

statute would appear to allow Utah discretion to not hold the informal conference in the locality of the proposed mining even when the Division receives a request to do so within a reasonable time. The Director finds that UCA 40-10-13(2)(b), to the extent that the first sentence of the proposed new language at this statute requires that the conference be informal and be conducted in accordance with the procedures for informal conferences, is no less stringent than section 513(b) of SMCRA, and approves this part of the statute. However, to the extent that the second sentence Utah proposed to add at UCA 40-10-13(2)(b) allows the Division to possibly not hold the informal conference in the locality of the coal mining and reclamation operation when such conference is requested within a reasonable time, the Director finds UCA 40-10-13(2)(b) is less stringent than section 513(b) of SMCRA. Utah stated in its December 7, 1994, response to OSM's October 24, 1994, issue letter (issue No. 6), that it would pursue a change from the discretionary "may" in holding the informal conference in the locality of the mining operation to a mandatory "shall" in its 1995 legislative session.

Therefore, with the requirement that Utah revise UCA 40-10-13(2)(b) to change the word "may" to "shall" in the sentence that begins "[t]he conference may be held in the locality of the coal mining and reclamation operation * * *," the Director finds UCA 40-10-13(2)(b) to be no less stringent than section 513(b) of SMCRA. The Director approves the proposed revisions at UCA 40-10-13(2)(b).

10. UCA 40-10-14(6), Appeal to District Court and Further Review

In response to the required amendment at 30 CFR 944.16(b) (September 27, 1994; 59 FR 49185, 49186; finding No. 3), which required Utah to alleviate a discrepancy in the requirements addressing the jurisdiction of the Utah Supreme Court and the State district courts, and at its own initiative, Utah proposed to revise UCA 40-10-14(6). Specifically, Utah proposed that:

(a) *[a]n applicant or person with an interest which is or may be adversely affected who has participated in the proceedings [to determine whether a permit should be issued] as an objector, and who is aggrieved by the decision of the board, may appeal the decision of the board directly to the Utah Supreme Court.*

(b) *[i]f the board fails to act within the time limits specified in this chapter [UCA Title 40, Chapter 10], the applicant or any person with an interest which is or may be adversely affected, who has requested a hearing in accordance with Subsection (3), may bring an*

action in the district court for the county in which the proposed operation is located.

(c) *[a]ny party to the action in district court may appeal from the final judgment, order, or decree of the district court.*

(d) *[t]ime frames for appeals under Subsections (6) (a) through (c) shall be consistent with applicable provisions in Section 63-46-14, Administrative Procedures Act.*

(Italics indicate new language proposed to be added to this statute.) Utah also proposed the deletion of the provision at UCA 40-10-14(6)(b) that required that "[r]eview of the adjudication of the district court is by the [Utah] Supreme Court."

Section 526(e) of SMCRA provides, in pertinent part, that actions of the State regulatory authority pursuant to an approved State program are subject to judicial review by a court of competent jurisdiction in accordance with State law.

The Director finds that Utah's proposed procedures for further review and appeal of decisions concerning permit applications at UCA 40-10-14(6) are consistent with and no less stringent than the judicial review requirements of section 526(e) of SMCRA. Therefore, the Director approves proposed UCA 40-10-14(6). The Director also notes that the proposed revisions at UCA 40-10-14(6) satisfy the required amendment at 30 CFR 944.16(b) (59 FR 49185, 49186; September 27, 1994; finding No. 3), which required Utah to amend this statute to eliminate inconsistencies regarding appellate procedures. Accordingly, the Director is removing the required amendment at 30 CFR 9434.16(b).

11. UCA 40-10-16(6) (b) through (d), Informal Conferences or Formal Hearings Pertaining to Performance Bond Release Decisions

Utah proposed to delete its procedural requirements pertaining to bond release decisions at UCA 40-10-16(6) (b) through (d) and to replace them with a reference in UCA 40-10-16(6)(d) to the Board's Rules of Practice and Procedure, which are at Utah Admin. R. Part 641. Existing UCA 40-10-16(6) is substantively identical to the provisions of sections 519 (f), (g), and (h) of SMCRA, which provides, in pertinent part, the requirements for advertising notice of a hearing, establishing an informal conference to resolve written objections, gathering evidence, and compiling a verbatim record and making a transcript available.

The procedural requirements at sections 519 (f), (g), and (h) of SMCRA are contained in the referenced Rules of Practice and Procedure of the Board at

Utah Admin. R. Part 641. In addition, Utah has clarified, that for the purposes of UCA 40-10-16(6), all of the provisions of Utah Admin. R. Part 641 apply to hearings held for the purpose of bond release.

There is no counterpart provision in SMCRA similar to Utah's provision at UCA 40-10-16(6)(c) that allows an informal conference to be converted to a formal proceeding under the standards set forth at UCA 63-46b-4 of UAPA. OSM requested in its October 24, 1994, issue letter (issue No. 8) that Utah verify that all procedural requirements accompanying a formal hearing will occur prior to continuing the conference as a formal proceeding when an informal conference is converted to a formal proceeding under UCA 63-46b-4. Utah responded in its December 7, 1994, letter that when a hearing is converted to a formal proceeding from an informal proceeding, all of the requirements of a formal proceeding apply.

Based upon Utah's assurances that the provisions of Utah Admin. R. Part 641, Rules of Practice and Procedure of the Board, provide for counterpart requirements to sections 519 (f), (g), and (h) of SMCRA, apply to bond release hearings, and that, when an informal hearing is converted to a formal hearing, the requirements of a formal proceeding apply, the Director finds that the revisions proposed by Utah at UCA 40-10-16(6) are no less stringent than sections 519 (f), (g), and (h) of SMCRA. The Director approves the revised statute.

12. UCA 40-10-18(4) (a) through (c), Damage Resulting From Underground Coal Mining Subsidence

Utah proposed new language at UCA 40-10-18(4) (a) through (c) to provide:

(a) *[u]nderground coal mining operations conducted after October 24, 1994, shall be subject to the following requirement: The permittee shall promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and related structures of noncommercial building due to underground coal mining operations. Repair of damage will include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and related structures of noncommercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and related structures or noncommercial building and will be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium prepaid insurance policy.*