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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 393      Session of  
1999

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INTRODUCED BY FEESE, GEORGE, MAITLAND, SNYDER, BARRAR, TIGUE,  
PLATTS, GEIST, NICKOL, FARGO, CORRIGAN, KREBS, SAYLOR,  
CHADWICK, DEMPSEY, TRELLO, LAUGHLIN, LYNCH, LEH, STAIRS,  
HERMAN, WALKO, CURRY, HENNESSEY, MASLAND, MAHER, CLARK,  
STERN, STEIL, BAKER, SCHRODER, McCALL, GANNON, S. H. SMITH,  
YOUNGBLOOD, SEYFERT, STEELMAN, E. Z. TAYLOR, WILT, ORIE,  
MICHLOVIC AND THOMAS, FEBRUARY 8, 1999

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AS AMENDED ON THIRD CONSIDERATION, IN SENATE, NOVEMBER 21, 2000

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AN ACT

1    Amending Title ~~42 (Judiciary and Judicial Procedure)~~ 27      <—  
2    (ENVIRONMENTAL PROTECTION RESOURCES) of the Pennsylvania      <—  
3    Consolidated Statutes, providing for participation in  
4    environmental law or regulation AND FOR COSTS IN MINING      <—  
5    PROCEEDINGS.

6    The General Assembly finds and declares as follows:

7            (1) ~~There has been a disturbing increase in~~ IT IS      <—  
8    CONTRARY TO THE PUBLIC INTEREST TO ALLOW lawsuits, known as  
9    Strategic Lawsuits Against Public Participation (SLAPP), TO      <—  
10   BE brought primarily to chill the valid exercise by citizens  
11   of their constitutional right to freedom of speech and to  
12   petition the government for the redress of grievances.

13            (2) It is in the public interest to empower citizens to  
14   bring a swift end to retaliatory lawsuits seeking to  
15   undermine their participation in the establishment of State  
16   and local environmental policy and in the implementation and

enforcement of environmental law and regulations.

~~(3) This act will ensure that a frivolous lawsuit or a SLAPP can be resolved in a prompt manner by permitting citizens to raise civil immunity to such suits when filing a preliminary objection for legal insufficiency of a pleading or demurrer or upon another appropriate motion and to obtain a stay on discovery as provided for in this act.~~

~~(4) A court should grant or deny relief on the preliminary objection or other appropriate motion without reserving the matter for further discovery.~~

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

Section 1. Title 42 27 of the Pennsylvania Consolidated Statutes is amended by adding a section CHAPTERS to read:

~~§ 8340.1. Participation in environmental law or regulation.~~

~~(a) Immunity.~~

~~(1) A person who acts in furtherance of the person's right of petition or free speech under the Constitution of the United States or the Constitution of Pennsylvania in connection with an issue related to enforcement or implementation of environmental law or regulation shall be immune from civil liability in any action except where the communication to the government agency is not genuinely aimed at procuring a favorable governmental action, result or outcome.~~

~~(2) A communication is not genuinely aimed at procuring a favorable governmental action, result or outcome if it:~~

~~(i) is not material or relevant to the enforcement or implementation of environmental law or regulation;~~

~~(ii) was knowingly false when made;~~

1           ~~(iii) was rendered with reckless disregard as to the~~  
2           ~~truth or falsity of the statement when made; or~~  
3           ~~(iv) represented a wrongful use of process or abuse~~  
4           ~~of process.~~

5           ~~(b) Stay of discovery. The court shall stay all discovery~~  
6           ~~proceedings in the action upon the filing of preliminary~~  
7           ~~objections for legal insufficiency of a pleading or other~~  
8           ~~appropriate motion on the basis of immunity, provided, however,~~  
9           ~~that the court, on motion and after a hearing and for good cause~~  
10           ~~shown, may order that specified discovery be conducted. The stay~~  
11           ~~of discovery shall remain in effect until notice of the entry of~~  
12           ~~the order ruling on the preliminary objections or on another~~  
13           ~~appropriate motion.~~

14           ~~(c) Admissibility of court determination. If the court~~  
15           ~~determines that the plaintiff has established that there is a~~  
16           ~~substantial likelihood that the plaintiff will prevail on the~~  
17           ~~claim, neither that determination nor the fact of that~~  
18           ~~determination shall be admissible in evidence at any later stage~~  
19           ~~of the case, and no burden of proof or degree of proof otherwise~~  
20           ~~applicable shall be affected by that determination.~~

21           ~~(d) Intervention. The government agency involved in the~~  
22           ~~furtherance of a person's right of petition or free speech under~~  
23           ~~the Constitution of the United States or the Constitution of~~  
24           ~~Pennsylvania in connection with a public issue may intervene or~~  
25           ~~otherwise participate as an amicus curiae in the action~~  
26           ~~involving public petition and participation.~~

27           ~~(e) Legal protections of defendants. Nothing in this~~  
28           ~~section shall be construed to limit any constitutional,~~  
29           ~~statutory or common law protections of defendants to actions~~  
30           ~~involving public petition and participation.~~

~~(f) Abuse of legal process. In addition to other costs or remedies allowed by general rule or statute, in any administrative or judicial proceeding related to the enforcement or implementation of environmental law or regulation, the agency or court may award costs, including reasonable attorney fees, if the agency or court determines that an action, appeal, claim, motion or pleading is frivolous or taken solely for delay or that the conduct of a party or counsel is dilatory or vexatious.~~

~~(g) Definitions. The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:~~

~~"Act in furtherance of a person's right of petition or free speech under the United States Constitution or the Constitution of Pennsylvania in connection with a public issue." Any written or oral statement or writing made before a legislative, executive or judicial proceeding, or any other official proceeding authorized by law; any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other official proceeding authorized by law; any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; or any written or oral statement or writing made to a government agency in connection with the implementation and enforcement of environmental law and regulations.~~

~~"Enforcement of environmental law and regulations." Any activity related to the identification and elimination of violations of environmental laws and regulations, including investigations of alleged violations, inspections of activities subject to regulation under environmental law and regulations~~

~~and responses taken to produce correction of the violations.~~

~~"Government agency." The Federal Government, the  
Commonwealth and all of its departments, commissions, boards,  
agencies and authorities, and all political subdivisions and  
their authorities.~~

~~"Implementation of environmental law and regulations." Any  
activity related to the development and administration of  
environmental programs developed under environmental law and  
regulations.~~

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

#### SUBPART A

#### GENERAL PROVISIONS

#### CHAPTER

#### 77. COSTS AND FEES

#### 83. PARTICIPATION IN ENVIRONMENTAL LAW OR REGULATION

#### CHAPTER 77

#### COSTS AND FEES

SEC.

7707. PARTICIPATION IN ENVIRONMENTAL LAW OR REGULATION.

7708. COSTS FOR MINING PROCEEDINGS.

§ 7707. PARTICIPATION IN ENVIRONMENTAL LAW OR REGULATION.

~~(A) JUDICIAL.~~ A PERSON THAT SUCCESSFULLY DEFENDS AGAINST AN  
ACTION UNDER CHAPTER 83 (RELATING TO PARTICIPATION IN  
ENVIRONMENTAL LAW OR REGULATION) SHALL BE AWARDED REASONABLE  
ATTORNEY FEES AND THE COSTS OF LITIGATION. IF THE PERSON  
PREVAILS IN PART, THE COURT MAY MAKE A FULL AWARD OR A  
PROPORTIONATE AWARD.

~~(B) ADMINISTRATIVE. THE ENVIRONMENTAL HEARING BOARD MAY  
AWARD COSTS AND REASONABLE ATTORNEY FEES IF IT DETERMINES ANY OF  
THE FOLLOWING:~~

1           ~~(1) AN ACTION, MOTION OR PLEADING BEFORE IT IS~~  
2           ~~FRIVOLOUS.~~

3           ~~(2) AN ACTION, MOTION OR PLEADING BEFORE IT IS TAKEN~~  
4           ~~SOLELY FOR DELAY.~~

5           ~~(3) THE CONDUCT OF A PARTY IS DILATORY OR VEXATIOUS.~~

6       § 7708. COSTS FOR MINING PROCEEDINGS.

7       (A) PURPOSE.--THIS SECTION ESTABLISHES COSTS AND FEES  
8       AVAILABLE IN PROCEEDINGS INVOLVING COAL MINING ACTIVITIES. THE  
9       PURPOSE OF THIS SECTION IS TO PROVIDE COSTS AND FEES TO THE SAME  
10      EXTENT OF SECTION 525(E) OF THE SURFACE MINING CONTROL AND  
11      RECLAMATION ACT OF 1977 (PUBLIC LAW 95-87, 30 U.S.C. § 1201 ET  
12      SEQ.) AND THE REGULATIONS PROMULGATED PURSUANT THERETO. IT IS  
13      HEREBY DETERMINED THAT IT IS IN THE PUBLIC INTEREST FOR THE  
14      COMMONWEALTH TO MAINTAIN PRIMARY JURISDICTION OVER THE  
15      ENFORCEMENT AND ADMINISTRATION OF THE SURFACE MINING CONTROL AND  
16      RECLAMATION ACT OF 1977 AND THAT THE PURPOSE OF THIS SECTION IS  
17      TO MAINTAIN PRIMARY JURISDICTION OVER COAL MINING IN THIS  
18      COMMONWEALTH BUT IN NO EVENT TO AUTHORIZE STANDARDS WHICH ARE  
19      MORE STRINGENT THAN FEDERAL STANDARDS FOR THE AWARD OF COSTS AND  
20      FEES.

21      (B) GENERAL RULE.--ANY PARTY MAY FILE A PETITION FOR AWARD  
22      OF COSTS AND FEES REASONABLY INCURRED AS A RESULT OF THAT  
23      PARTY'S PARTICIPATION IN ANY PROCEEDING INVOLVING COAL MINING  
24      ACTIVITIES WHICH RESULTS IN A FINAL ADJUDICATION BEING ISSUED BY  
25      THE ENVIRONMENTAL HEARING BOARD OR A FINAL ORDER BEING ISSUED BY  
26      AN APPELLATE COURT.

27      (C) RECIPIENTS OF AWARDS.--APPROPRIATE COSTS AND FEES  
28      INCURRED FOR A PROCEEDING CONCERNING COAL MINING ACTIVITIES MAY  
29      BE AWARDED:

30           (1) TO ANY PARTY FROM THE PERMITTEE, IF:

1           (I) THE PARTY INITIATES OR PARTICIPATES IN ANY  
2           PROCEEDING REVIEWING ENFORCEMENT ACTIONS UPON A FINDING  
3           THAT A VIOLATION OF A COMMONWEALTH COAL MINING ACT,  
4           REGULATION OR PERMIT HAS OCCURRED OR THAT AN IMMINENT  
5           HAZARD EXISTED.

6           (II) THE ENVIRONMENTAL HEARING BOARD DETERMINES THAT  
7           THE PARTY MADE A SUBSTANTIAL CONTRIBUTION TO THE FULL AND  
8           FAIR DETERMINATION OF THE ISSUES.

9           EXCEPT THAT THE CONTRIBUTION OF A PARTY WHO DID NOT INITIATE  
10          A PROCEEDING SHALL BE SEPARATE AND DISTINCT FROM THE  
11          CONTRIBUTION MADE BY A PARTY INITIATING THE PROCEEDING.

12          (2) TO ANY PARTY, OTHER THAN A PERMITTEE OR HIS  
13          REPRESENTATIVE, FROM THE DEPARTMENT, IF THAT PARTY:

14               (I) INITIATES OR PARTICIPATES IN ANY PROCEEDING  
15               CONCERNING COAL MINING ACTIVITIES.

16               (II) PREVAILS IN WHOLE OR IN PART, ACHIEVING AT  
17               LEAST SOME DEGREE OF SUCCESS ON THE MERITS.

18          UPON A FINDING THAT THE PARTY MADE A SUBSTANTIAL CONTRIBUTION  
19          TO A FULL AND FAIR DETERMINATION OF THE ISSUES.

20          (3) TO A PERMITTEE FROM THE DEPARTMENT WHEN THE  
21          PERMITTEE DEMONSTRATES THAT THE DEPARTMENT IN A MATTER  
22          CONCERNING COAL MINING ACTIVITIES ISSUED AN ORDER OF  
23          CESSATION, A COMPLIANCE ORDER OR AN ORDER TO SHOW CAUSE WHY A  
24          PERMIT SHOULD NOT BE SUSPENDED OR REVOKED, IN BAD FAITH AND  
25          FOR THE PURPOSE OF HARASSING OR EMBARRASSING THE PERMITTEE.

26          (4) TO A PERMITTEE FROM ANY PARTY WHERE THE PERMITTEE  
27          DEMONSTRATES THAT THE PARTY, IN BAD FAITH AND FOR THE PURPOSE  
28          OF HARASSING OR EMBARRASSING THE PERMITTEE:

29               (I) INITIATED A PROCEEDING UNDER ONE OR MORE OF THE  
30               COAL MINING ACTS OR THE REGULATIONS PROMULGATED PURSUANT

TO ANY OF THOSE ACTS CONCERNING COAL MINING ACTIVITIES;  
OR

(II) PARTICIPATED IN SUCH A PROCEEDING IN BAD FAITH  
FOR THE PURPOSE OF HARASSING OR EMBARRASSING THE  
PERMITTEE.

(D) TIME FOR FILING.--THE PETITION FOR AN AWARD OF COSTS AND  
FEES SHALL BE FILED WITH THE ENVIRONMENTAL HEARING BOARD WITHIN  
30 DAYS OF THE DATE AN ADJUDICATION OF THE ENVIRONMENTAL HEARING  
BOARD BECOMES FINAL.

(E) CONTENTS OF PETITION.--A PETITION FILED UNDER THIS  
SECTION SHALL INCLUDE THE NAME OF THE PARTY FROM WHOM COSTS AND  
FEES ARE SOUGHT AND THE FOLLOWING SHALL BE SUBMITTED IN SUPPORT  
OF THE PETITION:

(1) AN AFFIDAVIT SETTING FORTH IN DETAIL ALL REASONABLE  
COSTS AND FEES REASONABLY INCURRED FOR OR IN CONNECTION WITH  
THE PARTY'S PARTICIPATION IN THE PROCEEDING.

(2) RECEIPTS OR OTHER EVIDENCE OF SUCH COSTS AND FEES.

(3) WHERE ATTORNEY FEES ARE CLAIMED, EVIDENCE CONCERNING  
THE HOURS EXPENDED ON THE CASE, THE CUSTOMARY COMMERCIAL RATE  
OF PAYMENT FOR SUCH SERVICES IN THE AREA AND THE EXPERIENCE,  
REPUTATION AND ABILITY OF THE INDIVIDUAL OR INDIVIDUALS  
PERFORMING THE SERVICES.

(F) ANSWER.--ANY PARTY SHALL HAVE 30 DAYS FROM SERVICE OF  
THE PETITION WITHIN WHICH TO FILE AN ANSWER TO SUCH PETITION.

(G) EXCLUSIVE REMEDY.--EXCEPT FOR SECTION 601 OF THE ACT OF  
JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS THE CLEAN STREAMS  
LAW, SECTION 18.3 OF THE ACT OF MAY 31, 1945 (P.L.1198, NO.418),  
KNOWN AS THE SURFACE MINING CONSERVATION AND RECLAMATION ACT,  
SECTION 13 OF THE ACT OF APRIL 27, 1966 (1ST SP.SESS., P.L.31,  
NO.1), KNOWN AS THE BITUMINOUS MINE SUBSIDENCE AND LAND



1 CONSERVATION ACT AND SECTION 13 OF THE ACT OF SEPTEMBER 24, 1968  
2 (P.L.1040, NO.318), KNOWN AS THE COAL REFUSE DISPOSAL CONTROL  
3 ACT, THIS SECTION SHALL BE THE EXCLUSIVE REMEDY FOR THE AWARDED  
4 OF COSTS AND FEES IN PROCEEDINGS INVOLVING COAL MINING  
5 ACTIVITIES.

6 (H) DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES WHEN USED  
7 IN THIS SECTION SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
8 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

9 "COAL MINING ACTIVITIES." THE EXTRACTION OF COAL FROM THE  
10 EARTH, WASTE OR STOCKPILES, PITS OR BANKS BY REMOVING THE STRATA  
11 OR MATERIAL WHICH OVERLIES OR IS ABOVE OR BETWEEN THEM OR  
12 OTHERWISE EXPOSING AND RETRIEVING THEM FROM THE SURFACE,  
13 INCLUDING, BUT NOT LIMITED TO, STRIP MINING, AUGER MINING,  
14 DREDGING, QUARRYING AND LEACHING AND ALL SURFACE ACTIVITY  
15 CONNECTED WITH SURFACE OR UNDERGROUND COAL MINING, INCLUDING,  
16 BUT NOT LIMITED TO, EXPLORATION, SITE PREPARATION, COAL  
17 PROCESSING OR CLEANING, COAL REFUSE DISPOSAL, ENTRY, TUNNEL,  
18 DRIFT, SLOPE, SHAFT AND BOREHOLE DRILLING AND CONSTRUCTION, ROAD  
19 CONSTRUCTION, USE, MAINTENANCE AND RECLAMATION, WATER SUPPLY  
20 RESTORATION OR REPLACEMENT, REPAIR OR COMPENSATION FOR DAMAGES  
21 TO STRUCTURES CAUSED BY UNDERGROUND COAL MINING AND ALL  
22 ACTIVITIES RELATED THERETO.

23 "COAL MINING ACTS." THE PROVISIONS OF THE ACT OF JUNE 22,  
24 1937 (P.L.1987, NO.394), KNOWN AS THE CLEAN STREAMS LAW, THE ACT  
25 OF MAY 31, 1945 (P.L.1198, NO.418), KNOWN AS THE SURFACE MINING  
26 CONSERVATION AND RECLAMATION ACT, THE ACT OF APRIL 27, 1966 (1ST  
27 SP.SESS., P.L.31, NO.1), KNOWN AS THE BITUMINOUS MINE SUBSIDENCE  
28 AND LAND CONSERVATION ACT, AND THE ACT OF SEPTEMBER 24, 1968  
29 (P.L.1040, NO.318), KNOWN AS THE COAL REFUSE DISPOSAL CONTROL  
30 ACT, WHICH GOVERN COAL MINING OR ACTIVITIES RELATED TO COAL

1 MINING.

2 "COSTS AND FEES." ALL REASONABLE COSTS AND EXPENSES,  
3 INCLUDING ATTORNEY FEES AND EXPERT WITNESS FEES, REASONABLY  
4 INCURRED AS A RESULT OF PARTICIPATION IN A PROCEEDING INVOLVING  
5 COAL MINING ACTIVITIES.

6 "DEPARTMENT." THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF  
7 THE COMMONWEALTH.

8 "PROCEEDING." APPEALS OF FINAL DEPARTMENT OF ENVIRONMENTAL  
9 PROTECTION ACTIONS BEFORE THE ENVIRONMENTAL HEARING BOARD AND  
10 JUDICIAL REVIEW OF ENVIRONMENTAL HEARING BOARD ADJUDICATIONS.

11 CHAPTER 83

12 PARTICIPATION IN ENVIRONMENTAL LAW OR REGULATION  
13 SEC.

14 8301. DEFINITIONS.

15 8302. IMMUNITY.

16 ~~8303. INTERVENTION.~~

<—

17 ~~8304. CONSTRUCTION.~~

18 8303. RIGHT TO A HEARING.

<—

19 8304. INTERVENTION.

20 8305. CONSTRUCTION.

21 § 8301. DEFINITIONS.

22 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER  
23 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
24 CONTEXT CLEARLY INDICATES OTHERWISE:

25 "COMMUNICATION TO THE GOVERNMENT." A WRITTEN OR ORAL  
26 STATEMENT OR WRITING MADE:

27 (1) BEFORE A LEGISLATIVE, EXECUTIVE OR JUDICIAL  
28 PROCEEDING OR ANY OTHER OFFICIAL PROCEEDING AUTHORIZED BY  
29 LAW;

30 (2) IN CONNECTION WITH AN ISSUE UNDER CONSIDERATION OR

1 REVIEW BY A LEGISLATIVE, EXECUTIVE OR JUDICIAL BODY OR ANY  
2 OTHER OFFICIAL PROCEEDING AUTHORIZED BY LAW; OR

3 (3) TO A GOVERNMENT AGENCY IN CONNECTION WITH THE  
4 IMPLEMENTATION AND ENFORCEMENT OF ENVIRONMENTAL LAW AND  
5 REGULATIONS.

6 "ENFORCEMENT OF ENVIRONMENTAL LAW AND REGULATION." ACTIVITY  
7 RELATING TO THE IDENTIFICATION AND ELIMINATION OF VIOLATIONS OF  
8 ENVIRONMENTAL LAWS AND REGULATIONS, INCLUDING INVESTIGATIONS OF  
9 ALLEGED VIOLATIONS, INSPECTIONS OF ACTIVITIES SUBJECT TO  
10 REGULATION UNDER ENVIRONMENTAL LAW AND REGULATIONS AND RESPONSES  
11 TAKEN TO PRODUCE CORRECTION OF THE VIOLATIONS.

12 "GOVERNMENT AGENCY." THE FEDERAL GOVERNMENT, THE  
13 COMMONWEALTH AND ANY OF THE COMMONWEALTH'S DEPARTMENTS,  
14 COMMISSIONS, BOARDS, AGENCIES, AUTHORITIES, POLITICAL  
15 ~~SUBDIVISIONS OR THEIR AUTHORITIES.~~ SUBDIVISIONS, OR THEIR  
16 DEPARTMENTS, COMMISSIONS, BOARDS, AGENCIES OR AUTHORITIES. <—

17 "IMPLEMENTATION OF ENVIRONMENTAL LAW AND REGULATION."  
18 ACTIVITY RELATING TO THE DEVELOPMENT AND ADMINISTRATION OF  
19 ENVIRONMENTAL PROGRAMS DEVELOPED UNDER ENVIRONMENTAL LAW AND  
20 REGULATIONS.

21 § 8302. IMMUNITY.

22 (A) GENERAL RULE.--EXCEPT AS PROVIDED IN SUBSECTION (B), A  
23 PERSON THAT, PURSUANT TO FEDERAL OR STATE LAW, FILES AN ACTION  
24 IN THE COURTS OF THIS COMMONWEALTH TO ENFORCE AN ENVIRONMENTAL  
25 LAW OR REGULATION OR THAT MAKES AN ORAL OR WRITTEN COMMUNICATION  
26 TO A GOVERNMENT AGENCY RELATING TO ENFORCEMENT OR IMPLEMENTATION  
27 OF AN ENVIRONMENTAL LAW OR REGULATION SHALL BE IMMUNE FROM CIVIL  
28 LIABILITY IN ANY RESULTING LEGAL PROCEEDING FOR DAMAGES WHERE  
29 THE ACTION OR COMMUNICATION IS AIMED AT PROCURING FAVORABLE  
30 GOVERNMENTAL ACTION.

(B) EXCEPTIONS.--A PERSON SHALL NOT BE IMMUNE UNDER THIS  
SECTION IF ANY OF THE FOLLOWING APPLY:

~~(1) THE ALLEGATION IN THE ACTION OR COMMUNICATION IS NOT  
RELEVANT OR MATERIAL TO THE ENFORCEMENT OR IMPLEMENTATION OF  
AN ENVIRONMENTAL LAW OR REGULATION.~~ SECTION IF THE ALLEGATION  
IN THE ACTION OR ANY COMMUNICATION TO THE GOVERNMENT IS NOT  
RELEVANT OR MATERIAL TO THE ENFORCEMENT OR IMPLEMENTATION OF  
AN ENVIRONMENTAL LAW OR REGULATION AND:

~~(2) THE~~ (1) THE ALLEGATION IN THE ACTION OR  
COMMUNICATION IS KNOWINGLY FALSE, DELIBERATELY MISLEADING OR  
MADE WITH MALICIOUS AND RECKLESS DISREGARD FOR THE TRUTH OR  
FALSITY;

~~(3) THE~~ (2) THE ALLEGATION IN THE ACTION OR  
COMMUNICATION IS MADE FOR THE SOLE PURPOSE OF INTERFERING  
WITH EXISTING OR PROPOSED BUSINESS RELATIONSHIPS; OR

~~(4) THE~~ (3) THE ORAL OR WRITTEN COMMUNICATION TO A  
GOVERNMENT AGENCY RELATING TO ENFORCEMENT OR IMPLEMENTATION  
OF AN ENVIRONMENTAL LAW OR REGULATION IS LATER DETERMINED TO  
BE A WRONGFUL USE OF PROCESS OR AN ABUSE OF PROCESS.

§ 8303. RIGHT TO A HEARING.

A PERSON WHO WISHES TO RAISE THE DEFENSE OF IMMUNITY FROM  
CIVIL LIABILITY UNDER THIS CHAPTER MAY FILE A MOTION WITH THE  
COURT REQUESTING THE COURT TO CONDUCT A HEARING TO DETERMINE THE  
PRELIMINARY ISSUE OF IMMUNITY. IF A MOTION IS FILED, THE COURT  
SHALL THEN CONDUCT A HEARING AND IF THE MOTION IS DENIED, THE  
MOVING PARTY SHALL HAVE AN INTERLOCUTORY APPEAL OF RIGHT TO THE  
COMMONWEALTH COURT, DURING WHICH TIME ALL DISCOVERY SHALL BE  
STAYED.

~~§ 8303~~ 8304. INTERVENTION.

A GOVERNMENT AGENCY HAS THE RIGHT TO PETITION TO INTERVENE OR

1 OTHERWISE PARTICIPATE AS AN AMICUS CURIAE IN THE ACTION  
2 INVOLVING PUBLIC PETITION AND PARTICIPATION.

3 § ~~8304~~ 8305. CONSTRUCTION. <—

4 NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO LIMIT ANY  
5 CONSTITUTIONAL, STATUTORY OR COMMON LAW PROTECTIONS OF  
6 DEFENDANTS TO ACTIONS INVOLVING PUBLIC PETITION AND  
7 PARTICIPATION.

8 ~~SECTION 2. THE FOLLOWING ACTS OR PARTS OF ACTS ARE REPEALED:~~ <—

9 ~~THE FIFTH SENTENCE OF SUBSECTION (B) OF SECTION 307 OF THE~~  
10 ~~ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS THE CLEAN~~  
11 ~~STREAMS LAW.~~

12 SECTION 2. (A) THE FOLLOWING ACTS OR PARTS OF ACTS ARE <—  
13 REPEALED:

14 THE FIFTH SENTENCE OF SECTION 4(B) AND SUBSECTION ~~(F)(2)(V)~~ <—  
15 (F)(5) OF SECTION 4.2 OF THE ACT OF MAY 31, 1945 (P.L.1198, <—  
16 NO.418), KNOWN AS THE SURFACE MINING CONSERVATION AND  
17 RECLAMATION ACT.

18 THE LAST SENTENCE OF SECTION 5(G) OF THE ACT OF APRIL 27,  
19 1966 (1ST SP.SESS., P.L.31, NO.1), KNOWN AS THE BITUMINOUS MINE  
20 SUBSIDENCE AND LAND CONSERVATION ACT.

21 THE LAST SENTENCE OF SECTION 5(I) OF THE ACT OF SEPTEMBER 24,  
22 1968 (P.L.1040, NO.318), KNOWN AS THE COAL REFUSE DISPOSAL  
23 CONTROL ACT.

24 (B) ALL OTHER ACTS AND PARTS OF ACTS ARE REPEALED INsofar AS <—  
25 THEY ARE INCONSISTENT WITH THIS ACT.

26 SECTION 3. THE ADDITION OF 27 PA.C.S. § 7708 SHALL APPLY TO  
27 ALL PROCEEDINGS AND PETITIONS FOR COSTS AND FEES FILED AFTER THE  
28 EFFECTIVE DATE OF THIS ACT.

29 SECTION 4. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

30 (1) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT

1 IMMEDIATELY:

2 (I) THE ADDITION OF 27 PA.C.S. § 7708.

3 (II) THIS SECTION.

4 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60  
5 DAYS.