

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 979

Session of
1987

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PRESTON, RICHARDSON, GEORGE AND OLASZ, APRIL 6, 1987

REFERRED TO COMMITTEE ON CONSERVATION, APRIL 6, 1987

AN ACT

1 Relating to restoration of water supplies damaged by underground
2 mining.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Pennsylvania
7 Water Restoration Act.

8 Section 2. Legislative purpose.

9 This act shall be deemed to be an exercise of the police
10 powers of the Commonwealth for the protection of the health,
11 safety and general welfare of the people of this Commonwealth by
12 providing for the restoration of water supplies damaged by
13 underground mining to aid in the preservation of surface and
14 groundwater supplies, to improve the use of such water supplies
15 and to enhance the value of lands for taxation.

16 Section 3. Legislative findings and declaration of policy.

17 (a) Findings.--It is hereby determined by the General

1 Assembly of the Commonwealth and declared as a matter of
2 legislative finding that:

3 (1) Water, as it occurs in wells, springs, ponds,
4 streams, lakes and aquifers, is an intrinsic part of the land
5 and as such is a natural resource which must be protected and
6 conserved for the use of and enjoyment by present and future
7 generations.

8 (2) Loss and contamination of water supplies severely
9 limits the use and enjoyment of surface lands, causes severe
10 hardship to the citizens affected, increases their daily
11 expenses, decreases the value of the land for taxation,
12 decreases the economic value of the land for residential,
13 farming or business purposes and devalues the property
14 investments of affected surface owners.

15 (3) Underground mining operations can cause the
16 contamination, interruption or diminution of surface and
17 groundwater supplies.

18 (4) Unlike water supplies damaged by surface mining
19 operations, there exists no statutory remedy to replace water
20 supplies damaged by underground mining operations.

21 (b) Policy.--The General Assembly of the Commonwealth
22 therefore declares it to be the policy of the Commonwealth that:

23 (1) The protection of water supplies is of utmost
24 importance to citizens of this Commonwealth.

25 (2) Damage to water supplies from underground mining
26 operations is against the public interest and may adversely
27 affect the health, safety and welfare of the citizens of this
28 Commonwealth.

29 (3) The maintenance of adequate water supplies in areas
30 of underground mining operations is recognized as essential

1 to the economic future of Pennsylvania and necessary for the
2 safety and welfare of the people.

3 (4) It is necessary to balance the rights of
4 Pennsylvania's coal mining industry to extract its minerals
5 with the rights of surface owners to the use of essential
6 water supplies.

7 (5) It is necessary to bring users of water supplies
8 damaged by underground mining to parity with users of water
9 supplies damaged by surface mining so that the former will
10 also be justly compensated for any such damage.

11 Section 4. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Board." The Environmental Quality Board.

16 "Department." The Department of Environmental Resources of
17 the Commonwealth.

18 "Operator." A person or municipality engaged in underground
19 mining as a principal, as distinguished from an agent or
20 independent contractor. Where more than one person is engaged in
21 underground mining activities in a single operation, they shall
22 be deemed jointly and severally responsible for compliance with
23 the provisions of this act.

24 "Person." Any natural person, partnership, association,
25 corporation or municipality or any agency, instrumentality or
26 entity of Federal or State government.

27 "Surface owner." The person or municipality in whom legal
28 title to surface land is vested.

29 "Underground mine operation." Includes:

30 (1) Surface operations incident to underground

1 extraction of coal or onsite processing, such as
2 construction, use, maintenance and reclamation of roads,
3 aboveground repair areas, storage areas, processing areas,
4 shipping areas, areas upon which are sited support
5 facilities, including hoist and ventilating ducts, areas used
6 for the disposal and storage of waste, and areas on which
7 materials incident to underground mining operations are
8 placed.

9 (2) Underground operations such as underground
10 construction, operation and reclamation of shafts, adits,
11 underground support facilities, onsite processing and
12 underground mining, hauling, storage and blasting.

13 (3) Operation of the mine, including preparatory work in
14 connection with the opening or reopening of a mine,
15 backfilling, sealing and other closing procedures, and any
16 other work done on land or water in connection with mines.

17 "Water supply." All rivers, streams, creeks, impoundments,
18 watercourses, lakes, ponds, springs, wells and all other bodies
19 of surface and underground water or parts thereof, whether
20 natural or artificial, which serve as a source of water for
21 domestic, agricultural, industrial or commercial needs.

22 Section 5. Enforcement; rulemaking.

23 (a) Orders.--The department shall have the power to issue
24 such orders as are necessary to enforce the provisions of this
25 act.

26 (b) Rules and regulations.--The board may promulgate such
27 regulations as it deems necessary to carry out the provisions
28 and purposes of this act.

29 Section 6. Restoration or replacement of water supplies damaged
30 by underground mining.

1 (a) Restoration and replacement.--Any operator who affects a
2 public or private water supply by contamination or diminution
3 shall restore or replace the affected supply with an alternate
4 source of water which is adequate in quantity and quality for
5 the purposes served by the supply and in a manner which provides
6 a minimal disruption of water service. If any operator fails to
7 comply with this provision, the department may issue such orders
8 as are necessary to assure compliance.

9 (b) Disputes.--In the event that a water supply is damaged
10 and there is dispute as to cause, the department shall rule on
11 the cause of loss. Any operator or surface owner aggrieved by
12 the department's ruling shall have the right to appeal the
13 ruling to the Environmental Hearing Board within 30 days of the
14 ruling.

15 (c) Replacement.--If the department finds that immediate
16 replacement of an affected water supply is required to protect
17 public health and safety and that the operator has appealed or
18 failed to comply with the order to restore or replace said
19 supply, the department may, at its discretion, restore or
20 replace the affected water supply with an alternate source of
21 water, utilizing moneys paid by underground mine operators into
22 the Bituminous Mine Subsidence and Land Conservation Fund.
23 Should the department's order to replace or restore the water
24 supply be upheld on appeal, the department shall proceed to
25 recover the costs of restoration or replacement, including costs
26 incurred for design and construction of facilities, from the
27 responsible operator or operators. Any such costs recovered
28 shall be deposited in the fund.

29 (d) Compensation.--In the event that the operator is unable
30 to restore or replace the affected water supply, the department

1 shall require that the operator compensate the surface owner for
2 any devaluation of property due to the loss or contamination of
3 the water supply.

4 Section 7. Permit application information.

5 All permit applications for underground mining operations
6 submitted pursuant to the act of June 22, 1937 (P.L.1987,
7 No.394), known as The Clean Streams Law, and the act of April
8 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous
9 Mine Subsidence and Land Conservation Act, shall identify the
10 extent to which the proposed underground mining activities may
11 result in contamination, diminution or interruption of a water
12 supply within or adjacent to the proposed permit area for
13 domestic, agricultural, industrial or commercial use. If the
14 application indicates that such contamination, diminution or
15 interruption may result from the proposed operation, then the
16 permit application shall identify the operator's intended means
17 to restore or replace the affected water supply as required by
18 section 6.

19 Section 8. Surface owner notification; monitoring of water
20 supplies.

21 (a) Commencement.--Within 180 days of the date on which
22 mining is to commence, the operator shall notify surface owners
23 of any mining which will occur within 3,000 feet of the water
24 supplies required to be identified pursuant to section 7.

25 (b) Survey.--Within the 180-day period before the
26 commencement of mining within 3,000 feet of a water supply, the
27 operator shall conduct a premining survey of the water supply
28 for existing quality and quantity pursuant to regulations
29 promulgated by the board. The operator shall submit the results
30 of the premining survey to the department and the surface owner

1 no later than 90 days before the commencement of mining. Should
2 the surface owner disagree with the results of the premining
3 survey, he must provide the department with the results of an
4 independently conducted premining survey of such water supply,
5 in which case the department shall determine the quality and
6 quantity of the water supply before mining may commence.

7 (c) Groundwater.--When underground mining operations may
8 affect the groundwater systems which serve as water supply
9 sources, groundwater levels and groundwater quality shall be
10 periodically monitored by the operator. Monitoring shall include
11 measurements from a sufficient number of wells and chemical
12 analysis of water from aquifers, and the measurements shall
13 adequately reflect changes in groundwater quantity and quality
14 resulting from mining activities.

15 (d) Hydrologic tests.--The operator shall conduct additional
16 hydrologic tests as required by the department, including, but
17 not limited to, drilling, infiltration tests, aquifer tests,
18 chemical and mineralogical analyses. The results of such tests
19 shall be submitted to the department.

20 Section 9. Injunctive relief.

21 (a) Injunction.--In addition to any other remedy at law or
22 in equity or under this act, the Attorney General may apply for
23 relief by injunction, or to enforce compliance with, or restrain
24 violations of, any provisions of this act, or any rule,
25 regulation, permit condition or order made pursuant thereto.

26 (b) Other remedies.--The remedy prescribed in this section
27 shall be deemed concurrent or contemporaneous with any other
28 remedy, and the existence or exercise of any one remedy shall
29 not prevent the exercise of any other remedy.

30 Section 10. Remedies of citizens.

1 (a) Commencement of civil action.--Except as provided in
2 subsection (c), any person having an interest that is or may be
3 adversely affected may commence a civil action on his own behalf
4 to compel compliance with this act or any rule, regulation or
5 order issued pursuant to this act against the department, where
6 there is alleged a failure of the department to perform any act
7 that is not discretionary with the department, or against any
8 other person who is alleged to be in violation of any provision
9 of this act or any rule, regulation or order issued pursuant to
10 this act. The courts of common pleas shall have jurisdiction of
11 such actions, and venue in such actions shall be as set forth in
12 the Pennsylvania Rules of Civil Procedure concerning actions in
13 assumpsit.

14 (b) Inspection upon information of violation.--Whenever any
15 person presents information to the department that gives the
16 department reason to believe that any person is in violation of
17 any requirement of this act, the department shall immediately
18 order inspection of the operation at which the alleged violation
19 is occurring.

20 (c) Limitations on commencement of action.--No action
21 pursuant to this section may be commenced prior to 60 days after
22 the plaintiff has given notice, in writing, of the violation to
23 the department and to any alleged violator. In addition, no such
24 action may be commenced if the department has commenced and is
25 diligently prosecuting a civil action in a court of the United
26 States or of the Commonwealth, or has issued an order or entered
27 into a consent order and agreement or decree to require
28 compliance with this act or any rule, regulation or order issued
29 under this act, but, in any such action in a court of the United
30 States or of the Commonwealth, any person may intervene as a

1 matter of right.

2 (d) Imminent threats to health and safety.--The provisions
3 in subsection (c) requiring 60 days' written notice to the
4 contrary notwithstanding, any action under this section may be
5 initiated immediately, upon written notification to the
6 department, where the violation constitutes an imminent threat
7 to the health and safety of the plaintiff.

8 (e) Court orders.--The court, in issuing any final order in
9 any action brought pursuant to this section, may award costs of
10 litigation, including attorney and expert witness fees, to any
11 party, whenever the court determines such award is appropriate.
12 The court may, if a temporary restraining order or preliminary
13 injunction is sought, require the filing of a bond or equivalent
14 security in accord with the Pennsylvania Rules of Civil
15 Procedure.

16 Section 11. Penalties.

17 Failure to comply with this act during mining or thereafter
18 shall render the operator liable to the sanctions and penalties
19 provided in the statutes set forth in section 7.

20 Section 12. Unlawful conduct.

21 (a) General rule.--It shall be unlawful to do any of the
22 following:

23 (1) Violate the provisions of this act or the
24 regulations adopted hereunder.

25 (2) Fail to comply with any order issued under this act.

26 (3) Hinder, obstruct, prevent or interfere with the
27 department or its personnel in the performance of any duty
28 hereunder.

29 (4) Violate the provisions of 18 Pa.C.S. § 4903
30 (relating to false swearing) or 4904 (relating to unsworn

1 falsification to authorities).

2 (b) Provisions violators are subject to.--Any person
3 engaging in conduct prohibited by subsection (a) shall be
4 subject to the sanctions and penalties provided in the statutes
5 set forth in section 7.

6 (c) Court proceedings authorized.--The department may
7 institute, in a court of competent jurisdiction, proceedings
8 against any person who fails to comply with the provisions of
9 this act, any rule or regulation issued hereunder, any order of
10 the department or the terms and conditions of any license or
11 permit.

12 Section 13. Effective date.

13 This act shall take effect in 60 days.