

of underground mining operations. As of January 13, 1995, Virginia found that a violation of the Act existed on 35 of the complaints, no violation of the Act existed on 202 of the complaints, and technical reports and a final decision were pending on 25 complaints.

On May 10, 1995 (Administrative Record Number VA-856), OSM met with the Virginia Division of Mined Land Reclamation (DMLR) to discuss implementation issues relative to the Energy Policy Act of 1992. At that meeting, OSM agreed with DMLR concerning the following interpretation of the Virginia program:

- Virginia has full statutory authority at section 43.1-258. of the Code of Virginia to require the replacement of drinking, domestic or residential water supplies contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992.

- Virginia has full authority at section 480-03-19.817.121(C)(2) of the Virginia Coal Surface Mining Reclamation Regulations to require the repair or compensation for damage to non-commercial buildings and dwellings and related structures resulting from subsidence caused by underground mining activities conducted after October 24, 1992.

Comments. On April 7, 1995, OSM published in the **Federal Register** (60 FR 17743) 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 Virginia. The comment period closed on May 8, 1995. Because OSM did not receive a request for one, OSM did not hold a public hearing. Following are summaries of all substantive comments that OSM received, and OSM's responses to them.

One commenter (Administrative Record Numbers VA-862) asserted 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. The party also commented that the waiving of ten-day notice procedures under direct Federal enforcement is not consistent with Federal case law. A second commenter adopted these comments by reference. 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 Virginia because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Another commenter stated that the Virginia program currently has adequate counterpart provisions in place and has proper authority to implement the requirements of the Energy Policy Act of 1992 in Virginia (Administrative Record Number VA-860). The party also stated that Virginia's investigations of subsidence related complaints has been designed to ensure prompt remedial action. These investigations, the commenter asserted, have been deemed fair by both the mining industry and the affected public. The commenter concluded that initial enforcement of the requirements of the Energy Policy Act of 1992 in Virginia is already being accomplished by the Virginia program.

One commenter requested "interim direct OSM enforcement" (Administrative Record Number VA-857). The commenter asserted that even though Virginia has statutory and regulatory provisions in place that are counterparts to the Energy Policy Act of 1992, Virginia provides inadequate protection for citizens residing in the coalfields. The commenter asserted that Virginia fails to attribute subsidence and water loss damages of any extent to underground coal mining operations. The commenter asserted that subsidence damages to the hydrologic regime and personal property (homes, ponds, outbuildings, etc.) are each looked at by the State as an isolated event rather than tied together to show the wide expanse of subsidence damage in Virginia. On March 10, 1995 this same commenter requested that OSM conduct a review of the Virginia program to verify similar allegations. That review is currently being conducted by OSM and it will address the commenter's allegations concerning the Virginia program.

Director's decision. Based on the information discussed above, the Director has decided that enforcement of the underground coal mine subsidence control and water replacement requirements in Virginia will be accomplished through State enforcement. The Director has made this decision after soliciting public comment and providing opportunity for public hearing (no requests for a hearing were received), and considering information provided by Virginia by letters dated January 13, 1995, and May 26, 1995, and in discussions held with Virginia on May 4, 1995. The Director has concluded that under the Code of Virginia section 41.1-258, the State has full authority to require the replacement

of drinking, domestic or residential water supplies contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992. In addition, Virginia has full authority at section 480-03-19.817.121(c)(2) of the Virginia Coal Surface Mining Reclamation Regulations to require the repair or compensation for damage to non-commercial buildings and dwellings and related structures resulting from subsidence caused by underground mining activities conducted after October 24, 1992.

If circumstances within Virginia 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 Part 948

West Virginia Regulatory Program

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 West Virginia. 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 West Virginia and consideration of public comments, OSM has decided that initial enforcement in West Virginia will be accomplished through State enforcement.

EFFECTIVE DATE: July 28, 1995.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street East, Charleston, West Virginia 25301-2816, Telephone: (304) 347-7158.