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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 517 Session of  
1989

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INTRODUCED BY REBER, MORRIS, LETTERMAN, NOYE, TIGUE, BOYES,  
MELIO, FOX, LASHINGER, NAHILL, MICOZZIE, McVERRY, CIVERA,  
SCHULER, TRELLO, MERRY, G. SNYDER, DIETTERICK, S. H. SMITH,  
HECKLER, SERAFINI, BISHOP, LAUGHLIN, B. SMITH, STABACK, LEH,  
BUNT, KUKOVICH, STEIGHNER, FLICK AND RICHARDSON,  
FEBRUARY 15, 1989

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REFERRED TO COMMITTEE ON CONSERVATION, FEBRUARY 15, 1989

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AN ACT

1 Providing for compensation for individuals whose private water  
2 supply is rendered unusable as the result of groundwater  
3 contamination; providing for penalties; and making an  
4 appropriation.

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11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. Short title.

14 This act shall be known and may be cited as the Groundwater  
15 Contamination Compensation Act.

16 Section 2. Definitions.

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

20 "Alternate water supply." A supply of water, acceptable in  
21 quality and quantity, obtained in bottles by tank truck or other  
22 similar means.

23 "Board." The Environmental Quality Board.

24 "Community water system." A public water system which serves  
25 at least 15 service connections used by year-round residents or  
26 which regularly serves at least 25 year-round residents.

27 "Department." The Department of Environmental Resources of  
28 the Commonwealth.

29 "Groundwater." Water beneath the surface of the ground,  
30 whether or not flowing through known and definite channels,

1 including water contained in aquifers, artesian and nonartesian  
2 basins, underground water courses and other bodies of water  
3 below the surface of the earth.

4 "Noncommunity water system." A public water system that is  
5 not a community water system.

6 "Private water supply." A water well or other water supply  
7 which is not a public water supply. A private water supply can  
8 be connected to no more than 14 dwelling units.

9 "Public water system." A system for the provision to the  
10 public of water for human consumption which system has at least  
11 15 service connections or regularly serves an average of at  
12 least 25 individuals daily at least 60 days out of the year. The  
13 term includes:

14 (1) Treatment, storage and distribution facilities under  
15 control of the operator of the system and used in connection  
16 with the system.

17 (2) Pretreatment storage facilities not under control of  
18 the operator of a system which facilities are used in  
19 connection with the system.

20 (3) Collective facilities used in connection with the  
21 system.

22 (4) A system which provides water for bottling or bulk  
23 hauling for human consumption.

24 "Secretary." The Secretary of Environmental Resources of the  
25 Commonwealth.

26 "Well." An excavation that is constructed for the location,  
27 diversion or acquisition of groundwater.

28 Section 3. Powers and duties of board.

29 The board shall have the power and its duty shall be to  
30 promulgate regulations implementing this act. The regulations

1 shall include procedures for the submission, review and  
2 determination of claims under this act.

3 Section 4. Powers and duties of department.

4 The department shall:

5 (1) Assist claimants in submitting a complete  
6 application under section 8.

7 (2) Issue awards under this act.

8 Section 5. Private water supplies for which a claim may be  
9 submitted.

10 (a) Eligibility.--A claim may be submitted for a private  
11 water supply which, at the time of submitting the claim, is:

12 (1) Contaminated.

13 (2) Used or constructed for use as a source of potable  
14 water.

15 (b) Contamination.--For the purposes of this section, a  
16 private water supply is contaminated if either of the following  
17 apply:

18 (1) The private water supply contains contaminants in  
19 excess of a primary maximum contaminant level promulgated  
20 either by the Commonwealth or under the Safe Drinking Water  
21 Act (Public Law 93-593, 42 U.S.C. §§ 300f through 300j-9).

22 (2) The department or the Department of Health has  
23 advised that the private water supply not be used because of  
24 potential human health risks.

25 Section 6. No compensation for certain substances.

26 The department shall not award compensation under this act if  
27 a private water supply is contaminated by bacteria generated  
28 from a source on the claimant's property and is not contaminated  
29 by any other substance.

30 Section 7. Claimants.

1 (a) General rule.--Except as provided in subsection (b), a  
2 person who is the landowner or lessee of property which is  
3 served by a private water supply meeting the requirements of  
4 section 5 as the sole source of potable water, or the spouse,  
5 dependent, heir, assignee or legal representative of the  
6 landowner or lessee, may submit a claim under this act.

7 (b) Exclusion.--The following entities may not submit a  
8 claim:

9 (1) The Commonwealth.

10 (2) An office, department, independent agency,  
11 institution of higher education, association, society or  
12 other body in State government.

13 (3) A county, city, borough, town, township, village or  
14 school district or an authority created by any of them.

15 (4) A Federal agency, department or instrumentality.

16 (5) An interstate agency.

17 (6) The landowner or lessee of property which is served  
18 by a public water supply.

19 Section 8. Application.

20 (a) Submission.--A claimant shall submit a claim on forms  
21 provided by the department. The claimant shall verify the claim  
22 by affidavit.

23 (b) Contents.--The claim shall contain:

24 (1) Facts which show that the private water supply is  
25 contaminated.

26 (2) Documentation of the costs of water tests paid for  
27 by the claimant.

28 (3) Any information available to the claimant regarding  
29 possible sources of contamination of the private water  
30 supply.

1 (4) Other information requested by the department.

2 (c) Completion.--The department shall notify the claimant if  
3 the claim is complete or specify the additional information  
4 which is required to be submitted. If the claimant does not  
5 submit a complete claim, as determined by the department, the  
6 department may not proceed under this section until it receives  
7 a complete claim.

8 (d) Effect.--A claim constitutes:

9 (1) If the claimant is the landowner or lessee, consent  
10 to allow the department to enter the property where the  
11 private water supply is located during normal business hours  
12 and to conduct investigations or tests necessary to verify  
13 the claim.

14 (2) Consent by the claimant to cooperate with the  
15 Commonwealth in administrative, civil or criminal action  
16 involving a person or activity alleged to have caused the  
17 private water supply to become contaminated.

18 (e) Consolidation.--The department may consolidate claims if  
19 more than one claimant submits a claim for the same private  
20 water supply.

21 Section 9. Required proof.

22 (a) Alternate supply.--In order to obtain an award for an  
23 alternate water supply, the claimant must submit the test  
24 results of one sample showing that the private water supply is  
25 contaminated.

26 (b) Correction.--In order to obtain an award for correction  
27 under section 10(3), the claimant must submit the test results  
28 of two samples showing that the private water supply is  
29 contaminated.

30 (c) Rejection.--The department may reject test results

1 submitted under this section which are not sufficiently recent  
2 to prove that the private water supply is contaminated.

3 (d) Additional testing.--The department may, at its own  
4 expense, test additional samples from any private water supply  
5 for which a claim is submitted. Tests shall be conducted by a  
6 laboratory which is certified to conduct tests for safe drinking  
7 water by the department or under the authority of the Safe  
8 Drinking Water Act (Public Law 93-593, 42 U.S.C. §§ 300f through  
9 300j-9).

10 Section 10. Purpose of the award.

11 Within the limits under sections 12 and 14, if the department  
12 finds that the claimant has met the requirements of this act and  
13 regulations promulgated under this act and if the department  
14 finds that the private water supply is contaminated, the  
15 department shall issue a declaration of eligibility for an award  
16 for the purposes of:

17 (1) Testing the private water supply.

18 (2) Obtaining an alternate water supply.

19 (3) Providing any one of the following:

20 (i) Equipment used for treating the water.

21 (ii) Reconstruction of the well.

22 (iii) Construction of a new well.

23 (iv) A connection to a public or private water  
24 supply.

25 (4) Purchasing a new pump if a larger pump is necessary  
26 due to the greater depth of a new or reconstructed well.

27 (5) Abandoning a contaminated well, if a new well is  
28 constructed or the premises is connected to another well.

29 Section 11. Issuance of award.

30 (a) Fault not a factor.--Awards shall be issued without

1 regard to fault.

2 (b) Contributory negligence.--Contributory negligence is not  
3 a bar to recovery, and no award may be diminished as the result  
4 of negligence attributable to the claimant.

5 (c) Departmental action.--After the department determines  
6 that the claimant is eligible for an award, the department  
7 shall:

8 (1) Issue an award for testing the private water supply  
9 within 30 days after the determination of eligibility.

10 (2) Issue an award for an alternate water supply, as a  
11 lump sum payment, within 30 days after the determination of  
12 eligibility.

13 (3) Issue an award for any of the purposes under section  
14 10(3) through (5) within 30 days after the claimant submits  
15 receipts showing that the costs under section 10(3) through  
16 (5) have been incurred or within 30 days after the  
17 determination of eligibility, whichever is later.

18 (d) Consolidation.--If the portion of the award under  
19 subsection (c)(1) is less than \$50, the department may  
20 consolidate that award with the portion of the award under  
21 subsection (c)(3), subject to the time limits under subsection  
22 (c)(3).

23 (e) Advance payment.--Notwithstanding subsection (c), the  
24 department shall issue an advance payment for the tests required  
25 under section 9(a) and (b) if the department or the Department  
26 of Health has advised that the private water supply not be used  
27 because of potential health risks.

28 (f) Insufficient appropriation.--If the appropriation in  
29 section 20 is insufficient to pay all claims, the department  
30 shall pay claims in full until the appropriation is exhausted



1 and delay payment of remaining claims until sufficient funds are  
2 available to pay the claims.

3 Section 12. Awards.

4 (a) Denial.--The department shall deny a claim if any of the  
5 following apply:

6 (1) The claim is not within the scope of this act.

7 (2) The contaminant was introduced into a private water  
8 supply through the plumbing connected to the private water  
9 supply.

10 (3) The contamination was caused intentionally by the  
11 claimant.

12 (4) The claimant submitted a fraudulent claim.

13 (5) The contaminant which gives rise to the claim is a  
14 naturally occurring substance, and the concentration of the  
15 contaminant in the water from the public water supply does  
16 not significantly exceed the background concentration of the  
17 contaminant in groundwater at that location.

18 (6) The claim is for reimbursement of costs under  
19 section 10(2) through (5) incurred before the department  
20 determined that the claim was complete under section 8(c).

21 (b) Conditions.--

22 (1) An award of reconstruction of a well or construction  
23 of a new well may include the cost of pump only if a larger  
24 pump is necessary because the new or reconstructed well is  
25 deeper than the contaminated well.

26 (2) An award may be issued for water treatment only if  
27 the contamination cannot be remedied by reconstruction or  
28 replacement of the well or if connection to another water  
29 supply is not feasible.

30 (c) Regulations.--The board shall promulgate regulations to

1 establish the usual and customary costs of each item for which  
2 an award may be issued under section 10. The regulations shall  
3 reflect the range of costs resulting from differences in costs  
4 of construction, labor, equipment and supplies throughout this  
5 Commonwealth; various soil and bedrock conditions; sizes and  
6 depths of wells; types of well construction; and other factors  
7 which may affect the costs. The department shall determine the  
8 amount of awards, including the limits on awards in subsections  
9 (d) and (e), according to regulations adopted under this  
10 subsection.

11 (d) General limits.--Awards shall be issued with no  
12 limitation on amount if the costs are reasonably consistent with  
13 the regulations adopted under subsection (c) except as follows:

14 (1) An award for an alternate water supply shall be  
15 limited to the amount necessary to obtain water for a one-  
16 year period except as provided in section 14.

17 (2) If the contamination can be remedied by  
18 reconstruction of a well, construction of a new well or  
19 connection to another water supply, the department shall  
20 issue an award for the least expensive means of remedying the  
21 contamination.

22 (3) If connection with another private water supply is  
23 both feasible and less expensive than a new or reconstructed  
24 well, the department shall issue an award to connect with the  
25 private water supply, less the amount paid by the claimant  
26 under paragraph (5).

27 (4) An award for connecting to a public water supply  
28 shall be limited to the following amounts, less the amount  
29 paid by the claimant under paragraph (5):

30 (i) An amount less than or equal to the cost of

1           reconstructing the well or constructing a new well, if  
2           the contamination can be remedied by a new or  
3           reconstructed well.

4           (ii) An amount less than or equal to 150% of the  
5           cost of reconstructing the well or constructing a new  
6           well, if the contamination cannot be remedied by a new or  
7           reconstructed well.

8           (5) The claimant shall pay 20% of the costs under  
9           section 10(3) through (5), or \$500, whichever is less.

10          (6) An award for testing shall be limited to the amount  
11          necessary to conduct the number of tests required under  
12          section 9(a) and (b).

13          (e) Nitrates.--If a private water supply is contaminated by  
14          nitrate or nitrite and is not contaminated by any other  
15          substance, the award shall be limited as follows:

16           (1) If the private water supply is used as a source of  
17           potable water for human consumption, the award shall be  
18           limited to the amount necessary to test the water and to  
19           provide an alternate water supply for an infant under the age  
20           of six months who regularly occupies the premises and who  
21           would otherwise use the private water supply as a source of  
22           drinking water.

23           (2) If the private water supply is used as a source of  
24           potable water for livestock, an award under section 10 shall  
25           be made only if the private water supply produces water  
26           containing more than ten milligrams per liter of nitrate  
27           nitrogen or more than 45 milligrams per liter of nitrate.

28          Section 13. Reconstruction or replacement of wells.

29          If the department determines that the claimant is entitled to  
30          compensation for reconstruction of a well or construction of a

1 new well, the department may only issue the award if the well is  
2 constructed by a well driller licensed under the act of May 29,  
3 1956 (1955 P.L.1840, No.610), known as the Water Well Drillers  
4 License Act.

5 Section 14. Coordination of compensation and remedial action.

6 If the secretary determines that the implementation of a  
7 response to groundwater contamination under the act of July 7,  
8 1980 (P.L.380, No.97), known as the Solid Waste Management Act,  
9 the act of June 22, 1937 (P.L.1987, No.394), known as The Clean  
10 Streams Law, the Comprehensive Environmental Response,  
11 Compensation, and Liability Act of 1980 (Public Law 96-510, 26  
12 U.S.C. § 4611 et seq. and 42 U.S.C. § 9601 et seq.), or any  
13 other pertinent State or Federal statute, can be expected to  
14 remedy the contamination in a private water supply in less than  
15 two years, the secretary may order the delay of an award under  
16 section 10(3) through (5) for up to a two-year period. If the  
17 secretary issues an order under this section, the department  
18 shall issue an award for an alternate water supply while the  
19 order is in effect or until the private water supply is no  
20 longer contaminated as defined under section 5(b), whichever is  
21 earlier. If, at the end of the effective period of the order,  
22 the department determines that the private water supply is not  
23 contaminated, the department may not issue an award for any of  
24 the purposes under section 10(3) through (5).

25 Section 15. New claims.

26 A claimant who receives an award for the purpose of treating  
27 water, reconstructing a well or constructing a new well or  
28 connecting to a private water supply may submit a new claim if  
29 the well or water treatment device was constructed and operated  
30 properly and the contamination is not eliminated. Only one

1 additional claim may be submitted under this act within ten  
2 years after the initial award is made.

3 Section 16. Tolling of statute of limitations.

4 Any law limiting the time for commencement of an action is  
5 tolled by the filing of a claim. The law limiting the time for  
6 commencement of the action is tolled for the period from the  
7 first filing of a claim until the department issues an award  
8 under this act. If a period of limitation is tolled by the  
9 filing of a claim and the time remaining after issuance of the  
10 final award is less than 30 days, the period within which the  
11 action may be commenced is extended to 30 days from the date of  
12 issuance of the final award.

13 Section 17. Time for submission of claim.

14 A claim may be submitted irrespective of the time when the  
15 contamination is or could have been discovered in the private  
16 water supply. A claim may be submitted for contamination which  
17 commenced before the effective date of this act and continues at  
18 the time a claim is submitted under this act.

19 Section 18. Enforcement.

20 The department may suspend or revoke a license issued under  
21 the act of May 29, 1956 (1955 P.L.1840, No.610), known as the  
22 Water Well Drillers License Act, if the department finds that  
23 the licensee falsified information submitted pursuant to this  
24 act. The appropriate agency may suspend or revoke the license of  
25 a plumber licensed under section 1 of the act of July 7, 1911  
26 (P.L.680, No.272), entitled "An act providing for the  
27 examination, licensure, and registration of persons, firms, or  
28 corporations engaged or engaging in the business or work of  
29 plumbing or house drainage, and prescribing certain rules,  
30 regulations, and requirements for the construction of plumbing,

1 house drainage, and cesspools in cities of the first class, and  
2 imposing fines, penalties, and forfeitures for violation  
3 thereof," or section 1 of the act of June 7, 1901 (P.L.493,  
4 No.245), entitled "An act providing for the examination,  
5 licensure and registration of persons, firms or corporations  
6 engaged or engaging in the business or work of plumbing or house  
7 drainage, and prescribing certain rules, regulations and  
8 requirements for the construction of plumbing, house drainage  
9 and cesspools, in cities of the second class, and imposing  
10 fines, penalties and forfeitures for violation thereof," if  
11 notified by the department that the plumber falsified  
12 information submitted pursuant to this act.

13 Section 19. Penalties.

14 A person who causes or exacerbates the contamination of a  
15 private water supply for the purpose of submitting a claim under  
16 this act or who submits a fraudulent claim under this act shall  
17 forfeit not less than \$50 nor more than \$1,000 and shall repay  
18 the amount of any award issued to him.

19 Section 20. Appropriation.

20 The sum of \$1,500,000, or as much thereof as may be  
21 necessary, is hereby appropriated to the Department of  
22 Environmental Resources for the fiscal year July 1, 1989, to  
23 June 30, 1990, for the implementation of this act.

24 Section 21. Effective date.

25 This act shall take effect immediately.