

at 3 p.m. and at 7 p.m. and on October 16, 2003, at the Holiday Inn Meadow Lands in Washington, Pennsylvania, at 3 p.m. and at 7 p.m. We will accept requests to speak at a hearing until 4 p.m., e.s.t. on October 7, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to George Rieger, Acting Field Office Director at the address listed below.

You may review copies of the Pennsylvania program, this proposal, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

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SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Description of the Proposed Action
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition

of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Action

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), we are proposing to supersede portions of the following sections of BMSLCA as detailed below: 5.1(b)(52 P.S. 1406.5a(b)), 5.2(g)(52 P.S. 1406.5b(g)), 5.2(h)(52 P.S. 1406.5b(h)), 5.4(a)(3)(52 P.S. 1406.5d(a)(3)), 5.4(c)(52 P.S. 1406.5d(c)), 5.5(b)(52 P.S. 1406.5e(b)).

Section 5.1(b). We are proposing to supersede section 5.1(b) to the extent it would apply to water supplies covered under section 720 of SMCRA. Section 5.1(b) provides that:

(b) A mine operator shall not be liable to restore or replace a water supply under the provisions of this section if a claim of contamination, diminution or interruption is made more than two years after the supply has been adversely affected.

Section 5.2(g). We are proposing to supersede section 5.2(g) of BMSLCA to the extent that it would remove an operator's liability to restore or replace a water supply covered under section 720 of SMCRA. Section 5.2(g) provides that:

(g) If an affected water supply is not restored or reestablished or a permanent alternate source is not provided within three years, the mine operator may be relieved of further responsibility by entering into a written agreement providing compensation acceptable to the landowner. If no agreement is reached, the mine operator, at the option of the landowner, shall:

- (1) purchase the property for a sum equal to its fair market value immediately prior to the time the water supply was affected; or
- (2) make a one-time payment equal to the difference between the property's fair market value immediately prior to the time the water supply was affected and at the time payment is made; whereupon the mine operator shall be relieved of further obligation regarding contamination, diminution or interruption of an affected water supply under this act. Any measures taken under sections 5.1 and 5.3 and this section to relieve a mine operator of further obligation regarding contamination, diminution or interruption of an affected water supply shall not be deemed to bar a subsequent purchaser of the land on which the affected water supply was located or any water user on such land from invoking rights under this section for contamination, diminution or interruption of a water supply resulting from subsequent mining activity other than that contemplated by the mine plan in effect at the time the original supply was affected.

Section 5.2(h). We are proposing to supersede section 5.2(h) of BMSLCA to

the extent it would bar Pennsylvania from requiring the restoration or replacement of a water supply covered under section 720 of SMCRA. Section 5.2(h) provides that:

(h) Prior to entering into an agreement with the mine operator pursuant to subsection (g), the landowner may submit a written request to the department asking that the department review the operator's finding that an affected water supply cannot reasonably be restored or that a permanent alternate source, as described in subsection (i), cannot reasonably be provided. The department shall provide its opinion to the landowner within sixty days of receiving the landowner's request. The department's opinion shall be advisory only, including for purposes of assisting the landowner in selecting the optional compensation authorized under subsection (g). The department's opinion shall not prevent the landowner from entering into an agreement with the mine operator pursuant to subsection (g), and such opinion shall not serve as the basis for any action by the department against the mine operator or create any cause of action in a third party, provided the operator otherwise complies with subsection (g).

Section 5.4(a)(3). We are proposing to supersede the portion of section 5.4(a)(3) of BMSLCA that states, "in place on the effective date of this section or on the date of first publication of the application for a Mine Activity Permit or a five-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in said application," to the extent it excludes structures covered under Section 720 of SMCRA from repair or compensation requirements. This provision is proposed to be superseded because it may exclude certain structures from the repair and compensation provisions of SMCRA.

Section 5.4(a)(3) provides that:

5.4. Restoration or compensation for structures damaged by underground mining.

(a) Whenever underground mining operations conducted under this act cause damage to any of the following surface buildings overlying or in the proximity of the mine:

* * * * *

(3) Dwellings used for human habitation and permanently affixed appurtenant structures or improvements in place on the effective date of this section or on the date of first publication of the application for a Mine Activity Permit or a five-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in said application; or

* * * * *

Section 5.4(c). We are proposing to supersede section 5.4(c) of BMSLCA where it would relieve an operator's liability to repair or compensate for damage to a structure covered under