

and use. OSM interprets section 720 and the implementing rules as not requiring the replacement of water supplies to the extent underground mining activities consume or legitimately use the water supply under a senior water right determined under applicable State law. See *In re Permanent Surface Mining Regulation Litigation II, Round III*, 620 F. Supp. 1519, 1525 (D.C.D.C. 1985). However, OSM believes that section 717(a) concerns rights under State water law to consumption or use of water, and was not intended to address destruction or damage of the source of water, or contamination of water supply. Thus, OSM anticipates that underground mining activities which cause destruction or damage of a water supply source, or contamination of a water supply, would be subject to the replacement requirements of section 720 even if the permittee possessed senior water rights.

(60 FR 16722, 16733).

Two commenters indicated that, in a proceeding before the Board on Oil, Gas and Mining concerning alleged diminution and contamination by a Utah mining operation of a water source, the Division was unwilling to enforce the water replacement requirements of section 720(a) of SMCRA (Administrative Record Nos. UT-1047, 1048, and 1050). These commenters, and one other person (Administrative Record No. UT-1050), stated that the Division had not fully enforced the water protection provisions of the Utah program. One of the commenters recommended a number of changes in the implementation of the Utah program and indicated that, until these changes were made, OSM should conduct oversight Utah's implementation of the ground-water protection provisions of the Utah program and, if necessary, directly enforce water resources protection provisions in Utah. The other commenter recommended, at a minimum, joint Division and OSM enforcement of the Energy Policy Act requirements, or direct Federal enforcement. OSM acknowledges these comments and took them into consideration in making the decision set forth below.

One commenter stated that, to the best of his knowledge, Utah does not conduct any monitoring of the hydrological consequences of a mine after it has been permitted to determine whether the mine is affecting the hydrologic balance as predicted in the permit (Administrative Record No. UT-1050). In response to this statement, the Division indicated that, during the operation of a mine, it does reevaluate the hydrologic impact conclusions made at the permitting stage in light of monitoring data collected during the

mine's operation (Administrative Record No. UT-1050).

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Utah, the Albuquerque Field Office, on May 1 and 31, and June 5, 1995, consulted with Utah in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. UT-1058).

The majority of Utah mines have operated after October 24, 1992, and are subject to the provisions of section 720(a) of SMCRA and the implementing Federal regulations. Although Utah has implemented its regulatory program provisions concerning hydrologic information and hydrologic balance and is committed to the investigation and resolution of citizens' concerns regarding water sources, there are, as is documented in the written record of the public hearing, current concerns and potential for additional complaints regarding the loss, contamination, or diminution of water sources that serve large populations in the coal producing counties in Utah. The mid-1996 projection for promulgating statutory and regulatory State program provisions for water replacement is in keeping with usual timeframes for enactment of legislation and revision of regulations.

The Field Office and Utah agreed that Utah should be the primary enforcer of its State program provisions for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. However, the Field Office found that it is unclear that the water supply protections of section 720(a)(2) of SMCRA and 30 CFR 817.41(j) can be implemented by Utah in all cases. Therefore, the Field Office concluded that, if a situation arises in which Utah's enforcement role as primary enforcer does not appear to fully meet the water replacement requirements of section 720(a)(2) of SMCRA, OSM must take direct Federal enforcement.

On this basis and the disposition of the comments received, the Regional Director decides that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Utah will occur through State enforcement and, if necessary, direct Federal enforcement of the water replacement requirements of section 720(a)(2) of SMCRA and 30 CFR 817.41(j).

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

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

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95-18441 Filed 7-26-95; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Parts 915, 916, and 925

Iowa, Kansas, and Missouri 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 Iowa, Kansas, and Missouri. 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 Iowa, Kansas, and Missouri and consideration of public comments, OSM has decided that initial enforcement is not reasonably likely to be required and that implementation in these States will be accomplished through the State program amendment process.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Acting Director, Kansas City Field Office, Telephone: (816) 374-6405.

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