

89.145a. Water supply replacement: performance standards.

* * * * *

(f) Adequacy of permanently restored or replaced water supply. A permanently restored or replaced water supply shall include any well, spring, municipal water supply system or other supply approved by the Department, which meets the criteria for adequacy as follows:

(1) Reliability, maintenance and control. A restored or replaced water supply, at a minimum, shall:

(i) Be as reliable as the previous water supply.

(ii) Be as permanent as the previous water supply.

(iii) Not require excessive maintenance.

(iv) Provide the owner and the user with as much control and accessibility as exercised over the previous water supply.

* * * * *

(5) Cost to landowner or water user. A restored or replacement water supply shall meet the following cost criteria:

(i) The restored or replacement water supply for an affected EPAct water supply shall not cost the landowner or water user more to operate and maintain than the previous water supply. Operation and maintenance costs of the replacement water supply which exceed the operation and maintenance costs of the previous water supply are the responsibility of the operator. Upon agreement by the operator and the landowner or water user, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance cost for a period agreed to by the operator and the landowner or water user.

(ii) The restored or replacement water supply for an affected water supply, which does not qualify as an EPAct water supply, shall not have operation and maintenance costs that exceed those of the previous water supply by more than a *de minimis* cost increase. If the operation and maintenance costs of the restored or replacement water supply are more than a *de minimis* cost increase, the operator shall provide for the permanent payment of the increased operating and maintenance cost of the restored or replacement water supply.

* * * * *

Regulation at 30 CFR 938.16(vvvvv). Amendment Required by December 27, 2001, **Federal Register** Notice: OSM directed Pennsylvania to amend 25 Pa. Code 89.145a(f)(3)(i) and (ii), if necessary, to ensure that the phrase "satisfy the water user's needs and the demands of any reasonably foreseeable uses" is consistent with the actual use and the reasonably foreseeable uses.

Discussion: OSM's December 27, 2001, final rule conditionally approved the Pennsylvania program with regard to the use of the "adequate" standard for water quantity of replacement supplies based upon statements made by PADEP

during the rulemaking process. OSM remained concerned about statements indicating PADEP's intent to limit reasonably foreseeable uses to those of the current owner/supply user as documented by a plan.

In this submission, PADEP proposes to address OSM's concern by affirming that it will consider all reasonably foreseeable drinking, domestic and residential uses when evaluating the adequacy of restored EPAct water supplies or replacements for EPAct water supplies. PADEP further affirms that evaluations will be based on the location and characteristics of the property as well as the apparent and documented needs of the current water user. An example cited by PADEP would be a situation where one person resided in a three-bedroom house with a premining water supply capable of serving the needs of four people. In the event of impacts, PADEP stated that it would require a replacement water supply capable of serving the needs of four people and that the reasonably foreseeable use determination would focus on the property's premining capacity to house and provide sufficient water for four people. The replacement liability would not be limited by the fact that the property had only one resident at the time of impact. In this case, PADEP noted that the final determination regarding reasonably foreseeable uses could be based on observation alone without the need for any specific documentation from the landowner.

In this submission, PADEP also notes that determinations of adequacy will also include consideration of the capacity of the premining water supply, including the delivery system. An example provided by PADEP would be where two people resided in a four-bedroom house with a premining water supply capable of serving only two people. In this case, the reasonably foreseeable use determination would account for the fact that capacity of the house exceeded the capacity of the premining water supply. In this situation, PADEP stated that it would require the operator to provide a replacement water supply capable of serving two people.

PADEP notes that 25 Pa. Code 89.145a(a)(1)(ii) requires a mine operator to gather information regarding the existing and reasonably foreseeable use of a water supply at the time of the premining survey. This ensures that mine operators will gather information regarding reasonably foreseeable uses prior to affecting a water supply.

PADEP asserts that this affirmation satisfactorily addresses OSM's concern

in regard to the reasonably foreseeable use of restored EPAct water supplies or replacements for EPAct water supplies. PADEP does, however, reserve the authority to require documented plans in cases that do not involve EPAct water supplies or agricultural water supplies.

PADEP's Proposed Resolution: In this submission, PADEP is proposing that there is no need to amend the regulations. PADEP agrees that operators must identify and account for all existing and reasonably foreseeable uses of a water supply when providing a replacement; not just those of the current owner or those documented in a plan.

Regulation at 30 CFR 938.16(wwwww). Amendment Required by December 27, 2001, **Federal Register** Notice: OSM directed Pennsylvania to amend 25 Pa. Code 89.146a(c) to the extent the timeframes for PADEP investigations are longer than those in Pennsylvania's approved citizen complaint procedures.

Discussion: This issue is discussed under 30 CFR 938.16(kkkk) in regard to section 5.2(b) of BMSLCA. Section 5.2(b) was the basis for the investigation timeframes in 25 Pa. Code 89.146a(c)(1).

In this submission, PADEP proposes to revise 25 Pa. Code 89.146a(c) to impose on itself an obligation to report water supply problem investigations to claimants within 10 days of completing the investigation.

PADEP's Proposed Resolution: See proposed revisions to 25 Pa. Code 89.146a(c) described under 30 CFR 938.16(kkkk). PADEP maintains that this satisfies the required amendment under 30 CFR 938.16(wwwww).

Regulation at 30 CFR 938.16(xxxxx). Amendment Required by December 27, 2001, **Federal Register** Notice: OSM directed Pennsylvania to amend 25 Pa. Code 89.152(a) to remove paragraph (2), which provides a release of liability when water supply impacts are due to underground mining activities that took place more than three years prior to the onset of water supply problems.

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

PADEP's Proposed Resolution: In this submission, PADEP is not proposing any changes in response to 30 CFR 938.16(xxxxx) for reasons discussed under 30 CFR 938.16(mmmm).

Regulation at 30 CFR 938.16(yyyyy). Amendment Required by December 27, 2001, **Federal Register** Notice: OSM directed Pennsylvania to amend 25 Pa. Code 89.152(a) to remove paragraph (4), which provides a release of liability when water supply problems are reported more than two years after the date of occurrence.