

State program but are not enforceable back to October 24, 1992, until the effective date of the State's rules.

As described in items (3) and (4) above, OSM could directly enforce in total or in part the applicable Federal regulatory provisions until the State adopts and OSM approves under 30 CFR part 732, the State's counterparts to the required provisions. However, as discussed in item (1) above, OSM could decide not to initiate direct Federal enforcement but rather to rely instead on the 30 CFR part 732 State program amendment process.

In those situations where OSM determined that direct Federal enforcement was necessary, the ten-day notice provisions of 30 CFR 843.129a(2) would not apply. That is, when on the basis of a Federal inspection OSM determined that a violation of 30 CFR 817.41(j) or 817.121(c)(2) existed, OSM would issue a notice of violation or cessation order without first sending a ten-day notice to the State.

Also under direct Federal enforcement, the provisions of 30 CFR 817.121(c)(4) would apply. This regulation states that if damage to any noncommercial building or occupied residential dwelling or structure related thereto occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land (normally a 30 degree angle of draw), a rebuttable presumption exists that the permittee caused the damage.

Lastly, under direct Federal enforcement, OSM would also implement the new definitions at 30 CFR 701.5 of "drinking, domestic or residential water supply," "material damage," "non-commercial building," "occupied dwelling and structures related thereto," and "replacement of water supply" that were adopted with the new underground mining performance standards.

OSM would enforce 30 CFR 817.41(j), 817.121(c)(2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Alabama

Alabama program activity, requirements, and enforcement. By letter to Alabama dated December 14, 1994, OSM requested information that would be useful in determining how to implement section 720(a) of SMCRA and the implementing Federal regulations in Alabama (Administrative Record No. A1-520). By letter dated January 12, 1995, Alabama responded to this request (Administrative Record No. AL-521).

Alabama stated that ten underground coal mines were active in Alabama after October 24, 1992. Alabama stated that the Alabama program does not fully authorize enforcement of the repair or compensation of material damage requirements of Section 720(a) of SMCRA and the implementing Federal regulations. Alabama's regulations are silent on the issue of replacement of water supplies damaged by subsidence but do contain a "to the extent required by State law" limitation on repair of material damage to structures. Alabama has not determined whether a change to the State Act is necessary to implement regulation change which would be required under the Energy Policy Act (EPACT). Further analysis would be necessary by the State legal staff before a determination can be made of the need for statutory revisions.

Alabama has assumed since the passage of EPACT that the retroactive enforcement of its provisions by Alabama would be possible until regulatory changes can be made. Alabama has in fact adopted the position that since the effective date of EPACT they have had enforcement authority of its provisions.

Since October 24, 1992, Alabama has had only one citizen complaint where alleged damage to structures from subsidence has existed. This complaint covered a church and several houses. No complaints have been received alleging damage to water supplies due to subsidence.

Representatives from OSM's Birmingham Field Office met with Alabama on May 2, 1995. Alabama confirmed it has the authority to enforce the water replacement provisions of 30 CFR 817.41(j) for underground mining activities conducted after October 24, 1992. The State will not, however, be able to fully enforce the repair or compensation of material damage resulting from subsidence provisions of 30 CFR 817.121(c)(2) because of certain limitations placed on compensation in the current State status.

Comments. On April 10, 1995, OSM published in the **Federal Register** (60 FR 18044) an 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 Alabama. The comment period closed on April 20, 1995. The comment period was subsequently extended to May 10, 1995 (60 FR 20193, April 25, 1995). Because OSM did not receive a request for one, OSM did not hold a public hearing. OSM received

one comment in response to its notice. Following is OSM's response to it.

OSM received comments from one party in response to its notice (Administrative Record Number AL-546). The party stated that the enforcement alternatives incorporating total or partial direct interim Federal enforcement (items (3) and (4) in section I.B. above) have no statutory basis in SMCRA and are not consistent with Congress' intent in creating section 720 of SMCRA. Specifically, the party commented that SMCRA contains various statutory procedure for the amendment, preemption, and substitution of Federal enforcement of State programs (sections 503, 505, and 521(b)) that should be used in lieu of direct interim Federal enforcement.

In response to this comment, OSM's position remains as was stated in the March 31, 1995, preamble for the Federal regulations at 30 CFR 843.25, which in part implement section 720 of SMCRA:

OSM has concluded that it is not clear from the legislation or legislative history, how Congress intended that section 720 was to be implemented, in light of existing SMCRA provisions for State primacy. Thus, OSM has a certain amount of flexibility in implementing section 720. After weighing these considerations, OSM intends to implement section 720 promptly, but was pursue Federal enforcement without undermining State primacy under SMCRA.

(60 FR 16722, 16743). Using this rationale, OSM concludes that there is no inconsistency in its implementation of section 720 of SMCRA with sections 503, 505, and 521(b) of SMCRA.

Further, the party commented that Congress' intent was that agreements between coal mine operators and landowners would be used to ensure that the protection standards of section 720 of SMCRA would occur rather than enforcement by State regulatory authorities and OSM. The party did not supply any legislative history to support this conclusion, and the plain language of section 720 of SMCRA does not support this conclusion.

Lastly, the party commented that the waiver 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 assertion. The Following response to a similar comment in the March 31, 1995, **Federal Register** (60 FR 16722, 16742-16745) also applies to this comment.

[The commenter stated that] the proposal to provide for direct Federal enforcement ignores Federal case law which indicates that, as a general proposition, the State