

sentence "[t]he rules for informal adjudicative proceedings are in the Coal Program Rules, the Oil and Gas Conservation Rules and the Mineral Rules." OSM previously approved the informal proceeding provisions of Utah Admin. R. 645 and formal proceeding provisions of Utah Admin. R. 641.

The Director finds that the addition of new administrative procedures at UCA 40-10-6.7 is not inconsistent with SMCRA. OSM wishes to clarify that any future rules implemented by Utah in accordance with UAPA must be revised and determined to be consistent with SMCRA. In addition, the Director finds that the proposed revision at Utah Admin. R. 641-100-100 referencing Utah's coal mining rules at Utah Admin. R. Part 645 is not inconsistent with SMCRA. Therefore, the Director approves the addition of UCA 40-10-6.7 and the revision of Utah Admin. R. 641-100-100.

7. UCA 40-10-11(3), Schedule of Applicant's Mining Law Violations and Pattern of Violations Determination

Utah proposed to revise UCA 40-10-11(3) to provide, in part:

[t]he applicant shall file with his permit application a schedule listing any and all notices of violations of this chapter, any state or federal program or law approved under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et seq., and any law, rule, or regulation of the United States, State of Utah, or any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. * * * no permit shall be issued to an applicant after a finding by the board * * * that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of *this chapter* of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of *this chapter*.

Emphasis added. As used by Utah in UCA 40-10-11(3), "this chapter" means UCA Title 40, Chapter 10.

Section 510(c) of SMCRA provides, in part, that (1) the applicant shall file with the permit application a schedule listing any and all notices of violations of, among other things, "this Act;" and (2) the permit shall not be issued after a finding that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of "this Act" of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not

to comply with the provisions of "this Act." The reference to "this Act" in section 510(c) of SMCRA includes SMCRA, the implementing Federal regulations, and all State and Federal programs approved under SMCRA. (See 48 FR 44344, 44389, September 28, 1983. See also 53 FR 38868, 38882-38883, October 3, 1988.)

With regard to the first sentence of UCA 40-10-11(3) that requires that the permit application contain a schedule listing any and all notices of violations, the provision encompasses violations of all State and Federal programs approved under SMCRA, but it does *not* encompass violations of SMCRA itself or violations of the implementing Federal regulations. With regard to the portion of UCA 40-10-11(3) that deals with the pattern of violations, "this chapter" encompasses only violations of the State statute. It does *not* encompass violations of SMCRA, the implementing Federal regulations, any State and Federal programs enacted under SMCRA, or other provisions of the approved Utah program.

OSM discussed these issues in its October 24, 1994, issue letter to Utah (issue No. 4). Utah agreed in its December 7, 1994, response to OSM's issue letter that UCA 40-10-11(3) needed to be revised in accordance with the deficiencies identified in OSM's issue letter. Utah stated that it would, in its 1996 legislative session, pursue the changes to UCA 40-10-11(3).

Based upon the above, the Director, with the requirement that Utah revise UCA 40-10-11(3) to require that (1) the schedule of the applicant's mining law violations required in connection with a permit application includes violations of SMCRA and the implementing Federal regulations and (2) the pattern of violations determination discussed therein includes violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, and other provisions of the approved Utah program, finds UCA 40-10-11(3) to be no less stringent than section 510(c) of SMCRA. The Director approves the proposed revisions at UCA 40-10-11(3).

8. UCA 40-10-11(5)(a), Remining Operation Violations Resulting From Unanticipated Events or Conditions

Proposed UCA 40-10-11(5)(a) provides that the prohibition of UCA 40-10-11(3), which limits the issuance of a permit for violations (discussed above at finding No. 7), does not apply to a permit application after October 14, 1992, if the violation resulted from an unanticipated event or condition that occurred at a surface coal mining

operation on lands eligible for remining under a permit held by the person making the application. This provision is similar to section 510(e) of SMCRA, except that section 510(e) of SMCRA applies after the date of enactment of the Energy Policy Act of 1992, which was October 24, 1992. OSM discussed the difference in dates in its October 24, 1994, issue letter to Utah (issue No. 4). Utah stated in its December 7, 1994, response to OSM's issue letter that the October 14 date at UCA 40-10-11(5)(a) is a typographical error and that the correct date should be October 24.

With the requirement that Utah revise UCA 40-10-11(5)(a) to reflect an effective date of "after October 24, 1992," the Director finds UCA 40-10-11(5)(a) to be no less stringent than section 510(e) of SMCRA. The Director approves proposed UCA 40-10-11(5)(a).

9. UCA 40-10-13(2)(b), Location of Informal Conferences

Existing UCA 40-10-13(2)(b) states that, if a person files written objections on an initially-proposed or revised mine permit application, the Division shall hold an informal conference within a reasonable time of the receipt of the objections or request. Utah proposed to revise this rule to further state, among other things, that:

[t]he conference shall be informal and shall be conducted in accordance with the procedures described in Subsection (b), irrespective of the requirements of Section [UCA] 63-46b-5, Administrative Procedures Act. The conference *may* be held in the locality of the coal mining and reclamation operation if requested within a reasonable time after written objections or the request for an informal conference are received by the division.

Emphasis added. The procedures described in subsection (b) of UCA 40-10-13(2) are consistent with the procedures for informal conferences established by section 513(b) of SMCRA, except that SMCRA requires that the regulatory authority *shall* hold an informal conference in the locality of the proposed mining, if requested within a reasonable time of the receipt of such written objections or the request.

Because Utah did not submit any rationale for this statute, it is not clear what it intended with the use of the word "may" instead of "shall." It is possible that Utah intended, as section 513(b) of SMCRA requires, that the Division would always hold an informal conference in the locality of the proposed mining when requested within a reasonable time after receipt of the objections or request. However, the use of the word "may" in the proposed