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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1077 Session of 1991

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PESCI, MIHALICH, PRESTON, CAWLEY, LEVDANSKY, STABACK,  
RICHARDSON AND STEELMAN, APRIL 9, 1991

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REFERRED TO COMMITTEE ON CONSERVATION, APRIL 9, 1991

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AN ACT

1 Providing for restoration and replacement of water supplies  
2 damaged by underground mining; conferring powers and duties  
3 on the Department of Environmental Resources and the  
4 Environmental Hearing Board; and providing for remedies and  
5 penalties.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Water  
10 Restoration Act.

11 Section 2. Legislative purpose.

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

1 Section 3. Legislative findings and declaration of policy.

2 The General Assembly finds and declares as follows:

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 (5) The protection of water supplies is of utmost  
22 importance to citizens of this Commonwealth.

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

27 (7) The maintenance of adequate water supplies in areas  
28 of underground mining operations is recognized as essential  
29 to the economic future of this Commonwealth and necessary for  
30 the safety and welfare of the people.

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

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

9       Section 4. Definitions.

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

13       "Board." The Environmental Quality Board.

14       "Department." The Department of Environmental Resources of  
15       the Commonwealth.

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

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

25       "Replacement." The actions taken to provide a permanent  
26       alternative water supply of equal or better quality and quantity  
27       and equal or greater ease of procurement to surface owners whose  
28       water supply has been contaminated, diminished or disrupted.

29       "Restoration." The actions taken to return a water supply to  
30       the quality, quantity and ease of procurement associated with

1 that water supply prior to its contamination, diminution or  
2 disruption.

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

5 "Underground mine operation." Includes:

6 (1) Surface operations incident to underground  
7 extraction of coal or onsite processing, including, but not  
8 limited to, construction, use, maintenance and reclamation of  
9 roads, aboveground storage areas, processing areas, shipping  
10 areas, support facilities such as hoist and ventilating  
11 ducts, facilities for the disposal and storage of waste, and  
12 areas on which the materials incident to underground mining  
13 operations are placed.

14 (2) Underground operations such as underground  
15 construction, operation and reclamation of shafts, adits,  
16 underground support facilities, onsite processing and  
17 underground mining, hauling, storage and blasting.

18 (3) Operation of the mine, including preparatory work in  
19 connection with the opening or reopening of a mine,  
20 backfilling, sealing and other closing procedures, and any  
21 other work done on land or water in connection with mines.

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

27 Section 5. Enforcement and rulemaking.

28 (a) Orders.--The department shall have the power to issue  
29 orders necessary to enforce the provisions of this act.

30 (b) Rules and regulations.--The board shall promulgate

1 regulations as it deems necessary to carry out the provisions  
2 and purposes of this act.

3 Section 6. Permit application information.

4 (a) Water supply impact study.--All applications for  
5 underground mining operations submitted pursuant to the act of  
6 June 22, 1937 (P.L.1987, No.394), known as The Clean Streams  
7 Law, and the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1),  
8 known as The Bituminous Mine Subsidence and Land Conservation  
9 Act, shall include an environmental impact study conducted by an  
10 independent agency which shall identify the extent to which the  
11 proposed underground mining activities may result in  
12 contamination, diminution or interruption of a water supply  
13 within or adjacent to the proposed permit area. If this study  
14 finds that the contamination, diminution or interruption is a  
15 risk associated with the proposed operation, the department  
16 shall require the independent agency to develop plans to restore  
17 or replace the water supplies in question. The plans shall  
18 include a financial estimate for their implementation.

19 (b) Bond.--A new, revised or renewed permit to conduct the  
20 proposed underground mining activities shall not be issued by  
21 the department until the operator has filed with the department  
22 a bond payable to, and approved by, the department. This bond  
23 shall be in the amount of 125% of the estimate for the  
24 implementation of the plan as provided for in subsection (a) or  
25 100% of the estimates for the implementation of the plan as  
26 provided for in subsection (a) if the operator commits a  
27 periodically monitoring groundwater levels and quality and  
28 reporting the results of the monitoring to the department. The  
29 reports will include measurements from a sufficient number of  
30 wells and chemical analyses of water from aquifers and

1 hydrologic testing, including, but not limited to, drilling,  
2 infiltration tests, aquifer tests and chemical and mineralogical  
3 analyses. This bond may consist of either a collateral or surety  
4 bond or a combination thereof. In lieu of the bond, the operator  
5 may purchase and maintain subsidence insurance.

6 Section 7. Restoration or replacement of water supplies damaged  
7 by underground mine operation.

8 (a) Restoration and replacement.--Any operator who, through  
9 activities associated with underground mine operation,  
10 contaminates, diminishes or disrupts a public or private water  
11 supply shall restore or replace that water supply. The operator  
12 will meet this requirement in a manner that provides minimal  
13 disruption of water service and at a cost to the surface owner  
14 not greater than that which they would have incurred for water  
15 use prior to the contamination, diminution or disruption. If any  
16 operator fails to comply with this provision, the operator's  
17 bond, held by the department as set forth in section 6(b), shall  
18 be forfeited and used to restore or replace the water supply in  
19 the manner provided in this subsection.

20 (b) Disputes.--In the event that a water supply is damaged  
21 and there is dispute as to cause, the department shall rule on  
22 the cause of the loss within 120 days. Any operator or surface  
23 owner aggrieved by the department's ruling shall have the right  
24 to appeal the ruling to the Environmental Hearing Board within  
25 30 days of the ruling.

26 (c) Interim replacement.--If the department finds that  
27 immediate replacement of an affected water supply is required to  
28 protect public health and safety and that the operator has  
29 appealed or failed to comply with the order to restore or  
30 replace the water supply, the department shall restore or

1 replace the affected water supply by the most efficient means  
2 available until a permanent solution is brought about. The  
3 department shall fund the interim replacement by utilizing  
4 moneys paid by underground mine operators into the Bituminous  
5 Mine Subsidence and Land Conservation Fund. Should the  
6 department's order to replace or restore the affected water  
7 supply be upheld on appeal, the department shall proceed to  
8 recover the costs associated with the interim replacement from  
9 the responsible operator or operators, using civil action if  
10 necessary. The costs shall include the interim restoration or  
11 replacement costs, costs incurred for the design and  
12 construction of facilities used in the interim replacement and  
13 any costs associated with securing the recovery of the funds.

14 (d) Failure to restore or replace water supply.--In the  
15 event that an operator responsible for contaminating or  
16 diminishing a water supply cannot restore or replace that water  
17 supply and the department cannot fund restoration or replacement  
18 through forfeiture of the bond provided for in section 6(b), the  
19 department shall require that the operator provide financial  
20 compensation to the owner in an amount equal to the devaluation  
21 of the surface owner's property or, at the surface owner's  
22 discretion, the department shall require the operator to  
23 purchase the property for an amount not less than its value  
24 prior to its water supply being affected. In no case shall  
25 either the operator or surface owner construe this section as an  
26 alternative to restoration or replacement of the water supply.  
27 Actions by an operator that require the repeated enforcement of  
28 this provision shall result in the revocation of all permits for  
29 underground mining operations held by the operator.

30 Section 8. Surface owner notification.

1 (a) Commencement.--Not less than 240 days prior to the date  
2 on which underground mining operations are to commence, the  
3 operator shall notify surface owners of the operations which  
4 will occur within 3,000 feet of water supplies required to be  
5 identified pursuant to section 6(a).

6 (b) Survey.--Within the 240-day period prior to the  
7 commencement of operations within 3,000 feet of a water supply  
8 the operator shall conduct a premining survey of the water  
9 supply to determine its quality and quantity pursuant to  
10 regulations promulgated by the board. The survey report shall  
11 include data taken at least six month apart to account for  
12 seasonal variance in the water supply. The operator shall submit  
13 the results of the premining survey to the department and the  
14 surface owner not less than 30 days prior to the commencement of  
15 operations. Should the surface owner disagree with the results  
16 of the premining survey and wish to appeal, the surface owner  
17 must provide the department with the results of an independently  
18 conducted premining survey of such water supply for the current  
19 seasonal level. The department shall determine the merit of the  
20 appeal and, if finding for the owner, it shall conduct an  
21 assessment of the quality and quantity of the water supply  
22 before mining operations may commence.

23 Section 9. Injunctive relief.

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

29 (b) Other remedies.--The remedy prescribed in this section  
30 shall be deemed concurrent or contemporaneous with any other



1 remedy, and the existence or exercise of any one remedy shall  
2 not prevent the exercise of any other remedy.

3 Section 10. Remedies of citizens.

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

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

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

1 compliance with this act or any rule, regulation or order issued  
2 under this act, but, in any such action in a court of the United  
3 States or of the Commonwealth, any person may intervene as a  
4 matter of right.

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

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

#### 19 Section 11. Penalties.

20 Failure to comply with this act during mining or thereafter  
21 shall render the operator liable to the sanctions and penalties  
22 provided in the statutes set forth in section 6(a). In no case  
23 shall liability incurred under this act or under the statutes  
24 set forth in section 6(a) indemnify the violator from criminal  
25 proceedings.

#### 26 Section 12. Unlawful conduct.

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

29 (1) Violate the provisions of this act or the  
30 regulations adopted hereunder.

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

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

5           (4) Violate the provisions of 18 Pa.C.S. § 4903  
6       (relating to false swearing) or 4904 (relating to unsworn  
7       falsification to authorities).

8       (b) Provisions violators are subject to.--Any person  
9       engaging in conduct prohibited by subsection (a) shall be  
10      subject to the sanctions and penalties provided in the statutes  
11      set forth in section 6(a).

12      (c) Court proceedings authorized.--The department may  
13      institute, in a court of competent jurisdiction, proceedings  
14      against any person who fails to comply with the provisions of  
15      this act, any rule or regulation issued hereunder, any order of  
16      the department or the terms and conditions of any license or  
17      permit.

18      Section 13. Effective date.

19      This act shall take effect in 90 days.