



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

COMMENT AND RESPONSE DOCUMENT

Water Supply Replacement for Surface Coal Mining Rule

**25 Pa. Code Chapters 87, 88, 89 and 90
49 Pa.B. 6524 (November 2, 2019)
Environmental Quality Board Rulemaking #7-545
Independent Regulatory Review Commission #3245**

COMMENTERS ON THE PROPOSED RULEMAKING

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COMMENTS AND RESPONSES

Sections 87.47 & 88.27 (and all sections)

1. **Comment:** Under these sections, the Department of Environmental Protection (Department) is required to “notify the **owner** of any potentially affected supply.” [Emphasis added.] In the Preamble, the Board states that “the Department will give **advance notice** to water supply owners and **water supply users.**” [Emphasis added.] A public commentator states that limiting “notice to owners... would severely undercut the stated goal of this amendment” and that advance notice “will help enable residents to know their rights and protect their water.” Why is a timeframe not specified in the regulation for notice, and why are water supply users omitted? We ask the Board to amend the notification requirements to clarify implementation procedures and to ensure protection of the public health, safety and welfare. We also ask the Board to explain in the Preamble to the final-form regulation the implementation procedures for notification and how the procedures adequately protect the public health, safety and welfare. Finally, the Department should review the entire final regulation ensure that water supply users are included in all relevant provisions. (1)

§§ 87.47 and 88.27 must be amended to require notification to both the owner *and user* of any potentially affected water supply. There are myriad ways in which notice may be delayed from reaching a water supply owner. To limit such notice to owners and not users would severely undercut the stated goal of this amendment. Not only must the language be amended to provide notice to water supply users as well as owners, but it should also be expanded to ensure that such notice is issued before the permit is issued. Much in the same way that sharing results of water surveys with users before permit issuance will help enable residents to know their rights and protect their water, as will alerting potentially affected users before issuance. If water supply users and owners are not notified of potential impacts until after permit issuance, it is much less likely they will utilize their right to water replacement supplies. Resident may even be entitled to water replacement supplies prior to when construction begins under section § 87.119a (Water Supply Replacement Obligations). Yet, if they did not receive notice until after the permit is issued, it may be too late for them to understand such a threat and employ their right to the available protections. (2)

Response: Regarding the timeframe for providing notice, the District Mining Office (DMO) will provide written notice (certified mail) to the owners of these water supplies when a mining permit application or the DMO identifies proposed activities that may result in the loss, diminution or interruption of a water supply in the permit area or adjacent area. The letter from the DMO must address how the owner's water supply would be replaced if affected by the mining operation. The DMO will send the notice as soon as the operator is able to identify and propose an adequate replacement supply. The Preamble has been updated to clarify that resolution of the permit applicant's water supply survey obligations, including contact with the water supply owner, must occur prior to permit issuance. Additionally, the Preamble explains that the process and associated timeline for this is currently outlined in the existing technical guidance document, *Water Supply Replacement and Permitting* (DEP ID #563-2112-605).

Related to the feedback concerning "water supply owners" and "water supply users", the final-form rulemaking distinguishes between water supply owners and water supply users based on the relative rights of each party consistent with the Federal Surface Mining Control and Reclamation Act of 1977 (Federal SMCRA) and the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA). Water supply owners require notification that the water supplies may potentially be affected, because the water supply owner is the party who has the right to consent to a permit applicant's request to enter the property to perform the water supply survey, as well as the right to consent to the proposed replacement supply and associated long-term operation and maintenance costs.

By contrast, water supply users, to the extent that party is different than the water supply owner, are considered when determining the uses of the supply, and therefore to determining whether the proposed replacement is adequate in quantity and quality to serve the purposes of the existing supply (i.e., the water supply user's needs). This final-form rulemaking also includes consideration of water supply users with regard to the following: (i) the water supply survey cannot pose an excessive inconvenience to the water supply user; (ii) the water supply user shall receive a copy of the results of all qualitative analyses and quantity measurements gathered as part of a water supply survey; (iii) a water supply user who is in the statutory zone of presumption will receive a temporary replacement supply within 24 hours of notifying the Department that their supply has been affected; (iv) a water supply user who incurs costs restoring or replacing their supply prior to a determination that mining was the cause will be reimbursed by the operator; (v) a water supply user's refusal to allow an operator on site to determine the cause of an affected supply may be used by the operator to rebut the statutory presumption of liability; and (vi) water supply users are referenced as a party who, through these regulations, are not prevented from pursuing other remedies available under law.

In several circumstances, the water supply user may be unknown or unknowable (such as the case with short-term rentals), which would complicate the Department's ability to comply with a regulation requiring notice to water supply users in the manner the commenters are suggesting. In all circumstances, the water supply owner will be in the

best position to notify water supply users. The Preamble has been revised to remove “water supply user” in the context referenced in the comments to be consistent with the Annex A for the reasons provided above.

Sections 87.119(a) and 88.107(a)

2. **Comment:** Under Subsection (a) (relating to water supply surveys), Paragraph (1) states that the survey must include certain information to the extent that it can be collected without “excessive inconvenience to the water supply owner or water supply user.” In the Preamble, the Board explains that “[t]hese exceptions address situations such as when an operator or mine owner would have to excavate or remove a structure to gain access to a well or spring, or, for supplies with existing treatment, when there is no reasonable option to collect untreated water without risking contamination of the supply (that is, no port in the piping to obtain the water).” Further, the Board states that the Department will make its determination that a scenario constitutes an excessive inconvenience or that collection is infeasible on a case-by-case basis. Since the term “excessive inconvenience” is not regulatory language and does not set a binding norm that could be predicted by the regulated community, we ask the Board to clarify this term in the final-form regulation. (1)

Response: “Excessive inconvenience” is included to maintain consistency with an analogous provision in Chapter 89 (§ 89.145a(a)(1) references “excessive inconvenience” without elaboration). This term is described in the Preamble using examples, because it is difficult to define precisely and is rather a determination to be made on a site-specific basis. The Mining and Reclamation Advisory Board (MRAB) also engaged in discussion regarding this term and were satisfied with the use of examples to provide additional clarification for this term. The MRAB agreed that there is a judgment that must be made by the Department at the time as to whether the sampling would be too inconvenient to complete. This is a rare occurrence; therefore, it is not suitable for inclusion in the regulations but should be resolved through professional judgment and discussion with the water supply owner on a case-by-case basis.

3. **Comment:** We strongly encourage the addition of subsection (a)(2), which says that - prior to issuance of a permit - mine owners/operators must submit the results of water supply surveys to: the Department, the water supply owner, and water supply user. This will be an incredibly valuable tool in protecting the rights of coalfield communities. For the many reasons set forth below, it is often the case that water supply users are never notified of potential threats, despite the fact that they are often the best situated to respond to such impacts. Providing them with information about their water supply is the best way to help ensure the protection of their rights. (2)

Subsection (a)(4)(iii) potentially undercuts much of the utility of this rule and, in fact, much of the requirement to conduct water surveys, generally. This section seems to say that water supply owners (not users) will receive a notice of intent to survey and if they do not authorize the survey within 10 days, the operator is no longer obligated. The

newly proposed language §§ 87.119a (a)(4) and § 88.107a (a)(4) [...] implies that if a water supply owner fails to, not only respond, but authorize access within 10 days of receiving notice, then the mine owner/operator is no longer required to conduct a water supply survey. If this is the case, such a severe time restraint could functionally render the requirement of a water supply survey almost entirely moot. Experience shows us that very often, water supply inventories are rife with outdated and inaccurate information about the water supply owners. Many times, notification never even comes to the hands of the correct water supply owner. In these cases, such a severe time constraint would have the unjust effect of essentially releasing the mine operator/owner from the duty to conduct water surveys for anyone whose information is incorrectly listed.

Particularly in the tourist-heavy area of the Laurel Highlands, which covers many coal producing counties in Pennsylvania, “water supply owner” is often synonymous with “vacation home owner.” Such seasonal residents may not be in the area, or even the country, for more than a few months a year. Hence, a large percentage of our region’s water supply owners would be functionally excluded from their right to a water supply survey. Furthermore, in many instances water supply owners rent their property to others who occupy it a majority of the time. Individual owners – if they do ultimately receive the notice - need to coordinate with their lessees and tenants before they may authorize such access, a process which could take several months. In fact, sometimes property owners are prohibited, by lease terms or landlord-tenant laws, from entering a leased property without a minimum of 30 days advance notice. Hence, it would be functionally impossible for water supply owners to authorize access within the 10 days stated in the rule. If it is not the case that the Board intends to create such a stringent requirement, then the language should be revised and clarified so that no such potential loophole exists. (2)

Response: The Department acknowledges the comment regarding the addition of subsection (a)(2).

Related to the time period for which the water supply owner must respond to the mining applicant’s request for a survey, this provision was originally included in the proposed rulemaking to maintain consistency with its analogous provision under Chapter 89. This provision – that provides that a mine operator may rebut the presumption of liability if the surface owner does not authorize access within ten days of receipt of notice – is unique to Section 5.2(c) of the Bituminous Mine Subsidence and Land Conservation Act (52 P.S. § 1406.5b(c)), regulating underground coal mining. The related provision in the surface mining law (PA SMCRA) does not include a time within which a landowner must respond. Therefore, as the commenter has suggested, the Department has removed “within 10 days of receipt” from the final-form regulations under Chapters 87 and 88 and replaced it with “prior to commencing mining activity.” This provides potentially several months for the owner and mine operator to communicate regarding the survey.

- Comment:** Paragraph (l)(vi) requires the survey to include “[s]ufficient sampling and other measurements to document the seasonal variation in hydrologic conditions of the water supply.” Is an operator or mine owner required to survey water during all four seasons before an application can be submitted? We ask the Board to explain in the

Preamble to the final-form regulation the timetable for compliance with this requirement.
(1)

Response: As part of the overall hydrologic assessment (§§ 87.69 and 88.49) that requires the operator to determine probable hydrologic consequences within the proposed permit and adjacent areas, the operator considers seasonal variations that correspond to times of high or low water tables (early spring vs. late summer, respectively). During the application process, the permit reviewer assesses differences in types of water supplies and seasonal variations for the background samples. For a monitoring point, six months of samples are required with at least one sample during a low-flow period of August, September, or October. For points not included in the monitoring plan – that is, water supplies that are not anticipated to be affected – the survey would include information on its seasonal variability.

5. **Comment:** Regarding Subsection (b) (relating to water supply replacement obligations), the Preamble explains that Sections 87.119a and 88.107a replace Sections 87.119 and 88.107, respectively, which apply to mine operators and persons engaged in government-financed reclamation. However, government-financed reclamation is not addressed in Subsection (b) and the Board does not explain in the Preamble why these persons are no longer obligated to meet the water supply replacement requirements. We ask the Board to amend the final-form regulation or to explain in the Preamble why it is reasonable for a person engaged in government-financed reclamation not to be required to meet the obligations in this subsection. (1)

§§ 88.107 and 87.119 must not remove obligation for operators/owners to replace water supplies caused by government-financed construction contracts. In regard to water replacement, the draft language unacceptably removes the obligation for persons engaged in government-financed construction contracts (GFCC's) to replace damaged water supplies. This is deeply problematic because GFCC's often utilize the exact same processes and procedures as surface mining. (2)

Response: This final-form rulemaking does not remove the obligation for persons engaged in government-financed reclamation (GFR) or government-financed construction contracts (GFCCs) to restore or replace a water supply affected by those activities. The provisions in Chapters 87 and 88 pertain to activities that require a surface mining permit. GFCCs and GFR projects are not permits but reclamation contracts authorized under PA SMCRA. See 52 P.S. § 1396.4h (regarding government-financed reclamation projects authorizing incidental and necessary extraction of coal or authorizing removal of coal refuse). As such, they are not directly subject to regulation under Chapters 87 and 88.

GFCCs and GFR projects are regulated primarily under 52 P.S. § 1396.4h and Pennsylvania's regulations in 25 Pa. Code § 86.6 (relating to extraction of coal incidental to government-financed construction or government-financed reclamation projects), which do not require permits for coal extraction related to GFCCs or GFR projects. Specifically, GFR projects and GFCCs are exempt from the surface mining permit

requirements of Chapter 87 and 88 if they meet the criteria listed in 25 Pa. Code § 86.6(a).

However, in addition to being subject to provisions of PA SMCRA and other environmental laws, Section 4.8(c)(4)(i) of PA SMCRA directs that GFCCs adhere to “the applicable environmental protection performance standards promulgated in the rules and regulations relating to surface coal mining listed in the [GFCC].” See 52 P.S. § 1396.4h(c)(4)(i); see also 25 Pa. Code § 86.6(a)(6) and (d). Operations performing work pursuant to GFCCs and GFR projects must still restore or replace water supplies affected by those operations under Section 4.2(f)(1) and 4.8(g) of PA SMCRA (52 P.S. §§ 1396.4b(f)(1) and 1396.4h(g)).

Persons engaged in GFR projects or GFCCs that do not meet the exemption criteria in § 86.6(a) would require a surface mining permit for their activities. Under those circumstances, GFR and GFCC projects would be obligated to meet the water supply replacement requirements in §§ 87.119a and 88.107a.

To avoid unnecessary repetition in the regulatory text and confusion resulting from an inconsistent reference to GFCCs in other provisions that still otherwise apply to these activities, "a person engaged in government-financed reclamation" was omitted from the regulatory text in §§ 87.119(a) and 88.107(a) even though the obligation for operations performing work pursuant to GFCCs to restore or replace affected water supplies still exists.

6. **Comment:** General observations on the use or potential misuse of GFCCs. (2)

Response: GFCCs are outside of the scope of this rulemaking.

7. **Comment:** Under Subsection (b), Paragraph (1) states that the operator or mine owner “who affects a water supply to any demonstrable extent . . . shall **promptly** restore or replace the affected water supply with a permanent alternate supply” [Emphasis added.] The term “promptly” is not regulatory language and does not set a binding norm that could be predicted by the regulated community. We ask the Board to clarify this implementation timeframe in the final-form regulation. (1)

Response: The phrase “promptly replace” is included to maintain consistency with an analogous provision under Chapter 89 (§ 89.145a(b)) and has been effectively understood and implemented in the regulation of underground mining to mean without undue or unjustified delay. The word “promptly” is used frequently in the Federal SMCRA. “Promptly” provides some flexibility by allowing the supply to be replaced as soon as practical considering site-specific conditions.” See 35 Pa.B. 5775; 25 Pa. Code § 89.145a(b); see also Section 720(a)(2) of Federal SMCRA (30 U.S.C.A. § 1309a(a)(2)) (“*Promptly* replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting

from underground coal mining operations.”).

8. **Comment:** Under Subsection (b), Paragraph (2) states that “for any water supply that will ... be affected by . . . the proposed mining, the operator or mine owner shall provide a replacement supply **prior to commencing the activity.**” [Emphasis added.] How does this provision work with Subsection (c) (relating to temporary water supplies) that requires the operator or mine owner to provide a temporary water supply within 24 hours if the affected water supply owner or user is without a readily available alternate source of water? We ask the Board to explain in the Preamble to the final-form regulation how an owner or mine operator will be required to implement these regulations. (1)

Response: These provisions operate together across the timeline of mining activity, where subsection (b) relates to permanent replacement supplies while subsection (c) relates to the temporary supply provided until a permanent supply can be established. In order of events, the regulations apply as follows:

1. If the operator or the Department anticipate that a mining activity will impact a water supply, the operator must provide a replacement supply prior to commencing its activities. (subsection (b)(2)). This is determined during permit review.
2. If no impact is anticipated but a water supply within the area of presumption is affected after commencement of the mining activity, the operator shall provide a temporary water supply within 24 hours of being contacted (subsection (c)).
3. Then, if the water supply is within the area of presumption and no defense is available or if causation can otherwise be established, the operator must “promptly” provide a permanent replacement (subsection (b)(1)).

The Department has successfully been implementing the 24-hour time frame for providing temporary water supplies for supplies impacted by underground mines (see 25 Pa. Code § 89.145a(e)(1)) and intends to continue this implementation for surface mining impacted supplies.

9. **Comment:** Subsection (c) relates to **temporary** water supplies. The term “temporary” is not regulatory language and does not set a binding norm that could be predicted by the regulated community. We ask the Board to clarify this timeframe in the final-form regulation. (1)

Response: “Temporary” is used in the federal regulations in relation to the requirement for a temporary supply that is equivalent to premining quality and quantity under the federal regulations (30 CFR 701.5) (“Replacement of water supply means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis . . .”). A temporary supply is warranted if the persons served by the supply will be without water for more than 24 hours. Therefore, a temporary supply is needed when the prompt

resolution of a problem or installation of a new permanent supply will take more than a day. The duration of the temporary supply will depend on the successful installation and implementation of a new supply that meets the quality and quantity requirements, which will vary depending on the type of permanent replacement supply or whether the affected supply can otherwise be restored. Please also see the response to Comment #7.

- 10. Comment:** In Subsection (c), the requirement for a temporary water supply may be subject to a preliminary determination by the Department. The Board states in the Preamble that “the Department may determine in a preliminary review that the water supply loss is not related to the mining activity in which case the operator or mine owner will not be required to install a temporary supply. This determination may not be possible, however, within a 24-hour [timeframe], but the District Mining Office personnel who investigate water loss claims stated that they can regularly make this preliminary determination within 48 hours of notification of an impacted supply.” Why is the timeframe for implementation in Subsection (c) 24 hours if the Department needs 48 hours to make a determination? If the provision remains unchanged at final, what is the recourse for an operator or mine owner who has complied by providing a temporary water supply within 24 hours if the Department then determines that the water supply loss is not related to mining activity? Who will reimburse the operator or mine owner? We ask the Board to explain the reasonableness and fiscal impacts of these implementation timeframes in the final-form regulation. (1)

Response: To clarify, water supply issues are typically addressed within the 24-hour time frame. The language in the Preamble of the proposed rulemaking attempted to address the rare instances that the Department may be unable to respond to a water loss call within 24 hours due to holidays or other conditions. This language has since been removed to avoid further confusion. While the Department is unable to ensure that it can make a determination as to the cause of the impact of the supply within any particular timeframe, the final-form rulemaking has been written to accommodate the scenario where the Department is able to quickly determine that the cause was not related to mining. For example, the mine operator or Department staff may suspect the cause of the affected supply is instead a mechanical or plumbing issue unrelated to mining. In that instance, a plumber or well driller may be required to check the distribution system.

If the Department later determines mining did not impact the water supply yet an operator had to provide a temporary water supply, the operator or mine owner will not be reimbursed. This was the cost of operating near water supplies determined by the General Assembly when it created the statutory presumption. PA SMCRA initially included a provision for operators to seek reimbursement for these costs, but this provision was later repealed in 2000. The statutory presumption makes the reasonableness and fiscal impact difficult to discern, as the scenarios described by IRRC take place after an impact but before the cause of the impact is known. Any fiscal impact to a mine operator or mine owner directly corresponds to a fiscal impact to the water supply owner or water supply user within the zone of presumption, which the General Assembly already weighed in creating the presumption.

11. Comment: Subsection (j) (relating to presumption of liability) is described in the Preamble as “specify[ing] that the presumptive area includes support areas...” However, this subsection does not explicitly include “support areas.” We ask the Board to add “support areas” or explain in the Preamble to the final-form regulation how support areas are addressed in this subsection. (1)

Response: Sections 87.119a(j) and 88.107a(j) (relating to presumption of liability) state that the area subject to the presumption extends 1,000 feet from “areas affected” by the mining activities. “Affected area,” which is a broadly defined term in 87.1 and 88.1, is comprised of a mining area, where the coal is mined, and “support areas,” which the Department and the regulated community understand as describing areas needed to facilitate, but otherwise incidental to, the extraction of coal.

12. Comment: Both RAF Question #9 and the Preamble state: “Section 4.2 (f)(4) of PA SMCRA [the Pennsylvania Surface Mining Conservation and Reclamation Act], 52 P.S. § 1396.4b, was not approved [by the United States Department of the Interior’s Office of Surface Mining Reclamation and Enforcement (OSM)] because it allowed for final bond release when there is an outstanding water supply replacement order. See 30 CFR 938.12(c)(1). Sections 87.119(i) and 88.107(i) were not approved for the same reason. See 30 CFR 938.12(c)(7).” The Preamble also states that “[s]tate laws must be consistent with the provisions of Federal SMCRA, see 30 U.S.C.A. § 1255(a)...” Has Section 4.2(f)(4) of the Pennsylvania SMCRA been amended to conform to Federal law? If not, how is the Department addressing OSM’s disapproval of this statutory provision? (1)

Response: Section 87.119(i) was replaced by § 87.119a(m), which removed the language objected to by OSM.

Section 4.2(f)(4) of PA SMCRA has not been amended to conform to Federal law, but this should have no effect on OSM’s approval of the PA coal mining regulatory program. Section 4.2(f)(4) and the corresponding regulations at sections 87.119(i) and 88.107(i) were a limitation on an otherwise valid Department enforcement mechanism (withholding final bond release), codified under section 4(g) of PA SMCRA, 52 P.S. § 1396.4(g), and in the regulations at sections 86.172 and 86.174.

Federal regulations require that “[s]tates with an approved State program shall implement, administer, enforce and maintain it in accordance with the [Surface Mining Control and Reclamation Act of 1977], this chapter and the provisions of the approved State program.” 30 CFR 733.11. Moreover, Section 18.10 of PA SMCRA directs that “it shall be the intent of the General Assembly, and this act shall not be construed to violate any of the requirements of ... the Surface Mining Control and Reclamation Act of 1977... “ 52 P.S. § 1396.18j.

Therefore, OSM’s disapproval of the limitation set forth in section 4.2(f)(4) of PA SMCRA rendered the Department unable to implement it. This effectively lifts the restriction on the Department’s authority under Section 4(g) to enforce compliance with the standards set forth in PA SMCRA and other relevant laws (which includes

compliance with a water supply replacement order) by withholding final bond release. See 52 P.S. § 1396.4(g) and 25 Pa. Code §§ 86.172 and 86.174.

- 13. Comment:** This proposed regulation adds a requirement for an operator or mine owner to provide a temporary water supply to a water supply owner or user in certain circumstances. The Board provides in response to RAF Questions #15 and #17 that district mine offices receive complaints and claims for water supply replacement each year. Further, the Board states in response to RAF Questions #19 and #24 that providing a temporary water supply would cost \$1,000 - \$2,000 per occurrence. However, the Board does not provide an estimate of costs for the regulated community to implement this regulation in response to RAF Question #23. Since the Board states that there are costs for temporary water supplies and claims for these supplies, we ask the Board to amend its response to Question #23 or to explain why it is appropriate to respond \$0 to this question. (1)

Response: The cost of “\$0” for the regulated community to implement this regulation listed in response to Question #23 of the Regulatory Analysis Form is appropriate. To the extent that an operator or mine owner would incur a cost, they would already incur those costs regardless of whether this requirement was included in Chapters 87 and 88, because it is how the Department currently interprets and enforces Section 4.2(f) of PA SMCRA. The Department currently requires the provision of temporary water supplies under the same circumstances described in the rulemaking by relying on the Department’s enforcement authority to issue orders to operators under the appropriate circumstances.

Additionally, the expense of providing a replacement supply is not one that applies to all operations – only those that impact a water supply. The mine owners and operators have an obligation to avoid these impacts in the first place, or, at a minimum, anticipate any impacts and work out a replacement supply with the landowner ahead of initiating its operations. The provisions relating to temporary supplies address the consequences of failing to fulfill the initial obligations to not adversely affect water supplies. In that sense, the regulation is not “implemented” by the operators and mine owners – operators and mine owners should not find themselves in the situation of having to provide temporary water in the first place.

- 14. Comment:** As published in the *Pennsylvania Bulletin*, Section 87.119a(d)(1) contains a typographical error in the cross-reference to Section 4.29(f) of the Pennsylvania SMCRA. This cross-reference should be corrected to Section 4.2(f). (1)

Response: The number “4.29” was a printing error and should have been 4.2(f). The error was corrected shortly after publication and no longer appears in the posted documents.

- 15. Comment:** If the Department is required to submit this proposed regulation to OSM for its review and approval, we ask the Board to provide this information in the Preamble to the final-form regulation. (1)

Response: The proposed rulemaking has been informally provided to OSM for their review. OSM has provided some preliminary feedback, which was positive and did not identify any issues. Once approved, the final-form rulemaking will be submitted as a program amendment to OSM.

16. Comment: Paragraph 6 of the draft Model SMCRA Water Supply Settlement Agreement and Release Form limits the “release of the SMCRA water supply restoration/replacement rights given by the Water Supply Owners in this Agreement [to] a term of no more than thirty-five (35) years.” What is the reason for this time limit? (1)

Response: The 35-year limit was a guideline that is no longer applicable and will be removed prior to publication of this form for use. There will not be a stated term limit for the agreement.