

*Regional Director's Decision*

Prior to the Regional Director making this decision on which enforcement alternative should be implemented in North Dakota, the Casper Field Office on May 30, 1995, consulted with North Dakota in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. ND-W-07).

The North Dakota program does not currently allow underground coal mining. Prior to issuing a permit allowing underground mining, North Dakota 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 North Dakota 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 comment 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 North Dakota underground mining permit.

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

**F. Enforcement in Wyoming***Wyoming Program Activity, Requirements, and Enforcement*

By letter of Wyoming dated December 15, 1994, OSM requested information from Wyoming that would help OSM decide which approach to take in Wyoming to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Wyoming program provisions (Administrative Record No. WY-29-01). By letter dated January 19, 1995, Wyoming responded to OSM's request (Administrative Record No. WY-29-02).

Wyoming stated that three underground coal mines were active in Wyoming after October 24, 1992. Wyoming indicated that existing State

program provisions at Wyoming Statutes 35-11-102 (policy and purpose); 35-11-406 (permit applications); 35-11-416 (surface owner protection); and 35-11-428 (in situ mining permit applications); and Wyoming Coal Rules and Regulations at chapter VI, section 2 (general environmental performance standards); chapter VII, sections 1 through 4 (underground mining permit applications, environmental protection performance standards, public notice, and surface owner protection); and chapter XVIII, section 3 (in situ mining permit applications) are adequate State counterparts to section 720(a) of SMCRA and the implementing Federal regulations.

Wyoming explained that it will enforce these State program provisions in accordance with the enforcement provisions that were in effect October 24, 1992. Wyoming has investigated one citizen complaint alleging subsidence-caused structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. This complaint concerned subsidence damage to a reclaimed reservoir. This is a unique situation in that the alleged damage occurred within the permit area of an adjacent surface coal mine. The two mine operators have mutually agreed upon corrective measures and have not requested the State of Wyoming to intervene.

On May 11, 1995, OSM corresponded with Wyoming and reiterated the available alternative enforcement decisions in the State (Administrative Record No. WY-29-09).

On July 13, 1995, Wyoming sent to OSM a letter in which it stated that it preferred the State enforcement alternative (Administrative Record No. WY-29-12). Wyoming also stated that it interpreted its program and the Federal water replacement requirements (at section 720(a)(2) of SMCRA and 30 CFR 817.41(j)) to apply only to valid water rights as determined by the Wyoming State Engineer. That is, Wyoming 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 has determined that three underground coal mines have operated after October 24, 1992. For these mines, Wyoming has received the one complaint alleging subsidence-related damage to a water reservoir.

*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 Wyoming (Administrative Record No. WY-29-04). 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 three parties in response to its notice.

The comments discussed above for the Alaska program, and OSM's responses to it, also apply to the Wyoming program (Administrative Record No. WY-29-11).

A party supported the selection of the State enforcement alternative (Administrative Record No. WY-29-07). The Regional Director acknowledges this comment and took it into consideration before making the enforcement decision set forth below.

A party commented that several of Wyoming's statutory provisions are less stringent than the Federal counterparts at section 720(a) of SMCRA and less effective than the implementing Federal regulations at 30 CFR 817.121(c) and 817.41(j) (Administrative Record No. WY-29-08). Because of this, the party stated that OSM is required to provide direct Federal enforcement as set forth in item (3) of section B. of the April 6, 1995, **Federal Register** notice soliciting comment on the enforcement alternative that should be implemented in the State.

In the near future, OSM intends to send a letter to Wyoming in accordance with 30 CFR 732.17(d) notifying Wyoming of revisions that need to be made to its program. OSM does not agree with the commenter's conclusion that OSM is required to institute Federal enforcement in the interim period because Wyoming's program is less stringent than SMCRA and less effective than the implementing Federal regulations. As set forth in item (1) of section B. of the April 6, 1995, **Federal Register** notice, OSM could decide not to directly enforce the Federal SMCRA and regulation provisions in the interim period in Wyoming if it found that the number and extent underground mines that have operated since October 24, 1992, is low, the number of complaints concerning section 720 of SMCRA is low, the State's investigation of subsidence-related or water supply loss and contamination complaints has been thorough and complete so as to assure prompt remedial action, or the State's promulgation of counterparts to 30 CFR 817.41(j) and 817.121(c)(2) is imminent. Also, OSM could decide not to directly