

The party also recommends that the implementation of the subsidence and water replacement rules should be an oversight topic (special study) for at least the first two years of implementation. The Director notes that OSM will continue to consider special studies of interest to its stakeholders as required by OSM's Directive REG-8 which establishes the procedures for conducting oversight. The State will be required to enforce the provisions of its approved program while OSM will conduct normal oversight using the ten-day notice process if necessary.

The party recommends that all citizen complaints relating to the water loss or subsidence provisions that are the subject of this notice be logged and tracked by OSM to assure proper implementation of the Energy Policy Act. The Director notes that the LFO has compiled a list of all water loss complaints received after October 24, 1992, and each complaint will be evaluated. Since Kentucky has equivalent provisions to the Federal subsidence regulations, the Director notes that State will enforce those provisions while OSM will conduct normal oversight using the ten-day notice process, if necessary.

The party feels that in those cases when the State has previously investigated a complaint, the ten-day notice process should not be used prior to Federal investigation and enforcement. The Director does not agree and reiterates his response to the comment above. For all subsidence-related complaints and for those water replacement-related complaints where damage occurred after July 16, 1994, OSM will conduct normal oversight using the ten-day notice process, if necessary.

The party's last comment concerned the permitting process. It recommends that pending submission of the State program amendment, if Kentucky does not modify the permitting process immediately through the use of existing language in the State program to require additional groundwater and subsidence information, OSM should demand that each permittee be required, prior to permit issuance, to develop groundwater and subsidence information for OSM's approval prior to permit issuance. Failing this, individual enforcement actions should be taken. The Director does not agree. Kentucky has jurisdiction over the regulation of its surface coal mining operations. Through the 30 CFR 732.17 process, the Director will notify Kentucky of required changes to its program.

*Director's decision.* Based on the information provided by Kentucky,

discussions held with the State on June 14, 1995, and the comments discussed above, the Director has decided that the enforcement of the underground coal mine subsidence control and water replacement requirements in Kentucky will be accomplished by State and OSM enforcement—Option #4. Kentucky will enforce its provisions that correspond to the Federal regulations at 30 CFR 817.41(c)(2) pertaining to the repair or compensation of material damage resulting from subsidence. Kentucky has statutory provisions in place that correspond to the Federal regulations and has the authority to implement its provisions for all underground activities conducted after October 24, 1992. Kentucky will also enforce its provisions that correspond to the Federal regulations at 30 CFR 817.41(j) pertaining to water replacement for the period after July 16, 1994. It has statutory provisions in place that correspond to the Federal regulations and has the authority to implement its provisions for all underground mining activities conducted after July 16, 1994—the effective date of Kentucky's statutory provisions for water replacement. For those underground mining activities conducted after October 24, 1992, and before July 16, 1994, OSM will enforce the provisions of 30 CFR 817.41(j) because Kentucky does not have the statutory authority to retroactively apply water replacement requirements to water losses prior to the effective date of its statute.

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

Dated: July 24, 1995.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

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### 30 CFR Parts 920 and 938

#### Maryland and Pennsylvania 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 Maryland and Pennsylvania. 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 Maryland and Pennsylvania and consideration of public comments, OSM has decided that initial enforcement in Maryland will be accomplished through the State enforcement and in Pennsylvania through State and OSM enforcement.

**EFFECTIVE DATE:** July 28, 1995.

**FOR FURTHER INFORMATION CONTACT:**

George Rieger, Acting Director, Harrisburg Field Office, OSM, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

**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 to implement the performance

standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722).

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, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 10, 1995, **Federal Register** (60 FR 18046) and as reiterated below, enforcement could be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart of 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 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 enforce 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 30 CFR 701.5 for operations conducted after October 24, 1992.

### C. Enforcement in Maryland

*Maryland program activity, requirements, and enforcement.* By letter to Maryland dated December 13, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Maryland (Administrative Record No. MD-570.0). By letter dated March 29, 1995, Maryland responded to this request (Administrative Record No. MD-570.1).

Maryland stated that four underground coal mines were active in Maryland after October 24, 1992. Maryland indicated that existing State program provisions at Maryland Natural Resources Article 7, Subtitle 5A, § 7-5A-05.1, § 7-5a-05.2 and COMAR 08.20.13.09B, 08.20.13.09C are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations. Maryland explained that it will enforce these State program provisions in accordance with Maryland Natural Resources Article 7 effective October 24, 1992. Maryland has investigated eight 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. To date, Maryland has made determinations that the single structural damage complaint was unrelated to subsidence and that two water supply complaints were not impacted by the mining operations. In the five other water supply complaints Maryland determined the water supplies were impacted by underground mining and the mining company satisfactorily replaced these supplies.

*Comments.* On April 10, 1995, OSM published in the **Federal Register** (60 FR 18046) an 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 Maryland. The comment period closed on May 10, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. Following are summaries of all substantive comments that OSM received, and OSM's responses to them.

A mining association responded on May 12, 1995 (Administrative Record No. MD-571.01). The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (Items (3) and (4) in section I.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 in Maryland because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

A mine operator responded on May 8, 1995 (Administrative Record No. MD-571.03). The party commented that the water replacement and subsidence repair provisions that are the subject of this notice are already in effect in Maryland. The Director agrees.

*Director's Decision.* Based on the information provided by Maryland and the comments discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Maryland will be accomplished by State enforcement—option #2. Maryland has provisions at sections 7-5A-05.1 and 7-5A-05.2 of its statutes and sections 08.20.13.09 B and C of its regulations in place that correspond to all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2). Maryland also has the authority to implement its provisions for all underground mining activities conducted after October 24, 1992.

If circumstances within Maryland change significantly, the Director may reassess this decision. Formal

reassessment of this decision would be addressed by **Federal Register** notice.

#### **D. Enforcement in Pennsylvania**

*Pennsylvania program activity, requirements, and enforcement.* By letter to Pennsylvania dated December 13, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Pennsylvania (Administrative Record No. PA-835.00). By letter dated January 24, 1995, Pennsylvania responded to this request (Administrative Record No. PA-835.01).

Pennsylvania stated that 120 bituminous underground coal mines are permitted and that 60 of these are currently producing coal. In the anthracite field, there are approximately 115 permitted underground mining operations of which 50 to 75 operations are currently producing coal. Pennsylvania stated that Act 54, amending the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) became effective on August 21, 1994. This amendment to BMSLCA does address water supply replacement and subsidence damage repair or compensation, but certain provisions do not mirror the Federal Energy Policy Act of 1992 portions establishing section 720 of SMCRA.

Specifically, Pennsylvania stated in the January 24, 1995, response that BMSLCA does not include water replacement and repair of subsidence damage in the following situations.

##### **Water Supply Replacement**

- Cases where water supplies were impacted between October 24, 1992, and August 21, 1994.
- Cases where affected water supplies are located in the anthracite coalfields.
- Cases where landowners entered voluntary agreements allowing their supplies to be impacted.
- Cases where impacts occurred more than three years after completion of coal extraction.
- Cases where affected water sources are used to supply agricultural irrigation systems constructed after August 20, 1994.
- Cases where the property owner failed to report the water supply problem within two years of its occurrence.
- Cases where the mine operator was denied access to conduct a pre-mining or post-mining survey of the water supply and no pre-mining quality and quantity information is available.
- Cases where a mine operator purchased the property or compensated

the property owner rather than replace the supply.

##### **Repair or Compensate for Subsidence Damage**

- Cases where dwellings were constructed after April 27, 1966, and damaged prior to August 21, 1994.
- Cases where dwellings constructed after August 21, 1994, are damaged prior to the time when coverage commences under BMSLCA (dwellings which are built after August 21, 1994, and between permitting actions are not covered by repair compensation requirements until the next permit renewal).
- Cases where the mine operator was denied access to conduct a pre-mining or post-mining survey of the damaged structure.
- Cases involving noncommercial buildings where the damaged buildings were not used by the public, accessible to the public, or used for certain agriculture purposes.

The Pennsylvania Department of Environmental Resources (PADER) states that it has authority to investigate complaints of structural damage and water loss caused by underground mining operations conducted after October 24, 1992. Pennsylvania, as discussed above, has authority to provide repair or compensation for subsidence related structural damage and water supply replacement for bituminous coalfield residents after August 21, 1994. Pennsylvania does not have the authority to fully implement section 720(a), in the anthracite coalfield or for bituminous coalfield for the time period October 24, 1992, through August 21, 1994. Pennsylvania will require at least one year to make the necessary statutory changes.

Pennsylvania has investigated 91 citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. To date, Pennsylvania has completed review and made a final determination on 87 with 4 pending further study.

PADER has determined that 2 complaints regarding structural damage were unrelated to underground mining and the remaining 19 were the result of subsidence due to mining conducted after October 24, 1992. PADER reports that investigations of 70 water supply complaints resulted in finding that 60 were unrelated to underground mining conducted after October 24, 1992 and 6 water supplies were determined to have been affected by mining. Four water supply complaints are currently under review with no determination as to impacts from underground mining.

By letter dated May 4, 1995 (Administrative Record No. PA-835.11), Pennsylvania expressed its intention to implement as much of the Federal regulations as possible, to the extent of its law. It agreed to investigate all subsidence-related complaints and take remedial action and will defer to OSM in those situations where the Federal rules provide greater relief for the complainant. Program changes will be made, as necessary, through the program amendment process.

**Comments.** On April 10, 1995, OSM published in the **Federal Register** (60 FR 18046) an 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 Pennsylvania. The comment period closed on May 10, 1995. Because Pennsylvania did not receive a request for one, OSM did not hold a public hearing. Following are summaries of all substantive comments that OSM received, and OSM's responses to them. Although 12 commenters responded, only 4 specifically addressed the implementation options as requested in the **Federal Register** Notice. The others addressed general provisions of Pennsylvania's regulatory program or Pennsylvania Act 54 implementation or wrote to endorse the position of the industry organization who responded on May 5, 1995.

A mining organization responded on May 12, 1995 (Administrative Record No. PA-835.16). The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (Items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedures for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25 which in part implement section 720 of SMCRA:

OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in

implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but will pursue Federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further, the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protective standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiving of ten-day notice procedures in implementing direct Federal enforcement is not consistent with Federal case law. OSM does not agree with the commenter's assertion. The following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742-16745) also applies to this comment.

[The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regularly programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule, OSM has carved out a limited exception to the general proposition, to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

A second industry organization responded on May 5, 1995 (Administrative Record No. PA-835.13). The party recommended that OSM pursue enforcement through the State program amendment process. The Director does not agree for the following reasons: (a) although Pennsylvania's regulatory program provides similar protections to those afforded by 30 CFR 817.41(j) and 817.121(c)(2), it does not have comparable provisions to all of the Federal requirements and Pennsylvania will require one year or more to make the necessary changes through the amendment process, (b) the number of underground coal operations is not low, and (c) the number of complaints

pertaining to section 720 of SMCRA is now low. The Director also notes that the party states that "for all practical purposes, the Pennsylvania program is already as effective as section 720 and OSM's implementing regulations." However, Pennsylvania has itself acknowledged that it Act 54 lacks water replacement and subsidence provisions contained in SMCRA and the accompanying Federal regulations (60 FR 18048). The party also contends that complaints or reports of violations do not indicate a chronic or pervasive problem requiring direct Federal enforcement or interim enforcement and concludes that the State program amendment process is the best enforcement option for Pennsylvania. The Director notes that although the State performed initial investigations of 32 water supply and structural damage complaints, the absence of additional program provisions prevented additional State action to ensure compliance with all provisions of the Federal regulations. For the reasons specified in the Director's Decision below, the Director has decided that enforcement in Pennsylvania will be best accomplished through joint OSM and State enforcement. As noted above, however, the State will investigate all subsidence related complaints and take remedial action. The State will only refer to OSM in those situations where the Federal provisions provide greater relief for the complainant.

A citizens' group responded on May 8, 1995 (Administrative Record No. PA-835.03). The party's comments were divided into two sections: (1) changes it believes are necessary to make the Pennsylvania program as effective as the Federal rules, and (2) interim enforcement. The Director notes that the comments presented in the first section pertain to alleged deficiencies in Pennsylvania Act 54. The majority of the comments in section two pertain more directly to the implementation options presented in the **Federal Register** Notice. The party states that Pennsylvania cannot qualify for options one or two. It believes OSM has a responsibility to see that all complaints in the "gap" period are investigated. The party also commented that full compensation be made to homeowners by the permittee regardless of any prior agreements between homeowners and operators. The party recommended that when OSM begins direct enforcement, it should handle all cases of water loss and subsidence damage dealing with occupied dwellings and structures. Pennsylvania should handle those provisions not addressed by the Federal

regulations. The Director agrees, in part, with the comments presented above. As explained in the Director's Decision below, the Director notes that OSM will directly enforce those provisions of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) for which the State does not have comparable provisions and/or the authority to enforce. Specifically, for those underground mining activities conducted between October 24, 1992, and August 21, 1994. The State will enforce its provisions for which it has authority. Specifically, for those underground mining activities conducted after August 21, 1994.

A citizens' group responded on May 10, 1995 (Administrative Record No. PA-835.04). The party commented that a strict timeframe should be established for submission of a State program amendment which incorporates all the provisions of the Energy Policy Act. The Director recognizes that Pennsylvania may need to amend its program. As discussed above, by letter dated May 4, 1995, Pennsylvania intends to utilize the State program amendment process to make its program no less effective than the Federal regulations. The Director finds the 732 State program amendment process adequate to address potential deficiencies in the State program. The Director also notes that OSM will support the State's program by enforcing the provisions of the Energy Policy Act of 1992 for which the Pennsylvania program lacks counterparts. The party also recommends that the implementation of the subsidence and water replacement rules be an oversight (special fund) for at least the first two years of implementation. The Director notes that OSM will continue to consider special studies of interest to its stakeholders as required by OSM's Director REG-8 which establishes the procedures for conducting oversight. The State will be required to enforce the provisions of its approved program while OSM will conduct oversight using the ten-day notice process, if necessary.

The party recommends that all citizen complaints relating to water loss or subsidence that are the subject of this notice be logged and tracked by OSM to assure proper implementation of the Energy Policy Act. For those complaints previously investigated by the State, the party feels the ten-day notice procedure should not be used. The Director notes the OSM's Harrisburg Field Office has compiled a list of all complaints received after October 24, 1992, and each will be evaluated. For those complaints where damage occurred after August 21, 1994, OSM will conduct normal oversight using the ten-day notice process, if necessary.

The party's last comment concerns the permitting process. It recommends that pending submission of a State program amendment, if Pennsylvania does not modify the permitting process immediately through the use of existing language in the State program to require additional groundwater and subsidence information, OSM should demand that each permittee be required, prior to permit issuance, to develop groundwater and subsidence information for OSM's approval prior to permit issuance. Failing this, individual enforcement actions should be taken. The Director does not agree. Pennsylvania has jurisdiction over the regulation of its surface coal mining operations. Through the 30 CFR 732.17 program amendment process, the Director will notify Pennsylvania of required changes to its program.

*Director's Decision.* Based on the information provided by Pennsylvania, the comments discussed above, and two informal meetings with the State, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Pennsylvania will be accomplished through joint State and OSM enforcement—option #4. Pennsylvania has statutory and 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). The State's authority to enforce its provisions applies to operations conducted after August 21, 1994, and it would enforce its provisions for these operations. 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.

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

Dated: July 24, 1995.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 95-18582 Filed 7-27-95; 8:45 am]

BILLING CODE 4310-05-M

### 30 CFR Part 946

#### Virginia Regulatory Program

**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 Virginia. 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 Virginia and consideration of public comments, OSM has decided that initial enforcement in Virginia will be accomplished through State enforcement.

**EFFECTIVE DATE:** July 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Douglas E. Stone, Acting Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Big Stone Gap, Virginia 24219, Telephone: (703) 523-4303.

#### 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 placement 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.