

The party also recommends that the implementation of the subsidence and water replacement rules should be an oversight topic (special study) for at least the first two years of implementation. The Director notes that OSM will continue to consider special studies of interest to its stakeholders as required by OSM's Directive REG-8 which establishes the procedures for conducting oversight. The State will be required to enforce the provisions of its approved program while OSM will conduct normal oversight using the ten-day notice process if necessary.

The party recommends that all citizen complaints relating to the water loss or subsidence provisions that are the subject of this notice be logged and tracked by OSM to assure proper implementation of the Energy Policy Act. The Director notes that the LFO has compiled a list of all water loss complaints received after October 24, 1992, and each complaint will be evaluated. Since Kentucky has equivalent provisions to the Federal subsidence regulations, the Director notes that State will enforce those provisions while OSM will conduct normal oversight using the ten-day notice process, if necessary.

The party feels that in those cases when the State has previously investigated a complaint, the ten-day notice process should not be used prior to Federal investigation and enforcement. The Director does not agree and reiterates his response to the comment above. For all subsidence-related complaints and for those water replacement-related complaints where damage occurred after July 16, 1994, OSM will conduct normal oversight using the ten-day notice process, if necessary.

The party's last comment concerned the permitting process. It recommends that pending submission of the State program amendment, if Kentucky does not modify the permitting process immediately through the use of existing language in the State program to require additional groundwater and subsidence information, OSM should demand that each permittee be required, prior to permit issuance, to develop groundwater and subsidence information for OSM's approval prior to permit issuance. Failing this, individual enforcement actions should be taken. The Director does not agree. Kentucky has jurisdiction over the regulation of its surface coal mining operations. Through the 30 CFR 732.17 process, the Director will notify Kentucky of required changes to its program.

*Director's decision.* Based on the information provided by Kentucky,

discussions held with the State on June 14, 1995, and the comments discussed above, the Director has decided that the enforcement of the underground coal mine subsidence control and water replacement requirements in Kentucky will be accomplished by State and OSM enforcement—Option #4. Kentucky will enforce its provisions that correspond to the Federal regulations at 30 CFR 817.41(c)(2) pertaining to the repair or compensation of material damage resulting from subsidence. Kentucky has statutory provisions in place that correspond to the Federal regulations and has the authority to implement its provisions for all underground activities conducted after October 24, 1992. Kentucky will also enforce its provisions that correspond to the Federal regulations at 30 CFR 817.41(j) pertaining to water replacement for the period after July 16, 1994. It has statutory provisions in place that correspond to the Federal regulations and has the authority to implement its provisions for all underground mining activities conducted after July 16, 1994—the effective date of Kentucky's statutory provisions for water replacement. For those underground mining activities conducted after October 24, 1992, and before July 16, 1994, OSM will enforce the provisions of 30 CFR 817.41(j) because Kentucky does not have the statutory authority to retroactively apply water replacement requirements to water losses prior to the effective date of its statute.

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

Dated: July 24, 1995.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

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### 30 CFR Parts 920 and 938

#### Maryland and Pennsylvania 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 Maryland and Pennsylvania. 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 Maryland and Pennsylvania and consideration of public comments, OSM has decided that initial enforcement in Maryland will be accomplished through the State enforcement and in Pennsylvania through State and OSM enforcement.

**EFFECTIVE DATE:** July 28, 1995.

#### FOR FURTHER INFORMATION CONTACT:

George Rieger, Acting Director, Harrisburg Field Office, OSM, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

#### 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 must be provided to the owner in the full amount of the reduction in value of the damaged structures as a result of subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies if those supplies have been adversely affected by underground coal mining operations.

These provisions requiring prompt repair or compensation for damage to structures, and prompt replacement of water supplies, went into effect upon passage of the Energy Policy Act on October 24, 1992. As a result, underground coal mine permittees in States with OSM-approved regulatory programs are required to comply with these provisions for operations conducted after October 24, 1992.

##### B. The Federal Regulations Implementing the Energy Policy Act

On March 31, 1995, OSM promulgated regulations at 30 CFR Part 817 to implement the performance