

without amending the statutory language in section 5.5(c).

Regarding the issue relating to underground mining operations, OSM stated that section 5.5(c) conditions the issuance of enforcement orders upon a finding that damage was due to "underground coal mining." OSM further determined that the Federal regulations require repair or compensation for all damages caused by "underground mining operations"—a term that is more expansive than "underground coal mining." On this basis, OSM found that section 5.5(c) might limit PADEP's authority to write enforcement orders for repair or compensation that would be required under the Federal program.

In this submission, PADEP proposes to address OSM's concern by amending 25 Pa. Code 89.143a(d)(1)–(3) to replace the term "underground mining" with "underground mining operations." PADEP contends that this will make Pennsylvania's repair and compensation requirements no less effective than Federal requirements in regard to the type of mining activities that trigger liability.

PADEP further asserts that there is no need to amend the language in section 5.5(c) to accomplish this change. The term "underground coal mining" is not defined in BMSLCA and according to PADEP, there is no consistent usage of the terms "mining," "underground mining" or "underground mining operations" that would suggest any specific differences in the meaning of these terms.

Regarding the issue of citizen complaint time frames, OSM also determined that the investigation time frames in section 5.5(c) do not require PADEP to inform the claimant of the results of its investigation within 10 days of completing the investigation. OSM found this to be inconsistent with Federal requirements on responding to citizens' complaints.

In this submission, PADEP proposes to address OSM's concern by amending 25 Pa. Code 89.143a(d)(1) to add a requirement regarding claimant notification. Under the proposed amendment, PADEP would be required to notify the claimant and the mine operator of its findings within 10 days of completing its investigation. PADEP contends that this provision makes Pennsylvania's complaint response time frames no less effective than those of the Federal program.

Finally, PADEP maintains that the proposed regulation change can be made without amending section 5.5(c) of the BMSLCA.

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.143a(d). The amended subsection reads as follows:

89.143a. Subsidence control: procedure for resolution of subsidence damage claims

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(d) Upon receipt of the claim, the Department will send a copy of the claim to the operator and conduct an investigation in accordance with the following procedure:

(1) Within 30 days of receipt of the claim, the Department will conduct an investigation to determine whether underground mining operations caused the subsidence damage to the structure and provide the results of its investigation to the property owner and mine operator within 10 days of completing the investigation.

(2) Within 60 days of completion of the investigation, the Department will determine, and set forth in writing, whether the damage is attributable to subsidence caused by the operator's underground mining operations and, if so, the reasonable cost of repairing or replacing the damaged structure.

(3) If the Department finds that the operator's underground mining operations caused the damage to the structure, the Department will either issue a written order directing the operator to promptly compensate the structure owner or issue an order directing the operator to promptly repair the damaged structure. The Department may extend the time for compliance with the order if the Department finds that further damage may occur to the same structure as a result of additional subsidence.

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Regulation at 30 CFR 938.16(zzzz). Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to remove the following phrase from section 5.5(f) of the BMSLCA, "* * * within six months or such longer period as the department has established or shall fail to perfect an appeal of the department's order directing such repair or compensation, * * *".

Discussion: Section 5.5(f) provides that if a mine operator fails to repair or compensate for subsidence damage within six months or longer period or fails to perfect an appeal of PADEP's order requiring repair or compensation, PADEP shall issue the orders necessary to compel compliance. If the operator fails to repair or compensate after exhausting its right of appeal, PADEP shall pay the escrow deposit required by section 5.5(e) to the owner of the damaged building.

In disapproving the specific language, OSM found that the portion of section 5.5(f) allowing six months or longer to pass before Pennsylvania takes an enforcement action is less effective than the Federal regulation at 30 CFR 843.12(c), which requires abatement of

violations within 90 days. As stated in the finding for 5.5(c), an operator's failure to promptly repair or compensate for subsidence damage is a violation that must be abated within 90 days. As a separate issue, OSM also disapproved language in section 5.5(f) that deals with perfecting an appeal of the PADEP's orders. OSM stated that the phrase prevents Pennsylvania from issuing a cessation order if an operator files an appeal, thus acting as a stay and that the provision is not as effective as the Federal regulations at 30 CFR 843.16(b) which indicate that the filing of an application for review and request for a hearing cannot operate as a stay of any notice or order.

In this submission, PADEP proposes to address OSM's required amendment through changes in 25 Pa. Code 89.143a(d) and by proposing that the effect of the escrow provision on staying the issuance of further orders by PADEP is no less effective than Federal regulations at 30 CFR part 843. PADEP asserts that the proposed changes and additional information eliminate any need to revise section 5.5(f) of BMSLCA.

Regarding the issue of the six-month compliance periods in enforcement orders, PADEP proposes to address OSM's concern regarding the length of the compliance period through a change in regulations. PADEP notes that section 5.5(c) uses the phrase "within six months" to describe the time frame in which the operator is expected to comply. PADEP asserts that this phrase can be interpreted to require compliance in less than six months in situations where it is reasonable to expect resolution within a shorter time frame. PADEP states that it clearly has authority to require repair or compensation within the 90-day period specified by OSM, since 90 days clearly falls "within six months" of the date an order is issued.

PADEP's position is that repair or compensation should be provided as promptly as possible based on site-specific considerations. PADEP argues that the most significant part of the determination turns on when PADEP considers subsidence to be complete. PADEP maintains that premature repair or compensation does little to minimize inconvenience to the property owner and, in some cases, may lead to more severe damage.

Based on its position, PADEP proposes to amend 25 Pa. Code 89.143a(d) to accomplish three objectives. One is to clarify PADEP's intent to require "prompt" compliance. The second is to condition time extensions for abatement on PADEP determinations that additional