

OFFICE OF SURFACE MINING
DEPARTMENT OF THE INTERIOR

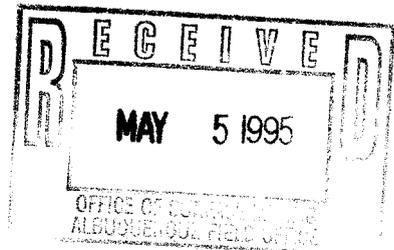
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PUBLIC HEARING,)
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HEARING HELD:

3 TRIAD CENTER, SALT LAKE CITY, UTAH

MAY 1, 1995



INTERMOUNTAIN COURT REPORTERS
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Reported By:
KELLY SOMMERVILLE, CSR, RPR

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I N D E X

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24
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Statement by

Page

Mr. Carter

8

Mr. Appel

13

Mr. Zobell

18

Mr. Gainer

20

Ms. Dragoo

24

Mr. Atwood

27

Mr. Smith

29

Mr. Carter

39

Mr. Johansen

47

Mr. Leamaster

52

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1 May 1, 1995

9:00 a.m.

2 P R O C E E D I N G S

3 MR. EHMETT: Good morning. Let the
4 record reflect a hearing was called at 9:00 a.m.,
5 Monday, May 1, 1995, at the Division of Oil, Gas,
6 and Mining boardroom, Salt Lake City, Utah.

7 My name is Tom Ehmett and I'm the Acting
8 Field Office Director for the Albuquerque Field
9 Office for the Office of Surface Mining. Also with
10 me is Donna Griffen and she's the Branch Chief of
11 Regulatory Programs in my office.

12 This hearing is being held in response
13 to requests for a public hearing offered by the
14 Office of Surface Mining in the April 6, 1995
15 Federal Register notice.

16 The notice explained that Congress in
17 the Energy Policy Act of 1992 amended the Surface
18 Mining Control and Reclamation Act of 1977 to
19 mitigate the adverse impacts of underground coal
20 mining operations. It amended section 720(a) of the
21 Surface Mining Control and Reclamation Act that
22 requires that underground mining operations to
23 repair or compensate for subsidence-caused material
24 damage to noncommercial buildings and to occupied
25 dwellings and related structures. It also required

1 that underground mining operations replace drinking,
2 domestic, or residential water supplies from wells
3 or springs that have been affected by the
4 operation.

5 These provisions requiring repair or
6 compensation for damage to structures, and water
7 replacement went into effect upon the passage of the
8 Energy Policy Act on October 24, 1992. As a result,
9 underground coal mine permittees in the states with
10 OSM-approved regulatory programs, such as Utah, are
11 required to comply with these provisions for
12 operations conducted after October 24, 1992.

13 On March 31, 1995, OSM published in the
14 Federal Register final regulations to implement the
15 amended portions of the Surface Mining Control and
16 Reclamation Act. One of these regulations, the one
17 at 30 CFR 843.25, requires that by July 31, 1995,
18 OSM decide, in consultation with the state
19 regulatory authority, how enforcement of the new
20 requirements will be accomplished in the state. As
21 explained in the April 6, 1995, Federal Register
22 notice, the notice through which this hearing was
23 requested, enforcement in a state may be
24 accomplished through the 30 CFR Part 732 state
25 program amendment process, or by the state itself,

1 or by direct federal enforcement by OSM, or by joint
2 state and OSM enforcement of the requirements. The
3 purpose of this hearing is to obtain input and
4 comments on which of these enforcement alternatives
5 should be used in Utah.

6 For those persons present here today,
7 I'd like to make you aware of information on this
8 subject that the State of Utah Division of Oil, Gas
9 and Mining provided by letter dated January 20,
10 1995, in response to the Office of Surface Mining's
11 request for information.

12 Utah stated that the number of
13 underground coal mines in operation after October
14 24, 1992, could be found in past and current grant
15 applications filed annually with the Office of
16 Surface Mining. From review of these grant
17 applications, OSM has determined that there are
18 approximately 21 underground mines that operated
19 after October 24, 1992.

20 As submitted to OSM on April 14, 1994,
21 and subsequently revised on December 14, 1994, Utah
22 proposed subsidence material damage provisions at
23 Utah Code Annotated 40-10-18 paragraph 4 that were
24 intended to be counterparts to the provisions of
25 section 720(a)(1) of the Surface Mining Control and

1 Reclamation Act. OSM has not yet published a final
2 rule Federal Register notice detailing its decision
3 on Utah's proposed provisions.

4 In its January 20, 1995, letter, Utah
5 indicated that it intends to promulgate by March
6 1996 water replacement statutory or rule provisions
7 that are counterparts to the provisions of section
8 720(a)(2) of SMCRA.

9 If Utah wishes to add or clarify any of
10 the information already submitted, or if anyone else
11 wants to comment on it, they have the opportunity to
12 do so today.

13 As set forth in the April 6, 1995,
14 Federal Register notice, the written comment period
15 closes on May 8, 1995. Anyone wishing to submit
16 written comments in addition to testimony given here
17 today should submit them to me no later than 4 p.m.,
18 May 8, 1995, and our address is the Office of
19 Surface Mining Albuquerque Field Office, 505
20 Marquette Avenue, NW, Suite 1200, Albuquerque, New
21 Mexico 87102.

22 With this information in mind, I would
23 now like to discuss the ground rules for this
24 hearing. The purpose of the hearing is neither to
25 explain the Energy Policy Act of 1992 or OSM's

Kelly Sommerville, R.P.R.

1 regulations to implement those changes nor is it to
2 present a preferred enforcement alternative by OSM
3 in Utah.

4 I will respond to procedural questions
5 that you have if I can. Also, if it's necessary, I
6 may ask questions to clarify any testimony presented
7 here.

8 We have a court reporter and she will be
9 transcribing a verbatim record of the hearing. Any
10 written copies of your testimony that you could
11 provide to the court reporter today would make her
12 job easier and faster. So if you have written
13 comments, I encourage you to also submit them. OSM
14 will enter a copy of the transcript into the
15 administrative record which is available in the
16 Albuquerque Field Office and a copy will also be
17 available in the Oil, Gas, and Mining offices here.

18 The Utah Division of Oil, Gas, and
19 Mining has indicated that it wishes to read a
20 statement into the record. It will be the first
21 party to present testimony at the hearing, and
22 following the Division, I will call persons to
23 testify in the order listed on the sign-in sheet.
24 And if you haven't signed in, if anyone else wishes
25 to testify, please do so over there. Then after all

1 that testimony, if there's anyone else who wishes to
2 comment, I'll just open it up to people from the
3 audience to come up and give testimony. We have
4 this room reserved until 12:30, so hopefully we'll
5 have ample opportunity for everybody to provide
6 comments.

7 When you come up to the table to
8 testify, for the benefit of everybody else at the
9 hearing and for the court reporter, I'll ask you to
10 please state your name and who you're representing.
11 And if there aren't any questions, I'll call on the
12 Division of Oil, Gas, and Mining to present its
13 testimony.

14 MR. CARTER: I've got extra copies of
15 our statement which I'll just park right here.

16 MR. LEAMASTER: Could I ask one
17 question? Will you accept written comments by fax
18 and if so, can we get your fax number?

19 MR. EHMETT: Sure. Let me see if I can
20 remember it. That's area code 505-766-2609.

21 MR. CARTER: Thank you very much. My
22 name is Jim Carter. I'm the director of the Utah
23 Division of Oil, Gas, and Mining. And as Mr. Ehmett
24 indicated, I have a prepared statement that I'd like
25 to read into the record, which constitutes the

1 State's recommendation for implementation of the
2 Energy Policy Act provisions. We'll see how the
3 questioning goes, but I was just seeing that there
4 are two distinguished members of the Utah Water Bar
5 here. I may want to take a few minutes when they
6 finish their presentations to make some additional
7 comments. We'll see how it goes.

8 The Division appreciates the opportunity
9 to address the Office of Surface Mining on
10 implementation of the subsidence and water
11 replacement provisions of the Energy Policy Act
12 through this public hearing process. As you know,
13 the Utah coal industry produced in excess of 24
14 million tons of coal last year, all by underground
15 mining methods. The two main areas of regulation
16 under the Act, subsidence control and the
17 replacement of water supplies affected by
18 underground mining are significant features of the
19 Utah coal program and are important to the
20 underground mining industry and the residents of
21 coal mining areas.

22 During the 1994 Utah Legislative
23 session, the Division of Oil, Gas, and Mining was
24 successful in obtaining amendments to the Utah coal
25 regulatory program implementing most of the changes

1 to SMCRA brought about by the Energy Policy Act.
2 However, because of implications for Utah's long-
3 settled water law, those portions dealing with
4 subsidence damage and water replacement were not
5 enacted as proposed. The Division, therefore, has
6 not yet formally adopted subsidence or water
7 replacement rules as OSM has recently done. The
8 Division has already committed to introduce new
9 legislation in the 1996 session, if necessary, which
10 will avoid the earlier water law concerns, and could
11 provide the basis for rulemaking by this time next
12 year. Notwithstanding the actions of the 1994
13 legislature, the Division and Board currently have
14 authority under existing enactments and rules to
15 adequately address subsidence and water replacement
16 issues as they arise.

17 Since obtaining primacy in 1981 the
18 Division has been making well-based and informed
19 decisions on the hydrologic impacts of underground
20 mining through the use of advanced computer modeling
21 and investigatory techniques, combined with formal
22 and informal administrative processes. The Division
23 and Board have been examining water and related
24 subsidence issues for quite some time. In
25 cooperation with the Utah Division of Water Rights,

1 we have been addressing water supply and water
2 rights issues from the very beginning of the State's
3 primacy program. We have also learned a great deal
4 about the western mining subsidence phenomenon
5 during the past 14 years of primacy, and we
6 routinely condition mining permits to avoid
7 subsidence-caused surface damage.

8 Enactment of new subsidence and water
9 replacement laws and regulations may enhance these
10 on going activities, but such regulations must be
11 carefully crafted within existing water rights
12 doctrine. In this area in particular, state primacy
13 in creating and administering the provisions of the
14 Energy Policy Act is critical. Without close
15 collaboration with the Division of Water Rights,
16 regulation of subsidence damage and water
17 replacement will be a legal morass. The potential
18 for creating conflicts between the legitimate
19 objectives of the prior appropriation doctrine and
20 the Energy Policy Act is high, and careful
21 definition of the interplay of the two is critical.

22 We are now in an interim regulatory
23 period while OSM analyzes the Utah program and the
24 provisions of our most recent program amendment
25 submittal, and compares them to its own recently

1 promulgated rules. During this period it would make
2 no logical sense for OSM to gear up a separate
3 federal program to address only subsidence damage
4 and water replacement issues for three reasons: 1)
5 The Board and Division now have adequate existing
6 authority to implement those provisions; 2) There
7 exists significant legal and administrative
8 impediments to creation of a successful separate
9 federal program; 3) At the outside, the Division can
10 have new regulatory provisions in place, if
11 necessary, by March 1996. This would be in the case
12 legislation is required. If only administrative
13 rules are required, these can be enacted in a matter
14 of weeks.

15 Given these circumstances,
16 implementation of the terms of the Energy Policy Act
17 by any other regulatory authority than the State of
18 Utah at this time would be an inefficient and
19 wasteful use of our scarce budgetary resources. We
20 recommend that OSM continue with its review of
21 Utah's recent program amendments and that the
22 Division pursue whatever legislative or
23 administrative modifications are deemed necessary.
24 We would strongly discourage the creation of a new,
25 temporary and limited-scope regulatory program.

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1 I'd be glad to answer questions and as I
2 indicated I'd like the opportunity to address you
3 further depending on what specific issues are
4 addressed by others. If you've got any questions,
5 I'd like to answer them now.

6 MR. EHMETT: I don't think so. Thanks,
7 Jim.

8 MR. CARTER: Thank you.

9 MR. EHMETT: Okay. I'll now start
10 calling people from the list here, but like I said,
11 after I get through the list, if anyone else wishes
12 to present testimony, there will be an opportunity
13 after the people who have signed up have spoken.

14 Number one on the list is Jeffrey Appel
15 or Appel?

16 MR. APPEL: Appel.

17 MR. EHMETT: And Daniel Leamaster.

18 MR. APPEL: Darrel.

19 MR. EHMETT: Darrel, I'm sorry.

20 MR. APPEL: You can come up if you want,
21 Darrel.

22 MR. EHMETT: Would you please state your
23 name and who you're affiliated with for the court
24 reporter and provide testimony.

25 MR. APPEL: My name is Jeffrey W. Appel

1 and Darrel Leamaster representing Castle Valley
2 Special Service District today. I appreciate the
3 opportunity to testify at this hearing, Mr. Ehmett.
4 It's a very important issue to my clients and the
5 customers of my clients.

6 By the way of background, we represent
7 the largest water server in a very arid portion of
8 Emery County and rely primarily on spring sources
9 since about 1920 which is one of the more
10 significant springs that has had its water rights,
11 which has been recognized by the state. There
12 really isn't a whole bunch of extra water there that
13 hasn't been tapped by the residents absent treatment
14 of surface waters which creates a whole plethora of
15 additional issues.

16 In summary, it's an area with very, very
17 little water and lots of coal. Thus the future
18 holds and looks like increasing pressure between
19 water service and coal exploration -- development.
20 On that basis the Energy Policy Act of 1992 has been
21 received favorably by my client and its customers
22 and represents not only critical legislation, but
23 good sound policy in an area like ours.

24 We have a specific example which has
25 been on everyone's mind, especially Castle Valley.

1 There's a mine that's owned by the Co-op Company.
2 It's located immediately upgradient from one of our
3 major spring sources. In the past we've experienced
4 a surge of contaminants and recently a very
5 significant 30 percent drop in the quantity of
6 water. The other mines in the area have by
7 comparison been cooperative. This one has not been
8 so cooperative. The attitude of them, if I can
9 characterize it that way, after bringing these sorts
10 of problems to their attention is, it must be
11 something else, it's not our fault. Therefore, the
12 burden of proof and the involvement of a regulatory
13 authority could be very beneficial to my client.

14 Mr. Carter mentioned the tension between
15 western water law and these sorts of federal acts.
16 It's brought into sharp focus in this particular
17 instance. The State Engineer manages the water in
18 this state. No question about that. However, in
19 recent meetings, perhaps not so recent now, it was
20 several months ago, Mr. Morgan indicated to us that
21 they don't deal with water within mines. This is a
22 regulatory gap. The Department of Oil, Gas, and
23 Mining has federal primacy to deal with hydrologic
24 balance and those sorts of hydrologic issues and
25 have additional regulatory authority. It appears

1 once the regulations are accepted and adopted under
2 the EPA of 1992. However, it's difficult to get
3 them to deal with these water issues because they
4 perceive that it's the State Engineer's domain. So
5 my clients are left in a regulatory gap into which
6 they think they've fallen.

7 We've experienced some difficulty
8 getting relief. People are relatively cooperative
9 on a talking level, but we haven't been able to get
10 any sort of enforcement at this point in time.
11 We've taken it to a rather high level and nothing
12 really has been done yet. What I'm referring to is
13 a meeting between Mr. Carter, Mr. Morgan, myself and
14 others, and while I'm certain they're working on it
15 in good faith, nothing has occurred to this point in
16 time.

17 So the question that comes in my mind is
18 if we wait to see what the State is coming up with,
19 and we'd be happy to be involved with that, where do
20 we go if tomorrow we have a problem? The
21 legislation is in place. One aspect that's not
22 clear to me is where we would go to find a meeting
23 of enforcement on this particular policy. I'm not
24 certain that has been answered yet.

25 In summary of our position the

1 replacement requirement is critical to the customers
2 of CVSSD. Strict enforcement of that is necessary
3 whether it's federal or state. We can look to the
4 State for strict enforcement and they have the staff
5 to do it, and I think that's fine. Again, we have
6 this gap as to know what their enforcement looks
7 like and whether they're going to do it.

8 We have a problem now. We've recently
9 had a significant 30 percent drop in the quantity of
10 one of our springs, and we need to check that.
11 We're not certain when we'll be able to present the
12 evidence for that, but we need some place to go and
13 that's critically important to us. Related to that
14 issue is the fact that the effective date must be
15 October 24, 1992 and no later. My reading of the
16 regulations indicates that that's OSM's position,
17 but some states have been requesting a later
18 enforcement date.

19 I guess since we have three options to
20 pick, right now we would ask for either direct
21 enforcement of the feds or a joint state and federal
22 enforcement. It's an issue primarily of
23 responsibility. Who do we go to tomorrow if we have
24 a problem? These are people that we're talking
25 about that need their water. Replacement sources

1 are hard to come by and we won't be able to wave a
2 magic wand and suddenly create them without
3 significant lead time.

4 That's all I have right now, and we will
5 be submitting some written comments once we've
6 reviewed the State's position. Darrel, did you want
7 to say anything?

8 MR. LEAMASTER: No, I don't think I have
9 any comment.

10 MR. EHMETT: Okay. Thank you very
11 much. I appreciate it. Okay, the next speaker is
12 Mr. Keith Zobell. Would you state your name and
13 spell it, please.

14 MR. ZOBELL: Here's an extra copy.

15 MR. EHMETT: Thank you.

16 MR. ZOBELL: My name is Keith Zobell and
17 I work for and am representing Coastal States Energy
18 Company today who owns and operates the Skyline
19 Mines, Convulsion Canyon mine and the Soldier Creek
20 mine here in the state of Utah.

21 We are knowledgeable and aware of our
22 responsibilities under the Energy Policy Act and
23 have reviewed the final OSM rule in 30 CFR Parts
24 701, 784, 817 and 843 that were published in the
25 Federal Register, Friday, March 31, 1995.

1 There are currently 13 active
2 underground mines in the state of Utah. Compared to
3 many other coal mining states, this is a relatively
4 small number.

5 There are no non-commercial buildings or
6 occupied residential dwellings or structures related
7 thereto that could be damaged as a result of coal
8 mining caused subsidence at any of our Coastal
9 States Energy Company three mine locations in the
10 state of Utah. We are also not aware of any such
11 structures at any other active coal mines located
12 within the state.

13 Since the enactment of the Energy Policy
14 Act on October 24, 1992, we are aware of one
15 citizen's complaint dealing with the loss of water
16 which dealt with livestock water. This complaint
17 was immediately investigated by the Utah Division of
18 Oil, Gas, and Mining and was brought to a conclusion
19 in a prompt and orderly manner.

20 There are no drinking, domestic or
21 residential springs or wells within the angle of
22 draw impact area at any of our three mines in the
23 state of Utah. Based on the facts that: 1) There
24 is a relatively low number of active underground
25 coal mines in the state of Utah; 2) There have been

1 a relatively low number of citizen's complaints
2 dealing with non-commercial buildings or occupied
3 residential dwellings or structures related thereto
4 or to drinking water, domestic or residential water
5 supplies in the state of Utah; 3) The Utah division
6 of Oil, Gas, and Mining has promptly taken remedial
7 action on all citizen's complaints received; 4) The
8 Utah Division of Oil, Gas and Mining is keenly aware
9 of Utah State Water Law and 5) The Utah Division of
10 Oil, Gas, and Mining has the qualified personnel to
11 enforce the requirements of the Energy Policy Act.
12 Coastal States Energy Company recommends that the
13 state of Utah proceed with the promulgation of
14 regulatory provisions that are counterpart to 30 CFR
15 817.41(j) and 817.121(c)(2) and that the State of
16 Utah take over the immediate enforcement of these
17 regulations. Thank you.

18 MR. EHMETT: Thank you, Mr. Zobell.

19 Next on the list is Randy Gainer.

20 MR. GAINER: I would also like to invite
21 Ms. Denise Dragoo to come up with me and present the
22 other half.

23 MR. EHMETT: Sure. Okay. Could you
24 spell your name.

25 MR. GAINER: G-a-i-n-e-r. Mr. Ehmett,

1 today on behalf of the Utah Mining Association we're
2 presenting our concerns. We appreciate the
3 opportunity to present comments concerning the Utah
4 Division of Oil, Gas, and Mining's options for
5 enforcement of the water replacement provisions of
6 the Energy Policy Act.

7 As you are aware, the Division has
8 primacy to enforce its coal program in Utah and
9 should be the entity which enforces the Energy
10 Policy Act in this state. It has been suggested
11 that the Utah program must be modified to be no less
12 effective than the Office of Surface Mining's rules
13 adopted on Friday, March 31, 1995. However, the
14 protection afforded by OSM's rules regarding water
15 replacement are currently in place under the Utah
16 Water Code. Without further amendment of Utah law,
17 enforcement of these regulations may be accomplished
18 through a Memorandum of Understanding between the
19 Division and the Utah State Engineer.

20 Section 717(a) of the federal Surface
21 Mining Control and Reclamation Act requires
22 deference to State water law. Utah's water law is
23 based on the doctrine of prior appropriation. The
24 right to use of unappropriated water in Utah is
25 acquired exclusively by an approved application to

1 appropriate issued by the State Engineer. Utah Code
2 Ann. 73-3-1. As a condition of approval of an
3 application to appropriate, the applicant must
4 demonstrate that the proposed use will not impair
5 existing rights or interfere with a more beneficial
6 use of the water. Utah Code Ann. 73-3-8.

7 Applications to appropriate are subject to public
8 notice and comment and those affected by a proposed
9 application may file a protest and request a hearing
10 before the State Engineer. Utah Code Ann. 73-3-13.

11 Under the Utah appropriation system, the
12 first in time is the first in right and the senior
13 appropriator. The Water Code currently addresses
14 conflicts between junior and senior appropriators
15 which may result in the replacement of water
16 rights. For example, under Utah Code Ann. 73-3-23,
17 the right of replacement is granted statutorily for
18 appropriations of underground water where the junior
19 appropriator may diminish the quantity or
20 injuriously affect the quality of appropriated
21 underground water in which the right to use thereof
22 has been established as provided by law. No
23 replacement may be made by the junior appropriator
24 until an application has been approved by the State
25 Engineer. Replacement is made at the sole cost and

1 expense of the applicant and the Water Code allows
2 the applicant to exercise the right of eminent
3 domain for the purpose of replacement. In addition,
4 the State Engineer sets conditions for replacement
5 of existing water wells.

6 The Utah Mining Association believes
7 that Utah's appropriation system establishes vested
8 rights to drinking, domestic or residential water
9 supplies. In addition, the office of the State
10 Engineer has the expertise and training to make
11 determinations as to whether or not mining
12 activities may result in contamination, diminution
13 or interruption of these water supplies. The
14 Subcommittee suggests that OSM leave these
15 determinations to the Division and the State
16 Engineer through the mechanism of a Memorandum of
17 Understanding. In addition, if the changes to the
18 Utah program are deemed necessary, the Division must
19 consult the State Engineer to ensure that the
20 program does not conflict with established
21 procedures for appropriation and replacement of
22 water rights.

23 We appreciate your consideration of
24 these comments and Denise Dragoo will present the
25 Memorandum of Understanding as we have prepared it.

1 MS. DRAGOO: This is clearly a
2 suggestion as to how the Division of Oil, Gas, and
3 Mining which is of course primarily the regulatory
4 authority and how the Utah State Engineer might
5 cooperate. Currently the Division of Oil, Gas, and
6 Mining and the State Engineer have a Memorandum of
7 Understanding which concerns dam's safety and this
8 would be a separate Memorandum of Understanding to
9 which we just work out how the State could
10 coordinate water replacement and how Division of
11 Oil, Gas, and Mining could coordinate water
12 replacement issues with the State's Engineer.

13 As Randy has indicated, the State
14 Engineer makes the determinations regarding
15 appropriation of water and who is entitled to use
16 and ownership of water. And under this MOU, what we
17 would propose is that when a petitioner citizen's
18 complaint comes in, that the Division would
19 cooperate with the State Engineer and sort of ask
20 the State Engineer to be a special master. The
21 Division of Oil, Gas, and Mining would ask that the
22 State Engineer determine whether the applicant, the
23 citizen, or the complainant has an established right
24 to use the water supply as provided by Utah law.

25 The State Engineer is the repository of

1 all records regarding water rights, and by statute
2 those water rights have to be filed with the State
3 Engineer and recorded there. So he's able to make a
4 preliminary determination regarding an applicant's
5 right to use or ownership interest.

6 So that Division would ask that State
7 Engineer to make that preliminary determination and
8 also make a finding preliminarily regarding whether
9 the underground mining activities could have
10 resulted in contamination, diminution or
11 interruption, as that term is defined by OSM.

12 Once the State Engineer's finding as a
13 special master was made, then that would be
14 forwarded to the Division. The Division would then
15 issue the final decision regarding the petition and
16 that petition could be appealed through the
17 Division's existing administrative appeal
18 mechanisms.

19 In addition, if there is a finding that
20 there is damage, the mining company would have to
21 coordinate with the State Engineer regarding water
22 replacement. As Randy indicated, there's currently
23 a mechanism in place. An application has to be
24 filed with the State Engineer in order for a junior
25 appropriator to replace water and actually that

1 junior appropriator is given a power that the Energy
2 Policy Act didn't even imagine, and that's the right
3 of eminent domain.

4 So if the proper application is made and
5 determination is made by the State Engineer, that
6 junior appropriator can actually exercise the rights
7 of eminent domain in order to acquire a water supply
8 to replace the damaged water supply.

9 So as you can see, we think Utah law may
10 even surpass the strength and authority of the
11 Energy Policy Act in addressing water replacement
12 issues, and we would urge that OSM defer to both the
13 Division of Oil, Gas, and Mining and to the State
14 Engineer in that regard. And in fact, we believe
15 that Surface Mining Control and Reclamation Act
16 requires that deference under section 717(a).

17 This Memorandum of Understanding is just
18 a suggestion by the way, and something I'm sure
19 that's within the domain of Jim to negotiate. Thank
20 you.

21 MR. EHMETT: Could you just give me a
22 copy of the suggested MOU.

23 MR. GAINER: Now is that for your
24 signature?

25 MR. EHMETT: It doesn't mean anything

1 after today anyway. My signature, that is.

2 MR. GAINER: Oh, okay.

3 MR. EHMETT: Okay. The next speaker --
4 is it Mark Page?

5 MR. PAGE: Yes, I have no comment at
6 this time.

7 MR. EHMETT: Okay. Thank you, Mr.
8 Page. The next speaker is Gaylor Atwood.

9 MR. ATWOOD: It's Gaylon, G-a-y-l-o-n
10 Atwood. I represent Huntington-Cleveland Irrigation
11 Company. We are the suppliers of water to Castle
12 Valley Special Service District, North Emery Water
13 Users Association, and the communities in the Emery
14 County area. Our area of the state is impacted by
15 the coal mines and water issues more than any other
16 area in the state of Utah.

17 As a coal miner for over 20 years, a
18 farmer involved with irrigation water issues, and of
19 having personal dealings in the coal industry with
20 Utah State Department of Oil, Gas, and Mining, I am
21 really quite delighted to see OSM come in and force
22 the State to do something about the water issues.

23 Huntington-Cleveland, in cooperation
24 with the Emery Water Conservancy District, has spent
25 a lot of money monitoring wells and springs because

1 of the subsidence issue. We have certain mines that
2 are willing to work with us. Some do not. We have
3 a very limited working arrangement with the State
4 Water Engineer and through the Department of Oil,
5 Gas, and Mining to resolve issues that have carried
6 on for a number of years. And our preference would
7 be for OSHA -- or OSM to be in conjunction with the
8 Department of Oil, Gas, and Mining to administer
9 these rules.

10 From experience it seems to us that the
11 State, through the Water Rights Division and
12 Department of Oil, Gas, and Mining have not really
13 addressed the issues of ownership and replacement of
14 this water. And it would work a lot better for us
15 if we could have some type of oversight from OSM.

16 The parts of the regulation, or proposed
17 regulation, that deals -- I have a concern. It does
18 not deal with irrigation water. It is talking
19 strictly with the domestic or culinary water. Water
20 rights in our area belong to the irrigation company
21 and we administer water out to the different
22 entities or different culinary systems. The
23 proposal does not address that and because of this
24 lack of being addressed, we seem to have the same
25 problem when dealing with the coal companies. When

1 you're talking somebody's drinking water, it carries
2 a little bit of weight other than if you're talking
3 with somebody's irrigation water for their
4 livelihood, so it concerns us under that issue.
5 That's all I have at this time.

6 MR. EHMETT: Okay. Thank you very
7 much. The next person on the list is Mr. J. Craig
8 Smith.

9 MR. SMITH: Thank you, Mr. Ehmett. I'm
10 here today, I'm an attorney with the law firm of
11 Nielson & Senior. I'm here representing several
12 clients who are water entities in the Emery County
13 area. One being the Emery Water Conservancy
14 District. Its chairman, Mr. Eugene Johansen, is
15 here today as well, and I think the record should
16 reflect that he may have some of his own comments he
17 would like to make when his turn comes on the list.

18 That is the governmental entity that's
19 charged with the responsibility of protecting and
20 preserving water in this entire area of Emery County
21 where their mining is taking place. Also, I'm
22 representing -- I'm the attorney for the
23 Huntington-Cleveland Irrigation Company. Mr. Gaylon
24 Atwood, one of the board members, has spoke. Also
25 its secretary, Mr. Varden Wilson is also here. And

1 also here today, who I'm representing, is the North
2 Emery Water Users Association, which is a culinary
3 water provider for the unincorporated areas of
4 Northern Emery County.

5 As Mr. Atwood stated, the water rights,
6 at least in the Huntington Creek drainage, which is
7 one of the major drainages impacted by coal mining,
8 are principally owned by the Huntington-Cleveland
9 Irrigation Company. It has shareholders that
10 include the culinary providers that are here. The
11 North Emery Water Users Association being one, the
12 unincorporated areas and the Castle Valley Special
13 Services District, who have already been heard at
14 this hearing is another one who provide culinary
15 water. So it's kind of a tiered approach to water
16 providing. So that's understandable, I guess, it's
17 somewhat unique.

18 So with that in mind, I'd like to just
19 state that we've had a -- for the last several years
20 had a growing concern over the impacts of mining on
21 water sources in the Huntington Creek drainage. I
22 think that it's just a matter of hydrology that the
23 mining where the strata where the coal is found is
24 also the same strata where the major aquifers are
25 found in that area. That's really -- those

1 drainages are really the only source of water for
2 the Emery -- northern part of Emery County, or I
3 think, probably all of Emery County. Because
4 underlying those stratas is a very thick layer of
5 mancos shell that also underlies most of the
6 flatlands not in the mountains.

7 So there is not water except for the
8 water that is available in these drainages. And our
9 concerns have focused both on quantity and on
10 quality. One of our quantity concerns is that just
11 by the very nature of where the mining operations
12 take place, there is a great ability for the mines
13 to cause -- and this is certainly nothing they do, I
14 think, through any intent -- but just through their
15 mining operations cause -- can cause transbasin
16 diversions. The mines are obviously -- are in where
17 they're located, does that and there are many
18 different basins including the Price River Water
19 Basin, the Sanpete area, the drainages in Sanpete,
20 cause water moving which would naturally go from one
21 basin, say from the Huntington Creek drainage into
22 the Price River drainage, thereby depriving those
23 water right holders of this water.

24 Our quality concerns focus on, at least
25 from what our measurements show that there is higher

1 levels of TDS in water that comes out of mines.
2 Also in reports that we've heard of materials being
3 left in worked out areas of mines that are
4 potentially hazardous to water quality. And so we
5 have those concerns, as I think's been previously
6 mentioned, and I want to emphasize during my
7 testimony, that we have to a large extent enjoyed
8 cooperation from the mining companies. We have a
9 relationship, obviously, with the mining companies.
10 They are a provider of jobs to the economy of our
11 area, and to a large extent, when we've had problems
12 with at least -- with water quantity and water
13 quality, that we've been able to reach friendly
14 resolutions to those problems.

15 And some of the people that we've worked
16 with are here and will probably speak today
17 representing those mining companies and so we want
18 to emphasize that we have had -- that has not
19 been -- as Mr. Appel said in his testimony, has not
20 uniformly been the case, and have not always had
21 that, but we have in large extent enjoyed that.

22 I'd also like to point out that we have
23 seen an evolution in the Division of Oil, Gas, and
24 Mining's position on the Energy Policy Act
25 protection of water and it's an evolution that we're

1 pleased to have seen. Because when we first began
2 at least our efforts to address some of our
3 concerns, we were told by members of the DOGM staff
4 that this was not part of the Utah program. And
5 that the Utah program did not include the protection
6 of drinking water that's under the Energy Policy Act
7 that's been referred to, and the reason why we are
8 here today.

9 We've seen an evolution in that position
10 and it's been a positive one from our perspective.
11 An evolution to recognizing that this is a federal
12 law that must be implemented, and also an evolution
13 to the point where now that I was pleased to hear
14 the comments of Mr. Carter saying that the State now
15 believes that they have the legal authority to
16 implement that and to make that part of the State
17 program. Some of our other concerns -- so we're
18 pleased about that development.

19 We have concerns about the manpower
20 resources to effectively enforce any water
21 protection requirements that may become part of
22 either a state or federal program. To date we've
23 been concerned that there has not been adequate
24 manpower or resources either available or marshalled
25 by the Division of Oil, Gas, and Mining to

1 effectively address our concerns. The concerns can
2 be broken down into maybe several subparts.

3 One is that during the permitting
4 process, that there is effective staff and manpower
5 devoted by the regulatory body to effect and
6 critically review hydrologic analysis that's
7 provided by the mines. It's typically a situation
8 where the mining company seeking the permit provides
9 the information that's reviewed. We've been
10 concerned that there has not been the level of
11 critical review that needs to go into the review of
12 their hydrologic analysis that's supposed to predict
13 what the effect of the intended mining will be on
14 the water resource.

15 Even more important than that, there has
16 been no review to my understanding, and if I'm wrong
17 I would like to be corrected at this hearing, of any
18 post permitting activities of the mine companies.
19 For example, if a mine is able to receive a permit,
20 there's no effort to then review its actions and
21 then also the impacts it has on aquifers during the
22 actual mining. We think that's a very serious
23 omission to the current situation, and any State
24 regulations that are adopted, we would like to see
25 include a requirement that there be post permitting

1 review.

2 For example, the permitting is done on
3 what is believed to be will be the hydrological
4 consequences. Obviously, those predictions may or
5 may not come forth, but at the current time even
6 though information is gathered about changes and
7 flows of springs, and seeps, and the water
8 information gathered, there is no one who is
9 reviewing that information to see if whether the
10 actual mining under the permit is having any greater
11 or lesser effect on the hydrologic balance and on
12 drinking water sources and other water sources than
13 was predicted during the time of the permitting
14 phase. And we think that's an important aspect that
15 needs to be included.

16 That there's a regular and -- manpower
17 and resources made available to regularly review
18 mining activities to see that they're causing no
19 greater consequences than was allowed in their
20 permit. And if they are, that that be automatically
21 addressed by the regulatory body and that the water
22 right holders and those who use the water not be
23 required to bring actions; that there be automatic
24 triggers in the permits that when certain things
25 happen, that they trigger certain requirements for

1 water replacement.

2 Another concern we have is water
3 quantity -- I'm sorry, water quality. To monitor
4 what materials are left in worked out sections of
5 mines. To make sure that water quality is
6 protected. We think that's important. We would
7 also like to see, if the State is allowed to develop
8 its own regulations, that even though there is only
9 a federal minimum under the federal laws that we've
10 been discussing, that that minimum be exceeded,
11 because as Mr. Carter pointed out, the unique
12 situation of Utah and of being different than many
13 other states because of the State water law we have
14 here, that other beneficial uses besides just
15 drinking water also be included and protected as
16 part of the State program.

17 There's no -- I would submit that there
18 is no bar to the State having something that
19 provides more protection for water than the minimum
20 that the federal laws require, and that irrigation,
21 stock and other recognized beneficial uses of the
22 State Engineer's office be similarly protected from
23 loss by the regulations that are adopted.

24 These are -- I hope we can get across
25 the idea that the water entities in this area of the

1 state are not large, powerful organizations. They
2 are small organizations that have limited
3 resources. For example, Huntington-Cleveland
4 Irrigation Company, which is the largest holder of
5 water rights in the Huntington drainage is a mutual
6 non-profit water agency and does not make a profit,
7 and is not in the profit making business. It simply
8 exists to distribute water to its shareholders, and
9 we have much less in the way of resources than the
10 companies that are involved in the mining. And so
11 we have to look to the regulators to protect us and
12 do so.

13 As Mr. Appel pointed out, there is
14 currently a gap existing between where State water
15 law is not addressing interference by mining of
16 water. The State Engineer has stated his position
17 that until it sees the light of day, water that's
18 intercepted in a mine is not under what he considers
19 to be his jurisdiction. We think that gap has to be
20 addressed. And as Mr. Carter pointed out, there has
21 to be some cooperative efforts, but that gap does
22 need to be addressed so that there isn't a current
23 gap that we find ourselves in.

24 We would ask that if there was State
25 rule making that we as the water entities be

1 involved in helping to craft those rules so those
2 concerns be involved. And finally, we would like to
3 see, at least initially, some OSM oversight until we
4 can get the program and be comfortable with what we
5 have.

6 And I guess we would like to defer our
7 final judgment -- or final position until we see the
8 proposed rules that the State would like to adopt so
9 that we can make a determination for ourself whether
10 these rules will not only meet the federal minimums,
11 but protect this important water resource.

12 And I would like to at this time present
13 a couple of previous letters that we sent when the
14 general oversight hearing was held last August. Mr.
15 Ehmett, you came here and I believe we were over at
16 the Doubletree Hotel, and when you were generally
17 reviewing that we came and had comments and rather
18 than repeat all those things, what I thought I would
19 like to do is to present comments both submitted by
20 myself and Mr. Johansen and submit those and make
21 those part of the record today. And also we will be
22 submitting some additional comments that we'll put
23 into written form with my verbal comments here
24 today. Thank you for the opportunity to provide
25 comments at this hearing.

1 MR. EHMETT: Thank you. That's all the
2 folks that have signed up to speak. Is there anyone
3 else who would like to speak? I see Mr. Carter has
4 his hand up, so if you'd like to come up.

5 MR. CARTER: I don't necessarily want to
6 get the last word, but I think it's important to
7 supplement the testimony of the Division in order to
8 address some of the issues that have been raised.
9 And I think it would also be beneficial just for the
10 general information for anyone who is here and
11 interested in this issue to get a fuller explanation
12 of the Division's perspective with regard to these
13 matters.

14 First, Mr. Appel mentioned that there's
15 a matter, a Co-op matter, and I wanted to let you
16 know that that is a matter that is currently under
17 advisement. The Board of Oil, Gas, and Mining has
18 heard argument and testimony in that matter. So
19 that's an issue that actually is a fairly good
20 example of why it is that the State Division
21 believes that it has in place already adequate
22 regulatory authority to address the mandates of the
23 Energy Policy Act.

24 Water replacement is a remedy and it's a
25 remedy that is provided for once certain factual

1 determinations are made. In the Co-op matter, the
2 Division of Oil, Gas, and Mining made certain
3 factual determinations, which in the conclusion of
4 the Division was that the remedy was not called for
5 because of the factual determinations we made. The
6 water users groups disagreed with the factual
7 determinations of the State and appealed those
8 determinations to the Board. In that matter the
9 Board is currently considering the arguments and
10 testimony and will make a determination on those
11 factual matters.

12 I anticipate that if the Board makes a
13 factual determination that is adverse to the
14 Division, and makes factual determinations that are
15 those urged by the water users, the water users will
16 then find themselves with a set of factual
17 determinations that they can utilize in other forums
18 to achieve appropriate remedies for whatever
19 injuries they are suffering.

20 The memorandum -- let me touch a bit on
21 the relationship between the State of Engineering
22 and the Division of Oil, Gas, and Mining. As was
23 pointed out, the State Engineer has not historically
24 made factual determinations about the effects of
25 mining on water rights. The Engineer does make

1 factual determinations on other effects and needs
2 to. When someone files a change application, the
3 Engineer must find that that change can be
4 accomplished without adversely affecting other water
5 rights owners. But the Engineer has not
6 historically made factual determinations about
7 mining and mining's impacts on water.

8 On the other hand, the Division has not
9 historically made factual determinations or
10 adjudications of water rights between owners of
11 water rights whose uses of those rights may come
12 into conflict with one another. So the Memorandum
13 of Understanding which was suggested is exactly the
14 kind of vehicle in the Division's view that can
15 resolve those gaps as have been pointed out in what
16 we view as being a complete regulatory framework.

17 So our testimony is and our belief is
18 that there exists adequate statutory authority to
19 address both factual determinations of whether or
20 not drinking water supplies are being adversely
21 affected by coal mining, and second, whether or not
22 replacement, which is an already existing remedy
23 under Utah State Water Law, is the appropriate
24 remedy. And it's simply a matter of dividing the
25 work between the Division of Oil, Gas, and Mining

1 and the Division of Water Rights in a way that
2 allows each of us to do what we have historically
3 done or not done, but provides the water users and
4 the mining companies with a complete picture, both a
5 factual picture and a legal remedy picture, of all
6 the impacts of underground mining on water.

7 We doubt that there's a need for a
8 legislative solution; nevertheless, we've committed
9 to undertake a legislative solution if it appears
10 that that's the only way we can get approval of our
11 regulatory program in finding that it's no less
12 effective, so we're prepared to do that. We are
13 also prepared to undertake rule making, if that's
14 necessary, either under existing statutory
15 enactments or under new enactments, and we'd do that
16 very quickly.

17 So that's sort of the basis of our
18 belief that we do not need to invite creation of a
19 new scheme of regulation or implementation of a
20 water replacement program that perhaps works in
21 Pennsylvania or someplace where there's not prior
22 appropriation, in Colorado, Utah, or New Mexico for
23 that matter.

24 I want to emphasize something that Mr.
25 Smith touched on, and I appreciate the kudos we

1 received and I'll offer this as an update on work in
2 progress. One of the results, probably the major
3 result of the oversight hearings that we jointly
4 conducted last summer, was that the Division of Oil,
5 Gas, and Mining recognized that the hydrologic
6 impacts of underground mining are one of the major
7 significant impacts of mining in the state of Utah.
8 As was pointed out and as we discussed at that
9 hearing, the state has monitored or has maintained a
10 data base of hydrologic monitoring that all of the
11 coal operators in the State are submitting to the
12 Division on a regular basis.

13 The difficulty that we've experienced,
14 and I think the water users and the coal community
15 has experienced as well, is that the Division has
16 not done as good a job as it could managing that
17 data. It has not been in a consistent and
18 accessible data base from which we could generate
19 predictions of future effects or evaluate past
20 effects.

21 One of the things Mr. Smith touched on
22 was that the State has not made an effort to revisit
23 its conclusions, hydrologic impact conclusions,
24 after its issuance of the permit. And I want to
25 make clear to you that that's not the case. The

1 State in fact is making every effort and concerted
2 efforts to better address and evaluate the impacts
3 of mining based upon the water monitoring data that
4 we're receiving.

5 And I'd also like to report that we've
6 made tremendous progress in that regard. We've had
7 an ad hoc group of industry folks meeting with our
8 hydrologists, Ken White in particular, to work out
9 the lumps and bumps in our data base to try to
10 improve that and get it into a more user
11 friendly -- when I say user, I mean inside the
12 Division and outside the Division user's, friendly
13 base so that we can make the kinds of conclusions
14 that we need to. So we are putting a tremendous
15 amount of time and energy into better understanding
16 the factual impacts of hydrologic impacts of
17 underground mining.

18 I also want to point out there was a
19 suggestion made that only culinary water supplies
20 are protected, and that is not the case. Only
21 culinary water supplies need to be replaced if there
22 is a factual determination that they have been
23 adversely affected. But SMCRA and the Utah Coal
24 Regulatory Program both emphasize that all
25 hydrologic impacts are to be minimized, prevented,

1 if possible, and minimized to the extent that they
2 can be for all beneficial uses of water. Even uses
3 of water which are not recognized as beneficial uses
4 under the Utah Water Code, such as habitat support,
5 maintenance of fisheries and so forth. So the
6 Division is actively working to protect both quality
7 and quantity of water supplies under its regulatory
8 program and has always done so.

9 The only issue that has cropped under
10 the Energy Policy Act, the narrow issue, is when
11 adverse effects are identified on culinary water
12 supplies, what's the appropriate remedy? And the
13 Energy Policy Act says replacement, and how do we
14 reconcile that with the existing replacement
15 requirements under Utah State Water Law based upon
16 the prior appropriation doctrine?

17 I don't think that's all that difficult,
18 and I can understand that the water users are
19 concerned and if it's not so difficult, how come it
20 hasn't happened already? I think part of the answer
21 to that is that it has and we're developing it, and
22 we'll find something out when the Board makes its
23 determination in the Co-op matter. But I think that
24 we can enhance what we've got and fill gaps in what
25 we've got through the use of an MOU and perhaps

1 additional ruling. But I continue to believe that
2 there's not a necessity even for State legislation,
3 let alone creation of a federal regulatory program
4 to administer Energy Policy Act provisions.

5 Those are the main things and again, I'm
6 available for questions basically from anybody, and
7 for all of us are here to understand clearly what
8 the Division's been doing and what it's working on.

9 MS. DRAGOO: Jim, Craig Smith had raised
10 the question of whether you were doing monitoring.
11 During your five-year permit reviews, were the
12 hydrological consequences reviewed at that time?

13 MR. CARTER: Right. At the time of
14 permit renewal, the Division needs to make a
15 finding -- it needs to make the same findings under
16 its probable hydrological consequences -- excuse
17 me. Its cumulative hydrologic impact assessment.
18 It needs to find again that that assessment is
19 correct or is accurate, so there is a window during
20 which we make a new factual determination which
21 those who are concerned could appeal if they wanted
22 to. And we're also looking at the monitoring
23 information that we've received at that time.

24 MR. EHMETT: Could we let the record
25 show that the question came from Denise Dragoo.

1 Okay. Thank you, Mr. Carter.

2 MR. CARTER: Thank you.

3 MR. EHMETT: Is there anyone else here
4 today who would like to speak? Yes, sir, could you
5 come up and state your name and spell it.

6 MR. JOHANSEN: Okay I'm going to stand
7 if I might.

8 MR. EHMETT: Sure.

9 MR. JOHANSEN: I've been sitting too
10 long. My name is Eugene Johansen and I'm wearing
11 several hats. And I'm a little disappointed that
12 the State did not notify other water users of this
13 hearing. The Emery County Water Conservancy
14 District was not notified. The Cottonwood Creek
15 Irrigation Company was not notified. The Ferron
16 Irrigation Company was not notified. The Special
17 Service District, which I'm a board member of,
18 received its information. It is not on the
19 letterhead and I guess when I read that, Coal
20 Operators, North Emery Water Users Association,
21 Huntington-Cleveland Irrigation Company, Utah Mining
22 Association, I guess that's what prompted me to come
23 to the meeting.

24 I am pleased that Mr. Carter is
25 informing us that the State is now doing everything

1 they can to implement what we thought should have
2 been done quite some time ago. And if they can
3 continue to do that, why we'd be satisfied with them
4 doing it. Our main concern is, and we don't know
5 whether to blame the concern onto the mining
6 industry or the drought, because we have seen our
7 springs dry up. Whole tributaries and canyons are
8 without water, and this forced the Conservancy
9 District anyway to begin a monitoring program on all
10 of the west end of Emery County.

11 We have installed at present around 35
12 stations and we've brought them into a central spot,
13 and I don't understand all this computer business,
14 but I can read the printout. And we now have a
15 record of the springs that the mining industry will
16 be affecting. We learned from the State that we
17 didn't have any records to combat what we were
18 complaining about. And we've spent a quarter of a
19 million dollars the last two years in now making a
20 data base, which we can say to the State, the mining
21 and the federal government look, something has gone
22 wrong here.

23 Our concern, I guess, is this. Because
24 of the industrial mechanization of the mining people
25 they can go into an entry here, they can go into an

1 entry over here. The drainage system is here for
2 this tributary or for that company. The draining
3 system is here for this company and they can tap all
4 the water, bring it to a collecting agency in their
5 portal and neither this system nor this system has
6 any control of the water.

7 And under the State laws, I understand
8 it the mines have the water and as long as they use
9 it and as long as it doesn't go to the surface, they
10 can do with it what they want. So if they choose to
11 take all of this, put it here and even make another
12 drainage and pump it out, they can do so. Am I
13 right or wrong on that? That's our concern, because
14 they're collecting water from several areas, putting
15 it in their own collecting system, and then at their
16 discretion, and I'll say the least cost, pump it
17 someplace else. We've got to have that corrected.
18 And I've listened to your questions and I don't know
19 how to answer them. How do we determine where the
20 water came from, whose water it was and whose it's
21 going to be? And I guess that's what brings us to
22 this type of a hearing.

23 We know that our springs are drying up.
24 We know that whole tributaries, for example, the
25 Little Cottonwood Canyon doesn't have a drop of

1 water and it used to have two, three, five, seven
2 feet of water. We know that's gone. I don't know.
3 I don't know if it's the drought. We'll find out
4 this year because we have a snowpack and our
5 entities also -- we feel that we don't have much say
6 on who's going to replace what. Who's going to
7 finance that replacement? Are they going to buy it
8 or are they going to give us some of their water?
9 Who's it going to come from?

10 All we know is that our water is
11 changing sources and going somewhere else or it's
12 being depleted. And as the mining industry moves
13 further south in Emery County, they will leave these
14 big, I don't know what you do with those, those
15 cave-ins. Can you tell me what you're going to do
16 with them? Are you going to let the water stay
17 there? Are you going to let it come out? That's
18 another concern. It comes out contaminated. It's
19 filled with grease. It's filled with materials that
20 didn't used to be there. How do we handle that
21 problem?

22 And I may have read into this wrong that
23 this just concerned culinary, but I thought Mr.
24 Carter said no, it concerns everything. And I'm
25 glad to hear that. But as I read the register and

1 so on, are you only concerned with culinary water?
2 Mr. Atwood pointed out that the irrigation companies
3 control the water and they distribute it not only to
4 industry, but to the culinary source and also
5 agriculture. It all comes off the same spring and
6 we don't want to be ignored. We want this whole
7 thing resolved as soon as possible.

8 MR. CARTER: I was just going to say my
9 point was the coal regulatory program is intended to
10 protect all or to minimize all hydrologic impacts in
11 order to protect water from all uses, culinary uses,
12 irrigation, everything. But this hearing is being
13 conducted to address the requirement that culinary
14 sources, when they're adversely affected, be
15 replaced, and that is my understanding that's a
16 function of the Energy Policy Act directive that
17 relates only to -- and Donna's probably got the
18 language -- but it excludes irrigation.

19 MS. GRIFFEN: I just wanted to clarify
20 it's not commercial, but it's residential, domestic
21 and drinking. When in fact, if someone's watering
22 their yard and it's part of the homestead, it's
23 covered under the Energy Policy Act, but it's
24 non-commercial.

25 MR. EHMETT: Your comments earlier

1 pertained to there are other requirements in the
2 Utah program and the Office of Surface Mining SMCRA
3 that require protection of all beneficial water
4 sources, but that's not a subject of this hearing
5 today. But I think Mr. Carter is saying, and
6 correct me if I'm wrong, there are other
7 requirements in the federal and state program that
8 protect other water sources that are not part of the
9 Energy Policy Act in addition to that.

10 MR. JOHANSEN: The entities that I am
11 part of are willing to work with anybody that will
12 seriously sit down and say somebody has
13 responsibilities for solving this problem and we're
14 going to insist that that happen, even if we have to
15 go to the federal government and say what has to be
16 said. I guess I've said enough.

17 MR. EHMETT: Mr. Johansen, could you
18 spell your last name.

19 MR. JOHANSEN: J-o-h-a-n-s-e-n. Eugene
20 is the first name.

21 MR. EHMETT: Okay. Thank you very
22 much. Is there anyone else? Yes, sir.

23 MR. LEAMASTER: My name is Darrel
24 Leamaster, L-e-a-m-a-s-t-e-r. I'm the manager of
25 Castle Valley Special Service District. In Mr.

1 Smith's testimony he mentioned that our water
2 companies have very little resources. We're
3 basically small companies. We don't have the
4 advantage of having geologists, hydrologists on our
5 staff and had very little expertise in these areas.
6 Because of that we're at the mercy of other people,
7 the coal mining companies, to provide us information
8 and DOGM to provide us information, and have not the
9 ability to do too much of that on our own.

10 Now the federal regulations seem to
11 recognize this, and state that when problems occur,
12 that the regulatory authority will have the ultimate
13 burden of proof of showing that we have been damaged
14 and that there is a problem. And we appreciate
15 having that in that federal law, because we think it
16 addresses the very problem that we have that we
17 don't have that expertise.

18 I guess the million dollar question here
19 is, is the State, the DOGM, in the position and of
20 the attitude that they're willing to step in and
21 show when problems have occurred and accept that
22 burden of proof of showing that there has been a
23 problem. We haven't seen that in the past and we're
24 pleased with the comments Mr. Carter has made of the
25 directions they're taking. But we still have some

1 grave concerns that they're willing to step in and
2 assume that responsibility and accept the burden of
3 proof.

4 One other comment, the federal
5 requirements also do require, if I read that
6 correctly, that the permittee provide additional
7 bonds, performance bonds, for the replacement of
8 these water sources. That's something that we
9 haven't seen in Utah. We don't know if that will be
10 a part of the new program and we would hope that
11 that would be put in place so that we have that
12 assurance. And until those questions are answered,
13 I think that we're still a little bit confused as to
14 which direction to go. I think we would still take
15 the position that we would like to see OSM and the
16 state jointly involved in the problem. Thank you.

17 MR. EHMETT: Thank you. Denise.

18 MS. DRAGOO: Denise Dragoo. I just
19 wanted to address on behalf of Utah Mining
20 Association one question that was raised by Eugene
21 Johansen and several of the water users, and that
22 concerns dewatering of mines. My understanding of
23 the testimony so far has been that there isn't
24 anything that addresses that. If those waters are
25 already appropriated, then certainly the State

1 Engineer can't step in and address those concerns.
2 It's when the waters are unappropriated that then
3 those waters can be dewatered or removed from the
4 mine.

5 So right now, as I understand the State
6 Water Code, those issues are addressed if there is
7 appropriated water. The concern here is that a lot
8 of times water is simply generated in the mining
9 process. It's called developed water. Its
10 unappropriated, but if that mine seeks to
11 appropriate that water, it still has to go through
12 the State Engineer's appropriation system. The fact
13 that this hearing is dealing with culinary water
14 sources would probably mean that those sources are
15 already appropriated, so I don't think the problem
16 that Eugene Johansen has raised and a couple of the
17 other water user associations have raised is truly a
18 concern in this context.

19 MR. EHMETT: Thank you.

20 MR. JOHANSEN: Can I make one more
21 comment?

22 MR. EHMETT: Is there anyone else
23 besides Mr. Johansen?

24 MR. JOHANSEN: She brought up another
25 interesting point there. The water is appropriated,

1 but who's got the appropriation? Here is the water
2 over here in this district and it's appropriated to
3 go into channel one. Now it goes into a collecting
4 agency and is pumped out into channel two, and
5 that's the problem. That's a different water now.
6 That's a new water for somebody, but an old water
7 for somebody else. How do you solve that one?

8 MS. DRAGOO: I think that's where the
9 State Engineer could be of some assistance.

10 MR. JOHANSEN: How is he going to do
11 it? Because we know that water from Huntington has
12 gone over into Ferron -- not Ferron -- over into
13 Price, and that's one of our problems here. You
14 collected it all in a big reservoir. Now is it old
15 water? I'll claim all the old water. Or is it new
16 water? Joe Blow will claim the new water. I don't
17 think -- somebody's got to regulate that.

18 MR. EHMETT: Mr. Atwood, did you have
19 another comment?

20 MR. ATWOOD: Well, it was along the same
21 lines. Having worked in -- they brought up the
22 Co-op mine issue. I worked at Co-op mine for five
23 years and was personally involved in the water
24 issues that was there. In my opinion, my job at the
25 mine was dealing with this water issue. That the

1 Department of Oil, Gas, and Mining in their
2 investigative work, their regulatory duties was very
3 very lax, and inefficient in what they done. I
4 dealt with them. I know.

5 This is my concern. I do not like the
6 federal government coming into the state and saying
7 this is what we will do to regulate you. I would
8 rather the State done it on their own. But from
9 personal experience, the State has not got the
10 gumption to do it. They do not have the expertise
11 to do it, or the desire. And it really concerns me
12 as a water user, and being personally involved in
13 this issue. The Co-op mine issue should have been
14 resolved years ago. If DOGM would have been on
15 their toes, they could have resolved it with no
16 problem in a real quick hurry. But they weren't.
17 So it brings this concern the federal has to come in
18 and oversight these people to get them to do it.

19 The comment of the new water being
20 created -- water in the mine coming here. We create
21 this water. You don't create any new water. It's
22 there. It's adjudicated by the State Water Engineer
23 as to where it belongs. These rights are filed on
24 hundreds -- over a hundred years ago. How does an
25 outfit come into your backyard and take things out

1 of your backyard that you own supposedly, and say it
2 was new, we created it? It doesn't make any sense,
3 but it shows the issues that the mining companies
4 and DOGM have got into where they do not realize and
5 understand personal property rights. And that's
6 where the issue gets into.

7 MR. EHMETT: Thank you. Any more
8 comments? I guess not. So thank you very much for
9 coming. The transcript will now be closed.

10 (The hearing was concluded at 10:20 a.m.)
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& SENIOR**
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August 10, 1994

Thomas E. Ehmett
Acting Director
Albuquerque Field Office
Office of Surface Mining
505 Marquette Avenue N.W.
Albuquerque, New Mexico 87102

Dear Mr. Ehmett:

This letter will convey my written comments as a supplement to those given verbally on August 9, 1994 at the Office of Surface Mining oversight meeting in the Doubletree Hotel in Salt Lake City.

This firm represents a number of water organizations in the Emery County, Utah area including Huntington-Cleveland Irrigation Company, which owns the majority of the water rights in the Huntington Creek drainage and provides most of the industrial, domestic and irrigation water in the Northern Emery area including water to Huntington City, and Cleveland and Elmo Towns. Another water organization this firm has represented is the Emery Water Conservancy District, the governmental body charged with protecting and conserving water in Emery County. Finally, we represent North Emery Water Users, which provide domestic water to unincorporated northern Emery County.

Coal and water are found together in Emery County. The mountains where coal deposits are found are the water shed for Emery County. It is not surprising that there is a conflict

Thomas E. Ehmett
August 10, 1994
Page 2

between mining and water rights. To a mine, water is something that is incidentally encountered. If large quantities appear in the mine, they will be disposed of in the most economic fashion. However, the interruption of water by mining may have serious impacts on water rights holders. Such interception may move water from a point of diversion of one owner to that of another. Water may also be moved from one drainage to another or may have its quality depreciated.

To better manage these conflicts from a regulatory standpoint, and to insure that federal and state laws and regulations designed to protect water quantity and quality from adverse impacts of mining are followed, we would suggest the following:

1. Appoint a staff DOGM hydrologist to act as a liaison or contact person for water quantity and quality issues arising from permitted mining activity.

2. Prepare water user guides to the regulatory and permitting process of DOGM to aid in their participation in this process.

3. Devise standard stipulations to all permits that protect groundwater quality and quantity so that if, after a permit is issued, greater impacts are found, the permit holder is required to mitigate those impacts.

4. Devise a procedure and policy to review hydrologic impacts of mining activity under existing permits to assure that water quality or quantity impacts are not occurring in greater magnitude than expected and permitted. The permits are issued on the basis of expected hydrologic consequences; however, the actual consequence may be much different. Currently, data is collected which measures the actual impact or consequence; however, no effort is made to review or analyze such data.

5. Coordinate with Forest Service and BLM to assure that their regulations and forest stipulations are enforced. For example, one stipulation to the Manti-LaSal Forest Plan, is for replacement of any water source interrupted by mining. However, this is not being considered in permitting, nor enforced by DOGM.

6. Coordinate with water users and the State Engineer's Office to better protect water rights and resources. The water users would be pleased to participate in such a coordinated effort.

Thomas E. Ehmett
August 10, 1994
Page 3

7. DOGM needs to aggressively review hydrologic information submitted during the permit process to minimize the necessity of water users in performing their own critique and review of such information. This would include requiring greater detail of information and analysis to be submitted by those seeking a permit. Many water users are nonprofit organizations that have modest resources. It is very difficult for these organizations to fund scientific critique and review of information submitted by permit grantors.

8. Improve noticing to water organizations.

We respectfully submit these suggestions. We are cognizant and appreciative of the help and assistance of DOGM and seek only to improve upon their efforts.

Yours truly,

NIELSEN & SENIOR



J. Craig Smith

cc: Board of Directors,
Huntington-Cleveland Irrigation Co.
cc: Eugene Johansen
cc: Board of Directors,
North Emery Water Users Association
cc: James W. Carter, Esq.

EMERY WATER CONSERVANCY DISTRICT

P.O. Box 998
Castle Dale, Utah 84513

Telephone (801) 381-2311

August 8, 1994

Thomas E. Ehmett
Acting Director
Albuquerque Field Office
Office of Surface Mining
505 Marquette Ave. N.W.
Albuquerque, NM 87102

Mr. Ehmett.

The Emery Water Conservancy District has repeatedly expressed our concerns pertaining to the effects that the mining industry has on the water supply in our area.

We are not opposed to the wise use of our mineral resources, but when that use diverts the flow of water from its natural course or contaminates it, we feel quite strongly that the industry responsible for the diversion or contamination be held accountable for such action and must mitigate for any and all losses.

Many of the streams and springs that once flowed freely on our mountain ranges have been altered in quantity and quality by the mining activities. The District is concerned with the continual disruption of the flow of water that is in the mountains caused by mining activities. We have seen small streams and springs decrease or completely stop flowing in recent years. This may be caused by drought conditions or by mining activities.

We are now seeing water being diverted from one river to another through the mines or being discharged at a site where the water cannot be utilized beneficially. At the point of discharge from the mine, the water has been contaminated by underground activities. The District monitors all of the rivers in Emery County. In comparing the T.D.S. of the water that is running into the valley we find about 300 as compared to over 1000 in the water being pumped from the mine. Many other contaminants appear in the water as well. This contaminated water runs from the mines into the rivers and contaminates the rivers.

If this program is to be regulated by the Division of Oil, Gas, & Mining for the established program in the State of Utah, then it is the consensus of the Emery Water Conservancy District

the mining industry mitigate with local irrigation companies under the direction of DOGM for lost and contaminated water as a result of the industries activities. Rules and regulations need to be enforced and concerns of private individuals and water users need to be addressed.

Sincerely,



Eugene Johansen
Chairman
Emery Water Conservancy District

EJ/db

Reporter's Certificate

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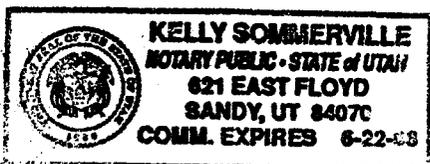
STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, KELLY SOMMERVILLE, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That said hearing was taken down by me in shorthand on May 1, 1995 at the place therein named and thereafter pages 3 through 58 were reduced to transcription under my direction.

I further certify that I am not of kin or otherwise associated with any of the parties to the said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND SEAL this 2nd day of May, 1995.



Kelly Sommerville
KELLY SOMMERVILLE, RPR
Notary Public
Residing in Salt Lake County

My Commission Expires:
June 22, 1996



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Suite 1200
505 Marquette Avenue N.W.
Albuquerque, New Mexico 87102

August 16, 1995

Mr. James W. Carter, Director
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180-1203

Dear Mr. Carter:

Enclosed are the latest entries to the Utah Administrative Record, UT-1055 through UT-1070, and the corresponding pages of the log reflecting these entries. I have also enclosed a current copy of the State Program Amendment Tracking (SPAT) report for your information and reference.

The Albuquerque Field Office no longer maintains the Utah Administrative Record. The Western Regional Coordination Center will provide you with updates and copies of SPAT reports in the future. Accordingly, please submit all future State program amendments directly to:

Mr. Jim Fulton, Chief
Denver Field Division
Western Regional Coordination Center

Please call me at 505-766-1486 if you have any questions.

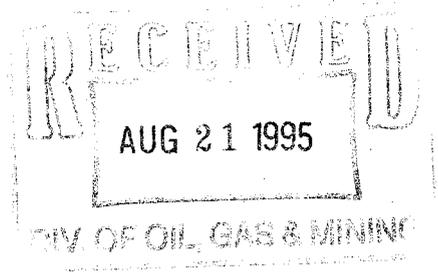
Sincerely,


Arthur W. Abbs, Acting Director
Albuquerque Field Office

Enclosures

TO RWD
Toni - This is
one of the files
for "OSM-Admin
Record"

Ron
8/22/95



Administrative Record Log: UTAH

Originator	Organization	Description of Document	no. pgs	Date of Corres Date Received	ID No.	By
Vernon Maldonado	OSM	<u>SPAT UT-028-FOR</u> Telephone conversation record regarding an issue letter for Amendment UT-1025.	1	05/12/95	UT-1055	VEM
John A. Kuzar	MSHA	<u>SPAT UT-024-FOR</u> Late - No comment letter for amendment UT-917.	1	05-18-95 05-23-95	UT-1056	VEM
60 FR 28040	OSM	<u>SPAT UT-025-FOR</u> Final rule approving amendments UT-941, UT-990 regarding highwall reclamation.	11	05-30-95 06-06-95	UT-1057	VEM
Arthur W. Abbs	OSM-AFO	Memorandum to Utah administrative record regarding consultation for enforcement of EPACT requirements.	5	06-05-95	UT-1058	VEM
James W. Carter	DOGM	<u>SPAT UT-028-FOR</u> Amendment revisions in response to UT-1054.	6	06-05-95 06-08-95	UT-1059	VEM
Harold P. Quinn, Jr.	NMA	Comments submitted in regard to UT-1039 concerning enforcement of EPACT requirements.	14		UT-1060	VEM
John A. Kuzar	MSHA	<u>SPAT UT-024-FOR</u> Late comment letters for amendment UT-917 (no comments).	1	06-22-95 06-27-95	UT-1061	VEM
Arthur W. Abbs	OSM	<u>SPAT UT-1028-FOR</u> Distribution letters for amendment UT-1059	9	06-27-95	UT-1062	VEM
John A. Kuzar	MSHA	<u>SPAT UT-029-FOR</u> No comment letter regarding amendment UT-1003.	1	06-16-95 06-19-95	UT-1063	VEM
60 FR 35188	OSM	<u>SPAT UT-028-FOR</u> Proposed rule reopening notice for amendment UT-1059 closing 07/21/95	4	07-06-95 07-21-95	UT-1064	VEM

Administrative Record Log: UTAH

Originator	Organization	Description of Document	no. pgs	Date of Corres Date Received	ID No.	By
Ronald W. Daniels	DOGM	<u>SPAT UT-017-FOR</u> Promulgated language.	2	07-13-95	UT-1065	VEM
				07-19-95		
60 FR 37002	OSM	<u>SPAT UT-024-FOR</u> Final rule approving amendments UT-917 and UT-997.	11	07-19-95	UT-1066	VEM
				07-25-95		
James W. Carter	DOGM	<u>SPAT UT-025-FOR</u> Letter requesting an extension for promulgating rules and for addressing required amendments	1	07-21-95	UT-1067	VEM
Arthur W. Abbs	OSM	<u>SPAT UT-017-FOR</u> Review of promulgated language for amendment UT-827.	1	07-25-95	UT-1068	VEM
Charles L. Baldi	Army COE	<u>SPAT UT-028-FOR</u> No comment letter for amendment UT-1059.	1	07-12-95	UT-1069	VEM
				07-17-95		
60 FR 38491	OSM	<u>30 CFR 944</u> Notice of decision on initial enforcement of subsidence control and water replacement.	6	07-27-95	UT-1070	VEM
				07-31-95		

STATE PROGRAM AMENDMENT TRACKING SYSTEM
ACTIVE DATABASE REPORT
Report date: 08/15/95

Report parameters: Field office: AFO State: UT Service Center: WRC Period covered: up thru 08/15/95

Include Archive: N

ID NO	FIELD OFFICE	STATE SUBMIT DATE	FLD OFC RECVD	REQUEST AGENCY COMMENTS	AMENDMENT SENT TO ESC/WSC/HQ	PROPOSED RULE TO ESC/WSC	PROPOSED RULE SIGNED	PROPOSED RULE PUBLISHED	COMMENTS SENT FRM FOD	COMMENTS SENT FRM HQ	CLOSE COMMENT PERIOD	FOD TEL NOTIFY STATE	ISSUE LTR	LETTER TO STATE	STATE RESPONSE TO LETTER	EXTEND NOTICE TO ESC/WSC	EXTEND NOTICE SIGNED	EXTEND NOTICE PUBLISHED	END EXT COMMENT PERIOD	EPA CONCURR. SENT	FINAL FED REG NOTICE TO SOLICITOR	FINAL FED REG NOTICE FR SOLICITOR	FOD CONCUR	FINAL FED REG SIGNED	FINAL FED REG PUBLISHED	STATE PROMULGATED DATE	
UT-010-FOR	AFO	04/30/92	05/04/92	05/14/92	05/04/92	05/05/92	05/07/92	06/02/92	06/19/92	05/22/92	07/02/92	/ /	Y	09/10/92	10/07/92	10/21/92	10/23/92	12/09/92	12/24/92	11/17/92	12/24/92	09/02/93	09/07/93	09/10/93	09/17/93	/ /	
SUBJECT:		1. 732R 1/1 0% 2. 0% 3. 0% 4. 0% 5. 0%																									
REMARKS:		AMEND. (AR NO. UT-758) CONCERNING HIGHWALLS. I.L. WAS WRITTEN IN COOP. WITH HQ, SOL, AND AFO. UT RESUBMITTED AMEND. ON 09/30/92 (AR NO. UT-788). COMP. W/ PRES. MORATOR. ON FED REGS DELAYED REOP. PUB. FINAL RULE FR ADDED 4 RA'S DUE 11/16/93 (UT-025-FOR). ACT. ELAPSED TIME FOR OFS TO REV. FINAL RULE WAS 78 DAYS																									
UT-021-FOR	AFO	03/07/94	03/14/94	03/21/94	03/18/94	03/21/94	03/23/94	03/29/94	/ /	05/20/94	04/28/94	06/10/94	Y	06/10/94	07/08/94	07/22/94	07/25/94	07/29/94	08/15/94	03/31/94	08/22/94	09/14/94	09/15/94	09/16/94	09/27/94	05/05/93	
SUBJECT:		1. STIN 0% 2. 0% 3. 0% 4. 0% 5. 0%																									
REMARKS:		UCA 40-10-14 (PERMIT REVIEW)-H.B.394 (NOT SEEN BY DSM); 40-10-20 (DIV. PENALTY), 40-10-28 (RECL. COSTS-TITLE IV), & 40-10-28.1 (CERT.-COMPL. OF COAL RECL.-TITLE IV)-S.B. 22. NOT ALL OF UT-021-INF INCL. IN THIS AMDT.																									
UT-022-FOR	AFO	08/02/93	08/10/93	08/18/93	08/18/93	08/18/93	08/19/93	08/27/93	/ /	09/30/93	09/27/93	12/09/93	Y	12/09/93	01/10/94	01/12/94	01/14/94	01/24/94	02/08/94	08/27/93	03/25/94	06/08/94	06/29/94	07/01/94	07/11/94	/ /	
SUBJECT:		1. STIN N/A 0% 2. 0% 3. 0% 4. 0% 5. 0%																									
REMARKS:		ADMIN RECORD #UT-851; CONSISTS OF REVISIONS TO R641 & R645 RULES-CONSIDERED BY UT TO BE NONSUBSTANTIVE & PER UT RULES REVIEW COMMITTEE. ACTUAL ELAPSED TIME FOR OFS REVIEW OF FINAL RULE WAS 75 DAYS.																									
UT-024-FOR	AFO	04/14/94	04/19/94	04/28/94	04/25/94	04/26/94	05/06/94	05/12/94	/ /	08/05/94	06/13/94	10/20/94	Y	10/24/94	12/12/94	/ /	12/09/94	12/15/94	12/30/94	05/09/94	06/27/95	07/11/95	/ /	07/13/95	07/19/95	/ /	
SUBJECT:		1. STIN 0% 2. 0% 3. 0% 4. 0% 5. 0%																									
REMARKS:		FORMAL SUBMITTAL OF UT-024-INF; COMBINES PREVIOUS INF'S (UT-018, 021, 023). STIN TO ADDRESS AMR ACT OF 90 & ENERGY POLICY ACT OF 92. DOES NOT INCLUDE WATER REPLACEMENT PROVISION. HQS AML COMMENTS RECD 06/07/94.																									
UT-025-FOR	AFO	11/12/93	11/15/93	11/24/93	11/17/93	11/24/93	12/01/93	12/08/93	/ /	01/28/94	01/07/94	/ /	Y	03/31/94	07/05/94	/ /	07/07/94	07/14/94	07/29/94	07/19/94	03/06/95	03/15/95	05/18/95	05/23/95	05/30/95	/ /	
SUBJECT:		1. 900R 4/4 0% 2. 0% 3. 0% 4. 0% 5. 0%																									
REMARKS:		RESPONSE TO REQUIRED AMENDMENTS FOR UT-010. ADMIN. RECORD NO. UT-875. HIGHWALL RETENTION AND RECLAMATION. DSM GRANTED UTAH'S REQUEST FOR EXTENSION TO RESPOND TO REQUIRED AMENDMENTS THAT WERE PLACED ON UT-025. EXTENDED UNTIL OCTOBER 31, 1995.																									
UT-026-FOR	AFO	03/07/94	03/10/94	03/18/94	03/15/94	03/17/94	03/18/94	03/28/94	/ /	03/24/94	04/28/94	/ /	N	/ /	/ /	/ /	/ /	/ /	/ /	/ /	05/11/94	05/16/94	05/16/94	05/17/94	05/24/94	/ /	
SUBJECT:		1. STIN 0% 2. 0% 3. 0% 4. 0% 5. 0%																									
REMARKS:		PROPOSED REVISION TO RULE SO THAT UTAH WOULD NOT HAVE TO PROCESS ALL DOGM-ORDERED PERMIT CHANGES AS SIGNIFICANT PERMIT REVISIONS. ACTUAL ELAPSED TIME FOR OFS TO REVIEW FINAL RULE WAS 1 DAY.																									
UT-027-FOR	AFO	01/27/94	01/31/94	02/08/94	02/08/94	/ /	02/18/94	02/25/94	/ /	03/25/94	03/28/94	04/15/94	Y	04/15/94	05/10/94	05/23/94	05/17/94	05/24/94	06/08/94	02/15/94	08/22/94	09/16/94	08/23/94	09/19/94	09/27/94	/ /	
SUBJECT:		1. STIN 0% 2. 0% 3. 0% 4. 0% 5. 0%																									
REMARKS:		COAL EXPL SUBJ TO 43 CFR 3480-3487; REMOVE INSIDE/OUTSIDE PERMIT AREA TIE; CHANGE COMPLIANCE REGS FOR REMOVAL OF <250T; PR FR PUBL DELAYED DUE TO DECISION THAT ASLM WOULD SIGN-FINAL DEC WAS TO EXEMPT STATE PROGRAM AMDTS.																									
UT-028-FOR	AFO	02/06/95	02/08/95	/ /	03/01/95	/ /	03/07/95	03/15/95	/ /	/ /	04/14/95	/ /	Y	05/23/95	06/05/95	/ /	06/28/95	07/06/95	07/21/95	/ /	07/27/95	/ /	/ /	/ /	/ /	/ /	
SUBJECT:		1. STIN 0% 2. 0% 3. 0% 4. 0% 5. 0%																									
REMARKS:		NORMAL HUSBANDRY PRACTICES, RESPONSE TO INF ISSUE LETTER.																									
UT-029-FOR	AFO	09/09/94	09/12/94	09/19/94	09/13/94	09/16/94	09/19/94	09/27/94	/ /	10/28/94	10/27/94	11/14/94	Y	11/15/94	01/11/95	01/11/95	01/13/95	01/24/95	02/08/95	09/29/94	02/17/95	03/17/95	02/22/95	03/20/95	03/27/95	/ /	
SUBJECT:		1. 944 1 0% 2. 0% 3. 0% 4. 0% 5. 0%																									
REMARKS:		RESPONSE TO REQD AMNDT @ 944.16(A) FROM UT-022-FOR PERTAINING TO CONFIDENTIALITY OF COAL EXPLORATION INFORMATION.																									
UT-030-FOR	AFO	10/04/94	10/06/94	10/26/94	10/26/94	/ /	10/14/94	10/21/94	/ /	11/18/94	11/21/94	12/01/94	Y	11/30/94	12/22/94	/ /	01/04/95	01/10/95	01/25/95	/ /	/ /	/ /	03/10/95	03/27/95	/ /		
SUBJECT:		1. STIN 1 0% 2. 0% 3. 0% 4. 0% 5. 0%																									
REMARKS:		AMEND. REVISES UT RULES BY REFERENCING U.C.A. STAT. PROVISION WITH INTENT OF ROWING COAL COMPANIES TO PROVIDE A CERTAIN AMT. OF LIABILITY INS. THROUGH SELF-S. WSC PREPARED PROP. RULE FR NOTICE AND PROP. RULE FR REOPENING NOTICE. R. DUT WITHDREW AMEND. BY LETTER DATED 02/24/95. WSC PREP. WITHDRAWAL FR NOTICE.																									
UT-031-FOR	AFO	02/10/95	02/16/95	/ /	/ /	/ /	02/21/95	02/27/95	/ /	/ /	03/29/95	/ /	N	/ /	/ /	/ /	/ /	/ /	/ /	/ /	03/03/95	04/06/95	04/24/95	04/19/95	04/26/95	05/02/95	/ /
SUBJECT:		1. STIN 0% 2. 0% 3. 0% 4. 0% 5. 0%																									
REMARKS:		STIN INITIATED REVISIONS CONCERNING CIVIL PENALTIES.																									
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REMARKS:		AML AMENDMENT IN RESPONSE TO DIR. URAM'S 09-26-94 LTR. (ADMIN. REC. #UT-1011).SEE UT'S 01/12/95 SCHEDULE FOR DATES CONCERNING THIS AMENDMENT (#UT-1014).																									
UT-032-FOR	AFO	08/02/95	08/07/95	08/09/95	/ /	/ /	08/09/95	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	06/15/95	
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UT-032-INF	AFO	02/24/95	02/27/95	/ /	03/03/95	/ /	/ /	/ /	/ /	04/06/95	/ /	04/06/95	Y	04/10/95	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	
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REMARKS:		PROPOSED AMEND. CONCERNS REVISIONS TO UTAH'S ABANDONED MINE RECLAMATION PROGRAM RULES. COMMENTS DUE FROM WSC ON APRIL 7, 1995.																									

of the underground coal mine subsidence control and water replacement requirements in Texas 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 Texas 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 Texas change significantly, the Regional Director may reassess this decision. Formal reassessment of this decision would be addressed by Federal Register notice.

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95-18440 Filed 7-26-95; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Parts 906, 931, and 944

Colorado, New Mexico, and Utah 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 Colorado, New Mexico, and Utah. 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 Colorado, New Mexico, and Utah and consideration of public comments, OSM has decided that initial enforcement will be accomplished in Colorado through State enforcement, in New Mexico through the State program amendment process, and in Utah through State enforcement and, if necessary, direct Federal enforcement of Federal provisions protecting water supplies.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT:

Arthur W. Abbs, Acting Director,
Albuquerque Field Office, Telephone:
(505) 766-1486.

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 (60 FR 16722) to implement the performance standards of sections 720(a)(1) and (2) of SMCRA.

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

The permittee must promptly repair, or compensate the owner for, material 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.

Alternative OSM enforcement decisions. 30 CFR 843.25 provides that by July 31, 1995, OSM will decide, after consultation with each State regulatory authority with an approved program, how enforcement of the new requirements will be accomplished. As discussed in the April 6, 1995, Federal Register (60 FR 17501) announcing the public comment period and opportunity for public hearing and as reiterated below, enforcement could be accomplished by State, OSM, or joint State and OSM enforcement of the requirements, or by a State after it has amended its program.

(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 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 843.12(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) 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 definition 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 implement the definitions at 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Colorado

Colorado Program Activity, Requirements, and Enforcement

By letter to Colorado dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in Colorado to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Colorado program provisions (Administrative Record No. CO-652). By letter dated February 24, 1995, Colorado responded to OSM's request (Administrative Record No. CO-661).

Colorado stated that, of the 25 underground coal mines that had permits as of October 24, 1992, 11 actually mined coal after that date.

Colorado indicated that prior to June 1, 1992, Colorado had in place surface owner protection performance standards at 2 Code of Colorado Regulations 407-2, rules 4.20.3(1) and 4.20.3(2) that encompassed the requirements of section 720(a)(1) of SMCRA. Rule 4.20.3(2), which contained requirements regarding an operator's obligation to repair or compensate for material damage or reduction in value or reasonably foreseeable use caused by subsidence to surface structures, features, or values, expired on June 1, 1992, under Colorado's "Sunset Law." The rule expired because Colorado's Office of Legislative Legal Services found during November 1991 it was not supported by statute. Colorado subsequently developed language for a bill to amend the Colorado Surface Coal Mining and Reclamation Act (the Colorado Act) and introduced the bill during the 1995 legislative session. The intent of the bill was to amend Colorado Revised Statute (C.R.S.) 34-33-121(2)(a)

to provide specific statutory support for Rule 4.20.3(2).

Colorado explained that, although the specific language of Rule 4.20.3(2) expired during June 1992, the Division of Minerals and Geology has continued since that time to interpret its rules to require that mine operators are responsible for repairing or compensating surface owners for subsidence-caused material damage to structures. Colorado based its authority for doing so on the general provisions of Rule 4.20.3(1) and the subsidence control plan mitigation requirements of Rule 2.05.6(6)(iv).

Colorado indicated that there may be a conflict between the provisions of section 720(a)(2) of SMCRA, which requires prompt replacement of drinking, domestic, or residential water supplies adversely impacted by underground mining operations, and Colorado water law. Consequently, Colorado has requested an opinion from the Colorado Assistant Attorney General in this regard. Existing Colorado Rule 4.05.15 requires operators to " * * * replace the water supply of any owner of a vested water right which is proximately injured as a result of the mining activities in a manner consistent with applicable State law" (emphasis added).

For underground mining operations conducted after October 24, 1992, Colorado has received one complaint alleging subsidence-related structural damage and two complaints alleging water supply loss or contamination. Colorado investigated all three complaints. Colorado determined the complaint alleging subsidence-caused structural damage to be without basis. One of the complaints alleging water supply loss or contamination was withdrawn, and the second was under investigation by Colorado.

On May 4 and 31, 1995, OSM confirmed with Colorado that 11 of its 25 underground coal mines produced coal after October 24, 1992 (Administrative Record No. CO-668). At that time, OSM also discussed with Colorado the status of the State's revision of its program to include counterparts to SMCRA and the implementing Federal regulations.

Effective July 1, 1995, the Colorado legislature amended the Colorado Surface Coal Mining Reclamation Act, C.R.S. 34-33-101, *et seq.*, (Administrative Record No. CO-664) to serve as a statutory basis for a subsidence material damage rule to replace Rule 4.20.3(2), which, as discussed above, expired under Colorado's Sunset Law. On May 24, 1995, the Colorado Mined Land

Reclamation Board commenced rulemaking to replace this rule. Upon the completion of these actions, Colorado believes that it will have fully implemented counterparts to the subsidence material damage provisions of the Federal regulations at 30 CFR 817.121(c)(2).

Colorado stated that C.R.S. 34-33-111(1)(m) and Rule 2.05.6(3), which address protection of the hydrologic balance, give it the necessary authority to require replacement of drinking, domestic, or residential water supplies in a manner no less effective than 30 CFR 817.41(j) (Administrative Record No. CO-664). However, Colorado has not yet received an opinion from the Colorado Assistant Attorney General as to whether related Rule 4.05.15 limits the replacement of water supplies to those with "vested water rights."

Colorado received no additional complaints. The investigation of the water supply complaint is ongoing. With respect to the structural damage complaint that Colorado initially determined was without basis, Colorado and OSM are reviewing information supplied by the complainant with the intent of resolving the complainant's concerns.

Comments. On April 6, 1995, OSM published in the *Federal Register* (60 FR 17501) 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 Colorado (Administrative Record No. CO-662). The comment period closed on May 8, 1995. Because OSM did not receive a request for a public hearing, OSM did not hold a public hearing. OSM received comments from two parties in response to its notice.

One party stated 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 (Administrative Record No. CO-666). 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) and also responds to these comments below in the "Comments" subsection of following Utah section E. These concerns about direct Federal enforcement are moot

issues for Colorado because the Regional Director has decided, as set forth below, not to implement an enforcement alternative including direct Federal enforcement.

Another party commented on the national Federal regulations (Administrative Record No. CO-665) after OSM published them as a final rule on March 31, 1995 (60 FR 16722). These comments are not germane to OSM's April 6, 1995, *Federal Register* 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 Colorado.

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Colorado, the Albuquerque Field Office on May 4 and 31, 1995, consulted with Colorado in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. CO-668). Because the number of mines in Colorado that are subject to section 720(a) of SMCRA is low, Colorado has made significant progress in promulgating the necessary statutory and rule provisions, and Colorado has shown a commitment to investigating citizen complaints regarding subsidence and water supply impacts, the Field Office and Colorado agreed that Colorado should be the primary enforcer of its State program provisions for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. Only, if a situation arises in which Colorado's enforcement role as primary enforcer does not appear to fully meet the requirements of section 720(a) of SMCRA, would OSM through Federal oversight issue ten-day notices.

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 Colorado will occur through State enforcement.

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

D. Enforcement in New Mexico

New Mexico Program Activity, Requirements, and Enforcement

By letter to New Mexico dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in New Mexico to implement the requirements of section 720(a) of SMCRA, to implementing Federal regulations, and/or the counterpart New Mexico program provisions (Administrative Record No. NM-725). By letter dated December 22, 1994, New Mexico responded to OSM's request (Administrative Record No. NM-726).

New Mexico stated that two underground coal mines were active in New Mexico after October 24, 1992. New Mexico stated that it intended to revise its subsidence information and control plan provisions at Coal Surface Mining Commission (CSMC) Rule 80-1-20-124 to be no less stringent than section 720 of SMCRA.

New Mexico did not indicate whether it had authority within its program to investigate citizen complaints of structural damage or water supply loss or contamination caused by underground mining operations conducted after October 24, 1992. New Mexico had not received any citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. New Mexico indicated that both of the underground mines that operated after October 24, 1992, are located several miles from structures subject to the Federal requirements for subsidence-related material damage.

On May 13, 1995, New Mexico proposed an amendment to OSM for its permit application requirements at CSMC Rule 80-1-9-39 (Administrative Record No. NM-739). Specifically, New Mexico proposed to revise its subsidence information and control plan requirements at this rule with the intent of making it consistent with section 720 of SMCRA. OSM is currently reviewing the effectiveness of this proposed rule.

On May 3 and June 5, 1995, OSM confirmed with New Mexico that two underground coal mines were active after October 24, 1992 (Administrative Record No. NM-746). New Mexico stated that it had received no subsidence material damage or water supply complaints for these operations, and that neither operation has noncommercial buildings or occupied dwellings and related structures, or developed water sources, within the

projected subsidence angles of draw. New Mexico indicated that, if it were necessary to apply the provisions of 30 CFR 817.41(j) and 817.12(c)(2) before it had revised its program to be no less effective than these Federal regulations, it would pursue enforcement utilizing general provisions contained in the State regulations.

Comments. On April 6, 1995, OSM published in the *Federal Register* (60 FR 17501) 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 New Mexico (Administrative Record No. NM-737). 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 from one of the parties that commented on the Colorado program the same comments regarding total or partial direct interim Federal enforcement and ten-day notice procedures (Administrative Record No. NM-749). OSM does not agree with the commenter's assertions. It addressed similar comments in the March 31, 1995, *Federal Register* (60 FR 16722, 16742-16745) and also responds to these comments below in the "Comments" subsection of following Utah section E. These concerns about direct Federal enforcement are moot issues for New Mexico 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 New Mexico, the Albuquerque Field Office on May 3 and June 5, 1995, consulted with New Mexico in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. NM-746). Because there has been little underground mining activity since October 24, 1992; there is little likelihood for subsidence damage to noncommercial buildings and to occupied dwellings and related structures, or adverse effects to drinking, domestic, and residential water supplies by underground coal mining; and New Mexico has already proposed to OSM revisions to part of its regulatory program, the Field Office and New Mexico 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 New Mexico entirely 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 New Mexico is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. On June 22, 1995, OSM notified New Mexico 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 (Administrative Record No. NM-747).

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

E. Enforcement in Utah

Utah Program Activity, Requirements, and Enforcement

By letter to Utah dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in Utah to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Utah program provisions (Administrative Record No. UT-1001). By letter dated January 20, 1995, Utah responded to OSM's request (Administrative Record No. UT-1015).

Utah stated that the number of underground coal mines in operation after October 24, 1992, may be found in the past and current grant applications filed annually with OSM. From review of these grant applications, OSM determined that there are approximately 21 underground mines that operated after October 24, 1992.

As submitted to OSM on April 14, 1994, and subsequently revised on December 14, 1995 (Administrative Record Nos. UT-917 and UT-997), Utah proposed subsidence material damage provisions at Utah Code Annotated (UCA) 40-10-18(4) that were intended to be counterparts to the provisions of section 720(a)(1) of SMCRA. OSM has not yet published, in accordance with 30 CFR Part 732.17, a final rule *Federal Register* notice detailing its decision on the proposed provisions.

In its January 20, 1995, letter, Utah indicated that it intends to promulgate by March 1996 water replacement statutory provisions that are

counterparts to the provisions of section 720(a)(2) of SMCRA.

Utah did not state whether it has authority to investigate citizen complaints of structural damage or water loss caused by underground mining operations conducted after October 24, 1992. Utah indicated that it did receive, investigate, and resolve one citizen complaint after October 24, 1992, but is also indicated that the complaint was judged not to be one that the Energy Policy Act of 1992 revisions to section 720 of SMCRA could remedy.

On May 1 and 31, and June 5, 1995, OSM discussed with Utah its regulatory program as it relates to section 720 of SMCRA (Administrative Record No. UT-1058).

After further review, OSM has determined that 16 underground mines conducted mining operations after October 24, 1992. Utah has not received for these operations any complaints relating to subsidence damage to noncommercial buildings and to occupied dwellings and related structures, or adverse effects to drinking domestic, and residential water supplies.

Utah stated that it still intends to introduce a water replacement counterpart section 720(a)(2) of SMCRA to its legislature during the 1996 session and that it intends to undertake rulemaking by the summer of 1996. Utah stated that, although there is potential for conflicts with State water law regarding replacement of "junior" water allocation, it is committed to developing water replacement regulations that meet both the requirements of section 720(a)(2) of SMCRA and 30 CFR 817.41(j) and water rights doctrine. Notwithstanding these future program revisions, Utah indicated that it has the authority under existing enactments and rules to adequately address water replacement issues as they arise. It stated that it is committed to the investigation and resolution of citizens' concerns regarding water sources.

Comments. On April 6, 1995, OSM published in the *Federal Register* (60 FR 17501) 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 Utah (Administrative Record No. UT-1039). The comment period closed on May 8, 1995. In response to a request, OSM held a public hearing on May 1, 1995, in Salt Lake City, Utah. OSM entered into the administrative record a verbatim transcript of the hearing testimony

(Administrative Record No. UT-1050). Following are summaries of all substantive comments that OSM received, and OSM's responses to them.

Two commenters indicated that there are 13 active underground mines in Utah (Administrative Record Nos. UT-1045, 1049, and 1050). By OSM's count, there are 16 mines that operated after October 24, 1992, and that are subject to the provisions of the Energy Policy Act.

One party stated 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 (Administrative Record No. UT-1060). Specifically, the party commented that SMCRA contains various statutory procedures 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 will 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 protective 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 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 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 program, not SMCRA, is the law within the State. OSM recognizes that, under existing rules implementing SMCRA, States with approved regulatory programs have primary responsibility for implementing SMCRA, based on the approved program. However, in this rule OSM has carved out a limited exception to the general proposition to the extent necessary to give reasonable force and effect to section 720, while maintaining so far as possible State primacy procedures. OSM believes that the process adopted in this final rule is consistent with and authorized by Congress under the Energy Policy Act, and that case law interpreting other provisions of SMCRA is not necessarily dispositive.

Two commenters recommended that Utah take over the immediate enforcement of Energy Policy Act provisions and 30 CFR 817.41(j) and 817.121(c)(2) because (1) There is a relatively low number of active underground coal mines in Utah, (2) there have been a relatively low number of citizen complaints dealing with subsidence material damage or water supply damage. (3) Utah has promptly taken remedial action of all citizen complaints received, (4) Utah is Keenly aware of State water law, (5) Utah has qualified personnel to enforce the requirements of the Energy Policy Act (Administrative Record Nos. 1045, 1049, and 1050). OSM acknowledges these recommendations and took them into consideration in making a decision on enforcement in Utah.

One commenter stated that the water supply protections afforded by March 31, 1995, Federal regulations are currently in place under the Utah Water Code and that, without further amendment of Utah law, enforcement of these regulations may be accomplished through a memorandum of understanding (MOU) between the Utah Division of Oil, Gas and Mining (Division) and the Utah State Engineer (Engineer, Administrative Record No. UT-1046). Another commenter submitted a suggested MOU addressing water replacement that could be entered into the Division and the Engineer (Administrative Record No. UT-1050). In response to a commenter's perception that a regulatory gap exists between what the Division is willing to enforce and what the Utah State Engineer is willing to enforce (Administrative Record No. UT-1050), the Division endorsed the concept of an MOU with the Engineer as a means to bring together in a complete regulatory framework the Division's

determinations on mining's impact on water and the Engineer's determinations of adjudications on water rights. OSM's response to these comments and submission is that, although this is one approach that Utah may decide to pursue, this MOU is not in place and as such is not a consideration in the Regional Director's decision on whether to institute direct Federal enforcement in Utah. If Utah decides to modify its approved regulatory program through such an MOU, it would have to submit it as a State program amendment for OSM approval in accordance with 30 CFR 732.17.

The Utah Division of Oil, Gas and Mining stated that direct Federal enforcement in the State would amount to institution of a separate Federal program to address only subsidence damage and water replacement issues (Administrative Record No. UT-1050). In its opinion, this would be an inefficient and wasteful use of scarce budgetary resources because (1) It has adequate authority to implement the subsidence damage and water replacement provisions required by the Energy Policy Act and the implementing regulations, (2) there exists significant legal and administrative impediments to creation of a successful separate federal program, and (3) it can have new regulatory provisions in place, if necessary, by March 1996. In making the decision that is set forth below, OSM has given thoughtful consideration to Utah's concerns. OSM does not consider that any direct Federal enforcement in Utah would be inefficient and wasteful because OSM also has a responsibility under section 720(a) of SMCRA to ensure that the protective provisions to remedy subsidence material damage and adversely affected water supplies are promptly applied.

The Division indicated its intent to actively seek the input of the Utah Division of Water Rights when it develops water supply regulations so that these regulations are consistent with existing water rights doctrine. The Division and several other commenters made statements about what State water law and the Utah State Engineer require or do not require with respect to water rights and allocations. Some of these comments related directly or indirectly to the implementation of section 720(a) and 30 CFR 817.41(j). OSM responds to these comments by reiterating its position on water rights that was included in the preamble to the March 31, 1995, Federal regulations.

Section 717(a) requires deference to State water law on questions of water allocation

and use. OSM interprets section 720 and the implementing rules as not requiring the replacement of water supplies to the extent underground mining activities consume or legitimately use the water supply under a senior water right determined under applicable State law. See *In re Permanent Surface Mining Regulation Litigation II, Round III*, 620 F. Supp. 1519, 1525 (D.C.D.C. 1985). However, OSM believes that section 717(a) concerns rights under State water law to consumption or use of water, and was not intended to address destruction or damage of the source of water, or contamination of water supply. Thus, OSM anticipates that underground mining activities which cause destruction or damage of a water supply source, or contamination of a water supply, would be subject to the replacement requirements of section 720 even if the permittee possessed senior water rights.

(60 FR 16722, 16733).

Two commenters indicated that, in a proceeding before the Board on Oil, Gas and Mining concerning alleged diminution and contamination by a Utah mining operation of a water source, the Division was unwilling to enforce the water replacement requirements of section 720(a) of SMCRA (Administrative Record Nos. UT-1047, 1048, and 1050). These commenters, and one other person (Administrative Record No. UT-1050), stated that the Division had not fully enforced the water protection provisions of the Utah program. One of the commenters recommended a number of changes in the implementation of the Utah program and indicated that, until these changes were made, OSM should conduct oversight Utah's implementation of the ground-water protection provisions of the Utah program and, if necessary, directly enforce water resources protection provisions in Utah. The other commenter recommended, at a minimum, joint Division and OSM enforcement of the Energy Policy Act requirements, or direct Federal enforcement. OSM acknowledges these comments and took them into consideration in making the decision set forth below.

One commenter stated that, to the best of his knowledge, Utah does not conduct any monitoring of the hydrological consequences of a mine after it has been permitted to determine whether the mine is affecting the hydrologic balance as predicted in the permit (Administrative Record No. UT-1050). In response to this statement, the Division indicated that, during the operation of a mine, it does reevaluate the hydrologic impact conclusions made at the permitting stage in light of monitoring data collected during the

mine's operation (Administrative Record No. UT-1050).

Regional Director's decision. Prior to the Regional Director making this decision on which enforcement alternative should be implemented in Utah, the Albuquerque Field Office, on May 1 and 31, and June 5, 1995, consulted with Utah in accordance with 30 CFR 843.25(a)(4) (Administrative Record No. UT-1058).

The majority of Utah mines have operated after October 24, 1992, and are subject to the provisions of section 720(a) of SMCRA and the implementing Federal regulations. Although Utah has implemented its regulatory program provisions concerning hydrologic information and hydrologic balance and is committed to the investigation and resolution of citizens' concerns regarding water sources, there are, as is documented in the written record of the public hearing, current concerns and potential for additional complaints regarding the loss, contamination, or diminution of water sources that serve large populations in the coal producing counties in Utah. The mid-1996 projection for promulgating statutory and regulatory State program provisions for water replacement is in keeping with usual timeframes for enactment of legislation and revision of regulations.

The Field Office and Utah agreed that Utah should be the primary enforcer of its State program provisions for subsidence-caused material damage to noncommercial buildings and to occupied dwellings and related structures and for drinking, domestic, and residential water supplies adversely affected by underground coal mining. However, the Field Office found that it is unclear that the water supply protections of section 720(a)(2) of SMCRA and 30 CFR 817.41(j) can be implemented by Utah in all cases. Therefore, the Field Office concluded that, if a situation arises in which Utah's enforcement role as primary enforcer does not appear to fully meet the water replacement requirements of section 720(a)(2) of SMCRA, OSM must take direct Federal enforcement.

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 Utah will occur through State enforcement and, if necessary, direct Federal enforcement of the water replacement requirements of section 720(a)(2) of SMCRA and 30 CFR 817.41(j).

If circumstances within Utah change significantly, the Regional Director may reassess this decision. Formal

reassessment of this decision would be addressed by Federal Register notice.

Dated: July 19, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95-18441 Filed 7-26-95; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Parts 915, 916, and 925

Iowa, Kansas, and Missouri 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 Iowa, Kansas, and Missouri. 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 Iowa, Kansas, and Missouri and consideration of public comments, OSM has decided that initial enforcement is not reasonably likely to be required and that implementation in these States will be accomplished through the State program amendment process.

EFFECTIVE DATE: July 27, 1995.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Acting Director, Kansas City Field Office, Telephone: (816) 374-6405.

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

UT-1069

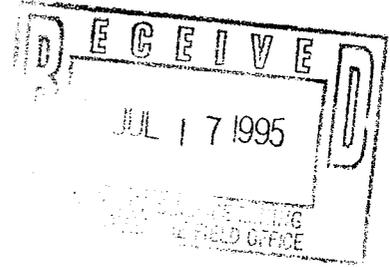


DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

July 12, 1995

REPLY TO
ATTENTION OF:

Engineering Division



Mr. Arthur W. Abbs, Acting Director
Albuquerque Field Office
Office of Surface Mining
Reclamation and Enforcement
505 Marquette Avenue, NW, Suite 1200
Albuquerque, New Mexico 87102

Dear Mr. Abbs:

This is in response to your letter of June 27, 1995,
concerning Administrative Record No. UT-1059.

Our review of the amendment to Utah's Coal Mining and
Reclamation Regulatory Program, found the changes to be
satisfactory to our agency.

Sincerely,

Charles L. Baldi
Acting Chief, Engineering Division
Directorate of Civil Works

TO	DATE	MESSAGE
T. EHMETT		<i>Donna</i>
L. MEADORS		
S. MARTINEZ		
S. MARTINEZ	<i>7/17</i>	
RATHBUN		

July 25, 1995

FILE COPY

Memorandum

To: Peter Rutledge, Chief
Program Support Division

From: Arthur W. Abbs, Acting Director
Albuquerque Field Office

1s/Abbs

Subject: Utah Promulgated Language for SPAT UT-017-FOR

The Albuquerque Field Office (AFO) received the attached promulgated language from Utah (UT-1065) for its March 24, 1993 amendment (UT-827).

The subject rules were promulgated by Utah on July 1, 1994.

AFO reviewed the promulgated language and found it to be identical to what was reviewed and approved by OSM on April 7, 1994, 59 FR 16538 (UT-913). Please insert the promulgated language into your official copies of the Utah rules.

A copy of this memorandum and the attachment are also being transmitted to OSM-HQ for input into COALEX.

If you have any questions contact Vernon Maldonado at 505-766-1486.

Attachment

cc: Edgar Stanton, OSM-HQ

INITIALS	REG/Date	INE/Date	AML/Date
Originator:	<i>5/11/95</i>	<i>7/25/95</i>	
Branch Chief:	<i>D</i>	<i>7/25/95</i>	
Deputy FOD:			Document Name/Date: C:\wp51\vem\plut827.2 cem 7/25/95
FOD:			
Typist:	<i>Cam</i>	<i>7/25</i>	File Code:
Secretary:			
Overnight:			Fax:

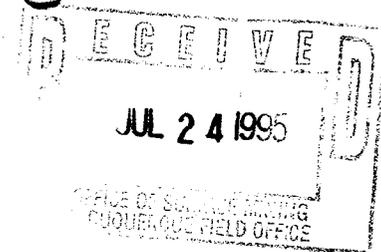


State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

UT-1067



July 21, 1995

Arthur W. Abbs, Acting Director
Office of Surface Mining
Reclamation & Enforcement
505 Marquette N.W., Suite 1200
Albuquerque, New Mexico 87102

Re: UT-025-FOR, Highwalls

Dear Mr. ~~Abbs~~ *Abbs*:

NAME	ROUTE	DATE	MESSAGE
A. Abbs			<i>Donna</i>
T. EHMETT			
L. MEADORS			
S. MARTINEZ			
<i>[initials]</i> D. MARTINEZ		<i>1/24</i>	
S. RATHBUN			

This communication is in response to the notice which appeared in the Federal Register on May 30, 1995, at 60 FR 28040. The subject notice announced approval of Utah's previously submitted program amendments and listed required program amendments at 30 CFR 944.15 and 30 CFR 944.16, respectively. As you know, the Utah program amendments set out in my letter of November 12, 1993, and as revised on June 28 and November 3, 1994, contained proposed rule changes which were intended to be enacted following OSM approval. Now, with the bulk of these rules approved via the May 30, 1995, notice, and the balance contained in a required amendment, Utah has begun the actual rulemaking process and requires additional time.

While the rules approved by the Federal Register notice of May 30, 1995, require no actual action by OSM (since they are approved pending promulgation), I am asking at this time that you recognize that more time will be required until formal adoption, and for the required amendment, that it be required to be performed by October 31, 1995, a 90-day extension for performance.

Should there be additional information required under this program amendment, please contact Ron Daniels, Lowell Braxton, or me. Thank you for your prompt action at this time.

Very truly yours,

[Signature]
James W. Carter
Director

jbe
cc: R. Seibel
R. Daniels
P:HIWALEXT.LTR



the administration and management of Montana's reclamation program.

As discussed in finding No. 3, the Director approves the policies and procedures concerning consultation and coordination by the designated agency in administering Montana's AMLR program.

As discussed in finding No. 4, the Director approves Exhibits B, C, and D as additions to Montana's AMLR Plan.

The Director approves the proposed revisions of the Montana plan with the provision that they be fully promulgated in identical form to the plan amendment submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 926, codifying decisions concerning the Montana plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VII. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 13, 1995.

Richard J. Seibel,
Regional Director, Western Regional
Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 926—MONTANA

1. The authority citation for Part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 926.20 is revised to read as follows:

§ 926.20 Approval of Montana Abandoned Mine Land Reclamation Plan.

The Montana Abandoned Mine Land Reclamation Plan, as submitted on June 16, 1980, and as revised on July 28, 1980, is approved effective November 24, 1980. Copies of the approved plan are available at:

(a) Montana Department of Environmental Quality, 1625 Eleventh Avenue, Helena, MT 59620-1601.

(b) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, Room 2128, Casper, WY 82601-1918.

3. Section 926.25 is added to read as follows:

§ 926.25 Approval of abandoned mine land reclamation plan amendments.

(a) The Montana AMLR Plan amendment, as submitted to OSM on April 20, 1983, and as revised on June 15, 1983, is approved effective September 19, 1983.

(b) Certification by Montana of completion of all known coal-related impacts, as submitted to OSM on December 27, 1989, is accepted effective July 9, 1990.

(c) The Montana AMLR Plan amendment, as submitted to OSM on March 22 and April 5, 1995, is approved effective July 19, 1995.

[FR Doc. 95-17715 Filed 7-18-95; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 944

SPAT UT-024

Utah Regulatory Program and Utah Abandoned Mine Land Reclamation (AMLR) Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with additional requirements, a proposed amendment to the Utah regulatory program and Utah AMLR plan (hereinafter referred to as the "Utah program" and the "Utah plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed revisions to the Utah Coal Mining and Reclamation Act of 1979. The revisions to the Utah program concern definitions of new terms; rulemaking authority and procedures; administrative procedures; Division of Oil, Gas and Mining (Division) action on permit applications; informal conferences; appeals and further review; release of performance bonds; revegetation standards on lands eligible for re-mining; operator requirements for underground coal mining; contest of violation or amount of penalty; violations of Utah's program or permit conditions; judicial review of rules and orders; repeal of specific sections of the Utah Code Annotated 1953; and repeal dates of certain provisions of the Utah program. The revisions to the Utah plan concern lands and water eligible for reclamation, recovery of reclamation costs, and liens against reclaimed lands. The amendment is intended to revise the Utah program to be consistent with the

Utah Administrative Procedures Act, and to revise the Utah program and Utah plan to be consistent with SMCRA, and improve operational efficiency. EFFECTIVE DATE: July 19, 1995.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, Western Regional Coordinating Center, Telephone: (303) 672-5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program and the Utah Plan

On January 21, 1981, and June 3, 1983, the Secretary of the Interior conditionally approved the Utah program and approved the Utah plan. General background information on the Utah program and Utah plan, including the Secretary's findings, the disposition of comments, the conditions of approval of the Utah program, and approval of the Utah plan, can be found in the January 21, 1981, and June 3, 1983, publications of the Federal Register (46 FR 5899 and 48 FR 24876). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30. Subsequent actions concerning Utah's plan amendments can be found at 30 CFR 944.25.

II. Proposed Amendment

By letter dated April 14, 1994, Utah submitted a proposed amendment to its program and plan pursuant to SMCRA (administrative record No. UT-917). The amendment consists of proposed revisions to the Utah Coal Mining and Reclamation Act of 1979. Utah submitted the proposed amendment in part to make its program and plan consistent with SMCRA and in part at its own initiative to make its program consistent with the Utah Administrative Procedures Act, thereby improving operational efficiency.

The Utah program provisions of the Utah Coal Mining and Reclamation Act of 1979 that Utah proposed to revise were: Utah Code Annotated (UCA) 40-10-2, purpose of Chapter 10; (2) UCA 40-10-3, definitions of new terms "adjudicative proceeding," "lands eligible for re-mining," and "unanticipated event or condition;" (3) UCA 40-10-6.5, rulemaking authority and procedure; (4) UCA 40-10-6.7, administrative procedures; (5) UCA 40-10-7, prohibition of financial interest in any coal mining operation; (6) UCA 40-10-8, coal exploration rules issued by the Division and penalty for violation; (7) UCA 40-10-10, permit applications; (8) UCA 40-10-11, Division action on the permit application; (9) UCA 40-10-

12, revision or modification of permit provisions; (10) UCA 40-10-13, informal conferences; (11) UCA 40-10-14, permit approval or disapproval, appeals, and further review; (12) UCA 40-10-15, performance bonds; (13) UCA 40-10-16, release of performance bond, surety, or deposit; (14) UCA 40-10-17, revegetation standards on lands eligible for re-mining; (15) UCA 40-10-18, operator requirements for underground coal mining; (16) UCA 40-10-19, information provided by the permittee to the Division and right of entry; (17) UCA 40-10-20, contest of violation or amount of penalty; (18) UCA 40-10-21, civil action to compel compliance with Utah's program and other rights not affected; (19) UCA 40-10-22, violations of Utah's program or permit conditions; (20) UCA 40-10-24, determination of unsuitability of lands for surface coal mining; and (21) UCA 40-10-30, judicial review of rules or orders. Utah also proposed to repeal UCA 40-10-4, "Mined land reclamation provisions applied," and UCA 40-10-31, "Chapter's procedures supersede Title 63, Chapter 46b." Finally, Utah proposed to repeal UCA 40-10-11(5), modification of permit issuance prohibition, and UCA 40-10-17(2)(t)(ii), revegetation standards on lands eligible for re-mining, effective September 30, 2004.

The Utah plan provisions of the Utah Coal Mining and Reclamation Act of 1979 that Utah proposed to revise were: (1) UCA 40-10-25, lands and water eligible for reclamation; (2) UCA 40-10-27, entry upon land adversely affected by past coal mining practices, State acquisition of land and public sale, and water pollution control and treatment plants; and (3) UCA 40-10-28, recovery of reclamation costs and liens against reclaimed land.

OSM announced receipt of the proposed amendment in the May 12, 1994, Federal Register (59 FR 24675), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT-926). Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 13, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of the Utah Coal Mining and Reclamation Act of 1979 at UCA 40-10-3(1), definition of "adjudicative proceeding;" UCA 40-10-4, applicability of provisions of UCA 40-8; UCA 40-10-6.7 and Utah Administrative Rule (Utah Admin. R.) 641-100-100, administrative procedures; UCA 40-10-11(3) schedule

of applicant's mining law violations; UCA 40-10-11(5), re-mining operation violations resulting from unanticipated events or conditions; UCA 40-1013(2)(b), location of informal conferences; UCA 40-1014(6)(c), appeal to district court and further review; UCA 40-10-16(6), information conference or formal hearings concerning performance bond release decisions; UCA 40-10-18(4), damage resulting from underground coal mining subsidence; UCA 40-10-20(2)(e), contest of a violation or amount of a civil penalty; UCA 40-10-22(2)(b), cessation order, abatement notice or show cause order; UCA 40-10-22(3)(e), costs assessed against the permittee or any person having an interest that is or may be adversely affected by the notice or order of the Board of Oil, Gas and Mining (Board); and UCA 40-10-28 (1)(b) and (2)(b), recovery of reclamation costs and liens against reclaimed land. OSM notified Utah of the concerns by letter dated October 24, 1994 (administrative record No. UT-980).

Utah responded in a letter dated December 7, 1994, by submitting a revised amendment and additional explanatory information (administrative record No. UT-997). Utah proposed revisions to its Rules of Practice and Procedure of the Board at Utah Admin. R. 641-100-100, administrative procedures. Utah also proposed revisions to and additional explanatory information for UCA 40-10-14(6), appeal to district court and further review, UCA 40-10-4, mined land reclamation provisions applied, UCA 40-10-16(6), formal hearings or informal conferences, and UCA 40-10-22(2)(b), cessation orders, abatement notices, or show cause orders.

Based upon the revisions to and additional explanatory information for the proposed program and plan amendment submitted by Utah, OSM reopened the public comment period in the December 15, 1994, Federal Register (59 FR 64636, administrative record No. UT-1002). The public comment period ended on December 30, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with additional requirements, that the proposed program and plan amendment submitted by Utah on April 14, 1994, and as revised by it and supplemented with additional explanatory information on December 7, 1994, is no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. *Nonsubstantive Revisions to Utah's Statutes*

Utah proposed revisions to the following previously-approved statutes that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (corresponding SMCRA provisions are listed in parentheses):

UCA 40-10-2 (1) through (6), purpose (section 102 of SMCRA),

UCA 40-10-3 (2) through (7), (9) through (20), and (22), recodification of definitions for the terms "alluvial valley floors," "approximate original contour," "Board," "Division," "imminent danger to the health and safety of the public," "employee," "operator," "other minerals," "permit," "permit applicant," or "applicant," "permitting agency," "permit area," "permittee," "person," "prime farmland," "reclamation plan," "surface coal mining and reclamation operations," "surface coal mining operations," and "unwarranted failure to comply" (sections 701 (1), (2), (8), (13) through (21), (28), (29), and (33) of SMCRA),

UCA 40-10-6.5 (2) and (3) [recodification], rulemaking procedures (section 505 of SMCRA),

UCA 40-10-7(1), prohibited financial interest in mining operations (section 201(f) of SMCRA),

UCA 40-10-8 (1) and (3), exploration rules issued by Division and penalty for violation (section 512 of SMCRA),

UCA 40-10-10(2), submission of application and reclamation plan (section 507 of SMCRA),

UCA 40-10-11 (1), (2) (a) through (d), (e)(ii), (f) (i) and (iii); and (4) (a) and (b), Division action on permit application, requirements for approval, and restoration of prime farmland (section 510 of SMCRA),

UCA 40-10-12(3), revision or modification of permit provisions (section 511(c) of SMCRA),

UCA 40-10-14 (2) and (3), notice to the applicant of approval or disapproval of the application and hearings (section 514 of SMCRA),

UCA 40-10-15(1), performance bonds (section 509(a) of SMCRA),

UCA 40-10-16(1), (3), and (6)(a), release of performance bond, surety, or deposit; action on application for relief of bond; and formal hearings or informal conferences (section 519 of SMCRA),

UCA 40-10-17(2)(g); (2)(j) (i)(B) and (ii) (A) and (B); (2)(m); (2)(o) and (o) (i), (iv), and (v); (2)(p) (i)(F), (ii), and (iii); (2)(t)(i); (2)(v)(viii); (3)(b) and (b)(ii); (3)(c); (4) (a) and (d); and (5), performance standards for all coal mining and reclamation operations, additional standards for steep-slope surface coal mining, and variances (section 515 of SMCRA),

UCA 40-10-18(1), (2)(i)(i)(B), (2)(j), and (5), underground coal mining, rules regarding surface effects, operator requirements for underground coal mining, and applicability of other chapter provisions (section 516 of SMCRA),

UCA 40-10-19(1) and (2)(a), information provided by the permittee to the Division and

inspections by the Division (sections 517(b) and (b)(3) of SMCRA),

UCA 40-10-21(1)(a)(i) and (ii), (2)(a)(ii), and (5), civil action to compel compliance with chapter, jurisdiction, and other rights not affected (section 520 of SMCRA),

UCA 40-10-22 (1)(c) and (2)(a)(i), violation of chapter or permit conditions and inspections (section 521 of SMCRA),

UCA 40-10-24(1)(c) (i) (A), (B), (C), and (D), and (ii); (e) (i), (ii), and (iii); and (2) (a) and (b), determination of unsuitability of lands for surface coal mining, petitions, and public hearings (section 522 of SMCRA),

UCA 40-10-25(2) (d) and (e) [recodification] and (3) and (3)(a), AMLR program, expenditure priorities, and eligible lands and water (sections 402(g)(4), 403, and 404 of SMCRA), and

UCA 40-10-27 (5)(a) and (12)(b), entry upon land adversely affected by past coal mining practices and State acquisition of lands (sections 407(g) and 413 of SMCRA).

Because the proposed revisions to these previously-approved statutes are nonsubstantive in nature, the Director finds that these proposed Utah statutes are no less stringent than SMCRA. The Director approves these proposed statutes.

2. *Substantive Revisions to Utah's Statutes That Are Substantively Identical to the Corresponding Provision of SMCRA*

Utah proposed revisions to the following statutes that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding SMCRA provisions (listed in parentheses).

UCA 40-10-3 (8) and (21), definitions for the terms "lands eligible for re-mining" and "unanticipated event or condition" (sections 701 (33) and (34) of SMCRA),

UCA 40-10-11(5) (b), and (c), Division action on permit application and requirements for approval (section 510(e) of SMCRA),

UCA 40-10-17(2)(t)(ii), performance standards for lands eligible for re-mining (section 515(b)(20)(B) of SMCRA),

UCA 40-10-22(1) (d), and (3) (a), (b), (d), and (f), violations of chapter or permit conditions; cessation orders, abatement notices, or show cause orders; suspension or revocation of permits; and reviews (sections 521(a)(4) and 525 (a)(1) and (a)(2) and (d) of SMCRA), and

UCA 40-10-25(2)(d) [deletion], 3(b), (4), (5), and (6), AMLR program and eligible lands and water (section 402(g)(4) of SMCRA).

Because these proposed Utah statutes are substantively identical to the corresponding provisions of SMCRA, the Director finds that they are no less stringent than SMCRA. The Director approves these proposed statute provisions.

3. *UCA 40-10-3(1), Definition of "Adjudicative Proceeding"*

Utah proposed at UCA 40-10-3(1) a definition for the term "adjudicative proceeding" to mean "a division or board action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license." This definition is similar to the definitions of the same term at existing UCA 63-46b-2(1)(a) as described at UCA 63-46b-1 of the Utah Administrative Procedures Act (UAPA) and Utah Admin. R. 641-100-200 of the Rules of Practice and Procedure of the Board, except that the proposed definition at UCA 40-10-3(1) does not contain the phrase "and judicial review of all such actions."

The term "adjudicative proceeding" is not specifically defined in the provisions of SMCRA or the Federal regulations at 30 CFR Chapter VII. Although there is no counterpart definition of "adjudicative proceeding" in SMCRA or the implementing Federal regulations, section 526(e) of SMCRA provides, in part, that "[a]ction of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law * * *."

UCA 40-10-30, which is Utah's counterpart to 526(e) of SMCRA, establishes requirements for judicial review of any "rule or order of the Board." However, the proposed definition at UCA 40-10-3(1) of "adjudicative proceeding" does not reference the judicial review provision at UCA 40-10-30(1), and by not specifically providing for "judicial review of all such actions" in the proposed definition, the implication is that judicial review is not included in "adjudicative proceedings." The inconsistency between definitions of the same term within provisions of the Utah regulatory program and the lack of consistency between the provisions of UCA 40-10-3(1) and 40-10-30 were pointed out to Utah by OSM in its October 24, 1994, issue letter (issue No. 1). In order to be consistent with its own provisions at UCA 40-10-30(1), which do require judicial review of adjudicative proceedings, and with its other existing definitions of "adjudicative proceedings" at UCA 63-46b-2(1)(a), which is further clarified at UCA 63-46b-1, and Utah Admin. R. 641-100-200, Utah, in its December 7, 1994, response to OSM's issue letter,

stated that it would pursue the inclusion of judicial review in its definition of "adjudicative proceeding" at UCA 40-10-3(1) during its 1996 legislative session.

Therefore, the Director finds that Utah's proposed definition of "adjudicative proceeding" at UCA 40-10-3(1), while not inconsistent with the provisions of SMCRA because there is no Federal counterpart definition for this term, is inconsistent with the definition of the same term elsewhere at UCA 63-46b-2(1)(a), as clarified at UCA 63-46b-1, of the UAPA, and the implementing rules at Utah Admin. R. 641-100-200. With the requirement that Utah further revise its definition of "adjudicative proceeding" at UCA 40-10-3(1) to include judicial review of agency actions, the Director is approving Utah's proposed definition of "adjudicative proceeding" at UCA 40-10-3(1).

4. Repeal of UCA 40-10-4, Applicability of Provisions of UCA 40-8

Utah proposed to repeal its provisions at UCA 40-10-4, which concern the applicability of provisions of Title 40, Chapter 8 and its implementing rules at Utah Admin. R. Part 647 to the State's coal mining and reclamation operations. UCA 40-8 and Utah Admin. R. Part 647 pertain to the Utah Mined Land Reclamation Act and contain general reclamation standards for mining, principally for hard rock mining. There are no Federal SMCRA to either UCA 40-10-4 or 40-8.

The repeal of UCA 40-10-4 would appear to eliminate any applicability of the provisions of UCA 40-8 and Utah Admin. R. Part 647 to the Utah program. OSM notes, however, that UCA 40-10-6, which is not proposed for revision in this amendment, also references UCA 40-8. The language at UCA 40-10-6 provides that the Board and Division have powers, functions, and duties in addition to those provided in Title 40, Chapter 8, and that employees, agents, and contractors are authorized by the Board and Division to enter upon any property for the purpose of carrying out the provisions of Chapter 10 and Chapter 8, Title 40.

OSM, in its October 24, 1994, issue letter (issue No. 2), asked Utah to clarify whether the Board and Division derived some or all of their powers, functions, or duties necessary for the administration of Utah's coal program from provisions contained in UCA 40-8. Utah stated in its December 7, 1994, response to this issue that UCA 40-10-4 was proposed for deletion from the Utah Coal Mining and Reclamation Act in order to remove ambiguity from

Utah's statute to clarify which, if any, of the UCA 40-8 provisions would apply to the State's coal regulatory program. Utah clarified further that the reference to UCA 40-8 at UCA 40-10-6 stems from the legislative branch awarding more powers in 1979 to the Board and Division and that such reference is only for historical purposes. Utah also stated that should there be provisions of UCA 40-8 or 40-6 which are discovered to apply to coal or which, when changed, would impact Utah's coal regulatory program, these provisions would be included in a program amendment.

Based upon the explanation provided by Utah and the State's assurance that the Board and Division do not derive powers needed to implement Utah's coal regulatory program from UCA 40-8, the Director finds that the deletion of the UCA 40-10-4 from the Coal Mining and Reclamation Act of 1979 is not inconsistent with SMCRA and approves the deletion of this statutory provision.

5. UCA 40-10-6.5 (1) and (3), Rulemaking Authority and Deletion of Administrative Procedures

Utah proposed the addition of new language at UCA 40-10-6.5(1) to provide that "[t]he board shall promulgate rules under this chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act [UARA]." OSM, in the January 21, 1981, Federal Register (46 FR 5899), approved UARA provisions that were incorporated by Utah into its program as part of its original program submittal.

Section 503(a)(7) of SMCRA provides, in part, that "[e]ach state * * * shall submit to the Secretary, * * * a State program which demonstrates that such State has the capability of carrying out the provisions of this Act and meeting its purposes through * * * rules and regulations consistent with regulations issued by the Secretary pursuant to this Act."

The Director finds that the proposed addition at UCA 40-10-6.5(1) is not inconsistent with section 503(a)(7) of SMCRA and the Director approves the proposed addition of this statute.

In addition, Utah proposed to delete UCA 40-10-6.5(3) in its entirety. Existing UCA 40-10-6.5(3) provides that:

[h]earings under this chapter shall be conducted in a manner which guarantees the parties' due process rights. This includes, but is not limited to, the right to examine any evidence presented to the [hearing] committee, the right to cross-examine any witness, and a prohibition of ex parte communication between any party and a member of the board.

Utah proposed at UCA 40-10-6.7(2)(b) the addition of similar provisions to those proposed for deletion (see finding No. 6). The Director finds that, with the proposed addition of similar language at UCA 40-10-6.7(2)(b), the deletion of UCA 40-10-6.5(3) is not inconsistent with SMCRA. The Director approves the deletion of this statute.

6. UCA 40-10-6.7 and Utah Admin. R. 641-100-100, Administrative Procedures

Utah proposed new administrative procedures at UCA 40-10-6.7 to provide:

(1)(a) Informal adjudicative proceedings shall be conducted by the division under this chapter and shall be referred to as conferences or informal conferences.

(b) The conduct of conferences shall be governed by rules adopted by the board which are in accordance with Title 63, Chapter 46b, Administrative Procedures Act [UAPA].

(2)(a)(i) Formal adjudicative proceedings shall be conducted by the division or board under this chapter and shall be referred to as hearings or public hearings.

(ii) The conduct of hearings shall be governed by rules adopted by the board which are in accordance with Title 63, Chapter 46b, Administrative Procedures Act [UAPA].

(b) Hearings under this chapter shall be conducted in a manner which guarantees the parties' due process rights. This includes:

(i) the right to examine any evidence presented to the board;

(ii) the right to cross-examine any witness; and

(iii) a prohibition of ex parte communication between any party and a member of the board.

(c) A verbatim record of each public hearing required by this chapter shall be made, and a transcript made available on the motion of any party or by order of the board.

Although not explicitly stated in this provision, the Utah Admin. R. Parts 645 and 641 rules respectively apply to informal and formal adjudicative proceedings and provide clear direction on how formal and informal hearings are to be conducted. There are no specific counterpart provisions in SMCRA, however, as discussed in finding No. 5 above; Utah's proposed deletion of UCA 40-10-6.5(3) in its entirety and the addition of the deleted provisions at UCA 40-10-6.7(2)(b) and (b)(i), (ii), and (iii) provides hearing requirements that are not inconsistent with SMCRA and its implementing Federal regulations.

Utah, in this amendment, also proposed a revision to its Rules of Practice and Procedure of the Board at Utah Admin. R. 641-100-100 to add the phrase "the Coal Program Rules" in the

sentence "[t]he rules for informal adjudicative proceedings are in the Coal Program Rules, the Oil and Gas Conservation Rules and the Mineral Rules." OSM previously approved the informal proceeding provisions of Utah Admin. R. 645 and formal proceeding provisions of Utah Admin. R. 641.

The Director finds that the addition of new administrative procedures at UCA 40-10-6.7 is not inconsistent with SMCRA. OSM wishes to clarify that any future rules implemented by Utah in accordance with UAPA must be revised and determined to be consistent with SMCRA. In addition, the Director finds that the proposed revision at Utah Admin. R. 641-100-100 referencing Utah's coal mining rules at Utah Admin. R. Part 645 is not inconsistent with SMCRA. Therefore, the Director approves the addition of UCA 40-10-6.7 and the revision of Utah Admin. R. 641-100-100.

7. UCA 40-10-11(3), Schedule of Applicant's Mining Law Violations and Pattern of Violations Determination

Utah proposed to revise UCA 40-10-11(3) to provide, in part:

[t]he applicant shall file with his permit application a schedule listing any and all notices of violations of this chapter, any state or federal program or law approved under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Sec. 1201 et seq., and any law, rule, or regulation of the United States, State of Utah, or any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application. * * * no permit shall be issued to an applicant after a finding by the board * * * that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this chapter of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter.

Emphasis added. As used by Utah in UCA 40-10-11(3), "this chapter" means UCA Title 40, Chapter 10.

Section 510(c) of SMCRA provides, in part, that (1) the applicant shall file with the permit application a schedule listing any and all notices of violations of, among other things, "this Act;" and (2) the permit shall not be issued after a finding that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of "this Act" of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not

to comply with the provisions of "this Act." The reference to "this Act" in section 510(c) of SMCRA includes SMCRA, the implementing Federal regulations, and all State and Federal programs approved under SMCRA. (See 48 FR 44344, 44389, September 28, 1983. See also 53 FR 38868, 38882-38883, October 3, 1988.)

With regard to the first sentence of UCA 40-10-11(3) that requires that the permit application contain a schedule listing any and all notices of violations, the provision encompasses violations of all State and Federal programs approved under SMCRA, but it does not encompass violations of SMCRA itself or violations of the implementing Federal regulations. With regard to the portion of UCA 40-10-11(3) that deals with the pattern of violations, "this chapter" encompasses only violations of the State statute. It does not encompass violations of SMCRA, the implementing Federal regulations, any State and Federal programs enacted under SMCRA, or other provisions of the approved Utah program.

OSM discussed these issues in its October 24, 1994, issue letter to Utah (issue No. 4). Utah agreed in its December 7, 1994, response to OSM's issue letter that UCA 40-10-11(3) needed to be revised in accordance with the deficiencies identified in OSM's issue letter. Utah stated that it would, in its 1996 legislative session, pursue the changes to UCA 40-10-11(3).

Based upon the above, the Director, with the requirement that Utah revise UCA 40-10-11(3) to require that (1) the schedule of the applicant's mining law violations required in connection with a permit application includes violations of SMCRA and the implementing Federal regulations and (2) the pattern of violations determination discussed therein includes violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, and other provisions of the approved Utah program, finds UCA 40-10-11(3) to be no less stringent than section 510(c) of SMCRA. The Director approves the proposed revisions at UCA 40-10-11(3).

8. UCA 40-10-11(5)(a), Remining Operation Violations Resulting From Unanticipated Events or Conditions

Proposed UCA 40-10-11(5)(a) provides that the prohibition of UCA 40-10-11(3), which limits the issuance of a permit for violations (discussed above at finding No. 7), does not apply to a permit application after October 14, 1992, if the violation resulted from an unanticipated event or condition that occurred at a surface coal mining

operation on lands eligible for remining under a permit held by the person making the application. This provision is similar to section 510(e) of SMCRA, except that section 510(e) of SMCRA applies after the date of enactment of the Energy Policy Act of 1992, which was October 24, 1992. OSM discussed the difference in dates in its October 24, 1994, issue letter to Utah (issue No. 4). Utah stated in its December 7, 1994, response to OSM's issue letter that the October 14 date at UCA 40-10-11(5)(a) is a typographical error and that the correct date should be October 24.

With the requirement that Utah revise UCA 40-10-11(5)(a) to reflect an effective date of "after October 24, 1992," the Director finds UCA 40-10-11(5)(a) to be no less stringent than section 510(e) of SMCRA. The Director approves proposed UCA 40-10-11(5)(a).

9. UCA 40-10-13(2)(b), Location of Informal Conferences

Existing UCA 40-10-13(2)(b) states that, if a person files written objections on an initially-proposed or revised mine permit application, the Division shall hold an informal conference within a reasonable time of the receipt of the objections or request. Utah proposed to revise this rule to further state, among other things, that:

[t]he conference shall be informal and shall be conducted in accordance with the procedures described in Subsection (b), irrespective of the requirements of Section [UCA] 63-46b-5, Administrative Procedures Act. The conference may be held in the locality of the coal mining and reclamation operation if requested within a reasonable time after written objections or the request for an informal conference are received by the division.

Emphasis added. The procedures described in subsection (b) of UCA 40-10-13(2) are consistent with the procedures for informal conferences established by section 513(b) of SMCRA, except that SMCRA requires that the regulatory authority shall hold an informal conference in the locality of the proposed mining, if requested within a reasonable time of the receipt of such written objections or the request.

Because Utah did not submit any rationale for this statute, it is not clear what it intended with the use of the word "may" instead of "shall." It is possible that Utah intended, as section 513(b) of SMCRA requires, that the Division would always hold an informal conference in the locality of the proposed mining when requested within a reasonable time after receipt of the objections or request. However, the use of the word "may" in the proposed

statute would appear to allow Utah discretion to not hold the informal conference in the locality of the proposed mining even when the Division receives a request to do so within a reasonable time. The Director finds that UCA 40-10-13(2)(b), to the extent that the first sentence of the proposed new language at this statute requires that the conference be informal and be conducted in accordance with the procedures for informal conferences, is no less stringent than section 513(b) of SMCRA, and approves this part of the statute. However, to the extent that the second sentence Utah proposed to add at UCA 40-10-13(2)(b) allows the Division to possibly not hold the informal conference in the locality of the coal mining and reclamation operation when such conference is requested within a reasonable time, the Director finds UCA 40-10-13(2)(b) is less stringent than section 513(b) of SMCRA. Utah stated in its December 7, 1994, response to OSM's October 24, 1994, issue letter (issue No. 6), that it would pursue a change from the discretionary "may" in holding the informal conference in the locality of the mining operation to a mandatory "shall" in its 1995 legislative session.

Therefore, with the requirement that Utah revise UCA 40-10-13(2)(b) to change the word "may" to "shall" in the sentence that begins "[t]he conference may be held in the locality of the coal mining and reclamation operation * * *," the Director finds UCA 40-10-13(2)(b) to be no less stringent than section 513(b) of SMCRA. The Director approves the proposed revisions at UCA 40-10-13(2)(b).

10. UCA 40-10-14(6), Appeal to District Court and Further Review

In response to the required amendment at 30 CFR 944.16(b) (September 27, 1994; 59 FR 49185, 49186; finding No. 3), which required Utah to alleviate a discrepancy in the requirements addressing the jurisdiction of the Utah Supreme Court and the State district courts, and at its own initiative, Utah proposed to revise UCA 40-10-14(6). Specifically, Utah proposed that:

(a) [a]n applicant or person with an interest which is or may be adversely affected who has participated in the proceedings [to determine whether a permit should be issued] as an objector, and who is aggrieved by the decision of the board, may appeal the decision of the board directly to the Utah Supreme Court.

(b) [i]f the board fails to act within the time limits specified in this chapter [UCA Title 40, Chapter 10], the applicant or any person with an interest which is or may be adversely affected, who has requested a hearing in accordance with Subsection (3), may bring an

action in the district court for the county in which the proposed operation is located.

(c) [a]ny party to the action in district court may appeal from the final judgment, order, or decree of the district court.

(d) [t]ime frames for appeals under Subsections (6) (a) through (c) shall be consistent with applicable provisions in Section 63-46-14, Administrative Procedures Act.

(Italics indicate new language proposed to be added to this statute.) Utah also proposed the deletion of the provision at UCA 40-10-14(6)(b) that required that "[r]eview of the adjudication of the district court is by the [Utah] Supreme Court."

Section 526(e) of SMCRA provides, in pertinent part, that actions of the State regulatory authority pursuant to an approved State program are subject to judicial review by a court of competent jurisdiction in accordance with State law.

The Director finds that Utah's proposed procedures for further review and appeal of decisions concerning permit applications at UCA 40-10-14(6) are consistent with and no less stringent than the judicial review requirements of section 526(e) of SMCRA. Therefore, the Director approves proposed UCA 40-10-14(6). The Director also notes that the proposed revisions at UCA 40-10-14(6) satisfy the required amendment at 30 CFR 944.16(b) (59 FR 49185, 49186; September 27, 1994; finding No. 3), which required Utah to amend this statute to eliminate inconsistencies regarding appellate procedures. Accordingly, the Director is removing the required amendment at 30 CFR 9434.16(b).

11. UCA 40-10-16(6) (b) through (d), Informal Conferences or Formal Hearings Pertaining to Performance Bond Release Decisions

Utah proposed to delete its procedural requirements pertaining to bond release decisions at UCA 40-10-16(6) (b) through (d) and to replace them with a reference in UCA 40-10-16(6)(d) to the Board's Rules of Practice and Procedure, which are at Utah Admin. R. Part 641. Existing UCA 40-10-16(6) is substantively identical to the provisions of sections 519 (f), (g), and (h) of SMCRA, which provides, in pertinent part, the requirements for advertising notice of a hearing, establishing an informal conference to resolve written objections, gathering evidence, and compiling a verbatim record and making a transcript available.

The procedural requirements at sections 519 (f), (g), and (h) of SMCRA are contained in the referenced Rules of Practice and Procedure of the Board at

Utah Admin. R. Part 641. In addition, Utah has clarified, that for the purposes of UCA 40-10-16(6), all of the provisions of Utah Admin. R. Part 641 apply to hearings held for the purpose of bond release.

There is no counterpart provision in SMCRA similar to Utah's provision at UCA 40-10-16(6)(c) that allows an informal conference to be converted to a formal proceeding under the standards set forth at UCA 63-46b-4 of UAPA. OSM requested in its October 24, 1994, issue letter (issue No. 8) that Utah verify that all procedural requirements accompanying a formal hearing will occur prior to continuing the conference as a formal proceeding when an informal conference is converted to a formal proceeding under UCA 63-46b-4. Utah responded in its December 7, 1994, letter that when a hearing is converted to a formal proceeding from an informal proceeding, all of the requirements of a formal proceeding apply.

Based upon Utah's assurances that the provisions of Utah Admin. R. Part 641, Rules of Practice and Procedure of the Board, provide for counterpart requirements to sections 519 (f), (g), and (h) of SMCRA, apply to bond release hearings, and that, when an informal hearing is converted to a formal hearing, the requirements of a formal proceeding apply, the Director finds that the revisions proposed by Utah at UCA 40-10-16(6) are no less stringent than sections 519 (f), (g), and (h) of SMCRA. The Director approves the revised statute.

12. UCA 40-10-18(4) (a) through (c), Damage Resulting From Underground Coal Mining Subsidence

Utah proposed new language at UCA 40-10-18(4) (a) through (c) to provide:

(a) [u]nderground coal mining operations conducted after October 24, 1994, shall be subject to the following requirement: The permittee shall promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and related structures of noncommercial building due to underground coal mining operations. Repair of damage will include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and related structures of noncommercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and related structures or noncommercial building and will be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium prepaid insurance policy.

(b) [n]othing in Subsection (4) shall be construed to prohibit or interrupt underground coal mining operations.

(c) [w]ithin one year after the date of enactment of Subsection (4), the board shall adopt final rules to implement Subsection (4).

The proposed language at UCA 40-10-18(4)(a) is substantively identical to the language provided at section 720(a)(1) of SMCRA, which requires repair or compensation for material damage to certain structures resulting from subsidence due to underground coal mining. Therefore, the Director finds that UCA 40-10-18(4)(a) is no less stringent than SMCRA and approves the statute.

The proposed language at UCA 40-10-18(4)(b) is identical to the last sentence of section 720(a)(2) of SMCRA, which provides that "[n]othing in this section shall be construed to prohibit or interrupt underground coal mining operations." This proposed language is consistent with section 720(a)(2) of SMCRA and the Director approves it. However, UCA 40-10-18(4)(b) lacks a counterpart provision to the first sentence of section 720(a)(2), which requires the prompt replacement of any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. As stated in the March 31, 1995, Federal Register final rule (60 FR 16722, 16745), if the Director determines that certain State program provisions should be amended in order to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17. For Utah, this may mean that a 30 CFR part 732 issue letter may be written if a determination is made that Utah's program is less effective than the Federal rules concerning the protection of water supplies affected by underground coal mining operations.

The proposed language at UCA 40-10-18(4)(c) is Utah's counterpart provisions to section 720(b) of SMCRA, which requires the promulgation, after providing notice and an opportunity for public comment, of final regulations to implement the subsidence provisions of section 720 of SMCRA. The Director finds that UCA 40-10-18(4)(c) is no less stringent than section 720(b) of SMCRA and approves it.

13. UCA 40-10-20(2)(e)(ii), Contest of Violation or Amount of Civil Penalty

In response to the Director's previous finding that UCA 40-10-20(3) was less stringent than section 518(c) of SMCRA, and the Director's deferred decision on this statutory provision (September 27, 1994; 59 FR 49185, 49187; finding No. 5), Utah proposed to create UCA 40-10-20(2)(e)(ii) to require that, if the operator charged with a violation fails to forward the amount of the penalty to the Division within 30 days of receipt of the results of an informal conference, the operator waives any opportunity "for further review of the violation or to contest the violation."

Section 518(c) of SMCRA provides, in part, that failure of the operator to forward the amount of the penalty to the Secretary of the Interior within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. Utah's proposed phrase "for further review of the violation or to contest the violation" addresses an operator's waiver of the right to contest the fact of the violation, but does not address an operator's waiver of the right to contest the amount of the civil penalty.

The Director finds UCA 40-10-22(2)(e)(ii) to be less stringent than section 518(c) of SMCRA to the extent that it does not preclude an operator from contesting the amount of the penalty when the operator does not forward the amount of the civil penalty to the Division within 30 days of the operator's receipt of the results of the informal conference. Utah stated in its December 7, 1994, response to OSM's October 24, 1994, issue letter (issue No. 10) that it would pursue clarification in its 1996 legislative session of what is "waived when an operator fails to forward the amount of the penalty to the Division.

Therefore, with the requirement that Utah revise UCA 40-10-20(2)(e)(ii) to provide for a waiver of the operator's right to contest the amount of the civil penalty when the operator fails to forward the amount of the penalty to the regulatory authority within 30 days of receipt of the results of the informal conference, the Director finds UCA 40-10-20(2)(e)(ii) to be no less stringent than section 518(c) of SMCRA. The Director approves the proposed statute.

14. UCA 40-10-22(2)(b), Cessation Orders, Abatement Notices, and Show Cause Orders

Utah proposed at UCA 40-10-22(2)(b), among other things, that any relief granted by a State district court to enforce an order pursuant to UCA 40-

10-22(2)(a)(i) shall continue in effect until the completion or final termination of all proceedings for review of such order, unless prior to completion or termination, the Utah Supreme Court on review grants a stay of enforcement or sets aside or modifies the Board's order that is being appealed.

Section 521(c) of SMCRA provides that, under similar circumstances, any relief granted by the Federal district court shall continue in effect until completion or final termination of all proceedings for review of such order, unless prior thereto, the district court granting such relief sets it aside or modifies it. Section 521(d) of SMCRA requires that an approved State program contain the same or similar procedural requirements relating to the enforcement provisions of section 521 of SMCRA.

OSM requested in its October 24, 1994, issue letter that Utah clarify whether the provisions of UCA 40-10-22(2)(b) allow the State district court to set aside or modify its own relief as section 521(d) of SMCRA does (issue No. 11). Utah stated in its December 7, 1994, response to OSM's issue letter that State law provides for the Utah Supreme Court to be the authority for modifying or setting aside a Board order or decision, and that, to the extent that any judicial body can reconsider its own order or decision, the State district court can also modify or set aside its own order or decision.

Based upon Utah's explanation of its rationale for the proposed revisions at UCA 40-10-22(2)(b), the Director finds that this provision is consistent with the provisions of section 521(c) of SMCRA. The Director approves the proposed revisions to UCA 40-10-22(2)(b).

15. UCA 40-10-22(3)(e), Costs Assessed Against Either Party Adversely Affected by the Board's Notice or Order

Utah proposed to revise UCA 40-10-22(3)(e) to provide:

[w]henver an order is entered under this section or as a result of any adjudicative proceeding under this chapter, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the board to have been reasonably incurred by that person in connection with his participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the board, resulting from adjudicative proceedings, deems proper.

UCA 40-10-22(3)(e) is similar to section 525(e) of SMCRA, except Utah is proposing to change the term "administrative proceedings" to "adjudicative proceedings." This

change is consistent with the addition of a definition for the term "adjudicative proceeding" proposed by Utah in this amendment at UCA 40-10-3(1). As discussed in finding No. 3, the definition of "adjudicative proceeding" as proposed by Utah at UCA 40-10-3(1) does not encompass judicial review.

Use of the term "adjudicative proceeding" in UCA 40-10-22(3)(e) allows Utah to limit the reimbursement of costs and expenses incurred through participation in the proceedings to only proceedings which are adjudicatory in nature. Section 525(e) of SMCRA provides for the award of costs and expenses incurred in connection with "any administrative proceeding." Prior to Utah's adoption of the amendment under consideration in this rulemaking, UCA 40-10-22(3)(e) contained similar language.

Both the Interior Board of Land Appeals (IBLA) and the U.S. District Court for the Utah District declined to delineate the full reach of the phrase "any administrative proceeding" in section 525(e) of SMCRA when presented with an opportunity to do so. *Natural Resources Defense Council, Inc. (NRDC), et al. v. Office of Surface Mining Reclamation and Enforcement (OSM) et al.*, 107 IBLA 339, 365 n. 12 (1989); *Utah International, Inc. v. Department of the Interior*, 643 F. Supp. 819, 825 n. 25 (D. Utah 1986). However, in deciding these cases, both IBLA and the U.S. District Court held that this phrase should not be read literally, but rather must be interpreted in the context of the legislative history of SMCRA and case law concerning attorney fee and expense awards under other statutes. Both opinions contain extensive dicta suggesting that the phrase could or should be read to include only administrative proceedings of an adjudicatory nature, not proceedings that are part of the fact-finding process culminating in an initial agency decision, e.g., informal conferences on permit applications. *NRDC, supra*, at 354-360; *Utah International, supra*, at 820-825.

Furthermore, the Federal regulations at 43 CFR 4.1290 and 4.1291, which implement this section of SMCRA in part, provide for an award of costs and expenses only in connection with administrative proceedings resulting in the issuance of a final order by an administrative law judge or IBLA. The preamble to these regulations notes that the Secretary rejected comments requesting the scope of the rules be expanded to allow the award of costs and expenses in other types of administrative proceedings, such as

rulemaking (4 CFR 34385, August 3, 1978).

Therefore, the Director finds the Utah statutory provision at UCA 40-10-22(3)(e) that allows for award of costs and expenses in connection with an adjudicatory proceeding is not inconsistent with section 525(e) of SMCRA and its implementing regulations, as interpreted by case law. The Director approves the proposed revisions to this statute.

The Director's approval is based upon OSM's interpretation that the term "adjudicatory proceedings," as used at UCA 40-10-22(3)(e) includes all classes of actions in which participants would be eligible for an award of costs and expenses under 43 CFR 4.1290 through 4.1295. The Director notes that, as more case law develops, it may be necessary in the future to further expand the provisions at UCA 40-10-22(3)(e) to include other types of administrative proceedings. In that event, OSM would notify Utah in accordance with 30 CFR Part 732.

16. UCA 40-10-28 (1)(a)(ii) and (2)(a), Recovery of Reclamation Costs and Liens Against Reclaimed Lands

In response to the Director's previous finding that UCA 40-10-28(1)(a)(ii) and 40-10-28(2)(a) were not consistent with sections 407(e) and 408(a) of SMCRA and the Director's deferred decision on these statutory provisions (September 27, 1994; 59 FR 49185, 49187-88; finding Nos. 7 and 9), Utah proposed to add new language to its provisions at UCA 40-10-28(1)(a)(ii) and UCA 40-10-28(2)(a).

Utah proposed at UCA 40-10-28(1)(a)(ii) to require that the sale price of land that is sold to the State or local government for public purposes may not be less than the actual "cost of the purchase of the property by the State plus the" costs of reclaiming the land. This requirement is analogous to and no less stringent than the counterpart Federal provision at section 407(e) of SMCRA, which provides that the sale price of land sold to the State or local government for public purposes may in no case be less than the cost of purchase and reclamation of such land.

Utah also proposed the addition of a new provision at UCA 40-10-28(2)(a) to provide, in addition to other criteria, that a lien will be placed against reclaimed land except where the surface owner "owned the land prior to May 2, 1977." This specific requirement is analogous to and no less stringent than the requirement of section 408(a) of SMCRA, which provides, in part, that no lien shall be filed against the

property of any person who owned the land prior to May 2, 1977.

As discussed above, the revisions proposed by Utah in this amendment at UCA 40-10-28(1)(a)(ii) and 40-10-28(2)(a) are consistent with sections 407(e) and 408(a) of SMCRA. Therefore, the Director approves the proposed revisions to these statutes.

17. UCA 40-10-30, Judicial Review of Orders or Rules

Utah proposed new provisions at UCA 40-10-30 to provide, in part:

(1) [Judicial review of adjudicative proceedings under this chapter is governed by Title 63, Chapter 46b, Administrative Procedures Act, and provisions of this chapter consistent with the Administrative Procedures Act.

(2) [Judicial review of the board's rulemaking procedures and rules adopted under this chapter is governed by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

*(3) [An appeal from an order of the board shall be directly to the Utah Supreme Court and is not a trial de novo. * * **

*(4) [An action or appeal involving an order of the board shall be determined as expeditiously as feasible and in accordance with Subsection 78-2-2(3)(e)(iv). The Utah Supreme Court shall determine the issues on both questions of law and fact and shall affirm or set aside the rule or order, enjoin or stay the effective date of agency action, or remand the cause to the board for further proceedings. * * **

(5) [If the board fails to perform any act or duty under this chapter which is not discretionary, the aggrieved person may bring an action in the district court of the county in which the operation or proposed operation is located.

(Italics indicate new language proposed to be added to this statute.) Utah also proposed to delete the requirement at existing UCA 40-10-30(3) that "[r]eview of the adjudication of the district court is by the Supreme Court."

The proposed revisions at UCA 40-10-30 are consistent with the requirements of the counterpart Federal provisions of section 526 of SMCRA. Therefore, the Director finds that the proposed revisions at UCA 40-10-30 are no less stringent than section 526 of SMCRA and approves them.

IV. Summary and Disposition of Comments

Following are summaries of all substantive oral and written comments on the proposed amendment that were received by OSM, and OSM's response to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program and Utah AMLR plan.

In a telephone conversation on May 11, 1994, the Bureau of Mines stated that it had no comments on the proposed amendment (administrative record No. UT-922).

The U.S. Army Corps of Engineers responded in a letter dated May 23, 1994, that it found the proposed changes to be satisfactory (administrative record No. UT-930).

In a letter dated May 18, 1995, the Mine Safety and Health Administration stated that its personnel had reviewed the proposed amendment for possible conflicts with MSHA regulations and that no conflicts between the two were found (administrative record No. UT-1056).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Utah proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. UT-919). It responded on May 9, 1994, that it believed that the proposed amendment would have no impact on water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

4. State Historic Preservation Officer (SHPO)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO (administrative record Nos. UT-919). The SHPO did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with additional requirements, Utah's proposed amendment as submitted on April 14, 1994, and as revised and supplemented with additional explanatory information on December 7, 1994.

The Director approves the following sections of the proposed amendment, as discussed in: finding No. 1, UCA 40-10-2 (1) through (6), concerning purpose; UCA 40-10-3 (2) through (7), (9) through (20), and (22) [recodification], concerning the definitions of certain terms; UCA 40-10-6.5 (2) and (3) [recodification], concerning rulemaking procedures; UCA 40-10-7(1), concerning prohibited financial interest in mining operations; UCA 40-10-8 (1) and (3), concerning exploration rules issued by the Division and penalties for violations; UCA 40-10-10(2), concerning submission of the application and reclamation plan; UCA 40-10-11 (1), (2)(a) through (d), (e)(ii), (f) (i) and (iii), and (4) (a) and (b), concerning Division action on the permit application, requirements for approval, and restoration of prime farmland; UCA 40-10-12(3), concerning revision or modification of permit provisions; UCA 40-10-14 (2) and (3), concerning notice to the applicant of approval or disapproval of the application and hearings; UCA 40-10-15(1), concerning performance bonds; UCA 40-10-16 (1), (3), and (6)(a), concerning release of the performance bond, surety, or deposit, action on the application for relief of bond, and formal hearings or informal conferences; UCA 40-10-17 (2)(g), (2)(j) (i)(B) and (ii) (A) and (B), (2)(m), (2) (o) and (o)(i), (iv), and (v), (2)(p)(i)(F), (ii), and (iii), (2)(t)(i), (2)(v)(viii), (3)(b) and (b)(ii), (3)(c), (4) (a) and (d), and (5), concerning performance standards for all coal mining and reclamation operations, additional standards for steep-slope surface coal mining, and variances; UCA 40-10-18 (1), (2)(i)(i)(B), (2)(j), and (5), concerning underground coal mining, rules regarding surface effects, operator requirements for underground coal mining, and applicability of other chapter provisions; UCA 40-10-19 (1) and (2)(a), concerning information provided by the permittee to the Division and inspections by the Division; UCA 40-10-21(1)(a) (i) and (ii), and (2)(a)(ii), and (5), concerning civil action to compel compliance with chapter, jurisdiction, and other rights not affected; UCA 40-10-22 (1)(c) and (2)(a)(i), concerning violation of chapter or permit conditions and inspections; UCA 40-10-24(1)(c)(i) (A), (B), (C), and (D), and (ii), (e) (i), (ii), and (iii), and (2) (a) and (b), concerning determination of unsuitability of lands for surface coal mining, petitions, and public hearings; UCA 40-10-25(2) (d) and (e) [recodification] and (3) and (3)(a), concerning abandoned mine reclamation program, expenditure

priorities, and eligible lands and water; and UCA 40-10-27(5)(a) and (12)(b), concerning entry upon land adversely affected by past coal mining practices and State acquisition of lands; finding No. 2, UCA 40-10-3 (8) and (21), concerning definitions for the terms "lands eligible for remaining" and "unanticipated event or condition;" UCA 40-10-11(5) (b), and (c), concerning Division action on permit application and requirements for approval; UCA 40-10-17(2)(t)(ii), concerning performance standards for lands eligible for remaining; UCA 40-10-22 (1)(d) and (3) (a), (b), (d) and (f), concerning violations of chapter or permit conditions, cessation orders, abatement notices, or show cause orders, suspension or revocation of permits, and reviews; and UCA 40-10-25(2)(d) [deletion], 3(b), (4), (5), and (6), concerning abandoned mine reclamation program, eligible lands and water; finding No. 4, UCA 40-10-4, concerning repeal of the applicability of provisions of UCA 40-8; finding No. 5, UCA 40-10-6.5 (1) and (3), concerning rulemaking authority and deletion of administrative procedures; finding No. 6, UCA UCA 40-10-6.7 and Utah Admin. R. 641-100-100, concerning administrative procedures; finding No. 10, UCA 40-10-14(6), concerning appeal to district court and further review; finding No. 11, UCA 40-10-16(6) (b) through (d), concerning informal conferences or formal hearings pertaining to performance bond release decisions; finding No. 12, UCA 40-10-18(4), concerning damage resulting from underground coal mining subsidence; finding No. 15, UCA 40-10-22(2)(b), concerning cessation orders, abatement notices, and show cause orders; finding No. 15, UCA 40-10-22(3)(e), concerning costs assessed against either party adversely affected by the Board's notice or order; finding No. 16, UCA 40-10-28(1)(a)(ii) and (2)(a), concerning recovery of reclamation costs and liens against reclaimed lands; and finding No. 17, UCA 40-10-30, concerning judicial review of rules or orders.

With the requirement that Utah further revise its statutes, the Director approves, as discussed in: finding No. 3, UCA 40-10-3(1), concerning the definition of "adjudicative proceeding;" finding No. 7, UCA 40-10-11(3), concerning the schedule of an applicant's mining law violations and pattern of violations determination; finding No. 8, UCA 40-10-11(5)(a), concerning remaining operation violations resulting from unanticipated events or conditions; finding No. 9, UCA 40-10-13(2)(b), concerning the

location of informal conferences; and finding No. 13, UCA 40-10-20(2)(e)(ii), concerning contest of the violation or the amount of the civil penalty.

The Director approves the statutes and rule as proposed by Utah with the provision that they be fully promulgated in identical form to the statutes and rule submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 944, codifying decisions concerning the Utah program and Utah plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program and plan amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments or AMLR plans and revisions thereof since each such program or plan is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based

solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for

which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 13, 1995.

Richard J. Seibel,
Regional Director, Western Regional
Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (ff) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(ff) The revisions to or additions of the following sections of the Utah Code Annotated 1953 (UCA), Title 40, and the Utah Administrative Rules (Utah Admin. R.) for Coal Mining, as submitted to OSM on April 14, 1994, and as revised and supplemented with explanatory information on December 7, 1994, are approved effective July 19, 1995.

UCA 40-10-2 (1) through (6)	Purpose.
40-10-3(1)	Definition of "Adjudicative Proceeding."
40-10-3 (2) through (7), (9) through (20), and (22)	Recodification of Definitions.
40-10-3 (8) and (21)	Definitions of "Lands Eligible for Remining" and "Unanticipated Event or Condition."
40-10-4	Repeal of the Applicability Provisions of 40-8.
40-10-6.5(1)	Rulemaking Authority.
40-10-6.5 (2) and (3)	Recodification of Rulemaking Procedures.
40-10-6.5(3)	Deletion of Administrative Procedures.
40-10-6.7	Administrative Procedures.
40-10-7(1)	Prohibited Financial Interests in Mining Operations.
40-10-8 (1) and (3)	Exploration Rules Issued by Division and Penalty for Violations.
40-10-10(2)	Submission of Applications and Reclamation Plans.
40-10-11 (1), (2)(a) through (d), (e)(ii), (f) (i) and (iii), and (4) (a) and (b).	Division of Oil, Gas and Mining (Division) Action on Permit Applications, Requirements for Approval, and Restoration of Prime Farmland.
40-10-11(3)	Schedule of Applicant's Mining Law Violations and Pattern of Violations Determination.

40-10-11(5)(a)	Remining Operation Violations Resulting From Unanticipated Events or Conditions.
40-10-15 (b) and (c)	Division Action on Permit Applications and Requirements for Approval.
40-10-12(3)	Revisions or Modifications of Permit Provisions.
40-10-13(2)(b)	Location of Informal Conferences.
40-10-14 (2) and (3)	Notice to Applicant of Approval or Disapproval of Application and Hearings.
40-10-14(6)	Appeals to District Court and Further Review.
40-10-15(1)	Performance Bonds.
40-10-16 (1), (3), and (6)(a)	Release of the Performance Bond, Surety, or Deposit, Action on Application for Relief of Bond, and Formal Hearings or Informal Conferences.
40-10-16(6) (b) through (d)	Information Conferences or Formal Hearings Pertaining to Performance Bond Release Decisions.
40-10-17(2) (g), (2)(j)(i) (B) and (ii)(A) and (B), (2)(m), (2) (o), and (o)(i), (iv), and (v), (2)(p) (i)(F), (ii), and (iii), (2)(t)(i), (2) (v)(viii), (3) (b) and (b)(ii), (3)(c), (4) (a) and (d), and (5).	Performance Standards for All Coal Mining and Reclamation Operations, Additional Standards for Steep-Slope Surface Coal Mining, and Variances.
40-10-17(2)(t)(ii)	Performance Standards for All Coal Mining and Reclamation Operations.
40-10-18 (1), (2)(i)(i)(B), (2)(j), and (5)	Underground Coal Mining, Rules Regarding Surface Effects, Operator Requirements for Underground Coal Mining, and Applicability of Other Chapter Provisions.
40-10-18(4) (a) through (c)	Damage Resulting From Underground Coal Mining Subsidence.
40-10-19 (1) and (2)(a)	Information Provided by Permittee to Division and Inspections by Division.
40-10-20(2)(e)(ii)	Contest of the Violation or the Amount of the Civil Penalty.
40-10-21 (1)(a) (i) and (ii), (2)(a)(ii), and (5)	Civil Action to Compel Compliance with Chapter, Jurisdiction, and Other Rights Not Affected.
40-10-22 (1)(c) and (2)(a)(i)	Violations of Chapter or Permit Conditions and Inspections.
40-10-22 (1)(d) and (3) (a), (b), (d), and (f)	Violations of Chapter or Permit Conditions, Cessation Orders, Abatement Notices, or Show Cause Orders, and Suspensions or Revocations of Permit.
40-10-22(2)(b)	Cessation Orders, Abatement Notices, and Show Cause Orders.
40-10-22(3)(e)	Costs Assessed Against Either Party.
40-10-24(1)(c)(i) (A), (B), (C), and (D), and (ii), (e) (i), (ii), and (iii), and (2) (a) and (b).	Determination of Unsuitability of Lands for Surface Coal Mining, Petitions, and Public Hearings.
40-10-30	Judicial Review of Rules or Orders.
Utah Admin. R. 641-100-100	Administrative Procedures.

3. Section 944.16 is amended by removing and reserving paragraph (b) and adding paragraphs (e) through (i) to read as follows:

§ 944.16 Required program amendments.
* * * * *

(e) By March 1, 1996, Utah shall revise its definition of "adjudicative proceeding" at UCA 40-10-3(1) to include judicial review of agency actions.

(f) By March 1, 1996, Utah shall revise UCA 40-10-11(3) to require that (1) the schedule of the applicant's mining law violations required in connection with a permit application includes violations of SMCRA and the implementing Federal regulations and (2) the pattern of violations determination discussed therein includes violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, and other provisions of the approved Utah program.

(g) By March 1, 1996, Utah shall revise UCA 40-10-11(5)(a) to reflect an effective date of "after October 24, 1992."

(h) By March 1, 1996, Utah shall revise UCA 40-10-13(2)(b) to change the word "may" to "shall" in the

sentence that begins "[t]he conference may be held in the locality of the coal mining and reclamation operation * * *"

(i) By March 1, 1996, Utah shall revise UCA 40-10-20(2)(e)(ii) to provide for a waiver of the operator's right to contest the amount of the civil penalty when the operator fails to forward the amount of the penalty to the regulatory authority within 30 days of receipt of the results of the informal conference.

4. Section 944.25 is amended by adding paragraph (c) to read as follows:

§ 944.25 Approval of amendments to State abandoned mine plan.
* * * * *

(c) The following sections of the Utah Code Annotated 1953 (UCA), Title 40, pertaining to the Utah abandoned mine plan, as submitted to OSM on April 14, 1994, and revised on December 7, 1994, are approved effective July 19, 1995.

- 40-10-25(2)(d), Deletion of Research and Demonstration Projects.
- 40-10-25(2) (d) and (e), Recodification of Expenditure Priorities.
- 40-10-25 (3), (3)(a), (3)(b), (4), (5), and (6), Eligible Lands and Water.
- 40-10-27 (5)(a) and (12)(b), Entry Upon Land Adversely Affected by Past Coal

Mining Practices and State Acquisition of Lands.

40-10-28 (1)(a)(ii) and (2)(a), Recovery of Reclamation Costs and Liens Against Reclaimed Lands.

[FR Doc. 95-17716 Filed 7-16-95; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AG86

Chronic Fatigue Syndrome

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

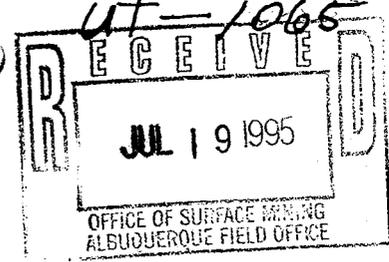
SUMMARY: This document adopts as a final rule without change an interim rule adding a diagnostic code and evaluation criteria for chronic fatigue syndrome to the VA Schedule for Rating Disabilities. The intended effect of this rule is to insure that veterans diagnosed with this condition meet uniform criteria and receive consistent evaluations.



State of Utah
 DEPARTMENT OF NATURAL RESOURCES
 DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
 Governor
 Ted Stewart
 Executive Director
 James W. Carter
 Division Director

355 West North Temple
 3 Triad Center, Suite 350
 Salt Lake City, Utah 84180-1203
 801-538-5340
 801-359-3940 (Fax)
 801-538-5319 (TDD)



July 13, 1995

TO	INITIAL	DATE	ROUTE	DATE	MESSAGE
	A. Abbs				
N	T. EHMETT				
	L. MEADORS				
	S. MARTINEZ				
	D. MARTINEZ				
	S. RATHBUN				
	V. V. V.				

Vernon Maldonado
 State Program Amendments
 Office of Surface Mining
 Reclamation and Enforcement
 505 Marquette N.W., Suite 1200
 Albuquerque, New Mexico 87102

Re: UT-017-FOR, State Rule Language as Enacted in the Utah Administrative Code, (Rules Relating to Roads)

Dear Vern:

I have extracted the final rule language as adopted by the state for this program amendment from the Utah Administrative Code. Copies are enclosed for your evaluation. The definitions for "affected area," "road," and "public road" are all included on the enclosure to this letter. Please note that any intervening rule language found between each of these definitions in the actual code is not shown.

Please let me know if you have any questions on the enclosed material or if you need any additional information.

Sincerely,

Ronald W. Daniels
 Coordinator of Minerals Research

jbe
 Enclosure
 cc: J. Carter
 L. Braxton
 P:ROADSFR.LTR



Enclosure -- 7/13/95

"Affected Area" means any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use. Editorial Note: The definition of "Affected area", insofar, as it excludes roads which are included in the definition of "Surface coal mining operations", was suspended at 51 FR 41960, Nov. 20, 1986. Accordingly, Utah suspends the definition of Affected Area insofar as it excludes roads which are included in the definition of "coal mining and reclamation operations."

"Public Road", for the purpose of part R645-103-200, R645-301-521.123, and R645-301-521.133 means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; (c) for which there is substantial (more than incidental) public use; and (d) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

subpoena, court order or legal process to the General Counsel.

(b) *Notification by person served.* If any current or former officer, director, employee or agent of the Corporation, or any other person who has custody of exempt records belonging to the FDIC, is served with a subpoena, court order, or other process requiring that person's attendance as a witness concerning any matter related to official duties, or the production of any exempt record of the Corporation, such person shall promptly advise the Office of the Corporation's General Counsel of such service, of the testimony and records described in the subpoena, and of all relevant facts which may be of assistance to the General Counsel in determining whether the individual in question should be authorized to testify or the records should be produced. Such person should also inform the court or tribunal which issued the process and the attorney for the party upon whose application the process was issued, if known, of the substance of this section.

(c) *Appearance by person served.* Absent the written authorization of the Corporation's General Counsel, or designee, to disclose the requested information, any current or former officer, director, employee, or agent of the Corporation, and any other person having custody of exempt records of the Corporation, who is required to respond to a subpoena, court order, or other legal process, shall attend at the time and place therein specified and respectfully decline to produce any such record or give any testimony with respect thereto, basing such refusal on this section.

By Order of the Board of Directors:

Dated at Washington, DC this 27th day of June, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95-16329 Filed 7-5-95; 8:45 am].

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 234

[Docket-50053]

RIN 2137-AC67

Airline Service Quality Performance Reports

AGENCY: Department of Transportation.

ACTION: Extension of comment period.

SUMMARY: This notice announces that the Bureau of Transportation Statistics is extending from July 5 to August 5,

1995, the deadline for submitting comments to the notice of proposed rulemaking concerning reporting by air carriers concerning their on-time performance.

DATES: Comments are now due August 5, 1995.

ADDRESSES: Comments should be submitted in duplicate to the Docket Clerk, Docket 50053, room PL 401, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus, Office of Airline Information, K-25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4387.

SUPPLEMENTARY INFORMATION: On June 5, 1995 (60 FR 29514), the Office of Airline Statistics, Research and Special Programs Administration of DOT (now the Office of Airline Information, Bureau of Transportation Statistics; see 60 FR 30195, June 8, 1995) published a notice of proposed rulemaking (NPRM) to amend the on-time flight performance reporting requirements. The central issue was whether air carriers should exclude mechanical delays from their on-time performance report. The public was given 30 days to respond to the NPRM.

On June 28, 1995, the Department received three different requests for extension of the comment period. In a letter to Secretary Peña, Senator Mark O. Hatfield asked that the comment period be extended 60 days. He noted that when DOT proposed changes to the on-time report process in the past, the docket was open for substantially longer periods of time. He further stated that the current proposal merits the same type of thoughtful and thorough review by all interested parties.

In a second letter to Secretary Peña, the National Consumers League asked that the comment period be extended for 60 days. It stated that it only recently became aware of the proposed change to exclude mechanical delays and cancellations from the carrier on-time performance ratings. Because on-time performance is now the number one concern of business travelers, the National Consumers League believes the public should be given more time to respond to the rulemaking.

American Airlines, Delta Air Lines, United Airlines and USAir filed a joint submission asking the Department to extend the comment period to September 5, 1995. The joint carriers stated that they need additional time to prepare comments that fully take into account the history of this issue, as well

as the merits of the Department's proposal. In addition, they note that we are now entering the peak vacation period and that critical personnel have not been available during the full period between issuance of the NPRM and the current comment closing date.

Two answers were filed opposing the extension. Southwest Airlines stated that the joint carriers failed to provide a credible basis for an extension and criticized the last minute nature of the filing. It stated that the "peak vacation period" argument is both unconvincing and irrelevant, and that the carriers are seeking a lengthy extension in order to delay a ruling. They concluded by stating that all parties deserve certainty on this issue instead of an unending period of further debate and skirmishing.

Northwest Airlines strongly opposed the request for extension. It stated that the Department has before it a pressing safety issue that requires immediate action, and that neither procrastination nor vacation schedules should stand in the way of the Department's resolution of this issue.

We are granting a one-month extension. This action serves to facilitate the submission of informed comments, while not unduly delaying the proceeding. DOT believes this action will not prejudice the position of any party.

Issued in Washington on June 30, 1995:

Timothy E. Carmody,

Acting Director, Office of Airline Information,
Bureau of Transportation Statistics.

[FR Doc. 95-16682 Filed 7-3-95; 11:26 am]

BILLING CODE 4910-62-P

DEPARTMENT OF THE INTERIOR.

Office of Surface Mining Reclamation and Enforcement

30.CFR Part 944

Utah Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Utah's proposed rules pertain to normal husbandry practices and Utah's "Vegetation Information Guidelines."

The amendment is intended to improve operational efficiency.

DATES: Written comments must be received by 4 p.m., m.d.t., July 21, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Richard J. Seibel at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Western Regional Coordinating Center.

Richard J. Seibel, Regional Director,
Western Regional Coordinating
Center, Office of Surface Mining
Reclamation and Enforcement, 1999
Broadway, Suite 3320, Denver,
Colorado 80202-5733

Utah Coal Regulatory Program, Division
of Oil, Gas and Mining, 355 West
North Temple, 3 Triad Center, Suite
350, Salt Lake City, Utah 84180-1203,
Telephone: (801) 538-5340.

FOR FURTHER INFORMATION CONTACT:
Richard J. Seibel, Telephone: (303) 672-
5501.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, *Federal Register* (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated February 6, 1995, Utah submitted a proposed amendment to its program (administrative record No. UT-1025) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Utah submitted the proposed amendment at its own initiative.

OSM announced receipt of the proposed amendment in the March 15, 1995, *Federal Register* (60 FR 13935), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT-1034). Because no one requested a public hearing or meeting, none was held.

The public comment period ended on April 14, 1995.

During its review of the amendment, OSM identified concerns relating to the provisions of the Utah Coal Mining Rules at Utah Administrative Rule (Utah Admin. R.) 645-301-357.340, concerning those activities that cause the need for repair of revegetation after phase II bond release that would not restart the liability period; Utah Admin. R. 645-301-357.350, concerning clarification that the rule applies to irrigation of transplanted trees and shrubs that would not restart the liability period; and Appendix C of Utah's "Vegetation Information Guidelines," concerning references to manuals it submitted to support the reestablishment of vegetation after wildfires that would not restart the liability period proposed at Utah Admin. R. 645-301-357.340. OSM notified Utah of the concerns by letter dated May 23, 1995 (administrative record No. UT-1054).

Utah responded in a letter dated June 5, 1995, by submitting a revised amendment (administrative record No. UT-1059). Utah proposes to revise: Utah Admin. R. 645-301-357.340, to include as an activity that would not restart the liability period, repair of revegetation after phase II bond release necessitated by illegal activities, such as vandalism, which are not caused by any lack of planning, design, or implementation of the mining and reclamation plan; Utah Admin. R. 645-301-357.350, to clarify that irrigation of transplanted trees and shrubs would not restart the liability period; and Appendix C of Utah's "Vegetation Information Guidelines," to include references to manuals that support the reestablishment of vegetation after wildfires.

OSM is reopening the comment period on the proposed Utah program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Western Regional Coordinating Center will not necessarily

be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities.

Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 28, 1995.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95-16544 Filed 7-5-95; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-5254-1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Delete Brown Wood Preserving Site from the National Priorities List; request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA), announces its intent to delete the Brown Wood Preserving Superfund Site (Site) in Live Oak, Suwannee County, Florida, from the National Priorities List (NPL) and requests public comment on this action. The NPL is codified as Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). EPA and the State of Florida (State) have determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State have determined that the remedial actions conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments on the Notice of Intent to Delete the Site from the NPL should be submitted on or before August 7, 1995.

ADDRESSES: Comments may be mailed to: Joe Franzmathes, Director, Waste Management Division, U.S.

Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

Comprehensive information on this Site is maintained in the public docket, which is available for viewing at the information repositories in two locations. Requests for appointments or copies of the background information from the public docket should be directed to:

Ms. Debbie Jourdan, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Phone: (404) 347-3555, ext. 6217, Hours: 8:00 a.m. to 4:00 p.m., Monday through Friday—By Appointment Only.

Suwannee River Regional Library, 207 Pine Street, Live Oak, Florida 32060, Phone: (904) 362-2317, Hours: 8:30 a.m. to 8:00 p.m., Monday and Thursday; 8:30 a.m. to 5:30 p.m., Tuesday, Wednesday, and Friday; 8:30 a.m.—4:00 p.m., Saturday.

FOR FURTHER INFORMATION CONTACT:

Randall Chaffins, U.S. Environmental Protection Agency, Region IV, Waste Management Division, South Superfund Remedial Branch, 345 Courtland Street, N.E. Atlanta, GA 30365, (404) 347-2643 ext. 6260.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

I. Introduction

EPA announces its intent to delete the Site from the NPL, which constitutes Appendix B of the NCP, 40 CFR Part 300, and requests comments on this proposed deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to Section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions in the event that conditions at the site warrant such action.

EPA will accept comments concerning this Site for thirty (30) calendar days after publication of this notice in the *Federal Register*.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, considers whether any of the following criteria have been met:

(i) Responsible or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment; and, therefore, taking of remedial measures is not appropriate.

III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision to delete the Site. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this Site:

(1) EPA has recommended deletion and has prepared the relevant documents.

(2) The State of Florida has concurred with the deletion decision.

(3) Concurrent with this Notice of Intent to Delete, a notice has been published in a local newspaper and has been distributed to appropriate Federal, State, and local officials, and other interested parties.

(4) EPA has made all relevant documents available at the information repositories.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designated primarily for information purposes and to assist EPA management. As mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

The comments received during the public comment period will be evaluated before the final decision to delete the Site. EPA will prepare a Responsiveness Summary, if necessary, which will address the comments received during the public comment period.

A deletion occurs when the Regional Administrator of EPA places a Notice of Deletion in the *Federal Register*. Any deletions from the NPL will be reflected

U. S. Department of Labor

Mine Safety and Health Administration
P.O. Box 25367
Denver, Colorado 80225-0367
Coal Mine Safety and Health
District 9



JUN 16 1995

Thomas E. Ehmett, Acting Director
Office of Surface Mining Reclamation and Enforcement
Albuquerque Field Office
505 Marquette Avenue, N.W., Suite 1200
Albuquerque, NM 87102

RE: Formal Amendment to
Utah's Coal Mining Rules (UT-1003)
SPAT No. (UT-029-FOR)
General Comments

Dear Mr. Ehmett:

This is in response to your letter dated January 12, 1995, requesting general comments concerning the referenced Utah rules being changed for surface mining. Unfortunately, the review of this information by MSHA personnel was delayed past the due date indicated. We apologize for the tardiness of our response.

However, the information has been reviewed, and it appears not to conflict with any current MSHA regulations. Thank you for your patience regarding this matter. If you have any questions, please contact this office at (303) 231-5462.

Sincerely,

for Archie D. Vigil
John A. Kuzak
District Manager

RECEIVED
JUN 19 1995
OFFICE OF SURFACE MINING
ALBUQUERQUE FIELD OFFICE

INITIAL	DATE	MESSAGE
A. Abbs		DUNN
T. EHMETT		
L. MEADORS		
S. MARTINEZ		
D. MARTINEZ		
S. RATHBUN		

June 27, 1995

Memorandum

To: Mr. Galen Knutsen
Intermountain Field Operations Center

From: Arthur W. Abbs, Acting Director
Albuquerque Field Office *SGR*

Subject: Solicitation of Comments on a Formal Amendment to Utah's Coal Mining Rules (UT-1059, SPAT No. UT-028-FOR)

On February 6, 1995, the State of Utah submitted an amendment (Administrative Record number UT-1025) to its permanent regulatory program for surface coal mining and reclamation operations. The amendment deals with husbandry practices of vegetation on reclaimed lands. It was submitted as a State initiative and was distributed to you on March 7, 1995.

Now, enclosed for your review and comment are revisions to the original amendment (UT-1059), submitted in response to a deficiency letter which OSM sent to Utah on May 23, 1995.

Although the revisions proposed to the original amendment at rules R. 645-301-357.340 and .350 are not marked with redline or strikeout, it appears that Utah changed the words "third-party interference" and "interference" to "illegal activities" in the first rule and the word "transplants" to "transplanted trees and shrubs" in the second.

Your comments are requested by July 12, 1995. However, because a proposed rule is being prepared for publication in the Federal Register to officially open the comment period for this amendment, additional time may be available for review, depending on the date of publication and the date established for the close of the comment period.

To facilitate our processing of your comments, please refer to Administrative Record No. UT-1059 in your response.

Comments should be submitted to:

Office of Surface Mining Reclamation and Enforcement
505 Marquette, NW, Suite 1200
Albuquerque, NM 87102

Please contact Vernon E. Maldonado at 505-766-1486 with any questions.

Attachment

Mr. Galen Knutsen^R
Intermountain Field Operations Center^R
^E

Mr. Dave Shaver^R
Mining and Minerals Branch^R
^E

Mr. Robert D. Williams, Asst., Field Supervisor^R
U.S. Fish and Wildlife Service^R
^E

Mr. Mat Millenbach, State Director
Bureau of Land Management



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

Suite 1200

505 Marquette Avenue N.W.

Albuquerque, New Mexico 87102

June 27, 1995

Mr. Charles L. Baldi, Chief
Engineering Division
U. S. Army Corp of Engineers
20 Massachusetts Avenue, NW
Washington, DC 20314

Re: Solicitation of Comments on a Formal Amendment to Utah's Coal
Mining Rules (UT-1059, SPAT No. UT-028-FOR)

Dear Mr. Baldi::

On February 6, 1995, the State of Utah submitted an amendment (Administrative Record number UT-1025) to its permanent regulatory program for surface coal mining and reclamation operations. The amendment deals with husbandry practices of vegetation on reclaimed lands. It was submitted as a State initiative and was distributed to you on March 7, 1995.

Now, enclosed for your review and comment are revisions to the original amendment (UT-1059), submitted in response to a deficiency letter which OSM sent to Utah on May 23, 1995.

Although the revisions proposed to the original amendment at rules R. 645-301-357.340 and .350 are not marked with redline or strikeout, it appears that Utah changed the words "third-party interference" and "interference" to "illegal activities" in the first rule and the word "transplants" to "transplanted trees and shrubs" in the second.

Your comments are requested by July 12, 1995. However, because a proposed rule is being prepared for publication in the Federal Register to officially open the comment period for this amendment, additional time may be available for review, depending on the date of publication and the date established for the close of the comment period.

To facilitate our processing of your comments, please refer to Administrative Record No. UT-1059 in your response.

Comments should be submitted to:

Office of Surface Mining Reclamation and Enforcement
505 Marquette, NW, Suite 1200
Albuquerque, NM 87102

Please contact Vernon E. Maldonado at 505-766-1486 with any questions.

Sincerely,

13/ Steve Rathburn

Arthur W. Abbs, Acting Director
Albuquerque Field Office

Enclosure

Mr. Charles L. Baldi, Chief
Engineering Division
U. S. Army Corp of Engineers
20 Massachusetts Avenue, NW
Washington, DC 20314
Mr. Baldi:

Assistant Secretary for
Environment, Safety, and Health^R
Department of Energy
Forrestal Building
1000 Independence Avenue, SW^R
Washington, DC 20585^R
Sir^R
^E

Mr. Dale Bosworth, Regional Forester^R
U.S. Forest Service^R
Federal Building
324-25th Street
Ogden, UT 84401^R
Mr. Bosworth^R
^E

Mr. Phillip J. Nelson, State Conservationist^R
Soil Conservation Service^R
P.O. Box 11350
Salt Lake City, UT 84147^R
Mr. Nelson^R
^E

Mr. John Kuzar, District Manager^R
U.S. Department of Labor
Mine Safety and Health Administration^R
P.O. Box 25367
Denver, CO 80225-0367^R
Mr. Kuzar^R
^E

Ms. Carolyn Johnson, CCC^R
1705 S. Pearl, Suite 5
Denver, CO 80210^R
Ms. Johnson^R
^E

Mr. Alex Jordan, President^R
Utah Mining Association
825 Kearns Building^R
Salt Lake City, UT 84101^R
Mr. Jordan^R
^E

Mr. Ken Rait^R
Southern Utah Wilderness Alliance^R
1471 South 1100 East
Salt Lake City, UT 84105^R
Mr. Rait^R
^E

Ms. Christine Osborne^R
Sierra Club
1536 East 3080 South^R
Salt Lake City, UT 84106^R
Ms. Osborne^R
^E

Ms. Anna Lopez
Wilderness Society
7475 Dakin Street, Suite 410^R
Denver, Colorado 80221^R
Ms. Lopez^R
^E

Harold P. Quinn, Jr., Sr. VP
National Coal Association1~
Coal Bldg. - 1130-17th St, NW2~
Washington, DC 200363~
Mr. Quinn4~

June 27, 1995

Mr. Max H. Dodson, Director
Water Management Division
U. S. EPA , Region 8, Suite 500
One Denver Place, 999 18th Street
Denver, CO 80202

Subject: Solicitation of Comments on a Formal Amendment to Utah's Coal
Mining Rules (UT-1059, SPAT No. UT-028-FOR)

Dear Mr. Dodson:

On February 6, 1995, the State of Utah submitted an amendment (Administrative Record number UT-1025) to its permanent regulatory program for surface coal mining and reclamation operations. The amendment deals with husbandry practices of vegetation on reclaimed lands. It was submitted as a State initiative and was distributed to you on March 7, 1995.

Now, enclosed for your review and comment are revisions to the original amendment (UT-1059), submitted in response to a deficiency letter which OSM sent to Utah on May 23, 1995.

Although the revisions proposed to the original amendment at rules R. 645-301-357.340 and .350 are not marked with redline or strikeout, it appears that Utah changed the words "third-party interference" and "interference" to "illegal activities" in the first rule and the word "transplants" to "transplanted trees and shrubs" in the second.

Your comments are requested by July 12, 1995. However, because a proposed rule is being prepared for publication in the Federal Register to officially open the comment period for this amendment, additional time may be available for review, depending on the date of publication and the date established for the close of the comment period.

To facilitate our processing of your comments, please refer to Administrative Record No. UT-1059 in your response.

Comments should be submitted to:

Office of Surface Mining Reclamation and Enforcement
505 Marquette, NW, Suite 1200
Albuquerque, NM 87102

Please contact Vernon E. Maldonado at 505-766-1486 with any questions.

Sincerely,

15/ *Arthur W. Abbs*

Arthur W. Abbs, Acting Director
Albuquerque Field Office

Enclosure

June 27, 1995

Mr. Max J. Evan, Director
State Historical Society
300 Rio Grande
Salt Lake City, UT 84101

Re: Solicitation of Comments on a Formal Amendment to Utah's Coal Mining Rules (UT-1059, SPAT No. UT-028-FOR)

Dear Mr. Evan:

On February 6, 1995, the State of Utah submitted an amendment (Administrative Record number UT-1025) to its permanent regulatory program for surface coal mining and reclamation operations. The amendment deals with husbandry practices of vegetation on reclaimed lands. It was submitted as a State initiative and was distributed to you on March 7, 1995.

Now, enclosed for your review and comment are revisions to the original amendment (UT-1059), submitted in response to a deficiency letter which OSM sent to Utah on May 23, 1995.

The Office of Surface Mining Reclamation and Enforcement (OSM) did not identify any aspects of the amendment that pertain to cultural or historic resources. Unless comments are received to the contrary, OSM will proceed as if a determination of no effect is in place with respect to the consultation requirements of 36 CFR Part 800.

Although the revisions proposed to the original amendment at rules R. 645-301-357.340 and .350 are not marked with redline or strikeout, it appears that Utah changed the words "third-party interference" and "interference" to "illegal activities" in the first rule and the word "transplants" to "transplanted trees and shrubs" in the second.

Your comments are requested by July 12, 1995. However, because a proposed rule is being prepared for publication in the Federal Register to officially open the comment period for this amendment, additional time may be available for review, depending on the date of publication and the date established for the close of the comment period.

To facilitate our processing of your comments, please refer to Administrative Record No. UT-1059 in your response.

Comments should be submitted to:

Office of Surface Mining Reclamation and Enforcement
505 Marquette, NW, Suite 1200
Albuquerque, NM 87102

Please contact Vernon E. Maldonado at 505-766-1486 with any questions.

Sincerely,

15/ *Steve Rathbun*

Arthur W. Abbs, Acting Director
Albuquerque Field Office

Enclosure

June 27, 1995

Memorandum

To: Jim Fulton, Chief
Denver Field Division

From: Arthur W. Abbs, Acting Director
Albuquerque Field Office

SGR

Subject: Formal Amendment to Utah's Coal Mining Rules (UT-1059, SPAT No. UT-028-FOR)

Attached for your evaluation and processing is a copy of a formal amendment submitted by the Utah Division of Oil, Gas and Mining. A proposed rule is being prepared by your staff for publication in the Federal Register, to announce receipt of the amendment and reopen the comment period for 15 days.

Similar memoranda transmitted the amendment to Gina Guy, Office of the Regional Solicitor, which instructed her to send comments to you by July 12, 1995.

Please call Vernon Maldonado or me at 505-766-1486 if you have any questions.

Attachment

FILE COPY

June 27, 1995

Memorandum

To: Gina Guy
Office of the Regional Solicitor
Rocky Mountain Region

From: Arthur W. Abbs, Acting Director
Albuquerque Field Office

SBR

Subject: Formal Amendment to Utah's Coal Mining Rules (UT-1059, SPAT No. UT-028-FOR)

Attached for your evaluation and processing is a copy of a formal amendment submitted by the Utah Division of Oil, Gas and Mining. The Denver Field Division (DFD) of the Western Regional Control Center (WRCC) is preparing a Federal Register notice to announce receipt of the amendment and reopen the comment period for 15 days.

Please submit your comments by July 12, 1995, to Mr. Jim Fulton, with a copy to me. DFD will be preparing either another issue letter or final rule Federal Register notice for this amendment.

Please call Vernon Maldonado or me at 505-766-1486 if you have any questions.

Attachment

UT-1061

U. S. Department of Labor

Mine Safety and Health Administration
P.O. Box 25367
Denver, Colorado 80225-0367

Coal Mine Safety and Health
District 9



JUN 22 1995

Thomas E. Ehmet, Acting Director
Office of Surface Mining Reclamation and Enforcement
Albuquerque Field Office
505 Marquette Avenue, N.W., Suite 1200
Albuquerque, NM 87102

RE: Formal Amendment
Utah's Coal Mining and
Reclamation Regulatory Program
(UT-917) General Comments

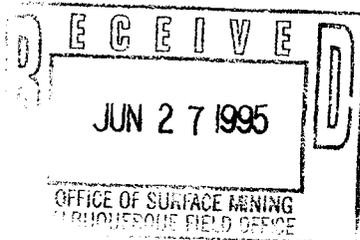
Dear Mr. Ehmet:

This is in response to your letter dated April 29, 1994, requesting general comments on the referenced proposed formal amendment to Utah's mining and reclamation regulatory program. The amendment has been reviewed by MSHA personnel, and it appears there are no conflicts with the requirements of 30 CFR.

MSHA appreciates the opportunity to comment on matters of such importance. If you have any questions, concerning this matter, please contact this office at (303) 231-5462.

Sincerely,

John A. Kuzar
John A. Kuzar
District Manager



TO	INITIAL	DATE	ROUTE	MESSAGE
	A. Abbs			View for Late comment Hr.
	T. EHMETT			
	E. MEADORS			
	S. MARTINEZ			
	D. MARTINEZ			
	S. HATHBUN			
	1. Donah			



National Mining Association
Foundation For America's Future

UT-1060
CO-666
NM-749

RECEIVED
MAY 18 1995

Harold P. Quinn, Jr.

May 12, 1995

Senior Vice President, General Counsel & Secretary

Legal & Regulatory Affairs

Mr. Robert J. Uram
Director
Office of Surface Mining
U.S. Department of Interior
Interior South Building 233
1951 Constitution Avenue, N.W.
Washington, D.C. 20240

RE: Proposed Implementation Scheme for §720 of SMCRA
60 F.R. 17495; 17498; 17501; 17504 (April 6, 1995)
60 F.R. 17734; 17736; 17739; 17741; 17743 (April 7, 1995)
60 F.R. 18044; 18046 (April 10, 1995)
60 F.R. 18351 (April 11, 1995)

Dear Mr. Uram:

This letter comprises the comments of the National Mining Association (NMA) on the implementation scheme announced by the Office of Surface Mining for primacy states under §720 of SMCRA. The NMA is a recently formed trade association joining the American Mining Congress (AMC) and National Coal Association (NCA) who participated in the regulatory proceeding which produced the final rule on "Underground Mining Permit Application Requirements and Performance Standards" published on March 31, 1995 (60 F.R. 16722).

The NMA contends that the various alternative implementation schemes suggesting the authority and necessity for complete or partial federal enforcement of certain parts of the underground coal mine rules conflicts directly with SMCRA. We previously set forth this view during the proposed rulemaking (58 F.R. 50174) in the comments filed by AMC and NCA (copy attached). In the course of that proposal, as well as in the context of the recent request for public comment, OSM has completely failed to supply any statutory basis for violating the deliberate allocation of regulatory authority vested with primacy states.

The proposed implementation scheme is apparently premised upon the incorrect view that since Congress did not provide specific direction as to how OSM was to implement §720, OSM is free to devise its own scheme. See 60 F.R. at 16744. The problem with this premise is that congressional silence is reasonably construed to indicate that Congress intended the existing statutory scheme to control implementation. SMCRA contains various statutory procedures for the amendment, preemption and substitution of federal enforcement of state programs. See e.g., §§503; 505; 521(b). OSM has not explained why these provisions do not apply here.

Moreover, the purpose gleaned from § 720 is that Congress did not intend for OSM, or the state regulatory authorities, to intervene in matters related to the remedies provided to landowners under that provision. Congress expressly provided that "Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations." §720(a). See also NCA/AMC comments. The phrase "this section" includes the remedies under subsection (a), as well as the rulemaking conducted under subsection (b). In short, there exists neither the necessity nor authority for this proposed radical departure from the statute.

Finally, the generic rulemaking authority in §201(c) does not authorize OSM to depart from SMCRA's implementation and enforcement scheme. Nor can OSM disregard or otherwise "waive" the ten-day notice procedure in a primacy state. West Virginia Mining and Reclamation Assn. v. Snyder, Civ. No. 91-0123-W (N.D.W. Va. August 3, 1991). And, as the district court in NCA v. Uram recently held, Section 521(a)(1) establishes a *mandatory procedure*. OSM cannot simply disregard the applicability of §521(a)(1) in primacy states because it considers it inconvenient. This proposal is yet another in a series of policy maneuvers by OSM toward the atrophication of the states' authority to implement SMCRA. This latest mutation of SMCRA's state primacy scheme readily evinces the reasons why OSM's pervasive presence in primacy states requires scrutiny immediately.

For these reasons, as well as those set forth in the AMC and NCA comments in the proposed subsidence rule, we ask that OSM withdraw the notices proposing the possibility that it would initiate direct federal inspections and enforcement in primacy states.

Sincerely,



Harold P. Quinn, Jr.
Senior Vice President and
General Counsel

cc: Guy Padgett-Casper Field Office-OSM
James Moncrief-Tulsa Field Office-OSM
Thomas Ehmett-Albuquerque Field Office-OSM
Michael Wulfrom-Kansas City Field Office-OSM
Jim Fulton-Springfield Field Office-OSM
Roger Calhoun-Indianapolis Field Office-OSM
William Kovacic-Lexington Field Office-OSM
Robert Monney-Columbus Field Office-OSM
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**Comments of the NCA/AMC Joint Committee on Surface Mining Regulation in Response to
OSM's Proposed Revisions to Underground Mining Permit Application Requirements and
Performance Standards - 58 Fed. Reg. 50174 (September 24, 1993).**

The following comments are submitted by the National Coal Association/American Mining Congress Joint Committee on Surface Mining Regulations on the proposed rule to substantially revise and reverse longstanding agency policy for permit application requirements and performance standards for underground coal mine operations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The coal company members of NCA and AMC account for most of the coal produced from underground mines throughout the United States. NCA and AMC and their member companies have participated in all the significant rulemaking procedures under SMCRA including those establishing the existing regulatory program for underground coal mines. The Associations and their members have extensive experience in the planning, development, and operation of underground coal mine operations domestically and internationally. They are also familiar with the state of the art technology associated with underground coal mining, subsidence control, monitoring and reclamation, as well as applicable federal and state laws and regulations related to these operations. The views expressed in these comments include the benefit of their knowledge and experience.

material damage occurred, was used as a residence. . . The term also includes a building adjunct and used in connection with the residential use of the occupied dwelling such as a garage or storage shed. Buildings used for any agricultural, commercial, or industrial purposes are excluded.

B. REPLACEMENT OF DRINKING, DOMESTIC OR RESIDENTIAL WATER SUPPLIES - § 817.41(k)

1. The Rule Designed to Implement Energy Policy Act Provisions Governing the Replacement of Domestic Water Supplies Fails to Defer to State Water Rights Laws as Required by Section 717(a).

When Congress enacted the revisions to SMCRA in the Energy Policy Act mandating the replacement of drinking and domestic water supplies, there is no indication of any intent to disrupt state water rights laws establishing priorities among water users, as guaranteed by section 717(a) of SMCRA. Yet the proposed rule at 30 CFR 817.41(k) would require an underground coal producer with senior rights to replace any "drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992." 58 FR at 50186. OSM must, therefore, include an appropriate clarification that this section will not in any way affect property rights under existing state water laws, consistent with section 717(a).

The water replacement provision of the Energy Policy Act § 2504(a) amends Title VII of SMCRA, and within that same title is found the broad savings provision for state water law which provides that:

Nothing in this Act, shall be construed as affecting in any way the right of a person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mine operation.

SMCRA § 717(a).

Both the Secretary and a court of appeals have construed this provision so that "whatever water rights state law affords mine operators are preserved.." National Wildlife Federation v. Hodel, 839 F. 2d at 757. This savings provision applies equally to the new underground coal mine water replacement requirements of SMCRA in that new § 720(a)(2) creates an additional remedy for the designated water users, but does not deprive anyone, including mine operators, of whatever water rights to the use of water they had previously. cf. NWF v. Hodel, 839 F. 2d at 757.

Congress could have excluded underground coal mine operators from this savings provision when it amended SMCRA, but chose not to do so. There is no indication that Congress intended to displace the status quo under SMCRA or its rules that explicitly recognize existing rights, including those of mine operators, under state water law. The final rules must reflect the applicability of this savings clause with respect to the remedy provided in proposed § 817.41(k) for the replacement of a drinking, domestic or residential water supply.

2. Language of § 817.41(k)

The rule to implement Section 720(a)(2) of SMCRA, § 2504(a)(1) of the Energy Policy Act, must recognize not only that water loss occurred from "mining" after the effective date of the Energy Policy Act, but also that the water supply from the wells or springs in existence prior to the permit application was being used for the drinking, domestic, or residential use at the time mining occurred which resulted in the loss of the water supply. Also, as we mentioned earlier, the replacement of a water supply should only pertain to that part of the water supply used for the purposes covered under Section 720(a)(2).

The federal rule should also recognize that where providing a replacement supply is not feasible, the permittee can provide the dwelling owner with appropriate compensation for the loss of the water supply. There is no indication that Congress intended to place the permittee in a situation where it may become technically impossible to comply with a requirement, but instead that it desired that dwelling owners be afforded a remedy where underground coal mining causes material damage or loss of water. According to Rep. Rahall (D-WV): *"These provisions say let us mine coal. At the same time, if that coal mining causes damage to someone's home, my amendment says that person should be compensated."* 138 Cong. Rec. 11414 (October 5, 1992). Moreover, the explicit language of the Energy Policy Act states unequivocally that: "Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations." Accordingly, to satisfy this intent, and to afford homeowners the opportunity for compensation when providing a replacement source is impractical, the final rule must also set forth an alternative compensation remedy.

As we discuss later under proposed § 817.121(c)(2), the rule should recognize that agreements between the permittee and owner constitute per se compliance with these remedial requirements. The industry's practice of reaching satisfactory arrangements with landowners has been successful in resolving most concerns about underground coal mining, and Congress did not intend to displace these private arrangements, but instead assure that remedies exist where no arrangements have been made with homeowners.

The term "promptly" should be construed in a flexible manner relative to the circumstances in each case. Studies on the underground coal mining effects upon hydrology generally demonstrate that impacts upon water supplies are temporary. Thus, "promptly" should

not mean that the replacement/compensation measures be completed until the impacts are fully determined, and appropriate measures considered to address these case-specific circumstances. The fact that the actual impacts and appropriate measures to address them will vary with the specific circumstances provides a sound basis for the final rules to explicitly recognize agreements with landowners as a method for compliance with the rules. It would also fit well with the nature and intent of the SMCRA amendments which only intended to provide another remedy for homeowners whose "drinking, domestic, or residential water supply" was lost due to underground coal mining which occurred after the effective date of the Energy Policy Act.⁷

Finally, OSM requested comments on the implementation schedules proposed in this rule for the Energy Policy Act requirements. According to the preamble:

In OSM's opinion, Congress did not intend enforcement of this Energy Policy Act provisions to await state program amendments, a process that may take years.

58 F.R. at 50180.

We submit that OSM has framed and characterized the issue incorrectly. This is not an issue of enforcement, but one of a remedy available to the homeowner. This is made clear in the history and language of the amendments which explicitly state that this provision cannot be applied to prohibit or interrupt underground coal mining. 106 Stat. 3104. To the extent these remedies were available for damage related to mining which occurs after the effective date of the statutory amendments, the rules incorporate these dates. Suggestions in the preamble about

⁷ OSM requested specific comments on whether the regulatory requirements should include a plan for the "repair of subsidence-related damage to well water supply." We submit that no such plan is authorized or necessary under the Energy Policy Act requirements. However, the rules should recognize the agreements with homeowners as one method for addressing repair/compensation requirements of that Act.

enforcement conflict with Congressional intent and other statutory provisions in SMCRA that prohibit the regulatory authority from adjudicating property disputes. Homeowners who believe they have not been provided the remedies afforded under the law may proceed with whatever action is necessary to obtain these remedies without entangling the federal and state agencies in these matters.

3. Revised Language

The rules should be revised to more closely reflect the statutory language as follows:

§ 817.41(k) *Drinking, Domestic, or Residential Water Supply.*

The permittee shall promptly replace, or compensate for, that part of a water supply used for drinking, domestic, or residential use that is contaminated, diminished, or interrupted by underground mining activities conducted after October 24, 1992, if the source of the affected supply was a well or spring in existence and used for drinking, domestic or residential purposes as of the date the regulatory authorities received the permit application for the activities causing the loss, contamination or interruption. Nothing in these rules shall be construed as affecting in any way the rights of any person, including the permittee, to enforce or protect, under applicable state law, his interest in water resources. Nothing in these rules shall be construed to prohibit or interrupt underground coal mining operations.

C. REPAIR OR COMPENSATION FOR SUBSIDENCE DAMAGE TO OCCUPIED RESIDENTIAL DWELLINGS, RELATED STRUCTURES AND NON-COMMERCIAL BUILDINGS - § 817.121(C)(2).

The final rule should recognize that agreements between the owner of the protected buildings and the mine operator will satisfy this requirement. Pre-subsidence and post-subsidence agreements between operators and owners have been used for decades to satisfactorily deal with landowner concerns. These agreements, or good neighbor policies, are a principal reason why the Department found few problems with subsidence damage during the 1991 notice

of inquiry. These policies may provide benefits not required under existing state laws and rules, or the new Energy Policy Act requirements for that matter. State regulatory authorities have generally accepted these agreements as per se compliance with their State subsidence damage laws. This approach avoids entangling the regulatory authorities in private disputes, and the adjudication of property disputes which is unauthorized under SMCRA and State programs. See e.g. SMCRA §§ 507(b)(9), 510(b)(6).

Moreover, these agreements allow the parties to tailor the compensation, repair, water replacement to the site-specific circumstances, and property owners' needs and preferences. These agreements will sometimes use a combination of compensation, repair, in-kind services (e.g. construction of a pond or road), or other payments to satisfy the building owner. To retain this flexibility, the final rule should reflect that such agreements will be recognized and accepted as satisfaction of the requirements in the rule. To provide otherwise will unduly burden operators, and deny landowners the ability to contract with respect to their property. Industry's experience has proven that it is better to deal with landowners when possible in a flexible manner, rather than attempting to address each in a pre-determined fashion. If OSM's final rules do not accommodate these agreements, then the rules will set back decades of progress, and frustrate Congressional intent.

Such recognition should also be accorded to agreements reached by property owners and operators prior to the enactment of the Energy Policy Act. The purpose of the Energy Policy Act was to provide owners of certain designated buildings a remedy for material subsidence damage where none already existed. Nothing in the language or history of the Energy Policy Act indicates an attempt to "unsettle" matters already mutually agreed to by the parties. Failure

to recognize existing agreements would render the rules, and the Energy Policy Act, constitutionally suspect under Article I § 10 of the U.S. Constitution which prohibits the States from the passage of any "Law Impairing the Obligation of Contracts"; and, this similar prohibition applies to the federal government under the due process clause of the Fifth Amendment. The rule should also recognize that where there exists agreements between landowners and operators, these agreements may also be recognized to allow for the waiver of filing subsidence control plans for those areas, as well as areas where the operator owns the surface and buildings.

The final rule should also clarify that the term "promptly" must be applied in a relative and flexible manner relating to the site-specific circumstances, and not construed and applied to require the remedies provided in the provision to be undertaken until the time when the full extent of the subsidence effects can be reasonably determined. Operators should not be compelled to initiate repair/compensation measures prematurely, only to once again conduct additional measures because the subsidence effects have not abated.

Finally, conspicuously absent from any aspect of the rulemaking is the language added in the Energy Policy Act that the provisions of § 2504(a) only provide additional remedies to owners of those buildings and water supplies covered in that section, and are not intended for purposes of enforcement or prohibition of underground coal mining. That language states clearly that:

Nothing in this section shall be construed to prohibit or interrupt underground coal mine operations.

106 Stat. 3104.

This language was inserted into the legislation during the Conference Committee in response to concerns that while these provisions were characterized as only remedial in nature, they would be used as a basis for denying coal mine permits, issuance of enforcement orders, and entangling the federal and state agencies in disputes between operators and landowners. This statutory provision also demonstrates Congressional intent that the obligations set forth in Section 2504(a) of the Energy Policy Act (§ 720 of SMCRA) were intended to resolve all issues over the scope of SMCRA authority to impose any requirements to repair/compensate for subsidence damage, and replacement of water supplies. Given Congressional concern that the provisions of new § 720 do not provide a basis for the prohibition or interruption of underground mining, it clearly intended that OSM not imply some residual authority for imposing additional obligations and remedies with respect to underground coal mines.⁸

Proposed Section 817.121(c) should be revised to insert the following provisions:

"The permittee may satisfy this requirement through an agreement with the owner or interest."

* * * * *

"Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations."

⁸ Even in the absence of this express language in the Energy Policy Act, a series of cases have held that remedial provisions in the federal SMCRA and state SMCRA do not preempt or render invalid state common law on waivers of subjacent support. See Smerdell v. Consolidation Coal Company, 806 F. Supp. 1278, 1284 (W.D. W. Va. 1992) Accord. Sendra v. Consolidation Coal Company, C.A. No. 89-0009-W(s) (N.D. W. Va. March 27, 1991); Giza v. Consolidation Coal Company, C.A. No. 85-0056-W(s)(N.D. W. Va. Dec. 12, 1991), aff'd., 972 F. 2d 339 (4th Cir. 1992); Russell v. Island Creek Coal Company, 389 S.E. 2d 194, 205 (1989).

additional costs and reallocates property rights, existing mechanisms in place should be evaluated and utilized. There exists no compelling need to alter the property rights, particularly among commercial interests, when another mechanism exists, or one could be established to provide insurance protection to an establishment built over coal areas where the title clearly reserves the right to subsidize.

OSM must evaluate existing programs which exist in these states in order to fully analyze the need for these proposed rules. Even when an insurance program does not cover a potential circumstance, the agency should evaluate whether establishment or enhancement of such a program in the states would provide an effective and more equitable option than aspects of this rulemaking which interfere with existing state property rights. See Overview of Mine Subsidence Insurance Programs in the Untied States, BOM Inf. Cir. 9362 (1993).

K. Proposed Enforcement Scheme

It remains unclear from the proposal what OSM means by retroactive enforcement. Nor is it clear which of these proposed standards OSM would make immediately effective. Only two performance standards appear related to the Energy Policy Act: § 817.41(k) and § 817.121(c)(2). According to the preamble, only these two standards would apply in the states upon promulgation of a final rule. However, the proposed definitions in § 701.5 expand the scope of these standards beyond what one derives from their plain meaning in the Energy Policy Act. It would be harsh and unjust to take enforcement action against operators in those circumstances where one could not reasonably anticipate that the statutory provisions would be expanded so broadly. Operators cannot be held to a standard or interpretation unknown at the time the incident occurred. Indeed, this would constitute retroactive enforcement, which is generally

proscribed. See e.g. Georgetown University Hospital v. Brown, 821 F. 2d 750 (D.C. Cir. 1987), aff'd 109 S. Ct. 468 (1988); U.S. V. Shelton Coal Corp., 829 F. 2d 1336 (4th Cir. 1987).

The proposed enforcement scheme does not comport with that under SMCRA which vests the state with enforcement authority. We submit that OSM should discuss with various states, approaches to assure that any necessary remedial work is performed by operators without the need for enforcement or federal intervention. We believe that OSM will find that most operators will perform any clear obligations imposed under the Energy Policy Act amendments. There will be cases where legitimate disagreements exist over causation and scope of obligations, but these are the types of issues that are not amenable to intervention by the regulatory authorities or OSM.

Unlike OSM, we do not glean from the Energy Policy Act amendments the same intent or concern about "enforcement". Instead, an intent to avoid the regulatory authorities intercedence into issues over damage, repair and compensation is evident from the statutory caveat that these provisions not be used to interrupt or prohibit underground coal mining. The intent was to provide homeowners a remedy where none existed, and any claim that an operator has not satisfied its obligation under § 720(a) may be pursued by the owner without any intervention by the state or OSM, with or without federal rules implementing these provisions. We see no necessity for OSM to supersede state programs. OSM should refrain from this action since it has not adequately explained how OSM would interact with states and operators in these circumstances. Would it send ten-day-notices, or would it initiate procedures under Part 733?

Without any further discussion of these issues, operators cannot adequately comment on this aspect of the proposal.

Finally, with respect to the remaining aspects of this proposal, these requirements cannot apply in a state until that state adopts its version of the requirements in its program.

VII. ANALYSIS ON COSTS, REPORTING BURDENS AND OTHER EFFECTS UPON THE COAL INDUSTRY

The Environmental Assessment and Determination of Effects prepared in support of the proposed rule discloses the haphazard manner in which the agency decided to add, at the last moment, many aspects of the proposed regulations and burdens which conflict with the intent of the Energy Policy Act. In various parts of the Environmental Assessment and Determination of Effects, significant aspects of the proposal are not even mentioned. In other parts, the passing mention of these new requirements appear to have been added later to documents prepared for supporting rulemaking limited to implementation of § 2504(a) of the Energy Policy Act. Moreover, the minimal depth of the discussion and analysis in each document further demonstrates that the agency has not adequately considered the need, basis, and impact of those aspects of the proposed rule which impose obligations and standards beyond those required under the Energy Policy Act.

A. ENVIRONMENTAL ASSESSMENT

The Environmental Assessment (EA) states that OSM considered only two alternatives: (1) no action; and, (2) the proposed rule. E.A. at 6. However, the National Environmental Protection Act (NEPA) requires the agency to evaluate all reasonable alternatives. In this matter, there was at least one other reasonable alternative which would be rules implementing



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June 5, 1995

TO	DATE	ROUTE	DATE	MESSAGE
1	A. Abbs			Turn in 6/20
	T. EHMETT			
	L. MEADORS			
	S. MARTINEZ			
	D. MARTINEZ			
	S. RATHBUN			
2	Down			

Arthur W. Abbs, Acting Director
 Office of Surface Mining
 Reclamation & Enforcement
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 Albuquerque, New Mexico 87102

Re: UT-028-FOR, Husbandry Practices Additional Information

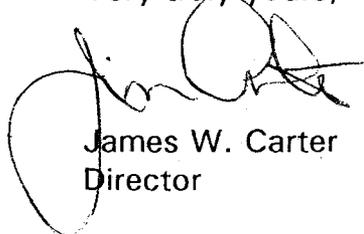
Dear Mr. ^{Art} Abbs:

This letter is in response to your issue letter of May 23, 1995. While you will find that the information enclosed is not a complete resubmittal of the program amendment, the appropriate revised documents are included: the draft husbandry practices rules, Utah Admin. Rule R645-301-357 et seq., and a proposed Appendix "C" to the existing Vegetation Information Guidelines. To avoid confusion in identifying the revised documents, I have labelled them Enclosure Nos. 1 and 2, respectively, and have dated each of the documents with the current date.

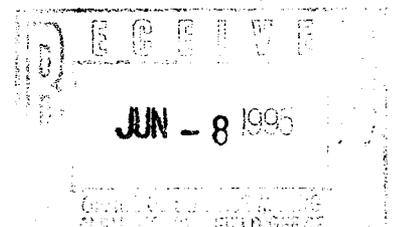
The main body of the husbandry practices rules is already adopted as part of the Utah Administrative Rules, but the enclosed changes at R645-301-357.340 and R645-301-357.350 remain as draft at this time. Likewise, the changes made to Appendix "C" are draft. Once the new forms of R645-301-357 et seq. and Appendix "C" are approved by OSM, Utah will begin the rulemaking process.

Please let me know if there are questions on this revised submittal, or if you require additional information.

Very truly yours,


 James W. Carter
 Director

jbe
 Enclosures (2)
 cc/enc: P. Baker
 L. Braxton
 R. Daniels
 S. White
 H:HUSBAND.LTR



Proposed for Inclusion as Appendix "C"
to the Existing
Vegetation Information Guidelines
June 5, 1995

Burned Area Revegetation:

USDA Forest Service. 1995. Burned-area emergency rehabilitation handbook. FSH 2509.13. Chapter 20, p. 1-18.

USDI Bureau of Land Management. 1985. Emergency fire rehabilitation. BLM Manual, Handbook H-1742-1. p. 1-9.

USDI Bureau of Land Management. 1987. State office emergency fire rehabilitation 1742. BLM Manual Utah State Office Release 1-152. Sections .01 through .8, Appendix I.

Pest Control:

Plummer, A. P., D. R. Christensen, and S. B. Monsen. 1968. Restoring big-game range in Utah. Utah Division of Fish and Game Publication No. 68-3. p. 1-183.

USDA Forest Service. 1988. Fences. Missoula Technology and Development Center, Richard Karsky (Project Leader). U.S. Government Printing Office: 1988-594-194/80139. p. 1-210.

Vallentine, J. F. 1977. Range development and improvements. Brigham Young University Press, Provo, Utah. p. 1-516.

Wildlife Society, The. 1980. Wildlife management techniques manual, fourth edition: revised. S. D. Schemnitz (ed.). The Wildlife Society, Washington, D.C. p. 1-686.

Rill and Gully Repair:

Israelsen, C. E., J. E. Fletcher, F. W. Haws, and E. K. Israelsen. 1984. Erosion and sedimentation in Utah: a guide for control. Utah Water Research Laboratory, Logan, Utah. Hydraulics and Hydrology Series UWRL/H-84/03. p. 1-90.

Transportation Research Board. 1980. Erosion control during highway construction: manual on principles and practices. National Research Council, Washington, D.C. National Cooperative Highway Research Program Report 221. p. 1-23.

Utah State University Agricultural Experiment Station and Cooperative Extension Service.
1989. Interagency forage and conservation planting guide for Utah. Howard Horton
(ed.). Extension Circular EC433. p. 1-67.

Vallentine, J. F. 1977. Range development and improvements. Brigham Young University
Press, Provo, Utah. p. 1-516.

Seeding and Planting:

Bureau of Land Management. 1987. Renewable resource improvement and treatment
guidelines and procedures. Bureau of Land Management Handbook H-1740-1. p. IV-
1 to IV-10.

Ferguson, R. B., and N. C. Frischknecht. 1981. Shrub establishment on reconstructed soils
in semiarid areas. Proc. Shrub establishment on disturbed arid and semi-arid lands.
Wyoming Game and Fish Dept. p. 1-154.

Plummer, A.P., D.R. Christensen, and S. B. Monsen. 1968. Restoring big-game range in
Utah. Utah Division of Fish and Game Publication No. 68-3. p. 1-183.

Utah State University Agricultural Experiment Station and Cooperative Extension Service.
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(ed.). Extension Circular EC433. p. 1-67.

Vallentine, J. F. 1977. Range development and improvements. Brigham Young University
Press, Provo, Utah. p. 1-516.

Weed Control:

Bureau of Land Management. 1991. Final environmental impact statement, vegetation
treatment on BLM lands in thirteen western states. U.S. Government Printing Office:
1991-573-071/44014.

Montana State University, Utah State University, and University of Wyoming Cooperative
Extension Services. 1993. 1993-94 Montana - Utah - Wyoming weed control
handbook. Tom D. Whitson, Steven A. Dewey, and Peter K. Fay (editors). p. 1-
210.

357.300. Husbandry Practices - General Information

357.301. The Division may approve certain selective husbandry practices without lengthening the extended responsibility period. Practices that may be approved are identified in R645-301-357.310 through R645-301-357.365. The operator may propose to use additional practices, but they would need to be approved as part of the Utah Program in accordance with 30 CFR 732.17. Any practices used will first be incorporated into the mining and reclamation plan and approved in writing by the Division. Approved practices are normal conservation practices for unmined lands within the region which have land uses similar to the approved postmining land use of the disturbed area. Approved practices may continue as part of the postmining land use, but discontinuance of the practices after the end of the bond liability period will not jeopardize permanent revegetation success. Augmented seeding, fertilization, or irrigation will not be approved without extending the period of responsibility for revegetation success and bond liability for the areas affected by said activities and in accordance with R645-301-820.330.

357.302. The Permittee will demonstrate that husbandry practices proposed for a reclaimed area are not necessitated by inadequate grading practices, adverse soil conditions, or poor reclamation procedures.

357.303. The Division will consider the entire area that is bonded within the same increment, as defined in R645-301-820.110, when calculating the extent of area that may be treated by husbandry practices.

357.304. If it is necessary to seed or plant in excess of the limits set forth under R645-301-357.300, the Division may allow a separate extended responsibility period for these reseeded or replanted areas in accordance with R645-301-820.330.

357.310. Reestablishing trees and shrubs

357.311. Trees or shrubs may be replanted or reseeded at a rate of up to a cumulative total of 20% of the required stocking rate through 40% of the extended responsibility period.

357.312. If shrubs are to be established by seed in areas of established vegetation, small areas will be scalped. The number of shrubs to be counted toward the tree and shrub density standard for success from each scalped area is limited to one.

357.320. Weed Control and Associated Revegetation. Weed control through chemical, mechanical, and biological means discussed in R645-301-357.321 through R645-301-357.323 is allowed through the entire extended responsibility period for noxious weeds and through the first 20% of the responsibility period for other weeds. Any revegetation necessitated by the following weed control methods will be performed according to the seeding and transplanting parameters set forth in R645-301-357.324.

357.321. Chemical Weed Control. Weed control through chemical means, following the current Weed Control Handbook (published annually or biannually by the Utah State University Cooperative Extension Service) and herbicide labels, is allowed.

357.322. Mechanical Weed Control. Mechanical practices that may be approved include hand roguing, grubbing and mowing.

357.323. Biological Weed Control. Selective grazing by domestic livestock is allowed. Biological control of weeds through disease, insects, or other biological weed control agents is allowed but will be approved on a case-by-case basis by the Division, and

other appropriate agency or agencies which have the authority to regulate the introduction and/or use of biological control agents.

357.324. Where weed control practices damage desirable vegetation, areas treated to control weeds may be reseeded or replanted according to the following limitations. Up to a cumulative total of 15% of a reclaimed area may be reseeded or replanted during the first 20% of the extended responsibility period without restarting the responsibility period. After the first 20% of the responsibility period, no more than 3% of the reclaimed area may be reseeded in any single year without restarting the responsibility period, and no continuous reseeded area may be larger than one acre. Furthermore, no seeding is allowed after the first 60% of the responsibility period or Phase II bond release, whichever comes first. Any seeding outside these parameters is considered to be "augmentative seeding," and will restart the extended responsibility period.

357.330. Control of Other Pests.

357.331. Control of big game (deer, elk, moose, antelope) may be used only during the first 60% of the extended responsibility period or until Phase II bond release, whichever comes first. Any methods used will first be approved by the Division and, as appropriate, the land management agency and the Utah Division of Wildlife Resources. Methods that may be used include fencing and other barriers, repellents, scaring, shooting, and trapping and relocation. Trapping and special hunts or shooting will be approved by the Division of Wildlife Resources. Other control techniques may be allowed but will be considered on a case-by-case basis by the Division and by the Utah Division of Wildlife Resources. Appendix C of the Division's "Vegetation Information Guidelines" includes a non-exhaustive list of publications containing big game control methods.

357.332. Control of small mammals and insects will be approved on a case-by-case basis by the Utah Division of Wildlife Resources and/or the Utah Department of Agriculture. The recommendations of these agencies will also be approved by the appropriate land management agency or agencies. Small mammal control will be allowed only during the first 60% of the extended responsibility period or until Phase II bond release, whichever comes first. Insect control will be allowed through the entire extended responsibility period if it is determined, through consultation with the Utah Department of Agriculture or Cooperative Extension Service, that a specific practice is being performed on adjacent unmined lands.

357.340. Natural Disasters and Illegal Activities Occurring After Phase II Bond Release. Where necessitated by a natural disaster, excluding climatic variation, or illegal activities, such as vandalism, not caused by any lack of planning, design, or implementation of the mining and reclamation plan on the part of the Permittee, the seeding and planting of the entire area which is significantly affected by the disaster or illegal activities will be allowed as an accepted husbandry practice and thus will not restart the extended responsibility period. Appendix C of the Division's "Vegetation Information Guidelines" references publications that show methods used to revegetate damaged land. Examples of natural disasters that may necessitate reseeded which will not restart the extended responsibility period include wildfires, earthquakes, and mass movement originating outside the disturbed area.

357.341. The extent of the area where seeding and planting will be allowed will be determined by the Division in cooperation with the Permittee.

357.342. All applicable revegetation success standards will be achieved on areas reseeded following a disaster, including R645-301-356.232 for areas with a designated postmining land use of forestry or wildlife.

357.343. Seeding and planting after natural disasters or illegal activities will only be allowed in areas where Phase II bond release has been granted.

357.350. Irrigation. The irrigation of transplanted trees and shrubs, but not of general areas, is allowed through the first 20% of the extended responsibility period. Irrigation may be by such methods as, but not limited to, drip irrigation, hand watering, or sprinkling.

357.360. Highly Erodible Area and Rill and Gully Repair. The repair of highly erodible areas and rills and gullies will not be considered an augmentative practice, and will thus not restart the extended responsibility period, if the affected area as defined in R645-301-357.363 comprises no more than 15% of the disturbed area for the first 20% of the extended responsibility period and if no continuous area to be repaired is larger than one acre.

357.361. After the first 20% of the extended responsibility period but prior to the end of the first 60% of the responsibility period or until Phase II bond release, whichever comes first, highly erodible area and rill and gully repair will be considered augmentative, and will thus restart the responsibility period, if the area to be repaired is greater than 3% of the total disturbed area or if a continuous area is larger than one acre.

357.362. The extent of the affected area will be determined by the Division in cooperation with the Permittee.

357.363. The area affected by the repair of highly erodible areas and rills and gullies is defined as any area that is reseeded as a result of the repair. Also included in the affected areas are interspacial areas of thirty feet or less between repaired rills and gullies. Highly erodible areas are those areas which cannot usually be stabilized by ordinary conservation treatments and if left untreated can cause severe erosion or sediment damage.

357.364. The repair and/or treatment of rills and gullies which result from a deficient surface water control or grading plan, as defined by the recurrence of rills and gullies, will be considered an augmentative practice and will thus restart the extended responsibility period.

357.365. The Permittee shall demonstrate by specific plans and designs the methods to be used for the treatment of highly erodible areas and rills and gullies. These will be based on a combination of treatments recommended in the Soil Conservation Service (Natural Resources Conservation Service) Critical Area Planting recommendations, literature recommendations including those found in Appendix C of the Division's "Vegetation Information Guidelines", and other successful practices used at other reclamation sites in the State of Utah. Any treatment practices used will be approved by the Division.



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement

Suite 1200

505 Marquette Avenue N.W.

Albuquerque, New Mexico 87102

June 5, 1995

Memorandum

To: The Utah Administrative Record

From: Arthur W. Abbs, Acting Director
Albuquerque Field Office

Subject: Consultation with the State of Utah

The Energy Policy Act of 1992 (EPACT) added a section, Section 720, to Surface Mining Control and Reclamation Act (SMCRA) for which implementing federal regulations were published March 31, 1995. Included in the new regulations is Section 843.25 which addresses EPACT enforcement in States with approved programs. Section 843.25 directs OSM to make a State-by-State determination of the appropriate regulatory approach for each State in the period before approved State regulations implementing the provisions of EPACT are in place. Before making this determination, Section 843.25 requires that OSM consult with each affected State.

Consultation with the Utah Division of Oil, Gas and Mining (DOG M) occurred in conjunction with the public hearing held May 1, 1995, in the DOGM Board Room. The hearing was requested by the Utah Mining Association in response to the April 6, 1995, Federal Register Notice soliciting comments on the implementation of underground subsidence and water replacement provisions of Section 720 of SMCRA. The State made an oral and written statement in the Hearing, and discussion with OSM followed. The State's written statement is attached.

When EPACT was passed, DOGM did not have provisions in its Statute to support regulation of subsidence related material damage and water loss or diminution. In 1993, DOGM made a submittal to the State Legislation that was intended to update the Utah Statute to be no less effective than Section 720 of SMCRA. However, during the legislative process the provision covering water replacement was removed from the bill in deference to the Utah State Engineer's authority over

water rights. Senate Bill 214 passed, effective May 2, 1994, adding 40-10-18 (4) (a) which states:

Underground coal mining operations conducted after October 24, 1992, shall be subject to the following requirement: The permittee shall promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and related structures or non-commercial building due to underground mining operations. Repair of damage will include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and related structures or noncommercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and related structures or noncommercial building and will be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium prepaid insurance policy.

There is no approved language regarding water replacement.

In conversation following the public hearing, DOGM stated that it recognizes that hydrology is the most important issue facing the Utah coal operators and DOGM, as regulators. DOGM pointed out that it has, in the past, investigated ground water hydrology and taken action to address concerns both in its permitting process and because of concerns expressed by citizens and interested parties under the current hydrologic regulatory language.

DOGM reiterated that, though there is potential for conflicts with State Water Law regarding replacement for "junior" water allocation, DOGM is committed to developing further water replacement regulation that would meet the needs of EPACT without impacting current water rights doctrine. The current timetable given in DOGM's presentation is introducing new legislation in the 1996 session and rulemaking by the summer of 1996.

DOGM's preference for interim enforcement methodology is immediate State implementation of the terms of EPACT under general provisions in the current State regulations, and continued implementation under new regulations similar to Federal regulations as rulemaking occurs.

ANALYSIS

OSM finds that DOGM has implemented provisions contained in its approved regulatory program concerning hydrologic information and hydrologic balance replacement and is committed to the investigation and resolution of citizens'

concerns regarding water sources. OSM also recognizes that the majority of mines in Utah are subject to the EPACT provisions and that there are both current concerns, as well as potential for additional complaints, regarding the loss, contamination or diminution of water sources that serve large populations in the coal producing counties of Utah. These concerns are documented in the written record of the hearing in which numerous parties spoke on behalf of the water districts.

All mines in Utah are underground operations, of which it appears that 21 mines have conducted mining operations after October 24, 1992. DOGM has the statutory basis in place corresponding to all of 30 CFR 817.(j), but does not have language corresponding to 817.121(c)(2). The timetable for promulgating water replacement statutory and/or regulatory provisions corresponding to 817. 121(c)(2) is in keeping with usual timeframes for enactment of legislation and revision of regulations.

It is our initial determination that OSM should defer to State enforcement of provisions corresponding to subsidence related material damage and state enforcement of provisions concerning water loss or diminution caused by underground mining to the extent authorized under the approved Utah regulatory program. The State will retain its role as primary enforcer to the extent that it has the authority to do so. In that it is unclear under current Utah regulatory provisions that the protections corresponding to 817.121(c)(2) can be fully implemented by Utah in all cases, OSM must retain enforcement authority in cases where it is determined that Utah lacks authority or where exercise of current authority will not meet the requirements of 817.121(c)(2).

This approach was discussed with DOGM on May 31, and June 5, 1995, and OSM and DOGM are in agreement that this selection will fully enforce provisions of the Energy Policy Act until such time as the State has all appropriate statutory and regulatory language in place.

cc: Dennis Winterringer

Statement of James W. Carter
Director, Utah Division of Oil Gas and Mining
May 1, 1995

The Division appreciates the opportunity to address the Office of Surface Mining on implementation of the subsidence and water replacement provisions of the Energy Policy Act through this public hearing process. As you know, the Utah coal industry produced in excess of 24 Million tons of coal last year, all by underground mining methods. The two main areas of regulation under the Act, subsidence control and the replacement of water supplies affected by underground mining, are significant features of the Utah coal program and are important to the underground mining industry and the residents of coal mining areas.

During the 1994 Utah legislative session, the Division of Oil, Gas and Mining was successful in obtaining amendments to the Utah coal regulatory program implementing most of the changes to SMCRA brought about by the Energy Policy Act. However, because of implications for Utah's long-settled water law, those portions dealing with subsidence damage and water replacement were not enacted as proposed. The Division, therefore, has not yet formally adopted subsidence or water replacement rules as OSM has recently done. The Division has already committed to introduce new legislation in the 1996 session, if necessary, which will avoid the earlier water law concerns, and could provide the basis for rulemaking by this time next year. Notwithstanding the actions of the 1994 legislature, the Division and Board currently have authority under existing enactments and rules to adequately address subsidence and water replacement issues as they arise.

Since obtaining primacy in 1981 the Division has been making well-based and informed decisions on the hydrologic impacts of underground mining through the use of advanced computer modeling and investigatory techniques, combined with formal and informal administrative processes. The Division and Board have been examining water and related subsidence issues for quite some time. In cooperation with the Utah Division of Water Rights we have been addressing water supply and water rights issues from the very beginning of the State's primacy program. We have also learned a great deal about the western mining subsidence phenomenon during the past fourteen years of primacy, and we routinely condition mining permits to avoid subsidence-caused surface damage.

Enactment of new subsidence and water replacement law and regulations may enhance these on-going activities, but such regulations must be carefully crafted within existing water rights doctrine. In this area in particular, state primacy in creating and administering the provisions of the Energy Policy Act is critical. Without close collaboration with the Division or Water Rights, regulation of

subsidence damage and water replacement will be a legal morass. The potential for creating conflicts between the legitimate objectives of the prior appropriation doctrine and the Energy Policy Act is high, and careful definition of the interplay of the two is critical.

We are now in an interim regulatory period while OSM analyzes the Utah program and the provisions of our most recent program amendment submittal, and compares them to its own recently promulgated rules. During this period it would make no logical sense for OSM to gear up a separate federal program to address only subsidence damage and water replacement issues for three reasons: 1) The Board and Division have adequate existing authority to implement those provisions; 2) There exist significant legal and administrative impediments to creation of a successful separate federal program; 3) At the outside, the Division can have new regulatory provisions in place, if necessary, by March, 1996. This would be in the case legislation is required. If only administrative rules are required, these can be enacted in a matter of weeks.

Given these circumstances, implementation of the terms of the Energy Policy Act by any other regulatory authority than the State of Utah at this time would be an inefficient and wasteful use of our scarce budgetary resources. We recommend that OSM continue with its review of Utah's recent program amendments and that the Division pursue whatever legislative or administrative modifications are deemed necessary. We would strongly discourage the creation of a new, temporary and limited-scope regulatory program.

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UT-1057

those countries entitled to reciprocal privileges and designates the extent of the exemptions allowed.

In accordance with 19 U.S.C. 1309(d), the Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration, Department of Commerce, has advised the Customs Service by letter dated April 17, 1995, that following an appropriate investigation, it has been found that the Governments of Abu Dhabi, Bahrain, Oman and Qatar allow or would allow to aircraft of United States registry exemption privileges, in connection with international commerce operations, substantially reciprocal to those exemption privileges provided to aircraft of foreign registry by sections 309 and 317 of the Tariff Act of 1930, as amended. The effective date of this finding is June 1, 1994.

This document amends the list in § 10.59(f), Customs Regulations (19 CFR 10.59(f)) by adding Abu Dhabi, Bahrain, Oman and Qatar to the list of countries entitled to reciprocal privileges.

Authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations Branch.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because the subject matter of this document does not constitute a departure from established policy or procedures, but merely announces the granting of an exemption for which there is a statutory basis, it has been determined, pursuant to 5 U.S.C. 553(b)(B), that the notice and public comment procedures thereon are unnecessary. Further, for the same reasons and because Abu Dhabi, Bahrain, Oman and Qatar have been found to be presently granting reciprocal exemption privileges to U.S.-registered aircraft, it has been determined, pursuant to 5 U.S.C. 553(d)(1) and (3), that a delayed effective date is not required. Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

List of Subjects in 19 CFR Part 10

Aircraft, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements.

Amendment to the Regulations

To reflect the reciprocal privileges granted to aircraft registered in Abu Dhabi, Bahrain, Oman and Qatar, part 10, Customs Regulations (19 CFR part 10) is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for part 10 continues to read, in part, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *
Section 10.59 also issued under 19 U.S.C. 1309, 1317;
* * * * *

§ 10.59 [Amended]

2. Section 10.59(f) is amended in the table by adding to the column headed "Country", in appropriate alphabetical order, "Abu Dhabi", "Bahrain", "Oman", and "Qatar" and by adding "95-45" adjacent to the names of the above-listed countries in the column headed "Treasury Decision(s)".

Dated: May 23, 1995.
Harold M. Singer,
Chief, Regulations Branch.
[FR Doc. 95-13070 Filed 5-26-95; 8:45 am]
BILLING CODE 4820-02-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with an exception and additional requirements, a proposed amendment to the Utah regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to and additions of rules pertaining to retention of highwalls in the postmining landscape. Utah submitted the amendment with the intent of revising its program to be consistent with the corresponding Federal regulations, clarifying ambiguities, and improving operational efficiency.

EFFECTIVE DATE: May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Acting Director, Albuquerque Field Office, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, Federal Register (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated November 12, 1993, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT-875). Utah submitted the proposed amendment at its own initiative and in response to the required State program amendments codified at 30 CFR 944.16 (a), (b), (c), and (d). The provisions of the Utah Administrative Rules (Utah Admin. R.) that Utah proposed to revise were: Utah Admin. R. 645-301-553.200, spoil and waste; Utah Admin. R. 645-301-553.252, refuse piles; Utah Admin. R. 645-301-553.500, previously mined areas (PMA's), continuously mined areas (CMA's), and areas subject to the approximate original contour (AOC) requirements; Utah Admin. R. 645-301-553.520, exception from complete highwall elimination for CMA's; Utah Admin. R. 645-301-553.523, stability criteria for highwall remnants and retained highwalls; Utah Admin. R. 645-301-553.600 and .620, AOC variances for incomplete elimination of highwalls in PMA's or CMA's; Utah Admin. R. 645-301-553.631, mountaintop removal operations; Utah Admin. R. 645-301-553.650, required showing by the operator and required findings by the regulatory authority necessary for approval of a retained highwall; Utah Admin. R. 645-301-651, height restrictions for retained highwalls; Utah Admin. R. 645-301-553.652, the applicability date of Utah's AOC standards at Utah Admin. R. 645-301.553.651 through .655; Utah Admin. R. 645-301-553.653, the restoration of retained highwalls to cliff-type habitats required by the flora and fauna existing prior to mining; and Utah Admin. R. 645-301-553.654, compatibility of retained highwalls with both the

approved postmining land use and the visual attributes of the area.

OSM announced receipt of the proposed amendment in the December 8, 1993, *Federal Register* (58 FR 64529), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT-879). Because no one requested a public hearing or meeting, none was held. The public comment period ended on January 7, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of Utah Admin. R. 645-301-553.110, backfilling and grading of disturbed areas; Utah Admin. R. 645-301-553.500 and .600, the organization of Utah's rules pertaining to retained highwalls; Utah Admin. R. 645-301-553.510 and .522, general backfilling and grading requirements; Utah Admin. R. 645-301-553.522, slope stability and drainage; Utah Admin. R. 645-301-553.500 and .523, stability criteria for retained highwalls; Utah Admin. R. 645-301-553.620, AOC variances; Utah Admin. R. 645-301-553.650, AOC and stability requirements for highwall retention; Utah Admin. R. 645-301-553.651, height and length of retained highwalls; Utah Admin. R. 645-301-553.652, the applicability date of Utah's AOC alternative; and various editorial comments concerning Utah Admin. R. 645-301-553.120, .631, .650, and .655. By letter dated March 31, 1994, OSM notified Utah of the concerns (administrative record No. UT-908).

By letter dated April 18, 1994, Utah requested a meeting between the Utah Division of Oil, Gas and Mining (Division) and OSM for the purpose of addressing the issues set forth by OSM in the March 31, 1994, letter (administrative record No. UT-918). On May 12, 1994, the Division and OSM held an executive session at the Western Support Center in Denver, Colorado. OSM posted a notice of the executive session in the Western Support Center (administrative record No. UT-925). OSM summarized the session and entered the summary into the administrative record (administrative record UT-942).

By letter dated June 29, 1994, Utah submitted a revised amendment in response to OSM's March 31, 1994, letter as clarified at the May 12, 1994, session (administrative record No. UT-941). In this submittal, Utah, at its own initiative, also proposed to (1) create a definition of the term "continuously mined areas" and (2) not use the terms "highwall remnant" and "retained highwall."

OSM announced receipt of the proposed revised amendment in the July 14, 1994, *Federal Register* (59 FR 35871) and reopened and extended the public comment period (administrative record No. UT-951). The public comment period ended on July 29, 1994.

During its review of the revised amendment, OSM identified additional concerns relating to the provisions of Utah Admin. R. 645-100-200, definition of the term "continuously mined areas;" Utah Admin. R. 645-301-553, general provisions on highwalls and backfilling and grading; Utah Admin. R. 645-301-553.110, backfilling and grading of disturbed areas; Utah Admin. R. 645-301-553.120, backfilling and grading of spoil and waste; Utah Admin. R. 645-301-553.130, slope stability requirements; Utah Admin. R. 645-301-553.510, re-mining operations on PMA's, CMA's, and areas with remaining highwalls subject to AOC provisions; Utah Admin. R. 645-301-553.550, .551, and .552, AOC exceptions; Utah Admin. R. 645-301-553.650, highwall management under the AOC provisions; Utah Admin. R. 645-301-553.651, nonmountaintop removal mining on steep slopes; Utah Admin. R. 645-301-553.652, remaining highwalls under the AOC provisions; and Utah Admin. R. 645-301-553.653, applicability date. By letter dated August 24, 1994, OSM notified Utah of the concerns (administrative record No. UT-967).

By telephone conversation on August 30, 1994, Utah requested a meeting between the Division and OSM for the purpose of addressing the date of applicability of Utah's rules that allow the replacement of preexisting cliffs or similar natural premining features with retained highwalls (administrative record No. UT-1010). On September 7, 1994, the Division and OSM held an executive session at the Western Support Center in Denver, Colorado. OSM posted a notice of the executive session in the Western Support Center (administrative record No. UT-969). OSM summarized the session and entered the summary into the administrative record (administrative record UT-970).

By letter dated November 3, 1994, Utah submitted a revised amendment in response to OSM's August 24, 1994, letter, as clarified at the September 7, 1994, session (administrative record No. UT-990).

OSM announced receipt of the proposed revised amendment in the December 2, 1994, *Federal Register* (59 FR 61855) and reopened and extended the comment period (administrative record No. UT-996). The public

comment period ended on December 19, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with an exception and additional requirements, that the proposed program amendment submitted by Utah on November 12, 1993, and as revised by it on June 28 and November 3, 1994, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations. Accordingly, the Director approves, with one exception, the proposed amendment and requires Utah to revise its program.

The Director notes that in a December 13, 1982, final rule *Federal Register* notice (47 FR 55672, 55673), the Secretary of the Interior approved as part of the Utah program a provision that the Director in a subsequent September 17, 1993, final rule *Federal Register* notice (58 FR 48600) referred to as the Utah "AOC alternative." OSM created the term "AOC alternative" and Utah does not define it in its program. In this proposed amendment, Utah used the terminology "areas with remaining highwalls subject to the AOC provisions," which is the Utah counterpart terminology to what OSM referred to in the past as the "AOC alternative." Accordingly, and throughout the remainder of this *Federal Register* notice, the Director refers to what was previously called the "AOC alternative" in the September 17, 1993, final rule *Federal Register* notice as "areas with remaining highwalls subject to the AOC provisions."

Also, in the September 17, 1993, final rule *Federal Register* notice (58 FR 48600), the Director placed upon the Utah program four required State program amendments at 30 CFR 944.16 (a), (b), (c), and (d) (administrative record No. UT-872). Specifically, the *Federal Register* notice revised 30 CFR 944.16 to read as follows:

Section 944.16 Required Program Amendments

* * * * *

(a) By November 16, 1993, Utah shall submit a proposed amendment for highwall retention and approximate original contour (AOC) at Utah Admin. R. 645-301-553.650 to require that, prior to obtaining Utah's approval for highwalls to be retained, the operator must establish and Utah must find in writing that any proposed highwall will comply with the approximate original contour criteria at Utah Admin. R. 645-301-553.651 through 655 and the stability requirement at Utah Admin. R. 645-301-553.523.

(b) By November 16, 1993, Utah shall submit a proposed amendment for highwall

retention and approximate original contour at Utah Admin. R. 645-301-553.651 restricting the height of retained highwalls to the height of cliffs or cliff-like escarpments that were replaced or disturbed by the mining operations.

(c) By November 16, 1993, Utah shall submit a proposed amendment stating that its requirement at Utah Admin. R. 645-301-553.652 has an applicability date of December 13, 1982, and applies to any highwall retained pursuant to the approximate original contour alternative.

(d) By November 16, 1993, Utah shall submit a proposed amendment for Utah Admin. R. 645-301-553.523 (1) eliminating the inconsistency between the title "previously mined areas" at Utah Admin. R. 645-301-553.500 and the content of subsection Utah Admin. R. 645-301-553.523, and clarifying that the stability criteria of proposed Utah Admin. R. 645-301-553.523 apply to the AOC alternative at Utah Admin. R. 645-301-553.650, (2) specifying that a highwall remnant or retained highwall must not pose a hazard to the environment, and (3) deleting the phrase "not to exceed either the angle of repose or such lesser slope as is necessary to."

However, in an April 7, 1994, final rule **Federal Register** notice (59 FR 16538), OSM inadvertently removed the above required State program amendments from 30 CFR 944.16 (administrative record No. UT-913). In addition, and subsequent to this inadvertent removal of the required State program amendments originally codified at 30 CFR 944.16 (a), (b), (c), (d), OSM published two final rule **Federal Register** notices (July 11, 1994, 59 FR 35255; September 27, 1994, 59 FR 49185) and placed new required State program amendments on the Utah program at 30 CFR 944.15 (a) and (b) respectively (administrative record Nos. UT-947 and UT-977). Throughout this notice, OSM refers to the required amendments associated with this proposed amendment and originally codified as 30 CFR 944.16 (a), (b), (c), and (d) as "the required amendments previously codified at 30 CFR 944.16 (a), (b), (c), and (d) (September 17, 1993, 58 FR 48600)."

1. Nonsubstantive Revisions to Utah's Rules

Utah proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial, grammatical, and recodification changes (corresponding Federal provisions are listed in parentheses):

Utah Admin. R. 645-301-553 (30 CFR 816.102 and 817.102), contemporaneous reclamation for backfilling and grading;

Utah Admin. R. 645-301-553.130 (30 CFR 816.102(a)(3)), 1.3 static safety factor;

Utah Admin. R. 645-301-553.150 (30 CFR 816.102(a)(5) and 817.102(a)(5)), postmining land use;

Utah Admin. R. 645-301-553.200 (30 CFR 816.102(c) and 817.102(c)) backfilling and grading of spoil and waste;

Utah Admin. R. 645-301-553.210 (30 CFR 816.71 and 817.71), general requirements for disposal of excess spoil;

Utah Admin. R. 645-301-553.220 (30 CFR 816.102(d) and 817.102(d)), placement of spoil;

Utah Admin. R. 645-301-553.252 (30 CFR 816.83(c)(4) and 817.83(c)(4)), final grading of refuse piles and coal mine waste;

Utah Admin. R. 645-301-553.300 (30 CFR 816.102(f) and 817.102(f)), covering of exposed coal seams;

Utah Admin. R. 645-301-553.510 (30 CFR 816.106(a) and 817.106(a)), remaining operations on PMA's, CMA's, and areas with remaining highwalls subject to AOC provisions;

Utah Admin. R. 645-301-553.540, previously codified as Utah Admin. R. 645-301-553.524 (30 CFR 816.106(b)(4) and 817.106(b)(4)), spoil placement;

Utah Admin. R. 645-301-553.300, previously codified as Utah Admin. R. 645-301-553.653 (30 CFR Parts 816 and 817 concerning backfilling and grading requirements for both surface and underground mining operations and sections 515 (b)(2) and (b)(3) of SMCRA), modifications to retained highwalls restoring cliff-type habitats required by premining flora and fauna;

Utah Admin. R. 645-301-553.650.400, previously codified as Utah Admin. R. 645-301-553.654 (30 CFR 784.15 and sections 515 (b)(2) and (b)(3) of SMCRA), compatibility of retained highwalls with the approved postmining land use and visual attributes of the area; and

Utah Admin. R. 645-301-553.650.500, previously codified as Utah Admin. R. 645-301-553.655, exemption from obtaining a variance from AOC requirements.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that these proposed Utah rules are no less effective than the Federal regulations and no less stringent than SMCRA. The Director approves these proposed rules.

2. Substantive Revisions to Utah's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations and SMCRA

Utah proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations (listed in parentheses):

Utah Admin. R. 645-301-553.100 (30 CFR 816.102(a) and 817.102(a)), section entitled "disturbed areas;" and

Utah Admin. R. 645-301-553.230 (30 CFR 816.102(j) and 817.102(j)), general requirements for backfilling and grading.

Because these proposed Utah rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rule.

3. Utah Admin. R. 645-100-200, Definition of "Continuously Mined Areas"

Utah proposed to define "continuously mined areas" (CMA's) at Utah Admin. R. 645-100-200 to mean "land which was mined for coal by underground mining operations prior to August 3, 1977, the effective date of the Federal Act, and where mining continued after that date." The "Federal Act" is SMCRA.

The Federal backfilling and grading regulations at 30 CFR 817.106(a), (b), and (b)(1) allow an exception from the requirement for complete highwall elimination for underground mining operations that remine highwalls in PMA's, which means land affected by surface coal mining operations prior to August 3, 1977, the effective date of SMCRA, that have not been reclaimed to the standards of SMCRA (January 8, 1993, 58 FR 3466). These regulations allow for the incomplete elimination of such highwalls where the volume of all reasonably available spoil is insufficient to completely backfill the reaffected or enlarged highwall.

As part of the Utah program, the Director approved, in a September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48603), a limited exception to the requirement to completely eliminate all highwalls for CMA's. Utah's approved CMA rules differ from the Federal PMA regulations in that they extend the exception for incomplete highwall elimination to underground mining operations where the highwall was created prior to

August 3, 1977, but continued to be used thereafter.

In approving Utah's CMA provisions, the Director reasoned, in part, that they provide equitable treatment for pre-SMCRA mines that have operated continuously since before the effective date of SMCRA and afford the same variance from AOC requirements as is provided in the PMA regulations at 30 CFR 817.106 for remaining sites where operation of a pre-SMCRA mine has been interrupted and mining was begun again at the sites after the effective date of SMCRA.

Utah's proposed definition of "continuously mined areas" is limited in accordance with the Director's approval in the September 17, 1993, final rule Federal Register notice. That is, Utah's newly-proposed definition at Utah Admin. R. 645-100-200 limits the term to underground mining operations. In the aforementioned final rule Federal Register notice, OSM approved Utah's CMA provisions at Utah Admin. R./ 645-301-553.510, .520, and .521 "[i]nsofar as they apply to underground mining operations that operated prior to August 3, 1977, and have continuously operated since that time." Therefore, Utah's proposed definition of the term "continuously mined areas" is not inconsistent with the Federal regulations at 30 CFR 817.106(a), (b), and (b)(1) and is in accordance with Utah's previously approved CMA provisions. On this basis, the Director approves Utah's proposed rule.

However, with respect to CMA's, the Director wishes to emphasize that the exception to the requirement to completely eliminate all highwalls should, like the similar Utah exception for PMA's, be narrowly construed and should ensure that the highwall is removed to the maximum extent technically practical (September 16, 1983, 48 FR 41720, 41729). Thus, for example, where an underground mining operation has been continuously mined since before the effective date of SMCRA (August 3, 1977) and contains both pre- and post-SMCRA face-up or portal areas, this exception must be understood as applying *only* to the pre-SMCRA face-up areas. Any post-SMCRA portal areas within the same mining operation must comply with the requirement to completely eliminate all highwalls. The Director interprets Utah's proposed definition of the term "continuously mined areas" in this limited fashion.

4. Utah Admin. R. 645-301-553.110, *Exceptions to the Requirement That Disturbed Areas Achieve AOC*

Utah proposed to revise existing Utah Admin. R. 645-301-553.110 to require that disturbed areas achieve AOC except as provided for in the reorganized and recodified provisions at Utah Admin. R. 645-301-500 through Utah Admin. R. 645-301-540 (PMA's, CMA's, and areas subject to the AOC provisions), Utah Admin. R. 645-301-553.600 through Utah Admin. R. 645-301-553.612 (PMA's and CMA's), Utah Admin. R. 645-302-270 (nonmountaintop removal on steep slopes), Utah Admin. R. 645-302-220 (mountaintop removal mining), Utah Admin. R. 645-301-553.700 (thin overburden), and Utah Admin. R. 645-301-553.800 (thick overburden). In conjunction with consolidating these exceptions into one provision, Utah also proposed to delete provisions that formerly existed at Utah Admin. R. 645-301-553.600 (introductory language), .610 (nonmountaintop removal on steep slopes), .620 (PMA's), .630 (mountaintop removal mining), .640 (introductory language), .641 (thin overburden), and .642 (thick overburden).

The Federal regulations at 30 CFR 816.102(k) provide variances from AOC for (1) steep-slope mining operations, (2) PMA's, (3) mountaintop removal operations, (4) thin overburden areas, and (5) thick overburden areas. The provisions at 30 CFR 817.102(k) provide variances from AOC for (1) steep-slope mining operations and (2) PMA's.

Utah's proposed revisions to Utah Admin. R. 645-301-553.110, which create a general AOC provision that references all exceptions to the requirement that disturbed areas must be backfilled and graded to achieve AOC, are consistent with the corresponding Federal regulations at 30 CFR 816.102(k) and 817.103(k) and clarify and improve the organizational nature of Utah's AOC rules. However, the cross-referenced provisions contain citation errors. Specifically, Utah's cross-referenced provisions in the phrase "R645-301-500 through R645-301-540," regarding PMA's, CMA's, and areas subject to the AOC provisions, should read "R645-301-553.500 through R645-301-553.540." Utah's incorrectly cross-referenced citations create a regulatory inconsistency within the Utah program.

For the reasons discussed above, the Director approves Utah's proposed consolidation of all exceptions to the requirement that disturbed areas must be backfilled and graded to achieve AOC into Utah Admin. R. 645-301-

553.110. In addition, the Director approves Utah's proposed deletion of existing Utah Admin. R. 645-301-553.600 and those provisions identified above that formerly existed elsewhere in Utah's rules prior to the consolidation. However, the Director further requires Utah to revise the cross-referenced provisions in the phrase "R645-301-500 through R645-301-540," regarding PMA's, CMA's, and areas subject to the AOC provisions, to read "R645-301-553.500 through R645-301-553.540."

5. Utah Admin. R. 534-301-553.120, *Backfilling and Grading of Spoil and Waste*

Utah proposed to revise existing Utah Admin. R. 645-301-553.120 to require that disturbed areas be backfilled and graded to "[e]liminate all highwalls, spoil piles, and depressions, except as provided in R645-301-552.100 (small depressions); R645-301-553.500 through R645-301-540 (PMA's, CMA's, and areas subject to approximate original contour (AOC) provisions; R645-301-553.600 through R645-301-553.612 (PMA's and CMA's); and in R645-301-553.650 through R645-301-553.653 (highwall management under the AOC provisions)."

The Director notes that the exceptions listed at proposed Utah Admin. R. 645-301-553.120 for PMA's, CMA's, and areas subject to AOC provisions are exceptions only to the requirement to completely eliminate all highwalls, and are not exceptions to the separate requirements to completely eliminate all spoil piles and depressions.

The Federal regulations at 30 CFR 816.102(a)(2) and 817.102(a)(2) require that disturbed areas be backfilled and graded to eliminate all highwalls, spoil piles, and depressions except as provided in 30 CFR 816.102(h) (small depressions) and (k)(3)(iii) (previously mined highwalls).

Utah's proposed revisions to Utah Admin. R. 645-301-553.120, which create a general provision that cross-references all exceptions to the requirement that disturbed areas must be backfilled and graded to eliminate all highwalls, spoil piles, and depressions, are consistent with the corresponding Federal regulations at 30 CFR 816.102(a)(2) and 817.102(a)(2) and clarify and improve the organizational nature of Utah's rules. However, the cross-referenced provisions contain citation inconsistencies. Specifically, Utah's cross-referenced provisions in the phrase "R645-301-553.500 through R645-301-540," regarding PMA's, CMA's, and areas subject to the AOC provisions, should read "R645-301-553.500 through R645-301-553.540." In

addition Utah cross-references provisions in the phrase "R645-301-553.650 through R645-301-553.653." However, Utah Admin. R. 645-301-553.653 no longer exists in Utah's reorganized rules and has now been recodified as Utah Admin. R. 645-301-553.651. Utah's incorrectly cross-referenced citations create a regulatory inconsistency within the Utah program.

For the reasons discussed above, the Director approves proposed Utah Admin. R. 645-301-553.120 but further requires Utah to (1) revise the cross-referenced provisions in the phrase "R645-301-553.500 through R645-301-540," regarding PMA's, CMA's, and areas subject to the AOC provisions, to read "R645-301-553.500 through R645-301-553.540" and (2) revise the cross-referenced provisions in the phrase "R645-301-553.650 through R645-301-553.653" to read "R645-301-553.650 through R645-301-553.651."

6. Utah Admin. R. 634-301-553.500, PMA's, CMA's, and Areas With Remaining Highwalls Subject to AOC Provisions

In partial response to the required amendment previously codified at 30 CFR 994.16(d)(1) (September 17, 1993, 58 FR 48600), Utah proposed to revise the existing title of section Utah Admin. R. 645-301-553.500 to make it consistent with the content of subsections Utah Admin. R. 645-301-553.510 through .540. Specifically, Utah proposed to revise the title of section Utah Admin. R. 645-301-553.500 from "Previously Mined Areas" to "Previously Mined areas (PMA's), Continuously Mined Areas (CMA's), and Areas with Remaining Highwalls Subject to the AOC Provisions."

Utah proposed this change to eliminate the inconsistency between the title "Previously Mined Areas" at Utah Admin. R. 645-301-553.500 and the content of recodified subsection Utah Admin. R. 645-301-553.530 (previously codified as .523), which addresses highwall stability criteria (see finding No. 9). The proposed title "Previously mined areas (PMA's), Continuously Mined Areas (CMA's), and Areas with Remaining Highwalls Subject to the AOC Provisions" for Utah Admin. R. 645-301-553.500 is consistent with the term "remaining highwalls," which Utah uses at Utah Admin. R. 645-301-553.530 in place of the terms "retained highwall" and "highwall remnant."

The Director finds that Utah's proposed revisions to the title of section Utah Admin. R. 645-301-553.500 are not inconsistent with the Federal AOC, PMA, and CMA provisions at 30 CFR 816.102, 817.102, 816.106, and 817.106.

The Director also finds that the proposed revisions satisfy the part of the required amendment previously codified at 30 CFR 944.16(d)(1) that applied to Utah Admin. R. 645-301-553.500. For these reasons, the Director approves Utah's proposed revisions to the title of section Utah Admin. R. 645-301-553.500.

7. Utah Admin. R. 634-301-553.520, Backfilling and Grading of Remaining Highwalls

Utah proposed to revise existing Utah Admin. R. 645-301-553.520 to make it consistent with the requirements for remaining operations on PMA's, operations on CMA's, and operations on areas with remaining highwalls subject to the AOC provisions. Specifically, Utah proposed to consolidate a phrase from original Utah Admin. R. 645-301-553.520 with the text of Utah Admin. R. 645-301-553.522 to create new Utah Admin. R. 645-301-553.520 which states that "[t]he backfill of all remaining highwalls will be graded to a slope that is compatible with the approved postmining land use and which provides adequate drainage and long-term stability." In conjunction with this consolidation, Utah deleted the citation previously codified at Utah Admin. R. 645-301-553.522.

The Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2) require that "the backfill [from remaining operations on PMA's] shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability." The Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2) apply only to remaining operations on PMA's. Utah's proposed rule differs from the Federal regulations in that Utah proposes to extend its rules concerning the backfilling and grading requirements for remaining highwalls to operations on CMA's and operations on areas with remaining highwalls subject to the AOC provisions. Although there are no Federal regulations that directly correspond to Utah's application of its rule to operations on CMA's and operations on areas with remaining highwalls subject to the AOC provisions, the Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2), as discussed in the September 17, 1993, final rule Federal Register notice, are analogous to this Utah provision.

Utah's proposed revisions to Utah Admin. R. 645-301-553.520, regarding the requirements for remaining operations on PMA's, CMA's, and areas with remaining highwalls subject to the AOC provisions, are not inconsistent with the corresponding Federal

regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2). For this reason, the Director approves Utah's proposed revision to Utah Admin. R. 645-301-553.520.

8. Utah Admin. R. 645-301-553.530, Stability Criteria for Backfilling and Grading

In partial response to the required amendment previously codified at 30 CFR 944.16(d) (September 17, 1993, 58 FR 48600), Utah proposed to revise existing Utah Admin. R. 645-301-553.523, regarding highwall retention stability criteria. Utah proposed recodifying the rule as Utah Admin. R. 645-301-553.530 and relocating it under the reorganized section of its rules at Utah Admin. R. 645-301-553.500 entitled "PMA's, CMA's and Areas with Remaining Highwalls Subject to the AOC Provisions," which was previously entitled "previously mined areas" (see finding No. 6). Utah also proposed to delete the phrase "not to exceed either the angle of repose or such lesser slope as is necessary to" from recodified Utah Admin. R. 645-301-553.530. Lastly, Utah proposed to revise the rule to require that (1) any remaining highwall will be stable and not pose a hazard to the public health or safety or to the environment, and (2) remaining highwalls must achieve a minimum long-term static safety factor of 1.3 and prevent slides, or meet an alternative criterion that the operator proposes and demonstrates to the satisfaction of the Division that the remaining highwall is stable does not pose a hazard to the public health and safety or to the environment.

By changing the PMA title of Utah Admin. R. 645-301-553.530 to include CMA's and areas with remaining highwalls subject to the AOC provisions, Utah in effect proposed that remaining highwalls on PMA's and CMA's and areas with remaining highwalls subject to the AOC provisions comply with the proposed stability criteria of Utah Admin. R. 645-301-553.530.

The Federal general backfilling and grading regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3) require that disturbed areas be backfilled and graded to achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides. The Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) concerning backfilling and grading of PMA's require that any highwall remnant be stable and not pose a hazard to the public health and safety

or to the environment and that the operator shall demonstrate, to the satisfaction of the regulatory authority, that the highwall remnant is stable. The Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) apply only to remaining operations on PMA's. Utah's proposed rule differs from the Federal regulations in that Utah proposes to extend its rules concerning the stability criteria for backfilling and grading of remaining highwalls to operations on CMA's and operations on areas with remaining highwalls subject to the AOC provisions. Although there are no Federal regulations that directly correspond to Utah's application of its rule to operations on CMA's and operations on areas with remaining highwalls subject to the AOC provisions, the Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3), as discussed in the September 17, 1993, final rule **Federal Register** notice, are analogous to this Utah provision.

The Director emphasizes that, in all cases, the Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3) require the backfill material at the base or against a highwall to have a minimum long-term static safety factor of 1.3 and prevent slides. The Director recognizes that a highwall remnant extending above the backfill material does not have to achieve the 1.3 minimum long-term static safety factor. However, the Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) and require (1) that any highwall remnant be stable and not pose a hazard to the public health and safety or to the environment and (2) that an operator demonstrate to the satisfaction of the regulatory authority that the highwall remnant is stable.

Utah's proposed revisions to recodified Utah Admin. R. 645-301-553.530 to require that its stability criteria apply to any remaining highwall left in accordance with the approved State program, whether in connection with a PMA, a CMA or an area with remaining highwalls subject to Utah's AOC provisions is not inconsistent with the Federal regulations at 30 CFR 816.102(a)(3), 817.102(a)(3), 816.106(b)(3) and 817.106(b)(3).

The portion of Utah's proposed revisions to recodified Utah Admin. R. 645-301-553.530 deleting the phrase "not to exceed either the angle of repose or such lesser slope as is necessary to," as previously required by 30 CFR 944.16(d), is not inconsistent with the Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3).

The portion of Utah's proposed revisions at Utah Admin. R. 645-301-553.530 that allows an operator to

provide alternative stability criterion to establish that a highwall remnant or retained highwall is stable and does not pose a hazard to the public health and safety or to the environment is not inconsistent with the Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3).

For the reasons discussed above, the Director approves Utah's proposed rule revisions to recodified Utah Admin. R. 645-301-553.530. The Director also finds that the proposed revisions satisfy the part of the required amendment previously codified at 30 CFR 944.16(d)(1) that applied to recodified Utah Admin. R. 645-301-553.530 and satisfy in total the required amendments previously codified at 30 CFR 944.16(d)(2) and (3).

9. Utah Admin. R. 634-301-553.600, PMA's and CMA's

Utah proposed to delete existing Utah Admin. R. 645-301-553.650 and create new Utah Admin. R. 645-301-553.600, which serves as the section title and introduction to Utah's reorganized rule requirements at Utah Admin. R. 645-301-553.610 through .612 for PMA's and CMA's (see finding Nos. 11 and 12).

The counterpart Federal regulations at 30 CFR 816.106 and 817.106 pertain to backfilling and grading requirements for PMA's. The Federal regulations at 30 CFR 816.106 and 817.106 apply only to backfilling and grading requirements for remaining operations PMA's. Utah's proposed rule differs from the Federal regulations in that Utah proposes to extend its rules concerning the backfilling and grading requirements for remaining highwalls to operations on CMA's. Although there are no Federal regulations that directly correspond to Utah's application of its rule to CMA's, the Federal regulations at 30 CFR 816.106 and 817.106, as discussed in the September 17, 1993, final rule **Federal Register** notice, are analogous to this Utah provision.

Newly-created Utah Admin. R. 645-301-553.600 is consistent with Utah's proposed rule reorganization and is not inconsistent with the corresponding Federal regulations at 30 CFR 816.106 and 817.106. Accordingly, the Director approves Utah's proposed rule revision.

10. Utah Admin. R. 634-301-553.610, Exceptions for PMA's and CMA's From the Requirement for Complete Highwall Elimination

Utah proposed to revise the text of the existing provision at Utah Admin. R. 645-301-553.520 and relocate it at new Utah Admin. R. 645-301-553.610 under the newly-created section of Utah's rules at Utah Admin. R. 645-301-

553.600 addressing PMA's and CMA's (see finding No. 10). Specifically, proposed Utah Admin. R. 645-301-553.610 states that highwalls on PMA's or CMA's must be eliminated to the maximum extent technically practical, but are not required to be completely eliminated where the volume of all reasonably available spoil is demonstrated in writing to the Division to be insufficient to completely backfill the reaffected or enlarged highwall.

Newly-created Utah Admin. R. 645-301-553.610, which allows an exception for PMA's and CMA's to the requirement that highwalls be completely eliminated, is consistent with the proposed reorganization of Utah's rules. In addition, because operations on both PMA's and CMA's must eliminate the highway to the maximum extent technically practical and make a written demonstration that all reasonably available spoil was used, proposed Utah Admin. R. 645-301-553.610 is not inconsistent with the Federal regulations at 30 CFR 816.106(b)(2) and 817.106(b)(2). For this reason, the Director approves newly-created Utah Admin. R. 645-301-553.610.

11. Utah Admin. R. 634-301-553.611 and .612, Backfilling and Grading of Reasonably Available Spoil

Utah proposed to delete existing Utah Admin. R. 645-301-553.521 and create new provisions at Utah Admin. R. 645-301-553.611 and .612 respectively, which consist of the revised text of former Utah Admin. R. 645-301-553.521. Newly-created Utah Admin. R. 645-301-553.611 requires that all spoils generated by the remaining operation or CMA and any other reasonably available spoil will be used to backfill the area. Newly-created Utah Admin. R. 645-301-553.612 requires that reasonably available spoil in the immediate vicinity of the remaining operation or CMA will be included within the permit area.

The Federal regulations at 30 CFR 816.106(b)(1) and 817.106(b)(1) require that all spoil generated by the remaining operation on PMA's and any other reasonably available spoil will be used to backfill the area, and reasonably available spoil in the immediate vicinity of the remaining operation shall be included within the permit area. The Federal regulations at 30 CFR 816.106(b)(1) and 817.106(b)(1) apply only to backfilling and grading requirements for remaining operations on PMA's. Utah's proposed rules differ from the Federal regulations in that Utah proposes to extend its rules concerning the requirements for backfilling and grading of reasonably

available spoil to operations with remaining highwalls on CMA's. Although there are no Federal regulations that directly correspond to Utah's application of its rules to CMA's, the Federal regulations at 30 CFR 816.106(b)(1) and 817.106(b)(1), as discussed in the September 17, 1993, final rule **Federal Register** notice, are analogous to these Utah provisions.

Utah's newly-created provisions at proposed Utah Admin. R. 645-301-553.611 and .612 are in accordance with Utah's proposed rule reorganization and are not inconsistent with the Federal requirements. Accordingly, the Director approves Utah's newly-created provisions at Utah Admin. R. 645-301-553.611 and .612.

12. Utah Admin. R. 645-301-553.650, Highwall Management Under the AOC Provisions

In response to the required amendment previously codified at 30 CFR 944.16(a) (September 17, 1993, 58 FR 48600), Utah proposed to create new Utah Admin. R. 645-301-553.650 by proposing a section entitled "Highwall Management Under the Approximate Original Contour Provisions." Newly-created Utah Admin. R. 645-301-553.650 requires that for situations where a permittee seeks approval for a remaining highwall under the AOC provisions, the permittee will establish and the Division will find in writing that the remaining highwall will achieve the stability and AOC requirements of certain cited applicable rules.

While there are no Federal regulations that directly correspond to newly-created Utah Admin. R. 645-301-553.650, the Federal regulations at 30 CFR 816.102(k)(3)(ii) and 817.102(k)(1) explicitly require operators to obtain the regulatory authority's approval for determinations relating to AOC. Because Utah's proposed rule at Utah Admin. R. 645-301-553.650 does explicitly require that, prior to the Division approving the retention of a highwall, the permittee will establish and the Division will find in writing that the remaining highwall will achieve the applicable stability requirements and will meet the applicable AOC criteria, it is not inconsistent with the Federal regulations at 30 CFR 816.102(k)(3)(ii) and 817.102(k)(1).

Accordingly, the Director approves newly-created Utah Admin. R. 645-301-553.650. The Director also finds that the proposed rule satisfies the required amendment previously codified at 30 CFR 944.16(a).

13. Utah Admin. R. 645-301-553.650.100, Height and Length of Remaining Highwalls

In response to the required amendment previously codified at 30 CFR 944.16(b) (September 17, 1993, 58 FR 48600), Utah proposed to revise existing Utah Admin. R. 645-301-553.651 by recodifying it as Utah Admin. R. 645-301-553.650.100 and revising it to require that a remaining highwall will not be greater in height or length than the cliffs and cliff-like escarpments that were replaced or disturbed by the mining operations.

Because proposed Utah Admin. R. 645-301-553.650.100 restricts the height and length of remaining highwalls to those cliffs and cliff-like escarpments that were replaced or disturbed by the mining operations, it is consistent with the replacement criterion for areas with remaining highwalls subject to the AOC provisions at Utah Admin. R. 645-301-553.650.200, and is no less stringent than section 515(b)(3) of SMCRA, which requires mining operations to restore the land to AOC. In addition, Utah Admin. R. 645-301-553.650.100 is in accordance with Utah's proposed rule reorganization.

For these reasons, the Director approves proposed Utah Admin. R. 645-301-553.650.100. The Director also finds that the proposed rule satisfies the required amendment previously codified at 30 CFR 944.16(b).

14. Utah Admin. R. 645-301-553.650.200, Replacement of Preexisting Cliffs or Similar Natural Premining Features With a Remaining Highwall

Utah proposed to recodify existing Utah Admin. R. 645-301-553.652 as Utah Admin. R. 645-301-553.650.200 and revise it to require that a highwall may remain only when it replaces a preexisting cliff or similar natural premining feature and resembles the structure, composition, and function of the natural cliff it replaces.

As discussed in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48604-5), the Secretary of the Interior harmonized the inherent contradiction that exists when applying section 515(b)(3) of SMCRA, which requires operators to restore land to AOC with all highwalls eliminated, to specific areas of Utah involving natural benches and steep topography by approving a carefully limited exception in the Utah program to SMCRA's requirement for the complete elimination of all highwalls. Because proposed Utah Admin. R. 645-301-553.650.200 allows highwalls to remain

only when they replace preexisting cliffs or similar natural premining features and resemble the structure, composition, and function of the natural cliffs they replace, it is in accordance with the Secretary's approval of Utah's provisions for areas with remaining highwalls subject to the AOC provisions and is no less stringent than section 515(b)(3) of SMCRA, which requires mining operations to restore the land to AOC. In addition, Utah Admin. R. 645-301-553.600.200 is consistent with Utah's proposed rule reorganization. Accordingly, the Director approves Utah's proposed rule.

15. Utah Admin. R. 645-301-553.651, Applicability Date

In response to the required amendment previously codified at 30 CFR 944.16(c) (September 17, 1993, 58 FR 48600), Utah proposed to create new Utah Admin. R. 645-301-553.651, which states the following.

Applicability. Where final backfilling and grading was completed and the phase one bond was released prior to June 2, 1992, no redisturbance of a reclaimed highwall will be required. Highwalls which were approved under R645-301-553.652, the rule commonly referred to as the "AOC alternative," after December 13, 1982 are subject to the retroactive application of current rule R645-301-552.650, providing the subject highwall has not been reclaimed and phase one bond was not released prior to June 2, 1992.

Utah incorporates by reference the provisions of Utah Admin. R. 645-301-552.650. No such citation exists in Utah's rules. For the purposes of the following finding, OSM assumes that the proposed reference is a typographical error and that Utah intended to cite Utah Admin. R. 645-301-553.650.200, which is pertinent to the proposed applicability section at Utah Admin. R. 645-301-553.651 and the required amendment previously codified at 30 CFR 944.16(c).

At Utah Admin. R. 645-301-553.651, Utah proposes that the requirements of Utah Admin. R. 645-301-553.650.200 (incorrectly cited by Utah as Utah Admin. R. 645-301-552.650) do not retroactively apply to highwalls which were retained under existing Utah Admin. R. 645-301-553.652 and for which final backfilling and grading was completed and the phase one bond was released prior to June 2, 1992.

Existing Utah Admin. R. 645-301-553.652 provides in part that a highwall may be retained if it is similar in structural composition to the preexisting cliffs "in the surrounding area." As discussed in the September 17, 1993, final rule **Federal Register** notice (58 FR 48600, 48605; finding No.

3), Utah interpreted the quoted phrase to allow the retention of highwalls when no similar natural features existed in the disturbed area prior to mining. By letter dated January 9, 1991, and sent to Utah in accordance with 30 CFR 732.17, OSM notified Utah that this interpretation was not consistent with SMCRA and the Secretary's assumptions in approving the provisions of the Utah program that allow for the incomplete elimination of highwalls for areas with remaining highwalls subject to the AOC provisions.

With respect to the June 2, 1992, date that Utah uses in proposed Utah Admin. R. 645-301-553.651, the Director, as also discussed in the September 17, 1993, final rule Federal Register notice (58 FR 48600, 48605-6; finding No. 3(C)(3)(b)), found that an applicability date of December 13, 1982, rather than June 2, 1992, is mandated by SMCRA. In that discussion, the Director made clear that the replacement criterion, now codified at Utah Admin. R. 645-301-553.650.200, has an applicability date of December 13, 1982, and *must* apply to any highwall retained pursuant to the AOC provisions of the Utah program at Utah Admin. R. 645-301-553.650 regardless of the date that the highwall was created.

For these reasons, the Director finds that proposed Utah Admin. R. 645-301-553.651 is less stringent than section 515 of SMCRA, not in accordance with the Secretary's assumptions in approving the provisions of the Utah program that allow for the incomplete elimination of highwalls subject to the AOC provisions, and not in accordance with the Director's previous finding in the September 17, 1993, final rule Federal Register notice (58 FR 48600, 48605-6; finding No. 3(C)(3)(b)). Therefore, the Director does not approve Utah's proposed rule at Utah Admin. R. 645-301-553.651. In addition, the Director will continue to interpret the replacement criterion at Utah Admin. R. 645-301-553.650.200 as having an applicability date of December 13, 1982, and as applying to any highwall retained pursuant to the AOC provisions of the Utah program at Utah Admin. R. 645-301-553.650. The Director is not requiring Utah, as was done previously at 30 CFR 944.16(c), to revise its rules to require that the replacement criterion provision at Utah Admin. R. 645-301-553.650.200 has an applicability date of December 13, 1982, and applies to any highwall retained pursuant to the AOC provisions of the Utah program. OSM has decided that it is not necessary to require Utah to so revise its rules because OSM has already made clear, in

the September 17, 1993, final rule Federal Register notice (58 FR 48600, 48605-6; finding No. 3(C)(3)(b)), and again in this finding, that the Director will interpret the Utah replacement criterion at Utah Admin. R. 645-301-553.650.200 as having an applicability date of December 13, 1982, and as applying to any highwall retained pursuant to the AOC provisions of the Utah program at Utah Admin. R. 645-301-553.650. OSM will utilize this interpretation of the replacement criterion at Utah Admin. R. 645-301-553.650.200 in its oversight of the Utah program, regardless of whether or not Utah's program explicitly addresses the applicability of the replacement criterion.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program.

The U.S. Army Corps of Engineers responded on December 15, 1993, and August 1 and December 9, 1994, that the changes to the Utah program were satisfactory (administrative record Nos. UT-884, UT-958, and UT-998).

The U.S. Fish and Wildlife Service responded on December 16, 1993, that it found nothing of significant concern and on August 9, 1994, that it had no further comments (administrative record Nos. UT-885 and UT-961).

The U.S. Forest Service (USFS) responded on December 27, 1993, that "the State of Utah uses a safety factor of 1.3 for long-term stability of highwalls whereas the Forest Service requires a safety factor of 1.5" (administrative record No. UT-886).

Utah Admin. R. 645-301-553.130, in pertinent part, requires that disturbed areas will be backfilled and graded to achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a long-term static safety factor of 1.3 and prevent slides. In addition, Utah Admin. R. 645-301-553.530 requires, in pertinent part, that a Utah operator will demonstrate, to the

satisfaction of the Division, that a remaining highwall must achieve a minimum long-term static safety factor of 1.3 and prevent slides.

As discussed in finding No. 8, the Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3) require that disturbed areas shall be backfilled and graded to achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a long-term static safety factor of 1.3 and prevent slides. Therefore, Utah's use of a 1.3 static safety factor for long-term stability of highwalls is "in accordance with and no less effective than" the Federal backfilling and grading standards set forth in title 30 of the Code of Federal Regulations. Because the Federal regulations at 30 CFR 730.5(b) only require that a State's laws be "in accordance with" and "no less effective than" the Federal regulations in meeting the requirements of SMCRA, the Director does not have the authority to require standards in excess of the Federal regulations that implement SMCRA. On this basis, the Director does not require Utah to revise its program in response to USFS's comment. However, if USFS has a 1.5 static safety factor that applies to highwalls on land under USFS's jurisdiction, this does not preclude USFS from enforcing this standard on such highwalls.

The Mine Safety and Health Administration responded on June 20, 1994, and January 12, 1995, that the proposed amendment did not appear to conflict with the requirements of 30 CFR, which includes its safety regulations (administrative record Nos. UT-940 and UT-1006).

The U.S. Bureau of Mines responded on July 18 and December 6, 1994, by telephone conversation, that it had no comments on the proposed amendment (administrative record Nos. UT-948 and UT-995).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record Nos. UT-876, UT-946, and UT-993). It responded on December 9, 1993, July 19, 1994, and December 22, 1994, that it had no comments on the proposed amendment and did not believe that there would be any impacts to water quality standards promulgated under the Clean Water Act (administrative record Nos. UT-880, UT-954, and UT-1000).

4. State Historic Preservation Officer (SHPO)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO (administrative record Nos. UT-876, UT-946, and UT-993). The SHPO did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with an exception and additional requirements, Utah's proposed amendment as submitted on November 12, 1993, and as revised on June 28 and November 3, 1994.

The Director does not approve, as discussed in: finding No. 15, Utah Admin. R. 645-301-553.651, concerning the applicability date of Utah's replacement criterion for areas with remaining highwalls subject to the AOC provisions at Utah Admin. R. 645-301-553.650.200.

The Director approves, as discussed in: finding No. 1, Utah Admin. R. 645-301-553, concerning contemporaneous reclamation requirements for backfilling and grading; Utah Admin. R. 645-301-553.130, concerning the requirements for a 1.3 static safety factor; Utah Admin. R. 645-301-553.150, concerning the requirements for post mining land use; Utah Admin. R. 645-301-553.200, concerning the backfilling and grading requirements for spoil and waste; Utah Admin. R. 645-301-553.210, concerning the general requirements for disposal of excess spoil; Utah Admin. R. 645-301-553.220, concerning the requirements for placement of spoil; Utah Admin. R. 645-301-553.252, concerning the requirements for final grading of refuse piles and coal mine waste; Utah Admin. R. 645-301-553.300, concerning the requirements for covering of exposed coal seams; Utah Admin. R. 645-301-553.510, concerning remaining operations on PMA's, operations on CMA's, and operations on areas with remaining highwalls subject to AOC provisions; Utah Admin. R. 645-301-553.540, concerning the requirements for spoil placement; Utah Admin. R.

645-301-553.650.300, concerning the requirement for modifications to retained highwalls restoring cliff-type habitats required by premining flora and fauna; Utah Admin. R. 645-301-553.650.400, concerning the requirement for compatibility of retained highwalls with the approved postmining land use and visual attributes of the area; and Utah Admin. R. 645-301-553.650.500, concerning the exemption from obtaining a variance from AOC requirements; finding No. 2, Utah Admin. R. 645-301-553.100, concerning the section entitled "disturbed areas," and Utah Admin. R. 645-301-553.230, concerning the general requirements for backfilling and grading; finding No. 3, Utah Admin. R. 645-100-200, concerning the definition of "Continuously Mined Areas;" finding No. 6, Utah Admin. R. 645-301-553.500, concerning PMA's, CMA's, and areas with remaining highwalls subject to AOC provisions; finding No. 7, Utah Admin. R. 634-301-553.520, concerning backfilling and grading of remaining highwalls; finding No. 8, Utah Admin. R. 645-301-553.530, concerning stability criteria for backfilling and grading and resulting in partial removal of the required amendment previously codified at 30 CFR 944.16(d)(1) and total removal of the required amendments previously codified at 30 CFR 944.16(d) (2) and (3); finding No. 9, Utah Admin. R. 634-301-553.600, concerning Utah's newly-created section title for its reorganized rule requirements for PMA's and CMA's; finding No. 10, Utah Admin. R. 634-301-553.610, concerning exceptions for PMA's and CMA's from the requirement for complete highwall elimination; finding No. 11, Utah Admin. R. 634-301-553.611 and .612, concerning backfilling and grading of reasonably available spoil; finding No. 12, Utah Admin. R. 645-301-553.650, concerning highwall management under the AOC provisions and removal of the required amendment previously codified at 30 CFR 944.16(a); finding No. 13, Utah Admin. R. 645-301-553.650.100, concerning the height and length of remaining highwalls and removal of the required amendment previously codified at 30 CFR 944.16(b); and finding No. 14, Utah Admin. R. 645-301-553.650.200, concerning the replacement of preexisting cliffs or similar natural premining features with a remaining highwall.

With the requirement that Utah further revise its rules, the Director approves, as discussed in: finding No. 4, Utah Admin. R. 645-301-553.110, concerning exceptions to the

requirement that disturbed areas achieve AOC; and finding No. 5, Utah Admin. R. 534-301-553.120, concerning backfilling and grading of spoil and waste.

The Director approves, with one exception, the rules as proposed by Utah with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Utah program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Utah of only such provisions.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and had determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR

730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

The rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have

a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared with certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

VII. List of Subjects in 30 CFR 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 23, 1995.

Richard J. Seibel,
Regional Director, Western Regional
Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal

Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (ee) to read as follows:

§ 944.15 Approval of amendments to the Utah regulatory program.

* * * * *

(ee) With the exception of Utah Admin. R. 645-301-553.651, concerning the applicability date of Utah's replacement criterion for areas with remaining highwalls subject to the AOC provisions at Utah Admin. R. 645-301-553.650.200 (formerly the "AOC alternative"), the following rules, as submitted to OSM on November 12, 1993, and as revised on June 28 and November 3, 1994, are approved effective May 30, 1995.

645-100-200	Definition of "Continuously Mined Areas" (CMA's).
645-301-553	Contemporaneous Reclamation Requirements for Backfilling and Grading.
645-301-553.100	Section Entitled "Disturbed Areas."
645-301-553.110	Exceptions to the Requirement That Disturbed Areas Achieve Approximate Original Contour (AOC).
645-301-553.120	Backfilling and Grading of Spoil and Waste.
645-301-553.130	Requirements for a 1.3 Static Safety Factor.
645-301-553.150	Requirements for Postmining Land Use.
645-301-553.200	Backfilling and Grading Requirements for Spoil and Waste.
645-301-553.210	General Requirements for Disposal of Excess Spoil.
645-301-553.220	Requirements for Placement of Spoil.
645-301-553.230	General Requirements for Backfilling and Grading.
645-301-553.252	Final Grading of Refuse Piles and Coal Mine Waste.
645-301-553.300	Covering of Exposed Coal Seams.
645-301-553.500	Previously Mined Area's (PMA's), CMA's, and Areas With Remaining Highwalls Subject to AOC Provisions.
645-301-553.510	Remaining Operations on PMA's, Operations on CMA's, and Operations on Areas With Remaining Highwalls Subject to AOC Provisions.
645-301-553.520	Backfilling and Grading of Remaining Highwalls.
645-301-553.530	Stability Criteria for Backfilling and Grading.
645-301-553.540	Spoil Placement.
645-301-553.600	Newly-Created Section Title for Utah's Reorganized Rule Requirements for PMA's and CMA's.
645-301-553.610	Exceptions for PMA's and CMA's From the Requirement for Complete Highwall Elimination.
645-301-553.611 and .612	Backfilling and Grading of Reasonably Available Spoil.
645-301-553.650	Highwall Management Under the AOC Provisions.
645-301-553.650.100	Height and Length Requirements of Remaining Highwalls.
645-301-553.650.200	Replacement of Preexisting Cliffs or Similar Natural Premining Features With a Remaining Highwall.
645-301-553.650.300	Modifications to Retained Highwalls Restoring Cliff-Type Habitats Required by Premining Flora and Fauna.
645-301-553.650.400	Compatibility of Retained Highwalls With the Approved Postmining Land Use and Visual Attributes of the Area.
645-301-553.650.500	Exemption from Obtaining a Variance From AOC Requirements.

3. Section 944.16 is amended by adding paragraphs (c) and (d) to read as follows:

§ 944.16 Required program amendments.

* * * * *

(c) By July 31, 1995, Utah shall revise Utah Admin. R. 645-301-553.110, or

otherwise modify its program, by correcting the cross-referenced provisions in the phrase "R645-301-500 through R645-301-540," regarding previously mined area's continuously mined area's, and areas subject to the AOC provisions, to read "R645-301-553.500 through R645-301-553.540."

(d) By July 31, 1995, Utah shall revise Utah Admin. R. 645-301-553-120, or otherwise modify its program, by correcting the cross-referenced provisions in the phrase "R645-301-553.500 through R645-301-540," regarding previously mined area's, continuously mined area's, and areas

subject to the AOC provisions, to read "R645-301-553.500 through R645-301-553.540" and correcting the cross-referenced provisions in the phrase "R645-301-553.650 through R645-301-553.653" to read "R645-301-553.650 through R645-301-553.651."

[FR Doc. 95-13156 Filed 5-26-95; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 216

Military Recruiting at Institutions of Higher Education

AGENCY: Office of the Secretary, DoD.
ACTION: Interim rule.

SUMMARY: The Department of Defense adopts this interim rule to implement the "National Defense Authorization Act for Fiscal Year 1995. It updates policy, procedures, and responsibilities for identifying and taking action against any institution of higher education that has a policy of denying, or, that effectively prevents, the Secretary of Defense from obtaining for military recruiting purposes: Entry to campuses, access to students on campuses, or access to student directory information. No funds available to the Department of Defense (DoD) may be provided by grant or contract to any such institution. The new law allows no basis for waivers.

DATES: This interim rule is effective on May 30, 1995. Written comments on this rule must be received by July 31, 1995.

ADDRESSES: Forward comments to the Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT: Ronald G. Liveris, (703) 697-9268.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is not a "significant regulatory action," as defined by Executive Order 12866. The Department of Defense believes that it will not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of

entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This interim rule will not have a significant adverse impact on a substantial number of small entities.

Paperwork Reduction Act of 1980 (44 U.S.C., Chapter 35)

This interim rule will not impose any additional reporting or record keeping requirements under the Paperwork Reduction Act.

List of Subjects in 32 CFR Part 216

Armed Forces, Colleges and universities, Recruiting personnel.

Accordingly, 32 CFR part 216 is revised to read as follows:

PART 216—MILITARY RECRUITING AT INSTITUTIONS OF HIGHER EDUCATION

- Sec.
216.1 Purpose.
216.2 Applicability.
216.3 Definitions.
216.4 Responsibility.

Appendix A to part 216—Sample Letter of Inquiry

Authority: 10 U.S.C. 503 note.

§ 216.1 Purpose.

This part implements section 558, The National Defense Authorization Act for Fiscal Year 1995, Pub. L. 103-337 (See 10 U.S.C. section 503 note). It updates policy and responsibilities for identifying and taking action regarding institutions of higher education that either have a policy of denying or effectively bar military recruiting personnel from entry to their campuses, or from access to student directory information.

§ 216.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified and Specified Combatant Commands, the Uniformed Services University of Health Sciences (USUHS), the Defense Agencies, and DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 216.3 Definitions.

(a) *Directory information.* Referring to a student means the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational institution enrolled in by student.

(b) *Institution of higher education.* A domestic college, university, or sub-element of a university providing post-secondary school courses of study, including foreign campuses of such institutions. This includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. The term "institution of higher education" does not include entities that operate exclusively outside the United States, its territories, and possessions.

(c) *Student.* An individual who is 17 years of age or older and enrolled in an institution of higher education.

§ 216.4 Policy.

(a) Under section 558 of the National Defense Authorization Act for Fiscal Year 1995, no funds available to the Department of Defense (DoD) may be provided by grant or contract to any institution of higher education that either has a policy of denying or that effectively prevents the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses or access to students on campuses or access to directory information pertaining to students. This prohibition on use of DoD funds applies only to sub-elements of an institution of higher education that are determined to have such a policy or practice.

(b) An evaluation to determine whether an institution of higher education has a policy of denying, or is effectively preventing, the Secretary of Defense from obtaining entry to the campuses, access to students on campuses, or access to student directory information shall be undertaken when:

(1) Military recruiting personnel cannot obtain permission to recruit on the premises of the institution or when they are refused directory information. Military recruiting personnel shall accommodate an institution's reasonable preferences as to times and places for scheduling on-campus recruiting, provided that any such restrictions are not based on the policies or practices of the Department of Defense and the Military Services are provided entry to the campus and access to students on campus and directory information; or

(2) The institution is unwilling to declare in writing as a prerequisite to an

U. S. Department of Labor

Mine Safety and Health Administration
P.O. Box 25367
Denver, Colorado 80225-0367

Coal Mine Safety and Health
District 9



UT-1056

MAY 18 1995

Robert H. Hagen, Director
Office of Surface Mining Reclamation and Enforcement
Albuquerque Field Office
505 Marquette Avenue, N.W., Suite 1200
Albuquerque, NM 87102

RE: Formal Amendment to
Utah's Coal Mining Rules (UT-917)
SPAT No. (UT-024-FOR)
General Comments

Dear Mr. Hagen:

This is in response to your letter dated April 29, 1994, requesting general comments concerning the referenced Utah rules being changed for surface mining. The information was reviewed by MSHA personnel for possible conflicts with MSHA regulations. No conflicts between the proposed changes and current MSHA regulations could be found.

MSHA appreciates the opportunity to comment on matters of such importance. We apologize for the lateness of this reply, due to a backlog in our technical support division. If you have any questions concerning this matter, please contact this office at (303) 231-5462.

Sincerely,

John A. Kuzar
John A. Kuzar
District Manager

RECEIVED
MAY 23 1995

NAME	DATE	MESSAGE
A. Abbs		<i>J. Veon SA 6-6-95</i>
F. SHRETT		
L. MEADORS		
S. MARTINEZ		
D. MARTINEZ		
S. RATHBUN		
<i>1 Dodge</i>	<i>dy</i>	

STATE PROGRAM AMENDMENT TRACKING SYSTEM
ACTIVE DATABASE REPORT
Report date: 05/26/95

Report parameters:	Field office: AFD	State: UT	Service Center: WRC	Period covered: up thru 05/26/95	Include Archive: N																					
ID NO	FIELD OFFICE	STATE SUBMIT DATE	FLD OFC RECVD	REQUEST AGENCY COMMENTS	AMENDMENT SENT TO ESC/WSC/HQ	PROPOSED RULE TO ESC/WSC	PROPOSED RULE SIGNED	PROPOSED RULE PUBLISHED	COMMENTS SENT FRM FOD	COMMENTS SENT FRM HQ	CLOSE COMMENT PERIOD	FOD TEL NOTIFY STATE	ISSUE LTR	LETTER TO STATE	STATE RESPONSE TO LETTER	EXTEND NOTICE TO ESC/WSC	EXTEND NOTICE SIGNED	EXTEND NOTICE PUBLISHED	END EXT COMMENT PERIOD	EPA CONCURR. SENT	FINAL FED REG NOTICE TO SOLICITOR	FINAL FED REG NOTICE FR SOLICITOR	FOD CONCUR	FINAL FED REG SIGNED	FINAL FED REG PUBLISHED	STATE PROMULGATED DATE
UT-010-FOR	AFD	04/30/92	05/04/92	05/14/92	05/04/92	05/05/92	05/07/92	06/02/92	06/19/92	05/22/92	07/02/92	/ /	Y	09/10/92	10/07/92	10/21/92	10/23/92	12/09/92	12/24/92	11/17/92	12/24/92	09/02/93	09/07/93	09/10/93	09/17/93	/ /
SUBJECT:		1. 732R 1/1 0% 2. 0% 3. 0% 4. 0% 5. AMEND. (AR NO. UT-758) CONCERNING HIGHWALLS. I.L. WAS WRITTEN IN COOP. WITH HQ, SOL, AND AFD. UT RESUBMITTED AMEND. ON 09/30/92 (AR NO. UT-788). COMP. W/ PRES. MORATOR. ON FED REGS DELAYED REOP. PUB. FINAL RULE FR ADDED 4 RA'S DUE 11/16/93 (UT-025-FOR). ACT. ELAPSED TIME FOR OFS TO REV. FINAL RULE WAS 78 DF																								
UT-017-FOR	AFD	09/17/92	09/21/92	10/16/92	10/01/92	10/07/92	10/09/92	11/16/92	11/16/92	12/30/92	12/16/92	01/19/93	Y	01/21/93	03/25/93	03/25/93	03/31/93	04/08/93	04/23/93	02/17/93	07/07/93	03/22/94	03/29/94	03/31/94	04/07/94	07/01/94
SUBJECT:		1. 900R 2/2 0% 2. 0% 3. 0% 4. 0% 5. AMEND. RE: ROADS DEFINITIONS (A.R. UT-782), RESPONDING TO REQ. AMENDS. "N" AND "O" & IN RESP. TO THE SETTLEMENT AGREEMENT OF 09/04/92. PER UT'S LTR OF 06/10/92, ROAD POL. W/DRAWN EFFECTIVE 12/05/92. COMPL. W/PRES. MORATORIUM AFTER 9-MO. DELAY W/ OFS. ACT. ELAPSED TIME FOR OFS TO REVIEW FINAL RULE WAS 187 DAYS.																								
UT-021-FOR	AFD	03/07/94	03/14/94	03/21/94	03/18/94	03/21/94	03/23/94	03/29/94	/ /	05/20/94	04/28/94	06/10/94	Y	06/10/94	07/08/94	07/22/94	07/25/94	07/29/94	08/15/94	03/31/94	08/22/94	09/14/94	09/15/94	09/16/94	09/27/94	05/05/93
SUBJECT:		1. STIN UCA 40-10-14 (PERMIT REVIEW)-H.B.394 (NOT SEEN BY OSM); 40-10-20 (CIV. PENALTY); 40-10-28 (RECL. COSTS-TITLE IV); & 40-10-28.1 (CERT.-COMPL. OF COAL RECL.-TITLE IV)-S.B. 22. NOT ALL OF UT-021-INF INCL. IN THIS AMDT.																								
UT-022-FOR	AFD	08/02/93	08/10/93	08/18/93	08/18/93	08/18/93	08/19/93	08/27/93	/ /	09/30/93	09/27/93	12/09/93	Y	12/09/93	01/10/94	01/12/94	01/14/94	01/24/94	02/08/94	08/27/93	03/25/94	06/08/94	06/29/94	06/30/94	07/11/94	/ /
SUBJECT:		1. STIN N/A 0% 2. 0% 3. 0% 4. 0% 5. ADMIN RECORD #UT-851; CONSISTS OF REVISIONS TO R641 & R645 RULES-CONSIDERED BY UT TO BE NONSUBSTANTIVE & PER UT RULES REVIEW COMMITTEE. ACTUAL ELAPSED TIME FOR OFS REVIEW OF FINAL RULE WAS 75 DAYS.																								
UT-023-INF	AFD	08/06/93	08/13/93	/ /	08/20/93	/ /	/ /	/ /	/ /	09/30/93	/ /	09/01/93	Y	09/03/93	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /
SUBJECT:		1. EPA RESPONSE TO OSM'S 3/93 LTR TO UT RE: ENERGY POLICY ACT REQMTS FOR SUBSIDENCE-INDUCED MATERIAL DAMAGE. NOT PROMULGATED YET - UT PLANS TO GET HR SUPPORT FOR THESE CHANGES IN SEPT. SO THEY CAN BE PASSED IN THE '94 LEG. SESSION. DRAFT IL TO AFD ON 09/01/93. ANOTHER INF AMDMT SUBMITTED (SEE UT-024-INF).																								
UT-024-FOR	AFD	04/14/94	04/19/94	04/28/94	04/25/94	04/26/94	05/06/94	05/12/94	/ /	08/05/94	06/13/94	10/20/94	Y	10/24/94	12/12/94	/ /	12/09/94	12/15/94	12/30/94	05/09/94	/ /	/ /	/ /	/ /	/ /	/ /
SUBJECT:		1. STIN FORMAL SUBMITTAL OF UT-024-INF; COMBINES PREVIOUS INF'S (UT-018, 021, 023). STIN TO ADDRESS AMR ACT OF 90 & ENERGY POLICY ACT OF 92. DOES NOT INCLUDE WATER REPLACEMENT PROVISION. HQS AML COMMENTS RECD 06/07/94.																								
UT-025-FOR	AFD	11/12/93	11/15/93	11/24/93	11/17/93	11/24/93	12/01/93	12/08/93	/ /	01/28/94	01/07/94	08/24/94	Y	03/31/94	07/05/94	/ /	07/07/94	07/14/94	07/29/94	07/19/94	03/06/95	/ /	/ /	/ /	/ /	/ /
SUBJECT:		1. 900R 4/4 0% 2. 0% 3. 0% 4. 0% 5. RESPONSE TO REQUIRED AMENDMENTS FOR UT-010. ADMIN. RECORD NO. UT-875. HIGHWALL RETENTION AND RECLAMATION. MEETING WITH DOGM TO DISCUSS THE 03/31/94 ISSUE LETTER WAS HELD ON 05/12/94 AT WSC. PER 09/07/94 MEETING WITH OSM AND DEADLINE EXTENSION REQUEST OF 9/26/94, DOGM RESPONDED TO 2ND ISS. LTR. ON 11/14/94.																								
UT-026-FOR	AFD	03/07/94	03/10/94	03/18/94	03/15/94	03/17/94	03/18/94	03/28/94	/ /	03/24/94	04/28/94	/ /	N	/ /	/ /	/ /	/ /	/ /	/ /	/ /	05/11/94	05/16/94	05/16/94	05/17/94	05/24/94	/ /
SUBJECT:		1. STIN PROPOSED REVISION TO RULE SO THAT UTAH WOULD NOT HAVE TO PROCESS ALL DOGM-ORDERED PERMIT CHANGES AS SIGNIFICANT PERMIT REVISIONS. ACTUAL ELAPSED TIME FOR OFS TO REVIEW FINAL RULE WAS 1 DAY.																								
UT-027-FOR	AFD	01/27/94	01/31/94	02/08/94	02/08/94	/ /	02/18/94	02/25/94	/ /	03/25/94	03/28/94	04/15/94	Y	04/15/94	05/10/94	05/23/94	05/17/94	05/24/94	06/08/94	02/15/94	08/22/94	09/16/94	08/25/94	09/19/94	09/27/94	/ /
SUBJECT:		1. STIN COAL EXPL SUBJ TO 43 CFR 3480-3487; REMOVE INSIDE/OUTSIDE PERMIT AREA TIE; CHANGE COMPLIANCE REGS FOR REMOVAL OF <250T; FR FR PUBL DELAYED DUE TO DECISION THAT ASLM WOULD SIGN-FINAL DEC WAS TO EXEMPT STATE PROGRAM AMDT.																								
UT-028-FOR	AFD	02/06/95	02/08/95	/ /	03/01/95	/ /	03/07/95	03/15/95	/ /	/ /	04/14/95	/ /	Y	05/23/95	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /
SUBJECT:		1. STIN NORMAL HUSBANDRY PRACTICES, RESPONSE TO INF ISSUE LETTER.																								
UT-029-FOR	AFD	09/09/94	09/12/94	09/19/94	09/13/94	09/16/94	09/19/94	09/27/94	/ /	10/28/94	10/27/94	11/14/94	Y	11/15/94	01/11/95	01/11/95	01/13/95	01/24/95	02/08/95	09/29/94	02/17/95	03/17/95	02/22/95	03/20/95	03/27/95	/ /
SUBJECT:		1. 944 1 0% 2. 0% 3. 0% 4. 0% 5. RESPONSE TO REQD AMMDT @ 944.16(A) FROM UT-022-FOR PERTAINING TO CONFIDENTIALITY OF COAL EXPLORATION INFORMATION.																								
UT-030-FOR	AFD	10/04/94	10/06/94	10/26/94	10/26/94	/ /	10/14/94	10/21/94	/ /	11/18/94	11/21/94	12/01/94	Y	11/30/94	12/22/94	/ /	01/04/95	01/10/95	01/25/95	/ /	/ /	/ /	/ /	03/10/95	03/27/95	/ /
SUBJECT:		1. STIN 1 0% 2. 0% 3. 0% 4. 0% 5. AMEND. REVISES UT RULES BY REFERENCING U.C.A. STAT. PROVISION WITH INTENT OF ADJING COAL COMPANIES TO PROVIDE A CERTAIN AMT. OF LIABILITY INS. THROUGH SELF-S. WSC PREPARED PROP. RULE FR NOTICE AND PROP. RULE FR REOPENING NOTICE. R. OUT WITHDRWN AMEND. BY LETTER DATED 02/24/95. WSC PREP. WITHDRAWAL FR NOTICE.																								
UT-031-FOR	AFD	02/10/95	02/16/95	/ /	/ /	/ /	02/21/95	02/27/95	/ /	/ /	03/29/95	/ /	N	/ /	/ /	/ /	/ /	/ /	/ /	03/03/95	04/06/95	04/24/95	04/19/95	04/26/95	05/02/95	/ /
SUBJECT:		1. STIN STIN INITIATED REVISIONS CONCERNING CIVIL PENALTIES.																								
UT-032-EXP	AFD	07/15/95	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /
SUBJECT:		1. AML AMENDMENT IN RESPONSE TO DIR. URAM'S 09-26-94 LTR. (ADMIN. REC. #UT-1011).SEE UT'S 01/12/95 SCHEDULE FOR DATES CONCERNING THIS AMENDMENT (#UT-1014).																								
UT-032-INF	AFD	02/24/95	02/27/95	/ /	03/03/95	/ /	/ /	/ /	/ /	04/06/95	/ /	04/06/95	Y	04/10/95	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /	/ /
SUBJECT:		1. AML PROPOSED AMEND. CONCERNS REVISIONS TO UTAH'S ABANDONED MINE RECLAMATION PROGRAM RULES. COMMENTS DUE FROM WSC ON APRIL 7, 1995.																								



United States Department of the Interior

OFFICE OF SURFACE MINING

Reclamation and Enforcement
Suite 1200
505 Marquette Avenue N.W.
Albuquerque, New Mexico 87102

May 23, 1995

Mr. James W. Carter, Director
Division of Oil, Gas, & Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, UT 84180-1203

Dear Mr. Carter:

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed review of Utah's February 6, 1995, formally-proposed amendment (administrative record No. UT-1025; State Program Amendment Tracking System (SPATS) No. UT-028-FOR). The amendment concerns normal husbandry practices. OSM finds those provisions of the proposed amendment identified in the enclosure to this letter to be less effective than the Federal counterpart regulations and less stringent than the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The Regional Director, Western Regional Coordinating Center, is prepared to delay final rulemaking on the proposed amendment to allow Utah an opportunity to submit draft proposed rules or other evidence that the proposed rules are no less effective than the Federal regulations and no less stringent than SMCRA. Utah must submit such additional information no later than 30 days from the date of this letter. Upon submission by Utah of new material to address the deficiencies, OSM would, as appropriate, reopen the comment period on the new information for 15 days. After the close of the reopened comment period, OSM would then publish a final rule announcing the Regional Director's decision on the amendment. The Regional Director's approval of the rules in proposed form is contingent upon Utah's adoption of the rules in the form in which they were reviewed by OSM and the public. Should Utah indicate that it does not wish to or is unable to submit further modifications to address the identified deficiencies, the Regional Director would not approve those provisions which contain identified deficiencies.

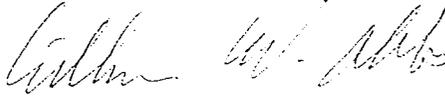
Please advise me at your earliest convenience whether Utah wishes to submit materials to address OSM's concerns within the next 30 days. If Utah does not intend to submit additional material, OSM will proceed directly with the publication in the Federal Register of the Regional Director's decision.

Mr. James W. Carter

2

We are available to meet with you to discuss our review findings or any matters of concern regarding the proposed rules. Please call me or Vernon Maldonado, Program Analyst, at 505-766-1486 if you have any questions.

Sincerely,

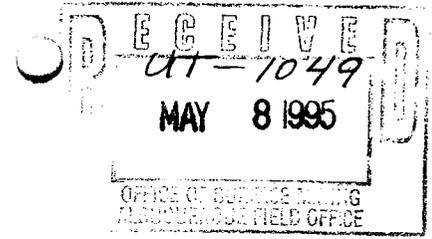
A handwritten signature in cursive script, appearing to read "Arthur W. Abbs".

Arthur W. Abbs, Acting Director
Albuquerque Field Office

Enclosure

cc: DFT, WRCC
Regional Solicitor,
Rocky Mountain Region

ANDALEX RESOURCES, INC.



WRITTEN COMMENTS ON IMPLEMENTATION OF UNDERGROUND COAL MINE PERFORMANCE STANDARDS OF SECTION 720(a) OF SMCRA,

Andalex Resources, Inc., appreciates the opportunity to comment on the implementation of the Energy Policy Act and the final OSM rule which was found at Section 720(a)(1) and 720(a)(2).

We are knowledgeable and aware of our responsibilities under the Energy Policy Act and have reviewed the final OSM rule in 30CFR Parts 701, 784, 817 and 843 that were published in the Federal Register, Friday, March 31, 1995.

There are currently 13 active underground mines in the State of Utah. Compared to many other coal mining states, this is a relatively small number.

There are no "non-commercial buildings or occupied residential dwelling or structures related thereto" that could be damaged as a result of coal mining-caused subsidence at any of Andalex's coal leases in the State of Utah. We are also not aware of any such structures at any of the other active coal mines located within the State.

Since the enactment of the Energy Policy Act on October 24, 1992, we are not aware of any complaint dealing with the loss of water; nor has Andalex, in its entire history, been made aware of a water-loss problem of any kind resulting from mining or any other Andalex activity.

There are no drinking, domestic or residential springs or wells within the angle of draw impact area at any location in the State of Utah which is controlled by Andalex.

Based on the facts that: 1) There is a relatively low number of active underground coal mines in the State of Utah; 2) There have been a relatively low number of citizen

complaints dealing with "non-commercial buildings or occupied residential dwellings or structures related thereto" or to drinking, domestic, or residential water supply in the State of Utah; 3) The Utah Division of Oil, Gas and Mining has promptly taken remedial action on all citizen complaints received; 4) The Utah Division of Oil, Gas and Mining is keenly aware of Utah State water law; and 5) The Utah Division of Oil, Gas and Mining has the qualified personnel to enforce the requirements of the Energy Policy Act, Andalex recommends that the State of Utah proceed with the promulgation of regulatory provisions that are counterpart to 30CFR 817.41(j) and 817.121(C)(2) and that the State of Utah take over the immediate enforcement of these regulations.

LAW FIRM OF
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SALT LAKE CITY, UTAH 84111KATHRYN COLLARD, L.C.
JEFFREY W. APPEL, L.C.
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FAXED
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(801) 532-1232
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(801) 532-1278

May 8, 1995

Thomas Ehmett, Acting Director
Federal Office of Surface Mining
505 Marquette Avenue, NW
Suite 1200
Albuquerque, NM 84702

Re: Written Comments Concerning Compliance by State of Utah
with Respect to Provisions of the Energy Policy Act of
1992

Dear Mr. Ehmett:

The Castle Valley Special Service District (CVSSD) appreciated the opportunity to appear before you on May 1, 1995, to provide comments on the above-referenced topic. The following should be deemed our written comments and we request they become part of the formal record for the purposes of determining how the regulations promulgated in response to the Energy Policy Act of 1992 will be enforced in the State of Utah.

As we indicated at the hearing, CVSSD represents the largest water service entity in Emery County, Utah. In that the vast majority of the water developed and served by CVSSD emanates from the side of cliffs in the form of springs and those cliffs also contain coal mining operations, the strict enforcement of the Energy Policy Act of 1992 is of critical significance to CVSSD and its customers. It is important to remember that due to the arid nature of this region, all easily obtainable water sources have previously been developed and appropriated under state law; thus, the issue of replacement becomes problematic absent the initiation of treatment of surface water or development of new sources not tributary to existing sources.

In an ongoing effort to protect its critical water sources, CVSSD and its culinary and irrigation water service partners have been involved in a number of proceedings before the Division of Oil, Gas and Mining ("DOG M") and the Utah State Engineer concerning the ongoing coal mining operations in the Co-op Mine. Without belaboring those particular efforts, the results have been unsatisfactory. In fact, during the course of the proceedings before the Board of Oil, Gas and Mining in 1994, the DOGM took the position that it was unwilling to apply the replacement provisions of the Energy Policy Act of 1992. It also adopted a review posture

LAW FIRM OF
COLLARD, APPEL & WARLAUMONT, L.C.

Thomas Ehmett
Page 2
May 8, 1995

which CVSSD believes segmented the analysis and review of the total hydrologic impact of the mining operations of the Co-op Mine. While CVSSD believes some positive changes are occurring at the DOGM, it has no desire to be the victim of a hiatus in enforcement.

While the majority of the coal operators whose operations impact the water supplies of CVSSD have been cooperative, the operators of Co-op have not. Unfortunately, this mine is located directly upgradient from and within the recharge area of one of the major water sources of CVSSD--the Big Bear Spring. CVSSD is a special service district with a rather large service area peopled by persons of modest economic means. Use of its limited financial resources should not be required to force compliance from resistant coal operators--that should be the mission and purpose of the DOGM.

Unfortunately, in the past, CVSSD and its associated entities have found themselves in the position of seeking expert testimony to unravel conclusions and factual findings reached by the DOGM. Invariably, these findings and conclusions are not based upon objective data collected by the DOGM, but rather upon data and information provided to it by consultants for Co-op. A tremendous amount of time and effort has been expended by CVSSD and its associated entities to expose the flaws in the consultants' work. Again, while we believe positive progress is being made at the DOGM, the track record is very poor concerning the enforcement and protection of water resources adjacent to the coal mining operations of the Co-op Mine.

In addition to a resistant coal operator and a recalcitrant and apparently understaffed regulatory authority, CVSSD faces additional problems in protecting its water sources from coal operations. A significant problem has been created due to the inability of the Utah State Engineer and the DOGM to provide adequate enforcement to protect these underground water sources. The current enforcement scheme has resulted in little or no protection of the water rights and water sources of my client.

Both the Utah Mining Association (UMA) and the DOGM have assumed that the State Engineer's existing authority provides sufficient remedies for replacement of water sources. As currently administered, it does not. The code sections cited by the UMA in their letter dated May 1, 1995, (Utah Code Ann. 73-3-1, 73-3-8, 73-3-13, and 73-3-23) only operate in the instance where the operator has previously obtained a water right under Utah law and then follows through with additional filings of change applications under 73-3-3 for movements of water within the mine. Until the

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COLLIARD, APPEL & WARLAUMONT, L.C.

Thomas Ehmett

Page 3

May 8, 1995

State Engineer requires such compliance with operative law, there is no protection for prior appropriators such as CVSSD and its associated entities. However, if the State Engineer requires compliance with the water code for those underground movements of water and the DOGM forces that compliance prior to every underground movement of water, then the scenario proposed by the UMA and the DOGM may work.

It must be stressed, however, that this is not the case now and the State Engineer will not currently enforce its authority over these underground mine workings and the movement of water therein. Thus, the "solutions" proposed by the DOGM and the UMA are ineffective at this time. Likewise, the memorandum of understanding proposed by the UMA will have no beneficial impact on this situation until the State Engineer and the DOGM require compliance with the Utah Water Code for underground movement of water within underground workings.

Due to this lack of coordinated enforcement by the DOGM and the State Engineer, CVSSD has experienced different return flow patterns than it has in the past. For instance, in 1991 Big Bear Spring experienced an "event" during which anomalous materials such as grease and oil appeared in the water. CVSSD believes this was the result of dumping of water encountered in the Co-op Mine into a mined area upgradient from the spring. Recently, flows have dropped approximately 30%. Such aberrations seriously threaten the viability of this water source.

The other aspect of DOGM monitoring that has been lax or nonexistent is the requirement concerning post-permitting conditions. While these mines will come and go once the coal resource is removed, the water sources need to be protected in perpetuity for the benefit of the population. In order to accomplish this, there must be a consistent and frequent updating of the hydrologic models and a frequent comparison of pre-permit conditions to current conditions. Failure to do so throughout the permitting process will lead to catastrophic results in the post permit period. Source replacement identification and emplacement efforts must also survive the post-permit period.

In summary, while the DOGM appears to be moving in the right direction, additional resources need to be applied to ensure that the requirements of the Energy Policy Act of 1992 are met. Strict enforcement of that statute is absolutely critical to the future of my client and its customers. On that basis, CVSSD requests, at a minimum, joint DOGM/OSM enforcement and regulation of the

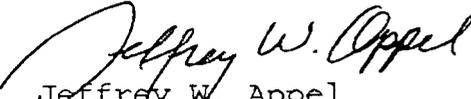
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Thomas Ehmett
Page 4
May 8, 1995

provisions of the Energy Policy Act of 1992 until it is clear that
a workable and effective enforcement scenario is in place.

Very truly yours,

COLLARD, APPEL & WARLAUMONT


Jeffrey W. Appel

cc: Darrel Leamaster

LAW FIRM OF
COLLARD, APPEL & WARLAUMONT, L.C.

1100 BOSTON BUILDING
9 EXCHANGE PLACE
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KATHRYN COLLARD, L.C.
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MICHELE MATSSON

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TELEFAX COVER MEMO

DATE: 5-8-95

TIME: 3:00 pm

Total number of pages (including cover page) 5

Client/Matter: CVSSD Acct. No. _____

FROM: Jeffrey W. Appel

TO: Thomas Ehmett
505-766-2609

MESSAGE: _____

=====
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UT-1047

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May 8, 1995

Via Fax No. (505) 766-2609
and First Class Mail

Thomas E. Ehmett
Acting Director
Albuquerque Field Office
Office of Surface Mining
505 Marquette Avenue, N.W.
Albuquerque, New Mexico 87102

Re: May 1, 1995 Public Hearing - Federal Energy Policy Act
Requirements for Water Replacement and Subsidence Control
Utah Coal Regulatory Program

Dear Mr. Ehmett:

This letter will supplement the oral comments and written materials submitted on May 1, 1995 on behalf of the Emery Water Conservancy District, Huntington-Cleveland Irrigation Company and North Emery Water Users Association. We appreciate the opportunity to submit comments on this issue of critical concern to the residents of Emery County, Utah.

The above-mentioned water organizations are organized and function solely to enhance, preserve, and purvey water for domestic, irrigation and industrial uses in Emery County. The Emery Water Conservancy District is a governmental entity charged by state law to "provide for the conservation of the water and land resources" (See Utah Code Ann. § 17A-2-1401). Huntington-Cleveland Irrigation Company is the holder of the vast majority of the water rights in the Huntington Creek drainage and provides water to the Castle Valley Special Services District that serves Huntington City and Elmo and Cleveland Towns as well as irrigation and industrial uses. North Emery Water Users Association provides drinking water to unincorporated Northern Emery County.

Thomas E. Ehmett
May 8, 1995
Page 2

These water entities, along with others, have grown increasingly concerned over the impact of coal mining activities on both water quality and water quantity. Several studies by the United States Geological Survey have demonstrated that the regional aquifer that provides water to the Huntington, Cottonwood and Ferron drainages, is found in the same strata as the coal seams that are commercially mined.

During recent years, anomalous changes in flows of springs and water quality have been observed near mining activity. In order to develop a data base to document such water quality and quantity changes, the Emery Water Conservancy District has expended \$250,000 to monitor springs and streams.

When flows of two springs used for drinking water were impacted by mining by Co-op Mining Company, Huntington-Cleveland and North Emery Water Users Association along with Castle Valley Special Services District undertook a formal administrative proceeding before the Utah Board of Oil, Gas & Mining to challenge the issuance of a substantive revision to Co-op's permit by the Division of Oil, Gas & Mining ("Division"). No decision has yet been issued by the Board.

However, a similar level of concern by the Division over water resource has not been detected. As recently as October of 1994 Division legal counsel, Thomas Mitchell, Esq. informed the Board of Oil, Gas & Mining that replacement of drinking water required by the Federal Energy Policy Act, 30 U.S.C., § 1309(a), was not part of the Utah Program. Also, the Division has not heretofore aggressively enforced the water protection regulations that it considers part of the Utah program.

For example, at the hearings regarding the substantive revision to Co-op's permit, it came to light that the Division had failed to obtain mandatory baseline flow information for the two Springs that provided drinking water. Failure to obtain baseline flow information made determination of impact by mining very difficult to gauge.

The comments of Mr. James W. Carter, Division Director, at the May 1, 1995 hearing indicate a positive evolution of the position of the Division regarding the protection of water. We applaud this apparent shift in Division policy. However, we are as yet unwilling to rely on the Division alone to protect this critical resource.

Thomas E. Ehmett
May 8, 1995
Page 3

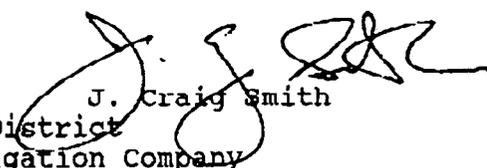
We would ask that Office of Surface Mining oversee and closely monitor the efforts of the Division to develop regulations and enforce such regulations. If the Division is able to accomplish the following, we will then agree that the Division should administer ground water protection:

1. With involvement of water users and other interested parties, develop regulations that protect all beneficial uses of water and require replacement of water lost by mining activity.
2. Build water quantity and water quality triggers into mining permits that automatically require water replacement if flows in identified springs or wells drop below certain levels or exhibit a specified decrease in quality.
3. Enter into a Memorandum of Understanding with the State Engineer which clarifies the roles of the respective divisions and shares expertise to assure that water protection does not continue to fall between the cracks.
4. Dedicate sufficient resource to aggressively review both applications and existing permits on hydrology issues and annually review permits to compare probable hydrologic consequences with actual.
5. Demonstrate an ongoing commitment to protection of water resources from the impacts of mining.

If these five steps are accomplished, we will be comfortable with Division administration. However, until such time, we would request Office of Surface Mining oversight, and if necessary, Office of Surface Mining administration of statutes and regulations which protect water resources.

Thank you for your consideration of our comments. Please contact me should additional information be needed.

Very truly yours,


J. Craig Smith

cc: Emery Water Conservancy District
cc: Huntington-Cleveland Irrigation Company
cc: North Emery Water Users Association
cc: James W. Carter, Esq.

PS>B:\NORTH-EMERYMETT.LTR



UT-1047

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CLIENT/MATTER NUMBER: EMERY water conservancy district

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UT-1053

By removing "(lat. 40°07'47"N., long. 91°16'44"W.)" and substituting "(lat. 40°07'45"N., long. 91°40'42"W.)"

Herman J. Lyons, Jr.,
Acting Manager, Air Traffic Division, Central
Region.

[FR Doc. 95-10773 Filed 5-1-95; 8:45 am]
BILLING CODE 4910-15-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1
[T.D. 7636]

Contributions to Pension, Profit-Sharing, etc., Plans on Behalf of Self-Employed Individuals and Shareholders-Employees; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final regulations (T.D. 7636), which were published in the *Federal Register* Friday, August 10, 1979 (44 FR 47046), relating to contributions to pension, profit-sharing, etc., plans on behalf of self-employed individuals and shareholder-employees.

EFFECTIVE DATE: May 2, 1995.

FOR FURTHER INFORMATION CONTACT: Brant Goldwyn (202) 622-6090, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction clarify the applicability of the \$100,000 limitation of section 401(a)(17) to certain plans maintained by an aggregated employer group.

Need for Correction

As published, T.D. 7636 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.401(e)-5 [Corrected]

Par. 2. The first sentence of § 1.401(e)-5 (a)(1) is amended by removing the "(1)" following the paragraph heading "(a) General rules—(1) General rule."

Cynthia E. Grigsby,
Chief, Regulations Unit, Assistant Chief
Counsel (Corporate).

[FR Doc. 95-10688 Filed 5-1-95; 8:45 am]
BILLING CODE 4830-01-

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Utah regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to its civil penalty rules with the intent of making them consistent with recently promulgated revisions to the Utah Coal Reclamation Act of 1979.

EFFECTIVE DATE: May 2, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmert, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, *Federal Register* (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Proposed Amendment

By letter dated February 10, 1995, Utah at its own initiative submitted a proposed amendment to its program (administrative record No. UT-1019) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Utah proposed to amend the Utah Coal Mining Rules at Utah Administrative Rules (Utah, Admin. R.) 645-401-120, 410, 430, 721, 810, 830,

and 910, concerning civil penalties, and Utah Admin. R. 645-402-120, 420, and 422, concerning individual civil penalties. Utah did so with the intent of making them consistent with recently promulgated revisions to the Utah Coal Reclamation Act of 1979 (UCA 40-10 *et seq.*).

OSM announced receipt of the proposed amendment in the February 27, 1995, *Federal Register* (60 FR 10531; administrative record No. UT-1029) and in the same document opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on March 29, 1995. The public hearing, scheduled for March 24, 1995, was not held because no one requested an opportunity to testify.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed Utah program amendment submitted by Utah on February 10, 1995, is no less effective than the corresponding Federal regulations. Thus, the Director approves the proposed amendment.

1. Nonsubstantive Revision to Utah's Rules

Utah proposed a revision to previously-approved Utah Admin. R. 645-401-430, concerning assessment of violations and unabated violations, that is nonsubstantive in nature and consists of the addition of the acronym "UCA" prior to referenced provisions of Utah's statute.

Because the proposed revision to this previously-approved rule is nonsubstantive in nature, the Director finds that the proposed revision to Utah Admin. R. 645-401-430 is no less effective than the corresponding Federal regulation at 30 CFR 845.15(b)(2). The Director approves this proposed revision.

2. Substantive Revisions to Utah's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Utah proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations (listed in parentheses). The rules include revisions that transfer power for assessing civil penalties from the Board of Oil, Gas, and Mining (Board) to the Division of Oil, Gas, and Mining (Division). These rule revisions

implement previously approved statutory revisions at UCA 40-10-20 (1)(a) and (3)(a) that had the same effect (see finding No. 4, 59 FR 49185, 49187, September 27, 1994).

Utah Admin. R. 645-401-120 (30 CFR 845.11), concerning information on civil penalties;

Utah Admin. R. 645-401-410 (30 CFR 845.15(a)), concerning assessments of separate violations for each day;

Utah Admin. R. 645-401-721, 645-401-723.100, and 645-401-742 (30 CFR 845.18(b)(1), 845.18(b)(3)(i), and 845.18(d)(2)), concerning procedures for informal assessment conferences;

Utah Admin. R. 645-401-810 (30 CFR 845.19(a)), concerning requests for formal hearings; and

Utah Admin. R. 645-402-420 and 645-402-422 (30 CFR 846.17(b) and 846.17(b)(2)), concerning procedures for assessment of individual civil penalties.

Because these proposed revisions of the Utah rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. Utah Admin. R. 645-401-830, *Formal Review of the Violation Fact or the Civil Penalty*

Utah proposed to revise Utah Admin. R. 645-401-830 to specify that formal review of the violation fact or penalty will be conducted by the Board under the provisions of the "procedural rules of the Board (R641 Rules)." The "procedural rules of the Board (R641 Rules)" are entitled "Rules of Practice and Procedure of the Utah Board of Oil, Gas and Mining."

The corresponding Federal regulations at 30 CFR 845.19(a) state that the person charged with the violation may contest the fact of a violation or the proposed penalty for a violation by submitting, among other things, a petition to the Office of Hearings and Appeals. The procedural requirements that apply to these appeals are included in the Federal program at 43 CFR 4.1150 through 4.1171.

Utah's proposed reference to its "procedural rules of the Board (R641 Rules)" in proposed Utah Admin. R. 645-401-830 corresponds to the general reference in the Federal regulation at 30 CFR 845.19(a) to the Office of Hearings and Appeals. OSM previously approved, in Utah's original program, Utah's procedural requirements at Utah Admin. R. Part 641, the "Rules of Practice and Procedure of the Utah

Board of Oil, Gas and Mining." (see finding No. 4(q), 46 FR 5899, 5910, January 21, 1981).

On this basis, the Director finds that the proposed revision to Utah Admin. R. 645-401-830 is no less effective than the Federal regulations at 845.19(a) and approves it.

4. Utah Admin. R. 645-401-910, *Final Civil Penalty Assessment and Payment of Penalty*

Utah proposed to revise Utah Admin. R. 645-401-910 to require that, if the permittee fails to request a hearing as provided in Utah Admin. R. 645-401-810, the proposed civil penalty assessment will become a final order of the Division, rather than the Board. Utah also proposed revising Utah Admin. R. 645-401-910 to require that the penalty assessed will become due and payable upon expiration of the time allowed to request a hearing and "upon the Division fulfilling its responsibilities under UCA 40-10-20(3)(e)." Utah proposed to add the quoted language as part of this amendment.

The counterpart Federal regulation at 30 CFR 845.20(a) requires that if the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided for in 30 CFR 845.19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

The Federal regulation at 30 CFR 845.20(a) differs from proposed Utah Admin. R. 645-401-910 only in that (1) it addresses the final order of the Secretary of the Interior and (2) it does not reference section 518(b) of SMCRA which is substantively identical to the Utah's referenced statutory provision at UCA 40-10-20(3)(e).

Utah's referenced statutory provision at UCA 40-10-20(3)(e) provides that, if the person charged with a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Division after it has (1) determined that a violation did occur, (2) determined the amount of the penalty that is warranted, and (3) issued an order requiring that the penalty be paid. These provisions of Utah's statute are implemented in Utah Admin. R. 645-401-730, which states that the assessment conference officer will promptly serve the permittee with a notice of his or her action (i.e., an assessment notice) and will include a worksheet if the penalty has been lowered or raised from the original assessment.

Proposed Utah Admin. R. 645-401-910 therefore requires that, if the

permittee fails to request a hearing as provided in Utah Admin. R. 645-401-810, the proposed civil penalty assessment (i.e., the assessment notice required in Utah Admin. R. 645-401-730) will become a final order of the Division.

The Director finds that proposed Utah Admin. R. 645-401-910 is no less effective than the Federal regulation at 30 CFR 845.20(a) and approves it.

5. Utah Admin. R. 645-402-120, *Information on Individual Civil Penalties*

Utah proposed to revise Utah Admin. R. 645-402-120 to require that a Division-appointed, rather than a Board-appointed, assessment officer will assess individual civil penalties.

Proposed Utah Admin. R. 645-402-120 has no direct counterpart in the Federal regulations. However, the generally corresponding Federal regulation at 30 CFR 846.1 establishes the scope of OSM's individual civil penalty regulations when it states that 30 CFR Part 846 covers the assessment of individual civil penalties under section 518(f) of SMCRA.

Utah's statutory provision which corresponds to, and is substantively identical to, section 518(f) of SMCRA is UCA 40-10-20(6). As discussed in finding No. 2 above, OSM previously approved Utah's statutory provisions at UCA 40-10-20 that transferred power for assessment of civil penalties from the Board to the Division. It naturally follows that Utah also has the discretion to select the same State entity to be responsible for assessments of individual civil penalties.

On this basis, the Director finds that proposed Utah Admin. R. 645-402-120 is consistent with its statute as well as the Federal regulation at 30 CFR 846.1. Therefore, the Director approves proposed Utah Admin. R. 645-402-120.

IV. Summary and Disposition of Comments

Following are summaries of all substantive comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program.

The U.S. Bureau of Mines responded on March 3, 1995, by telephone conversation, that it had no comments on the proposed amendment (administrative record No. UT-1028).

The U.S. Army Corps of Engineers responded on March 14, 1995, that the changes to the Utah program were satisfactory (administrative record No. UT-1032).

The U.S. Mine Safety and Health Administration (MSHA) responded on April 3, 1995, that no conflict could be found between the amendment and current MSHA regulations (administrative record No. UT-1040).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. UT-1021). EPA responded on March 3, 1995, that it had no comments on the proposed amendment and did not believe that there would be any impacts to water quality standards promulgated under the Clean Water Act (administrative record No. UT-1031).

4. State Historic Preservation Officer (SHPO)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO (administrative record No. UT-1021). The SHPO did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Utah on February 10, 1995.

The Director approves, as discussed in: finding No. 1, Utah Admin. R. 645-401-430, concerning a nonsubstantive editorial revision; finding No. 2, Utah Admin. R. 645-401-120, Utah Admin. R. 645-401-410, Utah Admin. R. 645-401-721, 723.100, and 742, Utah Admin. R. 645-401-810, and Utah Admin. R. 645-402-420 and 422, concerning substantive revisions that

are substantively identical to the corresponding Federal regulations; finding No. 3, Utah Admin. R. 645-401-830, concerning the formal review of the violation fact or the civil penalty; finding No. 4, Utah Admin. R. 645-401-910, concerning the final civil penalty assessment and payment of penalty; and finding No. 5, Utah Admin. R. 645-402-120, concerning information on individual civil penalties.

The Director approves the rules as proposed by Utah with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 or SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program

provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 25, 1995.

Peter A. Rutledge,
Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, Chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (dd) to read as follows:

§ 944.15 Approval of amendments to the State regulatory program.

* * * * *
(dd) Revisions to the following Utah Administrative Rules, as submitted to OSM on February 10, 1995, are approved effective May 2, 1995.

- 645-401-120 ... How Civil Penalty Assessments Are Made.
- 645-401-410 and 430. Assessment of Separate Violations for Each Day.
- 645-401-721, 723.100, and 742. Procedures for Informal Assessment Conferences.
- 645-401-810 and 830. Request for Formal Hearings.
- 645-401-910 ... Final Civil Penalty Assessment and Payment of Penalty.
- 645-402-120 ... Information on Individual Civil Penalties.
- 645-402-420 and 422. Procedures for Assessment of Individual Civil Penalties.

[FR Doc. 95-10777 Filed 5-1-95; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF EDUCATION

34 CFR Part 690

RIN 1840-AB73

Federal Pell Grant Program; Presidential Access Scholarship Program

AGENCY: Department of Education.
ACTION: Final regulations; correction.

SUMMARY: This document corrects an error in the final regulations published in the Federal Register on November 1, 1994 for the Federal Pell Grant Program (59 FR 54718). These regulations implement statutory changes in the Federal Pell Grant Program authorized by title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, and the Higher Education Technical Amendments of 1993.

FOR FURTHER INFORMATION CONTACT: Greg Gerrans, Office of Student Financial Assistance Programs, Office of Postsecondary Education, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3045, Regional Office Building 3, Washington, D.C. 20202-5447. Telephone (202) 708-4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Dated: April 24, 1995.

David A. Longanecker,
Assistant Secretary for Postsecondary Education.

§ 690.12 [Corrected]

- The following correction is made in FR Doc. 94-26832, published on November 1, 1994 (59 FR 54718):
On page 54732, column 1,
§ 690.12(b)(2) "Mailing the paper

application form to the Secretary." is corrected to read "Sending an approved application form to the Secretary."

[FR Doc. 95-10665 Filed 5-1-95; 8:45 am]
BILLING CODE 4000-01-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office.

37 CFR Parts 1 and 10

[Docket No. 950403086-5086-01]
RIN 0651-AA72

Revisions of Patent Cooperation Treaty Provisions

AGENCY: Patent and Trademark Office, Commerce.
ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice relating to applications filed under the Patent Cooperation Treaty (PCT) in accordance with revised regulations under the PCT. The changes will result in a procedure whereby international applications improperly filed with the United States Receiving Office (RO/US) will, for a fee, be forwarded for processing to the International Bureau as Receiving Office.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Pearson at (703) 308-6515.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published in the Federal Register at 59 FR 33707 (June 30, 1994) and in the Patent and Trademark Office Official Gazette at 1164 Off. Gaz. Pat. Office 77 (July 26, 1994), the Office proposed to amend several rules of practice in patent cases. Recent changes to the PCT Regulations include the addition of a new section (PCT Rule 19.4) which provides for transmittal of an international application to the International Bureau, acting in its capacity as Receiving Office, in certain instances. Under the regulations currently in effect, at least one applicant is required, on filing the international application in the United States, to be a resident or national of the United States.

The practice under the revised PCT Regulations permits an international application filed with the United States Receiving Office to be forwarded to the International Bureau for processing in its capacity as a Receiving Office if the international application does not name an applicant who is indicated as being a U.S. resident or national, but names an

applicant who is indicated as a resident or national of another PCT Contracting State or if the indication of residence or nationality of the applicant is missing. The Receiving Office of the International Bureau will consider the international application to be received as of the date accorded by the United States Receiving Office. This practice will avoid the loss of a filing date in those instances where the United States Receiving Office is not competent to act, but where the international application is filed by an applicant who is a national or resident of a PCT Contracting State. Where questions arise regarding residence and nationality, e.g., where residence and nationality are not clearly set forth, the application will be forwarded to the International Bureau as Receiving Office. If all applicants are indicated to be residents and nationals of non-PCT Contracting States, PCT Rule 19.4 does not apply and the application is denied an international filing date.

Discussion of Specific Rules

Section 1.412(c)(6) is added to reflect that the United States Receiving Office, where it is not a competent Receiving Office under PCT Rule 19.1 or 19.2, could transmit the international application to the International Bureau for processing in its capacity as a Receiving Office.

Section 1.421(a) is amended to clarify that applications filed by applicants who are not residents or nationals of the United States, but who are residents or nationals of a PCT Contracting State or who indicate no residence or nationality, will, upon timely payment of the proper fee, be forwarded to the International Bureau for processing in its capacity as a Receiving Office.

Section 1.445(a)(5) is added to establish a fee equivalent to the transmittal fee in paragraph (a)(1) of this section for transmittal of an international application to the International Bureau for processing in its capacity as a Receiving Office.

Section 10.9 is amended to add a new provision consistent with PCT Rule 90.1, clarifying that an attorney or agent having the right to practice before the International Bureau when acting as Receiving Office may represent the applicant before the U.S. International Searching Authority of the U.S. International Preliminary Examining Authority. An individual who has the right to practice before the International Bureau when acting as Receiving Office, and who is not registered under § 10.6, may not prosecute patent applications in the national stage in the Office.



ALEXANDER H. JORDAN
President

Utah Mining Association

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Vice President
Interwest Mining Corp.

May 1, 1995

Thomas Ehmett, Acting Director
FEDERAL OFFICE OF SURFACE MINING
505 Marquette, N.W., Suite 1200
Albuquerque, New Mexico 87102

RE: Statement of the Utah Mining Association re Federal Energy Policy Act
Requirements for Water Replacement and Subsidence Control, Utah
Coal Regulatory Program

Dear Acting Director Ehmett:

On behalf of the Utah Mining Association ("UMA"), we appreciate the opportunity to present comments concerning the Utah Division of Oil, Gas & Mining's ("Division's") options for enforcement of the water replacement provisions of the Energy Policy Act. As you are aware, the Division has primacy to enforce its coal program in Utah and should be the entity which enforces the Energy Policy Act in this State. It has been suggested that the Utah Program must be modified to be no less effective than the Office of Surface Mining's ("OSM's") rules adopted on Friday, March 31, 1995. However, the protection afforded by OSM's rules regarding water replacement are currently in place under the Utah Water Code ("Water Code"). Without further amendment of Utah law, enforcement of these regulations may be accomplished through a Memorandum of Understanding ("MOU") between the Division and the Utah State Engineer ("State Engineer").

Section 717(a) of the federal Surface Mining Control & Reclamation Act requires deference to State water law. Utah's water law is based on the doctrine of prior appropriation. The right to use of unappropriated water in Utah is acquired exclusively by an approved application to appropriate issued by the State Engineer. Utah Code Ann. § 73-3-1. As a condition of approval of an application to appropriate, the applicant must demonstrate that the proposed use will not impair existing rights or interfere with a more beneficial use of the water. Utah Code Ann. § 73-3-8. Applications to appropriate are

Thomas Ehmett
May 1, 1995
Page 2

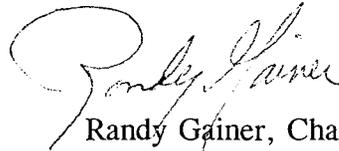
subject to public notice and comment and those affected by a proposed application may file a protest and request a hearing before the State Engineer. Utah Code Ann. § 73-3-13.

Under the Utah appropriation system, the first in time is the first in right and the senior appropriator. The Water Code currently addresses conflicts between junior and senior appropriators which may result in the replacement of water rights. For example, under Utah Code Ann. § 73-3-23, the right of replacement is granted statutorily for appropriations of underground water where the junior appropriator may "diminish the quantity or injuriously affect the quality of appropriated underground water in which the right to use thereof has been established as provided by law." No replacement may be made by the junior appropriator until an application has been approved by the State Engineer. Replacement is made at the sole cost and expense of the applicant and the Water Code allows the applicant to exercise the right of eminent domain for the purpose of replacement. In addition, the State Engineer sets conditions for replacement of existing water wells.

The UMA believes that Utah's appropriation system establishes vested rights to "drinking, domestic or residential water supplies." In addition, the office of the State Engineer has the expertise and training to make determinations as to whether or not mining activities "may result in contamination, diminution or interruption" of these water supplies. The Subcommittee suggests that OSM leave these determinations to the Division and the State Engineer through the mechanism of an MOU. In addition, if changes to the Utah program are deemed necessary, the Division must consult the State Engineer to ensure that the coal program does not conflict with established procedures for appropriation and replacement of water rights.

We appreciate your consideration of these comments.

Sincerely,



Randy Gainer, Chairman
Coal Environmental Committee

RG:DAD:jmc:55826

cc: Robert Morgan, Utah State Engineer
UMA, Coal Environmental Committee

COASTAL STATES ENERGY

**STATEMENT ON IMPLEMENTATION OF UNDERGROUND COAL MINE
PERFORMANCE STANDARDS OF
SECTION 720(a) OF SMCRA, OSM HEARING MAY 1, 1995, SALT LAKE CITY UTAH**

My name is Keith Zobell and I work for and am representing Coastal States Energy Company who owns and operates the Skyline Mines, Convulsion Canyon mine and the Soldier Creek mine here in the State of Utah.

We are knowledgeable and aware of our responsibilities under the Energy Policy Act and have reviewed the final OSM rule in 30CFR Parts 701, 784, 817 and 843 that were published in the Federal Register, Friday, March 31, 1995.

There are currently 13 active underground mines in the State of Utah. Compared to many other coal mining states, this is a relatively small number.

There are no "non-commercial buildings or occupied residential dwelling or structures related thereto" that could be damaged as a result of coal mining caused subsidence at any of our Coastal States Energy Co. three mine locations in the State of Utah. We are also not aware of any such structures at any of the other active coal mines located within the State.

Since the enactment of the Energy Policy Act on October 24, 1992, we ^{are} aware of one citizen complaint dealing with the loss of water which dealt with livestock water. This complaint was immediately investigated by the Utah Division of Oil, Gas and Mining and was brought to a conclusion in a prompt, orderly manner.

There are no drinking, domestic or residential springs or wells within the angle of draw impact area at any of our three mines in the State of Utah.

Based on the facts that: 1) There is a relatively low number of active underground coal mines in the State of Utah. 2) There have been a relatively low number of citizen complaints dealing with "non-commercial buildings or occupied residential dwellings or structures related thereto or to drinking, domestic, or residential water supply in the State of Utah. 3) The Utah Division of Oil, Gas and Mining has promptly taken remedial action on all citizen complaints received. 4) The Utah Division of Oil, Gas and Mining is keenly aware of Utah State water law and 5) The Utah Division of Oil, Gas and Mining has the qualified personnel to enforce the requirements of the Energy Policy Act, Coastal States Energy recommends that the State of Utah proceed with the promulgation of regulatory provisions that are counter part to 30CFR 817.41(j) and 817.121(C)(2) and that the State of Utah take over the immediate enforcement of these regulations.

Thank you.

Statement of James W. Carter
Director, Utah Division of Oil Gas and Mining
May 1, 1995

The Division appreciates the opportunity to address the Office of Surface Mining on implementation of the subsidence and water replacement provisions of the Energy Policy Act through this public hearing process. As you know, the Utah coal industry produced in excess of 24 Million tons of coal last year, all by underground mining methods. The two main areas of regulation under the Act, subsidence control and the replacement of water supplies affected by underground mining, are significant features of the Utah coal program and are important to the underground mining industry and the residents of coal mining areas.

During the 1994 Utah legislative session, the Division of Oil, Gas and Mining was successful in obtaining amendments to the Utah coal regulatory program implementing most of the changes to SMCRA brought about by the Energy Policy Act. However, because of implications for Utah's long-settled water law, those portions dealing with subsidence damage and water replacement were not enacted as proposed. The Division, therefore, has not yet formally adopted subsidence or water replacement rules as OSM has recently done. The Division has already committed to introduce new legislation in the 1996 session, if necessary, which will avoid the earlier water law concerns, and could provide the basis for rulemaking by this time next year. Notwithstanding the actions of the 1994 legislature, the Division and Board currently have authority under existing enactments and rules to adequately address subsidence and water replacement issues as they arise.

Since obtaining primacy in 1981 the Division has been making well-based and informed decisions on the hydrologic impacts of underground mining through the use of advanced computer modeling and investigatory techniques, combined with formal and informal administrative processes. The Division and Board have been examining water and related subsidence issues for quite some time. In cooperation with the Utah Division of Water Rights we have been addressing water supply and water rights issues from the very beginning of the State's primacy program. We have also learned a great deal about the western mining subsidence phenomenon during the past fourteen years of primacy, and we routinely condition mining permits to avoid subsidence-caused surface damage.

Enactment of new subsidence and water replacement law and regulations may enhance these on-going activities, but such regulations must be carefully crafted within existing water rights doctrine. In this area in particular, state primacy in creating and administering the provisions of the Energy Policy Act is critical. Without close collaboration with the Division or Water Rights, regulation of

subsidence damage and water replacement will be a legal morass. The potential for creating conflicts between the legitimate objectives of the prior appropriation doctrine and the Energy Policy Act is high, and careful definition of the interplay of the two is critical.

We are now in an interim regulatory period while OSM analyzes the Utah program and the provisions of our most recent program amendment submittal, and compares them to its own recently promulgated rules. During this period it would make no logical sense for OSM to gear up a separate federal program to address only subsidence damage and water replacement issues for three reasons: 1) The Board and Division have adequate existing authority to implement those provisions; 2) There exist significant legal and administrative impediments to creation of a successful separate federal program; 3) At the outside, the Division can have new regulatory provisions in place, if necessary, by March, 1996. This would be in the case legislation is required. If only administrative rules are required, these can be enacted in a matter of weeks.

Given these circumstances, implementation of the terms of the Energy Policy Act by any other regulatory authority than the State of Utah at this time would be an inefficient and wasteful use of our scarce budgetary resources. We recommend that OSM continue with its review of Utah's recent program amendments and that the Division pursue whatever legislative or administrative modifications are deemed necessary. We would strongly discourage the creation of a new, temporary and limited-scope regulatory program.

I:statemen.sub



GENWAL
RESOURCES, INC.

UT-1052

P.O. Box 1420 • 195 North 100 West • Huntington, Utah 84528
Telephone (801) 687-9813 • Fax (801) 687-9784

FAX TRANSMISSION
APRIL 21, 1995

To:

Mr. Thomas E. Ehmett, Acting Director
Office of Surface Mining
Reclamation and Enforcement
505 Martquette N.W., Suite 1200
Albuquerque, New Mexico 87102

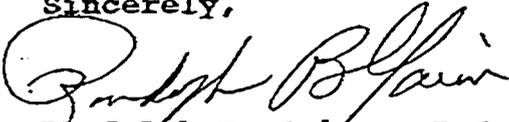
RE: 60 FR 17501, April 6, 1995, Subsidence Control and Water
Replacement.

Dear Mr. Ehmett:

As Chairman of the Environmental Committee for the Utah Coal
Operators, I respectfully ask for an opportunity, for myself or
other designee, to speak at a Public Meeting held in Utah on May 1,
1995 to discuss Subsidence Control and Water Replacement.

Thank you for this opportunity.

Sincerely,


Randolph B. Gainer, P.G.
Environmental Manager



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Ted Stewart
Executive Director
James W. Carter
Division Director

355 West North Temple
3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203
801-538-5340
801-359-3940 (Fax)
801-538-5319 (TDD)

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April 14, 1995

Thomas E. Ehmett, Acting Director
Office of Surface Mining
Reclamation and Enforcement
505 Marquette N.W., Suite 1200
Albuquerque, New Mexico 87102

Re: 60 FR 17501, April 6, 1995, Subsidence Control and Water Replacement

Dear Mr. Ehmett:

These comments are intended to respond to the above-described notice which was distributed by OSM for the purpose of obtaining public comment on how to proceed in enforcing the provisions of the Energy Policy Act of 1992 and its attendant regulations in the states of New Mexico, Colorado, and Utah. First, I request a public hearing in Utah on this issue. I am sure you know that Utah is the leader of the western states in the production of coal from underground mines. By holding the hearing in Utah on May 1, 1995, you will enable numerous interested people to express their preference on how OSM should proceed with the regulation of water replacement and the control of subsidence from mining.

Second, Utah's particular choice of how OSM should proceed with the regulation of these two highly controversial and critically important topics is the same as our long-standing position on state primacy. That position, of course, is that the regulatory issues are so specific to each state, the state must be the primacy authority, even during an interim period while rules are being developed and approved as a part of the approved state regulatory program. Utah must be the entity that regulates subsidence and water replacement. I think the preponderance of comments that are presented at the hearing will bear this out to you.

The Utah State Legislature in 1994 revised the Utah Coal Regulatory Statute (UCA 40-10-1, et seq.) to, among other things, make it compatible with the Energy Policy Act of 1992. The enacted changes are now under review by OSM as State Program Amendment Number UT-024-FOR. In our opinion the changes to the law have done an excellent job in capturing the provisions of the Energy Policy Act and



STATE OF UTAH

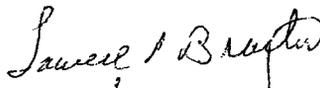
Page 2
Thomas E. Ehmett
April 14, 1995

should be acceptable as a program amendment as enacted. The one part of the Utah version of the code revisions which has been given a region-specific twist is that which addresses water replacement. This deviation is to account for the western water rights doctrine which is the law of the land here where there are limited water resources and numerous demands on these resources.

Therefore, in the Utah Coal Regulatory Program, there may be differences in how the issue of water replacement is addressed. I am confident that the end product or goal of water resource protection, as set out in the Energy Policy Act, the replacement of water resources that are affected by mining operations conducted after October 24, 1992, can be achieved in no less effective a manner than if the federal government did the job. I urge you to choose Option Number Two as listed in the notice and assign the responsibility for water rights and subsidence control under the Energy Policy Act to the state of Utah.

If you have questions on this position or need any additional information on the Utah regulatory provisions under the Energy Policy Act, please contact me at your convenience.

Very truly yours,



James W. Carter
Director

jbe
cc: L. Braxton
P:SUBWATER.LTR

Department of Interior
Office of Surface Mining Reclamation and Enforcement
Notice of Scheduled Hearing to Receive Public Comment

On April 6, 1995, an "Announcement of Public Comment Period and Opportunity for Public Hearing" was published in the Federal Register (60 FR 17501). That announcement provided for public input regarding how provisions of the Surface Control and Reclamation Act of 1977 as amended (SMCRA), implementing Federal regulations, and/or counterpart State provisions should implement and enforce the requirements of Energy Policy Act of 1992. Specifically, the requirements that underground coal mining operations conducted after October 24, 1992, (1) promptly repair or compensate for subsidence-caused material damage to occupied dwellings and related structures and (2) promptly replace drinking, domestic and residential water supplies that have been adversely affected.

A timely request for a hearing was received in accordance with the April 6, 1995 announcement, so a Public Hearing will be held on May 1, 1995, at the Utah Department of Natural Resources, Division of Oil, Gas and Mining, 3 Triad Center, Suite 520, 355 West North Temple, Salt Lake City, Utah. Oral and written comments will be accepted into the record between 9:00 a.m. and 12:30 p.m. at that location. Written comments received by 4:00 p.m., May 8, 1995, at the address listed in the aforementioned Announcement will also be accepted. For further information, see the April 6, 1995, Federal Register notice or contact Mr. Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Telephone: (505) 766-1486.

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UT-1043 (cont.)

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ACCOUNT NAME	
OFFICE OF SURFACE MINING	
TELEPHONE	INVOICE NUMBER
505-766-1486	TL4P8200101
SCHEDULE	
START 04/28/95 END 04/30/95	
CUST. REF. NO.	

Department of Interior
 Office of Surface Mining
 Reclamation and Enforcement
 Office of Scheduled Hearings to
 Receive Public Comment

On April 6, 1995, an "Announcement of Public Comment Period and Opportunity for Public Hearing" was published in the Federal Register (60 FR 17501). That announcement provided for public input regarding how provisions of the Surface Control and Reclamation Act of 1977 as amended (SMCRA), implementing Federal regulations, and/or counterpart State provisions should implement and enforce the requirements of Energy Policy Act of 1992. Specifically, the requirements that underground coal mining operations conducted after October 24, 1992, (1) promptly repair or compensate for subsidence-caused material damage to occupied dwellings and related structures and (2) promptly replace drinking, domestic and residential water supplies that have been adversely affected.

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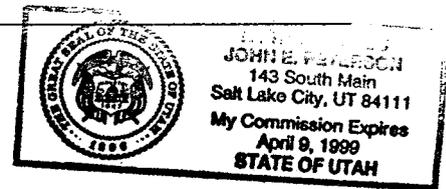
AFFIDAVIT OF PUBLICATION

NEWSPAPER AGENCY CORPORATION LEGAL BOOKKEEPER, I CERTIFY THAT THE ATTACHED PUBLICATION OF DEPARTMENT OF INTERIOR OFFICE O FOR OFFICE OF SURFACE MINING WAS PUBLISHED BY THE NEWSPAPER AGENCY CORPORATION, AGENT FOR THE SALT LAKE TRIBUNE AND DESERET NEWS, DAILY NEWSPAPERS PRINTED IN THE ENGLISH LANGUAGE WITH GENERAL CIRCULATION IN UTAH, AND PUBLISHED IN SALT LAKE CITY, SALT LAKE COUNTY IN THE STATE OF UTAH.

PUBLISHED ON START 04/28/95 END 04/30/95

SIGNATURE _____

DATE 04/30/95



THIS IS NOT A STATEMENT BUT A "PROOF OF PUBLICATION"
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support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Tulsa 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.d.t. on April 21, 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 Arkansas, Louisiana, Oklahoma, and Texas 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.
Russell F. Price,
Acting Assistant Director, Western Support
Center.
[FR Doc. 95-8469 Filed 4-5-95; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Parts 906, 931, and 944

Colorado, New Mexico, and Utah
Regulatory Programs

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 Colorado, New Mexico, and Utah 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 of 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 Colorado, New Mexico, and Utah regulatory programs (herein after referred to as the "State programs" currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Colorado, New Mexico, and Utah and consideration of public comments, OSM will decide whether initial enforcement in each of these States 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., m.d.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 1, 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 Colorado, New Mexico, and Utah. Requests to speak at the hearing must be received by 4:00 p.m., m.d.t. on April 21, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Thomas E. Ehmett, Acting Director, Albuquerque Field Office at the address listed below.

Copies of the applicable parts of the Colorado, New Mexico, and Utah programs, SMCRA, the implementing Federal regulations, information provided by Colorado, New Mexico, and Utah concerning their 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.

Thomas E. Ehmett, Acting Director,
Albuquerque Field Office, Office of
Surface Mining Reclamation and
Enforcement, 505 Marquette NW., Suite
1200, Telephone: (505) 766-1486.

FOR FURTHER INFORMATION CONTACT:
Thomas E. Ehmett, Acting Director,
Albuquerque Field Office, Telephone:
(505) 766-1486.

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 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

UT - 1039

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) 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, material 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) 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 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), 817.121(c)(2) and (4), and 30 CFR 701.5 for operations conducted after October 24, 1992.

C. Enforcement in Colorado

By letter to Colorado dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in Colorado to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Colorado program provisions (Administrative Record No. CO-652). By letter dated February 23, 1995, Colorado responded to OSM's request (Administrative Record No. CO-661).

Colorado stated that permits were issued for 25 underground coal mines after October 24, 1992, and 11 of those

mines actually mined coal after October 24, 1992.

Colorado indicated that prior to June 1, 1992, Colorado had in place surface owner protection performance standards at 2 Code of Colorado Regulations 407-2, Rules 4.20.3(1) and 4.20.3(2) that encompassed the requirements of section 720(a)(1) of SMCRA. Rule 4.20.3(2), which contained requirements regarding an operator's obligation to repair or compensate for material damage or reduction in value or reasonably foreseeable use caused by subsidence to surface structures, features, or values, expired on June 1, 1992, under Colorado's "Sunset Law." The rule expired because Colorado's Office of Legislative Legal Services found during November 1991 it was not supported by statute. Colorado subsequently developed language for a bill to amend the Colorado Surface Coal Mining and Reclamation Act (the Colorado Act) and introduced the bill during the 1995 legislative session. The intent of the bill is to amend section 34-33-121(2)(a) to provide specific statutory support for Rule 4.20.3(2). Colorado has not yet formally submitted this amendment to OSM for review under 30 CFR 732.17.

Colorado explained that, although the specific language of Rule 4.20.3(2) expired during June 1992, the Division of Minerals and Geology has continued since that time to interpret its rules to require that mine operators are responsible for repairing or compensating surface owners for subsidence-caused material damage to structures. Colorado based its authority for doing so on the general provisions of Rule 4.20.3(1) and the subsidence control plan mitigation requirements of Rule 2.05.6(6)(iv).

Colorado indicated that there may be a conflict between the provisions of section 720(a)(2) of SMCRA, which requires prompt replacement of drinking, domestic, or residential water supplies adversely impacted by underground mining operations, and Colorado water law. Consequently, Colorado has requested an opinion from the Colorado Assistant Attorney General in this regard. Existing Colorado Rule 4.05.15 requires operators to " * * * replace the water supply of any owner of a vested water right which is proximately injured as a result of the mining activities in a manner consistent with applicable State law" (emphasis added).

For underground mining operations conducted after October 24, 1992, Colorado has received one complaint alleging subsidence-related structural damage and two complaints alleging

subsidence-related water supply loss or contamination. Colorado investigated all three complaints. Colorado determined the complaint alleging subsidence-caused structural damage to be without basis. One of the complaints alleging subsidence-related water supply loss or contamination was withdrawn, and the second is currently under investigation by Colorado.

D. Enforcement in New Mexico

By letter to New Mexico dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in New Mexico to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart New Mexico program provisions (Administrative Record No. NM-725). By letter dated December 22, 1994, New Mexico responded to OSM's request (Administrative Record No. NM-726).

New Mexico stated that two underground coal mines were active in New Mexico after October 24, 1992. New Mexico stated that, because its existing provision at Coal Surface Mining Commission (CSMC) Rule 80-1-20-124 does not include requirements no less stringent than section 720 of SMCRA, it intended to revise this rule to read as follows:

Each person who conducts underground mining which results in subsidence shall:

- (a) Promptly repair, or compensate for, material damage resulting subsidence caused to any occupied residential dwelling and structures related thereto, or non-commercial building due to underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged structures.

Compensation shall be provided to the owner and shall be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to underground mining which results in damage of the structures, of a noncancellable premium-prepaid insurance policy.

- (b) Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground mining operations. Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations.

New Mexico did not indicate whether it currently has the authority within its program to investigate citizen complaints of structural damage or water supply loss or contamination caused by underground mining operations conducted after October 24, 1992. New Mexico has not received any

citizen complaints alleging subsidence-related structural damage or water supply loss or contamination as a result of underground mining operations conducted after October 24, 1992. New Mexico indicated that both of the underground mines that operated after October 24, 1992, are located several miles from structures subject to the Federal requirements for subsidence-related material damage.

E. Enforcement in Utah

By letter to Utah dated December 14, 1994, OSM requested information that would help OSM decide which approach to take in Utah to implement the requirements of section 720(a) of SMCRA, the implementing Federal regulations, and/or the counterpart Utah program provisions (Administrative Record No. UT-1001). By letter dated January 20, 1995, Utah responded to OSM's request (Administrative Record No. UT-1015).

Utah stated that the number of underground coal mines in operation after October 24, 1992, may be found in the past and current grant applications filed annually with OSM. From review of these grant applications, OSM determined that there are approximately 21 underground mines that operated after October 24, 1992.

As submitted to OSM on April 14, 1994, and subsequently revised on December 14, 1994 (Administrative Record Nos. UT-917 and UT-997), Utah proposed subsidence material damage provisions at Utah Code Annotated 40-10-18(4) that were intended to be counterparts to the provisions to the provisions of section 720(a)(1) of SMCRA. OSM has not yet published, in accordance with 30 CFR Part 732.17, a final rule Federal Register notice detailing its decision on the proposed provisions.

In its January 20, 1995, letter, Utah indicated that it intends to promulgate by March 1996 water replacement statutory provisions that are counterparts to the provisions of section 720(a)(2) of SMCRA.

Utah did not state whether it has authority to investigate citizen complaints of structural damage or water loss caused by underground mining operations conducted after October 24, 1992. Utah indicated that it did receive, investigate, and resolve one citizen complaint after October 24, 1992, but it also indicated that the complaint was judged not to be one that the Energy Policy Act of 1992 revisions to section 720 of SMCRA could remedy.

II. Public Comment Procedures

OSM is requesting public comment to assist OSM in making its decision on which approach to use in Colorado, New Mexico, and Utah 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 Albuquerque 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., mst on April 21, 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 Colorado, New Mexico, or Utah 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.

Russell F. Price,

Acting Assistant Director, Western Support Center

{FR Doc. 95-8468 Filed 4-5-95; 8:45 am}

BILLING CODE 4310-05-M

30 CFR Parts 915, 916, and 925

Iowa, Kansas, and Missouri Regulatory Programs

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 Iowa, Kansas, and Missouri 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 Iowa's, Kansas', and Missouri's regulatory programs (hereinafter referred to as the "Iowa, Kansas, and Missouri programs") currently have adequate counterpart provisions in place to promptly implement the recent amendments to SMCRA and the Federal regulations. After consultation with Iowa, Kansas, and Missouri and consideration of public comments, OSM will decide whether initial enforcement in Iowa, Kansas, and Missouri 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., c.d.t. on May 8, 1995. If requested, OSM will hold a public hearing on May 1, 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 Iowa, Kansas, and Missouri. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t. on April 21, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Michael C. Wolfrom, Acting Director, Kansas City Field Office at the address listed below.

Copies of the applicable parts of the Iowa, Kansas, and Missouri programs, SMCRA, the implementing Federal regulations, information provided by Iowa, Kansas, and Missouri concerning their 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.

Michael C. Wolfrom, Acting Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105, Telephone: (816) 374-6405.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Acting Director, Kansas City Field Office, Telephone: (816) 374-6405.

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 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