

counterpart Federal regulation, and is therefore approved.

*26.20.13.05 Hydrologic Balance: General Requirements*

Maryland proposed to amend this section by adding a water replacement requirement to the general requirements for hydrologic balance. The amendment requires a permittee to “promptly replace the water supply of an owner of interest in real property who obtains all or part of the agricultural, industrial, or other legitimate use from an underground or surface source that is contaminated, diminished, or interrupted by underground mining activities.” The amendment also clarifies that the term “owner of interest” includes a renter, tenant, or a lessee of real property.

This amendment is consistent with the Federal regulation at 30 CFR 817.41(j), which requires a permittee to “promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities.” Further, Maryland’s amendment is more stringent than its Federal counterpart because it applies to agricultural, industrial, and other legitimate uses of underground or surface waters rather than simply drinking, domestic or residential water supplies as required in the Federal counterpart. We are therefore approving the proposed changes.

Regarding the State’s definition of “owner in interest,” we note that, in approving the amendment, we are construing the term to include the normally recognized meaning of the word “owner” in addition to a renter, tenant, or lessee of real property.

*26.20.13.07 Subsidence Control: General Requirements*

We are approving all of Maryland’s proposed changes to this section. First, Maryland proposed changes to subsection A. The amended subsection A reads as follows:

A. Underground mining activities shall be planned and conducted so as to prevent subsidence from causing material damage to the extent technologically and economically feasible, and so as to maintain the value and reasonably foreseeable use of surface lands. This may be accomplished by leaving adequate coal in place, backfilling, or other measures to support the surface, or by conducting underground mining in a manner that provides for planned and controlled subsidence.

The counterpart Federal regulation is found at 30 CFR 817.121(a) and is quoted below:

The permittee must either adopt measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands or adopt mining technology that provides for planned subsidence in a predictable and controlled manner.

The provisions are similar, but not identical. The Federal regulation requires the permittee to either mine in a manner that prevents subsidence from causing material damage to the extent technologically and economically feasible, maintain the value and reasonably foreseeable use of surface lands, and ensure the stability of the mine or to mine in a way that provides for planned and controlled subsidence. The Maryland provision, on the other hand, requires mining in a manner that prevents subsidence from causing material damage to the extent technologically and economically feasible, maintains the value and reasonably foreseeable use of surface lands, and ensures the stability of the mine, even where the mining technology used provides for planned and controlled subsidence. In this respect, the Maryland provision is more stringent than, and therefore is consistent with, its Federal counterpart. Regarding the mine stability requirement, we note that the Federal requirement explicitly requires a permittee to “maximize mine stability,” while the State requires “measures to support the surface.” We find that, although the State’s regulation is worded slightly differently, it implies a mine stability requirement through surface support measures and therefore is no less effective than the Federal counterpart.

Second, Maryland proposed to amend COMAR 26.20.13.07 by adding a new subsection B which requires, with certain exceptions, measures to minimize material damage to structures caused by planned subsidence. The proposed amendment is virtually identical to the Federal counterpart found at 30 CFR 817.121(a)(2). The only difference between the two is that the Maryland regulation applies to all structures while the Federal counterpart applies only to “non-commercial buildings and occupied residential dwellings and structures related thereto.” Thus, because the Maryland regulation is more stringent than the Federal counterpart, we are approving the amendment.

We are also approving Maryland’s proposal to add a new subsection C which states that “nothing in this

regulation prohibits the standard method of room-and-pillar mining.” This language is found in the Federal counterpart, 30 CFR 817.121(a)(3), and is therefore no less effective than the Federal regulations.

Third, we are approving a change to the current regulation at COMAR 26.20.13.07B. Without the change, subsection B requires compliance with the subsidence control plan. The approved amendment incorporates a reference to COMAR 26.20.02.16, which lists the requirements for the subsidence control plan, and also renumbers the regulation to COMAR 26.20.13.07D. The Federal counterpart found at 30 CFR 817.121(b) also requires compliance with the subsidence control plan and references the Federal regulations containing the subsidence control plan requirements. We are approving the amendment because, like its Federal counterpart, the State provision now requires compliance with the subsidence control plan prepared and approved in accordance with the subsidence control plan requirement regulations.

Finally, we are approving the proposed addition of subsection E of COMAR 26.20.13.07. The proposed subsection requires that permit applications contain a “survey of the condition of the quantity and quality of all water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence.” The proposed subsection E is more stringent than the Federal counterpart, 30 CFR 784.20(a)(3), because it applies to all water supplies. The Federal regulation applies only to all “drinking, domestic, and residential water supplies.” Because the remaining language is substantively identical to its Federal counterpart, we find that the proposed addition is no less effective than the Federal regulations and can therefore be approved.

*26.20.13.09 Subsidence Control: Surface Owner Protection*

Maryland proposed to add a subsection D to its current regulations found at COMAR 26.20.13.09. The proposed subsection D requires that when “determining whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered” by the regulatory authority. Because the proposed language is substantively identical to the Federal counterpart found at 30 CFR 817.121(c)(4)(v), we find that it is no less effective than the