

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD [25 PA. CODE CH. 89]

#### Mine Subsidence Control, Subsidence Damage Repair and Water Supply Replacement

##### Preamble

The Environmental Quality Board (Board) by this order amends Chapter 89 (relating to the underground mining of coal and coal preparation facilities). The amendments pertain to the control and repair of mine subsidence damage and the replacement of water supplies affected by underground bituminous coal mining.

This order was adopted by the Board at its meeting of March 17, 1998.

##### A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

##### B. Contact Persons

For further information contact Roderick A. Fletcher, Director, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103, or Joseph Pizarchik, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 2063, Rachel Carson State Office Building, Harrisburg, PA 17105-2063, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 voice (users). This rulemaking is available electronically through the Department of Environmental Protection's (Department) Web site (<http://www.dep.state.pa.us>).

##### C. Statutory Authority

The amendments are adopted under the authority of The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) (52 P. S. §§ 1406.1—1406.21); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

##### D. Background and Summary

This rulemaking is intended to bring the Commonwealth's regulations on mine subsidence control, subsidence damage repair and water supply replacement into conformance with the act of June 22, 1994 (P. L. 357, No. 54) (Act 54) amendments to the BMSLCA. In addition to inserting the new provisions implemented by Act 54, this rulemaking also incorporates several changes aimed at clarifying and facilitating the implementation of the new statutory provisions.

This rulemaking also includes changes which are intended to bring the Commonwealth's underground coal mining regulatory program into closer conformance with its Federal counterpart. While the Commonwealth's program is generally broader in terms of the scope of structures covered by subsidence damage repair requirements and the scope of water supplies covered by replacement requirements, there are some areas where the Commonwealth's regulations are not as inclusive as the Federal regulations or incorporate different approaches for resolving damage claims. Regulations are included to

resolve these differences to the extent practical and permissible under the BMSLCA.

This rulemaking also includes changes that are intended to eliminate the confusion over utility protection requirements, which has arisen as a result of an Environmental Hearing Board (EHB) decision in *P.U.S.H. et al. v. DEP, et al.* EHB Docket No. 95-232-R (Consolidated) (Opinion and Order on Motions for Summary Judgment issued November 27, 1996) pp. 5-13. Since the decision, there has been controversy between mine operators and utility owners regarding the measures which must be taken to protect utilities and who bears the burden of taking protective measures. The revised regulations include provisions which are intended to restore the conventional arrangements made between mine operators and utility owners prior to the EHB's *P.U.S.H.* decision.

Finally, the rulemaking also includes changes made for purposes of clarifying the existing regulations. These changes were made in accordance with Executive Order 1996-1.

The following is a description of the final-form regulations by section.

##### § 89.5. Definitions.

A definition of the term "de minimis cost increase" was added for clarity. The term identifies a threshold below which an operator is not responsible for compensating a landowner or water user for the increased cost of operating a replacement water supply. The definition is consistent with that employed in the Department's surface mining regulatory program which is derived from Commonwealth case law.

A definition of the term "dwelling" was added for clarity.

A definition of the term "fair market value" was added for clarification. The term is used to determine the amount of compensation an operator must provide to a landowner whose water supply cannot be replaced. The definition is taken from *Blacks Law Dictionary*.

A definition of the term "irreparable damage" was added for clarity. The term is used to describe a level of damage which must be prevented to dwellings and certain agricultural buildings unless the structure owner consents. The definition is modified from that presented in the proposed rulemaking. The final definition includes criteria relating to structural stability, special architectural characteristics and practicality of repairs.

A definition of the term "material damage" was added for clarity and to conform with the Federal definition in 30 CFR 701.5 (relating to definitions).

A definition of "noncommercial building" was added for clarity and to demonstrate conformance with the Federal definition in 30 CFR 701.5. The term includes "community or institutional buildings" defined in § 86.101 (relating to definitions).

A definition of the term "permanently affixed appurtenant structures" was added for clarity. The term is used to describe structures associated with dwellings and buildings accessible to the public which must be repaired. The term is defined to conform to the Federal term "structures related thereto" which is used to describe structures that are covered in association with occupied residential dwellings.

## Appendix B (continued)

### Regulations for Mine Subsidence Control, Subsidence Damage Repair and Water Supply Replacement

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A definition of the term "public buildings and facilities" was added for clarity. The definition is based on the Federal definition of "public building" in 30 CFR 761.5 (relating to definitions) and the dictionary definition of "facility." The definition is used to clarify which buildings and facilities cannot be undermined if subsidence will cause material damage or reduce the reasonably foreseeable use of the building or facilities.

A definition of the term "public water supply system" was added for clarity. The term is used to designate those aquifers and water bodies that are protected against material damage or reduction in reasonably foreseeable use. If a well or spring supplies a water supply system which falls within the scope of the definition, the source aquifer which recharges that well or spring is eligible for special protection. Similarly, streams and other water bodies supplying these systems are afforded special protection. The definition is based partially on the definition of community water supply system as used in the safe drinking water program. It also includes systems serving public buildings, churches, schools, hospitals and nursing homes.

The term "rebuttable presumption area" was defined to facilitate descriptions of the term when it is used in information requirements and performance standards. The term refers to an area within the proximity of a mine where an operator is presumed responsible for impacting water supplies. The term is defined to encompass an area above the mine, which is determined by projecting a line along a 35° angle from the outside of a coal removal area to the land surface.

Definitions were provided for the terms "underground mining" and "underground mining operations." These terms are used to describe subcategories of activities within the broader term "underground mining activities." Underground mining operations includes all operations which take place in an underground mine, while underground mining refers to the actual extraction of coal. These terms are used to tailor regulatory requirements to the appropriate activity.

A definition of the term "water supply" was added for clarity and convenience. The definition is taken from the language in section 5.1 of the BMSLCA (52 P.S. § 1406.5a) and relates to the types of water supplies which must be replaced when affected by underground mining activities.

#### § 89.33. *Geology.*

Section 89.33 was revised to add coal seam thickness as an information requirement in permit applications. This addition is intended to achieve consistency with the Federal regulation in 30 CFR 784.20(b)(3) (relating to subsidence control plans).

#### § 89.34. *Hydrology.*

Section 89.34 was revised to add the ownership of wells and springs to the list of information which must be provided in the groundwater inventory. This change is intended to achieve consistency with the Federal counterpart regulation in 30 CFR 784.14(b) (relating to hydrologic information).

Section 89.34 was also revised to replace the term "potentially impacted offsite area" with the term "adjacent area." The term "adjacent area" has a specific meaning while the former term does not.

#### § 89.35. *Prediction of the hydrologic consequences.*

Section 89.35 was revised to require permit applicants to predict whether underground mining activities may

result in contamination, diminution or interruption of water supplies. This language is intended to conform to the Federal requirement in 30 CFR 784.14(e).

#### § 89.36. *Protection of the hydrologic balance.*

A new subsection was added to require an operator to describe the measures which the operator will use to replace water supplies impacted by the mining operation. This requirement reflects those contained in section 5.2(j) of the BMSLCA (52 P.S. § 1406.5b(j)) and 30 CFR 784.20(b)(8).

#### § 89.67. *Support facilities.*

Section 89.67 was revised to clarify that this section applies to surface sites associated with underground mining activities. Surface sites include shaft sites, slope sites, drift entry sites, borehole sites, coal loading sites, coal preparation sites and other sites where surface operations associated with underground mining activity take place.

#### § 89.141. *Subsidence Control: application requirements.*

Subsection (a) was revised to require a description of geologic conditions which affect the likelihood or extent of subsidence or subsidence related damage. This revision is intended to conform to the Federal requirement in 30 CFR 784.20(b)(3). Additional language was also inserted to clarify the relationship between the geologic information requirements of § 89.33 and this subsection.

The introductory paragraph in subsection (d) was revised to clarify the area which must be covered by the subsidence control plan. Subsidence control plans must now include all areas where structures, facilities and features may be materially damaged by mine subsidence. At a minimum, the plan must cover the area within a 30° angle of draw of proposed mining to ensure inclusion of all structures that are covered by the Federal rebuttable presumption on subsidence damage.

Subsection (d)(2) is a new information requirement. It requires a description of the potential impacts of subsidence on overlying structures, surface lands and water supplies. This requirement was included to conform to the Federal requirement in 30 CFR 784.20(a)(2).

Subsection (d)(3) requires descriptions of the measures to be taken to prevent material damage to or reduction in the reasonably foreseeable uses of certain structures and features listed in § 89.142a(c). These structures and features include: public buildings and facilities; churches, schools and hospitals; and impoundments and water bodies with storage capacities greater than 20 acre-feet (2.47 hectare-meters). This paragraph was revised from that which appeared in the proposed rulemaking to better clarify a mine operator's options for mining beneath and adjacent to these structures and features.

Subsection (d)(4) requires a description of anticipated effects due to mine subsidence. This paragraph was added to conform to the Federal requirements in 30 CFR 784-20(f).

Subsection (d)(5) requires a general description of the measures a mine operator will take to correct material damage to surface lands if damage occurs as a result of underground mining. Subsection (d)(6) requires a general description of the measures a mine operator will take to prevent irreparable damage to structures enumerated in § 89.142a(f)(1)(iii)-(v). Subsection (d)(7) requires a description of any monitoring the mine operator will conduct in conjunction with his subsidence control plan.

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Subsection (d)(8) requires a description of the measures that will be taken to maximize mine stability in accordance with § 89.142a(a). Subsection (d)(9) and (10) require descriptions of the measures that will be taken to protect perennial streams and, in particular, those perennial streams and aquifers which serve as significant sources to public water supply systems.

Subsection (d)(11) is a new information requirement which is intended to elicit additional information on utilities and the measures that will be used for their protection. New subsection (d)(11) requires information concerning the construction, use and approximate age of pipelines, which will enable the Department to better assess the potential of damage which would result in an imminent hazard to human safety.

Subsection (d)(12) and (13) require information relating to subsidence control measures that must be taken to comply with statutes other than the BMSLCA, and authorizes the Department to require any additional information as needed to properly evaluate subsidence control plans.

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

Subsection (a) sets forth general subsidence control requirements including the requirement to mine in accordance with an approved subsidence control plan, the requirement to maximize mine stability and the restriction on mining beneath structures in areas where the cover thickness is less than 100 feet (30.48 meters). Paragraph (3) is revised to clarify the requirements for mining beneath structures in areas where cover thickness is less than 100 feet (30.48 meters).

Subsection (b) is a new requirement pertaining to premining structure surveys. Mine operators are now required to conduct premining surveys of dwellings, buildings that are accessible to the public, noncommercial buildings customarily used by the public, barns, silos and certain agricultural structures. The surveys must be conducted prior to the time the structure falls within a 30° angle of draw of underground mining. Surveys must describe the premining condition of the structure and, if the structure is historically or architecturally significant, the presence of any architectural characteristics that will require special craftsmanship to restore or replace. Requirements also call for survey results to be kept confidential.

Subsection (c) sets forth the special protections afforded to public buildings and facilities, churches, schools, hospitals, impoundments and water bodies of 20 acre-feet (2.47 hectare-meters) and larger, and aquifers and perennial streams which serve as significant sources to a public water supply system. Subsection (c) retains the existing requirements for mining beneath these structures and features. The default standard for mining beneath these structures and features is 50% coal support although the Department may require a greater percentage if the overburden thickness is sufficient to render 50% coal support inadequate or if the Department finds that 50% coal support is proving insufficient in a particular mine. Subsection (c) also clarifies alternatives to the coal support standard including surface measures which may be undertaken in conjunction with planned and controlled subsidence.

Subsection (d) prohibits a mine operator from mining in a manner which would cause irreparable damage to dwellings and permanently affixed appurtenant structures, barns, silos and certain permanently affixed structures of 500 or more square feet (46.45 or more square

meters) used for agricultural purposes. The prohibition is predicated upon the Department determining that irreparable damage would result from the proposed mining. The proposed mining can occur if the mine operator obtains the consent of the structure owner to allow the damage to occur. Alternatively, the proposed mining can proceed if the mine operator, prior to mining, implements measures approved by the Department to minimize or reduce the irreparable damage which would result from subsidence.

Subsection (e) is a revised version of an existing regulation concerning the repair of damage to surface lands. The former regulation was vague in that it required operators to maintain the value and reasonably foreseeable use of surface lands. The revised version specifies that an operator must correct material damage to surface lands. The revised language also parallels that of the Federal counterpart regulation 30 CFR 817.121(c)(1) (relating to subsidence control).

Subsection (f) is a new regulatory section which reflects the provisions of section 5.4 of the BMSLCA (52 P. S. § 1406.5d). It sets forth an operator's responsibility to repair or compensate for subsidence damage to buildings that are accessible to the public and their permanently affixed appurtenant structures; noncommercial buildings customarily used by the public; barns, silos and certain agricultural structures of 500 or more square feet (46.45 square meters) in area; and, dwellings, permanently affixed appurtenant structures and certain improvements. It should be noted that section 5.4(a)(3) of the BMSLCA and the corresponding clause in § 89.142a(f)(1)(iii) are now being interpreted to require the operator to repair all dwellings in place at the time of underground mining and all permanently affixed appurtenant structures in place at the time of underground mining. This interpretation is based on the rule of statutory construction known as "the rule of the last antecedent" which is also an accepted principle of English grammar. This rule provides that unless plainly meant otherwise a modifying clause operates only upon the phrase preceding it. This interpretation differs from the Department's previous interpretation in that the requirement to be in place on August 21, 1994, the date of first publication of the permit application, or date of first publication of a permit renewal application is no longer viewed as applicable to dwellings or permanently affixed appurtenant structures. Under the rule of the last antecedent, the requirement for being in place on one of the specified dates applies only to improvements. In addition, language has been added to the text of the amendment to clarify that the requirements also pertain to mining conducted on August 21, 1994, the effective date of Act 54.

Subsection (g) is a revised version of the current regulation regarding protection of utilities. Subsection (g) includes the basic requirement to minimize damage, destruction or disruption in services provided by utilities, which is derived from the Federal regulation in 30 CFR 817.180 (relating to utility installations). Paragraph (2) describes various measures a mine operator may take in complying with the performance standard, including a program for detecting subsidence damage and minimizing disruption in service; providing timely notice of proposed mining to the utility operator; providing support in accordance with the utility owner's support rights; providing temporary or alternate utility service to customers; and demonstrating that mine subsidence will not materially damage the utility. This represents a change from the proposed rulemaking in that it will allow notification to suffice for meeting the requirement to minimize damage, destruction or disruption in services provided by utilities.

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