

62 Ill. Adm. Code 1817.121(c)(3), an inventory of all drinking, domestic and residential water supplies in place at the time of permitting will be necessary to fully implement section 720(a)(2) of SMCRA. Based on this information, Illinois may require pre- and post-mining monitoring of certain planned subsidence operations. This will be determined on a case by case basis.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Illinois to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Springfield Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., C.S.T. on April 24, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss recommendations on how OSM and Illinois should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95-8639 Filed 4-6-95; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Indiana underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to 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. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Indiana regulatory program (hereinafter referred to as the "Indiana program") currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with

Indiana and consideration of public comments, OSM will decide whether initial enforcement in Indiana will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4:00 p.m., E.S.T. on May 8, 1995. If requested, OSM will hold a public hearing on concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Indiana. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T. on April 24, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Roger W. Calhoun, Director, Indianapolis Field Office at the address listed below.

Copies of the applicable parts of the Indiana program, SMCRA, the implementing Federal regulations, information provided by Indiana concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, Room 301, Indianapolis, Indiana 46204, Telephone: (317) 226-6166.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Telephone: (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background

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 standards of sections 720(a) (1) and (2) of SMCRA (60 FR 16722-16751).

30 CFR 817.121(c)(2) requires in part that:

The permittee must promptly repair, or compensate the owner for, materials damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or structure related thereto that existed at the time of mining. * * * The requirements of this paragraph apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

30 CFR 817.41(j) requires in part that:

The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption.

30 CFR 843.25 provides that by July 31, 1995, OSM will decide, in consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed below, enforcement may be accomplished through the 30 CFR Part 732 State program amendment process, or by State, OSM, or joint State and OSM enforcement of the requirements. OSM will decide which of the following enforcement approaches to pursue.

(1) *State program amendment process.* If the State's promulgation of regulatory provisions that are counterpart to 30 CFR 817.41(j) and 817.121(c)(2) is imminent, the number and extent of underground mines that have operated in the State since October

24, 1992, is low, the number of complaints in the State concerning section 720 of SMCRA is low, or the State's investigation of subsidence-related complaints has been thorough and complete so as to assure prompt remedial action, then OSM could decide not to directly enforce the Federal provisions in the State. In this situation, the State would enforce its State statutory and regulatory provisions once it has amended its program to be in accordance with the revised SMCRA and to be consistent with the revised Federal regulations. This program revision process, which is addressed in the Federal regulations at 30 CFR Part 732, is commonly referred to as the State program amendment process.

(2) *State enforcement.* If the State has statutory or regulatory provisions in place that correspond to all of the requirements of the above-described Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its statutory and regulatory provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations.

(3) *Interim direct OSM enforcement.* If the State does not have any statutory or regulatory provisions in place that correspond to the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2), then OSM would enforce in their entirety 30 CFR 817.41(j) and 817.121(c)(2) for all underground mining activities conducted in the State after October 24, 1992.

(4) *State and OSM enforcement.* If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and the State has authority to implement its provisions for all underground mining activities conducted after October 24, 1992, then the State would enforce its provisions for these operations. OSM would then enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are not covered by the State provisions for these operations.

If the State has statutory or regulatory provisions in place that correspond to some but not all of the requirements of the Federal regulations at 30 CFR 817.41(j) and 817.121(c)(2) and if the State's authority to enforce its provisions applies to operations conducted on or after some date later than October 24, 1992, the State would enforce its provisions for these operations on and after the provisions' effective date. OSM would then enforce

30 CFR 817.41(j) and 817.121(c)(2) to the extent the State statutory and regulatory provisions do not include corresponding provisions applicable to all underground mining activities conducted after October 24, 1992; and OSM would enforce those provisions of 30 CFR 817.41(j) and 817.121(c)(2) that are included in the State program but are not enforceable back to October 24, 1992, for the time period from October 24, 1992, until the effective date of the State's rules.

As described in item numbers (3) and (4) above, OSM would directly enforce in total or in part its Federal statutory or 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 number (1) above, OSM could decide not to initiate direct Federal enforcement and 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 843.12(a)(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) and 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 enforce 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) and 817.121(c) (2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Indiana

By letter to Indiana dated December 13, 1994, OSM requested information from Indiana that would help OSM decide which approach to take in Indiana to implement the new requirements of section 720(a) of SMCRA and the implementing Federal regulations (Administrative Record No. IND-1428). By letter dated February [sic] 20, 1995, Indiana responded to this OSM request (Administrative Record No. IND-1429) (the letter was misdated; the correct date is January 20, 1995).

Indiana stated that six underground coal mines were active in Indiana between October 24, 1992, and July 1, 1994. Indiana also stated that Indiana statute IC 13-4.1-9-2.5 incorporates the substantive language of section 720 of SMCRA. Indiana noted that IC 13-4.1-9-2.5's requirements are expressly limited to operations conducted after June 30, 1994. Therefore, the Indiana Division of Reclamation (DOR) may not require structural repair (or compensation) or water replacement under the authority of IC 13-4.1-9-2.5 with respect to surface coal mining operations conducted on or before June 30, 1994. However, Indiana stated that pre-existing Indiana program provisions provide the DR with sufficient authority to impose the Energy Policy Act of 1992 requirements with respect to underground mining operations conducted on or before June 30, 1994.

With respect to structural damage caused by underground mine subsidence, Indiana cited the following provisions of Indiana's approved program as requiring the substantive equivalent of the Energy Policy Act of 1992 provisions:

IC 13-4.1-9-1 concerning the surface effect of underground coal mining operations. Based upon this broad grant of rulemaking authority, Indiana stated, Indiana adopted 310 IAC 12-3-87 and 12-5-130 through 133, each of which pertain to the control of underground mine subsidence and the protection of surface owners from the harms caused therefrom.

310 IAC 12-3-87 concerning underground mining permit applications—reclamation plan—subsidence control plan. This provision provides that if the [operator's premining] survey shows structures or renewable resource lands exist, or that subsidence could cause material damage to or foreseeable use of the land, or if the director determines that this damage could occur, the application shall include a subsidence control plan which contains the following information:

A detailed description of the measures to be taken to mitigate the effects of any material damage to foreseeable use of lands which may occur, including one or more of the following as required by 310 IAC 12-5-132:

Restoration or rehabilitation of structures and features, including approximate land-surface contours, to premining condition.

Replacement of structures destroyed by subsidence.

Purchase of structures prior to mining * * *

Purchase of noncancellable insurance policies payable to the surface owner in the full amount of the possible material damage or other comparable measures.

310 IAC 12-5-132 concerning underground mining—subsidence control—surface owner protection. 310 IAC 12-5-132 provides that:

Each person who conducts underground mining activities shall use all measures approved by the commission under 310 IAC 12-3-87 to * * * mitigate the effect of any damage or reduction [in value] which may occur.

Each person who conducts underground mining activities will complete the following:

Compensate the owner of any surface structure in the full amount of the diminution in value resulting from subsidence by purchase prior to mining of a noncancellable premium prepaid insurance policy or other means approved by the commission as assurance before mining begins that payment will occur.

Indemnify every person with an interest in the surface for all damages suffered as a result of the subsidence.

To the extent technologically feasible, fully restore the land to a condition capable of maintaining reasonably foreseeable uses which it could support before subsidence.

These provisions, Indiana stated, have been in operation in their present form since June of 1990, and provide coverage for the period between October 24, 1992, and June 30, 1994. Indiana concluded that Indiana SMCRA is no less effective than the Federal SMCRA with respect to structural repair and/or compensation caused by underground mine subsidence.

With respect to water replacement, Indiana stated, such obligations are set forth under 310 IAC 12-5-94 concerning underground mining—hydrologic balance—water rights and replacement. The question of water rights and water replacement obligations under 310 IAC 12-5-29 (hydrologic balance—water rights and

replacement) was addressed by the Indiana Supreme Court in *Nat. Res. Comm'n v. AMAX* (1994), Ind. 638 N.E.2d 418. The Indiana Supreme Court held that the DOR was authorized under Indiana-SMCRA to mandate the replacement of water supplies adversely affected by surface coal mining operations. Indiana also stated that because the requirements of 310 IAC 12-5-94 are substantively identical to the provision affirmed by the Indiana Supreme Court, the result is identical: the DOR may require replacement of water supplies adversely affected by underground coal mining operations.

Indiana has received five citizen complaints alleging subsidence-caused structural damage as a result of underground mining operations conducted between October 24, 1992, and July 1, 1994. Indiana stated that three of the five complaints were not formal complaints. Of the two formal complaints, one involved no structural damage or water well complaint and the DOR issued a notice of violation for not mining according to plan. With the other formal complaint, the resolution process followed by the coal company is being monitored by the DOR to assure that appropriate mitigation measures are taken.

Indiana explained its enforcement procedures as follows:

Upon notification of subsidence related damages to structures and/or water supply alleged as a result of underground mining operations, an inspection of the area is conducted by the assigned reclamation specialist. Notifications of such damage may come from affected landowners, mine operators, industries in the area, or other sources. If imminent danger is found to inhabitants of the area, the Director shall suspend underground operations as required by 310 IAC 12-5-133(e). The mine plan as required by 310 IAC 12-5-133(f) is then examined by the operator and the Division specialists to determine compliance with the approved plan. Specific complaints with respect to the subsidence event are investigated on a case-by-case basis as received. In the event that problems arise with respect to water supplies as a result of the underground mining activities, the operator must act to replace such supply as required by 310 IAC 12-5-94. In addition, as required by 310 IAC 12-5-132, the operator is required to "correct or compensate" for damages which result from such subsidence.

After consulting with the affected parties in the area, and the operator, if the requirements of these sections are being met, the DOR acts as a mediator

between the affected parties and operator with respect to any problem which may arise. Enforcement action may be taken in the event that certain of these regulations are not followed.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Indiana to implement the underground coal mine performance standards of section 720(a) of SMCRA, the implementing Federal regulations, and any counterpart State provisions.

A. Written Comments

Written comments should be specific, pertain only to the issues addressed in this notice, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in OSM's final decision or included in the Administrative Record.

B. Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on April 24, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

C. Public Meeting

If only a few persons request an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to

discuss recommendations on how OSM and Indiana should implement the provisions of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart State provisions, may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

Dated: March 31, 1995.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 95-8635 Filed 4-6-95; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 917

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Announcement of public comment period and opportunity for public hearing.

SUMMARY: OSM is requesting public comment that would be considered in deciding how to implement in Kentucky underground coal mine subsidence control and water replacement provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the implementing Federal regulations, and/or the counterpart State provisions. Recent amendments to 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. These provisions also require such operations to promptly replace drinking, domestic, and residential water supplies that have been adversely affected by underground coal mining.

OSM must decide if the Kentucky regulatory program (hereinafter referred to as the "Kentucky program") currently has adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Kentucky and consideration of public comments, OSM will decide whether initial enforcement in Kentucky will be accomplished through the State program amendment process or by State enforcement, by interim direct OSM

enforcement, or by joint State and OSM enforcement.

DATES: Written comments must be received by 4 p.m., e.s.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 2, 1995 concerning how the underground coal mine subsidence control and water replacement provisions of SMCRA and the implementing Federal regulations, or the counterpart State provisions, should be implemented in Kentucky. Requests to speak at the hearing must be received by 4 p.m., e.s.t. on April 24, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to William J. Kovacic, Director, Lexington Field Office at the address listed below.

Copies of the applicable parts of the Kentucky program, SMCRA, the implementing Federal regulations, information provided by Kentucky concerning its authority to implement State counterparts to SMCRA and the implementing Federal regulations, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays: William J. Kovacic, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Telephone: (606) 233-2894.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington, Field Office, Telephone: (606) 233-2894.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Energy Policy Act

Section 2504 of the Energy Policy Act of 1992, Public Law 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 include 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