

operator of the obligation to collect information that would clearly result in an excessive inconvenience to a landowner. An example of an excessive inconvenience would be the need to demolish part of a dwelling to access a well for water level measurement. Lesser inconveniences, such as the need to pump a well for several hours or the need to disconnect treatment systems for purposes of quality sampling, would not normally qualify as excessive.

Regarding the concern on use of the 1,000-foot distance parameter, OSM disapproved the provision allowing mining to advance to within 1,000 feet of a water supply before the completion of the premining survey. OSM reasoned that mining-related effects could occur at distances greater than 1,000 feet and that delaying surveys to the time mining advances to within the 1,000-foot distance could result in data that does not accurately reflect premining conditions.

In this submission, PADEP also proposes to address OSM's concern by amending 25 Pa. Code 89.145a(a)(1) to remove the 1,000-foot criterion and clarify the requirement to collect premining survey information prior to the time a water supply is susceptible to mining-related effects. The determination of when surveys must be completed will be determined by PADEP technical staff based on information in the permit application, PADEP database information relating to the distances at which impacts have been documented to occur, and the reviewer's knowledge of conditions in the general area. Sampling distances specific to each mine and, if appropriate, to individual areas within a mine, will be established by permit condition.

Regarding the concern relating to delayed premining surveys, OSM also directed PADEP to demonstrate that Pennsylvania's premining survey requirements were in compliance with its guidance regarding delayed water supply surveys. This guidance was issued in a memorandum to the Regional Directors dated February 9, 1998, titled "Timing of Presubsidence Surveys," and in March 9, 1999, letters to IMCC and Tri-State Citizens Mining Network (March 1999 letters). It provided that baseline data collected at the time of permit application must be sufficient to develop the probable hydrologic impact determination (PHC) and cumulative hydrologic impact assessment (CHIA) and that States may use the regulatory program amendment process to identify what additional information required under 30 CFR 784.20(a)(3) must be submitted at the

time of permit application and which, if any, could be collected at a time closer to when mining would actually occur. OSM committed to giving consideration to approving State program amendments that identify water supply information required under 30 CFR 784.20(a) which could be collected closer to the time when mining actually occurs instead of being submitted at the time of permit application. Finally, OSM required that States must demonstrate, through the regulatory program amendment process for any delayed water supply surveys, that those analyses would be completed sufficiently in advance of mining to avoid any adverse effect to the water supply.

OSM's March 1999 letters were written to clarify OSM's view that a program amendment that assures that analysis of water supply data is completed sufficiently in advance of mining could be approved to provide data that isn't affected by mining. PADEP's proposed modification of 25 Pa. Code 89.145a(a)(1), removes the requirement that premining surveys be conducted prior to mining advancing within 1000 feet of a water supply and replaces it with a requirement that the premining survey be conducted prior to the time a water supply is susceptible to mining-related effects. PADEP maintains that this makes its program no less effective than the Federal requirements.

As an additional means of complying with the OSM guidance, PADEP proposes to apply the requirements of 25 Pa. Code 89.34 (relating to hydrology), 25 Pa. Code 89.35 (relating to prediction of hydrologic consequences), and 25 Pa. Code 89.36 (relating to protection of the hydrologic balance) to ensure that appropriate drinking, domestic and residential water supplies are sampled to adequately determine the hydrologic consequences at large and to identify those water supplies that may be adversely affected. Collectively, PADEP states that these information gathering requirements correspond to Federal counterpart requirements in 30 CFR 784.14(b)(1) and (e). PADEP asserts that the sample information collected and submitted with the application as baseline information satisfies the requirement for identifying the samples that will be collected at the time of permit application in accordance with OSM's March 1999 letters. PADEP asserts that the proposed language, "premining surveys shall be conducted prior to the time a water supply is susceptible to mining related effects," satisfies OSM's March 9, 1999, letters' requirement that the State identify the samples that can

be collected at a time closer to when mining will occur. In addition, PADEP contends that it satisfies the requirement that the surveys be completed "sufficiently in advance of mining to avoid any adverse effects to the water supply."

In this submission, PADEP asserts that the determination made under 25 Pa. Code 89.35 together with the samples collected during the baseline information collection effort and the presubsidence survey process provide the information required by 30 CFR 784.20(a)(3); a survey of the drinking domestic and residential water supplies that may be adversely affected.

In addition, PADEP maintains that its new language that "premining surveys shall be conducted prior to the time a water supply is susceptible to mining related effects" satisfies OSM's March 9, 1999, requirement that the State demonstrate through the program amendment process that the delayed analyses would be completed sufficiently in advance of mining to avoid any adverse effects to the water supply.

In this submission, PADEP asserts that the proposed changes to 25 Pa. Code 89.145a, in combination with its proposal to gather appropriate premining information using the provisions of 25 Pa. Code sections 89.34, 89.35 and 89.36, will make Pennsylvania's premining survey requirements no less effective than the Federal requirements.

*PADEP's Proposed Resolution:* In this submission, Pennsylvania is proposing the following changes to 25 Pa. Code 89.145a(a)(1):

89.145a. Water supply replacement: performance standards.

(a) Water supply surveys.

(1) The operator shall conduct a premining survey and may conduct a postmining survey of the quantity and quality of all water supplies within the permit and adjacent areas, except when the landowner denies the operator access to the site to conduct a survey and the operator has complied with the notice procedure in this section. Premining surveys shall be conducted prior to the time a water supply is susceptible to mining-related effects. Survey information shall include the following information to the extent that it can be collected without excessive inconvenience to the landowner:

(i) The location and type of water supply.

(ii) The existing and reasonably foreseeable uses of the water supply.

(iii) The chemical and physical characteristics of the water, including, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, hardness, total coliform, acidity, alkalinity and sulfates. An operator who obtains water samples in a premining or