

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1342 Session of
2003

INTRODUCED BY GEORGE, CRUZ, DALEY, FABRIZIO, FAIRCHILD, FRANKEL,
GOODMAN, GRUCELA, HORSEY, JAMES, KIRKLAND, LAUGHLIN,
LEVDANSKY, ROONEY, RUBLEY, STABACK, SURRA, TANGRETTI,
TRAVAGLIO, WALKO, WASHINGTON AND YOUNGBLOOD, MAY 6, 2003

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MAY 6, 2003

AN ACT

1 Amending the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1),
2 entitled, as amended, "An act to protect the public health,
3 welfare and safety by regulating the mining of bituminous
4 coal; declaring the existence of a public interest in the
5 support of surface structures; providing a remedy for the
6 restoration or replacement of water supplies affected by
7 underground mining; providing a remedy for the restoration or
8 replacement or compensation for surface structures damaged by
9 underground mining; providing standards for the prevention of
10 hazards to human safety and material damage to certain
11 structures; requiring permits, and in certain circumstances
12 bonds, for the mining of bituminous coal; providing for the
13 filing of maps or plans with recorders of deeds; providing
14 for the giving of notice of mining operations to political
15 subdivisions and surface landowners of record; requiring mine
16 inspectors to accompany municipal officers and their agents
17 on inspection trips; granting powers to public officers and
18 affected property owners to enforce the act; requiring
19 grantors to certify as to whether any structures on the lands
20 conveyed are entitled to support from the underlying coal and
21 grantees to sign an admission of a warning of the possible
22 lack of any such right of support; requiring grantors to
23 provide notice of the existence of voluntary agreements for
24 the restoration or replacement of water supplies or for the
25 repair or compensation for structural damage; imposing duties
26 on the Department of Environmental Resources for the
27 compilation and analysis of data; and imposing liability for
28 violation of the act," providing for alternative methods to
29 minimize subsidence damage, for additional protection for
30 surface water, water supplies, perennial streams, surface
31 structures, historic properties and public utilities, for

1 additional measures regarding the restoration or replacement
2 of water supplies, for limitations on defenses in an action
3 for contamination, diminution or interruption of a water
4 supply or damage to a surface structure, for assurance of the
5 adequacy of bond amount to cover subsidence damage, for
6 compilation, analysis and reporting of additional data and
7 for additional duties of the Department of Environmental
8 Protection; and making editorial changes.

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

11 Section 1. The title and section 3 of the act of April 27,
12 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine
13 Subsidence and Land Conservation Act, amended June 22, 1994
14 (P.L.357, No.54), are amended to read:

15 AN ACT

16 To protect the public health, welfare and safety by regulating
17 the mining of bituminous coal; declaring the existence of a
18 public interest in the support of surface structures;
19 providing a remedy for the restoration or replacement of
20 water supplies affected by underground mining; providing a
21 remedy for the restoration or replacement or compensation for
22 surface structures damaged by underground mining; providing
23 standards for the prevention of hazards to human safety and
24 material damage to certain structures; requiring permits, and
25 in certain circumstances bonds, for the mining of bituminous
26 coal; providing for the filing of maps or plans with
27 recorders of deeds; providing for the giving of notice of
28 mining operations to political subdivisions and surface
29 landowners of record; requiring mine inspectors to accompany
30 municipal officers and their agents on inspection trips;
31 granting powers to public officers and affected property
32 owners to enforce the act; requiring grantors to certify as
33 to whether any structures on the lands conveyed are entitled

1 to support from the underlying coal and grantees to sign an
2 admission of a warning of the possible lack of any such right
3 of support; requiring grantors to provide notice of the
4 existence of voluntary agreements for the restoration or
5 replacement of water supplies or for the repair or
6 compensation for structural damage; imposing duties on the
7 Department of Environmental [Resources] Protection for the
8 compilation and analysis of data; and imposing liability for
9 violation of the act.

10 Section 3. Legislative findings; declaration of policy.--(a)

11 It is hereby determined by the General Assembly of Pennsylvania
12 and declared as a matter of legislative findings that:

13 (1) Present mine subsidence legislation and coal mining laws
14 have failed to protect the public interest in Pennsylvania in
15 preserving our land.

16 (2) Damage from mine subsidence has seriously impeded land
17 development of the Commonwealth.

18 (3) Damage from mine subsidence has caused a very clear and
19 present danger to the health, safety and welfare of the people
20 of Pennsylvania.

21 (4) Damage by subsidence erodes the tax base of the affected
22 municipalities.

23 (5) Coal and related industries and their continued
24 operation are important to the economic welfare and growth of
25 the Commonwealth.

26 (6) In the past, owners of surface structures have not in
27 many instances received adequate notice or knowledge regarding
28 subsurface support, or lack thereof, for surface structures, and
29 therefore the State must exercise its police powers for the
30 protection of the structures covered herein.

1 (7) In order to prevent the occurrence of such state of
2 affairs in the future, the deed notice provisions relating to
3 such subsurface support, or lack thereof to a person desiring to
4 erect a surface structure after the effective date of this act,
5 must be emphasized and strengthened and it is necessary to make
6 available to those persons desiring to erect a surface structure
7 procedures whereby adequate support of such structure can be
8 acquired.

9 (8) Historic properties within Pennsylvania are
10 irreplaceable resources for future generations, but they have
11 not received adequate protection from damage due to mine
12 subsidence.

13 (9) Preservation of surface water resources, including
14 wetlands, during and after coal extraction is essential to the
15 public interest.

16 (10) Millions of tax dollars are invested annually in the
17 construction and maintenance of roads and bridges in this
18 Commonwealth. This public infrastructure needs to be protected
19 for future generations.

20 (b) The Pennsylvania General Assembly therefore declares it
21 to be the policy of the Commonwealth of Pennsylvania that:

22 (1) The protection of surface structures and better land
23 utilization are of utmost importance to Pennsylvania.

24 (2) Damage to surface structures and the land supporting
25 them caused by mine subsidence is against the public interest
26 and may adversely affect the health, safety and welfare of our
27 citizens.

28 (3) The prevention or restoration of damage from mine
29 subsidence is recognized as being related to the economic future
30 and well-being of Pennsylvania.

1 (4) The preservation within the Commonwealth of surface
2 structures and the land supporting them is necessary for the
3 safety and welfare of the people.

4 (5) It is the intent of this act to harmonize the protection
5 of surface structures and the land supporting them and the
6 continued growth and development of the bituminous coal industry
7 in the Commonwealth.

8 (6) [It is necessary to develop an adequate remedy for the
9 restoration and replacement of water supplies affected by
10 underground mining.] It is the intent of this act to provide
11 protection of water resources, including the restoration and
12 replacement of water supplies affected by underground mining, so
13 that these resources are available for utilization in connection
14 with agricultural, commercial, recreational and residential uses
15 of the surface during and after coal extraction.

16 (7) It is necessary to develop a remedy for the restoration
17 or replacement of or compensation for surface structures damaged
18 by underground mining.

19 (8) It is necessary to provide a method whereby surface
20 structures erected after the effective date of this act may be
21 protected from damage arising from mine subsidence.

22 (9) It is necessary to protect historic properties from
23 material damage to their historic fabric arising from subsidence
24 related to mine operation.

25 (10) It is necessary to protect State and local roads from
26 subsidence related to mine operation.

27 Section 2. The act is amended by adding a section to read:

28 Section 3.1. Definitions.--The following words and phrases
29 when used in this act shall have the meanings given to them in
30 this section unless the context clearly indicates otherwise:

1 "Department." The Department of Environmental Protection of
2 the Commonwealth.

3 "Perennial stream." A body of water which is flowing in a
4 channel or bed composed primarily of substrates associated with
5 flowing waters and is capable, in the absence of pollution or
6 other manmade stream disturbances, of supporting a benthic
7 macroinvertebrate community composed of two or more recognizable
8 taxonomic groups of organisms which are large enough to be seen
9 by the unaided eye, can be retained by a United States Standard
10 No. 30 sieve with twenty-eight meshes per inch and 0.595
11 millimeter openings and can live at least part of their life
12 cycles within or upon available substrates in a body of water or
13 water transport system.

14 "Public roads." Any road or appurtenant structure
15 constructed or maintained by the Commonwealth or any county or
16 municipality.

17 "Secretary." The Secretary of Environmental Protection of
18 the Commonwealth.

19 Section 3. Section 5(a) and (e) of the act, amended October
20 10, 1980 (P.L.874, No.156), are amended to read:

21 Section 5. Permit; application; map or plan; bond or other
22 security; filing; general rulemaking authority; prevention of
23 damage; mine stability; maintenance of use and value of lands.--

24 (a) Before any bituminous coal mine subject to the provisions
25 of this act is opened, reopened, or continued in operation, the
26 owner, operator, lessor, lessee, general manager, superintendent
27 or other person in charge of or having supervision over such
28 mine or mining operation shall apply to the [Department of
29 Environmental Resources] department, on a form prepared and
30 furnished by the department, for a permit for each separate

1 bituminous coal mine or mining operation. As a part of such
2 application for a permit the applicant shall furnish, in
3 duplicate, a map or plan of a scale and in a manner in
4 accordance with rules and regulations of the [Department of
5 Environmental Resources] department showing the location of the
6 mine or mining operation, the extent to which mining operations
7 presently have been completed, and the extent to which mining
8 operations will be conducted under the permit being requested.
9 Such map or plan shall show the boundaries of the area of
10 surface land overlying the mine or mining operation, the
11 location and/or designation of all structures in place on the
12 effective date of this act which overlies the proposed mine or
13 mining operation, the name of the record owner or owners of said
14 surface structures, the location of all bodies of water, rivers
15 and streams, roads and railroads, and the political subdivision
16 and county in which said structures are located. Such map or
17 plan shall include, in addition to the information specified
18 above, such information on the character of the mining
19 operation, overburden, rock strata, proximity of and conditions
20 in overlying or underlying coal seams and other geological
21 conditions as the department, by rules and regulations, shall
22 direct. The department shall have the power to require the
23 updating of such maps from time to time as it shall prescribe by
24 rule and regulation. The map or plan must set forth a detailed
25 description of the manner, if any, by which the applicant
26 proposes to support the surface structures overlying the
27 bituminous mine or mining operation. Upon receipt of such
28 application in proper form the department shall cause a permit
29 to be issued or reissued if, in its opinion, the application
30 discloses that sufficient support will be provided for the

1 protected structures and that the operation will comply with the
2 provisions of this act and the rules and regulations issued
3 thereunder. All permits issued under this act shall contain such
4 terms and shall be issued for such duration as the department
5 may prescribe.

6 * * *

7 (e) An operator of a coal mine subject to the provisions of
8 this act shall adopt measures and shall describe to the
9 department in his permit application measures that he will adopt
10 to prevent subsidence causing material damage to the extent
11 technologically and economically feasible, to maximize mine
12 stability, and to maintain the value and [reasonable] reasonably
13 foreseeable use of such surface land[: Provided, however, That
14 nothing]. The demonstration shall explain and provide
15 technological and economic analysis of the impacts of subsidence
16 on each surface structure overlying the mine which may be
17 materially damaged by the mining. It shall also include, but not
18 be limited to, an alternatives analysis which will demonstrate
19 whether there are alternative methods of mining, mine layout
20 and/or engineering which would minimize damage to dwellings and
21 other surface structures. For the purposes of this section,
22 "material damage" shall mean any damage to a dwelling, building,
23 barn or other surface structure which could exceed five thousand
24 dollars (\$5,000.00). An applicant for a permit under this act
25 shall also demonstrate to the department in the applicant's
26 permit application that the proposed mining will be planned and
27 conducted in a manner which will maintain and protect existing
28 and designated surface water uses and the degree of water
29 quality necessary to protect these existing uses. The
30 Environmental Quality Board or the department may provide

1 additional protection to perennial streams. Nothing in this
2 subsection shall be construed to prohibit planned subsidence in
3 a predictable and controlled manner or the standard method of
4 room and pillar mining so long as the operator complies with the
5 requirements of this section.

6 * * *

7 Section 4. Sections 5.1, 5.2, 5.3, 5.4, 5.5(a), (b) and (d),
8 5.6(c) and 6(b) of the act, amended or added June 22, 1994
9 (P.L.357, No.54), are amended to read:

10 Section 5.1. Restoration or replacement of water supplies
11 affected by underground mining.--(a) (1) After the effective
12 date of this section, any mine operator who, as a result of
13 underground mining operations, affects a public or private water
14 supply by contamination, diminution or interruption shall
15 restore or replace the affected supply with an alternate source
16 which adequately services in quantity and quality the premining
17 uses of the supply or any reasonably foreseeable uses of the
18 supply.

19 (2) A restored or replacement water supply shall be deemed
20 adequate where it differs in quality from the premining supply,
21 providing it meets standards set forth in the act of May 1, 1984
22 (P.L.206, No.43), known as the "Pennsylvania Safe Drinking Water
23 Act," or is comparable to the premining supply where that supply
24 did not meet such standards. If an operator fails to comply with
25 this provision, the [Secretary of Environmental Resources]
26 secretary shall issue such orders to the operator as are
27 necessary to assure compliance.

28 (3) For the purposes of this section, the term "water
29 supply" shall include any existing source of water used for
30 domestic, commercial, industrial or recreational purposes or for

1 agricultural uses, including use or consumption of water to
2 maintain the health and productivity of animals used or to be
3 used in agricultural production and the [watering] irrigation of
4 lands on a periodic or permanent basis by a constructed or
5 manufactured system in place [on the effective date of this act]
6 three months prior to mining to provide [irrigation] water for
7 agricultural production of plants and crops at levels of
8 productivity or yield historically experienced by such plants or
9 crops within a particular geographic area, or which serves any
10 public building or any noncommercial structure customarily used
11 by the public, including, but not limited to, churches, schools
12 and hospitals.

13 (4) A restored or replacement water supply shall be deemed
14 adequate in quantity when it produces the same or greater volume
15 of water as existed prior to mining.

16 (b) A mine operator shall not be liable to restore or
17 replace a water supply under the provisions of this section if a
18 claim of contamination, diminution or interruption is made more
19 than two years after [the supply has been adversely affected.]
20 either the property owner discovers the contamination,
21 diminution or interruption or the operator refuses to replace
22 this supply.

23 Section 5.2. Procedures for securing restoration or
24 replacement of affected water supplies; duties of Department of
25 Environmental [Resources] Protection.--(a) (1) Whenever a
26 landowner or water user experiences contamination, diminution or
27 interruption of a water supply which is believed to have
28 occurred as a result of underground coal mining operations, that
29 landowner or water user shall notify the mine operator who shall
30 both promptly notify the department thereof and with reasonable

1 diligence investigate the water loss.

2 (2) Where the presumption of subsection (c) applies and the
3 user is without a readily available alternate source, the
4 operator shall provide a temporary water supply within twenty-
5 four hours of being contacted by the landowner or water user.

6 (3) If a temporary water supply is not provided within
7 twenty-four hours, the [Department of Environmental Resources]
8 department, after notice by the landowner or water user, shall
9 order the operator to provide temporary water within twenty-four
10 hours. The operator shall notify the department of any claim of
11 contamination, diminution or interruption made to it by a
12 landowner or water user and its disposition.

13 (b) (1) If the affected water supply has not been restored
14 or an alternate source has not been provided by the operator or
15 if an operator ceases to provide an alternate source, the
16 landowner or water user may so notify the department and request
17 that an investigation be conducted.

18 (2) Within ten days of such notification, the department
19 shall investigate any such claim and shall, within [forty-five]
20 thirty days following notification, make a determination in
21 writing of whether the contamination, diminution or interruption
22 was caused by the underground mining operation and so notify all
23 affected parties. If it finds causation, [it] within forty-five
24 days of receipt of the notification required by subsection (a),
25 the department shall issue [such orders] an order to the mine
26 operator [as are necessary to assure compliance with this
27 section. Such orders may include orders requiring the temporary
28 replacement of a water supply where it is determined that the
29 contamination, diminution or interruption may be of limited
30 duration, orders requiring the provision of immediate temporary

1 water to the landowner or orders requiring the provision of a
2 permanent alternate source where the contamination, diminution
3 or interruption does not abate within three years of the date on
4 which the supply was adversely affected.] requiring replacement
5 of the water supply. It is the intent of this section that
6 temporary replacement of a water supply shall be permitted for
7 no longer than ninety days after the department has determined
8 that there is contamination, diminution or interruption of the
9 supply caused by the underground mining operation or an
10 additional two hundred seventy days if the department determines
11 that water supply replacement to occur through connection to a
12 public water supply is necessary. The permanent replacement
13 supply shall be provided more promptly where reasonably
14 possible.

15 (c) In any determination or proceeding under this section,
16 it shall be presumed that an underground mine operator is
17 responsible for the contamination, diminution or interruption of
18 a water supply that is within an area [above the mine determined
19 by projecting a thirty-five degree angle from the vertical from
20 the outside of any coal removal area] of the mine subsidence
21 permit's boundary or within two thousand five hundred feet
22 horizontally beyond that permit's boundary. The mine operator
23 may successfully rebut the presumption by affirmatively proving
24 that the mine operator solicited access [was denied] to the
25 property on which the supply is located to conduct premining and
26 postmining surveys of the quality and quantity of the supply but
27 was denied such access, that the mine operator notified the
28 department thereof and the department thereafter served notice
29 upon the landowner by certified mail or personal service, which
30 notice identified all of the rights established by sections 5.1

1 and 5.3 and this section[,] and that access [had been] continued
2 to be denied to the mine operator or the department [and the
3 landowner failed to provide or authorize access within ten] for
4 this survey work for thirty days after receipt [thereof.] by the
5 landowner of the department's notice. In addition to identifying
6 the rights established in sections 5.1 and 5.3 and this section,
7 the notice by the department shall also advise the landowner
8 receiving such notice that the failure to provide or authorize
9 access may preclude the replacement of the water supply, in the
10 event the water supply is diminished, contaminated or
11 interrupted.

12 (d) Unless the presumption contained in subsection (c)
13 applies, a landowner, the department or any affected user
14 asserting contamination, diminution or interruption shall have
15 the burden to affirmatively prove that underground mining
16 activity caused the contamination, diminution or interruption.
17 Wherever a mine operator, upon request, has been denied access
18 to conduct a premining survey and the mine operator thereafter
19 served notice upon the landowner by certified mail or personal
20 service, which notice identified the rights established by
21 sections 5.1 and 5.3 and this section, was denied access and the
22 landowner failed to provide or authorize access [within ten days
23 after receipt thereof,] as provided in subsection (c), then such
24 affirmative proof shall include premining baseline data,
25 provided by the landowner or the department, relative to the
26 affected water supply.

27 (e) A mine operator shall be relieved of liability for
28 affecting a public or private water supply by contamination,
29 diminution or interruption by affirmatively proving [one] either
30 of the following defenses:

1 (1) The contamination, diminution or interruption existed
2 prior to the mining activity as determined by a premining
3 survey.

4 [(2) The contamination, diminution or interruption occurred
5 more than three years after mining activity occurred.

6 (3)] (2) The contamination, diminution or interruption
7 occurred solely as [the] a result of some cause other than the
8 mining activity.

9 (f) Any mine operator who obtains water samples in a
10 premining or postmining survey shall utilize a certified
11 laboratory to analyze such samples and shall submit copies of
12 the results of such analysis, as well as the results of any
13 quantitative analysis, to the department and to the landowner
14 within [thirty] ten days of their receipt. Nothing contained
15 herein shall be construed as prohibiting a landowner or water
16 user from utilizing an independent certified laboratory to
17 sample and analyze the water supply.

18 (g) If an affected water supply is not restored or
19 reestablished or a permanent alternate source is not provided
20 within [three years, the mine operator may be relieved of
21 further responsibility by entering into a written agreement
22 providing compensation acceptable to the landowner. If no
23 agreement is reached, the mine operator] ninety days, at the
24 option of the landowner, the department shall order the mine
25 operator to:

26 (1) replace the water supply within ninety days unless
27 replacement is by connection to a public water supply in which
28 case the department shall order replacement in a period not to
29 exceed one year; or

30 [(1)] (2) purchase the property for [a sum equal to its] an

1 amount which is the fair market value immediately prior to the
2 time the water supply was affected [; or]: Provided further,
3 That in the event the mine operator is ordered to purchase the
4 property, he shall pay the landowner an additional amount equal
5 to 25% of the fair market value of such property to cover the
6 landowner's dislocation and relocation to other property, but no
7 more than twenty thousand dollars (\$20,000.00).

8 [(2) make a one-time payment equal to the difference between
9 the property's fair market value immediately prior to the time
10 the water supply was affected and at the time payment is made;
11 whereupon the mine operator shall be relieved of further
12 obligation regarding contamination, diminution or interruption
13 of the affected water supply under this act. Any measures taken
14 under sections 5.1 and 5.3 and this section to relieve a mine
15 operator of further obligation regarding contamination,
16 diminution or interruption of an affected water supply shall not
17 be deemed to bar a subsequent purchaser of the land on which the
18 affected water supply was located or any water user on such land
19 from invoking rights under this section for contamination,
20 diminution or interruption of a water supply resulting from
21 subsequent mining activity other than that contemplated by the
22 mine plan in effect at the time the original supply was
23 affected.

24 (h) Prior to entering into an agreement with the mine
25 operator pursuant to subsection (g), the landowner may submit a
26 written request to the department asking that the department
27 review the operator's finding that an affected water supply
28 cannot reasonably be restored or that a permanent alternate
29 source, as described in subsection (i), cannot reasonably be
30 provided. The department shall provide its opinion to the

1 landowner within sixty days of receiving the landowner's
2 request. The department's opinion shall be advisory only,
3 including for purposes of assisting the landowner in selecting
4 the optional compensation authorized under subsection (g). The
5 department's opinion shall not prevent the landowner from
6 entering into an agreement with the mine operator pursuant to
7 subsection (g), and such opinion shall not serve as the basis
8 for any action by the department against the mine operator or
9 create any cause of action in a third party, provided the
10 operator otherwise complies with subsection (g).]

11 (i) For purposes of this section, a permanent alternate
12 source shall include any well, spring, municipal water supply
13 system or other supply approved by the department which is
14 adequate in quantity, quality and of reasonable cost to serve
15 both the premining uses of the affected water supply and the
16 supply owner's projected future uses of that supply.

17 (j) The department shall require an operator to describe in
18 his permit application how water supplies [will] shall be
19 replaced. [Nothing contained herein shall be construed as
20 authorizing the department to require a mine operator to provide
21 a replacement water supply prior to mining as a condition of
22 securing a permit to conduct underground coal mining.] The
23 operator shall, for each water supply which either overlies the
24 permit area or is within two thousand five hundred feet of the
25 permit boundary, describe specifically and with particularity in
26 the permit application, the manner in which contaminated,
27 diminished or interrupted water supplies will be replaced, and
28 how they can be replaced within ninety days of being affected by
29 mining. The permit application shall conclusively demonstrate
30 the availability of replacement options including, but not

1 limited to, replacement options such as a hookup to a public
2 water supply, drilling a well into a fresh water aquifer
3 containing water of adequate quality and quantity to be used for
4 a replacement supply, development of a spring in an area not
5 affected by the mining, and any and all such other information
6 as may be necessary for the department to determine that the
7 water supply affected can actually be replaced within ninety
8 days of being adversely affected by the mining, that such a
9 replacement is feasible and practical, and that the water for
10 the replacement is available at the location where the mining
11 occurs. If the operator cannot conclusively demonstrate each
12 such replacement, the permit shall not issue.

13 (k) Any landowner, water user or mine operator aggrieved by
14 an order or determination of the department issued under this
15 section shall have the right to appeal such order to the
16 Environmental Hearing Board within thirty days of receipt of the
17 order.

18 Section 5.3. Voluntary agreement; restoration or replacement
19 of water; deed recital.--(a) Nothing contained in this act
20 shall prohibit the mine operator and landowner at any time after
21 the effective date of this section from voluntarily entering
22 into an agreement establishing the manner and means by which an
23 affected water supply is to be restored or an alternate supply
24 is to be provided or providing fair compensation for such
25 contamination, diminution or interruption as required by section
26 5.2(g). Any release contained in such an agreement shall only be
27 valid in releasing the operator from liability for affecting a
28 public or private water supply by contamination, diminution or
29 interruption if all of the following apply:

30 (1) It clearly states [what] all of the landowner's rights

1 [are] in regard thereto as established by this act.

2 (2) The landowner expressly acknowledges their release for
3 the consideration rendered.

4 (3) The contamination, diminution or interruption of the
5 water supply occurs as a result of the mining contemplated by
6 the agreement.

7 (4) The term of the release does not exceed thirty-five
8 years.

9 (5) Notwithstanding the provisions of an agreement entered
10 into under this section, in the event that an affected water
11 supply cannot reasonably be restored or that a permanent
12 alternate source, as described in section 5.2(i), cannot
13 reasonably be provided within [three years] ninety days of the
14 date on which the supply was adversely affected, the landowner
15 shall have the option of proceeding pursuant to section 5.2(g)
16 [and (h)]. Any amounts previously paid to the landowner by the
17 mine operator pursuant to an agreement entered into under this
18 section that were not used by the landowner to restore or
19 replace the affected water supply or to secure a permanent
20 alternate source, as described in section 5.2(i), shall be
21 deducted from the compensation determined to be due pursuant to
22 section 5.2(g).

23 (b) In every deed for the conveyance of property for which
24 an agreement executed pursuant to subsection (a) is effective at
25 the time of transfer, the grantor shall include in the deed a
26 recital of the agreement and any release contained therein.

27 (c) Nothing contained in this act shall prevent any
28 landowner or water user who claims contamination, diminution or
29 interruption of a water supply from seeking any other remedy
30 that may be provided [at] in law or [in] equity. In any

1 proceedings in pursuit of a remedy other than as provided
2 herein, the [provisions of this act shall not apply and the
3 party or parties against whom liability is sought to be imposed
4 may assert in defense any rights or waivers arising from
5 provisions contained in deeds, leases or agreements pertaining
6 to mining rights or coal ownership on the property in question.]
7 mine operator against whom liability is sought to be imposed may
8 assert only those defenses specifically set forth in this act
9 and waives, as a privilege of being granted a permit to conduct
10 underground mining activities in this Commonwealth, any defense
11 based on any right or waiver arising from provisions contained
12 in deeds, leases or agreements pertaining to mining rights or
13 coal ownership on the property in question. Any defense or
14 waiver of rights contained in any severance deed shall be null
15 and void as a defense to water contamination, diminution or
16 interruption, by an operator granted a permit under this act.

17 Section 5.4. Restoration or compensation for structures
18 damaged by underground mining.--(a) Whenever underground mining
19 operations conducted under this act cause damage to any of the
20 following surface buildings overlying or in the proximity of the
21 mine:

22 (1) any building which is accessible to the public,
23 including, but not limited to, commercial, industrial and
24 recreational buildings and all permanently affixed structures
25 appurtenant thereto;

26 (2) any noncommercial buildings customarily used by the
27 public, including, but not limited to, schools, churches and
28 hospitals;

29 (3) dwellings used or intended to be used for human
30 habitation and permanently affixed appurtenant structures or

1 improvements [in place on the effective date of this section or
2 on the date of first publication of the application for a Mine
3 Activity Permit or a five-year renewal thereof for the
4 operations in question and within the boundary of the entire
5 mine as depicted in said application]; or

6 (4) the following agricultural structures: all barns and
7 silos and all permanently affixed structures of five hundred or
8 more square feet in area that are used for raising livestock,
9 poultry or agricultural products, for storage of animal waste or
10 for the processing or retail marketing of agricultural products
11 produced on the farm on which such structures are located;
12 the operator of such coal mine shall repair such damage or
13 compensate the owner of such building for the reasonable cost of
14 its repair or the reasonable cost of its replacement where the
15 damage is irreparable.

16 (b) For any irreparably damaged agricultural structure
17 identified in subsection (a)(4) which, at the time of damage,
18 the operator can affirmatively prove was being used for a
19 different purpose than the purpose for which such structure was
20 originally constructed, the operator, with the structure owner's
21 consent, may provide for the reasonable cost to replace the
22 damaged structure with a structure satisfying the functions and
23 purposes served by the damaged structure before such damage
24 occurred.

25 (c) [A] The underground mine operator shall be presumed to
26 be responsible for any damage to structures located above the
27 mine or within an area above the mine determined by projecting a
28 thirty-five degree angle from the vertical from the outside of
29 any coal removal area. The mine operator [shall not be liable to
30 repair or compensate for subsidence damage if the mine] may

1 successfully rebut the presumption of liability by affirmatively
2 proving that the mine operator[, upon request, is denied]
3 solicited access to the property [upon] on which the [building]
4 structure is located to conduct premining and postmining surveys
5 of the [building and surrounding property] structure's condition
6 but was denied such access; that the mine operator notified the
7 department thereof and the department thereafter [serves] served
8 notice upon the landowner by certified mail or personal service,
9 which notice [identifies] identified all of the rights
10 established by sections 5.5 and 5.6 and this section[, the mine
11 operator was denied access and]; and that access continued to be
12 denied to the mine operator or the department for this survey
13 work for thirty days after receipt by the landowner of the
14 department's notice. In addition to identifying all of the
15 rights established in sections 5.5 and 5.6 and this section, the
16 notice by the department shall also advise the landowner
17 [failed] receiving such notice that the failure to provide or
18 authorize access [within ten days after receipt thereof] may
19 preclude the repair of the structure's damage, in the event the
20 structure is damaged from mining activities.

21 Section 5.5. Procedure for securing repair and/or
22 compensation for damage to structures caused by underground
23 mining; duties of Department of Environmental [Resources]
24 Protection.--(a) The owner of any building enumerated in
25 section 5.4(a) who believes that the removal of coal has caused
26 mine subsidence resulting in damage to such building and who
27 wishes to secure repair of or compensation for such damage shall
28 notify the mine operator[.] thereof. The mine operator shall
29 promptly notify the department of each such claim he receives.
30 If the mine operator agrees that mine subsidence damaged such

1 building, he shall cause such damage to be fully repaired or
2 compensate the owner for such damage in accordance with section
3 5.4(a) or with an agreement in accordance with section 5.6
4 reached between the parties either prior to mining or after the
5 damage has occurred.

6 (b) If the parties are unable to agree [within six months of
7 the date of notice] as to the cause of the damage or the
8 reasonable cost of repair or compensation, the owner of the
9 building may file a claim in writing with the [Department of
10 Environmental Resources] department, a copy of which shall be
11 sent to the operator. All claims under this subsection shall be
12 filed within two years of the date damage to the building
13 occurred or, if later, the date when the damage is discovered by
14 the property owner.

15 * * *

16 (d) In no event shall the mine operator be liable for
17 repairs or compensation in an amount exceeding the cost of
18 replacement of the damaged structure[.] with an equivalent
19 structure. Whenever damage to a structure exceeds one thousand
20 dollars (\$1,000.00), the mine operator shall also compensate the
21 structure's owner an amount equal to 10% of the cost of all
22 repairs which will be made to the structure for the cost in time
23 and effort to the structure's owner in securing, making or
24 supervising the making of any such repairs. The occupants of a
25 damaged structure shall also be entitled to additional payment
26 for reasonable, actual expenses incurred for temporary
27 relocation, interim storage of personal property and for other
28 actual reasonable, incidental costs [agreed to by the parties or
29 approved by the department] incurred by the structure's
30 occupants as a result of damage from mine subsidence.

1 * * *

2 Section 5.6. Voluntary agreements for repair or compensation
3 for damages to structures caused by underground mining; deed
4 recital.--* * *

5 (c) The duty created by section 5.5 to repair or compensate
6 for subsidence damage to the buildings enumerated in section
7 5.4(a) shall be the sole and exclusive administrative remedy for
8 such damage and shall not be diminished by the existence of
9 contrary provisions in deeds, leases or agreements which
10 [relieved] relieve mine operators from such duty[. Nothing
11 herein shall impair agreements entered into after April 27,
12 1966, and prior to the effective date of this section, which,
13 for valid consideration, provide for a waiver or release of any
14 duty to repair or compensate for subsidence damage. Any such
15 waiver or release shall only be valid with respect to damage
16 resulting from the mining activity contemplated by such
17 agreement.]: Provided further, That nothing contained in this
18 act shall prevent the owner of any building who claims damage
19 thereto from subsidence from seeking any other remedy that may
20 be provided in law or equity. In any proceedings in pursuit of a
21 remedy other than as provided under this act, the mine operator
22 against whom liability is sought to be imposed may assert only
23 those defenses specifically set forth in this act and waives, as
24 a privilege of being granted a permit to conduct underground
25 mining activities in this Commonwealth, any defense based on any
26 right or waiver arising from provisions contained in deeds,
27 leases or agreements pertaining to mining rights or coal
28 ownership on the property in question. Any defense or waiver of
29 rights contained in any severance deed shall be null and void as
30 a defense to subsidence damage to a building, by an operator

1 granted a permit under this act.

2 * * *

3 Section 6. Repair of damage or satisfaction of claims;
4 revocation or suspension of permit; bond or collateral.--* * *

5 (b) The department shall require the applicant to file a
6 bond in a form prescribed by the secretary payable to the
7 Commonwealth and conditioned upon the applicant's faithful
8 performance of mining or mining operations, in accordance with
9 the provisions of sections 5, 5.1, 5.4, 5.5 [and], 5.6, 5.7, 5.8
10 and 5.9. Such bond shall be in [a reasonable amount as
11 determined by the department.] an amount which will be adequate
12 to cover all subsidence damage anticipated by the mine operator,
13 and identified in the permit application, for the term of the
14 permit. In addition, the bond shall be adequate to ensure that
15 the mine operator can repair all subsidence damage anticipated
16 during the life of the permit, as well as replace any and all
17 water supplies contaminated, diminished or interrupted by the
18 mining operations and repair all public roads damaged by the
19 subsidence. In providing an amount for this bond, the mine
20 operator shall estimate the amount of subsidence damage to each
21 dwelling, structure, building, road or other surface feature,
22 including surface waters, which is likely to sustain damage by
23 subsidence during the term of the mining operation. In the even
24 that the operator is unable to estimate the amount of subsidence
25 damage with a reasonable degree of engineering and scientific
26 certainty, then it shall be assumed for the purposes of this act
27 that the anticipated subsidence damage to any dwelling,
28 building, structure, road or other surface feature shall be
29 equal to the fair market value of the dwelling, building,
30 structure, road or other surface feature prior to the date of

1 the issuance of the mining permit. Liability under such bond
2 shall continue for the duration of the mining or mining
3 operation, and for a period of ten years thereafter or such
4 longer period of time as may be prescribed by rules and
5 regulations promulgated hereunder, at which time the bond shall
6 become of no force and effect, and it, or any cash or securities
7 substituted for it as hereinafter provided, shall be returned to
8 the applicant. Upon application of any proper party in interest,
9 the department, after due notice to any person who may be
10 affected thereby, and hearing, in accordance with the provisions
11 of section 5(g), may order the amount of said bond to be
12 increased or reduced or may excuse the permit holder from any
13 further duty of keeping in effect any bond furnished pursuant to
14 a prior order of the department and return said bond, or the
15 securities or cash posted in lieu thereof, to the permit holder,
16 notwithstanding any different provision herein respecting the
17 duration or term of said bond. Such bond shall be executed by
18 the applicant and a corporate surety licensed to do business in
19 the Commonwealth: Provided, however, That the applicant may
20 elect to deposit cash, automatically renewable irrevocable bank
21 letters of credit which may be terminated by the bank at the end
22 of a term only upon the bank giving ninety days prior written
23 notice to the permittee and the department or negotiable bonds
24 of the United States Government or the Commonwealth of
25 Pennsylvania, the Pennsylvania Turnpike Commission, the General
26 State Authority, the State Public School Building Authority, or
27 any municipality within the Commonwealth, with the department in
28 lieu of a corporate surety. The cash deposit or irrevocable
29 letter of credit or market value of such negotiable bonds shall
30 be at least equal to the sum of the bond. Where the mining

1 operation is reasonably anticipated to continue for a period of
2 at least ten years from the date of application, the operator
3 may, as an alternative, deposit collateral and file a collateral
4 bond as provided for in this section according to the following
5 phased deposit schedule. The operator shall, prior to commencing
6 operations, deposit ten thousand dollars (\$10,000.00) or 25% of
7 the amount determined under this subsection, whichever is
8 greater. The operator shall thereafter annually deposit 10% of
9 the remaining bond amount for ten years. Interest accumulated by
10 such collateral shall become a part of the bond. The department
11 may require additional bonding at any time to meet the intent of
12 this subsection. The collateral shall be deposited, in trust,
13 with the State Treasurer, or with a bank, selected by the
14 department, which shall act as trustee for the benefit of the
15 Commonwealth, according to rules and regulations promulgated
16 hereunder, to guarantee the operator's compliance with this act.
17 The operator shall be required to pay all costs of the trust.
18 The collateral deposit, or part thereof, shall be released of
19 liability and returned to the operator, together with a
20 proportional share of accumulated interest, upon the conditions
21 of and pursuant to the schedule for release provided for by
22 rules and regulations promulgated hereunder. In lieu of the bond
23 required by this section, the department may require the
24 operator of an underground mining operation to purchase
25 subsidence insurance, as provided by the act of August 23, 1961
26 (P.L.1068, No.484), entitled, as amended, "An act to provide for
27 the creation and administration of a Coal and Clay Mine
28 Subsidence Insurance Fund within the Department of Environmental
29 Resources for the insurance of compensation for damages to
30 subscribers thereto; declaring false oaths by the subscribers to

1 be misdemeanors; providing penalties for the violation thereof;
2 and making an appropriation," for the benefit of all surface
3 property owners who may be affected by damage caused by
4 subsidence. The insurance coverage shall be in an amount
5 determined by the department to be sufficient to remedy any and
6 all damage. The term of this obligation shall be for the
7 duration of the mining and reclamation operation and for ten
8 years thereafter. For all other surface effects of underground
9 mining, the operator shall post a bond as required by this
10 section. The department shall, upon receipt of any such deposit
11 of cash or irrevocable letter of credit or negotiable bonds,
12 immediately place the same with the State Treasurer, whose duty
13 it shall be to receive and hold the same in the name of the
14 Commonwealth, in trust, for the purposes for which such deposit
15 is made. The State Treasurer shall at all times be responsible
16 for the custody and safekeeping of such deposits. The applicant
17 making the deposit shall be entitled from time to time to demand
18 and receive from the State Treasurer, on the written order of
19 the department, the whole or any portion of any collateral so
20 deposited, upon depositing with him, in lieu thereof, other
21 collateral of the classes herein specified having a market value
22 at least equal to the sum of the bond, and also to demand,
23 receive and recover the interest and income from said negotiable
24 bonds as the same become due and payable: Provided, however,
25 That where negotiable bonds, deposited as aforesaid, mature or
26 are called, the State Treasurer, at the request of the
27 applicant, shall convert such negotiable bonds into such other
28 negotiable bonds of the classes herein specified as may be
29 designated by the applicant: And provided further, That where
30 notice of intent to terminate a letter of credit is given, the

1 department shall give the permittee thirty days written notice
2 to replace the letter of credit with other acceptable bond
3 guarantees as provided herein, and if the permittee fails to
4 replace the letter of credit within the thirty-day notification
5 period, the department shall draw upon and convert such letter
6 of credit into cash and hold it as a collateral bond guarantee.

7 The department, in its discretion, may accept a self-bond
8 from the permittee, without separate surety, if the permittee
9 demonstrates to the satisfaction of the department a history of
10 financial solvency, continuous business operation and continuous
11 efforts to achieve compliance with all United States of America
12 and Pennsylvania environmental laws, and, meets all of the
13 following requirements:

14 (1) The permittee shall be incorporated or authorized to do
15 business in Pennsylvania and shall designate an agent in
16 Pennsylvania to receive service of suits, claims, demands or
17 other legal process.

18 (2) The permittee or if the permittee does not issue
19 separate audited financial statements, its parent, shall provide
20 audited financial statements for at least its most recent three
21 fiscal years prepared by a certified public accountant in
22 accordance with generally accepted accounting principles. Upon
23 request of the permittee, the department shall maintain the
24 confidentiality of such financial statements if the same are not
25 otherwise disclosed to other government agencies or the public.

26 (3) During the last thirty-six calendar months, the
27 applicant has not defaulted in the payment of any dividend or
28 sinking fund installment or preferred stock or installment on
29 any indebtedness for borrowed money or payment of rentals under
30 long-term leases or any reclamation fee payment currently due

1 under the Federal Surface Mining Control and Reclamation Act of
2 1977, 30 U.S.C. § 1232, for each ton of coal produced in the
3 Commonwealth of Pennsylvania.

4 (4) The permittee shall have been in business and operating
5 no less than ten years prior to filing of application unless the
6 permittee's existence results from a reorganization,
7 consolidation or merger involving a company with such longevity.
8 However, the permittee shall be deemed to have met this
9 requirement if it is a majority-owned subsidiary of a
10 corporation which has such a ten-year business history.

11 (5) The permittee shall have a net worth of at least six
12 times the aggregate amount of all bonds applied for by the
13 operator under this section.

14 (6) The permittee shall give immediate notice to the
15 department of any significant change in managing control of the
16 company.

17 (7) A corporate officer of the permittee shall certify to
18 the department that forfeiture of the aggregate amounts of self-
19 bonds furnished for all operations hereunder would not
20 materially affect the permittee's ability to remain in business
21 or endanger its cash flow to the extent it could not meet its
22 current obligations.

23 (8) The permittee may be required by the department to
24 pledge real and personal property to guarantee the permittee's
25 self-bond. The department is authorized to acquire and dispose
26 of such property in the event of a default to the bond
27 obligation and may use the moneys in the Bituminous Mine
28 Subsidence and Land Conservation Fund to administer this
29 provision.

30 (9) The permittee may be required to provide third party

guarantees or indemnifications of its self-bond obligations.

(10) The permittee shall provide such other information regarding its financial solvency, continuous business operation and compliance with environmental laws as the department shall require.

(11) An applicant shall certify to the department its present intention to maintain its present corporate status for a period in excess of five years.

(12) A permittee shall annually update the certifications required hereunder and provide audited financial statements for each fiscal year during which it furnishes self-bonds.

(13) The permittee shall pay an annual fee in the amount determined by the department of the cost to review and verify the permittee's application for self-bonding and annual submissions thereafter.

* * *

Section 5. The act is amended by adding sections to read:

Section 5.7. Protection requirements for public roads.--(a) An underground mine operator shall be presumed to be financially responsible for the costs of repair of any subsidence damage to public roads located above the mine or within an area above the mine determined by projecting a thirty-five degree angle from the vertical from the outside of any coal removal area.

(b) The department shall develop and implement regulations to prevent, minimize and repair mine subsidence damage to public roads. These regulations shall include, but are not limited to, specific bonds to cover the projected cost of repairing undermined roads within an area above the mine determined by projecting a thirty-five degree angle from the vertical from the outside of any coal removal.

1 Section 5.8. Procedure for securing compensation for damage
2 to public roads caused by underground mining; duties of
3 department.--(a) The owner of any public road described in
4 section 5.7(a) who believes that the removal of coal has caused
5 mine subsidence resulting in damage to such public road and who
6 wishes to secure compensation for such damage shall notify the
7 mine operator thereof. The mine operator shall promptly notify
8 the department of each such claim the operator receives. If the
9 mine operator agrees that mine subsidence damaged the public
10 road, as claimed, the operator shall compensate the owner for
11 the damage in accordance with section 5.7(a) or with an
12 agreement in accordance with section 5.9 reached between the
13 parties either prior to mining or after the damage has occurred.

14 (b) If the parties are unable to agree as to the cause of
15 the damage or the reasonable cost of compensation, the owner of
16 the public road may file a claim in writing with the department,
17 a copy of which shall be sent to the operator. All claims under
18 this subsection shall be filed within two years of the date
19 damage to the public road occurred or, if later, the date when
20 the damage is discovered by the owner of the public road.

21 (c) The department shall make an investigation of a claim
22 within thirty days of receipt of the claim. The department
23 shall, within sixty days following the investigation, make a
24 determination in writing as to whether the damage was caused by
25 subsidence due to underground coal mining and, if so, the
26 reasonable cost of repairing or replacing the damaged road. If
27 the department finds the damage to be caused by the mining, it
28 shall issue a written order directing the operator to compensate
29 the owner of the road.

30 (d) In no event shall the mine operator be liable for

compensation in an amount exceeding the cost of replacement of the damaged public road.

(e) If either the road owner or the mine operator is aggrieved by an order issued by the department under this section, that person shall have the right to appeal the order to the Environmental Hearing Board within thirty days of receipt of the order. The appeal of a mine operator shall not be considered perfected unless within sixty days of the date the mine operator received the department's order, the operator has deposited an amount equal to the amount of compensation ordered by the department in an interest-bearing escrow account administered for such purposes by the department.

(f) If the mine operator shall fail to compensate for subsidence damage within six months or shall fail to perfect an appeal of the department's order directing compensation, the department shall issue an order or take an action as necessary to compel compliance with the requirements hereof, including, but not limited to, cessation orders and permit revocation. If the mine operator fails to compensate for damage after exhausting its right of appeal, the department shall pay the escrow deposit made with respect to the particular claim involved and accrued interest to the owner of the damaged road.

(g) Except as provided in subsection (f), the existence of unresolved claims of subsidence damage shall not be used by the department as a basis for withholding permits from or suspending review of permit applications submitted by a mine operator against whom such claims have been made.

Section 5.9. Voluntary agreements for compensation for damages to public roads caused by underground mining.--(a) Nothing contained in this act shall prohibit the mine operator

1 and the owner of the public road at any time after the effective
2 date of this section from voluntarily entering into an agreement
3 establishing the manner and means by which compensation for
4 subsidence damage is to be provided. Any release contained in
5 such an agreement shall only be valid in releasing the operator
6 from liability under this act if it clearly states what rights
7 are established by this act and the road's owner expressly
8 acknowledges the release as consideration for the alternate
9 remedies provided under the agreement, except that such remedies
10 shall be no less than those reasonably necessary to compensate
11 the owner of the road for the reasonable cost of its repair or
12 the reasonable cost of its replacement where the damage is
13 irreparable. Any such release shall be null and void if no
14 mining occurs for a period of thirty-five years within the coal
15 field of which the coal underlying the affected public road
16 forms a part.

17 (b) The duty created by section 5.8 to compensate for
18 subsidence damage to the public roads enumerated in section
19 5.7(a) shall be the sole and exclusive administrative remedy for
20 such damage: Provided, further, That nothing contained in this
21 act shall prevent the owner of any public road who claims damage
22 thereto from subsidence from seeking any other remedy that may
23 be provided in law or equity. In any proceedings in pursuit of a
24 remedy other than as provided under this act, the mine operator
25 against whom liability is sought to be imposed may assert only
26 those defenses specifically set forth in this act and waives, as
27 a privilege of being granted a permit to conduct underground
28 mining activities in this Commonwealth, any defense based on any
29 right or waiver arising from provisions contained in deeds,
30 leases or agreements pertaining to mining rights or coal

1 ownership on the property in question. Any defense or waiver of
2 rights contained in any severance deed shall be null and void as
3 a defense to subsidence damage to a road by an operator granted
4 a permit under this act.

5 Section 6. Section 7(a) of the act, amended October 10, 1980
6 (P.L.874, No.156), is amended to read:

7 Section 7. Jurisdiction; enforcement; rulemaking.--(a) All
8 bituminous coal mines or mining operations coming within the
9 provisions of this act shall be under the exclusive jurisdiction
10 of the [Department of Environmental Resources] department and
11 shall be conducted in accordance with this act, the act of July
12 17, 1961 (P.L.659, No.339), known as the "Pennsylvania
13 Bituminous Coal Mine Act," the act of November 10, 1965
14 (P.L.721, No.346), known as the "Pennsylvania Anthracite Coal
15 Mine Act," the act of July 9, 1976 (P.L.931, No.178), entitled
16 "An act providing for emergency medical personnel; employment of
17 emergency medical personnel and emergency communications in coal
18 mines," and with such reasonable rules and regulations as may be
19 deemed necessary by the department for the health and safety of
20 those persons engaged in the work. The department shall have the
21 power to enforce the provisions of this act and the rules and
22 regulations promulgated hereunder by it.

23 * * *

24 Section 7. Section 9.1 of the act, added June 22, 1994
25 (P.L.357, No.54), is amended to read:

26 Section 9.1. Prevention of hazards to human safety and
27 material damage to certain buildings.--(a) [If the Department
28 of Environmental Resources determines and so notifies the mine
29 operator that] The department shall determine if a proposed
30 mining technique or extraction ratio will result in subsidence

1 which creates an imminent hazard to human safety[,] and notify
2 the mine operator of its conclusion in regard thereto. If the
3 department concludes that there is such a hazard, utilization of
4 such technique or extraction ratio shall not be permitted unless
5 the mine operator, prior to mining, takes measures approved by
6 the department to eliminate the imminent hazard to human safety.
7 For purposes of this section, "imminent hazard to human safety"
8 shall include, but not be limited to, subsidence of homes,
9 dwelling, roads, buildings or other surface features which
10 could result in injury to the occupants thereof.

11 (b) [If the department determines and so notifies] The
12 department shall determine and so notify the mine operator
13 [that] if a proposed mining technique or extraction ratio will
14 cause subsidence which will result in irreparable damage to a
15 building enumerated in section 5.4(a)(3) or (4)[, utilization].
16 Utilization of such technique or extraction ratio shall not be
17 permitted unless the building owner, prior to [mining] issuance
18 of the permit, consents to such mining or the mine operator,
19 with the consent of the building owner and prior to [mining]
20 issuance of the permit, agrees to take measures approved by the
21 department to minimize [or reduce] impacts resulting from
22 subsidence [to] of such buildings. For purposes of this section,
23 "irreparable damage" to a dwelling, structure, building or other
24 surface feature shall mean damage which will cause temporary or
25 permanent relocation of the owner of the dwelling, structure or
26 building, as a result of the mining operation or which exceeds
27 ten thousand dollars (\$10,000.00), or both.

28 (c) Underground mining activities shall not be conducted
29 beneath or adjacent to:

30 (1) public buildings and facilities;

(2) churches, schools or hospitals;

(3) impoundments with a storage capacity of twenty acre-feet or more; [or]

(4) bodies of water with a volume of twenty acre-feet or more;

(5) any historic property, which shall mean any property listed on the National Register of Historic Places, any property determined by the Pennsylvania Historical and Museum Commission to be eligible for such a listing and any other property otherwise determined to be of historic or archeological importance; or

(6) public utilities, including, but not limited to, gas, electric and water lines, unless the mine operator has made adequate arrangements with the operator of such utility, prior to the issuance of a permit by the department, so as to assure that the utility will be protected to the satisfaction of the operator of the utility: Provided, That all costs associated with protection of such utilities shall be borne by the mine operator;

unless the subsidence control plan demonstrates that subsidence will not cause material damage to or reduce the reasonably foreseeable use of such features or facilities. If the department determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(d) Nothing in this act shall be construed to amend, modify or otherwise supersede standards related to prevailing

1 hydrologic balance contained in the Surface Mining Control and
2 Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et
3 seq.) and regulations promulgated by the Environmental Quality
4 Board for the purpose of obtaining or maintaining primary
5 jurisdiction over the enforcement and administration of that act
6 nor any standard contained in the act of June 22, 1937
7 (P.L.1987, No.394), known as "The Clean Streams Law," or any
8 regulation promulgated thereunder by the Environmental Quality
9 Board.

10 Section 8. Section 18 of the act, amended October 10, 1980
11 (P.L.874, No.156), is amended to read:

12 Section 18. Legislative oversight.--(a) In order to
13 maintain primary jurisdiction over surface coal mining in
14 Pennsylvania pursuant to the Surface Mining Control and
15 Reclamation Act of 1977, Public Law 95-87, the Environmental
16 Quality Board shall have the authority to adopt initial
17 regulations on an emergency basis in accordance with section
18 204(3) (relating to omission of notice of proposed rule making)
19 of the act of July 31, 1968 (P.L.769, No.240), referred to as
20 the Commonwealth Documents Law. Provided, however, within thirty
21 days after the Secretary of the United States Department of
22 Interior grants such primary jurisdiction to Pennsylvania, the
23 Environmental Quality Board shall repropose the regulations
24 adopted on an emergency basis, shall submit the regulations to
25 the [Senate] Environmental Resources and [House Mines and Energy
26 Management Committees of the General Assembly] Energy Committee
27 of the Senate and the Environmental Resources and Energy
28 Committee of the House of Representatives for their review and
29 comments, and shall schedule public hearings within ninety days
30 after such grant of primary jurisdiction for the purpose of

1 hearing public comment on any appropriate revisions.

2 **(b)** At least thirty days prior to consideration by the
3 Environmental Quality Board of any revised regulations or any
4 new regulations under this act other than those initial
5 regulations promulgated on an emergency basis, the department
6 shall submit such regulation to the [Senate] Environmental
7 Resources and [House Mines and Energy Management Committees of
8 the General Assembly] Energy Committee of the Senate and the
9 Environmental Resources and Energy Committee of the House of
10 Representatives for their review and comment.

11 Section 9. Section 18.1 of the act, added June 22, 1994
12 (P.L.357, No.54), is amended to read:

13 Section 18.1. Compilation and analysis of data.--(a) The
14 department shall conduct postmining inspections on all
15 undermined properties to determine the degree of structural
16 damage, completion of repairs or replacements and effectiveness
17 of repairs and replacements. As a part of these inspections, the
18 department shall record repair costs, duration of the repair
19 period, type of water supply replacement and water supply
20 utilized. The department shall compile, on an ongoing basis, the
21 information so collected and the information contained in deep
22 mine permit applications, in monitoring reports and other data
23 submitted by operators, from enforcement actions and from any
24 other appropriate source for the purposes set forth below.

25 (b) Such data shall be analyzed by the department, utilizing
26 the services of professionals or institutions recognized in the
27 field, for the purpose of determining, to the extent possible,
28 the effects of deep mining on subsidence of surface structures
29 and features and on water resources, including sources of public
30 and private water supplies.

1 (c) The [analysis] analyses of such data and any relevant
2 findings shall be presented in report form to the Governor, the
3 General Assembly and to the Citizens Advisory Council of the
4 department at five-year intervals commencing in 1993.

5 (d) [Nothing contained herein shall be construed as
6 authorizing the department to require a mine operator to submit
7 additional information or data, except that it shall require
8 reporting of all water loss incidents or claims of water loss.]

9 The department, as part of its Annual Report of Mining
10 Activities, shall report the numbers of all water loss incidents
11 or claims of water loss, numbers of incidents of road damage
12 from mine subsidence, the numbers of all incidents of subsidence
13 damage to surface structures or claims of structural damage from
14 mine subsidence on a county-by-county basis for each mine which
15 is covered in the Annual Report of Mining Activities.

16 (e) Beginning on the effective date of this subsection, as
17 part of all reports to the Governor, General Assembly and the
18 Citizens Advisory Council pursuant to subsection (c), the
19 department shall undertake a comprehensive evaluation of the
20 various techniques and methods employed by or on behalf of mine
21 operators to mitigate subsidence damage to, roads and surface
22 structures, including surface waters, to determine the extent to
23 which these techniques and methods are effective in preventing
24 structural and nonstructural damage to surface structures and as
25 part thereof shall investigate and report on whether other
26 potential techniques and methods are available which would more
27 effectively prevent all types of subsidence-related damage to
28 surface structures.

29 Section 10. This amendatory act shall be known and may be
30 cited as the Coal Community Fairness Act.

1 Section 11. This act shall take effect in 60 days.