

exclusively by BMSLCA. The proposed changes are as follows:

89.142a. Subsidence control: performance standards.

* * * * *

(f) Repair of damage to structures.

(1) Repair or compensation for damage to certain structures. Whenever underground mining operations conducted on or after August 21, 1994, cause damage to any of the structures listed in subparagraphs (i)–(v), the operator responsible for extracting the coal shall promptly and fully rehabilitate, restore, replace or compensate the owner for material damage to the structures resulting from the subsidence unless the operator demonstrates to the Department's satisfaction that one of the provisions of section 89.144a (relating to subsidence control: relief from responsibility) relieves the operator of responsibility.

(i) Buildings that are accessible to the public including, but not limited to, commercial, industrial and recreational buildings and all structures that are securely attached to the land surface and adjacent to or used in conjunction with these buildings, including, garages; storage sheds and barns; greenhouses and related buildings; customer-owned utilities and cables; fences and other enclosures; retaining walls; paved or improved patios; walks and driveways; septic sewage treatment facilities; inground swimming pools, and lot drainage and lawn and garden irrigation systems.

* * * * *

(iii) Dwellings which are used for human habitation and permanently affixed appurtenant structures or improvements. In the context of this paragraph, the phrase permanently affixed appurtenant structures and improvements includes, but is not limited to, structures adjacent to or used in conjunction with dwellings, such as but not limited to, garages; storage sheds and barns; greenhouses and related buildings; customer-owned utilities and cables; fences and other enclosures; retaining walls; paved or improved patios; walks and driveways; septic sewage treatment facilities; inground swimming pools, and lot drainage and lawn and garden irrigation systems.

* * * * *

Regulation at 30 CFR 938.16(gggg). Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to amend 25 Pa. Code 89.141(d)(3) to expand its requirement that subsidence control plans include descriptions of the measures to be taken to prevent material damage to dwellings and related structures and noncommercial buildings when mining methods do not result in planned subsidence.

Discussion: Section 89.141(d)(3) requires descriptions of measures to be taken to ensure that subsidence will not cause material damage to, or reduce the reasonably foreseeable uses of, public buildings and facilities, churches, schools, hospitals, impoundments with storage capacities of 20 acre-feet or

more, bodies of water with volumes of 20 acre-feet or more, and bodies of water and aquifers that serve as significant sources to public water supply systems. It also lists various measures that may be used to comply with this requirement. Section 89.141(d)(3) reflects the provisions of section 9.1(c) of the BMSLCA and is the State counterpart to 30 CFR 817.121(d).

In the December 27, 2001, final rule, OSM stated that this subsection requires that, for each structure and feature, or class of structures and features, described in 25 Pa. Code 89.142a(c) (which includes public buildings and facilities, churches, schools, hospitals, certain sized impoundments and bodies of water, and bodies of water or aquifers which serve as a significant source to a public water supply system), there must be a description of the measures to be taken to ensure that subsidence will not cause material damage to, or reduce the reasonably foreseeable uses of, the structures or features. The Federal rule at 30 CFR 784.20(b)(5) requires for non-planned subsidence a description of measures that will be taken to prevent or minimize subsidence and subsidence-related damage. The Federal rule does not limit the descriptions to specific structures or features, while Pennsylvania's regulation does limit the description to specified structures and features. Therefore, OSM noted that to the extent that the description is not all-inclusive (for example, dwellings, buildings accessible to the public, and noncommercial buildings customarily used by the public would not be included), PADEP must amend its program to provide the protection of 30 CFR 784.20(b)(5).

In this submission, PADEP proposes extensive changes to 25 Pa. Code 89.141(d) and 25 Pa. Code 89.142a(d) to address OSM's concern and to more clearly distinguish between requirements pertaining to mining that results in planned subsidence versus mining that does not result in planned subsidence. The proposed amendments establish different approaches to protecting noncommercial buildings, dwellings and related structures (EPA structures) depending on the type of mining an operator plans to use. If plans involve mining that does not result in planned subsidence, an operator must take measures to prevent subsidence that would cause material damage to EPA structures. If plans involve mining that is projected to result in planned subsidence, an operator must develop his plans around alternate measures, which are described in the discussion under 30 CFR 938.16(hhhhh).

The proposed amendments also include an editorial change relating to descriptions of measures for protecting public buildings and facilities, churches, schools, hospitals, impoundments with storage capacities of 20 acre-feet or more, bodies of water with volume of 20 acre-ft or more, and aquifers and bodies of water that serve as significant sources to public water supply systems. The amendment deletes the partial list of measures in existing 25 Pa. Code 89.141(d)(3). This change ensures that applicants will consider the full list of measures in 25 Pa. Code 89.142a(c) when preparing plans for mining beneath or adjacent to these structures.

During the joint meeting process, PADEP noted that there is an inconsistency in the Federal regulations at 30 CFR 784.20 with respect to preventing material damage when using methods of mining that do not result in planned subsidence. In describing the contents of subsidence control plans, 30 CFR 784.20(a)(5) indicates that the standard is to "prevent or minimize" damage. By contrast, 30 CFR 817.121 (relating to subsidence control performance standards) indicates the standard is to "prevent" damage. OSM advised that the requirement to prevent material damage when using methods that do not result in planned subsidence is based on section 516 of SMCRA, which uses the term "prevent" and requested that PADEP use this standard in amending its regulations.

PADEP's Proposed Resolution: In this submission, PADEP proposes to address OSM's concerns through amendments to 25 Pa. Code 89.141(d)(3) and 25 Pa. Code 89.142a(d). Proposed changes are as follows:

89.141. Subsidence control: application requirements.

* * * * *

(d) Subsidence control plan. The permit application shall include a subsidence control plan which describes the measures to be taken to control subsidence effects from the proposed underground mining operations. The plan shall address the area in which structures, facilities or features may be materially damaged by mine subsidence. At a minimum, the plan shall address all areas with a 30° angle of draw of underground mining operations which will occur during the 5-year term of the permit. The subsidence control plan shall include the following information:

* * * * *

(3) For each structure and feature, or class of structures and features, described in 25 Pa. Code 89.142a(c) (relating to subsidence control: performance standards), a detailed description of the measures to be taken to ensure that subsidence will not cause