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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**  
**No. 1120** Session of  
1987

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INTRODUCED BY GEORGE, HASAY, MANDERINO, ITKIN, FEE, WOZNIAK,  
MICHLOVIC, STEIGHNER, SAURMAN, FREEMAN, JAROLIN, BELARDI,  
LaGROTTA, VAN HORNE, TRELLO, VEON, CIVERA, CAPPABIANCA, BUNT,  
JOSEPHS, FOX AND KUKOVICH, APRIL 27, 1987

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REFERRED TO COMMITTEE ON CONSERVATION, APRIL 27, 1987

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AN ACT

1 Amending the act of May 31, 1945 (P.L.1198, No.418), entitled,  
2 as amended, "An act providing for the conservation and  
3 improvement of land affected in connection with surface  
4 mining; regulating such mining; providing for the  
5 establishment of an Emergency Bond Fund for anthracite deep  
6 mine operators; and providing penalties," further providing  
7 for the protection of water supplies.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Section 4.2 of the act of May 31, 1945 (P.L.1198,  
11 No.418), known as the Surface Mining Conservation and  
12 Reclamation Act, is amended by adding subsections to read:

13 Section 4.2. General Rule Making; Health and Safety.--\* \* \*

14 (h) It shall be presumed, as a matter of law, that any  
15 surface mining operator or owner is responsible, without proof  
16 of fault, negligence or causation, for all pollution or  
17 diminution of public or private water supplies within 2,640  
18 linear feet (one-half mile) of the outside boundaries of the  
19 acreage assigned to the surface mining operation by a permit

issued from the department. There shall be only four defenses to the presumptions of liability provided herein. Any surface mining operator or owner must affirmatively prove by a preponderance of evidence that one of the following conditions exist:

(1) The landowner or water supply company refused to allow the surface mining operator or owner access to conduct a survey prior to commencing surface mining activities.

(2) The water supply is not within 2,640 linear feet (one-half mile) of the outside boundaries of the acreage assigned to the surface mining operation by a permit issued from the department.

(3) The pollution or diminution existed prior to the surface mining activities as determined by a survey conducted prior to commencing surface mining activities.

(4) The pollution or diminution occurred as a result of some cause other than the surface mining activities.

(i) If the secretary finds that immediate replacement of an affected water supply used for potable or domestic needs is required to protect health and safety, and that the operator or owner has appealed or failed to comply with an order issued pursuant to subsection (f), the secretary may restore or replace the affected water supply with an alternate source of water utilizing moneys from the Surface Mining Conservation and Reclamation Fund. The secretary shall recover the costs of restoration or replacement, including costs incurred for design and construction of facilities, from the responsible operators or owners. Any such costs recovered shall be deposited in the Surface Mining Conservation and Reclamation Fund.

(j) Any operator or owner aggrieved by the secretary's order

1 issued pursuant to subsection (f) shall have the right within  
2 thirty days of receipt of such order to appeal to the  
3 Environmental Hearing Board. Hearings under this subsection  
4 shall be in accordance with section 1921-A of the act of April  
5 9, 1929 (P.L.177, No.175), known as "The Administrative Code of  
6 1929," and 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and  
7 procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating  
8 to judicial review of Commonwealth agency action).

9 (k) Nothing herein shall prevent any landowner or water  
10 supply company who claims pollution or diminution of a water  
11 supply from seeking any other remedy that may be provided for at  
12 law or in equity.

13 Section 2. This act shall take effect in 60 days.