

## Appendix B (continued)

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

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(i) Buildings that are accessible to the public including, but not limited to, commercial, industrial and recreational buildings and all permanently affixed appurtenant structures.

(ii) Noncommercial buildings customarily used by the public, including, but not limited to, schools, churches and hospitals.

(iii) Dwellings which are used for human habitation and permanently affixed appurtenant structures or improvements in place on August 21, 1994, or on the date of first publication of the application for a coal mining activity permit or a 5-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in the application.

(iv) Barns and silos.

(v) Permanently affixed structures of 500 or more square feet (46.45 square meters) in area that are used for raising livestock, poultry or agricultural products, for storage of animal waste or for the processing or retail marketing of agricultural products produced on the farm on which the structures are located.

(2) *Amount of compensation.*

(i) If, rather than repair the damage, the operator compensates the structure owner for damage caused by the operator's underground mining, the operator shall provide compensation equal to the reasonable cost of repairing the structure or, if the structure is determined to be irreparably damaged, the compensation shall be equal to the reasonable cost of its replacement except for an irreparably damaged agricultural structure identified in paragraph (1)(iv) or (v) which at the time of damage was being used for a different purpose than the purpose for which the structure was originally constructed. For such an irreparably damaged agricultural structure, the operator may provide for the reasonable cost to replace the damaged structure with a structure satisfying the functions and purposes served by the damaged structure before the damage occurred if the operator can affirmatively prove that the structure was being used for a different purpose than the purpose for which the structure was originally constructed.

(ii) The operator shall compensate the occupants with an additional payment for reasonable, actual expenses incurred during their temporary relocation, if the occupants of a damaged structure are required to relocate. The operator shall also compensate the occupants for other actual, reasonable incidental costs agreed to by the parties or approved by the Department.

(g) *Protection of utilities.*

(1) Underground mining shall be planned and conducted in a manner which minimizes damage, destruction or disruption in services provided by oil, gas and water wells; oil, gas and coal slurry pipelines; rail lines; electric and telephone lines; and water and sewerage lines which pass under, over, or through the permit area, unless otherwise approved by the owner of the facilities and the Department.

(2) The measures an operator may take to minimize damage, destruction or disruption in services protected by this subsection may include, but are not limited to, one or more of the following:

(i) A program for detecting subsidence damage and minimizing disruption in services.

(ii) A notification to the owner of the facility which specifies when underground mining beneath or adjacent to the utility will occur.

(iii) Providing support in accordance with the utility owner's support rights.

(iv) Providing temporary or alternate service to customers.

(v) Demonstrating to the Department that subsidence will not materially damage the utility.

(3) A mine operator shall take measures to minimize damage to customer-owned gas and water service connections, unless the customer does not consent to the measures.

(4) The Department will suspend or restrict underground mining if it determines that mining beneath or adjacent to a utility will present an imminent hazard to human safety.

(h) *Perennial streams.*

(1) Underground mining shall be planned and conducted in a manner which maintains the value and reasonably foreseeable uses of perennial streams, such as aquatic life; water supply; and recreation, as they existed prior to coal extraction beneath streams.

(2) If the Department finds that the underground mining has adversely affected a perennial stream, the operator shall mitigate the adverse effects to the extent technologically and economically feasible, and, if necessary, file revised plans or other data to demonstrate that future underground mining will meet the requirements of paragraph (1).

(i) *Prevention of hazards to human safety.*

(1) The Department will suspend underground mining beneath urbanized areas; cities; towns; and communities and adjacent to or beneath industrial or commercial buildings; lined solid and hazardous waste disposal areas; major impoundments of 20 acre-feet (2.47 hectare-meters) or more; or perennial streams, if the operations present an imminent danger to the public.

(2) If the Department determines and so notifies the operator that a mining technique or extraction ratio will result in subsidence which creates an imminent hazard to human safety, the operator may not use the technique or extraction ratio unless the operator, prior to mining, takes measures approved by the Department to eliminate the imminent hazard to human safety.

(j) *Prohibition.* Underground mining is prohibited under an area which is not included within a subsidence control plan that has been submitted under § 89.141(d) (relating to subsidence control: application requirements) and approved by the Department.

(k) *Report of claim.* Within 10 days of being advised of a claim of subsidence damage to a structure or surface feature, the operator shall provide the Department with a report of the claim which shall include the following information:

(1) The date of the claim.

(2) The name, address and telephone number of the owner of the structure, surface feature or surface land claimed to be damaged.

(3) The number assigned to the structure or feature under § 89.154(a) (relating to maps).

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(l) *Property rights.* This section does not authorize the Department to adjudicate property rights disputes between mine operators and other parties.

**§ 89.143. (Reserved).**

**§ 89.143a. Subsidence control: procedure for resolution of subsidence damage claims.**

(a) The owner of a structure enumerated in § 89.142a(f)(1) (relating to subsidence control: performance standards) who believes that underground mining caused mine subsidence resulting in damage to the structure and who wishes to secure repair of the structure or compensation for the damage shall provide the operator responsible for the underground mining with notification of the damage to the structure.

(b) If the operator agrees that mine subsidence damaged the structure, the operator shall fully repair the damage or compensate the owner for the damage in accordance with either § 89.142a(f) or a voluntary agreement between the parties authorized by section 5.6 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.5f).

(c) If, within 6 months of the date that the building owner sent the operator notification of subsidence damage to the structure, the parties are unable to agree as to the cause of the damage or the reasonable cost of repair or compensation for the structure, the owner of the structure may within 2 years of the date damage to the structure occurred, file a claim in writing with the Department. The Department will send a copy of the claim to the operator.

(d) Upon receipt of the claim, the Department will conduct an investigation in accordance with the following procedure:

(1) Within 30 days of receipt of the claim, the Department will conduct an investigation to determine whether underground mining caused the subsidence damage to the structure.

(2) Within 60 days of completion of the investigation, the Department will determine, and set forth in writing, whether the damage is attributable to subsidence caused by the operator's underground mining and, if so, the reasonable cost of repairing or replacing the damaged structure.

(3) If the Department finds that the operator's underground mining caused the damage to the structure, the Department will either issue a written order directing the operator to compensate the structure owner or issue an order directing the operator to repair the damaged structure within 6 months of the date of issuance of the order. The Department may allow more than 6 months if the Department finds that further damage may occur to the same structure as a result of additional subsidence.

**§ 89.144. (Reserved).**

**§ 89.144a. Subsidence control: relief from responsibility.**

(a) The operator will not be required to repair a structure or compensate a structure owner for damage to structures identified in § 89.142a(f)(1) (relating to subsidence control: performance standards) if the operator demonstrates to the Department's satisfaction one or more of the following apply:

(1) The landowner denied the operator access to the property upon which the structure is located to conduct a

premining survey or a postmining survey of the structure and surrounding property, and thereafter the operator served notice upon the landowner by certified mail or personal service. The operator shall demonstrate the following:

(i) The notice identified the rights established by sections 5.4—5.6 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.5d—1406.5f).

(ii) The landowner denied the operator access to the site to conduct the survey within 10 days after the landowner's receipt of the notice.

(2) The operator's underground mining did not cause the damage.

(3) The operator and the landowner entered into a voluntary agreement that satisfies the requirements of section 5.6 of The Bituminous Mine Subsidence and Land Conservation Act.

**§ 89.145. (Reserved).**

**§ 89.145a. Water supply replacement: performance standards.**

(a) *Water supply surveys.*

(1) The operator shall conduct a premining survey and may conduct a postmining survey of the quantity and quality of all water supplies within the permit and adjacent areas, except when the landowner denies the operator access to the site to conduct a survey and the operator has complied with the notice procedure in this section. Premining surveys shall be conducted prior to mining within 1,000 feet (304.80 meters) of a water supply unless otherwise authorized or required by the Department based on site specific conditions. Survey information shall include the following information to the extent that it can be collected without extraordinary efforts or the expenditure of excessive sums of money:

(i) The location and type of water supply.

(ii) The existing and reasonably foreseeable uses of the water supply.

(iii) The chemical and physical characteristics of the water, including, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, hardness, total coliform, acidity, alkalinity and sulfates. An operator who obtains water samples in a premining or postmining survey shall utilize a certified laboratory to analyze the samples.

(iv) The quantity of the water.

(v) The physical description of the water supply, including the depth and diameter of the well, length of casing and description of the treatment and distribution systems.

(vi) Hydrogeologic data such as the static water level and yield determination.

(2) The operator shall submit copies of the results of the analyses, as well as the results of any quantitative analysis, to the Department and to the landowner within 30 days of their receipt by the operator.

(3) If the operator cannot make a premining or postmining survey because the owner will not allow access to the site, the operator shall submit evidence to the Department of the following:

(i) The operator notified the landowner by certified mail or personal service of the landowner's rights in sections



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5.1—5.3 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.5a—1406.5c), and the effect on the landowner of the landowner's denial to the operator of access to the site as described in section 5.2(d) of The Bituminous Mine Subsidence and Land Conservation Act.

(ii) The operator's attempt to conduct a survey.

(iii) The landowner failed to authorize access to the operator to conduct a survey within 10 days of receipt of the operator's notice of intent to conduct a survey.

(b) *Restoration or replacement of water supplies.* When underground mining activities conducted on or after August 21, 1994, affect a public or private water supply by contamination, diminution or interruption, the operator shall restore or replace the affected water supply with a permanent alternate source which adequately serves the premining uses of the water supply or any reasonably foreseeable uses of the water supply. The operator shall be relieved of any responsibility under The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21) to restore or replace a water supply if the operator demonstrates that one of the provisions of § 89.152 (relating to water supply replacement: relief from responsibility) relieves the operator of further responsibility. This subsection does not apply to water supplies affected by underground mining activities which are covered by Chapter 87 (relating to surface mining of coal).

(c) Within 24 hours of an operator's receipt of a claim of water supply contamination, diminution or interruption, the operator shall notify the Department of the claim.

(d) *Investigation and reporting of water supply damage complaints.* Upon receipt of notification that a water supply has been contaminated, diminished or interrupted and that the operator's underground mining activities may have caused the contamination, diminution or interruption, the operator shall diligently investigate the complaint and notify the Department in a timely manner of the results of the operator's investigation. This subsection does not apply to water supplies affected by underground mining activities which are governed by Chapter 87.

(e) *Temporary water supplies.*

(1) If the affected water supply is within the rebuttable presumption area and the rebuttable presumption applies and the landowner or water user is without a readily available alternate source, the operator shall provide a temporary water supply within 24 hours of being contacted by the landowner or water supply user or the Department, whichever occurs first.

(2) The temporary water supply provided under this subsection shall meet the requirements of paragraph (f)(2) and provide a sufficient amount of water to meet the water supply user's premining needs.

(f) *Adequacy of permanently restored or replaced water supply.* A permanently restored or replaced water supply shall include any well, spring, municipal water supply system or other supply approved by the Department, which meets the criteria for adequacy as follows:

(1) *Reliability, cost, maintenance and control.* A restored or replaced water supply, at a minimum, shall:

(i) Be as reliable as the previous water supply.

(ii) Be as permanent as the previous water supply.

(iii) Not require excessive maintenance.

(iv) Provide the owner and the user with as much control and accessibility as exercised over the previous water supply.

(v) Not result in more than a de minimis cost increase to operate and maintain. If the operating and maintenance costs of the restored or replaced water supply are more than a de minimis cost increase, the operator shall provide for the permanent payment of the increased operating and maintenance costs of the restored or replaced water supply.

(2) *Quality.* A restored or replaced water supply will be deemed adequate when it differs in quality from the premining water supply, if it meets the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 750.1—750.20), or is comparable to the premining water supply when that water supply did not meet these standards.

(3) *Adequate quantity.* A restored or replaced water supply will be deemed adequate in quantity if it meets one of the following:

(i) It delivers the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.

(ii) It is established through a connection to a public water supply system which is capable of delivering the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.

(iii) For purposes of this paragraph and with respect to agricultural water supplies, the term reasonably foreseeable uses includes the reasonable expansion of use where the water supply available prior to mining exceeded the farmer's actual use.

(4) *Water source serviceability.* A replacement of a water supply shall include the installation of any piping, pumping equipment and treatment equipment necessary to put the replaced water source into service.

#### § 89.146a. Water supply replacement: procedure for resolution of water supply damage claims.

(a) Whenever a landowner or water supply user experiences contamination, diminution or interruption of a water supply which is believed to have occurred as a result of underground mining activities, the landowner or water user shall notify the operator. The operator shall diligently investigate the water loss. This subsection does not apply to water supplies affected by underground mining activities which are governed by Chapter 87 (relating to surface mining of coal).

(b) The Department will order the operator to provide temporary water to the landowner or water supply user within 24 hours of issuance of the order if the following apply:

(1) No alternate temporary water supply is available to the landowner or water user.

(2) The water supply is contaminated, diminished or interrupted.

(3) The water supply is located within the rebuttable presumption area.

(4) The landowner notified the operator of the water supply problem.