

IV. Framework for the Report

Regulatory Setting

The regulatory setting underwent several changes during the period selected for study. These changes related to the passage of the federal National Energy Policy Act of 1992 (EPACT); the passage of the Act 54 amendments to the Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) in 1994; the promulgation of federal EPACT regulations; and the promulgation of Pennsylvania's regulations to incorporate the amendments to BMSLCA.

It should be noted that Section 18a, which requires data collection to cover a five-year period, was added to BMSLCA in 1994, yet it requires data collection to commence in 1993. In doing so, it requires data to be collected for a period when state law did not mandate the replacement of water supplies or the repair of subsidence damage to structures on a broad scale. In addition, the early part of the study period coincides with a period when the federal requirements mandated by EPACT were not fully implemented by the Office of Surface Mining (OSM).

In March 1995, OSM promulgated regulations to fully implement the provisions of EPACT. In July 1995, OSM announced that it would apply its regulations to water supply impacts and subsidence damages that occurred during the period of the federal mandate that Pennsylvania's amendments to BMSLCA did not cover. This involved enforcement on certain claims involving water supply impacts and subsidence damages that occurred between October 1992 and August 1994 (the time gap between the effective date of EPACT and the effective date of the amendments to BMSLCA).

In 1997 and 1998, the Department completed two rulemakings in order to bring its regulations into conformance with the amended BMSLCA and the 1995 EPACT regulations. The first of these rulemakings was completed on May 10, 1997. This rulemaking deleted those parts of the Department's existing regulations that were in conflict with the amended BMSLCA. The second rulemaking was completed on June 13, 1998. This rulemaking included new provisions and requirements associated with the amendments to BMSLCA.

These evolutionary changes are important to consider when reading and interpreting the data in this report. Except for the repeal of the "pre-1966" structure protections, the requirements imposed on mine operators have increased over the five-year period during which data was collected. In short, the study period provided less than the ideal conditions for an evaluation – a stable baseline against which the impacts from mining could be measured.

It is also important to recognize that Pennsylvania law allows three years for the permanent replacement or restoration of an affected water supply and six months for a property owner and operator to try to come to an agreement for the repair of mine subsidence damage to a structure. If an agreement is not reached in six months, the property owner may file a claim with the Department. Given these provisions, water supply impacts reported as early as July 1995 could still be pending permanent resolution at the time of this report. Similarly, subsidence

damage claims reported to an operator in January 1998 or thereafter could still be under negotiation between the operator and property owner.

Report Period

The information presented in this report targets the time period between August 1, 1993 and August 31, 1998. The starting year for data collection was chosen as 1993 in accordance with Section 18a of BMSLCA. August was chosen as the starting month since the Act 54 amendments became effective on August 21, 1994. August 1998 was chosen as the close of data collection because it represents the end of the five-year period that began on August 1993. The Department exercised discretion in reporting impacts that occurred near the beginning and end of the collection period. The report includes some impacts that occurred as late as October 1998. The motivation for this approach was to maximize the amount of usable data while keeping within the general guidelines of Section 18a.

The various data sources used to prepare this report have different periods of applicability. For instance, the observations of the Department's surface subsidence agents commenced in August 1997, and are therefore applicable only to the last year of the study period. (The Department's surface subsidence agents are responsible for monitoring areas above longwall mines, both before and after mining activity, communicating with property owners to ensure that they are aware of their rights, and, when necessary, facilitating discussion between property owners and coal operators to help resolve problems). Information obtained from claims filed by property owners is complete for the entire study period. In accordance with the statutory requirements, information derived from the mine operators' survey covers the period from August 21, 1994 to the end of the survey period. Information derived from six-month maps is complete from the beginning of the study period to February 1998 and partially complete from that point forward.¹ The coverage for the property owners' survey is similar to that of the six-month maps that were used to identify properties with the potential to be affected. The applicable time frames for each of the primary information sources is presented in Figure IV.1. A more detailed discussion on these and other data sources is presented in Section IX.

It is important that the reader consider the overall significance of the data and its relationship to the activities covered by the law. There are two points to consider. One is that the first year of the study period is not covered by the provisions of BMSLCA – a result that the Department believes was an oversight related to the relevant language from the same bill considered in 1992 not being updated. This result is in conflict with the objective to determine whether BMSLCA is working. The second point is that the statute provides a three-year period for water replacement. Thus, any water-related impact from mining that occurred after August 1995 (three years prior to the study period end date of August 1998) could still be pending, as provided by law. As a consequence, only one year (August 1994 to August 1995) out of the five-year study period provides the opportunity for a full assessment of the results associated

¹ A six-month map submitted in early July 1998 would be current at the time of its submission but would provide no information for the remaining portion of the study period (the latter part of July and August 1998). Similarly, for operations with six-month maps due in September 1998, the most current information available would have been obtained from six-month maps filed in February or March 1998.

with the implementation of the provisions of Act 54. This period of full coverage is highlighted in Figure IV.1.

**Figure IV.1
Data Sources and Periods of Applicability**

