental Protection. West Virginia was the first state to gain primacy in relation to SMCRA.³

³ Abrams Dennis M., "The Rockefeller Amendment: Its Origins, Its Effect, and Its Future," 82 W. Va. L. Rev. 1241 (1980).

In 1979, you, other coal-state governors--including Governor Ed Herschler of Wyoming-- and 17 Senators supported amendments to SMCRA. The Surface Mining Amendments Act of 1979, originally introduced in the Senate Committee on Energy and Natural Resources, included an amendment to provide states with a year-long extension to submit their SMCRA implementation plans, one to extend states' deadlines for implementation of a federal lands program, and another amendment to repeal the requirement in SMCRA that state regulations for surface coal mining and reclamation be consistent with federal regulations, as one of the conditions for a state to receive regulatory primacy.⁴ The latter was labeled the "Rockefeller Amendment", because you were the chief supporter of the proposal and a noted supporter of state coal mining reclamation programs. The amendment would have removed the requirement that states use OSM's rules and regulations as a guide for individual state programs, but still required the states to meet the environmental and reclamation standards in SMCRA.

Proponents argued that the "Rockefeller Amendment" would have reestablished the state lead contemplated by SMCRA. Its detractors, however, believed that the amendment would give states such broad discretion that the minimum protections of SMCRA would be destroyed.⁵ The "Rockefeller Amendment" passed the Senate in September 1979, but never came to a vote in the House.

⁴ Surface Mining Amendments of 1979 Report together with Additional And Minority Views to accompany S. 1403. (1979, June 21). Senate Committee on Energy and Natural Resources

⁵ Green, E., McGinley, P., Miller, D. M., & McCarthy, G. M. (1997). The Surface Mining Control and Reclamation Act of 1977: New Era of Federal-State Cooperation or Prologue to Future Controversy? *Energy Mineral Law Foundation* (p.412)

3 FLOOD OF APRIL 1977

In April 1977 massive floods devastated parts of southern West Virginia. The storm dropped 4 to 10 inches of rainfall on the Tug Fork basin and upper Guyandotte River basin. Towns along Tug Fork were under 20 to 25 feet of water from Welch to Fort Gay. Some small communities were almost completely inundated. As governor you toured the devastation by helicopter.

During the tour you said:



During an inspection tour of relief efforts, you met with families at a relief center in Williamson where many displaced people were staying after their homes had been flooded. Pictured here are Effie Stewart and her daughter, Samantha.

"We've seen a good deal from the air and I'm going on from here to Mingo County. But both McDowell and Mingo County, you have a 22-foot crest and a 54-foot crest of water -- a lot of damage, a lot of small damage, and a lot of larger damage in McDowell County. In Mingo County -- Matewan and south

Williamson, Williamson Hollow -- I'm not sure what the situation will be because I haven't gotten there yet. But 54 feet of water is an awful lot of water.”⁶

You ordered the National Guard, the Office of Emergency Services, the departments of Public Safety, Highways and Welfare and other pertinent state offices to take all steps to aid citizens in affected counties. You declared 10 southern West Virginia counties disaster areas and requested federal assistance.

The state received federal support on April 7, 1977, when President Jimmy Carter signed a disaster declaration for Mingo, McDowell, Logan, Lincoln, Raleigh, Cabell, Greenbrier, Summers, Wayne, and Wyoming counties.

4 BITUMINOUS COAL STRIKE OF 1977–1978

The UMWA’s Bituminous Coal Strike of 1977 occurred during your first year as Governor. The strike began December 6, 1977 when the UMWA national contract expired. The central issues in 1977 remained the “right to strike”—usually in response to health and safety issues—and the structure and solvency of the miners’ health care plan.

By 1977, the Bituminous Coal Operators Association (BCOA)—which was formed in 1950 specifically to bargain collectively with the UMWA—was increasingly comprised of some of the largest corporations in the United States. The BCOA included major

⁶ Time Trail, West Virginia, April 1998 Programs (Time Trail, West Virginia, April 1998 Programs)
<http://www.wvculture.org/history/timetr1/ttapr.html>

corporations like Continental Oil, Occidental Petroleum, U.S. Steel, and Bethlehem Steel. Even though coal profits doubled between 1970 and 1974, the BCOA wanted to restore “discipline” to the coalfields and speed up output which, given the nature of coal mining, would result in serious hazards for miners. The BCOA aimed to get rid of contract language that allowed strikers to walk out (strike) over safety concerns and made demands that would have undermined the UMWA health and retirement plan. In the 1960s mechanization of coal mining—while dramatically increasing output—put miners’ lives at greater risk and increased the rates of black lung.

Moreover, with mechanization largely complete, increasing output necessarily meant speeding up the work rates of miners themselves. The BCOA saw such concessions as imperative if it was to continue to increase its rate of profit in the coming years, years in which it expected President Jimmy Carter’s energy policies—which emphasized energy independence from Middle Eastern oil—to boost demand for coal.

From the beginning, the top union brass—UMWA President Arnold Miller in particular—wanted to avoid the strike, and when it could not be avoided, they tried to bring the strike to a close as quickly as possible. Their main problem in doing so was that they were not actually organizing the strike in the first place. The rank and file conducted the strike, in much the same way as it had organized the wildcats throughout the 1970s.

By the time the strike began, the UMWA and BCOA were headed for a showdown. On the one hand, the BCOA saw no other way

to increase profits without undermining miners' key recourse to prevent dangerous conditions—the right to strike. “There’s nothing mysterious about our proposals,” a coal company spokesperson argued, “we’re going to get stability one way or another.” On the other hand, the rank and file of the UMWA—if not the leadership—had grown stronger after ten years of militant organizing in the coalfields. When the BCOA set out to finally end the coalfield militancy of the 1970s, they mistook the divisions within the UMWA for overall weakness.

The coal operators' confidence was also buoyed by an October 1977 ruling by the Arbitration Review Board (ARB) that concluded owners had the right to fire workers who participated in wildcat strikes. Of course this was just the latest instance of the government and courts siding with the employers over miners. Such rulings had further put a wedge between the union's top leadership and its rank and file. The leadership was cowed in the face of injunctions. The rank and file became more determined.

UMWA's negotiating position was not an enviable one, however. Power utilities had built up a 120-day supply of coal, while iron and steel producers had a 75-day supply. Both were more than sufficient to weather a miners' strike. Additionally, the number of coal mines controlled by UMWA had fallen from 67 percent to 50 percent since 1974, leaving more mines in operation to supply national needs during a strike. The oil crisis which had powered the 1974 round of bargaining no longer existed, and coal demand was lower. Furthermore, the lack of organizational competence and flow of mixed messages helped prolong the labor dispute.

As the bargaining talks continued in December, sporadic violence broke out. A coal auger was blown up at a mine near Saint Charles, Georgia, a coal train was stopped and delayed in Cambria County, Pennsylvania, and in Utah a state judge issued a 10-day restraining order against the union and 1,100 summonses issued after replacement miners complained of being harassed by picketers. On December 13, state police in riot gear tear-gassed about 400 coal miners in Daviess County, Kentucky, who had thrown rocks and bottles at passing coal trucks. Four weeks into the strike, five union miners were indicted on federal charges for conspiracy in the dynamiting of a section of the Norfolk and Western Railway on which non-union coal was being carried. In Indiana, Governor Otis Bowen called out the National Guard to protect coal truck convoys and in Virginia, Governor John Dalton declared a state of emergency.

Because of the strike, West Virginia was facing a very serious energy situation and you released a statement on February 10, 1978 urging all citizens to take strict energy conservation measures and provided recommendations to reduce energy consumption for residential, commercial, governmental and industrial users:

“...If we are to avoid power outages and other related problems, then a reduction of the state’s total electrical consumption becomes a necessity...I strongly urge consumers of all sectors of the economy to actively pursue energy conservation initiatives...”

On March 6, President Jimmy Carter invoked the national emergency provision of the Taft-Hartley Act, which gives the

President authority to intervene in private sector labor disputes. An investigatory commission met on March 7, and held hearings at which both union and management witnesses testified. There was a question of using the National Guard to enforce a Taft-Hartley injunction, however, you refused to call out the National Guard in West Virginia. That same day, March 7, nearly 200 miners went to the state Capitol in Charleston to protest the use of the Taft-Hartley Act.

One of the miners shouted to you, "What about the National Guard, Governor?"

You responded saying, "I have nothing to say about that. There isn't going to be a problem, is there?"⁷

The miner replied, "If they keep their noses out of the mines there won't be."

And another miner shouted, "Bring the guard in and you'll have a war."⁸

Since their beginnings, labor relations in America's coal fields have been bloodier than any other American industry. Strikes sometimes culminated into outright massacres, and some of these massacres were at the hands of the National Guard.⁹ When TIME magazine reported on this story they inferred that your hesitation to call in the National Guard stemmed from a mine your grandfather owned in the early 1900s. According to the

⁷ To Work. (1978, March 20). TIME Magazine, Vol. 111, No. 13.

⁸ Bryant, B. (1978, March 08). The Associated Press

⁹ Freese, B. (2003). The Rise and Fall of King Coal. Coal: a human history . Cambridge, MA: Perseus Pub.

article, in 1914 the National Guard killed 40 miners on strike at your grandfather's mine.

At the time of the 1977-1978 strike, you had at your command 5,000 National Guard troops, and an estimated 500 to 750 of them were coal miners. So, West Virginia would be faced with pitting miner against miner, and neighbor against neighbor.

The President's Commission report was issued the following day, and a federal district court issued a temporary injunction ordering the miners back to work on March 9. The striking miners ignored the injunction. You remained confident saying:

"The strike at some point is going to end... The grass is going to turn green. It will turn warm. Spring is going to come. And West Virginia is going to prosper."¹⁰

Shortly thereafter a contract was agreed to and the strike ended on March 19, 1978.

Unfortunately, the bituminous coal strike had a significant impact on aggregate economic activity throughout the state. On April 12, 1978 you released an analysis of the impact the strike had on the economy and tax revenues. The State Tax Department estimated that the 60,000 miners who were unemployed during the 111 day strike lost \$280 million in wages during the work stoppage. The strike cost the state an estimated \$40.8 million in lost tax revenues.¹¹

¹⁰ Bryant, B. (1978, March 11). The Associated Press

¹¹ The Rockefeller Years, 1977-1985: official papers and policies of the honorable John D. Rockefeller IV, 29th governor of West Virginia By: Rockefeller, John D., and Sheri A. Dell. 1986

5 PRESIDENT'S COMMISSION ON COAL, 1978

In 1978 you were appointed by President Carter to be Chairman of the President's Commission on Coal. As part of the report you would prepare, you insisted that coal be given a higher standing in the national energy policy. At the time, President Carter was pursuing policies to increase our energy security and reduce America's dependence on foreign oil and was interested in replacing the use of oil with domestic coal.

President Carter announced the formation of the Commission in Charleston asking that the Commission make recommendations on the major issues involving coal. That same day President Carter appointed you as chairman saying:

"Your own Governor, Jay Rockefeller, has agreed to be the Chairman of this five-man Commission. He's a man who has intense interest in coal production, and he has the confidence both of the miners and the operators, and I believe that he will do a great job with the other members representing the public..."¹²

Specifically, under Carter's Executive Order, the Commission was directed to conduct a comprehensive review of the state of the coal industry in the United States with particular emphasis on matters pertaining to productivity, capital investment, and the general economic health of the industry; collective bargaining, grievance procedures, and such other aspects of labor

¹² Jimmy Carter: Charleston, West Virginia Remarks Announcing the Establishment of the President's Commission on the Coal Industry. (Jimmy Carter: Charleston, West Virginia Remarks Announcing the Establishment of the President's Commission on the Coal Industry.)
<http://www.presidency.ucsb.edu/ws/?pid=30858>

management relations as the Commission deemed appropriate; health, safety and living conditions in the Nation's coal fields; the development and application of new technologies to the industry; the impact on the of Federal regulations on the coal industry; and other matters as the Commission deemed appropriate.

In March 1980, you presented your report to President Carter.

Excerpts from your comments follow:

“Mr. President, I appear before you today in two capacities, as Chairman of your President's Commission on Coal and as Governor of the great coal State of West Virginia. As Chairman of the Coal Commission, I am proud to present you with this report, which holds our summary findings and our hopes for the coal industry of the United States....

This is a product of many years of work, Mr. President. Secretary Wirtz, Mr. Presley, Marvin Friedman, Jesse Core, Senators Randolph, Huddleston, and Percy, Congressmen Perkins, Murphy, and Buchanan have all helped, as well as some of your own Cabinet Secretaries...

Mr. President, we thank you for your leadership. We thank you for your commitment to coal. And with this report and with our own commitment for the future, we offer you our support and our continued hard work to keep this great Nation of ours energy independent, strong, and free. Thank you.”

The Commission's report recommended the following:

- In order to lessen dependence on foreign oil and grow the nation's economy, the commission recommended the creation of an oil and natural gas replacement program, substituting coal when possible. However, the increased coal usage would still need to comply with the provisions of the Clean Air Act and SMCRA.
- The expanded use of coal must go hand in hand with increased safety conditions in coal mines. The report recommended the commissioning of a National Academy of Sciences (NAS) to study why some coal mines are safer than others. Also, in an effort to improve miners living conditions, companies must provide housing or sufficient resources to obtain adequate housing.
- To help safeguard stability in labor-management relations, the commission recommended the establishment of a White House Advisory Council, comprised of representatives of labor, management and the public, to advise the President on coal policy matters and successfully implement the recommendations of the report.¹³

6 WILLOW ISLAND DISASTER, 1978

On April 27, 1978, the collapse of a cooling tower under construction at Willow Island, West Virginia killed 51 men.

¹³ U.S. President's Commission on Coal: Recommendations and Summary Findings, March 1980.

The 51 men were working on the construction of cooling tower No. 2 at Pleasants Power Station when falling concrete caused the scaffolding to collapse. Just after 10 AM, as the third lift of concrete was being raised, the cable hoisting that bucket of concrete went slack. The crane that was pulling it up fell toward the inside of the tower. The previous day's concrete, Lift 28, started to collapse. Concrete began to unwrap from the top of the tower, first peeling counter-clockwise, then in both directions. A jumble of concrete, wooden forms and metal scaffolding fell into the hollow center of the tower. Fifty-one construction workers were on the scaffold at the time. All fell 168 feet to their deaths.

Following what was described as the “worst non-coal related industrial disaster in the history of Wet Virginia,” you joined St. Marys Mayor Arthur Olds and Belmont Mayor Robert Doty in declaring that Sunday, April 30th as a day of mourning for the 51 men who perished at Pleasants Power Station. You extended your sympathies to the families of the victims and said:

“Tragedies of this magnitude are difficult to understand and even more difficult to accept.”

7 THE INTERNATIONAL SOLVENT REFINED COAL II PROJECT, 1980

The International Solvent Refined Coal II Project (better known as SRC II Project) was slated to be built in Morgantown, WV. In July 1980 the SRC II agreement was signed between the United States, Japan and Germany under President Carter’s Administration. On July 31, the day of the signing of the

agreement, you joined President Carter, Senators Byrd and Randolph and members of the German and Japan delegations at the White House.

The plant was part of a larger plan developed by the National Energy Program and the Energy Security Act of 1980 to reduce energy imports by developing additional forms of energy from previously untapped resources. Under the agreement, the Department of Energy was going to contribute 50% of the cost share. The plant was designed to demonstrate the feasibility of coal liquefaction technology and would have converted high sulfur coal into liquid fuels.

The plant would have created thirty-five hundred direct construction jobs in West Virginia, not including those operating the plant permanently. Furthermore, it would have used two million tons of coal each year and was slated to produce the equivalent of 7 million barrels of oil each year.¹⁴ However, the project was cancelled in 1981.

Among other issues including cost, the Reagan Administration decided to eliminate Department of Energy subsidies for such projects and revise the role of the Synthetic Fuels Corporation. Many believe that the drop in worldwide oil prices in the early 1980s played a primary role in obviating the need for the Corporation, at least from a short term economic perspective. The Synthetic Fuels Corporation was a U.S. government-funded corporation established in 1980 by the Synthetic Fuels

¹⁴ Jimmy Carter: International Solvent Refined Coal II Agreement Remarks on Signing the Agreement. (Jimmy Carter: International Solvent Refined Coal II Agreement Remarks on Signing the Agreement.) <http://www.presidency.ucsb.edu/ws/?pid=44853>

Corporation Act to create a financial bridge for the development and construction of commercial synthetic fuel manufacturing plants (such as coal gasification) that would produce alternatives to imported fossil fuels.

8 FERRELL COAL MINE DISASTER IN BOONE COUNTY, 1980

On November 7, 1980 a deadly explosion occurred at Westmoreland's Ferrell No. 17 mine near the mouth of Robinson's Creek in Boone County. Five men, all maintenance workers, were removing track in an unused portion of the mine about one mile away from any other work crew when the explosion occurred. Another 70 men working in different parts of the mine escaped without injury.

Herschel Hayden, a Westmoreland vice president, said the explosion occurred at 3:30 a.m. but federal mine officials were not notified until about 7:15 a.m. because it was initially thought that the blast was just the vibrations from a minor roof collapse. Union officials were upset that it took nearly 5 hours for a rescue crew to be brought in. After the explosion, toxic or noxious gases, including methane, hampered the rescue and a day passed before the bodies were reached. While the explosion occurred at 3:30 a.m. the morning of November 7, the 5 trapped men were located at 2:30 a.m. the next morning about 2 miles down in the mine. Officials blamed the explosion on a buildup of methane gas in the presence of inadequate ventilation.

In what may be a coal industry first, Westmoreland not only publicly accepted immediate and full responsibility for the West Virginia mine explosion, but also summarily relieved the top two managers of the Ferrell Mine "in anticipation that there may be criminal charges against them," as a company spokesman put it.

While rescue efforts progressed, you spent part of the afternoon with relatives of the trapped miners at the mouth of the mine. At the time you said:

"I don't think anybody at this point is trying to say who did what or fix blame. I think the entire concentration is to get to those 5 people and to make sure that they are . . . in the process of getting to them, that the 31 men on the rescue teams are also safe. Then comes . . . will come . . . a complete, total, thorough investigation."

United States Senate, 1985 – Present



On January 15, 1985, you were sworn in by then-Vice President George H. W. Bush for your first term.

1 COAL MINERS HEALTH, SAFETY AND BENEFITS

1.1 Introduction

"Maybe not everyone understands who miners are and what they've done for this country, but I can assure you that I do. They've given of themselves to make America better. They've warmed our homes and lit our schools; they've fueled our trains and powered our industries. They've sacrificed so that everyone else might have a better quality of life."

Excerpt from a Coalminers' Rally speech given in Washington, D.C. calling for better health benefits, May 17, 2000

This section will cover your many efforts to protect coal miners and their families. Throughout your 50 years in public service you have fought for a future that protects miners' jobs—while ensuring their safety and protecting their hard-earned benefits. You have spent your entire career working to make certain those in the coal industry and in Washington gave miners and their families the benefits and safety protections they deserve.

During your time in the Senate, coal miners faced many challenges ranging from unsafe working conditions; employment decline due to increased mechanization and mountaintop removal; a rise in black lung rates in the 2000s; as well as several bankruptcies and other court decisions that had allowed companies to abandon their obligations to miners.

Your many accomplishments during your time in the Senate include: protecting and strengthening the black lung trust fund while improving claims processing for black lung beneficiaries, engineering passage of the Coal Act in 1992, to protect workers' health benefits, and the MINER Act in 2006, to significantly improve mine safety.

1.2 Strengthening Black Lung Assistance, 1985

As far back as your first year in the Senate, you have sponsored and cosponsored legislation to make it easier for victims and widows to receive benefits under the federal Black Lung program.

According to Wes Holden, when you were first elected to the Senate, you held constituent meetings in the state. During your first constituent meeting in Welch in May 1985 you invited miners and their families to visit with you and discuss the problems they had encountered during the claims process. In 1985 the approval rates for black lung claims at the initial decision level were just under three percent and the federal government had an enormous backlog of black lung claims.

Over 100 people attended this event, with constituents lined up around the block. In order to have privacy, you asked Lane Bailey to send people in one at a time, making sure to listen to their entire story, while Wes wrote down the information needed to look into their individual cases.

In order to reduce the enormous backlog of black lung cases pending under the Black Lung Benefits Act, the first bill you introduced in May 1985 required the Department of Labor (DOL) to hire additional administrative law judges (ALJs) to hear cases.

You introduced a second bill titled the Black Lung Benefits Amendments Act of 1985 intended to help the DOL give ALJs a higher salary, thus making the job more attractive to potential hires.

Despite companion bills introduced in the House by then-Congressmen Mollohan and Congressman Austin Murphy from Pennsylvania, this legislation failed to leave committee. These were only the first bills in your career-long legislative fight to make certain miners and their families receive the benefits they deserve.

1.3 Protection of the Black Lung Trust Fund, 1986

In 1985, the Reagan Administration proposed to increase the coal excise tax by 50 percent in order to raise an additional \$236 million in the following year's budget for the Black Lung Trust Fund. You and Senator John Heinz of Pennsylvania mobilized congressional opposition, arguing that the proposed tax increase would jeopardize domestic coal jobs in West Virginia and the other coal states. Against stiff opposition from the Reagan Administration, you worked with conferees on the 1986 Tax Reform bill, attending conferee meetings to make certain that a compromise would be retained.

Enacted in 1986, the deficit reduction bill included the compromise, offered by the UMWA and the Bituminous Coal Operators Association (BCOA), which initiated a plan to restore the solvency of the Black Lung Trust Fund and sought to retire its debt by the year 2007. At the time, the trust fund had a deficit of about \$2.5 billion.

In particular, the compromise plan was to combine a five-year moratorium of the interest payments on the Black Lung Trust Fund's cumulative debt with a ten percent increase in the coal excise tax.

1.4 Resolving the Pittston Strike, 1989-1990

In 1946 the Krug-Lewis agreement was signed between the United Mine Workers of America and the federal government that created the UMWA Health and Retirement Funds. This agreement laid the foundation for decades of medical improvements in America's coal fields. Hundreds of thousands of coal mining families have enjoyed the promise of lifetime medical care for themselves and their dependents.

Prior to the creation of the UMWA Funds, medical care in the nation's coal field communities consisted of a pre-paid system based on deductions from the miners' paychecks. Under this system, coal companies deducted money from the miners' pay and hired doctors to provide medical services to the miners.¹⁵

¹⁵ A Brief History of UMWA Health and Retirement Funds (UMWA in Action)
<http://www.umwa.org/?q=content/brief-history-umwa-health-and-retirement-funds-0>

In the years leading up to the passage of your Coal Industry Retiree Health Benefits Act, better known as the 1992 Coal Act, coal company after coal company was "dumping" UMWA retirees by pulling out of the UMWA retiree health benefit trusts. The line was drawn by the union in the 1989–1990 strike against the Pittston Coal Company after the company announced they were terminating medical benefits to its retirees and their widows.

In 1987, the Pittston Coal Company withdrew from the Bituminous Coal Operators Association, which had traditionally negotiated union contracts for the coal industry. Pittston then implemented a number of work changes after the existing contract between the company and union miners expired, announcing they were terminating medical benefits to its retirees and their widows. On April 5, 1989, 500 West Virginia miners joined 1,200 miners in Virginia and Kentucky on strike, refusing to work after contract negotiations broke down between Pittston and the UMWA.

Pittston responded by securing injunctions against the union and attempted to bring in nonunion miners. The strikers used picketing and sit-down demonstrations, and donned camouflage apparel to demonstrate their militancy and solidarity. Cecil Roberts, then vice president of the UMWA and a native of Kanawha County, was the central union figure during the strike. Tension between striking miners, company guards, and state police ran high. More than 500 miners were arrested during the strike.

Although the strike's decisive events happened out of state, West Virginia miners supported the effort in a number of ways. In

Logan County, the UMWA set up a “Camp Solidarity” for the purpose of housing UMWA members and other labor activists sympathetic to the miners’ cause. On June 6, 1989, around 60 miners embarked on a four-day march from Logan County to Charleston, retracing the path of the 1921 Armed March on Logan. On June 10, thousands rallied in the state capital and listened to speeches by UMWA President Richard Trumka, activist Jesse Jackson, and Governor Gaston Caperton, who called for cooperation between business and labor. Another rally was held on Labor Day in Welch. Around 4,000 miners and relatives heard speeches by Governor Caperton and yourself.¹⁶ Country music star Kathy Mattea was also present at the rally.

In July 1989 you joined UMWA President Trumka and West Virginia Coal Association President Gary White in New York City to meet with Nippon Steel Corporation Chairman Eishiro Saito - "Mr. Steel" of Japan. You met with Mr. Saito because Pittston was the largest U.S. coal exporter to the Japanese steel market and set the rates for all U.S. coal exports to Japan. The union said demands for concessions from its labor forced by Pittston provoked the strike by UMWA members – at the time in its third month - and threatened to undermine Japanese confidence in the stability of U.S. coal exports - despite years of nurturing the U.S./Japanese relationship by leaders such as you, Gary White and Rich Trumka. Japan bought 13 million tons of U.S. coal in 1988, about half of it from West Virginia, and an increase of 3 million tons over 1987.

¹⁶ Share Pittston Strike (e-WV)
<http://www.wvencyclopedia.org/articles/1864>

At the time you said:

"We cannot afford to allow the Pittston strike to jeopardize West Virginia's high standing in international coal markets. With Rich Trumka and Gary White standing beside me, we will present a united group and we hope our efforts will help to secure our place in international coal markets."

The most dramatic turn of the strike came in September 1989 when union miners seized Pittston's central processing plant in Virginia, the Moss No. 3 plant. The seizure, organized by the UMWA leadership, was intended to halt coal production. The strikers occupied the plant from September 17 to September 20 without any serious incidents of violence.

The seizure of Moss No. 3 garnered the attention of the federal government. In October, Elizabeth Dole, Secretary of Labor, visited the strike zone. She met with both sides and appointed former Labor Secretary William J. Usery Jr. as a special mediator. After months of negotiations, a settlement was announced January 1, 1990.

As part of that settlement, Secretary Dole announced the formation of the Coal Commission, which included representatives from the UMWA, the coal industry, the health insurance industry, the medical profession, academia and the government, to recommend to the Secretary and Congress a comprehensive resolution to the crisis facing the UMWA Funds, retirees and their families. The commission's key finding was that "retired miners have legitimate expectations of health care benefits for life; that was the promise they received during their

working lives, and that is how they planned their retirement years. That commitment should be honored.” The panel believed that every company should pay for its own retirees.

Using the commission’s findings, you introduced the Coal Act that required all companies to pay for the cost of their retirees’ health care benefits.

You released the following press statement January 2, 1990:

“This tentative settlement is an answer to my prayers! West Virginia, our coal mines and their families could not have better news to begin the New Year. Those who toiled long hours in these seemingly endless negotiations deserve much praise. Bill Uery, Rich Trumka, and Paul Douglas deserve credit for finally reaching this accord. Their efforts have borne the fruit of this agreement. It has been a long eight months for all of us. I’m particularly gratified that my pensions/health benefits legislation was a positive influence in these negotiations. My legislation has made Congress and the Administration aware of the crises which now exist in health care in the coal industry. This legislation provided the incentive for the parties to reach accord on the health issues. As a result of this tentative settlement, and the debate which my legislation has sparked, the agreement reached includes the formation of a Secretarial Commission, by the Secretary of Labor to look at these major health care and pension issues. I will work constructively, with the commission, toward solving the larger problem and protecting the health care of the more than 125,000 pensioners, widows and their

families who remain -- even with this settlement -- at risk. The need for action by Congress on my bill remains. I will be discussing the terms of this settlement in detail with President Trumka, the BCOA and other coal industry leaders to determine what updates and revisions to my bill may need to be made. It is my intention to move forward with this measure as soon as Congress reconvenes. While we can rejoice in the historic agreement between the UMWA and Pittston, I have said all along that a settlement in this strike will not by itself solve the long-term health care crises our retired miners and their families face. I will not rest until we've finished the job of protecting the health care of all miners, pensioners and their families. I also want to acknowledge the miners who have gone without so much during 1989. They are the real heroes of this settlement. Their tenacity and their determination to be treated fairly was the driving force behind the negotiations. The 125,000 pensioners, widows and their families whose health care benefits remain at risk are also heroes in this struggle. They reside in 47 states and their average ages are in the 60's and 70's. 32,000 of them are in West Virginia alone. Their cause became inextricably a part of this debate. We can never let them down. That is why I did everything possible to facilitate the settlement of this strike. During the past two months, I was in regular communication with Federal Mediator Bill Usery, I stood behind Bill in his efforts to bring together the two sides and keep them talking. I helped keep the pressure on the talks by elevating these issues onto the floors of the Congress. These efforts produced a growing awareness and concern in Congress of the need for a resolution of the health benefit

issues involved in the strike. On New Year's Day we have taken a giant step forward toward protecting the fragile lives of retired miners, widows and their families -- and toward a more stable and productive coal industry.”

1.5 Coal Industry Health Benefit Stabilization Act of 1989

You first introduced the Coal Industry Health Benefit Stabilization Act (better known as the Coal Act) along with Senators Byrd, Heinz and Specter. The bill would have transferred surplus UMWA pension funds into the UMWA Benefit Trusts. At the time, the Benefit Trusts provided health benefits to 125,000 beneficiaries and was in financial difficulty. You said it was designed to help end the bitter strike against Pittston Coal and prevent coal companies from escaping financial responsibilities to pensioners, disabled miners, widows, and their children. You worked with the UMWA as well as the Bituminous Coal Operators Association to introduce the legislation.

While this legislation never left the Finance Committee, you continued to fight for miners' benefits, introducing and fighting for the passage of the Coal Act in 1992.

1.6 Passage of the Coal Act in 1992

Your Coal Act, which was introduced as the Coal Industry Retiree Health Benefit Act in November of 1991 and ultimately included in the Energy Policy Act of 1992, created two new health care funds to protect the health benefits of all union coal miners who retired before the end of 1994, along with their widows and dependents.

The law “reached back” to force many of the original companies, or related businesses, to pay for the health care benefits they had promised to their retirees. It also allowed the union to shift \$210 million over three years from its overfunded pension fund. After those first three years, it tapped interest on the Abandoned Mine Lands (AML) fund to help pay for retiree health benefits.

At the time of enactment, the two Coal Act funds covered 115,500 beneficiaries. Today, these funds continue to protect 25,000 retired miners and widows. As you will recall from recent meetings with Cecil Roberts, his mother is among the widows whose benefits have been protected by your Coal Act.

In an earlier version of the bill, there was an all-inclusive tax on coal companies, spreading the retiree-benefit cost among both union and non-union companies. In particular, the bill would have required an industry levy of 75 cents per hour worked, which would be paid directly into a new retiree-benefit fund. You tried to append this plan onto a Democratic tax bill in the Senate Finance Committee. However, the underlying bill was vetoed by President George H.W. Bush, in part because of his opposition to taxing companies that had never signed any of the UMWA-BCOA Wage Agreements.

1992, the year of the Coal Act, was an election year, between Clinton and Bush. President Bush did not have many legislative accomplishments to tout to voters. The White House realized that the Energy Policy Act could fill that role, and they did not want it to fall apart. Given your persistence with the miners’ benefits, the

White House realized they had to take an interest in “the coal issue”.

Tom Scully, then Deputy Assistant to President Bush, and Gail Wilensky, the former director of Medicare and Medicaid, came to your office to discuss the bill. Ellen Doneski, Paul Joffe, then UMWA President Richard Trumka, and Bill Samuel, now director of government affairs at AFL-CIO, were present during the meeting.

Instead of taxing the entire coal industry, Tom Scully and Gail Wilensky suggested a “super reach back” formula to require former operators who were no longer in the coal business, or were no longer union employers, to begin making contributions into the UMWA health care funds for their former workers. They said the Administration could not support your tax on the whole industry, but if you used the reach-back provision, they could support it so that Bush could say he was not supporting new taxes. Your staff got the sense that the White House did not think you would accept this offer, but you wanted a solution and either the all-inclusive tax or a reach-back formula would have been acceptable, but the White House preferred the latter. When you agreed to the proposal, Tom Scully turned “white as a sheet”.

The compromise plan that emerged on the energy bill called for using the “super reach back” formula that would trace as many retired miners as possible to their previous employers or, if those companies had gone out of business, to related companies. The nature of this super reach back was that it went farther back than the 1970s. Prior to the 1970s, large companies including

steel, owned coal mines. So, this particular reach back would include these companies.

You have said that, at that time, there was no general interest in Congress regarding your legislation whatsoever and the bill passed primarily because you said you would hold the Senate in session through Christmas of 1992, if the bill had not moved.

When speaking on the record about the bill in October 1992, you told the story of John Lewis, President of UMWA from 1920 to 1960, wiring words to West Virginia coalfields regarding securing the first health and retirement plan for UMWA members, the Krug-Lewis Agreement in the 1940s. When the plan was agreed to, Lewis sent a telegram saying, “the agreement is now honored.”

During the same speech, you said that when your legislation is signed by the President, you will send the same message to the coalfields—“at long last the agreement will be honored.”

The bill was signed into law in October 1992.

According to Ellen, for several years following the passage of the Coal Act, when you first met with newly elected members to the Senate your one request to them was to stick with you on the Coal Act. However, this request was not only limited to new members of Congress. Early in your Senate career you made a deal with Senator Daniel Inouye to vote with him in favor of legislation supporting sugar, and in return he would vote with you in favor of coal. Sugar was and remains a very important commodity for Hawaii, and this was the harbinger of a long-term

deal between West Virginia and Hawaii to look out for each other's interests.

In the many Farm Bills and Agriculture Appropriations bills over the years you have consistently supported sugarcane, the sugar price-support program and have voted against eliminating subsidies for sugar. In return, Senator Inouye voted for cloture and final passage of the Energy Policy Act of 1992, which included your Coal Act, and consistently supported you in your efforts to protect miners' safety, benefits and jobs and expand clean coal initiatives.

Throughout your tenures, the both of you held true to this agreement, and you continued to honor it after Senator Inouye's passing in December 2012.

1.7 Testifying in support of the Coal Act at the House Ways and Means Committee, September 1993

When the Coal Act conference report was adopted, House Ways and Means Chairman Rostenkowski stated that, because of the concerns expressed by the House conferees about the financing mechanism used to provide these health benefits, the Committee on Ways and Means would review those provisions.

The hearing in which you testified was prior to the commencement of collection of premiums on October 1, 1993, as mandated by the Coal Act. In addition, the Committee heard testimony from industry executives regarding alternative proposals to the Coal Act, including proposals to exempt reach-

back companies and small coal producers and to provide a tax credit to companies that are required under the Coal Act to contribute to the UMWA Combined Benefit Fund.

In your testimony, you emphasized that the Coal Commission concluded the retirees were entitled to health benefits and that the Coal Act was necessary to prevent companies from dumping responsibility for their former employees on others. Furthermore, you said that there has never been any dispute over the fact that beneficiaries are entitled to the lifetime health care benefits. The controversy was over who should pay, and that controversy was settled in the Coal Act.

An excerpt from your comments at the September 9, 1993 hearing before the Ways and Means Committee:

“I cannot emphasize enough how crucial that law (the Coal Act) is to the peace of mind as well as to the health of these elderly and often extremely vulnerable human beings, these men and women who watched with great fear the health care promised to them by companies almost vanish...I have seen so many times, of a retired coal miner, when I have been in their homes, just the act of watching them watching television and they want to change the channel, and they get up from their seat, and this is like a freeze-frame movie, they struggle to rise from their chair. It may take them 2 or 3 minutes to cross the 10 or 12 feet to their television set, gasping, wheezing, hurting, struggling to change their television set, and 2 or 3 minutes to get back and slump down into their chair.”

You argued that Congress chose the fairest approach possible, assigning responsibility for each beneficiary to the extent possible, to the employers for whom the beneficiaries worked. You urged the committee to ignore proposals offered by the critics of the Coal Act saying:

“... [If] we start talking about moratoriums or exceptions or whatever else [it] will be the collapse of all of this. I guarantee that as I would guarantee my life, as I can spell my last name, I guarantee it if there were exceptions, if there are moratoriums, it will all disappear. It will all fall apart, and 200,000 plus people whose average age is 77 years old will be out in the cold, which they would have been anyway had this legislation not passed... without the benefits of the program, the retirees are devastated.”

Democratic Congressman J.J. Pickle of Texas and Republican Congressman Amo Houghton of New York asked if the Coal Act was setting a dangerous precedent, providing retiree benefits to the coal industry while other industries were encountering the same problem. Among your responses you said:

“We are doing the Lord's work in passing this legislation. I am not talking about a precedent. There is never going to be another situation like the particular dynamics of coal miners, of Harry Truman, of John L. Lewis, of promises made, of promises that were almost not kept but which have been kept by this legislation. There will never be a precedent for something like that... So precedents are ours to make. If I had pancakes this morning, can I have oatmeal tomorrow? That decision is mine to make. Precedents are ours to make.”

Republican Congressman Amo Houghton was further concerned that the Coal Act was in effect bailing out a privately bargained agreement. You responded saying:

“Please understand that an enormous amount of the money for this, as you call it—bailout—comes from the miners themselves through their pension funds, through miners giving up their own pension funds, putting hundreds of millions of dollars of their own pension funds to which they are legally entitled into this solution. So this is not exactly a Chrysler bailout we are talking about. These are miners in some very substantial manner, money which they are legally entitled to, using their own money to help in the solution of their health care problems.”

1.8 Protecting the Coal Act in 1995

In 1994, Republicans won control of both the House and Senate. Since they controlled both houses of Congress, during the budget reconciliation process in 1995 Republicans again tried to roll back the health care coverage provided by the 1992 Coal Act that benefited over 32,000 West Virginians at the time. Republicans had support from the Senate Majority Leader Bob Dole, but you successfully won the battle to preserve benefits for the miners, by using the “Byrd Rule” to guard against dangerous changes to the Act. Under the “Byrd Rule”, Senators can block a piece of legislation if it purports significantly to increase the federal deficit beyond a ten-year term or is otherwise an extraneous matter as part of a reconciliation bill, resolution or conference report.

1.9 Named Honorary Member of UMWA in 1995

In 1995 you were named an honorary member of the UMWA because of your tireless efforts on behalf of the miners over the years, an honor rarely bestowed on an elected official. It was at their 51st constitutional convention held in Miami, Florida, which you attended and received the award in front of thousands of miners.

Ellen traveled with you to the event and recalls the UMWA sending a white stretch limo to pick you up from the airport. She said you were surprised and appreciative, but ultimately opted to take a taxi-cab to the convention instead.

1.10 Testifying in Support of the Coal Act in the Senate, 1998

After writing the Coal Act, you honored the decades-old promise to provide health benefits for those who drove the nation's industrial development with their work in the coal mines.

Immediately after passage of the Coal Act, several "reach back" companies filed lawsuits arguing that the Coal Act violated their Due Process and amounted to an unconstitutional taking of their property. The vast majority of these cases were unsuccessful because our federal courts determined the law was a rational and constitutional solution to an economic crisis. One exception to this line of cases occurred in 1998 when the Supreme Court held that Congress could not require some "super reach back" companies to pay into the funds. In that case, the Court ruled that only companies who employed union miners in 1974 or later

could be held responsible for paying into the funds because the 1974 contract was the first union contract that included an explicit, enforceable obligation to provide lifetime retiree health care.

In October 1998, you testified at a hearing before the Senate Committee on Governmental Affairs' Subcommittee on Oversight of Government Management regarding implementation of the Coal Act. Much of the discussion surrounded the aforementioned Supreme Court decision that relieved Eastern Enterprises from its obligations to retired miners and their widows. During that testimony, you insisted Congress and the federal government had an obligation to make certain health benefits are there for retired miners in West Virginia and across the country. While the Court's decision only applied to Eastern, you remained concerned about the short and long term financing of the Coal Act.

Two busloads of miners came to D.C. to attend the hearing. Ellen recalls Senator Thad Cochran opening the hearing room door and upon seeing the large number of miners in attendance and realizing the odds were stacked against him, he turned around and walked out. Additionally, Senator Specter invited some of the miners to sit on the dias because it was standing room only, saying:

“Mr. Chairman, might I make a suggestion? There are a lot of people standing outside. There are some chairs here that were reserved for witnesses, and I think we might allow quite a few more people in here, maybe even occupy some of the chairs on the dias until we have more Senators here. It is always uncomfortable to see taxpayers in the hallway when they want to see what is going on inside.”

At the hearing, you pointed out two individuals in attendance whose health care coverage was protected as a result of the Coal Act.

An excerpt from your comments:

“Some members may believe that the recent Supreme Court decision on Eastern Enterprises v. Apfel is a rationale to review or reopen the Coal Act. Anything is a rationale to reopen the Coal Act. The way I read the Court decision is, in fact, different. It strongly reaffirms that a promise was made to coal miners that must be kept that all reach back and signatories from 1988 and later must keep up their end of the promise. The Court only ruled that the Act as it narrowly applied to Eastern Enterprises was unconstitutional, period.”

Following your statement the hearing room broke out in applause, which seemed to irritate Senator Brownback who said:

“If we could, I would like to hold the applause down on future witnesses, if possible. I appreciate your support for Senator Rockefeller and I appreciate your attendance, but we do like to try to keep a certain demeanor about the Committee room, if we can.”

Senator Brownback had thought the hearing was going to be about taking down the Coal Act, but instead it ended up being a discussion about how the miners needed the Coal Act.

1.11 Coal Miner and Widows Health Protection Act, 2000

In 1999, the Combined Benefit Fund faced its first shortfall since passage of the Coal Act in 1992 and Senator Byrd and Congressman Rahall included a stop-gap of \$68 million in the final omnibus Appropriations bill to avert a cut.

In May 2000, Senators Durbin and Robb joined you in introducing the Coal Miner and Widows Health Protection Act. Senator DeWine of Ohio later joined the bill. The legislation would have authorized appropriations from the Treasury to the UMWA's Combined Benefit Fund for Fiscal Year 2001 through Fiscal Year 2010 for the payment of health benefits. At the time, the Combine Benefit Fund was facing a budget shortfall because of then-recent adverse court decisions and the rising cost of health care.

On May 17, 2000 you spoke to thousands of current and retired coalminers who rallied at the U.S. Capitol to support efforts to protect health benefits for retired miners and their families.

Unfortunately, this legislation never left committee, but you remained dedicated to fighting for retirees' health benefits and were able to again secure funding for benefits in 2006. The details of that agreement are detailed later in the memo.

1.12 Demonstration Drug Program for Retired Miners, 2001

You brokered an agreement to establish a three-year Medicare demonstration project to prevent devastating cuts to retired

miners' health care benefits. According to Ellen Doneski, Vice President Gore helped to secure the funding over Christmas at the end of 2000 through executive authority as one of the last acts of the Clinton Administration, as President Clinton was leaving office on January 5, 2001.

As a result, Medicare began to pay the UMWA Combined Benefit Fund approximately an additional \$140 million beginning July 1, 2001. Specifically, the funding was used to pay for a portion of the miners' prescription drug benefits. You were able to extend the program again in 2005. Those efforts are discussed later in the memo.

1.13 Inclusion of Mine Safety Amendment for Mine Inspectors in the 2002 Energy Legislation

You offered an amendment to the Energy Policy Act of 2002 to improve safety for coal miners in West Virginia and across the country by requiring the hiring of additional mine inspectors. Despite the \$7 million budget cut facing the federal Mine Safety and Health Administration (MSHA), you fought hard to reverse a projected 25 percent reduction in the mine safety inspection workforce, which was well below authorized levels. From Fiscal Year 2001 to Fiscal Year 2006, the first term of the Bush Administration, MSHA's staffing levels fell eight percent.¹⁷ Furthermore, a Government Accountability Office report released in 2003 said that 44 percent of MSHA's underground coal mine

¹⁷ Coal Mine Safety Shortchanged by Years of Budget Cuts | Center for Effective Government (Coal Mine Safety Shortchanged by Years of Budget Cuts | Center for Effective Government)
<http://www.foreffectivegov.org/node/3620>

inspectors were eligible to retire within 5 years and the agency had no plans for replacing them.¹⁸

Your amendment to the Senate energy bill would have required the U.S. Labor Secretary to review federal mine inspector staffing levels, and based on the findings, hire, train and deploy enough inspectors to maintain proper safety in coal mines. Your amendment was agreed to during consideration of the Energy Policy Act of 2002. You were one of the Senate conferees to this legislation; however it was stripped out during conference at the insistence of then-Chairman Ralph Hall (R-TX) of the House Education and Workforce Committee.

The bill also included an amendment of yours designed to protect miners' health and limited greenhouse gas emissions through an incentive to capture methane from coal. In November 2002, Republicans ended negotiations on the legislation, with the intention of drafting a new bill the following year when they gained control of both Houses of Congress.

When the negotiations fell apart, you released a statement saying:

"The energy policy legislation we had negotiated struck a balance between protecting the environment, promoting conservation and encouraging economic growth. When we started negotiating this bill, it wasn't about being a Democrat

¹⁸ Mine Safety: MSHA Devotes Substantial Effort to Ensuring the Safety and Health of Coal Miners, but Its Programs Could Be Strengthened.
General Accountability Office Reports & Testimony
2003-10-01

or Republican, it was about producing an energy policy that was beneficial to America's future. I am truly disappointed that there were some who would throw away a solid energy plan in the hope of passing legislation next year that focuses on their priorities of oil and gas exploration. The bill we were working on had incentives for clean coal technology and it increased safety for miners by maintaining sufficient numbers of mine safety inspectors. Now we are going to face an uphill battle to include these important provisions again next year. Not finishing this energy policy is both a loss for West Virginia, and the entire country."

1.14 Black Lung Benefits Survivors and Equity Act of 2002

You and Congressman Rahall introduced companion legislation, the Black Lung Benefits Survivors and Equity Act to streamline the black lung benefits process for coalminers and their spouses by allowing them to continue to receive benefits without re-filing claims or having to prove their spouse died as a result of black lung disease. Unfortunately, this bill never left committee.

Upon the bill's introduction, you took to the Senate floor saying that current policy arbitrarily forces some widows of black lung victims to wade through bureaucracy to prove and reprove their spouse's illness.

Fortunately, this provision (known as the "Byrd Amendments") was championed by you and Senator Byrd again in 2010 and was ultimately included in the Affordable Care Act. The Byrd Amendments are detailed later in this memo.

1.15 Demonstration Drug Program for Retired Miners, 2005

In 2005 you were again successful in extending the Medicare demonstration project for retired coal miners and their families. Under the agreement, Health and Human Services provided an additional \$100 million in each of the following two years to the United Mine Workers Association Health and Retirement Funds' Medicare Part A and B Demonstration Project.

1.16 The Sago and Aracoma Mine Disasters in January 2006

In January 2006, West Virginia saw both the Sago and Aracoma mine disasters. The Sago disaster occurred on January 2 in Upshur County, taking the lives of 12 miners. It was the worst mining disaster



The 2006 Sago Mine Disaster. You visited Sago Baptist Church where the miners' families awaited word on the men's fate.

in the United States since the Jim Walter Resources Mine Disaster in Alabama in September 2001 and the worst disaster in West Virginia since the Farmington Mine Disaster in 1968.

The mine blast and collapse trapped 13 miners for nearly two days. The tragedy was compounded when the miners' families were originally told by the mining company that their loved ones had survived. However, mining company officials took three hours to confirm the error, while families waited to greet their miners, only to be told in the end that 12 of the 13 had died.

The UMWA's report on the Sago Mine Disaster was issued on March 15, 2007. Among other provisions, the report states that this tragedy was preventable, and “occurred as a result of a series of decisions that were made by the mine's owner, and allowed by the state and federal agencies that are charged with mine safety.”¹⁹ The Sago mine had more than 270 safety citations in the two years prior to the disaster.

Shortly after Sago, on January 19, 2006, the Aracoma Alma mine in Logan County caught fire. This ultimately led to the death of two men.

The mine's conveyor belt ignited that morning, pouring smoke through the gaps in the wall and into the fresh air passageway that the miners were supposed to use for their escape, obscuring their vision and ultimately leading to the death of two miners. The two men, Ellery Hatfield, 47 and Don Bragg, 33, died of carbon monoxide poisoning when they became separated from the other members of their crew.

¹⁹ Sago Mine Disaster (UMWA in Action)
<http://www.umwa.org/?q=content/sago-mine-disaster>

Mine fires are not uncommon along conveyor belts in coal mines. However, the combination of friction caused by high speed belts and flammable material can and has resulted in heatings and/or ignitions.²⁰

MSHA's report about the Aracoma Alma mine, which was a non-unionized mine, revealed substandard safety conditions. The report showed that the owner of the mine, Massey Energy, violated multiple safety laws at Aracoma that led directly to the deaths of the two miners. Miners at non-union mines do not have the same safety rights UMWA miners have, rights that are guaranteed in their contracts and must be respected by mine management.²¹

Lack of available means to communicate became an issue during the Sago and Aracoma disasters because it was "down in the hollow". To help out, you were able to get AT&T to come in and string up lines so families could call and check-in with each other.

²⁰ McAteer, J. D. (2006, November). The Fire at Aracoma Alma Mine #1. A preliminary report to Governor Joe Manchin.

²¹ MSHA report on Aracoma disaster 'reveals truth about safety conditions' in nonunion mines, UMWA says (UMWA in Action)
<http://www.umwa.org/?q=node/74>

1.17 Mine Improvement and New Emergency Response (MINER) Act of 2006

On January 20, 2006, following the Sago and Aracoma mine disasters, you took several Senators from the Health, Education, Labor and Pensions (HELP) Committee to meet with the families of the Sago Mine workers who lost their lives.



Senator Enzi, Chair of the HELP Committee at the time, Senator Kennedy who was the Ranking Member and Senator Isakson joined you to meet with the families.

Even though the HELP Committee had jurisdiction over the legislation, Senators Enzi and Kennedy let you draft the MINER Act with them.

The MINER Act calls for substantial increases in oxygen supplies for miners, better tracking devices, better trained rescue teams, and revamps mine rescue rules to better safeguard a more rapid response in the event of an accident. In particular, the law requires each miner have at least two hours of breathable air and

additional stores of self-rescuers every 30 minutes along escape routes, as well as at the working face of the mine. It also establishes new electronic tracking systems, local rescue teams, quicker incident notification, stricter fines, and tougher fine enforcement. Importantly, the MINER Act has led to fewer fatalities. There has been a 56% reduction in the rate of coal mine fatalities and a 32% reduction in the coal mine injury rate.

When the Senate and House reached an agreement on the bill, you released the following statement:

"The MINER Act represents the most groundbreaking development in mine safety legislation in a generation. This bill will usher in a new era of safety for our mines. For the first time, we will be better able to address an accident before it occurs, not simply react to it. And when accidents happen – and, unfortunately, they will because coal mining is dangerous – we will now be able to employ the most advanced technology to bring miners back to safety and to their families. All of the Senators who worked on this bill put the interests of West Virginia miners and the coal industry first – they have visited Sago, they have talked to the families, and they have kept these memories uppermost in their minds as we have drafted this visionary legislation."

The legislation was signed into law in June 2006 with instrumental support from you, Senator Byrd, Senator Enzi, Senator Murray, Senator Isakson and Senator Kennedy.

1.18 Mine Safety Tax Incentives Act in 2006

You and Senator Byrd were able to include mine safety tax incentives in the year-end tax package, the Tax Relief and Health Care Act of 2006. The tax incentives were in response to the MINER Act which was requiring the industry to do something for the first time, so you wanted to give them financial assistance to do what the MINER Act required.

The provisions were included to help facilitate coal companies' investments in the latest mine safety technology, including providing breathing apparatus, tracking devices, and communications systems. The two provisions are detailed below:

- **Mine Rescue Team Training Credit**: This provides a tax credit of up to \$10,000 for coal companies and mine operators for the training of mine rescue team members.

In addition, this credit gives coal companies incentives to make crucial investments in equipment and training that will help coal miners return safely from work each day. A tax credit of this size offsets approximately 20 percent of the cost of preparing a miner to be ready to rescue his colleagues.

- **Election to Expense Advanced Mine Safety Equipment**: The provision allows a taxpayer to elect to treat 50 percent of the cost of any qualified advanced mine safety equipment property as an expense in the taxable year in which the equipment is placed in service. It enables coal companies to immediately expense 50 percent of the cost of purchasing new life-saving

safety equipment to make sure miners are protected. Several types of safety equipment are eligible for the tax benefit including communications technology that enables miners to maintain constant contact with an individual above ground; electronic tracking devices that enable an individual above ground to locate miners underground at all times; emergency breathing apparatuses including devices carried by miners and additional oxygen supplies stored in the mine; and mine atmospheric monitoring equipment to measure the levels of carbon monoxide, methane, and oxygen in the mine at all time.

The provisions were enacted by the Tax Relief and Health Care Act of 2006 and extended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. Most recently, on January 2, 2013, President Obama signed into law the American Taxpayer Relief Act of 2012, which extended the provisions through December 31, 2013.

During the mark-up of the 2012 tax extenders bill a few Democratic offices were upset over the possible inclusion of mine safety provisions in the legislation. Your staff was able to strike a deal with these offices to allow mine safety and mine rescue team provisions to be included, and in return we would not throw our weight behind a deal over the refined coal tax credit, which does not benefit West Virginia.

However, the recent failure in May 2014 to move forward on tax extenders on the Senate floor has delayed the extension of these provisions, which were included in the Finance Committee's 2014 tax extenders bill.

1.19 Preserving Retired Miners Health Benefits as Part of the 2006 Surface Mining Control and Reclamation Act Amendments (SMCRA)

You again fought to protect miner health benefits in 2006. While your original Coal Act of 1992 covered miners up to 1994, the health care provisions included in the 2006 amendments to SMCRA further protected health care benefits for orphaned miners through 2006.

According to Bill Banig of the UMWA, the 2006 health care provisions were a result of several issues facing the UMWA health plans. First, shortly after passage of the Coal Act, a federal court decision in Alabama reduced the amount of premiums that coal companies were paying into the Combined Benefit Fund (CBF). Second, as mentioned previously, the 1998 Eastern Enterprises case determined the Coal Act violated the Constitution when it required contributions to the CBF from a firm that left the coal industry in 1965 and was not party to later contract negotiations. Third, and most importantly, the UMWA was seeking relief for the 1993 Benefit Plan. Unlike the CBF and 1992 Benefit Fund, which are included in the Coal Act and have mandatory employer contribution rates set by congressional statute, the 1993 Fund is solely funded by employer contributions negotiated in collective bargaining agreements. The 1993 Plan was in trouble because of recent bankruptcies in the steel industry and especially by the Horizon Natural Resources bankruptcy, causing the population to double, from less than 3,500 to approximately 7,000 in the last two years.

These attacks on the benefits promised miners and their families simply furthered your determination to fight for miners' health care provisions in SMCRA.

The 2006 SMCRA Amendments authorized two federal payments to augment resources for the UMWA health benefit plan to make certain adequate funds were available to cover eligible health benefits: payments from the General Fund of the U.S. Treasury, and if additional funds are needed, payments from interest accrued to the unobligated balance of the Abandoned Mine Reclamation Fund. These payments cover the costs of providing healthcare benefits to unassigned beneficiaries, or miners who retired from a coal operator that is no longer in business.

At the time, you were a conferee to the bill, and Senator Enzi was Chairman. According to Ellen, you asked Senator Enzi for his assistance in keeping the health care provision in the bill and Senator Enzi agreed. The bill was signed into law by the President on December 20, 2006. Today, your efforts on the Coal Act of 1992 and the SMCRA bill in 2006 protect health care benefits for 35,000 miners and dependents who retired before the end of 2006. Your more recent efforts with the CARE Act, described later in this memo, would provide protections for miners who retired after 2006, including thousands who will lose health care benefits as a result of Patriot Coal's bankruptcy.

1.20 National Miners' Day, 2009

When you introduced the resolution designating December 6 as National Miners Day with Senator Byrd, you released this statement:

“Coal is part of our heritage – our West Virginia soul – and it’s important that we do everything possible to protect and recognize our miners and coal industry workers. Our hard-working miners show up to work every day to make sure that the lights turn on all across America. I am proud to join with the rest of the West Virginia delegation in introducing this resolution and I will fight for the future of coal jobs in our state for decades to come.”

National Miner’s Day resolution passed the Senate on December 3, 2009. It serves to commemorate the work and sacrifice of miners past and present, as well as demonstrate support for the jobs of miners well into the future. National Miner’s Day is celebrated on December 6.

1.21 Upper Big Branch Mine Disaster in April 2010:

On April 5, 2010 the United States suffered its worst mining disaster in 40 years, when 29 miners were killed in an explosion at the Upper Big Branch



(UBB) mine in Montcoal.

The mine, operated by a subsidiary of Massey Energy, exploded due to a build-up of methane. Many investigations, including a report released by MSHA, concluded that Massey Energy failed to properly maintain its ventilation systems, which allowed methane levels to increase to dangerous levels.

You attended and spoke at the memorial service at the Beckley-Raleigh County Convention Center on April 25th. You also went to the one year anniversary in Whitesville and attended the UBB Miner's Memorial Ceremony. Your office has been very active with the families and had a presence at the UBB family meetings MSHA held monthly for over a year at the Academy in Beaver. You met with victims' families in your D.C. office and they have greatly appreciated your efforts.

1.22 The Robert C. Byrd Mine and Workplace Safety and Health Act 2010:

In response to the horrific incident at the Upper Big Branch mine, you introduced the Robert C. Byrd Mine and Workplace Safety and Health Act to further strengthen workplace safety. While this bill has yet to be enacted, you have reintroduced it in the 112th and 113th Congresses.

The legislation adds safeguards for workers who speak up against unsafe working conditions. In particular the provisions of the draft bill:

- Fix the broken “Pattern of Violations” process – which was meant to give MSHA authority to crack down on mines that repeatedly violate our laws, but has never been effectively implemented.
- Take a hard look at MSHA to make sure it is doing its job by creating an independent panel to investigate MSHA’s role in serious accidents.
- Give teeth to existing whistleblower protections so that miners can come forward to report safety concerns.
- Give MSHA additional tools to keep miners safe, including the ability to subpoena documents and testimony outside of the public hearing context.
- Provide protections that will apply to workers across all industries: greater rights for victims and their families to participate in investigations and enforcement actions, updated civil and criminal penalties, and the requirement that hazardous conditions be addressed immediately so that litigation does not delay safety.

1.23 Hearings following the Upper Big Branch Disaster 2010

Following the disaster, you attended two congressional hearings which discussed UBB. The first hearing was held on April 27, 2010 in the Senate Committee on Health, Education, Labor and Pensions (HELP), titled “Putting Safety First: Strengthening Enforcement and Creating a Culture of Compliance at Mines and

Other Dangerous Workplaces”. You also attended the second hearing in Beckley on May 24, 2010 conducted by the House Committee on Education and Labor hearing titled “The Upper Big Branch Mine Tragedy.”

During the HELP hearing you gave testimony saying:

“...the Miners Memorial on Sunday [April 25, 2010], was one of the most powerful and gripping experiences that I've ever had.

“Workplace safety is important in all industries, but it's absolutely critical in those industries where the risks of injury are great, and the consequences of poor safety are severe...

“Following those tragic events [of Sago and Aracoma], we vowed to improve safety in the mines, and we came together to pass the bipartisan MINER Act--a good piece of legislation that did improve safety and rescue response--the most significant Federal mine safety legislation since 1977. But it is clear that we must do more...”

1.24 Mine Safety Information in the Dodd-Frank Bill of 2010

Because of your efforts, an amendment was included in the Dodd-Frank Wall Street Reform and Consumer Protection Act to require mining companies to disclose mine safety information in their reports filed with the Securities and Exchange Commission.

Prior to the bill, there was no requirement for publicly-traded coal companies to inform their shareholders about their safety records, which allowed companies to operate without critical checks and balances. You first mentioned the idea of safety disclosures in the Health, Education, Labor and Pensions Committee hearing on UBB. This provision was added in during conference, at your request, by Senator Dodd.

1.25 Coal Accountability and Retired Employee (CARE) Act, 2010

In July 2010, you and then-Senator Goodwin introduced this legislation to protect the pensions for over 100,000 mineworkers. The CARE Act amends the Surface Mining Control and Reclamation Act to transfer funds in excess of the amounts needed to meet existing obligations under the Abandoned Mine Land fund to the UMWA 1974 Pension Plan to prevent its insolvency.

The problems with the pension plan are largely a result of the 2008 financial crisis. Before the crisis, the plan was well-managed and 97 percent funded. But, because the financial crisis hit at a time when the pension plan had its largest payout obligations to retirees, the fund has not been able to recover its lost investments. The fund is now at-risk of falling into “critical status” – meaning that it is almost less than 65 percent funded – and is expected to completely collapse in 10 to 20 years. Furthermore, as of July 2012, the ratio of retired miners eligible for pension benefits to active miners who are paying into the fund

was 9.6 to 1. Upon its introduction you released the following statement:

“We owe it to our hard-working coal miners to make sure their pensions are there for them when they retire. Our West Virginia miners work long hours in difficult conditions to keep the lights on for America – and we should always thank them, respect them, and fight for them. This is money they have earned, and this legislation will give our retiring coal miners more certainty about their future.”

You have reintroduced this legislation in every Congress since, in March of 2011 and March of 2013. Given the uncertainty that many miners faced after the bankruptcy of Patriot Coal, you updated the legislation in 2013 (113th Congress) to make certain the 12,000 impacted retirees have access to health benefits. In particular, your new CARE Act adopts a proposal similar to your Coal Act of 1992 in that it “reaches back” to hold Peabody and Arch accountable for the benefit obligations they transferred to Patriot, while also providing AML funding for the pension plan. Without your bill, the 12,000 retirees who were impacted as part of Patriot’s bankruptcy will lose their health care benefits in approximately 3 years because the Voluntary Employee Beneficiary Association (VEBA) approved by the bankruptcy court was provided with insufficient funding to provide benefits beyond that period.

When you first sat down with Senator Wyden as he was taking over the gavel for the Senate Finance Committee, you told him this was your top priority in your remaining time in Congress. You told Senator Wyden getting the Coal Act passed was your

proudest accomplishment during your time in the Senate. You had previously met with Senator Baucus when he was Chair, and also told him action on the CARE Act was one of your highest priorities.

1.26 The Affordable Care Act and Black Lung in 2010

After years of fighting, with the passage of the Affordable Care Act (ACA), Congress passed legislation to make it easier for long-term miners and their widows to automatically qualify for Black Lung benefits.

As part of the ACA, Byrd succeeded in reversing Reagan-era changes to the black lung benefits program that had made it harder for miners or their widows to obtain those benefits.²²

The “Byrd Amendments” provided long-term miners with a presumption of entitlement to Black Lung benefits, meaning the law reverts to assuming that miners with at least 15 years’ experience who have a disabling respiratory condition have Black Lung disease. His amendments also required the automatic continuation of benefits to spouses when a miner who had been receiving Black Lung benefits dies, keeping widows whose husbands were receiving benefits at the time of their deaths from having to re-apply after their husbands die.

These ACA provisions are commonly referred to as the “Byrd Amendments” because they were one of the late Senator’s

²² Black lung benefit reform left out of health act debate (l)
<http://www.wvgazette.com/News/201210270057>

priorities in the bill, but the concept originated with your 2002 Black Lung Benefits Survivors and Equity Act.

As of November 2013, since the Byrd Amendments passed, 390 miners have received Black Lung awards and 1,107 survivors have received awards.

1.27 Black Lung Health Improvements Act of 2013

As part of your longstanding commitment to protect miners from the debilitating and deadly disease, you introduced your final piece of Black Lung legislation in June 2013.

The bill as introduced proposed lowering the respirable coal dust standards; increasing miners' access to their health records in the Black Lung claims process; making it easier for miners to access legal representation when operators refuse to provide benefits; creating new grants for research into the disease; and requiring the Government Accountability Office to study ways to make the application process for Black Lung Disability claims easier for miners to navigate, among other provisions.

You first spearheaded efforts in Congress to pass new respirable dust rules to protect miners from contracting Black Lung disease by including a provision requiring the Department of Labor to issue these regulations in your 2010 mine safety bill. You have since weighed in directly with President Obama and the Director of the Office of Management and Budget to finalize the rules.

Fortunately, on April 23, 2014, four years after the respirable dust rule was proposed, you joined the Department of Labor in announcing the new Black Lung rule in Morgantown, West Virginia. The rule, among other provisions, reduces the overall dust standards in coal mines from 2 to 1.5 milligrams per cubic meter of air. The new rule takes effect August 1, 2014, with some components phased in over the following two years. The current limit on coal dust exposure was set in 1973. While you had initially pushed for a standard of 1 milligram per cubic meter, the Department of Labor ultimately finalized the rule at the higher standard of 1.5 milligrams per cubic meter.

Together with the aforementioned Byrd Amendments, your efforts to finalize the respirable dust rule mark some of the most important protections for Black Lung victims and widows in more than two decades.

2 ENERGY & ENVIRONMENT

2.1 Introduction

“People think they are protecting coal by pretending climate change doesn’t exist or that carbon capture and storage is not needed. But burying one’s head in the sand is not a solution and can only backfire. Denying the problem of climate change may feel good in the short term, but in the long term, it only locks in an existing infrastructure for other fuels like natural gas and will cost coal miners’ jobs.”

University of Charleston Forum on carbon capture and sequestration, September 8, 2010

This section covers your work to bring West Virginia to the forefront of national energy policy discussions, including furthering investments in alternative and renewable energy sources, including natural gas, which has great potential in the state. However, as you have said countless times, any investments in alternative energy sources must work with coal to help the state thrive, as coal remains an essential piece to America’s energy independence. Throughout your career, you have had to balance environmental challenges with the realities of the economic impacts in West Virginia.

You have worked to help West Virginia become a leader in clean fuels by authoring legislation to encourage federal investment in

clean coal technologies such as carbon capture and sequestration. You have also participated in and supported many efforts to mitigate climate change.

During your time in the Senate, you saw West Virginia and the nation's coal industry go through many changes. As mentioned previously, you saw the collapse of the industry in the 1980s. During this time the industry saw further job loss because of mechanization. You saw mountaintop removal's prevalence expand even further in the 1990s to retrieve relatively low-sulfur coal, a cleaner burning form. Low-sulfur coal became desirable as a result of the Clean Air Act Amendments of 1990, which tightened emission limits on high-sulfur coal processing. At the same time, production in northern West Virginia decreased because of its high-sulfur coal. This was followed by southern West Virginia declining and northern West Virginia being stable as firms switched back to higher-sulfur coal due to wider adoption of scrubber technology in the 2000s.

Most recently, on top of a carbon-constrained economy, coal has faced an increasing challenge from natural gas as a preferred energy source. The discovery of new reserves has resulted in an over-supply of natural gas, which has reduced the cost of electricity generation from natural gas in relation to coal.

Some of your other notable efforts include: supporting the Clean Water Act and Safe Drinking Water Act; supporting Superfund legislation to clean up environmentally hazardous industrial sites; as well as swiftly responding to the January 2014 chemical spill that left 300,000 West Virginians without access to safe water.

2.2 Member of the Energy and Natural Resources Committee 1985-1987

As a member of the Energy and Natural Resources Committee, you were a member of the Energy Regulation and Conservation, Energy Research and Development, and the Natural Resources Development and Production subcommittees from February 1985 to January 1987. In 1987 you left the Energy Committee to become a member of the Finance Committee.

2.3 Emergency Planning and Community Right to Know Act (EPCRA) of 1986

You voted in favor of the Superfund Amendments and Reauthorization Act (SARA) of 1986, which included EPCRA. SARA was signed into law by the president on October 17, 1986. EPCRA establishes requirements and a framework to make certain that the EPA, state and local governments, and the private sector will work together to control and respond to releases of hazardous chemicals to the environment.

SARA amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly known as “Superfund”.

EPCRA was passed in response to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals. These concerns were triggered by the 1984 disaster in Bhopal, India, caused by an accidental

release of methylisocyanate. The release killed or severely injured more than 2,000 people.

To reduce the likelihood of such a disaster in the United States, Congress imposed requirements for federal, state and local governments, tribes, and industry. These requirements covered emergency planning and "Community Right-to-Know" reporting on hazardous and toxic chemicals. The Community Right-to-Know provisions help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment.

2.4 Supported the Clean Water Act, 1987

You voted to override President Reagan's veto of the Water Quality Act of 1987, the most recent amendment to the Clean Water Act of 1972.

The Water Quality Act provided for states to extend pollution control programs created under the Clean Water Act of 1972. The emergence of groundwater protection, particularly protection from pesticide pollutants, was of particular concern to state and federal authorities. At the time, 53% of West Virginia's population was served by groundwater, and the state used 933,000 pounds of pesticide per year.²³

²³ Winton, J. Water Treatment: The states zero in on groundwater regulation. *Chemical Week Special Report*, 29.

The legislation was a nine-year extension of the program credited with helping clean up the nation's waterways. In particular, the act authorized a total of \$18 billion to help states build sewage and wastewater treatment facilities; \$8.4 billion for a new revolving fund to provide loans to states for up to 100 percent of a project's cost and \$9.6 billion for a construction grant program.

The Water Quality Act of 1987 was really the Water Quality Act of 1986, which was passed in the final days of the 99th Congress.

The 1986 bill, representing two years of negotiation and compromise, was pocket-vetoed by President Reagan after the 99th Congress adjourned, so there was no chance to override the veto.

However, before the 100th Congress was three weeks old, it had been reintroduced, passed and again sent to the desk of a president who said it cost too much in a time of huge budget deficits. Before the vote on the bill occurred, you took to the Senate floor saying:

...I rise to express my very strong support for the Water Quality Act of 1987. I am very pleased to be a cosponsor. Not only is passage of this bill critical to...West Virginia which relies on the Federal-State partnership established by the existing clean water law, but it is also an important symbolic first bill to be passed by the 100th Congress...

I would simply note two aspects (of the bill) that would be of benefit to West Virginia. First, there is the difference in the funds made available for wastewater treatment facilities.

Under the administration's bill, West Virginia would lose over \$12.5 million in funding in the next 2 fiscal years, and some \$25 million in the next 5. This is an untenable solution for a State that is financially strapped.

Second, I would note the inclusion of the so-called re-mining provisions in the bill. This provision will maintain the integrity of the Clean Water Act for such operations, while also allowing some new flexibility for the coal industry to rework previously mined areas. I think this is an intelligent provision and one which will be used responsibly by both coal operators and State officials alike...

The President's pocket veto of the bill demonstrates a skewed set of priorities. I am hopeful that the strong margin in the other body, and a sizeable margin in the Senate today will send a message that the bill is, and should be, the law of the land. And if necessary, we should be prepared to overturn a Presidential veto, if one should occur...

Senators and representatives from both parties warned against a second veto. It came as expected, and Congress backed their threats with overwhelming override votes.²⁴

2.5 Funding for the Little Kanawha River Basin Study in 1987

Included in the Fiscal Year 1988 Appropriations was an amendment you introduced to fund the Little Kanawha River Basin Study. The conference agreement appropriated

²⁴ Goeller, D. (1987, December 25). Environmental Agenda Wimpers In 1987. Associated Press.

\$12,051,000 for river basin surveys and investigations. In particular, you were able to secure \$150,000 of this funding for the Little Kanawha River Basin study.

The study enabled the Soil Conservation Service to study flood control in the area. Upon offering the amendment, you took to the Senate floor, saying:

“The counties that make up the Little Kanawha River Basin were devastated by a flood in 1985. The area which includes Braxton, Gilmer, Calhoun, Lewis, and Upshur Counties consists of over a million and half acres. Damages of \$32 million were incurred when the Little Kanawha swelled over its banks. The people there live in constant fear that this will occur again. In addition the adverse effect on economic development is monumental. The situation has made it very difficult to interest investors in the area. This much needed study will provide for a reconnaissance survey of the area to determine the severity of the problem. The major portion of the study will involve the investigation of various methods of flood prevention. Both structural and nonstructural alternatives will be investigated to determine the most cost-effective approach to alleviate the problem.”

2.6 Alternative Motor Fuels Act of 1988



In July 1987, you introduced the Alternative Motor Fuels Act, designed to promote the use of methanol and other new automotive fuels that could reduce dependency on foreign oil while simultaneously reducing pollution.

Car manufacturers had refused to build alternative fuel vehicles if the fuel was not available to power the cars. Furthermore, gas stations refused to sell those fuels if there were no cars operating with them. Your bill was designed to motivate automakers by giving them a break on the fleetwide mileage requirements they must meet. Specifically, it required the Department of Energy to make certain that the maximum practical number of passenger automobiles and light-duty trucks acquired by the federal government be alternative- fueled vehicles and to study their performance. It also authorized the federal government to carry

out a program to help state and local governments test the use of alternative fuels in passenger buses.

The House companion legislation was introduced by Congressman Philip Sharp of Indiana, Chairman of the House Committee on Energy and Commerce's Subcommittee on Energy and Power. Congressman Sharp said that the bill represented "the single most important step we can take" to reduce oil imports. During the final conference for the bill, both you and Chairman Sharp thanked your staff for all of their hard work and dedication on the final product. However, California Congressman William Dannemeyer said nothing regarding his staff, but simply said that credit should be given to the members.

The bill was signed into law by the president on October 14, 1988.

This legislation has been credited as the reason for the dramatic increase in the production of alternatively fueled vehicles, notably the so-called flex-fuel vehicles, which run on either alternative fuels or gasoline. In fact, 500,000 of the 17 million cars sold in the United States in 1999 were flexible-fuel vehicles.

You brought several prototype coal powered cars back to West Virginia to test and drive. According to Wes Holden, he came to Washington D.C. to pick up a Ford Crown Victoria sedan that had been specially designed to run on a combination of ethanol and methanol fuel. He drove it back to the state for you to use during your next visit. Former staff member Paul Joffe said when you drove the alternative-fueled car around West Virginia constituents seemed to really enjoy it and you were happy to know that your

fellow West Virginians shared your enthusiasm and appreciation for automobiles.

2.7 Member of the Energy and Natural Resources Committee 1989-1991

You again served on the Energy and Natural Resources Committee in the 101st Congress, from February 1989 to February 1991. You served on the Public Lands, National Parks and Forests subcommittee. When you left the Committee for the second time, you did not receive any new Committee assignments. At the time you were already serving on the Commerce; Veterans Affairs; and Finance Committees.

2.8 Oil Pollution Act of 1990

You were one of 15 cosponsors of the Oil Pollution Act (OPA), to mitigate and prevent civil liability from future oil spills off the coast of the United States, largely in response to the Exxon Valdez incident.

The OPA established provisions that expand the federal government's ability, and provide the money and resources necessary, to respond to oil spills. The OPA also created the national Oil Spill Liability Trust Fund, which is available to provide up to one billion dollars per spill incident.

In addition, the OPA provided new requirements for contingency planning both by government and industry. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) was

expanded in a three-tiered approach: 1) the Federal government is required to direct all public and private response efforts for certain types of spill events; 2) Area Committees -- composed of federal, state, and local government officials -- must develop detailed, location-specific Area Contingency Plans; 3) and owners or operators of vessels and certain facilities that pose a serious threat to the environment must prepare their own Facility Response Plans.

Finally, the OPA increased penalties for regulatory noncompliance, broadened the response and enforcement authorities of the Federal government, and preserved State authority to establish law governing oil spill prevention and response.

The OPA was signed into law in August 1990 by President George H.W. Bush.

2.9 Clean Air Act Amendments of 1990

At the time of debate surrounding the Clean Air Act Amendments of 1990, you were concerned some of the provisions in this legislation disproportionately affected West Virginia and as a result you ultimately opposed the legislation.

Sulfur dioxide emissions are a chief component of acid rain, a large environmental concern at the time. The Clean Air Act Amendments required a reduction in sulfur dioxide emissions of 10 million tons a year. All the reductions would be made by coal-fired power plants. Reducing emissions could be done by

installing scrubbers in those plants that burned high-sulfur coal, or a less expensive approach was to shift from burning coal with high sulfur content to low-sulfur coal.

According to Paul Joffe, you were originally prepared to support the Clean Air Act Amendments, when Richard Trumka, then UMWA President, struck a compromise with Majority Leader George Mitchell. In an effort to save jobs in West Virginia and other high-sulfur coal states, Trumka had convinced Mitchell to mandate the use of scrubbers at coal-fired power plants, which are devices on smokestacks designed to remove sulfur.

However, when Senator Mitchell returned from recess the deal fell apart and the bill that emerged from Max Baucus' Environment Committee was completely redone. Although the majority of the Senate supported the legislation, you ultimately could not, citing that no longer requiring the use scrubbers, and giving the option to burn low-sulfur coal, threatened jobs in West Virginia.

In voicing your concerns about the approach taken to acid rain on the Senate floor, you said that the bill allocates a disproportionate share of the burdens of acid rain cleanup to the States of Appalachia. Also, you said that the legislation may meet some environmental objectives, but the potential economic impact of the acid rain provision calls for further action.

In addition, you also said the revised bill *“reflects a decision to change the rules of the game and those changes...threaten jobs in my State and...the entire country stands to lose if the industrial heartland, of which West Virginia is part, is devastated.”*

The Clean Air Act Amendments of 1990 were signed into law on November 15, 1990.

Ultimately after the enactment of Clean Air Act Amendments of 1990, many companies opted for the less expensive approach of shifting to low-sulfur coal, which was of abundance in the Powder River Basin of Wyoming, disproportionately affecting West Virginia and southern Appalachia, which at the time were primarily made up of high-sulfur mines.

Due to this fuel-switching from high to low-sulfur coal, the UMWA estimates that more than 100 million annual tons of high-sulfur coal production from the eastern United States was displaced.²⁵ Furthermore, in the years following the passage of the Clean Air Act Amendments of 1990, coal production in West Virginia declined, while production in Wyoming's Powder River Basin increased. Also, during those years the number of coal miners in West Virginia decreased, while Wyoming saw resurgence.²⁶ However, in the 2000's you saw high-sulfur coal make a comeback as a result of wider adoption of scrubber technology.

2.10 Research and Development Program for the non-fuel use of Coal in 1990

During debate on the National Energy Policy Act (NEPA), you sought \$95 million over 3 years for the non-fuel use of coal, but at Chairman Bennett Johnston's urging you submitted the less costly

²⁵ Comments of United Mine Workers of America on Proposed LADCO EGU White Paper. (2005, May). *United Mine Workers of America*, pp. 1-2.

²⁶ U.S. Energy Information Administration - EIA - Independent Statistics and Analysis (Annual Coal Report) <http://www.eia.gov/coal/annual/>

version. NEPA was a bill to establish a national energy conversation policy to reduce the threat of global warming. The full Senate passed NEPA on August 4, 1990 by voice vote. However, the legislation was unable to pass in the House. Ultimately, you were able to include several provisions as part of the Energy Policy Act of 1992.

According to former staffer Paul Joffe, West Virginia University (WVU) was the first to approach you regarding research for the non-fuel use of coal. Carl Irwin and Richard Bajura from WVU had been conducting research for advancing materials using carbon fibers. Given your long interest in finding alternative uses for coal, this provided another use for coal other than burning it for electricity.

2.11 The Waste Technologies Industries hazardous waste incinerator near Chester, West Virginia, 1992

Completed in 1992 and located on the banks of the Ohio River across from Chester, West Virginia, the East Liverpool incinerator is among the largest in the world. Built in a low-income residential neighborhood, it is located within 1,100 feet of an elementary school and 320 feet from the nearest home.

Before the incinerator was completed, you wrote then-Ohio Governor Voinovich in May 1991 to ask that the Ohio EPA review the permits that were issued. In July 1991, you wrote to Bill Reilly, then-Administrator of EPA, requesting the agency perform a new risk assessment for the project. You based your request on the

fact that EPA had come up with new guidelines for waste incinerators since the original permit was granted.

You also worked to get answers from the government about its approval and joined other members in requesting a Government Accountability Office study to look into issues pertaining to the incinerator. Specifically, the report which was issued in September 1994 examined: 1) the operational control and ownership of Waste Technologies Industries (WTI), which runs the East Liverpool incinerator, and whether its hazardous waste permit is valid; 2) whether EPA and the state of Ohio have complied with regulations for approving and modifying the WTI permits; and 3) EPA's ability to make certain that human health and the environment are protected during the operation of the WTI incinerator.

Ultimately, in 1997 the EPA issued their first-ever federal guidelines for the siting of hazardous waste management facilities. While there are now new siting requirements, the plant in Ohio still stands.

2.12 Kammer Power Plant and EPA Regulations, 1994-1995

The Kammer Plant located in Marshall County is a subsidiary of American Electric Power (AEP). The plant started burning coal in 1958 – 5 years before the Clean Air Act of 1963. Kammer was burning high sulfur coal, which came from Consol Inc.'s Shoemaker mine in Marshall County.

In September of 1994 the Environmental Protection Agency (EPA), under the rules of the Clean Air Act of 1990, ordered AEP to significantly limit sulfur emissions at the Kammer plant. However, this move would have forced Kammer to switch from the high-sulfur coal at the West Virginia Consol mine, to a low-sulfur coal from a nearby Kentucky mine.

The miners working at the Consol mine were represented by the UMWA. You, Senator Byrd and UMWA President Richard Trumka were very concerned about saving the jobs of the West Virginia miners. A switch to non-West Virginia, low-sulfur coal directly threatened the jobs of 375 miners at the Consol mine, and some 3,000 jobs indirectly.

You contacted the EPA on several occasions, making calls and writing letters, stressing the need to save West Virginia jobs. Following the release of the rule in September, you convinced the EPA to delay the enforcement of lower-sulfur emissions for two weeks until an agreement could be reached. By November of 1994 you had convinced the EPA to delay the emissions rule for one year, until November of 1995.

When the one year suspension was announced, you held a press conference at the Kammer plant. Despite the delay, AEP's General Counsel grew concerned that one year was not long enough for them to keep the jobs, and began to back out. According to Drew Fields, when you got off the plane to attend the press conference, you approached AEP's General Counsel and asked him to assure everyone during the press conference that they would be able to keep their jobs.

Below is an excerpt of your comments at the press conference:

"I am very pleased that everyone involved was able to work together to reach this solution. We have, today, an agreement that keeps our miners working and jobs...secure...I am optimistic that by September 1995, a long-term solution can be reached that will allow the Kammer plant to meet EPA's air quality standards while continuing to use local coal. Until then, I am pleased that Kammer will be able to continue using local coal, preserving nearly 3,000 jobs that people can absolutely stop worrying about. The agreement will allow us to continue to pursue ways to correct the situation at the Kammer plant without the loss of any West Virginia jobs. That tells us that it is capable of doing both at the same time."

By October of 1995 you had convinced the EPA to extend its deadline for revising Kammer's emissions through 1998, allowing Consol's Shoemaker mine in West Virginia to remain in operation through the fall of 1998.

The Kammer plant has remained operational throughout the years. Because the plant has been in operation since 1958, and thus is an older plant, no plans were made to install scrubbers.²⁷ However, AEP did eventually switch to low-sulfur coal. Citing additional EPA regulations American Electric Power announced they will close the plant in December 2014.

²⁷ Power Plant Emissions Get Cleaner (West Virginia Coal Association)
<http://www.wvcoal.com/latest/power-plant-emissions-get-cleaner.html>

Recently, in April 2014, Moundsville Power LLC of Buffalo, New York, announced their plans to build a \$615 million natural gas-fired power plant in the same county. Hopefully, this new development will help to offset the impact of the Kammer plant shutting down.

Moundsville Power says the construction phase will employ up to 500 workers while 30 people will work full-time at the plant when it goes on line in 2018. Company officials said the proposed plant would generate 549 megawatts of power. By comparison, the coal-fired American Electric Power Kammer plant now generates about 630 megawatts.

2.13 Safe Drinking Water Act Amendments in 1996

The Safe Drinking Water Act was originally passed by Congress in 1974 to protect public health by regulating the nation's public drinking water supply. It was amended in 1986 and 1996 and requires the Environmental Protection Agency to protect drinking water and its sources.

According to statements made by Senator Byrd on the Senate floor, a 1995 USDA study on safe drinking water listed West Virginia among the five worst states in the nation in terms of the availability of safe drinking water. Furthermore, the study assessed that it would take \$162 million to clean up and provide potable water to approximately 79,000 West Virginians and another \$405 million to meet the worsening drinking water supply situation of some 476,000 West Virginians, nearly half of the population of the state at the time.

In 1996 you voted in support of legislation to update the Safe Drinking Water Act, giving states more flexibility to concentrate on the most urgent health needs and supply aid to communities that need financial help to comply.

In particular, the Safe Drinking Water Act authorizes states to assume primary oversight and enforcement responsibility for public water systems. To assume primacy, states must adopt regulations at least as stringent as national requirements and develop a plan to provide safe drinking water under emergency circumstances. The state-administered Public Water Supply Supervision (PWSS) Program remains the basic program for regulating the nation's public water systems, and 49 states, including West Virginia, have assumed this authority.

This legislation was signed into law on August 6, 1996.

2.14 The Clean Water Act and Mountaintop Mining in 1999

In 1999, you worked with Senator Byrd and the rest of the West Virginia delegation in drafting an amendment to the Clean Water Act in response to a district court ruling by Chief Judge Haden of the Southern District of West Virginia. Judge Haden ruled the rock and dirt stripped off mountain tops to expose coal seams could not be dumped into perennial or intermittent streams in the hollows below.

You reacted to the Haden decision by saying:

“Coal mining is a matter of striking a balance between environmental conservation and the nation's economic and energy needs. The evolution of surface mining into the practice known as mountaintop removal mining has further complicated the effort to strike such a balance. Nonetheless, we believe that the intent of the Surface Mining Control and Reclamation Act was to allow well-regulated surface mining operations that would ensure a sufficient supply of coal to fuel American industries and provide affordable heating and lighting for the homes of millions of American families, while also protecting our precious natural resources.”

Senator Byrd received a vote on the amendment during consideration of the Fiscal Year 2000 continuing appropriations bill in November 1999. While the amendment was agreed to, the underlying bill was never signed into law. The ruling was later overturned on appeal when the United States Court of Appeals for the Fourth Circuit, in Richmond, Virginia, found in 2001 that federal courts had no jurisdiction in the case.

2.15 Emmons Water Project in 2000

On August 20, 2000 you dedicated the Emmons Water Project, a waterline extension providing the community with drinkable water. The waterline extension was made possible through a partnership among the West Virginia American Water Company, Boone County Commission, Boone County Public Service District,

Kanawha County Commission, and the Kanawha County Regional Development Authority.

Since the earliest days of your public service career in West Virginia as a VISTA volunteer in Emmons, you were determined to get a waterline extension for the community.

The following remarks are from the Emmons Water Project Dedication:

"For over 20 years, I've been working to bring safe, clean, drinking water to Emmons. The community's isolated and bi-county location made it difficult and expensive to expand the waterline. Now, after their long wait, the people of Emmons can finally turn on their taps and receive clean water."

2.16 Arsenic Out of Drinking Water in 2001

You joined your colleagues in insisting that the Bush Administration keep in place the 10 parts-per-billion (ppb) drinking water standard for arsenic. The previous standard was 50 parts per billion.

The level of 10 parts per billion was proposed by the Clinton administration in January of 2001, but blocked that March by the Bush administration. After intense outcry by both the public and Congress and eight months of delay, the Bush Administration allowed the 10 ppb standard to go forward. On August 1, 2001, as part of the Department of Veterans Affairs, Department of Housing and Urban Development and Related Agencies

Appropriations Bill for Fiscal Year 2002, the Senate voted 97-1 to require the Bush Administration to put in place new arsenic standards for drinking water immediately.

The bill was signed into law on November 26, 2001.

2.17 Working to Clean-up Brownfields in 2001

You cosponsored the Brownfields Revitalization and Environmental Restoration Act. The bill provided assistance to the estimated 500,000 contaminated or abandoned industrial and commercial sites throughout the U.S. The goal was to improve local clean-up efforts by providing assessment and clean-up grants; enhancing states' clean-up programs; and offering liability relief for contiguous property owners, prospective purchasers, and innocent landowners.

West Virginia has a wealth of older industrial lands that have the potential to be redeveloped - but many in West Virginia had fears of building on contaminated land. Before passage of the bill, the state of West Virginia was leaving a significant amount of brownfields money on the table. The brownfields legislation in 2001 was a critical step in the effort to accelerate the process of cleaning up contaminated sites in West Virginia.

Your statement at the time of passage:

“The bill, which has been endorsed by the American Bar Association, will also encourage officials in West Virginia to take greater advantage of the EPA’s brownfields program by protecting innocent parties who should not be held liable for

environmental contamination claims, including many property owners and potential buyers. By setting reasonable standards to resolve liability concerns, we will allow more West Virginians to feel comfortable supporting and pushing for brownfield clean-up initiatives.”

The president signed the bill into law on January 11, 2002.

2.18 Energy Policy Act of 2005

You voted in favor of the Energy Policy Act of 2005 because of the significant federal investments included for clean coal.

During consideration of the bill, you supported an amendment to the bill which sought to reduce oil usage by 40% by 2025 (instead of 5%) and an amendment that required reductions in greenhouse gases to 2000 levels, both of which were rejected in the final bill.

You also supported an amendment to create a new federal program to encourage reductions in greenhouse gases and voted in favor of making the Coastal Impact Assistance Program a mandatory spending program, directing funding to six states that have production off their shores, Louisiana, Texas, Mississippi, Alabama, California, and Alaska. The latter two items were ultimately included in the implemented legislation.

Upon voting on the bill, you released this statement:

“[I am] confident that this forward-looking package of clean coal incentives will help us achieve the fleet of zero-emission coal-fired power plants scientists and researchers have told

us is possible in the next two decades. These tax credits will result in a rapid deployment of these essential technologies in the very-near future. The bill will be good for West Virginia -- it's good for our miners, our coal industry, and our utilities. While I would have liked it to do more for our environment, I appreciate the bill's balanced approach to production, conservation, efficiency, and innovation."

The Energy Policy Act of 2005 was signed by the president, becoming public law on August 8, 2005.

2.19 Abandoned Mine Land Program in 2006

You have strongly supported efforts to reclaim abandoned mines to mitigate environmental degradation and to alleviate health issues for people living or working around those sites. Through the Abandoned Mine Land Program, the federal government transfers fees paid by coal companies to states to clean up these sites, many of which have been out of service and created hazardous conditions and environmental degradation for decades.

You introduced the Abandoned Mine Land Reclamation Reform Act of 2005 in the First Session of the 109th Congress on April 28, 2005. Your bill proposed to reauthorize coal reclamation fees through Fiscal Year 2019 and to amend various other provisions of the Surface Mining Control and Reclamation Act (SMCRA). Your bill was among several other House and Senate bills considered in the 109th Congress to reauthorize the Abandoned Mine Reclamation Fund.

Ultimately, you joined as a cosponsor Senator Rick Santorum's legislation, the Surface Mining Control and Reclamation Act Amendments of 2006 in May 2006. As passed by the House and Senate, the Tax Relief and Health Care Act of 2006 included the Surface Mining Control and Reclamation Act Amendments of 2006. The 2006 amendments to SMCRA reauthorized the collection of coal production fees through Fiscal Year 2021. The legislation also reduced the coal reclamation fee rates and contained numerous other provisions that govern the distribution of receipts from coal reclamation fees to eligible states, eligible uses of the monies, and federal funding for coal miner retiree health benefit plans. The Santorum bill lowered the reclamation fees by 20% in two stages and your bill would have extended them at current rates.

The legislation provided an unprecedented \$6 billion in funding for the Abandoned Mine Land (AML) program over a 15 year period - with \$1 billion anticipated for West Virginia during that time period. Since passage of this legislation, West Virginias AML funding has more than doubled- which will go a long way toward helping states clean up the effects of old mines.

2.20 Calling on Exxon to end its funding of a climate change denial campaign in 2006

In October 2006, in an effort to call attention to the detrimental effects of industry-funded, so-called "research" in the debate on global climate change, you and Senator Olympia Snowe sent a letter to ExxonMobil, the world's

largest oil company, to end its funding of a climate change denial campaign.

ExxonMobil's extensive funding of an "echo chamber" of non-peer reviewed pseudo-science had unfortunately succeeded in raising questions about the legitimate scientific community's virtually universal findings on the detrimental effects of global warming.

In addition to asking ExxonMobil to make its history of funding deniers public and acknowledge the dangers and realities of climate change, the letter said:

"American companies have every right to engage in important public debates, but these discussions should neither serve as a license to obscure credible data and research nor impede domestic and international actions based on that data, climate change is one of the most serious environmental and economic issues facing the United States and our partners in the international community. It is absolutely irresponsible for any entity to try to influence our government's involvement in such an important debate in any way that is not scrupulously accurate and honest."

2.21 Energy Independence and Security Act, 2007

You voted in support of the Energy Independence and Security Act of 2007. The bill was the 2007 omnibus energy policy law, originally introduced by Congressman Rahall. Once it reached the Senate, Senator Reid's Renewable Fuels, Consumer

Protection, and Energy Efficiency Act of 2007 was incorporated into the final legislation.

The purpose of the bill is to help the United States gain greater energy independence and security by increasing the production of clean renewable fuels and increase the energy efficiency of products, buildings, and vehicles. It also helps promote research on and deploy greenhouse gas capture and storage options. In particular, the bill includes a provision that sets a target of 35 miles per gallon for the combined fleet of cars and light trucks by model year 2020 and includes a repeal of two tax subsidies in order to offset the estimated cost to implement that provision.

2.22 Future Fuels Act of 2008

This legislation was the first of your attempts to expand incentives for the development of clean coal technologies, establish incentives to capture highly explosive methane gas to keep coal miners safe, and create a low-cost coal-to-liquid program to develop transportation fuels.

Upon your introduction of the bill, you took to the Senate floor saying, that clean coal is critical to America's energy independence and to our national security while also helping mitigate the effects of climate change.

2.23 Cap and Trade Legislation 2008-2010

Also known as the American Clean Energy and Security Act of 2009, the cap and trade Waxman-Markey climate change bill was

agreed to in the House, yet the Senate never acted upon it and instead tried to devise its own strategy. However, you were deeply involved during cap and trade negotiations, which were mainly happening behind the scenes.

In June 2008 you joined nine of your colleagues – Senators Stabenow, Levin, Lincoln, Pryor, Webb, Bayh, McCaskill, Brown and Ben Nelson – in writing to Majority Leader Reid and Environment and Public Works Chairman Boxer to spell out the principals of what you wanted to see in any cap and trade legislation. The goals outlined in the letter, including things such as investments in new technologies and containing costs of achieving emissions caps, were to prevent undue hardship on the state, industrial sectors and consumers.

According to Tom Dower, you had several meetings with Senator Kerry during which you would tell him that if he pushed too hard in the early years, he would wipe out coal and the industry needed the time to catch up. However, the meetings never ended up being too detailed because Senator Kerry kept saying it would all work out.

Between 2009 and 2010 there were also a series of Chairmen meetings convened by Leader Reid at which you, and Senators Kerry, Baucus, Boxer, and Bingaman attended. Senators Kerry and Boxer would claim they were talking to a lot of members and making a lot of progress. And while Senator Baucus was rather quiet at the meetings, you would be the first to say you had some real problems with the bill and the process was not working – and Senator Boxer and Kerry are not working with anyone to address

those issues. Great frustration grew out of the fact that Senator Kerry was not listening to member's concerns.

During the debate you also met with several cabinet members and high ranking White House officials regarding cap and trade including: Council for Environmental Quality Chairwoman Nancy Sutley; Director of the White House Office of Energy and Climate Change Policy Carol Browner; and Secretary of Energy Steven Chu. In June 2010, you and a group of bipartisan senators met with the President at the White House to discuss the climate legislation. However, the meeting produced no breakthroughs.

While negotiations eventually broke down, you later introduced legislation with Senator Voinovich to answer the question of what it would take to get to CCS deployment.

When the cap and trade bill was defeated you said:

“It might be tempting just to count the defeat of cap and trade as a win and forget about it, or to keep up the fight on the political front without delving deeper in to the issues. But for West Virginia that would be a grave mistake. The defeat of cap and trade was a short-term political win but it didn’t do anything to address the underlying issues. It bought us time, not certainty, and my view is that we better use it wisely.”

2.24 Carbon Capture and Sequestration Demonstration Project, 2009-2011

In September of 2009, American Electric Power (AEP) and Alstom began operating the Mountaineer Plant carbon capture and storage (CCS) project, the first fully-integrated CCS facility in the world. The system captured up to 90 percent of the CO₂ from a 20 megawatt slipstream of flue gas (combustion exhaust gas produced at power plants) from the 1,300 megawatt plant. AEP then injected the CO₂ into suitable geologic formations for permanent storage.



On October 30, 2009, you joined executives from American Electric Power, Alstom, as well as then-Governor Manchin, delivering remarks at the event to formally commission the project.

AEP was selected by the Department of Energy (DOE) to receive up to \$334 million through DOE's Clean Coal Power Initiative to pay part of the costs for the continued installation of the CCS system at AEP's power plant in New Haven, WV.

Plans were for the project to be completed in four phases, with the system to begin commercial operation in 2015. However, in July of 2011, AEP announced that they could no longer afford to pursue the current CCS test at the facility or move forward with the second phase, for which they had been awarded the stimulus funding in ARRA. The second phase, Mountaineer II, was going to scale up the CCS project to treat 20 percent of the flue gases up from 1.5 percent. Ultimately, AEP determined that it could not take on the 50 percent match and operating costs that would have been required. They also said that increased regulations, including the EPA Air Quality Rules, served as an added deterrent from furthering the CCS facility. You met with Mike Morris, CEO of AEP, before their announcement on July 14, 2011. In the meeting, you conveyed your disappointment about the CCS project not moving forward.

Between October 2009 and May 2011, when the CCS project with Alstom at the Mountaineer Plant ended, the CCS system operated more than 6,500 hours, captured more than 50,000 metric tons of CO₂ and permanently stored more than 37,000 metric tons of CO₂.

2.25 Stationary Source Regulations Delay Act of 2010

In March 2010, you introduced legislation to suspend potential Environmental Protection Agency (EPA) regulation of greenhouse gases from stationary sources for two years. Congressman Rahall introduced companion legislation in the House of Representatives. However, neither your bill nor Congressman Rahall's left committee.

For years, you had been working with the coal industry to try and get their concerns heard as any part of a climate debate. You refused to join the Specter-Bingaman cap and trade bill in 2005, which was one of the more moderate bills and endorsed by UMWA, but the coal industry still opposed. Ultimately, this culminated in your bill to delay the rules for EPA greenhouse gas regulations for two years.

In introducing the Stationary Source Regulations Delay Act, you released a statement saying, among other things, that the legislation would give Congress the time it needs to address an issue as complicated and expansive as our energy future. And that, Congress, not the EPA, must be the ideal decision-maker on such a challenging issue.

2.26 Senator Murkowski's Resolution of Disapproval on EPA findings, 2010

In June 2010, the Senate blocked the motion to proceed to a vote on Senator Murkowski's resolution of disapproval measure to overturn EPA's endangerment finding that greenhouse gases threaten public health and welfare. Forty-one republicans and six democrats – you, Senators Bayh, Landrieu, Lincoln, Ben Nelson of Nebraska and Pryor-- voted in favor of the resolution.

While you did not necessarily agree with the overturning of EPA's endangerment finding you took to the Senate floor to explain your vote saying:

"I rise today to lend my support to the Murkowski Resolution of Disapproval for one simple but enormously important reason: because I believe we must send this strong and urgent message that the fate of our economy, our manufacturing industries, and our workers, including our coal workers, should never be placed solely in the hands of the federal Environmental Protection Agency. I have long maintained this in Congress. I have been around here for a while. I was a Governor for 8 years. I think the elected people, and not the unelected EPA, have a constitutional responsibility here and on an issue which is so totally important. We are accountable to those people.

Some here seem to talk about other aspects of this. I tend to focus, as a VISTA volunteer who went to West Virginia and live among coal miners, on people and all the problems, including the problem of climate change, that attend to their future.

I am not here to deny or bicker fruitlessly about the science, as some would suggest. In fact, I would suggest that I think the science is correct. However, it doesn't one iota deter from my support of the Murkowski resolution.

I care deeply about this Earth and resent anybody who suggests otherwise about either me or the people of my State. I care about the fundamental human commitment – the higher calling we all have – to be a steward. Greenhouse gas emissions are not healthy for the Earth or her people, and we must take significant action to reduce them. We must

develop and deploy clean energy, period. I accept all of that. But EPA regulation is not the answer. EPA has little or no authority to address economic needs. They say they do, but they don't. They have no ability to incentivize and deploy new technologies. They have no obligation to protect the hard-working people I represent with deep and abiding passion – people who changed my life. I was born anew in the coalfields of West Virginia at the age of 26. So I fight for my people. I understand I am a Senator, but I am a Senator from West Virginia, and I have a right to fight for them, and I do, and I support Senator Murkowski's amendment because of that. Their jobs matter. Their people, their work matters. Their lives matter. Any regulatory solution that creates more problems than it fixes and causes more harm than good in the real lives or real people, if they are affected badly, is no solution at all. I won't accept it. It is not something I will be a part of...

...But she [EPA Administrator Jackson] also made clear that the EPA's regulations will go forward regardless of whether Congress has acted on a comprehensive energy policy and regardless of whether Congress has given the EPA a direction in law about how and when and upon whom those regulations should be imposed.

So I introduced my legislation to suspend EPA action for 2 years. It is a little different from the Murkowski legislation, but it makes the same point. The EPA can't decide. We have to. Some can ridicule that. I don't. I am elected to protect my people and my country, but first comes my people and especially on this issue..."

The blocking of Senator Murkowski's proposal had made it apparent that there was a need for some sort of regulation even if the cap and trade bill was not the answer. However, at the time you had already introduced your legislation to delay EPA regulation on greenhouse gas rules for two years, giving time to Congress, not the EPA, to decide the appropriate policy.

2.27 Carbon Capture and Sequestration Deployment Act of 2010

You and Senator George Voinovich introduced this legislation in July 2010 seeking to encourage a massive federal investment in clean coal research, while protecting and creating coal jobs.

Senator Voinovich was one of the few coal-state Republicans to support a bill like this. He supported coal, the advancement of clean coal technologies and was not concerned with cost like many other Republicans. This was an expensive piece of legislation, and it was really designed to replace the bonus allowances that were part of the aforementioned Waxman-Markey Cap and Trade bill. In Waxman-Markey, carbon capture and sequestration received bonus allowances to fund carbon capture and storage (CCS) and this bill presented another way of doing that.

While this legislation never left committee, the CCS legislation was the first major bipartisan bill that would advance research and development for the best engineers and scientific minds to tackle CCS. You reintroduced revised CCS legislation in the 113th

Congresses, continuing your push for clean coal research and incentives.

2.28 EPA Stationary Source Regulations Suspension Act, 2011

In January 2011 you reintroduced legislation from the previous year to suspend some EPA greenhouse gas regulations for two years.

While Republicans had introduced proposals to block EPA's effort to regulate greenhouse gases altogether, your bill took a more moderate approach by suspending selected EPA greenhouse gas regulations for two years while Congress came up with a solution. During the two-year hiatus imposed by the bill, EPA would have been prohibited from taking action under the Clean Air Act regarding any stationary source permitting requirement or any new source performance standards relating to CO₂ or methane. Your bill would not have affected EPA's greenhouse gas reporting rules or motor vehicle emissions.

Eventually, you introduced this bill as an amendment to Senator Landrieu's Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Reauthorization Act of 2011. During debate of the bill, you took to the Senate floor saying:

"This amendment protects jobs, protects West Virginia and gives Congress time to develop a smart energy policy – one that recognizes our country is going to need clean coal for

decades to come, and West Virginia is at the forefront of that effort.”

Ultimately, your amendment was not agreed to by a Yea-Nay vote of 12 – 88. According to Tom Dower, your legislation had gained a lot of interest with republicans early on but the decision was made not to have a lot of republicans on the bill out of fears that it would scare democrats away. Republicans later decided to make it a political issue, rather than what could get passed, and industry ultimately sided with them. Instead, they voted together on the McConnell- Inhofe amendment that would have scrapped the rules altogether.

An excerpt from your floor statement regarding the McConnell-Inhofe amendment:

Mr. President, all of my colleagues know how deeply I feel about the need to stop EPA regulation of greenhouse gases, so that Congress can have the time we need to develop a smart energy bill that moves our country forward. This is of tremendous importance to the people of West Virginia.

To say again: I am strongly opposed to the McConnell-Inhofe amendment because it goes too far and because it has absolutely no chance of being enacted into law.

The McConnell-Inhofe amendment makes a point, but it doesn't solve a problem. And I'm here to solve problems.

The amendment would take away EPA's ability to address greenhouse gas emissions – forever. Let me repeat that: the

EPA, which looks out for the health and safety of everyone who lives here, would be permanently banned from doing its job, no matter what we know or learn in the future about greenhouse gas emissions.

This total elimination of EPA's role – with no other structure in place for addressing greenhouse gases – is irresponsible and unrealistic...

2.29 Speaking out against Big Oil Tax Subsidies, 2011

In June 2011 you spoke on the Senate floor about the need to end tax breaks for big oil companies and voiced support for Senator Menendez's bill, the Repeal Big Oil Tax Subsidies Act.

The legislation would end tax subsidies to the five largest oil and gas companies. That money would instead be used to cut the deficit – not provide additional profits to BP, Chevron, ConocoPhillips, ExxonMobil, and Shell.

Among your comments were:

“Big oil has shown they are incapable of feeling the financial struggles that families across the country face with \$4 a gallon for gas...these companies are out of touch and shouldn't be rewarded. This bill takes away the handouts for big oil and uses that money to help improve the lives of regular Americans trying to make ends meet. We can set aside the savings to reduce the deficit and protect programs vital to children, seniors, and the disabled.”

Earlier that month, you spoke at a Finance Committee hearing about need to end tax subsidies for oil and gas companies making record profits. You asked executives from the largest oil and gas companies in the country questions about how gas prices are standing like a dead weight on our economy, especially when they earn billion-dollar salaries.

Among your comments:

I really do believe you're out of touch. I do believe that. That doesn't mean you're not good people. That you don't participate in your communities, that you don't do helpful things, along with the work you do. But I think the main reason you're out of touch, particularly with Americans, and the sacrifices we're having to make here to come close to even balancing the budget, is that you never lose. You've never lost. You always prevail in the halls of congress...and I don't really know any other business that never loses. And just the size of the amount of money that you take is really hard for average people in WV to even come close to understanding. They don't think that can be come by in the regular order of the way the world treats them. They are always in the process of losing. Everything is an uphill battle. So my view of my work in WV...is that I'm holding on to a huge boulder...and trying to push it uphill. Every day I feel that. And I love that feeling. But I know if I take one hand off, both I and the boulder will disappear into the ether. That then leads me to say, and this is my opinion, but I really believe it...I think you all have a great sense of assurance. I don't

think you feel threatened by anything that's going on here...because of the way votes line up in this present congress. But I yearn for one of you to see what average people are going through and ask 'What can I do as a very, very large profitable company to make sure that bad thing doesn't happen to that person...The things that people have to worry about every day, none of you have to worry about. None of you took a commercial flight here and I don't blame you for that... You have the money. But our people don't...'"

2.30 Measure to Modify 45Q Tax Credit in 2012

You joined Senators Conrad and Enzi in introducing a bill to modify and improve the operation of the Section 45Q, carbon sequestration credit. This bill was not passed before the end of the 112th Congress.

The bill would reconfigure the “45Q” tax credit that was passed in 2008 and that allows, among other things, companies to claim a credit of \$20 per ton of carbon dioxide captured when producing energy. It amends current law to provide assurances to companies who were previously concerned that the tax credit would no longer be available to them once construction of CCS projects began.

You reintroduced this provision again as part of your Carbon Capture and Sequestration Deployment Act of 2014.

2.31 Vote on Overturning New Pollution Standards in 2012

In June 2012 you took to the floor to oppose the Inhofe Resolution of Disapproval. The Inhofe Resolution of Disapproval was initiated under the Congressional Review Act, and was a resolution of disapproval that would have blocked the EPA's Mercury and Air Toxics Standards (MATS or Utility MACT) rule which gives existing coal fired power plants three years to meet the new standards for mercury and other toxic air pollution covered by the rule. The three-year timeframe is mandated by the Clean Air Act, which was amended under President George H.W. Bush in 1990. EPA has given state and local permitting agencies guidance to provide a fourth year for compliance in order to install pollution control equipment. EPA has also outlined an optional fifth year for compliance on a case-by-case basis.

In your floor speech, you vehemently opposed it, saying the Resolution did nothing to embrace coal's potential, and unless the coal industry aggressively leans forward, coal miners and their families will lose the most. You mentioned that coal faces real challenges, including finite reserves, aging coal power plants, the low cost of natural gas, and the shift to a lower carbon economy and it's a disservice to coal miners and their families to ignore it.

In an effort to work cooperatively with the coal industry, you had introduced legislation in previous years to temporarily suspend EPA regulations. However, instead of supporting your legislative approach, coal operators demanded all or nothing when they supported a complete repeal of all EPA authority to address carbon emissions forever. According to Tom Dower, your floor

speech in opposition to the Inhofe Resolution was in part due to your frustration with the coal industry over their refusal to work in cooperation with the EPA and Congress in delaying emissions standards. In your own words, the industry had consistently turned aside your efforts to enact a compromise and “in the end got nothing”.

2.32 Freedom Industries Chemical Spill in Charleston January 9, 2014

The spill occurred at Freedom Industries on the Elk River in Charleston, when a storage tank failed, causing a chemical, crude MCHM, to leak into West Virginia American Water’s intake. For 10 days following January 9th, 300,000 West Virginians were told not to use their water for drinking, cooking, cleaning, bathing or washing.

Freedom Industries did not initially report the spill. Instead, it was discovered after community calls about a strong licorice odor. The West Virginia Department of Environmental Protection (DEP) responded to the air quality issue, investigated and engaged in mitigation.

The leak of the chemical, crude MCHM, which is mainly 4-methylcyclohexane methanol, has affected 300,000 people in 9 counties (Kanawha, Boone, Logan, Lincoln, Cabell, Putnam, Jackson, Roane, and Clay). MCHM is used to wash coal – it separates the burnable fossil fuel from unburnable rock and dirt. Officials know little about the chemical and, because it is not used

in consumer products but rather in industrial settings, its toxicity and other effects on humans are largely unknown.

Immediately following the leak, West Virginia authorities imposed a 10-day “Do Not Use” ban on tap water for the affected counties. On January 18, authorities completely lifted the ban, once concentrations of MCHM dropped below 1 ppm (part per million), which is the threshold for MCHM recommended by the CDC. However, days following the lifting of bans in certain zones, the CDC – citing an abundance of caution – issued a recommendation that pregnant women should drink only bottled water, even in cleared zones.

Twelve days after the chemical leak, and three days after the “Do Not Use” ban was lifted, Freedom Industries revealed that a second chemical, PPH, had also leaked from the compromised tank. PPH represented a relatively small percentage (approximately 5%) of the total volume in the tank. Subsequently, Freedom Industries has declared bankruptcy and is currently under investigation by the U.S. Attorney, the FBI and the EPA’s Criminal Investigation Division.

2.33 Response to Freedom Industries Chemical Spill in Charleston, 2014

In the hours following the spill, you asked the Chemical Safety Board to investigate and worked to secure additional resources to help the Board do its job in the Fiscal Year 2014 omnibus.

In addition to introducing the Chemical Safety and Drinking Water Protection Act with Senator Manchin and Boxer that would require inspection of chemical storage tanks, you also introduced two pieces of legislation with Senator Schatz that would hold companies like Freedom Industries accountable when spills of non-hazardous substances occur, and provide state and federal governments with increased access to funding to help cover the costs associated with cleaning up a chemical spill.

Furthermore, you asked the Centers for Disease Control and the Environmental Protection Agency to work on a joint study into the long-term health risks associated with the main chemical spilled, crude methycyclohexane methanol, or crude MCHM. You also contacted the National Institute of Environmental Health Sciences and Centers for Disease Control asking that any studies, new findings or outside data be shared among the many federal and state agencies working to address this spill, as well as with the public, as fully and quickly as possible.

You also gave remarks before an Environment and Public Works Water and Wildlife Subcommittee hearing chaired by Senator Cardin which examined the safety of drinking water sources following the West Virginia spill. Locally, you remained in close contact with state agencies and the National Guard and have written letters to West Virginia American Water asking for more transparency and clarity in what the company is doing to minimize the risk to its customers.

There was great concern over how Governor Tomblin responded to the chemical spill. In February, more than a month after the

spill, Governor Tomblin announced that he had made \$650,000 in state funds available to initiate the West Virginia Testing Assessment Project (WVTAP), an independent study involving in-home testing of tap water; including an analysis on the odor threshold of MCHM; and establishing an independent panel of experts to evaluate the safety factor MCHM. During his public announcement of WVTAP and in related press releases, the Governor also reported that he had reached out to you, Senator Manchin, Congressman Rahall, and Congresswoman Capito to ask for federal assistance to help expand WVTAP testing, as well as funding to support research on the short and long-term health implications of MCHM. Given the magnitude of the chemical spill, you then wrote to the Governor and expressed your concerns that he was reaching out to you for funding when he was sitting on Rainy Day funds that he could use to pay for the study. WV has the third largest Rainy Day fund in the United States, at \$916 million, according to the West Virginia Center on Budget and Policy.

Among the many statements you released:

“We can no longer trade the public’s health and welfare for industry profits. We’ve done it for far too long. As we have seen in West Virginia, when you cannot drink the water, not much else matters. The long-term economic damage from this crisis is almost immeasurable and the breach of trust seems irreparable.”

3 PUBLIC LANDS

3.1 Introduction

“One of [West Virginia’s] most defining characteristics is its extravagant natural beauty. Blessed with icy native trout streams, majestic deep-forest hardwood stands, and lush groves of rhododendron, West Virginia is almost heaven to many people.”

Congressional Statement, West Virginia Day, June 20, 2002

This section will cover your endeavors to further investments in public lands, including national parks, forests and rivers throughout the state. You have also sought to further conservation efforts in West Virginia.

3.2 National Park Service and West Virginia, 1986

You, along with Senator Byrd, introduced legislation to authorize the acquisition of land for construction of a New River Gorge Administrative Headquarters Visitor's Center, and maintenance facility in Glen Jean, WV.

At the time your New River Gorge amendment was adopted, you took to the floor saying:

“Over a quarter of a million visitors come to the New River each year. For whitewater rafters, the New River is one of the best rafting rivers in this country. For anglers, the New River has long been a favorite fishing spot. For the local community, the river is an important source of jobs and economic activity in the southern part of my State that has severe economic problems. Given the sheer volume of New River visitors, it's important that the river be well run and adequately maintained -- and it needs the facilities to do that.”

Your amendment was ultimately included in a bill to amend the Wild and Scenic River Act Amendments, which was signed into law on October 30, 1986.

The headquarters and visitors' center was built to promote tourism along the New River Gorge, and helped create new jobs in West Virginia's travel industry. In addition to boosting the local economy, the new Glen Jean site consolidated and vastly improved the National Park Service's New River Gorge operation,

ensuring that information and services for Park visitors were located in a centrally accessible place.

3.3 West Virginia National Interest River Conservation Act of 1987

In 1987, you introduced the West Virginia National Interest River Conservation Act. Congressman Rahall introduced companion legislation in the House.

The bill established a portion of the Gauley River and the lower portion of the Meadow River as national recreation areas, and designates the lower portion of the Bluestone River as the state's first scenic river. The bill also provided boundary modifications in the New River Gorge National River. Furthermore, the legislation provided federal protection, funding, and increased public awareness through support from the National Park Service.

The final package did not seek federal designation for the Greenbrier River. Prior to introducing your version of the bill in the Senate, you held public meetings in Pocahontas and Greenbrier counties to gather local opinion on the proposal. The meetings indicated strong public opposition to the inclusion of the Greenbrier. Thus, you had the protections for the Greenbrier River removed from your version of the bill.

When the Senate approved the West Virginia National Interest River Conservation Act you released the following statement:

"My rivers bill is aimed at preserving the pristine nature of three magnificent rivers in southern West Virginia by bringing them under the protective federal umbrella. National status will also provide unique exposure to promote tourism around these rivers... Tourism is a leading industry in West Virginia. But we must do more to aggressively promote our tourist attractions including our whitewater rivers. Federal status will guarantee these rivers national, and even international, exposure in tourism brochures published by the National Park Service."

The bill passed in the House 344-39 and was agreed to in the Senate by Voice Vote. The bill was signed into law on October 26, 1988.

3.4 Harpers Ferry National Park Addition in 1989

You were an original cosponsor of legislation introduced by Senator Byrd to enable the National Park Service to accept a donation of private land to expand the boundaries of the Harpers Ferry National Park.

The private land located in the area called Bolivar Heights was donated by Brad and Ruth Nash. The Nashes have donated altogether 28 acres to the Harpers Ferry National Historical Park. This specific piece of property witnessed significant activity during the Civil War. The most noted historical event was the role this area played in the Battle of Harpers Ferry, one of the most significant Civil War battles in West Virginia. On September 15, 1862, as a result of fire from Loudon Heights and School House

Ridge, the Union was forced to surrender Bolivar Heights. This was the largest capitulation of Union troops during the war.

In April 1989, you gave an opening statement in support of the bill before the Senate Subcommittee on Public Lands, National Parks, and Forests, Committee on Energy and Natural Resources. At the hearing you thanked Mr. Nash, who was in attendance, for his generosity.

The legislation was enacted in October 1989 and the park was successfully expanded.

3.5 The Cranberry Wilderness boundary in the Monongahela National Forest in 1990

You successfully included an amendment to the Department of the Interior and Related Agencies Appropriations Act of 1991 to modify the Cranberry Wilderness boundary in the Monongahela National Forest. This amendment removed a few acres from the existing wilderness boundaries so that an acid neutralization and liming project could be constructed to enhance the fish population in the Cranberry River.

You introduced the modification of the boundary to permit for the construction of an acid neutralization facility on the North Fork of the Cranberry River. The North Fork of the Cranberry is one of the three major tributaries on the headwaters of the river. Under the amendment, less than 5 acres were to be deleted from the Wilderness Area near the mouth of the North Fork of the

Cranberry River. The same acreage would be added to the Cranberry Wilderness at another location.

When you took to the floor to discuss your amendment you stated that:

“It is imperative that the Cranberry River be restored to its original splendor as a habitat for aquatic life. All interested groups support this legislation. The benefits that will accrue to the fishery and the surrounding area are tremendous.”

3.6 Conservation and Reinvestment Act of 2000

You, along with a bipartisan coalition of Senators, pushed for the passage of the Conservation and Reinvestment Act (CARA) of 2000. CARA would have provided West Virginia with more than \$300 million over 15 years to fund historic preservation, land and water conservation, wildlife conservation, and payment in lieu of taxes. After passing in the House overwhelmingly, it was bogged down in the Senate. You signed a letter to Senate leadership encouraging their support of the landmark legislation. Part of the final 2000 budget did include new funding for such programs.

3.7 Harpers Ferry National Historic Park Revision Act, 2004

You joined Senator Byrd in introducing the Harpers Ferry National Historical Park Boundary Revision Act in 2003. The bill expanded the boundary of the Harpers Ferry National Historical Park by about 1,240 acres; authorized the National Park Service (NPS) to acquire the added acreage by purchase, donation, or exchange,

except that lands that are already owned by the federal government would be acquired by transfer; and authorized the appropriation of whatever amounts necessary for those purposes.

The bill was signed into law by the President on September 24, 2004.

3.8 Wild Monongahela Act, 2009

Introduced in 2008, the bill, officially titled “Wild Monongahela: A National Legacy for West Virginia's Special Places Act” was drafted by Congressman Rahall and you and Senator Byrd worked together to introduce the bill in the Senate.

This bill established three new Wilderness areas on the Monongahela: Big Draft, Spice Run and Roaring Plains West. It also expanded three existing wilderness areas: Cranberry, Dolly Sods and Otter Creek. The Wild Monongahela Act protects roughly 37,000 acres of wild lands on the national forest.

In the United States, a Wilderness Area is an area of federal land set aside by an act of Congress. Human activities in wilderness areas are restricted to scientific study and non-mechanized recreation.

The bill was ultimately included in the Omnibus Public Lands Management Act of 2009 which was signed into law by the President on March 30, 2009. The legislation designated an additional 2 million acres in nine states as wilderness,

representing the largest expansion of wilderness lands in over 25 years.

4 EPILOGUE

Throughout your career you have had to strike a difficult balance of protecting coal mining jobs while acknowledging the real environmental challenges we face as a nation. You have long believed that we need to develop a comprehensive and responsible national energy policy to make our country more energy secure. This includes making sure that coal is a key part of our energy future, just as it has been an essential part of West Virginia's history.

By acknowledging coal's challenges, and continuing important investments in the research and development of clean coal technology, you have supported policies to make coal, and the jobs that come along with it, a critical part of our energy future for decades to come. You have also supported further investments in alternative and renewable energy sources, as well as natural gas which have great potential in the state and must work with coal to help the state thrive.

Most importantly, you have been a leading champion for protecting health care benefits for miners and their families. You wrote and passed the Coal Act of 1992 - the landmark legislation in which established a health benefits fund for the nation's coal miners. Furthermore, you have long been an advocate for coal miners suffering from Black Lung, as well as their spouses, supporting legislation that allowed the thousands of retired miners and their families in West Virginia to receive benefits without re-filing claims or having to reprove their spouse died as a result of Black Lung disease. You have also been a leading advocate for

mine safety, helping write and pass the MINER Act of 2006 as well as introducing the Robert C. Byrd Mine and Workplace Safety and Health Act.