

*Discussion:* See discussion under 30 CFR 938.16(jjjj) in regard to section 5.1(b) of the BMSLCA. PADEP has agreed to changes that will eliminate the two-year statute of limitations on filing claims involving EAct water supplies. These changes will be accomplished through amendments to 25 Pa. Code 89.152(a) and through an OSM's action superseding section 5.1(b) to the extent it applies to EAct water supplies.

*PADEP's Proposed Resolution:* See proposed regulatory amendment and OSM supersession action described under 30 CFR 938.16(jjjj). PADEP contends that these changes satisfy the required amendment under 30 CFR 938.16(yyyyy).

*Regulation at 30 CFR 938.16(zzzzz).*  
*Amendment Required by December 27, 2001, Federal Register Notice:* OSM directed Pennsylvania to remove 25 Pa. Code 89.152(a)(5)(i), which provides a release of liability in cases where operators have addressed their water supply replacement obligations through a property purchase or by compensating a landowner for the resultant reduction in fair market value of the affected property.

*Discussion:* See discussion under 30 CFR 938.16(nnnn), (oooo), (qqqq) and (rrrr) regarding compensation in lieu of water supply replacement. PADEP has agreed to changes that will limit the conditions under which an EAct water supply claim can result in compensation. PADEP proposes to amend 25 Pa. Code 89.152(a) to establish specific conditions that must be satisfied in situations where EAct water supplies will not be restored or replaced. In order for the proposed regulatory amendments to become effective, PADEP maintains that OSM must supersede conflicting provisions in sections 5.2(g) and (h) of the BMSLCA.

*PADEP's Proposed Resolution:* PADEP proposes to address OSM's requirement through amendments to 25 Pa. Code 89.152(a). PADEP also asserts that OSM must supersede the provisions of sections 5.2(g) and (h) of the BMSLCA to the extent these provisions would prevent PADEP from requiring the restoration or replacement of EAct water supplies. These changes are described in detail in the response to 30 CFR 938.16(nnnn), (oooo), (qqqq) and (rrrr), and PADEP maintains they will serve to satisfy the requirement in 30 CFR 938.16(zzzzz), as well. The proposal to partially supersede sections 5.2(g) and (h) appears in a separate rulemaking in this **Federal Register** issue.

*Regulation at 30 CFR 938.16(aaaaa).*  
*Amendment Required by December 27,*

*2001, Federal Register Notice:* OSM required Pennsylvania to amend 25 Pa. Code 89.152a(5)(ii) to remove that portion of the section allowing compensation in lieu of restoration or replacement of affected water supplies. Additionally, the amendment must make it clear that agreements to replace a water supply or provide for replacement of an alternate supply of water must meet the requirements established in the Federal definition of "replacement of water supply" at 30 CFR 701.5.

*Discussion:* See discussion under 30 CFR 938.16(nnnn), (oooo), (qqqq) and (rrrr) regarding compensation in lieu of water supply replacement.

*PADEP's Proposed Resolution:* In this submission, PADEP proposes to address OSM's requirement through amendments to 25 Pa. Code 89.152 as described in the discussion under 30 CFR 938.16(nnnn), (oooo), (qqqq) and (rrrr).

*Regulation at 30 CFR 938.16(bbbbbb).*  
*Amendment Required by December 27, 2001, Federal Register Notice:* OSM directed Pennsylvania to amend 25 Pa. Code sections 89.141(d), 89.141(d)(9), 89.142a(a), 89.142a(f)(1), 89.142a(f)(2)(i), 89.142a(h)(1), 89.142a(h)(2), 89.142a(i)(1), 89.143a(a), 89.143a(d)(1), 89.143a(d)(2), 89.143a(d)(3), 89.155(b)(1) and (2) and 89.155(c) to be no less stringent than section 720(a) of SMCRA. This amendment required using the term "underground mining operations," rather than "underground mining" as used by PADEP.

*Discussion:* In the December 27, 2001, final rule, OSM noted that several sections of the regulations implementing Act 54 use the term "underground mining" rather than "underground mining operations" as used in the Federal regulations. OSM noted that these sections require a description of the impacts of underground mining on surface features, structures and facilities and provide performance standards to remedy those impacts. Section 720(a) of SMCRA requires underground coal mining operations to comply with those requirements. The Federal term "underground coal mining operations" is more expansive than Pennsylvania's term "underground mining," that is defined in 25 Pa. Code 89.5 to be the extraction of coal. The Federal definition of underground coal mining activities describes underground operations as underground construction, operation and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage and blasting. Thus, in regard to the aforementioned

regulations, the only activity that must meet the environmental requirements of Chapter 89 Subchapter F (relating to subsidence control and water supply replacement.) is coal extraction, while under SMCRA, all underground operations must meet the environmental requirements.

In this submission, PADEP is proposing to address OSM's concern by amending 25 Pa. Code sections 89.141(d), 89.141(d)(9), 89.142a(a), 89.142a(f)(1), 89.142a(f)(2)(i), 89.142a(h)(1), 89.142a(h)(2), 89.142a(i)(1), 89.143a(a), 89.143a(d)(1), 89.143a(d)(2), 89.143a(d)(3) to incorporate the term "underground mining operations." PADEP asserts that these changes will make the respective parts of Chapter 89 no less effective than Federal counterpart requirements.

PADEP is, however, proposing to leave 25 Pa. Code sections 89.155(b)(1) and (2) and 89.155(c) unchanged. These requirements pertain to notifications, which operators must provide to overlying property owners, utilities and government entities, to inform them of planned mining. OSM was concerned that activities such as development activities and blasting would not be cause for operators to notify these parties. However, PADEP has found that all underground mining activities that OSM would be concerned with would be the subject of PADEP's notification procedures because these activities are part of the process of extraction of coal in an underground mine (see definition of the term, "underground mining" at 25 Pa. Code 89.5). Therefore, property owners, utilities, and political subdivisions would be notified of these activities as part of the requirements of 25 Pa. Code sections 89.155(b)(1) and (2) and 89.155(c). PADEP contends that these requirements do not make Pennsylvania's notification requirements any less effective than Federal counterpart requirements. Accordingly PADEP argues that there is no need to amend 25 Pa. Code sections 89.155(b)(1) and (2) or 89.155(c) to incorporate the term "underground mining operations."

*PADEP's Proposed Resolution:* In this submission, PADEP proposes that OSM accept the following changes to 25 Pa. Code Chapter 89. (Note that section 25 Pa. Code 89.141(d)(9) has been redesignated (d)(11) based on other proposed changes. Also note use of term "operations" in newly proposed 25 Pa. Code 89.141(d)(10)).

89.141 Subsidence control: application requirements.

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