

COAL REFUSE DISPOSAL CONTROL ACT - ESTABLISHMENT OF COAL BED  
METHANE REVIEW BOARD AND DECLARATION OF POLICY

Act of Feb. 1, 2010, P.L. 126, No. 4

Cl. 52

Session of 2010

No. 2010-4

HB 1847

AN ACT

Amending the act of September 24, 1968 (P.L.1040, No.318), entitled, as amended, "An act providing for the protection of the safety, health and welfare of the people, property and public roads and highways of the Commonwealth from conditions on coal refuse disposal areas, or parts thereof, which fail to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution or to protect water supplies, and from the danger of slipping, sliding or burning of coal refuse disposal areas, or parts thereof, sometimes caused by the storage of coal refuse; prescribing for and regulating the operation of coal refuse disposal areas, and parts thereof; prescribing the powers of the Department of Environmental Resources with respect thereto; providing for the power to enjoin the operation of coal refuse disposal areas, or parts thereof, which contain certain conditions; providing for civil and criminal penalties; authorizing the acquisition by condemnation of certain land areas in certain cases; establishing a permit system, authorizing the adoption of rules and regulations, establishing minimum standards; requiring bonds and for the maintenance of primary jurisdiction over surface coal mining in Pennsylvania; providing incentives for coal refuse disposal activities on previously affected areas; and providing for coal refuse disposal research," further providing for findings and declaration of policy, for definitions and for site selection; and establishing the Coal Bed Methane Review Board to resolve disputes between property owners over the location of coal bed methane wells and access roads.

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

Section 1. Section 1 of the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act, is amended by adding a clause to read:

Section 1. Findings and Declaration of Policy.--It is hereby determined by the General Assembly of Pennsylvania and declared as a matter of legislative finding that:

\* \* \*

(10) It is the purpose in part of this act to establish an alternative procedure to court action for consideration and resolution of objections to the location of certain coal bed methane wells or roads associated with those wells to be constructed on surface lands and to modify the procedure for review of well permit applications to the extent necessary to allow for the procedure for alternative dispute resolution.

\* \* \*

Section 2. Clauses (1.3) and (1.4) of section 3 of the act, added December 7, 1994 (P.L.808, No.114), are amended and the section is amended by adding clauses to read:

Section 3. Definitions.--The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

\* \* \*

**(1.3) "Alternative dispute resolution" shall mean the procedure for dispute resolution provided in section 6.5.**

[(1.3)] **(1.4) "Baseline pollution load" shall mean, for the purposes of section 6.2 of this act, the characterization of the polluttional material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter deemed relevant by the department, including seasonal variations and variations in response to precipitation events.**

[(1.4)] **(1.5) "Best technology" means, for the purposes of section 6.2 of this act, measures and practices which will abate or ameliorate, to the maximum extent possible, discharges from or on the pollution abatement area.**

**(1.6) " Board " shall mean the Coal Bed Methane Review Board established in section 6.4 of this act.**

**(1.7) " Coal bed methane " shall mean gas which can be produced from a coal seam, a mined-out area or a gob well.**

**(1.8) " Coal bed methane well " shall mean a hole or well which is sunk, drilled, bored or dug into the earth for the production of coal bed methane from a coal seam, a mined-out area or a gob well for consumption or sale. The term includes a horizontal borehole. The term does not include any of the following:**

**(i) A shaft, hole or well which is sunk, drilled, bored or dug into the earth for core drilling or production of coal or water.**

**(ii) A borehole drilled or being drilled for the purpose of or to be used for degasifying coal seams if a condition in one of the following subclauses is met:**

**(A) The borehole is:**

**(I) Used to vent methane to the outside atmosphere from an operating coal mine.**

**(II) Regulated as part of the mining permit under the act of June 22, 1937 (P.L.1987, No.394) , known as "The Clean Streams Law," and the act of May 31, 1945 (P.L.1198, No.418) , known as the "Surface Mining Conservation and Reclamation Act."**

**(III) Drilled by the operator of the operating coal mine for the purpose of increased safety.**

**(B) The borehole is used to vent methane to the outside atmosphere under a federally funded or Commonwealth-funded abandoned mine reclamation project.**

**(iii) A well or borehole drilled in a coal seam from within an underground coal mine for the production of coal bed methane. This clause includes a well or borehole connected to a well or borehole which is sunk, drilled or dug from the surface.**

\* \* \*

**(13) " Surface owner " shall mean a person who owns any of the following interests in the surface upon which a coal bed methane well or associated access road may be constructed:**

**(i) A fee interest.**

**(ii) An interest for life.**

**(iii) A remainder interest.**

**The term does not include:**

(i) The Federal or State Government or any agency or political subdivision thereof.

(ii) A person who is entitled to royalties for removal or recovery of coal bed methane.

(iii) A person who owns a lease, easement, right-of-way, license, privilege or other similar interest in the surface.

(14) " Well operator " shall mean a person who has filed or who is required to file for a well permit under the act of December 19, 1984 (P.L.1140, No.223) , known as the "Oil and Gas Act."

(15) "Well p ermit " shall mean a well permit issued pursuant to the act of December 19, 1984 (P.L.1140, No.223) , known as the "Oil and Gas Act."

Section 3. Section 4.1(a) of the act, added December 7, 1994 (P.L.808, No.114), is amended to read:

Section 4.1. Site Selection.--(a) Preferred sites shall be used for coal refuse disposal unless the applicant demonstrates to the department another site is more suitable based upon engineering, geology, economics, transportation systems and social factors and is not adverse to the public interest. A preferred site is one of the following:

(1) A watershed polluted by acid mine drainage.

(2) A watershed containing an unreclaimed surface mine but which has no mining discharge.

(3) A watershed containing an unreclaimed surface mine with discharges that could be improved by the proposed coal refuse disposal operation.

(4) Unreclaimed coal refuse disposal piles that could be improved by the proposed coal refuse disposal operation.

(5) Other unreclaimed areas previously affected by mining activities.

(6) An area adjacent to or an expansion of an existing coal refuse disposal site.

Where, however, the adverse environmental impacts of the preferred site clearly outweigh the public benefits, the site shall not be considered a preferred site.

\* \* \*

Section 4. The act is amended by adding sections to read:

**Section 6.4. Coal Bed Methane Review Board.--(a) There is established the Coal Bed Methane Review Board.**

**(b) The following shall apply:**

**(1) The board shall consist of the following members:**

**(i) One member appointed by the Governor from a list of three individuals submitted by the Pennsylvania Farm Bureau.**

**(ii) One member appointed by the Governor from a list of three individuals prepared jointly by the Pennsylvania Oil and Gas Association, the Independent Oil and Gas Association of Pennsylvania and the Pennsylvania Coal Association.**

**(iii) One member appointed by the Governor who is an individual with expertise in petroleum geology or petroleum engineering with at least three years of experience in practice in Pennsylvania who is appointed from a list of three individuals prepared jointly by the deans of the College of Agricultural Sciences and the College of Earth and Mineral Sciences of The Pennsylvania State University.**

**(2) The lists required by clause (1) shall be submitted to the Governor within thirty days of the effective date of this section, and the Governor's appointments shall be made within ninety days of the effective date of this section.**

**(3) Upon occurrence of a vacancy, the appropriate entity shall submit a new list within thirty days of the vacancy, and**

the Governor shall make an appointment within thirty days of receipt of the list.

(c) The term of appointment of a board member shall be three years or until a successor is duly appointed. A board member may be appointed for successive terms.

(d) The Department of Environmental Protection shall provide administrative and clerical support to the board as requested.

(e) The purpose of the board shall be to consider objections and attempt to reach agreement on or determine a location for the coal bed methane well or access road.

(f) Members of the board shall be compensated at the appropriate per diem rate based on the prevailing formula administered by the Commonwealth, but not less than one hundred fifty dollars (\$150) per day, plus all reasonable expenses incurred while performing their official duties. Compensation shall be adjusted annually by the Secretary of Environmental Protection to account for inflation based on the rate of inflation identified by the Consumer Price Index published by the United States Department of Labor. The individual member may waive his right to all or part of the compensation set forth in this subsection.

Section 6.5. Procedures.--(a) A well operator who intends to drill a coal bed methane well or construct an access road associated with a coal bed methane well shall provide written notification to the surface owner in the manner prescribed in section 201(b) of the act of December 19, 1984 (P.L.1140, No.223) , known as the "Oil and Gas Act." The notification shall also include the following statement on a form provided by the Department of Environmental Protection in at least twelve-point print:

Right to Participate in  
Alternative Dispute Resolution

You have the right to have your objections to the well operator's proposed location of the well or of the access road associated with the well heard and decided by the three-member Coal Bed Methane Review Board, created under the act of \_\_\_\_\_, (P.L. \_\_\_\_\_, No. \_\_\_\_\_), known as the "Coal Bed Methane Well Dispute Resolution Act." You may participate with or without a lawyer in any conference session the board may hold to hear your objections.

Important: To exercise this right, you must file your objections in writing with the Coal Bed Methane Review Board through the Department of Environmental Protection at:

(Address)

(City, State, Zip)

within fifteen days of the date you received this notification. Otherwise, you will be considered to have waived this right to resolve your objections through the Coal Bed Methane Review Board. Your objection may be filed in person or by certified mail.

(b) A surface owner who intends to invoke alternative dispute resolution shall file written objections to the well operator's proposed location for the coal bed methane well or access road with the board within fifteen days of the date of receipt of the written notification and plat described in subsection (a). The written objections may indicate an alternative location at which the proposed coal bed methane well could be drilled or the access road could be located to overcome the objections. If no objections are filed in the time prescribed in this subsection, the Department of Environmental Protection shall accept an application from the operator and proceed to issue or deny that the well permit, provided that

the department shall not accept a well permit application unless the applicant demonstrates that the notification requirements of subsection (a) have been satisfied.

(c) If objections are filed by a surface owner pursuant to subsection (b), an employee of the Department of Environmental Protection responsible for receiving such objections on behalf of the board shall, within two days, notify the operator and the board of the objections, and the board shall fix a time and place for holding the dispute resolution conference and shall notify the surface owner and well operator of the time and place where the conference will be held. The conference shall be scheduled to commence not more than ten business days from the date of service of the objections on the well operator, provided, however, that, if the board cannot be fully convened for a conference within this time, the conference shall be scheduled to commence on the earliest reasonable date in which the board can be fully convened, but no later than fifteen business days from the date of the service of the objections on the well operator. For purposes of this section, the term "fully convened" shall mean the participation of all three members of the board. The conference shall be held at the applicable regional or district office of the Department of Environmental Protection closest to the tract which is the subject of the objection. The board may use, and the Department of Environmental Protection shall provide, clerical assistance and the use of regional or district offices for the board in conducting conference sessions.

(d) At the conference the well operator and surface owner or owners as are present or represented shall consider the objections and attempt to agree upon a location for the coal bed methane well or access road. The board may hold more than one conference session. The conference shall be completed within ten business days of the date that the conference is originally commenced. However, the board, in its sole discretion, may extend the time for completion of the conference by an additional five business days, and the parties to the conference may extend the time for completion of the conference to a date mutually agreed upon. Any agreement reached at the conference shall be consistent with the requirements of the "Oil and Gas Act" and shall be reduced to writing by the board and submitted to the Department of Environmental Protection within ten business days of the date that the conference is completed. Upon receipt of notice that the board's conference resulted in a mutual agreement between the operator and the surface owner, the Department of Environmental Protection shall accept an application with a plat showing the agreed-upon location of the coal bed methane well and access road from the operator and shall proceed to issue or deny the well permit. If the parties to the conference before the board fail to agree upon a location of the coal bed methane well or access road or if only the party requesting review participates in the conference, the board shall make a determination in writing establishing a location of the coal bed methane well or access road that, in the judgment of the majority of the board, will cause only those surface impairments that are reasonably necessary for purposes of extracting the underlying coal bed methane. Issuance of the written determination shall be made within ten business days of the date of completion of the conference and shall be served on the date of issuance by certified mail upon the surface owner, the well operator and the Department of Environmental Protection. Within fifteen business days of the date of

completion of the conference, the board shall issue a written statement setting forth findings of fact and reasons in support of its determination and shall serve copies of the written statement by certified mail upon the surface owner, the well operator and the Department of Environmental Protection. Failure by the board to issue the written statement of findings of fact and reasons in support of its determination within the prescribed period of fifteen business days shall not preclude an aggrieved person from exercising the right of appeal to a court of common pleas as provided under subsection (f). If no appeal of the board's determination is filed under subsection (f), the Department of Environmental Protection shall accept an application with a plat showing the location of the coal bed methane well and access road as determined by the board from the operator and shall proceed to issue or deny the well permit.

(e) Any determination by the board, made under subsection (d), shall be binding on the Department of Environmental Protection. The board's determination shall not limit or otherwise affect the Department of Environmental Protection's regulatory authority under the "Oil and Gas Act," the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," or any other applicable law administered by the department.

(f) Any person aggrieved by a determination of the board issued under subsection (d) shall have the right, within fifteen days of receipt of the written or final determination, to appeal the determination to the court of common pleas in the judicial district in which the affected property is located. A copy of the appeal shall be served upon all the parties to the conference. The board or the Department of Environmental Protection shall not be a party to the appeal. The court shall hold a hearing on the appeal within thirty days of filing of the appeal and shall render its decision in the appeal within sixty days of filing of the appeal. In any appeal, the only issue to be determined by the court is whether the location of the disputed coal bed methane well or access road, as the case may be, determined by the board, will cause only those surface impairments that are reasonably necessary for purposes of extracting the underlying coal bed methane. If the court agrees that the board's determination meets this standard, it shall affirm the board's determination. If the court determines that the board's determination does not meet this standard, it shall issue an order indicating the location of the disputed coal bed methane well or access road, as the case may be, that, in the opinion of the court, will cause only those surface impairments that are reasonably necessary for purposes of extracting the underlying coal bed methane. Upon issuance of an order by the court, the Department of Environmental Protection shall accept an application from the operator and shall proceed to issue or deny the well permit.

(g) This section supersedes the ordinances and resolutions of political subdivisions dealing with material regulated by this section.

(h) The provisions of this section shall not be construed to affect, limit or impair any enforcement action taken by the Department of Environmental Protection under the act of December 19, 1984 (P.L.1140, No.223), known as the "Oil and Gas Act."

(i) Nothing in this section precludes a person from seeking other remedies allowed by statute, common law, deed or contract, nor does this section diminish or alter rights previously established or granted by statute, common law, deed or contract.

Section 5. Notification.

The Department of Environmental Protection shall publish a notice in the Pennsylvania Bulletin when all initial members of the board established in section 6.4 of the act have been appointed.

Section 6. This act shall take effect as follows:

(1) The addition of section 6.5 of the act shall take effect upon publication of the notice under section 5 of this act.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 1st day of February, A.D. 2010.

EDWARD G. RENDELL