

Alaska concluded that it did not believe that it has the statutory authority to investigate complaints of structural damage or water loss caused by underground coal mining operations after October 24, 1992.

On May 18, 1995, OSM confirmed with Alaska that no underground mines were active after October 24, 1992 (Administrative Record No. AK-F-07). However, there is an underground coal mine exploration site that would likely be permitted within 6 months. Alaska has indicated that it would address the requirements of section 720(a) of SMCRA in its permitting process for this mine. Due to the remote location of this operation, it is highly unlikely that material damage to noncommercial buildings and to occupied residential dwellings and related structures and that damage to drinking, domestic, and residential water supplies would occur.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17495) 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 Alaska (Administrative Record No. AK-F-04). 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.

The party stated 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 (Administrative Record No. AK-F-08). The party also 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 assertions, and it addressed similar comments in the March 31, 1995, **Federal Register** (60 FR 16722, 16742-16745) and also responds to these comments below in the "Comments" subsection of following Montana section D. These concerns about direct Federal enforcement are moot issues for Alaska 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 Alaska, the Casper Field Office on May

18, 1995, consulted with Alaska in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. AK-F-07). Because there has been no underground mining activity since October 24, 1992; there is little likelihood for subsidence damage to noncommercial buildings and to occupied residential dwellings and related structures, or adverse effects to drinking, domestic, and residential water supplies by a proposed underground coal mining operation; and Alaska has indicated it would address the requirements of section 720(a) of SMCRA in the permit for the proposed mine, the Field Office and Alaska agreed that 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 Alaska 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 the initial enforcement of the underground coal mine subsidence control and water replacement requirements in Alaska is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process.

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

D. Enforcement in Montana

Montana Program Activity, Requirements, and Enforcement

By letter to Montana dated December 15, 1994, OSM requested information from Montana that would help OSM decide which approach to take in Montana to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Montana program provisions (Administrative Record No. MT-13-01). By letter dated March 6, 1995, Montana responded to OSM's request (Administrative Record No. MT-13-02).

Montana stated that one underground coal mine was active in Montana after October 24, 1992. Montana stated that its program does not fully authorize enforcement of the structural repair and water replacement requirements of section 720(a) of SMCRA and the implementing Federal regulations.

Specifically, Montana indicated that (1) Administrative Rules of Montana 26.4.911(5), which address compensation for structural damage

resulting from subsidence, are not clearly authorized by the subsidence prevention provisions of section 82-4-231(10)(f) of the Montana Strip and Underground Mine Reclamation Act (MSUMRA); (2) section 82-4-253(2) of MSUMRA excepts water derived from "a subterranean stream having a permanent, distinct, and known channel" from the requirement for underground coal miners to promptly replace drinking, domestic, or residential water supplies affected by underground coal mining, and (3) the procedural requirements of section 82-4-253(2) of MSUMRA would not, in Montana's opinion, result in "prompt" replacement of water supplies adversely affected by underground coal mining.

Montana has stated that statutory changes to address these issues will need to be sought in the next legislative session in January 1997, and subsequent rule changes would follow adoption of statute changes. OSM has determined that Montana has not received or investigated any 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.

On May 3, 1995, Montana indicated its preferred enforcement alternative for the State (Administrative Record No. MT-13-05). Because it would enforce its currently approved program to the fullest extent and introduce in the 1997 legislative session program amendments to address the issues in its March 6, 1995, letter, Montana recommended that OSM only initiate direct Federal enforcement in the interim period (between October 24, 1992, and the effective date of Montana's revision of its program to be no less stringent than SMCRA and no less effective than the Federal regulations) when enforcement is needed and the Montana program falls short of the Federal standards.

OSM has determined that only the one underground coal mine has operated after October 24, 1992, and that Montana has not received any complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of this underground mine's operations conducted after October 24, 1992.

Comments. On April 6, 1995, OSM published in the **Federal Register** (60 FR 17495) 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 Montana (Administrative Record No. MT-13-04).