

section 720 of SMCRA. Section 5.4(c) provides that:

(c) A mine operator shall not be liable to repair or compensate for subsidence damage if the mine operator, upon request, is denied access to the property upon which the building is located to conduct premining and postmining surveys of the building and surrounding property and thereafter serves notice upon the landowner by certified mail or personal service, which notice identifies the rights established by sections 5.5 and 5.6 and this section, the mine operator was denied access and the landowner failed to provide or authorize access within ten days after receipt thereof.

Section 5.5(b). We are proposing to supersede the portion of section 5.5(b) of BMSLCA that reads, "All claims under this subsection shall be filed within two years of the date damage to the building occurred" where it would apply to a structure covered under section 720 of SMCRA. Section 5.5(b) provides that:

(b) If the parties are unable to agree within six months of the date of notice as to the cause of the damage or the reasonable cost of repair or compensation, the owner of the building may file a claim in writing with the Department of Environmental Resources, a copy of which shall be sent to the operator. All claims under this subsection shall be filed within two years of the date damage to the building occurred.

We are proposing to supersede the provisions of BMSLCA as noted above because we have previously determined that these provisions are inconsistent with SMCRA or the Federal regulations based on the reasons cited under "Director's Findings" in a notice of final rulemaking published in the **Federal Register** on December 27, 2001 (66 FR 67010) and because Pennsylvania did not propose revisions to the statute. This action is also needed to resolve litigation between Pennsylvania and OSM. In subsequent discussions with OSM, Pennsylvania expressed concern that without this action, there may be conflicts with new State rulemaking, which is needed to satisfy some of the required amendments of 30 CFR 938.16. Therefore, to alleviate Pennsylvania's concerns and as part of the measures to resolve the litigation, we are proposing to supersede those provisions as noted above.

Please note that we are proposing to supersede only the provisions of the BMSLCA to the extent noted above in this notice. The superseded provisions, as noted above, cannot be implemented or enforced by any party as they would apply to a water supply or structure covered by section 720 of SMCRA. However, this proposal will not change the way Pennsylvania or OSM enforce

the provisions of BMSLCA or SMCRA in Pennsylvania unless or until it becomes final. To meet the enforcement requirements of section 720 in Pennsylvania, enforcement occurred through a combination of State enforcement of BMSLCA and direct Federal enforcement as described in the July 28, 1995, **Federal Register** (60 FR 38685). Pennsylvania's enforcement of BMSLCA and our direct enforcement continued from July 28, 1995, up to December 27, 2001, and continues as described in the December 27, 2001, final rule. A complete discussion of enforcement of the section 720 provisions of SMCRA in Pennsylvania and the relationship of the decisions made in the December 27, 2001, final rule to those enforcement provisions can be found in Section VI. Effect of Director's Decision in that final rule (66 FR 67061).

In a separate rulemaking located elsewhere in this **Federal Register** issue, Pennsylvania has submitted new regulations and supplemental information to OSM which will include enforcement of those areas of the program that have been superseded. We intend to coordinate the effective date of the final rule notice announcing the superseded provisions with Pennsylvania's rulemaking process regarding its new regulations to insure that there are no gaps in enforcement of Pennsylvania's program. The full text of the December 27, 2001, final rule is available for you to read at the locations listed above under **ADDRESSES**.

III. Public Comment Procedures

We are now soliciting comments on this proposal to supersede the portions of BMSLCA as noted above. If we receive no evidence demonstrating why these portions should not be superseded, we will publish a final notice to effect the supersession of the provisions by Federal law. This action, if taken, will require Pennsylvania to operate and enforce its approved program as if the superseded provisions did not exist.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see DATES*). We will make every attempt to log all comments into the administrative record, but comments

delivered to an address other than the Harrisburg Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS No. PA-141-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782-4036.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearings

If you wish to speak at the public hearings, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on October 7, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearings provide us with a written copy of his or her comments. The public hearings will continue on the specified dates until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearings after everyone scheduled to speak and others present in the audience who wish to speak, have been heard. You do not need to attend both public hearings. We will consider all