

amendment to its program (Administrative Record No. MD-574-05) under SMCRA (30 U.S.C. 1201 *et seq.*). Maryland sent the amendment in response to Federal rules promulgated by OSM as a result of the Energy Policy Act of 1992. The proposed amendment is intended to make the Maryland program consistent with the Federal regulations. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, Maryland proposes to amend several sections of the Code of Maryland Regulations (COMAR) including sections 26.20.01.02, 26.20.02.15, 26.20.02.16, 26.20.13.05, 26.20.13.07, 26.20.13.09, and 26.20.14.13, as they relate to subsidence from underground coal mining. The proposed amendments to each section are outlined below.

#### 26.20.01.02 Definitions

Maryland proposes to amend COMAR section 26.20.01.02(B) by adding the following definitions:

(51-1) "Material damage," in the context of COMAR 26.20.02.15 and .16 and 26.20.13.07, .09, and .10 means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

(81-1) "Replacement of water supply" means with respect to water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance cost in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence

at the time of loss, contamination or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If this approach is selected, written concurrence must be obtained from the water supply owner.

#### 26.20.02.15 Survey of Structures and Renewable Resources Lands

The State proposes to amend COMAR section 26.20.02.15 by adding the following new subsection B:

B. The survey required by § A of this regulation shall contain:

(1) A map of the permit and adjacent areas at a scale of 1:12,000, or larger, if determined necessary by the Bureau, showing the location and type of:

(a) Structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and

(b) Water supplies that could be contaminated, diminished, or interrupted by subsidence;

(2) A narrative indicating whether subsidence, if it occurred could cause material damage to or diminish the value or reasonably foreseeable use of any structures or renewable resource lands or could contaminate, diminish, or interrupt any water supplies; and

(3) A survey of the quantity and quality of all water supplies in accordance with COMAR 26.20.13.07E.

Because a new subsection B is proposed, the State also proposes to change the current subsection B to subsection C and proposes additional amendments to the current subsection B. The current subsection B reads as follows:

B. If the survey shows that these structures or renewable resource lands do not exist, or material damage or diminution could not be caused in the event of mine subsidence, and if the Bureau agrees with the conclusion, further information need not be provided in the application under this regulation.

If we approve the proposed changes, the amended subsection would read:

C. If the survey under section A of this regulation shows that no structures, water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, or interruption of such water supplies would occur as a result of mine subsidence, and if the Bureau agrees with the conclusion, further information need not be provided in the application under this regulation.

Finally, the current subsection C would be changed to subsection D and amended. The current subsection C states:

C. If the survey shows these structures or renewable resource lands exist, and that subsidence could cause material damage or diminution of the value or foreseeable use of the land, or if the Bureau determines that the damage or diminution could occur, the application shall contain a subsidence control plan in accordance with Regulation .16 of this chapter.

If we approve the proposed changes, the amended language would read:

D. If the survey, under sections A and B of this regulation shows that structures or renewable resource lands, or water supplies exist, and that subsidence could cause material damage or diminution of the value or reasonably foreseeable use of such structures or lands, or contamination, diminution, or interruption of water supplies, or if the Bureau determines that the damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application shall contain a subsidence control plan in accordance with Regulation .16 of this chapter.

#### 26.20.02.16 Subsidence Control Plan

Section 26.20.02.16 sets forth what shall be included in a subsidence control plan, if one is required. Maryland proposes to add an additional subsidence control plan requirement to this section:

E. A description of the measures to be taken in accordance with Environment Article, § 15-608(b), COMAR 26.20.13.05C, and COMAR 26.20.13.09 to replace adversely affected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures; and

If we approve the proposed amendment, the current subsection E would become subsection F, but otherwise would remain unchanged.

#### 26.20.13.05 Hydrologic Balance: General Requirements

This section currently has two subsections, A and B. The State proposes to amend this section by adding new subsections A and D and by changing the current subsections A and B to B and C, respectively. Should we approve the proposed amendment, the current subsections A and B would otherwise remain unchanged. The proposed subsections A and D state:

A. As used in this regulation, an owner of interest in real property shall include a renter, tenant, or a lessee of real property.

D. The permittee shall promptly replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source that is contaminated, diminished, or interrupted by underground mining activities.