

applicable Federal and State water quality laws and regulations. Section 515(b)(10) of SMCRA and the Federal regulation at 30 CFR 816.41(a) allow the regulatory authority to require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Therefore, we are approving 312 IAC 25–6–12.5.

#### *E. Underground Mining—Hydrologic Balance; Ground Water Quality Standards*

Indiana is adding a new rule at 312 IAC 25–6–76.5 to read as follows:

312 IAC 25–6–76.5 Underground mining; hydrologic balance; application of ground water quality standards at underground coal mining and reclamation operations permitted under IC 14–34 on which coal extraction, coal processing, coal processing waste disposal, or underground development waste and spoil deposition occurs after the effective date of this section, or on which disposal activity subject to IC 13–19–3–3 has occurred and the area is not fully released from the performance bond required by IC 14–34–6.

(a) Ground water is classified under 327 IAC 2–11 to determine appropriate criteria that shall be applied to ground water.

(b) Underground coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2–11.

(c) Underground coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25–4–74 and 312 IAC 25–6–88 govern water replacement.

(d) The ground water management zone described in 327 IAC 2–11–9 must be established as follows:

(1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:

(A) A coal mine processing waste disposal site.

(B) A location at which coal is crushed, washed, screened, stored, and loaded at or near the mine site.

(C) An underground development waste and spoil deposition area.

(2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in subdivision (1), the director shall require that a monitoring well

be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2–11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2–11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone.

There is no direct Federal counterpart to the proposed regulation at 312 IAC 25–6–76.5. However, we find that the requirements of 312 IAC 25–6–76.5 are not inconsistent with Section 516(b)(9) of SMCRA or the Federal regulations at 30 CFR 784.14(g) and 817.41(a), concerning protection of the hydrologic balance. The Federal regulation at 30 CFR 784.14(g), concerning hydrologic reclamation plans, requires plans to contain steps to be taken to meet applicable Federal and State water quality laws and regulations. Section 516(b)(9) of SMCRA and the Federal regulation at 30 CFR 817.41(a) allow the regulatory authority to require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Therefore, we are approving 312 IAC 25–6–76.5.

## **IV. Summary and Disposition of Comments**

### *Public Comments*

On October 15, 2003, we asked for public comments on the amendment (68 FR 59352), and received comments from one industry group and one citizens group.

**Industry Group.** We received comments from the Indiana Coal Council, Inc. (ICC) on October 31, 2003 (Administrative Record No. IND–1723). ICC commented that the proposed amendment is not inconsistent with any provision of SMCRA or of OSM's permanent program regulations, and should be approved. ICC also commented that the proposed amendment would not repeal or revise the requirement of Indiana's counterpart to 30 CFR 816.41(a) that surface mining and reclamation activities be conducted to prevent material damage to the hydrologic balance outside the permit area. ICC provided support for these comments.

We agree with ICC's comments. As shown above in section III, OSM's Findings, we found that the provisions of Indiana's proposed amendment are not inconsistent with SMCRA or the Federal regulations concerning protection of the hydrologic balance.

**Citizens Group.** We received comments from the Hoosier Environmental Council (HEC) on November 14, 2003 (Administrative Record No. IND–1724).

### *HEC Comment 1*

The rules make no mention of wells used for purposes other than human consumption. The Indiana Ground Water Quality Standards state 'No person shall cause the ground water in a non-drinking water supply well, including an industrial, commercial, or agricultural supply well, to have a contaminant concentration that, based on best scientific information, renders the well unusable for its current use.' 327 IAC 2–11–2 Sec. 2(f) Despite this requirement, a definition is only provided for drinking water wells, and no mention is made in the rules about protection of non-drinking water supply wells.

A definition for non-drinking water supply wells should be included in these rules. Language should be inserted requiring the protection of the use of these wells. While not used for human consumption, these wells are an important resource to their owners including farmers who often rely on ground water for irrigation and livestock. Farmers would be especially hard hit by the cost of replacing these wells with municipal water or other water supplies.

**Response to Comment 1.** We disagree with the commenter. Indiana's proposed rules do require protection for nondrinking water supply wells.