



COALEX SIGNIFICANT ISSUE REPORT - 346

October 1998

Interstate Mining Compact Commission
Herndon, VA

TOPIC: DAMAGE TO STRUCTURES AND REPLACEMENT OF WATER SUPPLIES

INQUIRY: Provide background on the Court's recent ruling on requirements for damage resulting from subsidence

SEARCH RESULTS: This Report consists of a variety of materials relating to SMCRA section 720 which provides for repair or compensation for subsidence-related damage to structures and the replacement of water supplies affected by subsidence.

The Energy Policy Act of 1992, Pub. L. 102-486 amended SMCRA by adding a new section 720. OSM's proposed rules on subsidence were published on September 24, 1993 (58 FR 50174) and the final rules were published on March 31, 1995 (60 FR 16722). Beginning in 1995, states began submitting proposed amendments to their existing regulatory programs to address section 720 and the OSM rules. The validity of the rules was upheld by U.S. District Court Judge William Bryant following a challenge by the coal industry (NATIONAL MINING ASSOCIATION v BABBITT, C.A. No. 95-0938, decided May 29, 1998).

At the September, 1998 meeting of the Conference of Government Mining Attorneys (COGMA), Gregory Conrad, the Executive Director of the Interstate Mining Compact Commission (IMCC) presented a paper containing a comparison among the OSM rules, the court's findings and OSM/State discussions. The paper included an overview of state program amendments and implementation concerns.

Copies of SMCRA section 720, Federal Register Notices relating to OSM rules and state program amendments, the court's decision, and Mr. Conrad's paper are attached.

ATTACHMENTS

- A. 30 CFR section 720 (30 USC section 1309a). Subsidence.
- B. 58 FR 50174 (SEPTEMBER 24, 1995). Proposed rule. Underground mining permit application requirements and performance standards.
- C. 60 FR 16722 (MARCH 31, 1995). Final rule. Underground mining permit application requirements and performance standards.
- D. NATIONAL MINING ASSOCIATION v BABBITT, C.A. No. 95-0938 (D.C. D.C. Decided May 29, 1998).



- E. "State Implementation of Subsidence Rules re. Damage to Structures and Replacement of Water Supplies", presented by Gregory Conrad, Executive Director of the IMCC, before COGMA (September 10, 1998).
- F. List of Federal Register Notices (from LEXIS) of proposed and final federal rules on subsidence, material damage or replacement of water supply.
- G. List of Federal Register Notices (from LEXIS) of proposed and final state program amendments on subsidence.
- H. ALABAMA
 - a. 60 FR 20250 (APRIL 25, 1995). Proposed rule; extension of public comment period.
 - b. 60 FR 38675 (JULY 28, 1995). Notice of decision.
 - c. 63 FR 23403 (APRIL 29, 1998). Proposed rule; public comment period and opportunity for public hearing.
 - d. 63 FR 35805 (JULY 1, 1998). Final rule; approval of amendment.
 - e. 63 FR 45192 (AUGUST 25, 1998). Proposed rule; public comment period and opportunity for public hearing.
- I. ALASKA
 - a. 60 FR 38482 (JULY 27, 1995). Notice of decision.
- J. ARKANSAS
 - a. 60 FR 38487 (JULY 27, 1995). Notice of decision.
 - b. 61 FR 19881 (MAY 3, 1996). Proposed rule; public comment period and opportunity for public hearing.
 - c. 62 FR 23129 (APRIL 29, 1997). Final rule; approval of amendment.
- K. COLORADO
 - a. 60 FR 38491 (JULY 27, 1995). Notice of decision.
 - b. 60 FR 39773 (JULY 28, 1995). Proposed rule; public comment period and opportunity for public hearing on proposed amendment.
 - c. 60 FR 64115 (DECEMBER 14, 1995). Final rule; approval of amendment.
 - d. 61 FR 47722 (SEPTEMBER 10, 1996). Proposed rule; public comment period and opportunity for public hearing on proposed amendment.
 - e. 61 FR 58800 (NOVEMBER 19, 1996). Proposed rule; public comment period and opportunity for public hearing on proposed amendment.
 - f. 61 FR 59332 (NOVEMBER 22, 1996). Final rule; approval of amendment.
- L. ILLINOIS
 - a. 60 FR 38677 (JULY 28, 1995). Notice of decision.
 - b. 61 FR 26801 (MAY 29, 1996). Final rule; approval of amendment.
- M. INDIANA
 - a. 60 FR 16985 (APRIL 4, 1995). Final rule; approval of amendment.
 - b. 60 FR 19669 (APRIL 20, 1995). Final rule; approval of amendment.
 - c. 60 FR 38680 (JULY 28, 1995). Notice of decision.
 - d. 60 FR 56515 (NOVEMBER 9, 1995). Final rule; approval of amendment [Excerpts].
 - e. 61 FR 26443 (MAY 28, 1996). Final rule; clarification/approval of amendment.



- f. 62 FR 7189 (FEBRUARY 18, 1997). Proposed rule; public comment period and opportunity for public hearing on proposed amendment.
 - g. 62 FR 44897 (AUGUST 25, 1997). Final rule; approval of amendment.
- N. IOWA
- a. 60 FR 38496 (JULY 27, 1995). Notice of decision.
 - b. 61 FR 67967 (DECEMBER 26, 1996). Proposed rule; public comment period and opportunity for public hearing on proposed amendment.
 - c. 62 FR 16490 (APRIL 7, 1997). Final rule; approval of amendment.
- O. KANSAS (See Iowa)
- a. 60 FR 38496 (JULY 27, 1995). Notice of decision.
- P. KENTUCKY
- a. 60 FR 33110 (JUNE 27, 1995). Final rule; approval of amendment.
 - b. 60 FR 38682 (JULY 28, 1995). Notice of decision.
 - c. 62 FR 46933 (SEPTEMBER 5, 1997). Proposed rule; public comment period and opportunity for public hearing on proposed amendment.
 - d. 63 FR 45430 (AUGUST 26, 1998). Proposed rule; reopening of public comment period.
- Q. LOUISIANA (See Arkansas)
- a. 60 FR 38487 (JULY 27, 1995). Notice of decision.
- R. MARYLAND
- a. 60 FR 38685 (JULY 28, 1995). Notice of decision.
- S. MISSISSIPPI (See Alabama)
- a. 60 FR 20250 (APRIL 25, 1995). Proposed rule; extension of public comment period.
 - b. 60 FR 38675 (JULY 28, 1995). Notice of decision.
- T. MISSOURI (See Iowa)
- a. 60 FR 38496 (JULY 27, 1995). Notice of decision.
- U. MONTANA (See Alaska)
- a. 60 FR 38482 (JULY 27, 1995). Notice of decision.
- V. NEW MEXICO
- a. 60 FR 22332 (MAY 5, 1995). Proposed rule; public comment period and opportunity for public hearing on proposed amendment.
 - b. 60 FR 38491 (JULY 27, 1995). Notice of decision. (See Colorado)
 - c. 61 FR 3625 (FEBRUARY 1, 1996). Proposed rule; public comment period and opportunity for public hearing on proposed amendment.
 - d. 61 FR 26825 (MAY 29, 1996). Final rule; approval of amendment with one exception and additional requirements.
- W. NORTH DAKOTA (See Alaska)
- a. 60 FR 38482 (JULY 27, 1995). Notice of decision.
- X. OHIO
- a. 60 FR 38500 (JULY 27, 1995). Notice of decision.
- Y. OKLAHOMA
- a. 60 FR 38487 (JULY 27, 1995). Notice of decision. (See Arkansas)
 - b. 61 FR 40369 (AUGUST 2, 1996). Proposed rule; public comment period and opportunity for public hearing on proposed amendment.



- c. 61 FR 49284 (SEPTEMBER 19, 1996). Proposed rule; reopening and extension of public comment period on proposed amendment.
- d. 61 FR 67213 (DECEMBER 20, 1996). Final rule; approval of amendment.
- Z. PENNSYLVANIA
 - a. 60 FR 38685 (JULY 28, 1995). Notice of decision. (See Maryland)
 - b. 63 FR 45199 (AUGUST 25, 1998). Proposed rule; public comment period and opportunity for public hearing.
- AA. TEXAS (See Arkansas)
 - a. 60 FR 38487 (JULY 27, 1995). Notice of decision.
- BB. UTAH
 - a. 60 FR 37002 (JULY 19, 1995). Final rule; approval of amendment.
 - b. 60 FR 38491 (JULY 27, 1995). Notice of decision. (See Colorado)
 - c. 62 FR 41845 (AUGUST 4, 1997). Final rule; approval of amendment.
 - d. 63 FR 17138 (APRIL 8, 1998). Proposed rule; public comment period and opportunity for public hearing.
- CC. VIRGINIA
 - a. 60 FR 38689 (JULY 29, 1995). Notice of decision.
 - b. 61 FR 29506 (JUNE 11, 1996). Proposed rule; public comment period and opportunity for public hearing.
 - c. 61 FR 38422 (JULY 24, 1996). Proposed rule; reopening of comment period.
 - d. 61 FR 48110 (SEPTEMBER 12, 1996). Proposed rule; public comment period and opportunity for public hearing.
 - e. 62 FR 16509 (APRIL 7, 1997). Proposed rule; reopening of comment period.
 - f. 62 FR 60658 (NOVEMBER 12, 1997). Final rule; correction.
 - g. 62 FR 48758 (SEPTEMBER 17, 1997). Final rule; approval of amendment.
- DD. WEST VIRGINIA
 - a. 60 FR 38691 (JULY 28, 1995). Notice of decision.
 - b. 61 FR 6511 (FEBRUARY 21, 1996). Final rule; approval of amendment.
 - c. 62 FR 31543 (JUNE 10, 1997). Proposed rule.
- EE. WYOMING (See Alaska)
 - a. 60 FR 38482 (JULY 27, 1995). Notice of decision.