

captures all activities included in paragraph (b) of the Federal definition of "underground mining activities" in 30 CFR 701.5.

In this submission, Pennsylvania indicated that its existing regulation at 25 Pa. Code 89.67(b) sets forth utility protection requirements that apply to activities at surface sites used in connection with underground mines. Section 89.67(b) uses the term "surface mining activities" to describe the range of activities that fall within the scope of utility protection requirements. The term "surface mining activities" is defined in § 86.1 to include all surface activity connected with underground mining. This, in effect, includes all activities that fall within the scope of paragraph (a) of the Federal definition of "underground mining activities."

Together, Pennsylvania maintains that the provisions of existing 25 Pa. Code 89.67(b) and the provisions of proposed 25 Pa. Code 89.142a(g)(1) cover all activities included within the scope of the Federal term "underground mining activities." In addition, both 25 Pa. Code 89.67(b) and 89.142a(g)(1) require an operator to conduct activities in a manner that minimizes damage, destruction or disruption in services provided by oil, gas and water wells; oil, gas and coal slurry pipelines; railroads; electric and telephone lines; and water and sewerage lines which pass under, over, or through the permit area, unless otherwise approved by the owner of the facilities and the Department. Pennsylvania maintains that the protection provided by 25 Pa. Code 89.67(b) and 89.142a(g) is therefore as effective as that provided by 30 CFR 817.180.

In this submission, PADEP asserts that the requirement in 30 CFR 938.16(mmmmm) can be fully satisfied by amending § 89.142a(g)(1) to make protection requirements applicable to all "underground mining operations."

PADEP's Proposed Resolution: In this submission, PADEP proposes that we accept the following proposed changes to 25 Pa. Code 89.142a(g)(1) as fulfilling the requirement in 30 CFR 938.16(mmmmm).

89.142a. Subsidence control: performance standards.

* * * * *

(g) Protection of utilities.

(1) Underground mining operations shall be planned and conducted in a manner which minimizes damage, destruction or disruption in services provided by oil, gas and water wells; oil, gas and coal slurry pipelines; rail lines; electric and telephone lines; and water and sewerage lines which pass under, over, or through the permit area,

unless otherwise approved by the owner of the facilities and the Department.

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Regulation at 30 CFR 938.16(nnnnn).
Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to remove the phrase from 25 Pa. Code 89.143a(c) that states, "* * * within 6 months of the date that the building owner sent the operator notification of subsidence damage to the structure * * *". Additionally, the amendment must remove the phrase, "within 2 years of the date damage to the structure occurred." OSM made a similar requirement at 30 CFR 938.16(yyyy) with regard to section 5.5(b) of the BMSLCA.

Discussion: See discussion and proposed resolution under 30 CFR 938.16(yyyy), including proposed amendments to 25 Pa. Code 89.143a(c).

PADEP's Proposed Resolution: See PADEP's proposed regulatory amendment and OSM supersession action described under 30 CFR 938.16(yyyy). PADEP maintains that these changes satisfy the required amendment at 30 CFR 938.16(nnnnn).

Regulation at 30 CFR 938.16(ooooo).
Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to remove the sentences from 25 Pa. Code 89.143a(d)(3) that state, "* * * within 6 months of the date of issuance of the order. The Department may allow more than 6 months if the Department finds that further damage may occur to the same structure as a result of additional subsidence." OSM made a similar requirement at 30 CFR 938.16(yyyy) with regard to section 5.5(c) of the BMSLCA.

Discussion: See discussion under 30 CFR 938.16(yyyy).

PADEP's Proposed Resolution: In this submission, PADEP proposes to amend 25 Pa. Code 89.143a(d)(3) as shown under 30 CFR 938.16(yyyy). PADEP asserts that this satisfies the required amendment at 30 CFR 938.16(ooooo).

Regulation at 30 CFR 938.16(ppppp).
Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to remove 25 Pa. Code 89.144(a)(1), which provides a waiver of liability that is inconsistent with Federal regulations.

Discussion: This is the same issue that was raised under 30 CFR 938.16(vvvv) in regard to section 5.4(c) of BMSLCA. In this submission, PADEP agreed to restrict this waiver so it cannot be raised in cases involving EAct structures.

PADEP's Proposed Resolution: See proposed regulatory amendment and

OSM supersession described under 30 CFR 938.16(vvvv). PADEP asserts that this satisfies the required amendment under OSM Rule 30 CFR 938.16(ppppp).

Regulation at 30 CFR 938.16(qqqqq).
Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to amend 25 Pa. Code 89.145a(a)(1) to address three concerns regarding the performance of premining water supply surveys.

Discussion: Section 25 Pa. Code 89.145a(a)(1) establishes requirements relating to the performance of premining water supply surveys. In the December 27, 2001, final rule, OSM had three concerns regarding the requirements of this section: (1) It provides that survey information must only be obtained to the extent that it can be collected without extraordinary efforts or the expenditure of excessive sums of money; (2) It allows premining surveys to be delayed until mining advances within 1,000 feet of a water supply; and (3) It does not indicate how Pennsylvania's premining survey requirements comply with 30 CFR 784.20(a)(3) relating to the submission of survey results for all EAct water supplies at the time of permit application.

Regarding limitations on collection of premining survey information, OSM observed that 25 Pa. Code 89.145a(a)(1) provides that survey information is required only to the extent that it can be collected without extraordinary efforts or expenditures of excessive sums of money. OSM further observed that the Federal regulations require the collection of survey information without regard to the level of effort or expense involved in obtaining the information. Based on its analysis, OSM directed PADEP to amend 25 Pa. Code 89.145a(a)(1) to clarify that the requirement to collect survey information to the extent that collection can be accomplished without extraordinary efforts or expenditures of excessive sums of money, is only applicable when it applies to inconveniencing landowners.

In this submission, PADEP proposes to address OSM's requirement by amending 25 Pa. Code 89.145a(a)(1) to replace the condition relating to "extraordinary efforts or excessive sums of money" with a condition relating to "excessive inconvenience to the landowner." Under the amended regulation, an operator would be required to collect all survey information listed in subparagraphs (i)–(v) to the extent that collection could be accomplished without excessive inconvenience to a property owner. The proposed amendment would relieve an