

enforce the Federal SMCRA and regulation provisions if some other similar extenuating circumstances exist. Even though OSM does not agree with this comment supporting direct Federal enforcement, the Regional Director acknowledges it and took it into consideration before making the enforcement decision set forth below.

Regional Director's Decision

Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Wyoming, the Casper Field Office on May 11 and July 13, 1995, consulted with Wyoming in accordance with 30 CFR 843.25(a)(4) (Administrative Record Nos. WY-29-09 and WY-29-12).

Three Wyoming mines have operated after October 24, 1992, and are subject to the provisions of section 720(a) of SMCRA and the implementing Federal regulations. For one of these mines, Wyoming investigated a complaint relating to potential subsidence damage to a water reservoir.

The Regional Director acknowledges Wyoming's determination that its program would not require an underground mine operator to replace a drinking, domestic, or residential water supply that was being used illegally in contradiction of water rights as determined by the State Engineer. OSM believes this position is not inconsistent with section 720(a) of SMCRA regarding water supply replacement and section 717 of SMCRA regarding water rights. However, before OSM finally determines that Wyoming's program on this complicated issue is no less stringent than SMCRA, OSM will further review Wyoming's water right statutes, rules, policies, and procedures.

OSM agrees with Wyoming that the State should be the enforcer of its program provisions for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. Based upon the number and location of the underground mines, the potential is low for material damage to noncommercial buildings, occupied residential dwellings, and related structures and for damage to drinking, domestic, or residential water supplies. Given these circumstances, it is unlikely that any enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Wyoming revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Wyoming will occur through State enforcement and the State program amendment process.

If circumstances within Wyoming change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

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30 CFR Parts 904,918, 936, and 943

Arkansas, Louisiana, Oklahoma, and Texas Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Arkansas, Louisiana, Oklahoma, and Texas. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992: promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Arkansas, Louisiana, Oklahoma, and Texas and consideration of public comments, OSM has decided that initial enforcement is not reasonably likely to be required and that implementation in these States will be accomplished through the State program amendment process.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT:

Tim L. Dieringer, Acting Director, Tulsa Field Office, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 (60 FR 16722) to implement the performance standards of sections 720(a)(1) and (2) of SMCRA.

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, after

consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 6, 1995, **Federal Register** (60 FR 17498) and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24,

1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce 30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR Part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR Part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.12(a)(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and implement the definitions at 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Arkansas

Arkansas Program Activity, Requirements, and Enforcement

By letter to Arkansas dated December 15, 1994, OSM requested information from Arkansas that would help OSM decide which approach to take in Arkansas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Arkansas program provisions (Administrative Record No. AR-542). By letter dated January 30, 1995, Arkansas respond to OSM's request (Administrative Record No. AR-543).

Arkansas stated that one underground coal mine was active in Arkansas after October 24, 1992. Arkansas indicated that its existing State law and its regulations at Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) Sections 779.17, 780.21(e), 783.17, 784.14, 784.20(c), 816.54, and 816.124-U(b) and (c) are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations. Arkansas did not indicate when the existing State counterpart provisions went into effect. However, Arkansas did indicate that it had not received any citizen complaints alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992.

On May 31, 1995, OSM confirmed with Arkansas that one underground coal mine was active after October 24, 1992, and that no citizen complaints alleging subsidence-caused material damage or water supply loss or contamination as a result of this operation had been received by Arkansas (Administrative Record No. AR-553). Arkansas stated its intention to actively pursue and promulgate regulations conforming to the Federal regulations once it receives a 30 CFR Part 732 notification from OSM.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17498) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Arkansas (Administrative Record No. AR-552). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. OSM received comments from one party in response to its notice (Administrative Record No. AR-554). These comments apply not only to the Arkansas program but also to the Louisiana, Oklahoma, and Texas programs (Administrative Record Nos. LA-356, OK-971, and TX-592) that are addressed below.

The party commented that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742-16745). These concerns about direct Federal enforcement are moot issues for these States because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Arkansas, the Tulsa Field Office on May 31, 1995, consulted with Arkansas in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. AR-553). Based upon the location of the existing and projected underground mining, the potential is low for material damage to noncommercial buildings, occupied residential dwellings, and related structures and for damage to drinking, domestic, or residential water supplies. Given these circumstances, the Tulsa Field Office and Arkansas agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Arkansas revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Arkansas is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Arkansas of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Arkansas change significantly, the Regional Director may reissues this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

D. Enforcement in Louisiana

Louisiana Program Activity, Requirements, and Enforcement

By letter of Louisiana dated January 23, 1995, OSM requested information from Louisiana that would help OSM decide which approach to take in Louisiana to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Louisiana program provisions (Administrative Record No. LA-352). By letter dated February 7, 1995, Louisiana responded to OSM's request (Administrative Record No. LA-353). Louisiana indicated that its regulatory program does not include provisions for underground coal mining and that no underground coal mines have operated in Louisiana after October 24, 1992.

On May 30, 1995, OSM confirmed with Louisiana that no underground coal mines have operated in Louisiana after October 24, 1992, and that there is no underground mining activity proposed in the State (Administrative Record No. LA-355). Prior to the issuance of any permit allowing underground mining, Louisiana is aware that it would have to revise its program to incorporate underground mining provisions no less stringent than SMCRA and no less effective than the Federal regulations. Such provisions would include counterpart provisions to section 720(a) of SMCRA and the implementing Federal regulations.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17498) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal

mine subsidence control and water replacement requirements should be implemented in Louisiana (Administrative Record No. LA-354). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Arkansas program, and OSM's responses to them, also apply to the Louisiana program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Louisiana, the Tulsa Field Office on May 30, 1995, consulted with Louisiana in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. LA-355).

The Louisiana program does not currently allow underground coal mining. Prior to issuing a permit allowing underground mining, Louisiana would have to, through the State program amendment process, revise its program to incorporate underground mining provisions no less stringent than SMCRA and no less effective than the Federal regulations. These State provisions would include counterparts to section 720(a) of SMCRA and its implementing Federal regulations. Any underground mining permit that Louisiana would issue under the underground mining provisions it promulgated would have to address State counterparts to section 720(a) of SMCRA and its implementing Federal regulations. No underground mining activities could commence prior to the issuance of a permit.

On this basis and the disposition of the comments received, the Regional Director decides that no State or Federal enforcement of underground coal mine subsidence control and water replacement provisions would be needed in the interim period between October 24, 1992, and the date of issuance of any Louisiana underground mining permit.

If circumstances within Louisiana change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

E. Enforcement in Oklahoma

Oklahoma Program Activity, Requirements, and Enforcement

By letter to Oklahoma dated January 23, 1995, OSM requested information from Oklahoma that would help OSM decide which approach to take in Oklahoma to implement the requirements of section 720(a) of SMCRA, the implementing Federal

regulations, and/or counterpart Oklahoma program provisions (Administrative Record No. OK-965). By letter dated February 8, 1995, Oklahoma responded to OSM's request (Administrative Record No. OK-966).

Oklahoma stated that one underground coal mine was active after October 24, 1992, and one underground mine was constructing surface facilities as of February 8, 1995.

Oklahoma indicated that the State regulation at OAC 460:20-45-47(c) (previously codified as section 817.121(c)) addresses repair or compensation of subsidence-related material damage to structures and replacement of water supplies contaminated or diminished due to subsidence. However, Oklahoma indicated that this regulation "is not as clearly written" as the new Federal regulations and that it includes "vague statements * * * regarding structures, facilities, and any drinking, domestic or residential water supplies" that will be clarified once the regulation is revised in accordance with the new Federal regulations.

Oklahoma did not indicate when the State counterpart provisions went into effect. However, Oklahoma stated that it had investigated one citizen complaint alleging subsidence-related damage for underground mining operations conducted after October 24, 1992, and it issued a violation notice as a result of the complaint. OSM has determined that the citizen complaint did not involve structural damage or water supply loss or contamination.

On May 23, 1995, OSM confirmed with Oklahoma that one underground coal mine was active after October 24, 1992 (Administrative Record No. OK-970). This mine is no longer producing coal, and the underground mine workings are not extensive. The other permitted underground mine was continuing development work and had not produced coal by underground mining methods. Oklahoma stated its intention to actively pursue and promulgate regulations conforming to the Federal regulations once it receives a 30 CFR Part 732 notification from OSM (Administrative Record No. OK-969). It stated that it believed this process would take approximately 12 months to implement.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17498) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Oklahoma

(Administrative Record No. OK-968). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Arkansas program, and OSM's responses to them, also apply to the Oklahoma program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Oklahoma, the Tulsa Field Office on May 23, 1995, consulted with Oklahoma in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. OK-970). Based upon the location of the existing and projected underground mining, the potential is low for material damage to noncommercial buildings, occupied residential dwellings, and related structures and for damage to drinking, domestic, or residential water supplies. Given these circumstances, the Tulsa Field Office and Oklahoma agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Oklahoma revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Oklahoma is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Oklahoma of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Oklahoma change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

F. Enforcement in Texas

Texas Program Activity, Requirements, and Enforcement

By letter to Texas dated January 23, 1995, OSM requested information from Texas that would help OSM decide which approach to take in Texas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Texas program provisions (Administrative Record No. TX-587). By

letter dated January 26, 1995, Texas responded to OSM's request (Administrative Record No. TX-588).

Texas stated that no underground coal mines were operating in Texas after October 24, 1992.

Texas stated that the Texas Surface Coal Mining and Reclamation Act currently has no counterpart to section 720 of SMCRA, and its regulations at section 817.564, regarding repair and compensation for damages occurring to buildings and other structures, and at section 817.521, regarding replacement of water supplies, have no direct counterparts to OSM's proposed regulations at 30 CFR 817.121(c) and 817.41(k).

On May 30, 1995, OSM confirmed with Texas that no underground coal mines have operated in Texas after October 24, 1992, and that there is no underground mining activity proposed in the State (Administrative Record No. TX-591). Texas stated its intention to actively pursue and promulgate regulations conforming to the Federal regulations once it receives a 30 CFR Part 732 notification from OSM.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17498) notice of opportunity for a public hearing and a request for public comment to assist OSM in making its decision on how the underground coal mine subsidence control and water replacement requirements should be implemented in Texas (Administrative Record No. TX-590). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold one. The comments discussed above for the Arkansas program, and OSM's responses to them, also apply to the Texas program.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Texas, the Tulsa Field Office on May 30, 1995, consulted with Texas in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. TX-591). Because there has been no underground mining activity since October 24, 1992, and there is no underground mining activity proposed in the State, the Tulsa Field Office and Texas agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Texas revises its program in accordance with SMCRA and the Federal regulations.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement

of the underground coal mine subsidence control and water replacement requirements in Texas is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Texas of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

If circumstances within Texas change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by **Federal Register** notice.

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95-18440 Filed 7-26-95; 8:45 am]

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30 CFR Parts 906, 931, and 944

Colorado, New Mexico, and Utah Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: OSM is announcing its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Colorado, New Mexico, and Utah. Amendments to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing Federal regulations require that underground coal mining operations conducted after October 24, 1992, promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining. After consultation with Colorado, New Mexico, and Utah and consideration of public comments, OSM has decided that initial enforcement will be accomplished in Colorado through State enforcement, in New Mexico through the State program amendment process, and in Utah through State enforcement and, if necessary, direct Federal enforcement of Federal provisions protecting water supplies.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT:

Arthur W. Abbs, Acting Director, Albuquerque Field Office, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Pub. L. 102-486, 106 Stat. 2776 (1992) added new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal mining operations promptly repair or compensate for subsidence-caused material damage to noncommercial buildings and to occupied residential dwellings and related structures. Repair of damage includes rehabilitation, restoration, or replacement of the structures identified in section 720(a)(1), and compensation must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 (60 FR 16722) to implement the performance standards of sections 720(a)(1) and (2) of SMCRA.

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, after consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 6, 1995, **Federal Register** (60 FR 17501) announcing the public comment period and opportunity for public hearing and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October 24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of