

FEDERAL REGISTER: 50 FR 41365 (October 10, 1985)

DEPARTMENT OF THE INTERIOR

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

30 CFR Part 817

Permanent Program Performance Standards; Underground Activities; Subsidence Control

ACTION: Petition for rulemaking; deferral of decision.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) has decided to defer decision on the rulemaking petition filed by the Consolidation Coal Company (Consol) requesting and exemption from the requirements of 30 CFR 817.121 (d) and (e) until a rule on the applicability of section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (the Act), *30 U.S.C. 1201* et seq., to underground mining has been promulgated.

FOR FURTHER INFORMATION CONTACT: Dr. C.Y. Chen, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240; Telephone: 202-343-1501 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

On June 1, 1983, OSM published its final permanent program subsidence control rules. (*48 FR 24652*). The rule, at 30 CFR 817.121(d), prohibits underground mining activities beneath or adjacent to specified structures and impoundments unless the subsidence control plan required by 30 CFR 784.20 demonstrates that subsidence will not cause material damage to or reduce the reasonably foreseeable use of those features or facilities. Section 817.121(d) further allows the regulatory authority to limit the percentage of coal extracted if it is necessary in order to minimize the potential for material damage. Section 817.121(e) provides that if subsidence does cause material damage, the regulatory authority may suspend mining until the subsidence control plan is modified.

On November 30, 1983, Consol filed a petition requesting OSM to revise Section 817.121(d) and (e) of the subsidence control rules to create an exemption when the mining technology used requires planned subsidence in a predictable and controlled manner. That request was based on section 516(b)(1) of the Surface Mining Control and Reclamation Act (the Act), *30 U.S.C. 1201* et seq., which provides that each permit shall require the operator to "adopt measures consistent with known technology in order to prevent subsidence causing material damage . . . except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner. . . ."

On February 23, 1984, OSM requested comments on the changes proposed by Consol. (*49 FR 6749*). Among other issues, OSM asked commenters to address whether such a showing of no material damage is essential to aid the regulatory authority in making the permit finding required by section 510(b)(4) of the Act that no surface coal mining operations will be permitted in areas that are unsuitable for mining under sections 522(e)(4) and (5) of the Act, which prohibit surface coal mining operations within certain distances of specified structures and facilities.

On April 3, 1985, while still evaluating the comments received on the Consol petition, OSM published a notice of intent to conduct rulemaking on the applicability of the prohibitions in section 522(e) to underground coal mining (*50 FR 13250*). That rulemaking process is underway. OSM has determined that the rulemaking will be a major Federal action, has conducted scoping meetings, and is preparing an EIS. (*50 FR 25473*).

The positions OSM could take in the proposed section 522(e) rulemaking cover a range of possibilities, most of which directly impact the issues in the Consol petition. Accordingly, OSM had determined that a decision on the Consol petition should be made following the section 522(e) rulemaking. Consol's concerns may be addressed in conjunction with the proposed section 522(e) rulemaking. If appropriate, OSM will reexamine the issues raised by the petition at the conclusion of that rulemaking.

Dated: October 7, 1985.

Brent Wahlquist, Assistant Director, Technical Service and Research.

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