

### C. Enforcement in Iowa

#### *Iowa Program Activity, Requirements, and Enforcement*

By letter to Iowa dated December 14, 1994, OSM requested information from Iowa that would help OSM decide which approach to take in Iowa to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Iowa program requirements (Administrative Record No. IA-413). Iowa did not respond to this request.

OSM determined that Iowa has not revised its statute to incorporate counterparts to the requirements of section 720 of SMCRA.

On May 9, 1995, OSM confirmed with Iowa that no underground coal mines have operated in Iowa after October 24, 1992, and that there is no underground mining activity proposed in the State (Administrative Record No. IA-418). At that time, OSM also discussed whether the State has counterparts to the implementing Federal regulations.

Iowa has not revised its regulations to incorporate counterparts to the Federal regulations implementing the SMCRA provisions. OSM's review of Iowa's regulations indicates that (1) at Iowa Administrative Code (IAC) 27-40.64(207), Iowa incorporated 30 CFR 817.41 as it existed on July 1, 1992, and (2) at IAC 27-40.64(6), Iowa incorporated 30 CFR 817.121(c)(2) as it existed on July 1, 1992, except the phrase "To the extent required under applicable provisions of State law."

Iowa has not proposed a schedule to OSM for when it will revise its program to be no less stringent than SMCRA and no less effective than the Federal regulations.

**Comments.** On April 6, 1995, OSM published in the **Federal Register** (60 FR 17504) 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 Iowa (Administrative Record No. IA-415). 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 (Administrative Record No. IA-419). These comments apply not only to the Iowa program but also to the Kansas and Missouri programs that are addressed below (Administrative Record Nos. KS-598 and MO-632).

The party commented 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. 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). These concerns about direct Federal enforcement are moot issues for these States 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 Iowa, the Kansas City Field Office on May 9, 1995, consulted with Iowa in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. IA-418). Because there has been no underground mining activity since October 24, 1992, and there is no underground mining activity proposed in the State, the Field Office and Iowa agreed that it is unlikely that any State or Federal enforcement would be necessary in the State during the interim period between October 24, 1992, and the date by which Iowa 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 that initial enforcement of the underground coal mine subsidence control and water replacement requirements in Iowa is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. In the near future, and in accordance with 30 CFR 732.17(d), OSM intends to notify Iowa of the specific revisions that it must make to its regulatory program to be no less stringent than SMCRA and no less effective than the implementing Federal regulations.

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

### D. Enforcement in Kansas

#### *Kansas Program Activity, Requirements, and Enforcement*

By letter to Kansas dated December 14, 1994, OSM requested information from Kansas that would help OSM

decide which approach to take in Kansas to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Kansas program requirements (Administrative Record No. KS-594). By letter dated February 3, 1995, Kansas responded to OSM's request (Administrative Record No. KS-595).

Kansas stated that no underground coal mines were operating in Kansas after October 24, 1992, and that there is no underground mining activity proposed in the State.

OSM has determined that Kansas has not revised its statute to incorporate counterparts to the requirements of section 720(a) of SMCRA. Although not specifically stated, Kansas' letter implies that the provisions can be implemented in the State program through the promulgation of regulations.

Kansas indicated that at Kansas Administrative Regulations (KAR) 47-9-1(d)(40), it adopted 30 CFR 817.121 as it existed on July 1, 1990, and was in the process of promulgating regulations adopting 30 CFR 817.121 as it was written on July 1, 1992. Kansas stated that this revised regulation will authorize the repair of structural damage caused by subsidence in accordance with section 720(a)(1) of SMCRA as it existed on December 31, 1993.

Kansas further indicated that it has the authority to investigate complaints concerning water loss through the material damage criteria of KAR 47-9-1(d)(40), which adopts by reference 30 CFR 817.121(a), and through its hydrologic balance regulations at KAR 47-9-1(d)(7), which adopts by reference 30 CFR 817.41. It further stated that any drinking, domestic, or residential water supply, or other beneficial use as defined by the Kansas Water Appropriations Act, which is impaired by diversion or is otherwise impaired, would have to be replaced according to Kansas Statutes Annotated (KSA) 82a-706b. Lastly, Kansas stated that any waters of the state whose quality is adversely impacted will have to be cleaned up at the owner's expense as provided for in KSA 65-171 *et seq.*

Kansas concluded that the above-discussed regulations and statutes adequately encompass the requirements of section 720(a) of SMCRA.

Kansas made these statements about the effectiveness of its regulations on February 3, 1995, prior to the publication of the Federal regulations on March 31, 1995. On May 5, 1995, after Kansas had an opportunity to review the new Federal regulations, OSM discussed with Kansas the Federal