

(d) Subsidence control plan. The permit application shall include a subsidence control plan that describes the measures to be taken to control subsidence effects from the proposed underground mining operations. The plan shall address the area in which structures, facilities or features may be materially damaged by mine subsidence. At a minimum, the plan shall address all areas within a 30° angle of draw of underground mining operations which will occur during the 5-year term of the permit. The subsidence control plan shall include the following information:

\* \* \* \* \*

(11) A description of the measures which will be taken to maintain the value and foreseeable uses of perennial streams which may be impacted by underground mining operations. The description shall include a discussion of the effectiveness of the proposed measures as related to prior underground mining operations under similar conditions.

\* \* \* \* \*

#### 89.142a. Subsidence control: performance standards.

(a) General requirements. Underground mining operations shall be planned and conducted in accordance with the following:

\* \* \* \* \*

(f) Repair of damage to structures.

(1) Repair or compensation for damage to certain structures. Whenever underground mining operations conducted on or after August 21, 1994, causes damage to any of the structures listed in subparagraphs (i)-(v), the operator responsible for extracting the coal shall promptly and fully rehabilitate, restore, replace or compensate the owner for material damage to the structures resulting from the subsidence unless the operator demonstrates to the Department's satisfaction that one of the provisions of 25 Pa. Code 89.144a (relating to subsidence control: relief from responsibility) relieves the operator of responsibility.

\* \* \* \* \*

(2) Amount of compensation.

(i) If, rather than repair the damage, the operator compensates the structure owner for damage caused by the operator's underground mining operations, the operator shall provide compensation equal to the reasonable cost of repairing the structure or, if the structure is determined to be irreparably damaged, the compensation shall be equal to the reasonable cost of its replacement except for an irreparably damaged agricultural structure identified in paragraph (1)(iv) or (v) which at the time of damage was being used for a different purpose than the purpose for which the structure was originally constructed. For such an irreparably damaged agricultural structure, the operator may provide for the reasonable cost to replace the damaged structure with a structure satisfying the functions and purposes served by the damaged structure before the damage occurred if the operator can affirmatively prove that the structure was being used for a different purpose than the purpose for

which the structure was originally constructed.

\* \* \* \* \*

(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.

\* \* \* \* \*

(h) Perennial streams.

(1) Underground mining operations shall be planned and conducted in a manner which maintains the value and reasonably foreseeable uses of perennial streams, such as aquatic life; water supply; and recreation, as they existed prior to coal extraction beneath streams.

(2) If the Department finds that the underground mining operations have adversely affected a perennial stream, the operator shall mitigate the adverse effects to the extent technologically and economically feasible, and, if necessary, file revised plans or other data to demonstrate that future underground mining operations will meet the requirements of paragraph (1).

(i) Prevention of hazards to human safety.

(1) The Department will suspend underground mining operations beneath urbanized areas; cities; towns; and communities and adjacent to or beneath industrial or commercial buildings; lined solid and hazardous waste disposal areas; major impoundments of 20 acre-feet (2.47 hectare-meters) or more; or perennial streams, if the operations present an imminent danger to the public.

\* \* \* \* \*

#### 89.143a. Subsidence control: procedure for resolution of subsidence damage claims.

(a) The owner of a structure enumerated in 25 Pa. Code 89.142a(f)(1) (relating to subsidence control: performance standards) who believes that underground mining operations caused mine subsidence resulting in damage to the structure and who wishes to secure repair of the structure or compensation for the damage shall provide the operator responsible for the underground mining with notification of the damage to the structure.

\* \* \* \* \*

(d) Upon receipt of the claim, the Department will send a copy of the claim to the operator and conduct an investigation in accordance with the following procedure:

(1) Within 30 days of receipt of the claim, the Department will conduct an investigation to determine whether underground mining operations caused the subsidence damage to the structure and provide the results of its investigation to the property owner and mine operator within 10 days of completing the investigation.

(2) Within 60 days of completion of the investigation, the Department will determine, and set forth in writing, whether the damage

is attributable to subsidence caused by the operator's underground mining operations and, if so, the reasonable cost of repairing or replacing the damaged structure.

(3) If the Department finds that the operator's underground mining operations caused the damage to the structure, the Department will either issue a written order directing the operator to promptly compensate the structure owner or issue an order directing the operator to promptly repair the damaged structure. The Department may extend the time for compliance with the order if the Department finds that further damage may occur to the same structure as a result of additional subsidence.

\* \* \* \* \*

Further, PADEP recommends that OSM accept its explanation that 25 Pa. Code 89.155(b)(1) and (2) and 89.155(c) are no less effective than the Federal regulations and need no modification.

As noted earlier in this proposed rule, PADEP is proposing several amendments to Chapters 86 and 89 that were not specifically required by OSM. These changes are summarized below:

#### *Definitions of EPACT Structures and EPACT Water Supplies*

PADEP is proposing to add definitions of the terms "EPAct structures" and "EPAct water supplies" under 25 Pa. Code 89.5 (relating to definitions). These terms are used in various information and performance standards to refer to structures and water supplies covered under section 720(a) of SMCRA. The proposed definitions are derived from descriptions in section 720(a) of SMCRA and the definitions of the terms "drinking, domestic or residential water supply" and "occupied residential dwelling and structures related thereto" in 30 CFR 701.5. PADEP maintains that the proposed definitions effectively encompass all structures and water supplies covered by Federal subsidence damage repair and water supply replacement provisions.

The proposed definitions are as follows:

#### 89.5. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

EPAct structures—Structures that are subject to repair and compensation requirements under section 720(a) of the Federal Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*). The term includes:

(a) Noncommercial buildings.

(ii) Dwellings.

(iii) Structures adjunct to or used in conjunction with dwellings, including, but not limited to, garages; storage sheds and