
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2613

Session of
1998

INTRODUCED BY S. H. SMITH, PESCI, FARGO, ORIE, COLAIZZO, ALLEN,
B. SMITH, ARGALL, J. TAYLOR, GEORGE, GEIST, STERN, PIPPY,
E. Z. TAYLOR, SAYLOR, HERSHEY, BELFANTI, LEH, LAUGHLIN,
SATHER, DeWEESE, McNAUGHTON, LYNCH, HENNESSEY, TRELLO, WILT,
SERAFINI, ROSS, RAMOS, BOSCOLA, YOUNGBLOOD AND SEYFERT,
MAY 11, 1998

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MAY 11, 1998

AN ACT

1 Providing immunity for certain persons who reclaim certain
2 abandoned lands or abate certain water pollution.

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 Environmental
7 Good Samaritan Act.

8 Section 2. Findings.

9 The General Assembly finds and declares as follows:

10 (1) This Commonwealth's long history of mining and the
11 extraction of oil and gas has left some lands and waters
12 unreclaimed and polluted.

13 (2) These abandoned lands and polluted waters are
14 unproductive, erode the tax base and are serious impediments
15 to the economic welfare and growth of this Commonwealth.

1 (3) The unreclaimed lands and polluted waters present a
2 danger to the health, safety and welfare of the people and
3 the environment.

4 (4) This Commonwealth does not possess sufficient
5 resources to reclaim all the abandoned lands and to abate the
6 water pollution.

7 (5) Numerous landowners, citizens, watershed
8 associations, environmental organizations and governmental
9 entities who do not have a legal responsibility to reclaim
10 the abandoned lands or to abate the water pollution are
11 interested in addressing these problems but are reluctant to
12 engage in such reclamation and abatement activities because
13 of potential liabilities associated with the reclamation and
14 abatement activities.

15 (6) It is in the best interest of the health, safety and
16 welfare of the people of this Commonwealth and the
17 environment to encourage reclamation of the abandoned lands
18 and abatement of water pollution.

19 Section 3. Purpose.

20 This act is intended to encourage the improvement of land and
21 water adversely affected by mining and oil and gas extraction,
22 to aid in the protection of wildlife, to decrease soil erosion,
23 to aid in the prevention and abatement of the pollution of
24 rivers and streams, to protect and improve the environmental
25 values of this Commonwealth and to eliminate or abate hazards to
26 health and safety. It is the intent of the General Assembly to
27 encourage voluntary reclamation of lands adversely affected by
28 mining or oil or gas extraction. The purpose of this act is to
29 improve water quality and to control and eliminate water
30 pollution resulting from mining or oil or gas extraction or

1 exploration by limiting the liability which could arise as a
2 result of the voluntary reclamation of abandoned lands or the
3 reduction and abatement of water pollution. This act is not
4 intended to limit the liability of a person who under existing
5 law is or may become responsible to reclaim the land or address
6 the water pollution or anyone who by contract, order or
7 otherwise is required to or agrees to perform the reclamation or
8 abate the water pollution.

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 "Approved project." A reclamation project or water pollution
14 abatement project approved by the Department of Environmental
15 Protection prior to completion.

16 "Consideration." Something of value promised, given or
17 performed in exchange for something which has the effect of
18 making a legally enforceable contract. For the purpose of this
19 act, the term does not include a promise to a landowner to
20 repair damage caused by a reclamation project or water pollution
21 abatement project when the promise is made in exchange for
22 access to the land.

23 "Department." The Department of Environmental Protection of
24 the Commonwealth.

25 "Eligible land and water." Land and water adversely affected
26 by mining or oil or gas extraction and left or abandoned in an
27 unreclaimed or inadequately reclaimed condition or left
28 discharging water pollution and for which no person has a
29 continuing reclamation or water pollution abatement obligation.
30 The term shall also include land and water adversely affected by

1 mining or oil or gas extraction and left in an unreclaimed or
2 inadequately reclaimed condition or left discharging water
3 pollution for which the Department of Environmental Protection
4 has forfeited and collected the operators bonds and there is no
5 outstanding litigation concerning the bond forfeiture.

6 "Landowner." A person who holds either legal or equitable
7 interest in real property.

8 "Mineral." Any aggregate or mass of mineral matter, whether
9 or not coherent, which is extracted by mining, including, but
10 not limited to, limestone, dolomite, sand, gravel, slate,
11 argillite, diabase, gneiss, micaceous sandstone known as
12 bluestone, rock, stone, earth, fill, slag, iron ore, zinc ore,
13 vermiculite, clay and anthracite and bituminous coal.

14 "Person." A natural person, partnership, association,
15 association members, corporation, political subdivision of the
16 Commonwealth, an agency, instrumentality or entity of Federal or
17 State Government or other legal entity recognized by law as the
18 subject of rights and liabilities.

19 "Project work area." That land necessary for a person to
20 complete a reclamation project or a water pollution abatement
21 project.

22 "Reclamation project." The restoration of eligible lands and
23 water to productive use by regrading and revegetating the land
24 to stable contours that blend in and complement the drainage
25 pattern of the surrounding terrain with no highwalls, spoil
26 piles or depressions to accumulate water.

27 "Water pollution abatement facilities." The methods for
28 treatment or abatement of water pollution located on eligible
29 lands and water. These methods include, but are not limited to,
30 a structure, system, practice, technique or method constructed,

1 installed or followed to reduce, treat or abate such water
2 pollution.

3 "Water pollution abatement project." A plan for treatment or
4 abatement of water pollution located on eligible lands and
5 water. These plans include, but are not limited to, the
6 practices to be followed and the installation, operation and
7 maintenance of facilities to reduce, treat or abate such water
8 pollution.

9 Section 5. Consultation with department.

10 (a) General rule.--Landowners and persons planning a
11 reclamation project or a water pollution abatement project may
12 notify the department of their proposed project. If notified,
13 the department shall review its files and advise whether any
14 person is legally responsible for the unreclaimed land or the
15 water pollution and whether the proposed project would be
16 located on eligible lands and water.

17 (b) Inventory of projects.--The department shall develop and
18 maintain a system to inventory and record each water pollution
19 abatement project and each reclamation project which is
20 submitted in writing, reviewed and approved by the department
21 before each project is completed. The approved project inventory
22 shall identify the land containing the project work area and
23 each landowner and each person who, through participation in the
24 reclamation project or water pollution abatement project, is
25 entitled to the protections and immunities provided by this act.

26 (c) Nature of department approval and identification.--For
27 the purposes of 2 Pa.C.S. Ch. 5 Subch. A (relating to practice
28 and procedure of Commonwealth agencies), the act of July 13,
29 1988 (P.L.530, No.94), known as the Environmental Hearing Board
30 Act, and the Environmental Hearing Board's regulation at 25 Pa.

Code Ch. 1021 (relating to practice and procedures), the following shall not be an adjudication or an action:

(1) The department's approval or disapproval of a reclamation project or a water pollution abatement project.

(2) The department's identification or failure to identify in the approved project inventory land containing the project work area or a landowner or a person who participated in a reclamation project or in a water pollution abatement project.

(d) Presumptions.--

(1) Every landowner and person identified in the approved project inventory shall be presumed to be covered by the protections and immunities provided by this act. This presumption may be rebutted by clear and convincing evidence that the landowner or person did not participate in an approved reclamation project or water pollution abatement project.

(2) A landowner or a person who participates in a reclamation project or a water pollution abatement project which is not an approved project is eligible for the protections and immunities provided by this act but shall not be entitled to the presumption provided by paragraph (1).

Section 6. Landowner liability limitation and exceptions.

(a) General rule.--Except as specifically provided in subsections (b) and (c), a landowner who provides access to the land, without charge or other consideration, which results in the implementation of a reclamation project or a water pollution abatement project:

(1) Shall be immune from liability for any injury or damage suffered by the person implementing the reclamation

1 project or the water pollution abatement project while the
2 person is within the project work area.

3 (2) Shall be immune from liability for any injury to or
4 damage suffered by a third party which arises out of or
5 occurs as a result of an act or omission of a person
6 implementing a reclamation project or water pollution
7 abatement project which occurs during the implementation of
8 the reclamation project or the water pollution abatement
9 project.

10 (3) Shall be immune from liability for any injury to or
11 damage suffered by a third party which arises out of or
12 occurs as a result of a reclamation project or a water
13 pollution abatement project.

14 (4) Shall not be deemed to assume legal responsibility
15 for or incur liability for any pollution resulting from a
16 reclamation project or water pollution abatement project.

17 (5) Shall not be subject to a citizen suit filed
18 pursuant to section 601 of the act of June 22, 1937
19 (P.L.1987, No.394), known as The Clean Streams Law, for
20 pollution resulting from a reclamation project or water
21 pollution abatement project.

22 (6) Shall be immune from liability for the operation,
23 maintenance or repair of the water pollution abatement
24 facilities constructed or installed during the project unless
25 the landowner negligently damages or destroys the water
26 pollution abatement facilities or denies access to those
27 persons who operate, maintain or repair the water pollution
28 abatement facilities.

29 (b) Duty to warn.--A landowner shall warn a person
30 implementing a reclamation project or water pollution abatement

1 project of known, latent, dangerous conditions located on the
2 project work area which known, latent, dangerous conditions are
3 not the subject of the reclamation project or the water
4 pollution abatement project. Nothing in this act shall limit in
5 any way or affect a landowner's liability which results from the
6 landowner's failure to warn of such known, latent, dangerous
7 conditions.

8 (c) Exceptions to immunity.--Nothing in this act shall limit
9 in any way or affect a landowner's liability which results from
10 a reclamation project or water pollution abatement project and
11 which would otherwise exist:

12 (1) For injury or damage resulting from the landowner's
13 acts or omissions which are reckless or constitute gross
14 negligence or willful misconduct.

15 (2) Where the landowner charges an access fee or
16 requires other consideration before allowing access to the
17 land for the purpose of implementing a reclamation project or
18 water pollution abatement project or to operate, maintain or
19 repair water pollution abatement facilities constructed or
20 installed during a water pollution abatement project.

21 (3) For the landowner's unlawful activities.

22 Section 7. Project liability limitation and exceptions.

23 (a) General rule.--Except as specifically provided in
24 subsection (b), a person who implements or participates in a
25 reclamation project or a water pollution abatement project:

26 (1) Shall be immune from liability for any injury to or
27 damage suffered by a person which arises out of or occurs as
28 a result of the water pollution abatement facilities
29 constructed or installed during the water pollution abatement
30 project.

1 (2) Shall be immune from liability for any pollution
2 emanating from the water pollution abatement facilities
3 constructed or installed during the water pollution abatement
4 project unless the person affects an area that is
5 hydrologically connected to the water pollution abatement
6 project work area and causes increased pollution by
7 activities which are unrelated to the implementation of a
8 water pollution abatement project.

9 (3) Shall not be deemed to assume responsibility for or
10 incur liability for the operation, maintenance and repair of
11 the water pollution abatement facilities constructed or
12 installed during the water pollution abatement project.

13 (4) Shall not be subject to a citizen suit under section
14 601 of the act of June 22, 1937 (P.L.1987, No.394), known as
15 The Clean Streams Law, for pollution emanating from the water
16 pollution abatement facilities constructed or installed
17 during the water pollution abatement project.

18 (b) Exceptions.--Nothing in this act shall limit in any way
19 the liability of a person who implements or participates in a
20 reclamation project or a water pollution abatement project which
21 liability results from the reclamation project or the water
22 pollution abatement project and which would otherwise exist:

23 (1) For injury or damage resulting from the person's
24 acts or omissions which are reckless or constitute gross
25 negligence or willful misconduct.

26 (2) For the person's unlawful activities.

27 Section 8. Permits and zoning.

28 Nothing in this act shall be construed as waiving any
29 existing permit requirements or waiving any local zoning
30 requirements.

1 Section 9. Relationship to Federal and State programs.

2 The provisions of this act shall not prevent the Commonwealth
3 from enforcing requirements necessary or imposed by the Federal
4 Government as a condition to receiving or maintaining program
5 authorization, delegation, primacy or Federal funds.

6 Section 10. General permits.

7 If the department determines it will further the purposes of
8 this act, the department may issue a general permit for each
9 reclamation project or water pollution abatement project, which
10 general permit shall:

11 (1) Encompass all of the activities included in that
12 reclamation project or water pollution abatement project.

13 (2) Be issued in place of any required stream
14 encroachment, earth disturbance or national pollution
15 discharge elimination system permits.

16 Section 11. Exceptions.

17 (a) General rule.--Any person who under existing law shall
18 be or may become responsible to reclaim the land or treat or
19 abate the water pollution or any person who for payment or
20 consideration or who receives some other benefit through a
21 contract, or any person who through a consent order and
22 agreement or otherwise agrees or is ordered to perform or
23 complete reclamation or treat or abate water pollution as well
24 as a surety which provided a bond for the site shall not be
25 eligible for nor shall that person receive the benefit of the
26 protections and immunities available under this act.

27 (b) Projects near mining or coal refuse sites.--This act
28 shall not apply to a reclamation project or a water pollution
29 abatement project that is located adjacent to, hydrologically
30 connected to or in close proximity to a site permitted under the

1 act of May 31, 1945 (P.L.1198, No.418), known as the Surface
2 Mining Conservation and Reclamation Act, the act of April 27,
3 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine
4 Subsidence and Land Conservation Act, the act of September 24,
5 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal
6 Control Act, or the act of December 19, 1984 (P.L.1093, No.219),
7 known as the Noncoal Surface Mining Conservation and Reclamation
8 Act, unless:

9 (1) The reclamation project or water pollution abatement
10 project is submitted to the department in writing before the
11 project is started.

12 (2) The department finds:

13 (i) The reclamation project or the water pollution
14 abatement project will not adversely affect the
15 permittee's obligations under the permit and the
16 applicable law.

17 (ii) The activities on the project work area cannot
18 be used by the permittee to avoid the permittee's
19 reclamation or water pollution treatment or abatement
20 obligations.

21 (3) The department issues a written notice of its
22 findings and the approval of the project.

23 (c) Projects in lieu of civil penalties.--This act shall not
24 apply to a reclamation project or a water pollution abatement
25 project that is performed in lieu of paying civil penalties.

26 (d) Land Recycling and Environmental Remediation Standards
27 Act.--The act of May 19, 1995 (P.L.4, No.2), known as the Land
28 Recycling and Environmental Remediation Standards Act to
29 reclamation projects or water pollution abatement projects
30 implemented under this act.

1 Section 12. Regulations.

2 The department may promulgate rules and regulations necessary
3 to implement the provisions of this act.

4 Section 13. Repeal.

5 All acts and parts of acts are repealed insofar as they are
6 inconsistent with this act.

7 Section 14. Effective date.

8 This act shall take effect in 60 days.