

barns; greenhouses and related buildings; customer-owned utilities and cables; fences and other enclosures; retaining walls; paved or improved patios; walks and driveways; septic sewage treatment facilities; inground swimming pools, and lot drainage and lawn and garden irrigation systems.

EPA Act water supplies—Water supplies that are subject to replacement under section 720(a) of the Federal Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*), including drinking, domestic or residential water supplies in existence prior to the date of permit application. The term includes water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. It does not include wells and springs that serve only agricultural, commercial or industrial enterprises except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

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Scope of Subsidence Bonds

PADEP is proposing two changes to its bonding regulations in addition to those proposed in response to 30 CFR 938.16(ccccc). These changes are intended to clarify that the scope and period of liability of subsidence bonds will not change as a result of other regulatory amendments proposed in response to the OSM requirements.

One proposed change is an amendment to 25 Pa. Code 86.151(b)(2) (relating to the period of liability of subsidence bonds). This change involves replacing the undefined term “mining and reclamation operation” with “underground mining operations”—a term defined in 25 Pa. Code 89.5. This change is intended to avoid confusion over whether the final 10-year period of bonded liability starts upon completion “underground mining operations” or upon completion of “underground mining activities.” This is an important distinction since the completion of underground mining operations is marked by the reclamation of the last shaft or drift opening, while the completion of underground mining activities is marked by the stabilization of the post closure mine pool, which usually occurs several years or decades after the completion of underground mining operations. The proposed amendment ties the start of the final 10-year period to the completion of underground mining operations, consistent with section 6(b) of BMSLCA.

Another proposed change is an amendment to 25 Pa. Code 86.152(a) (relating to bond adjustments). The proposed amendment adds a provision at the end of subsection (a) clarifying that the requirement to periodically re-evaluate and adjust bonds is not a basis

for extending the coverage of subsidence bonds beyond the requirements of sections 5, 5.4, 5.5, and 5.6 of the BMSLCA. This provision, which is based on section 6(b) of BMSLCA, clarifies that subsidence bonds are to be evaluated and adjusted based on the projected costs of repairing land and structure damage and not on costs arising from other regulatory obligations, such as the requirement to perform surface reclamation and the requirement to replace affected water supplies.

PADEP maintains that the proposed amendments will not make Pennsylvania’s bonding requirements less effective than the Federal bonding requirements. As explained in the response to 30 CFR 938.16(ccccc), Pennsylvania asserts its subsidence bonding requirements are as effective as those in 30 CFR 817.121(c)(5) in terms of assuring the availability of adequate funds for the repair of EPAct structures and land. The proposed changes to 25 Pa. Code 86.151(b)(2) will maintain the status quo regarding the period during which subsidence bonds must be maintained and will not result in a termination of liability prior to the time OSM would terminate jurisdiction over an underground mining operation. Further, since PADEP relies on other types of financial assurance to ensure the replacement of affected water supplies, it maintains there is no need to address these liabilities through subsidence bonds.

The proposed amendments to 25 Pa. Code 86.151(b)(2) and 86.152(a) are as follows:

86.151. Period of liability.

(a) Liability under bonds posted for a coal surface mining activity shall continue for the duration of the mining activities and its reclamation as provided in the acts, regulations adopted thereunder and the conditions of the permit and for 5 additional years after completion of augmented seeding, fertilization, irrigation or other work necessary to achieve permanent revegetation of the permit area.

(b) Liability under bonds posted for the surface effects of an underground mine, coal preparation activity or other long-term facility shall continue for the duration of the mining operation or use of the facility, its reclamation as provided in the acts, regulations adopted thereunder and the conditions of the permit, and for 5 years thereafter, except for:

(1) The risk of water pollution for which liability under the bond shall continue for a period of time after completion of the mining and reclamation operation. This period of time will be determined by the Department on a case-by-case basis.

(2) The risk of subsidence from bituminous underground mines for which liability under the bond shall continue for 10 years after

completion of the mining and reclamation operation underground mining operations. 86.152. Bond adjustments.

(a) The amount of bond required and the terms of the acceptance of the applicant’s bond will be adjusted by the Department from time to time as the area requiring bond coverage is increased or decreased, or where the cost of future reclamation changes, or where the projected subsidence damage repair liability changes. The Department may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement. This requirement shall only be binding upon the permittee and does not compel a third party, including surety companies, to provide additional bond coverage and does not extend the coverage of a subsidence bond beyond the requirements imposed by sections 5, 5.4, 5.5, and 5.6 of the Bituminous Mine Subsidence and Land Conservation Act.

Description of Features Protected Under 25 Pa. Code 89.142a(c)

PADEP is proposing to amend 25 Pa. Code 89.142a(c)(1) to make an editorial correction. The correction involves changing the term “surface features” to “features” in paragraph (1). The term “features” is more appropriate in this instance because it refers to both surface water bodies and aquifers enumerated in subparagraphs (c)(1)(iv)–(v). Since aquifers are not usually considered surface features, it is more appropriate to use the term “features” to refer to this group. PADEP maintains that the proposed change will not make Pennsylvania’s regulations less effective than Federal counterpart regulations. The proposed amendment to 25 Pa. Code 89.142a(c) is as follows:

89.142a. Subsidence control: performance standards.

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(c) Restrictions on underground mining.

(1) Unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of the structures and features listed in subparagraph (i)–(v), no underground mining shall be conducted beneath or adjacent to:

(i) Public buildings and facilities.

(ii) Churches, schools and hospitals.

(iii) Impoundments with a storage capacity of 20 acre-feet (2.47 hectare-meters) or more.

(iv) Bodies of water with a volume of 20 acre-feet (2.47 hectare-meters) or more.

(v) Bodies of water or aquifers which serve as significant sources to public water supply systems.

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Support Facilities Located Underground

PADEP is proposing to amend the definition of “underground mining operations” and paragraph (ii) of the definition of “underground mining activities” to replace the term “underground support facilities” with