

supply with respect to the rebuttable presumption area or the operator's rebuttal of the presumption of liability. It clarifies an operator's obligation to promptly provide temporary water when it finds, or when PADEP finds, that effects are due to the operator's underground mining and the affected water supply is an EPAct water supply.

PADEP bases this amendment on the statutory provisions of section 5.1(a)(1) and 5.2(a)(3) of the BMSLCA. Section 5.1(a)(1) establishes the basic requirement to restore or replace an affected water supply, which PADEP interprets to include the prompt provision of temporary water. Section 5.2(a)(3) authorizes PADEP to take action to require temporary water in any case where temporary water is not provided within 24 hours of the time effects are reported to the operator. PADEP notes that the actions authorized by section 5.2(a)(3) are not subject to the rebuttable presumption of liability.

PADEP further affirms that it will apply the requirements of 25 Pa. Code 89.34, relating to groundwater inventory information, and 25 Pa. Code 89.35, relating to predictions of hydrologic impacts, to ensure the collection of premining quality and quantity information for all EPAct water supplies that may be affected during the term of the permit. PADEP states that this information will be collected at the time of permit application or permit renewal, or prior to the time an EPAct water supply is susceptible to mining related effects to ensure that premining information is available for all EPAct water supplies prior to the time of impact. PADEP notes that the data collection requirements in 25 Pa. Code 89.34 and 25 Pa. Code 89.35 are equivalent to those in 30 CFR 784.14.

PADEP asserts that the proposed regulatory amendment in combination with the proposed expansion of groundwater survey requirements will make Pennsylvania's requirements relating to the provision of temporary water no less effective than those of the Federal program.

PADEP's Proposed Resolution: In this submission, PADEP proposes to revise 25 Pa. Code 89.145a(e) in the following manner.

89.145a. Water supply replacement: performance standards.

(e) Temporary water supplies.

(1) If the affected water supply is within the rebuttable presumption area and the rebuttable presumption applies and the landowner or water user is without a readily available alternate source, the operator shall provide a temporary water supply within 24 hours of being contacted by the landowner or water supply user or the Department, whichever occurs first.

(2) An operator shall promptly provide a temporary water supply if the operator or the Department finds that the operator's underground mining activities have caused contamination, diminution or interruption of an EPAct water supply and the landowner or water user is without a readily available alternate source of water. This requirement applies regardless of whether the water supply is located within or outside the rebuttable presumption area.

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Regulation at 30 CFR 938.16(ttttt).
Amendment Required by the December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to amend 25 Pa. Code 89.145a(e)(2) to require the restoration of water quantity in temporary water supplies to the same level as permanent water supplies, as noted in 25 Pa. Code 89.145a(f)(3).

Discussion: Subsection 89.145a(e)(2) requires temporary water supplies to meet the requirements of paragraph (f)(2) (relating to the quality of replacement water supplies) and to provide a sufficient amount of water to meet the water supply user's premining needs. In the December 27, 2001, final rule, OSM's concern was that the Pennsylvania program would only require temporary water supplies to provide a sufficient amount of water necessary to meet the water supply user's premining needs and not include reasonably foreseeable needs.

PADEP proposes to address OSM's requirement by amending former paragraph (e)(2), which is paragraph (e)(3) under the current proposal, to delete the reference to premining water needs. Amended paragraph (e)(3) will require temporary water supplies to meet all needs of an affected water user. This will ensure that all of a water user's premining and reasonably foreseeable needs are satisfied and will make the quantity requirements for temporary water supplies equivalent to those for permanently restored or replacement water supplies. In making this change, PADEP wishes to clarify that temporary water requirements would not extend to needs that exceed the capacity of the premining water supply.

PADEP asserts that the proposed revision to 25 Pa. Code 89.145a(e) will satisfy the requirement in 30 CFR 938.16(ttttt).

PADEP's Proposed Resolution: In this submission, PADEP proposes that OSM accept the revision to 25 Pa. Code 89.145a(e)(2) (paragraph (3) after preceding revision).

89.145a. Water supply replacement: performance standards.

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(e) Temporary water supplies.

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(3) The temporary water supply provided under this subsection shall meet the requirements of paragraph (f)(2) and provide a sufficient amount of water to meet the water supply user's needs.

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Regulation at 30 CFR 938.16 (uuuuu).
Amendment Required by December 27, 2001, Federal Register Notice: OSM directed Pennsylvania to revise 25 Pa. Code 89.145a(f)(1)(v) to make it clear that cost increases associated with the operation and maintenance of a restored or replacement water supply may not be passed on to the water user.

Discussion: As explained in discussions under 30 CFR 938.16(ppppp) and (ddddd), PADEP proposes to amend 25 Pa. Code 89.145a(f) to address OSM's concern. PADEP is proposing amendments to 89.145a(f) to specifically address the operation and maintenance costs of EPAct water supplies. The amendments require that, in the case of an EPAct water supply, the restored or replacement water supply shall cost no more to operate and maintain than the previous water supply. The amendments further provide that any increased costs associated with the operation and maintenance of an EPAct water supply are the responsibility of the mine operator. The amendments also allow an operator to satisfy its responsibility for increased costs by compensating the landowner or water user by a one-time payment in an amount which covers the present worth of the increased annual operations and maintenance cost for a period agreed to by the operator and the landowner or water user. Amended 25 Pa. Code 89.145a(f)(5)(i) mirrors the Federal requirement in regard to the operation and maintenance costs of EPAct water supplies.

The proposed amendments to 25 Pa. Code 89.145a(f) retain the allowance of a *de minimis* cost increase for replacement water supplies that are outside the scope of SMCRA and the Federal regulations. The retention of this provision preserves Pennsylvania law to the maximum extent possible.

PADEP maintains that the proposed changes to 25 Pa. Code 89.145a(f) will make Pennsylvania's provisions relating to the cost of restored and replacement water supplies no less effective than Federal counterpart provisions and will satisfy the requirement in 30 CFR 938.16(uuuuu).

PADEP's Proposed Resolution: PADEP proposes to amend 25 Pa. Code 89.145a(f) in the following manner: