

WV Joint Judiciary Subcommittee Hearing, January 9, 2007

Speaker: Chris Hamilton, WV Coal Association

The WV Coal Association deals more with underground injections systems as an alternative to impoundments or impurities removed from coal in coal processing aspect of mining. First of all let me apologize for some of the confusion over the last meeting. We were given a couple different times, a couple different dates, and consequently we weren't here to address this issue. I think a couple of delegates were heading back, and some our organization wasn't represented. Quite frankly, we question...we're trying to find the origin or basis of this issue being brought before this committee and are a little lost in trying to find out what the basis was for, actual origin of this issue.

We subsequently learned that there is some controversy surrounding one of the only twelve systems that are properly permitted and regulated in the state, and that issue is in litigation before the Mingo county circuit court at this time. And that litigation is advancing, positions are being taken, and the whole issue is being prepared for trial. Given that, we would question why this committee of the legislature would have interest in substituting itself for the judiciary. It's not uncommon for the leg to review matters that have been before courts, that have been litigated, and which cases a decision has been rendered. Typically that legislature will look at that decision, will question whether there are changes in public policy to protect the environment, to protect the general citizenry of the state on analyzing the decision. But, I submit to you, it's somewhat premature to parade in here, as we witnessed last fall, all the expert witnesses for the petitioners in the case without hearing from the defendants.

Underground injection is proven technology with extensive permitting requirements to have a system approved. We've heard from some of the nation's leading experts that adequate rules are in place, adequate protections for the citizens and the environment exist, careful monitoring takes place. And they've found in study after study, even the EPA has concluded that there are no hazards or risks to citizens or the environment from these systems. Again there are only 12 in the state that is currently active, that I'm aware of. There's controversy surrounding one. In fact, where it is alleged that water, drinking systems in a nearby community has been impacted in this system, the abandoned mine lands has made money available to provide drinking water, a system of public drinking water, available to this community.

Now upon making that decision to go ahead and extend the funds they concluded that if in fact, and its questionable, that if there had been any impact to this drinking water, that it was done under pre law, prior to 1977, and that's the finding that AML has to make before providing AML funds for providing water to this community. Do I think that we think that there's an issue with the water quality of these wells? We certainly do. Do we support providing drinking water, fresh water to this community? We certainly do. I think the only issue is culpability in this one system which is in litigation and we would maintain that given the expert testimony that we have perused, that there's no correlation between the active mining operation and the contamination of this well.

You've not heard from the experts representing the defendants in this case, and if you are to choose to consider legislation or some action, I would first urge to wait until the court that has heard this expert testimony and more makes a decision, or at least invite in the experts from the opposing side of the table.

I would further submit to you that, you know, no West Virginians should be without fresh drinking water supplies. Right now, thanks to mining, we have an unprecedented surplus of funds in this state, an unprecedented level, and while it's admirable to help pay down the debt, some of the retirement assistance, we would like to suggest that this legislature get serious about providing some additional infrastructure needs to the citizens of this state. I'm hearing some alarming levels, percentage wise, of West Virginians that don't have appropriate water and sewage. We currently have a program where a certain percentage of coal severance revenue is dedicated, first dollar out, to infrastructure needs. And I would suggest that you look at that program to see if we can't dedicate a higher percentage of dollars toward the basic infrastructure needs. Again we would question the appropriateness of this being before the legislature, due to the fact that it is right in the midst of litigation that's progressing forward.

Thank you, Mr. Chairman.

Question and Answers:

Q: Any questions for Mr. Hamilton? Delegate Tabb.

Q: Mr. Hamilton, I wasn't aware of the litigation that's going on, but it almost sounds as if you're saying to us that it's none of our business. And I take a little issue with that, because I have people that come in here. I haven't looked at this as a judge. I look at the issues that are brought forward and it's looking at possible solutions to problems and that's what we deal with on a regular basis. I'm not content on this issue or any other to wait until the court system makes a decision to do what I believe to be the right thing. I just, I'm a little offended that we're kind of being talking down to. I haven't looked at this at all from all the testimony I've heard, as being part of a court trial. I'm not wearing a black robe. We have the legislative system and we have the judicial system, and we have the executive system. That's what this whole thing's about. And I don't think that, I mean, the judicial system doesn't wait on us to decide what to do, and I don't think it's prudent to wait on them if there's a change that needs to be made. And that's just my personal opinion. But I'm willing to listen to anyone, anytime, and if you've got folks that you'd like to address issues with. I like facts. One thing that you mentioned, you said that the EPA said that there's no hazard or risk involved in a slurry system. That's pretty amazing, because I don't know any industry or business that doesn't have some risk to it. Now the risk may be very minute, but to say there's no risk to something, I find that to be a little hard for me to believe. If there's a minimal risk, I can understand that, but saying there's no risk in doing anything. There's risk in getting in a vehicle, driving down the highway, of being in an accident. There's just, I like dealing with facts, I appreciate you coming forward, but I take a little personal offense at being told that I don't need to look at any of this stuff until I hear a court's made a decision. Thank you, sir.

A: I, you like facts sir, I let me say, if I caused any offense in that regard, I apologize. I don't think I said that the legislature shouldn't look at this, or can't look at this; it certainly has the prerogative. I wanted to make sure that the committee understood, and by your own admission, you were not aware that this matter was being litigated. And it's, based on my experience with the legislature, that when a matter is being litigated that the lines of division between those two branches of government are respected and typically the legislature will allow, unless there's some unnecessary delay in that litigation, if it's moving, and advancing, and showing movement, then it's been my experience that the legislature's always been a little more willing to allow that

to play out before, before, uh, intervening in the matter. And my other comment about there being absolutely no risk, I think you're probably a little more correct than the words I used, there's certainly always risk. I think from the EPA record it shows that, if in fact these systems are designed, constructed as they are required to, and if in fact the agency ensures and monitors the design and construction through the permitting process, then those risks are minimal, minimized.

Q: (White) Thank you Mr. Chairman. First, this is from a couple years ago now, you told me there are twelve sites in West Virginia now?

A: Twelve active sites, yes.

Q: And, is Green Valley one of those?

A: I'm not sure.

Q: it is, or is it not?

A: I do not know.

Q: Well, the reason I bring it up is it was a number of year ago that I recall that uh, at least it was proposed to be a slurry injection site, and several abandoned mines there and I know that I received and awful lot, and overwhelming amount of opposition to that, certainly fear from folks that live there and depend on that water for drinking water, and certainly all of them. And I share Delegate Tabb's concerns that we are not motivated by having to interpret the laws and regulations but having to respond to our constituents concerns legitimately, or at least finding an answer to alleviate their concerns and being able to protect the interests of the people of WV, and certainly with that in mind, if I could. I mean I'd personally be working at...and this would be appropriate for Sec. Timmeryer to find out any complaints or what have you that their office has received concerning those issues. If you could find out for me if Green Valley in Nicholas County is one of those, I'd appreciate it.

A: I will do so.

Thank you, Mr. Hamilton. The next thing we have on the agenda is the resolution on the, regarding coal sludge issues and...but I guess I need to respond a little too, to Mr. Hamilton. We did request the coal industry to, on several occasions, come and present their opinion on the coal slurry issue, and I don't think any of us really were aware when we took this issue up that there was litigation. I even, like Senator White said, I even asked if this was an issue in other parts of the state, and found out that one of these coal slurry permits is in my district, and so I think that the intent at least as I heard it from this committee is to find out if there is any information, any data out there, that there might be a health hazard, you know to the citizens of the state. With this in mind, I don't think we are proposing at this point that any legislation on the coal slurry injection process itself. We are proposing a resolution. Counsel, you want to go ahead and explain that?

Speaker: Counsel

Yes. Taking into consideration all of the different speakers that we've had in the past couple of months on this issue, and the direction of the chairs of this committee. I've tried to

capture what it appeared were the four main issues that it appeared that we didn't have sufficient information on as it related to the injection and that although it is appropriate for the legislature to look at these issues and study it, it needed to be a little more technical than that. Perhaps the study should be directed to DEP and the Bureau of Public Health to actually conduct studies in a scientific manner and bring those results back before the leg.

With that in mind we have the standard language for resolutions, the 'whereas' that say "let's look at this" and then at the bottom of page one, it says for the results the DEP in conjunction w/ the Bureau of Public Health conduct or contract to have conducted a comprehensive study of the affects of underground injection of coal slurry including the following. And then it lists, what's in the slurry, and hydro geological study of the migration of slurry or its constituent contaminants from the injection sites into the waters of the state, a toxicological analysis of the coal slurry and its affects on human health. Because we heard it both ways, we heard that there were problems and that there weren't. Being proposed is a study to study the effects of coal slurry and its constituents on public health and communities where its being determined that coal slurry and its constituents have actually migrated into the groundwater.

So you wouldn't do the epidemiological study until you saw that there was some migration of the slurry in the water system. And then, the assessment of the effects on surface water and aquatic ecosystems, if there is migration of the slurry, and any other consideration that the Bureau of Public Health and the DEP would find as they went through their scientific analysis. And because you are talking about the scientific analysis, I've put in that they do multiple sampling dates at the locations and tried to make it understood that we want a broad range and quality scientific study. And that the Dept of Health and the Bureau for Public Health would report to the joint committee on government and finance with their findings and conclusions.

In addition, because I don't know what a scientific study like this would cost, and I don't think any of us are prepared to say, to put dollars on it, that the Bureau for Public Health and the DEP look at their own budgets and see what of this information they are already collecting and what they could handle within their current budget, and then to report to the committee on government and finance to ask for additional funds for the study if that's what they needed. And then when it came to reporting to the legislature, of course the standard language that the legislature would have, for having a legislative meeting and collecting that information and perhaps, a piece of legislation.

Question and Answer:

Q: Just a suggestion on the language, when we're trying to pass these resolutions, particularly to the full legislature, there has to be some balance, I think in the way the resolution is involved. We have one, two, three, and four, "whereas" there, there's nothing really there that indicates, you know, whereas this is currently an approved process of the EPA, or DEP. There doesn't appear to be any balance to the resolution, and I think when we pass a resolution like that, or we start out with an immediate bias or an appear to be a recommendation, pulling in one direction without any balance, so I think there needs to be some effort here in the resolution to attempt to establish some balance. Again, I, if we want, this is going to be a fair study, that, you know, right now we have these four "whereas", we have potential harmful effects, um, you know, effects largely unknown, presents serious public heath questions, presents serious environmental

question. Well, this is a process that is approved by our government right now. So I think we need to balance this and, then of course, if this study finds these things to be true, then we need to make some changes. But we need some balance now.

Q: Senator Oliverio suggests, if I understand you appropriately, to amend the resolution to say, whereas, blah blah, that this is a process that has been approved...?

A: Right.

Q: Everybody's heard the suggestion for the amendment to the resolution offered by Senator Oliverio? Objections? All that's in favor of the amendment say Aye.

A: Aye

Q: opposed? Okay, the amendment does pass. On second thought, the, we have to go back. We are making resolutions....Senator Barnard moves the resolution out with recommendation that we do pass. Ok, Senator Oliverio moves an amendment to the resolution as previously explained. So all in favor of that amendment say Aye.

A: Aye.

Q: Opposed? Okay, the amendment passes. We have the resolution as amended before us. Delegate Frank.

Q: Thank you Mr. Chairman. Just a comment. We have in our packets a letter from Long Mountain fellowship clean watershed association, Edward Knotts. And that first paragraph indicates, well it says, the legislative committee holding meetings on the common practice, and then it says, although strangely not officially recognized as taking place. I would question that, and i would say that every meeting has been published. It has to be, by law, with the sunshine law, and none of these meetings have been held secretly. I just wanted to reflect on that.

A: Point is well taken. Senator White.

Q: Thank you Mr. Chairman. Can anybody tell us when this study will be brought back? Timeframe?

A: That's a good question.

Q: Counsel, do you have any question on the timeframe for this study?

A: I would think they would need to do at least a year to get us a report, this is a pretty big undertaking to look at the literature and do these tests.

Q: Senator White, did you want to offer a suggestion for...

A: Well, she's saying a year, does that mean January 1, 2008, or do we need more time, for July 1, 2008?

Q: We have the Secretary here.

A: January is fine.

Q: Mr. Chairman, is it appropriate now for our committee to address that?

A: And you want to add that as an amendment then, that we further resolve that?

A: Yes, sir.

Q: And give Counsel Leeway to add that language. Any discussion of the proposed amendment? All in favor of the proposed amendment by Senator White, say Aye.

A: Aye

Q: opposed? Amendment does pass. Any other amendments to the resolution? We have the resolution now before us. All those in favor of passing that motion by Senator Barnard that we pass out the study resolution to the joint committee with the recommendation that they pass it, say Aye.

A: Aye.

Q: opposed? The resolution is out of here. Next we have is a bill, actually a proposed bill that was proposed by Delegate Tabb in our last meeting, Counsel is working on that, so counsel you want to discuss that?

Speaker: Counsel

Thank you. I'm trying to capture again, discussions that were had and suggestions that the secretary of DEP had made as well as Del. Tabb's professed about. So hopefully I captured that at this. This requires that the Secretary set a site specific bond for each coal slurry impoundment because the Secretary said that she found that there was some indication that they were not regulating those sufficiently. Delegate Tabb had suggested that, well, if we have a bond that would be helpful. I put in that they'd have to obtain the goal within ninety days following passage of the bill. Then the bond would have to be in an amount sufficient to remediate damage to human life, property, and the environment. They're going to have to do that based on the conditions at each site. Failure to maintain a requested bond would be a permit violation, and the permit includes that operations cease until the bond is obtained.

The Secretary could then allow the productions within the required bond for committees that have the alarms and other specified safety equipment. Again that would have to be based on site specific conditions. The Secretary could allow reduction of bond if the permitting used pipelining and a shut off and other protective devices that would immediately limit, contain the spill and any leak. The Secretary could offer a reduction to the bond if they added any other safety equipment that would significantly reduce the risk to human health, property, and the environment. Thus, we would have a slower pipelining prevention plan that would have to prevent and control any spills and leaks.

The prevention plan would be designed and based on sound engineering processes, would have to be signed off on, and companies' representatives being committed to actually having the resources available to implement this plan, and the personnel available to do so. The Secretary would propose for propagation and accordance with 29A, rules to implement such a protection plan. Failure to follow the following approved plan would be a permit violation and would be dealt with according to Chapter 3 that is already in place. The prevention claims would have to be certified by a registered professional committed to the Secretary's approval, and of that nature. That's it.

Are there any questions for the Secretary?

Speaker: Stephanie Timmermeyer, Secretary for the WV DEP

Hello. I'm Stephanie Timmermeyer, Secretary for the WV DEP. Are there any questions for me?

Question and Answer:

Q: Before you came up someone made the remark that the DEP was silent on this bill, that you had no opinion on the present legislation?

A: Well, we haven't seen this. But I, just to clarify, what I said at the last meeting. I know it wasn't the full committee there, is that in our own investigations, over the past year about the issues arising from slurry injection, what we found was that the most vulnerability was on the surface with the slurry lines. So we had been working on an emergency rule on that issue, to make sure that the pipes are welded correctly. We talked about the pumps, make sure there's some alarm on the pumps, that sort of thing. To the extent that this bill addresses that, we certainly support that and that was something that we were going forward with in any case.

Q: Don't you think that we already have enough safeguards without adding more hoops to jump through?

A: Well, on the issue of the prevention plan we do feel like that was required by rule to ensure that, already existing facilities and new facilities to ensure, I mean, what we have been finding is, again, something I spoke about in the last committee meeting is that we have been finding that the majority of our spills obviously have been coming from these types of operations, where the pumps have failed, lines have broke, so we do have the authority, sort of facility by facility, if it becomes an issue, to ensure it, but this makes sure that industry wide we make the playing field level and that everyone does it.

Q: But don't we already have the authority for fines and things of that nature?

A: Yes, as far as I know.

Q: I'm wondering if you already have those safeguards in place, you already have all the authority for the fines, it seems like we're getting into overkill with this bonding on that issue.

A: Well, as to the bonding part of it, let me speak to that in a minute, but as to the planned part of it, it's about prevention. We have the authority once one of these lines breaks and you have a blackwater spill to ensure that an active operation cleans that up. As you know the facility is producing, and we can absolutely shut them down until they get that cleaned up, but it's about preventing it in the first place. That is the key to this part of it. As to the bonding part of it we talked about at the last meeting, what I spoke it in that regard, is that the facilities are under bond. It's a bond for the entire land area, and I'll just give you an example. If the slurry line goes off the bonded area then the land which encompasses that slurry line has to be bonded as well, so that extent one could argue that the facilities are covered by bonding. I think the most important thing, obviously is that we have a way to ensure that once a spill occurs, first of all, to prevent the spill, but once it occurs, do we have a mechanism for cleaning that up in a timely fashion. And placing fines and things like that, and the answer to that is yes.

Q: You already have, they've already put up a bond for that specific purpose, before, and now adding a second bond?

A: It's not for the specific purpose of slurry lines, but for the specific purpose of mining operations on that site and all the operation on that land is covered.

Q: Yeah, but wouldn't that also be applicable to the slurry lines, as well?

A: Yes, to the extent that it went off site then that land where the line is would also have to be bonded.

Q: It still appears to me that its still overkill on the bonding since they've already bonded the whole project in the beginning. Anyway, it's just my opinion. Thank you.

Q: I don't mean to be redundant and I apologize for maybe asking a question that you've already answered. What effect would this bill have on the current twelve injection sites?

A: I'm not sure the exact number right now. I did send to all the committee members, and you all should have it, and Green Valley is, Senator, by the way, one of the sites that is currently operating. But you should have all that data, I think that was sent to all of you. The effect that this bill would have, as far as the prevention plan part of it, there are some facilities that already have these types of preventions in place, some of them would certainly have to invest in some extra control measures, and certainly it would be a timeframe for any rule that's developed for those facilities to come into compliance.

Q: At this time I'd like to speak to this bill. To me the whole purpose of this legislation is to encourage safety, and the language in there allows the Secretary to reduce this bond if you have the automatic shutoffs, if you have people on the site 24 hours a day, then the bonding level can be reduced to a very minimal amount. If you reduce the risk of exposure, to me, my reason for supporting this was, I'm not into punitive measures, but some companies are already doing some of these things. To me, it's kind of a best available practice. If you can mitigate a problem before it actually occurs. This says if you can do these extra things to make your operation safer then your liability level is going to be reduced dramatically. No one wants to have a coal slurry line break, owners of the property, no one wants that, but when it happens then you have the costs of cleaning that up. If people are encouraged to do things in a manner than, over time, if you have these kind of safety measures in effect, the automatic cutoffs or someone available 24 hours a do to flip a switch, instead of tens of thousands or a million gallons of spill, you might have a few thousand gallons, and that's something that's very easily containable, and to clean up, and doesn't disrupt operation. But from what I've gathered, most of these practices are already being used some places, they just aren't mandated. And this still wouldn't say you had to put all these in there, but if you choose not to do these extra safety measures, then you will get bonded at a higher level, reflective of a business practices. If I have a higher exposure risk for my insurance at home, I'm going to have to pay more for that insurance. If I do things to mitigate, if I have a large system in, if I have a fire suppression system, all these separate things on the fire insurance reduce, and I look at this, this could even possibly have the positive effect of causing the insurance for some of these companies to be reduced by their carriers, that's fine if their exposure risk goes down enough, liability could actually be reduced. Now, I do not want to do something punitive, I think something for people to do the extra measures to make a safe

operation. I think everybody wants to see a safer operation. I would definitely recommend the passage of this bill. Thank you, Mr. Chairman.

Q: Thank you. I had a question about this as well. This is aimed, as I understand it, mainly at those sites that have above ground pipes, is that correct?

A: Well, I mean we didn't draft this, so I'm just seeing this as well, but yes, as I understand it, yes that's its getting at the slurry pipelines. And I'd like to make this distinction as well, what the existing bonding really focuses on is the reclamation of the site once the facility is through mining and before they move on if those bonds can't be released. What this type of bonding mechanism is a performance bond so to speak, which is a new, and that is distinct from the current bonding we have in that regard.

Q: Madame Secretary, I know that you've said you have only seen the bonding recently. In terms of calculating how much of the cost to have someone issue the bond, and I talk slowly and listen carefully. This bill requires that the Secretary to require the bond to be sufficient to: 1. Remediate damages human life, property, and the environment in a general pipeline leak still break to release coal slurry. Now, how are you going to calculate what would be an adequate bond to do those things?

A: I think certainly we have data and facilities have data on what it has cost them in the past when a slurry pipeline breaks. What has it cost them to remediate, and what it has cost them in fines and penalties and those sorts of things, so I think to a certain extent those numbers should be readily available.

Q: Well, but when we're talking remediate damages to human life, we're not talking about clean up, we're talking about remediate damages to human life, we're talking now about civil liability now outside the regulatory, as a concept, would you agree with that?

A: That would be something that would be difficult to calculate.

Q: I'm also wondering, I don't know if you have an answer, who would issue such a bond, maybe you know some companies that would issue such a bond?

A: I don't know...I'm assuming that if there's a market for it, somebody would, but I can't speak to that.

Q: To rehash this, Senator early used the word overkill, I'm going to use the word superfluous, meaning the same thing. You, as a regulatory agency already have the right and do in fact, completely shut down an operation if there's bond issue and violations, correct?

A: Yes.

Q: You also have the right when there is a spill, whether it's a violation or something other than that, and you have the right to require remediation, and as a penalty for not remediation, you can shut down the operation for that, right?

A: Yes, sir.

Q: You also have a bond covering all of the mining operations on the premises over which the entire coal slurry system operates, is that correct?

A: For reclamation, yes sir.

Q: Which would include remediation I suppose?

A: Yes

Q: Then with an exception of perhaps some very esoteric or limited instance, would you agree with me that a bond such as this would be very expensive and would also be generally superfluous to the enforcement mechanism of the department as well as to the current bonding procedure?

A: I honestly couldn't say what the costs of a bond like this would be, and as to whether its superfluous, as it is now, a facility that's has these slurry lines is an operating facility, a producing facility, and to the extent that we find that there needs to be cessation of operation at that facility until things get fixed and resolved, well, we certainly have the authority to do that, and set penalties if we find out that that's appropriate.

Q: Any other questions for the Secretary? OK, chair recognizes delegate Frank for purpose of the motion.

A: I move that we vote on the bill, Mr. Chairman.

Q: We do have the bill before us, are there any amendments?

A: Mr. Chairman, since there's a question on this, remediate damage to human life, and what that could mean, I make the suggestion that we remove human life, and take that out.

Counsel: If I might say, that does appear to be very inartfully phrased.

Q: Mr. Chairman, would it be appropriate to take this bill and to roll this into the study resolution that we had previously passed?

A: I think at this point we have an amendment on the floor and we have to speak to that first.

Q: Anybody want to speak to the amendment? You heard the amendment, and that is to strike out the human life portion of the bill. All those in favor say Aye.

A: Aye

Q: Opposed? Ok. I had an amendment I had discussed with the counsel. Counsel do you want to explain in general what we were talking about?

A: I'm afraid I don't have the papers.

Mr. Chairman

Basically the premise of the amendment, and give counsel to put in the appropriate language, is, we don't have any data or any figures on how much the bonding would be, and the intent of the bill is basically to make bonds higher for those people who don't put any safeguards in, safety valves, people on site watching for possible spill, as its listed in the bill. So what I was suggesting in the amendment as part of the of legislative rules, that DEP come back and make recommendation on what that bonding structure would look like and how much those bonds would be, you're going to have to give the legislature, and that attempt as well, to see if they think that's reasonable and to approve that.

So if that explanation, such that it is, is enough for the members. Senator White moves the amendment. Any discussion on the amendment, did everyone understand, or did I confuse you?

Q: Would that amendment be available in writing. I'm coming from the house side, I'll grant you, but I'd like to see it in writing. You say you don't have that?

A: (Counsel) No sir.

Q: Basically what I had written out was handwritten form said that the Secretary would present the proposal for the bonding based on the criteria listed in the bill to the legislature for approval. Now you've heard the proposed amendment, all those in favor say Aye.

A: Aye

Q: Those opposed?

A: No

Q: What is the normal process by which members are able to see legislation before coming to a committee meeting to vote on it, and I say this in all earnest, because this is the first that I've ever seen this legislation, and I'm just wondering what the normal process is that the interim procedure is because coming to a committee meeting and being expected to vote on legislation and you haven't had the chance to read it and study it I just wonder what the process normally is.

A: I'm sure I think this did happen before, but this bill was made at the suggestion of Delegate Tabb at the last meeting and there seemed to be consensus. I even asked that, I asked if there was consensus that we ought to present a bill and the idea of the bill was not to make it punitive but to make it something that encouraged the use of safety devices in the pipelines. So we proceeded with that, I mean this is the last meeting of this joint committee so it's the last opportunity that we had to act upon such a bill, which I understood from the delegates at the last meeting was something that they were interested in doing.

Q: I don't question that aspect of it; I'm aware of the minutes of the meeting that he did make that proposal, the delegate. But my question is that, why were we not, given a copy of this legislation through the mail prior to coming to this meeting so that we would have an opportunity to look at it and study it and gather information on both sides.

A: We just never do that

Q: I think that if you're doing legislation that affects one of our major industries in the state, that we want to be more deliberative and in giving members a copy of legislation, if they are expected to vote on it, and I quite frankly would like to have legislation prior to coming to a meeting, not sitting down and seeing it for the first time in committee.

A: I serve on 6 or 7 interim committees and all of them have come back with proposed bills, of which none of them had been mailed, so I assume that the normal process within the legislation is that we do not mail out copies of legislation. Now if that's something that the joint committee wants to implement as a rule in the future, for this study committee that's something for them to take up, you could recommend. But that is not normal procedure.

Delegate Tabb

Q: Thank you, Mr. Chairman. The one thing that, and hopefully this will clarify. This doesn't put this bill in the hopper. What we're doing today is to recommend to the full judiciary committee that meets tomorrow at, 10? 2?...this doesn't put the bill before the full legislature, this just moves a bill from the interim committee to the judiciary committee and then the full judiciary decides whether they want to introduce it as a bill. I could introduce it as a bill in the regular session if it doesn't make it through, but this is not, it isn't the final step, it isn't going to be introduced on the first day of the regular session. That's my interpretation of it, of how an interim committee works. Is that right, Counsel?

A: (Counsel) yes, sir.

Q: I'm not questioning the need for this legislation or the...It's process I'm questioning, and would you not agree, this is another step to the process. In the interim, we take up issues, and study them and make recommendations to the whole committee, and we can either send it on to the whole committee or make no recommendation and allow the process to take place once the session starts in January. My question is, we have this process for a reason and it's to gather information, but when you have a piece of legislation that you've just seen for the first time, I don't think the process serves the people very well. And we can either recommend this or not, but I think there's a reason for having this meeting and it's to deliberate and discuss legislation that's going to affect people's lives on either side of this issue.

A: I totally agree and that's the time might not have been the best on how this was done, but it certainly didn't come out of the blue. If anyone was at the last meeting especially, that's where the concept came from and I'm not opposed to changing it to where its...this isn't the final step for this piece of legislation. This goes before the full Committee and faces it with recommendation or fails or whatever, and it could be introduced eventually in the full... I don't think there's anything here to blindside anyone on this piece of legislation from what we discussed in the previous meeting, and that's, this is the process at work. Questions were asked. There wasn't any bonding there wasn't any incentives in place for safety measures to be implemented on slurry lines, and that's why I asked for this to be introduced, so I wasn't trying to circumvent discussion. It's not like this just popped up out of the blue, piece of legislation I'd just slip it through.

Q: Would you not agree though, that we should have more time to study this issue?

A: We've studied a lot of issues in this past year, with only meeting typically one day a month, we've had interest in these issues this is just, from what I hear, this only affect a dozen, this doesn't affect the whole mining industry statewide, whether they're doing surface mining or underground mining or whatever. This is strictly the slurry pipelines so this, there's a lot of mines that don't have a slurry pipeline, so this doesn't affect them. Thank you.

Q: Is this issue up to vote? Let me frame the issue so it's helpful. I urge rejection of the motion, respectfully. I understand the delegate's intent in putting forth the bill. I think it makes a valid argument that rejecting it today; it's just too late in the day to put forth something this substantial with the deliberation that the judiciary committee usually affords. I admit to you, I'm as lame as a lame duck can be. This is my last day of being on this committee. I have had predecessors on this committee, the process, and that the bill being very well intentioned and will have all kinds

of time during the session to pick up the bill and give it the attention and time it deserves. But in as much as we cannot do that now without an abundance of coffee, I urge rejection. Thank you.

Senator Oliverio.

Q: I too think the...I feel a little like we're flying blind without knowing if a current bond exists, or the current authority the Secretary has to require bonds if something like this couldn't be done already. I share some of the same fears as the chairman in we're flying blind. I'd like to point to the resolution that we just passed. Six subsection, and the sixth being that in terms of areas that could be studied with respect to this issue any other consideration of the DEP and bureau of public health could be included in our study. So it seems to me that the objective here could be included in his study. If enough information arises about the issue it could be a bill in this legislative session, or this study. I too urge rejection at this point until we gather more information.

Delegate Tabb

Q: Chairman, would it be appropriate if I move to table this at this time?

A: Yes.

Q: Then, Chairman, I move to table this motion.

A: All those in favor of tabling this at this time say aye.

A: Aye