

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1346 Session of 2011

INTRODUCED BY KASUNIC, YUDICHAK, SOLOBAY, HUGHES AND FONTANA, NOVEMBER 21, 2011

SENATOR M. WHITE, ENVIRONMENTAL RESOURCES AND ENERGY, AS AMENDED, MAY 23, 2012

AN ACT

1 ~~Amending Title 27 (Environmental Resources) of the Pennsylvania~~ ←  
2 ~~Consolidated Statutes, providing for use of mine drainage~~  
3 ~~water.~~

4 AMENDING TITLE 27 (ENVIRONMENTAL RESOURCES) OF THE PENNSYLVANIA ←  
5 CONSOLIDATED STATUTES, FURTHER PROVIDING FOR DEFINITIONS, FOR  
6 ELIGIBILITY AND PROJECT INVENTORY, FOR LANDOWNER LIABILITY  
7 LIMITATION AND EXCEPTIONS, FOR PROJECT LIABILITY LIMITATION  
8 AND EXCEPTIONS AND FOR EXCEPTIONS.

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

11 ~~Section 1. Title 27 of the Pennsylvania Consolidated~~ ←  
12 ~~Statutes is amended by adding a chapter to read:~~

CHAPTER 81A

MINE DRAINAGE WATER

15 Sec.

16 81A01. Scope of chapter.

17 81A02. Findings.

18 81A03. Purpose.

19 81A04. Definitions.

20 81A05. Eligibility.

1 ~~§1A06. Natural gas operator liability limitation and~~  
2 ~~exceptions.~~

3 ~~§1A07. Landowner liability limitation and exceptions.~~

4 ~~§1A08. Water withdrawal permits.~~

5 ~~§1A09. Relationship to Federal and State programs.~~

6 ~~§1A10. Regulations.~~

7 ~~§ 81A01. Scope of chapter.~~

8 ~~This chapter relates to the use of mine drainage water.~~

9 ~~§ 81A02. Findings.~~

10 ~~The General Assembly finds and declares as follows:~~

11 ~~(1) This Commonwealth is poised for an extensive~~  
12 ~~development of the Marcellus Shale and other conventional and~~  
13 ~~unconventional natural gas reserves through the use of~~  
14 ~~hydraulic fracturing technology.~~

15 ~~(2) The hydraulic fracturing process utilizes large~~  
16 ~~quantities of water in the preparation and extraction of~~  
17 ~~natural gas from conventional and unconventional wells.~~

18 ~~(3) This Commonwealth's long history of mining has left~~  
19 ~~some waters unreclaimed and polluted.~~

20 ~~(4) This Commonwealth does not possess sufficient~~  
21 ~~resources to abate the pollution in these waters.~~

22 ~~(5) Numerous natural gas operators who do not have a~~  
23 ~~legal responsibility to abate the pollution in these waters~~  
24 ~~are interested in utilizing these polluted waters to~~  
25 ~~hydraulically fracture conventional and unconventional~~  
26 ~~natural gas wells but are reluctant to engage in the usage~~  
27 ~~because of the potential liabilities associated with the~~  
28 ~~usage of the polluted water.~~

29 ~~(6) It is in the best interest of the health, safety and~~  
30 ~~welfare of the people of this Commonwealth and the~~

1 ~~environment to encourage the use of the polluted water in the~~  
2 ~~hydraulic fracturing of conventional and unconventional~~  
3 ~~natural gas wells.~~

4 ~~§ 81A03. Purpose.~~

5 ~~This chapter is intended to encourage the use of polluted~~  
6 ~~water in hydraulic fracturing activity, to aid in the protection~~  
7 ~~of wildlife, to protect water resources, to aid in the~~  
8 ~~prevention of the pollution of rivers and streams, to protect~~  
9 ~~the environmental values of this Commonwealth and to eliminate~~  
10 ~~or abate hazards to health and safety. It is the intent of the~~  
11 ~~General Assembly to encourage voluntary use of polluted water in~~  
12 ~~the hydraulic fracturing of conventional and unconventional~~  
13 ~~natural gas wells. The purpose of this chapter is to protect the~~  
14 ~~quality and availability of fresh water resources by limiting~~  
15 ~~liability which could arise as a result of the voluntary use of~~  
16 ~~polluted water in hydraulic fracturing of natural gas wells.~~  
17 ~~This chapter is not intended to limit the liability of a person~~  
18 ~~who under existing law is or may become responsible to address~~  
19 ~~the polluted water or anyone who by contract, order or otherwise~~  
20 ~~is required to or agrees to perform the reclamation or abate the~~  
21 ~~polluted water.~~

22 ~~§ 81A04. Definitions.~~

23 ~~The following words and phrases when used in this chapter~~  
24 ~~shall have the meanings given to them in this section unless the~~  
25 ~~context clearly indicates otherwise:~~

26 ~~"Abandoned lands." Land adversely affected by mineral or oil~~  
27 ~~or gas extraction and left or abandoned in an unreclaimed or~~  
28 ~~inadequately reclaimed condition.~~

29 ~~"Compact basin commission." As defined in section 3102~~  
30 ~~(relating to definitions).~~

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

3 ~~"Eligible land and water." Land and water adversely affected~~  
4 ~~by mining or oil and gas extraction and left or abandoned in an~~  
5 ~~unreclaimed or inadequately reclaimed condition or left~~  
6 ~~discharging water pollution and for which no person has a~~  
7 ~~continuing reclamation or water pollution abatement obligation.~~  
8 ~~The term shall also include land and water adversely affected by~~  
9 ~~mining or oil and gas extraction and left in an unreclaimed or~~  
10 ~~inadequately reclaimed condition or left discharging water~~  
11 ~~pollution for which the department has forfeited and collected~~  
12 ~~the operators bonds and there is no outstanding claim, demand or~~  
13 ~~litigation concerning the bond forfeiture.~~

14 ~~"Landowner." A person who holds either legal or equitable~~  
15 ~~interest in the surface or mineral estate of eligible land and~~  
16 ~~water or other real property. The term includes a mining~~  
17 ~~company.~~

18 ~~"Mineral." Any aggregate or mass of mineral matter, whether~~  
19 ~~or not coherent, which is extracted by mining, including, but~~  
20 ~~not limited to, limestone, dolomite, sand, gravel, slate,~~  
21 ~~argillite, diabase, gneiss, micaceous sandstone known as~~  
22 ~~bluestone, rock, stone, earth, fill, slag, iron ore, zinc ore,~~  
23 ~~vermiculite, clay and anthracite and bituminous coal.~~

24 ~~"Mining activity site." A mining site that is abandoned,~~  
25 ~~inactive or is or was permitted by the department under any of~~  
26 ~~the following acts:~~

27 ~~(1) The act of June 22, 1937 (P.L.1987, No.394), known~~  
28 ~~as The Clean Streams Law.~~

29 ~~(2) The act of May 31, 1945 (P.L.1198, No.418), known as~~  
30 ~~the Surface Mining Conservation and Reclamation Act.~~

1       ~~(3) The act of April 27, 1966 (1st Sp.Sess., P.L.31,~~  
2       ~~No.1), known as The Bituminous Mine Subsidence and Land~~  
3       ~~Conservation Act.~~

4       ~~(4) The act of September 24, 1968 (P.L.1040, No.318),~~  
5       ~~known as the Coal Refuse Disposal Control Act.~~

6       ~~(5) The act of December 19, 1984 (P.L.1093, No.219),~~  
7       ~~known as the Noncoal Surface Mining Conservation and~~  
8       ~~Reclamation Act.~~

9       ~~"Natural gas operator." A person who holds a permit issued~~  
10      ~~under the act of December 19, 1984 (P.L.1140, No.223), known as~~  
11      ~~the Oil and Gas Act, to drill an oil or natural gas well in a~~  
12      ~~conventional or unconventional formation.~~

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

18      ~~"Polluted water." Water which contains water pollution and~~  
19      ~~which is found in or originates from a mining activity site on~~  
20      ~~eligible land and water.~~

21      ~~"Water pollution." Waters of this Commonwealth that contain~~  
22      ~~pollution as defined in section 1 of the act of June 22, 1937~~  
23      ~~(P.L.1987, No.394), known as The Clean Streams Law, which was~~  
24      ~~caused by mining activities, oil or gas extraction or~~  
25      ~~exploration for these resources.~~

26      ~~"Water withdrawal permit." A permit or approval required by~~  
27      ~~a compact basin commission or the department to withdraw water~~  
28      ~~from the surface water or the groundwater.~~

29      ~~§ 81A05. Eligibility.~~

30      ~~(a) General rule. The following shall apply:~~

~~(1) (i) Except as provided under subparagraph (ii), a landowner who allows the withdrawal of polluted water from eligible land and water that originates from a mining activity site, or a natural gas operator who withdraws polluted water from eligible land and water that originates from a mining activity site and, in accordance with this chapter, utilizes the polluted water to hydraulically fracture a conventional or unconventional natural gas well and reuses, recycles and properly disposes of any unutilized hydraulic fracturing waste water shall be immune from liability and may raise the protections afforded by this chapter in any subsequent legal proceeding which is brought to enforce environmental laws or otherwise impose liability in regard to the eligible land and water or any existing water pollution abatement facilities on the eligible land and water.~~

~~(ii) Nothing under this chapter shall relieve a natural gas operator from liability for the proper utilization and disposal of polluted water withdrawn from eligible land and water that originates from a mining activity site in accordance with this chapter.~~

~~(2) A natural gas operator shall only be eligible for the protections and immunities provided under section 81A06 (relating to natural gas operator liability limitation and exceptions) if a written plan of the polluted water withdrawal, utilization and disposal is submitted to and approved by the department and, where applicable, a compact basin commission. The plan shall include the approximate volume of each withdrawal of polluted water, the locations of~~

~~eligible land and water where the withdrawals of polluted water will occur, the locations of the natural gas wells where the withdrawn polluted water will be utilized in hydraulic fracturing, whether any processing or pretreatment will be made to the polluted water, and the reuse or treatment and disposal of any of the polluted water that is recovered by the natural gas operator from a well that is hydraulically fractured.~~

~~(b) Departmental review. The department shall review each written plan. If the department determines that the plan meets the following criteria, the department shall approve the plan:~~

~~(1) The plan provides that use of the polluted water will preserve water quality and availability in this Commonwealth through the use of polluted water in hydraulic fracturing of conventional and unconventional natural gas wells.~~

~~(2) The plan provides for proper storage of the polluted water during its use and the ultimate proper disposal of the polluted water following its use.~~

~~(3) The plan demonstrates that withdrawal of polluted water will not cause or contribute to water pollution at the site of the withdrawal from eligible land and water or any other location hydrogeologically connected to the withdrawal site and will not otherwise affect or threaten a current or proposed mining operation. The demonstration shall include a closure plan that describes how all wells used to withdraw polluted water will be properly closed and plugged upon conclusion of use.~~

~~§ 81A06. Natural gas operator liability limitation and exceptions.~~

1 ~~(a) General rule. Except as provided under subsection (b),~~  
2 ~~a natural gas operator who withdraws polluted water from a~~  
3 ~~mining activity site on eligible land and water for use in~~  
4 ~~hydraulic fracturing natural gas wells:~~

5 ~~(1) Shall not be deemed to assume legal responsibility~~  
6 ~~for or incur liability for any preexisting water pollution on~~  
7 ~~or hydrogeologically connected to the withdrawal site or for~~  
8 ~~the use of polluted water in hydraulic fracturing a~~  
9 ~~conventional or unconventional natural gas well.~~

10 ~~(2) Shall not be subject to a citizen suit filed~~  
11 ~~pursuant to section 601 of the act of June 22, 1937~~  
12 ~~(P.L.1987, No.394), known as The Clean Streams Law, for~~  
13 ~~pollution resulting from a withdrawal of polluted water and~~  
14 ~~its subsequent use.~~

15 ~~(b) Exceptions. Nothing under this chapter shall limit the~~  
16 ~~liability of a natural gas operator who withdraws polluted water~~  
17 ~~from a mining activity site on eligible land and water for use~~  
18 ~~in hydraulic fracturing conventional or unconventional natural~~  
19 ~~gas wells for liability which results from the withdrawal of the~~  
20 ~~polluted water and which would otherwise exist:~~

21 ~~(1) For injury or damage resulting from the natural gas~~  
22 ~~operator's acts or omissions which are negligent, reckless or~~  
23 ~~constitute gross negligence or willful misconduct.~~

24 ~~(2) For the natural gas operator's unlawful activities.~~

25 ~~(3) For damage to landowners or other persons which~~  
26 ~~result from a withdrawal of polluted water if the written~~  
27 ~~plan described under section 81A05 (relating to eligibility)~~  
28 ~~was not provided to and approved by the department.~~

29 ~~§ 81A07. Landowner liability limitation and exceptions.~~

30 ~~(a) General rule. Except as provided under subsections (b)~~

1 ~~and (c), a landowner who provides access to the land which~~  
2 ~~results in withdrawals of polluted water for use in hydraulic~~  
3 ~~fracturing of conventional or unconventional natural gas wells:~~

4 ~~(1) Shall be immune from liability for any injury or~~  
5 ~~damage suffered by a natural gas operator withdrawing~~  
6 ~~polluted water while the natural gas operator or its employee~~  
7 ~~is within the land necessary for withdrawal of polluted~~  
8 ~~water.~~

9 ~~(2) Shall be immune from liability for any injury to or~~  
10 ~~damage suffered by a third party that arises out of or occurs~~  
11 ~~as a result of an act or omission of a natural gas operator~~  
12 ~~withdrawing polluted water which occurs during the~~  
13 ~~withdrawal.~~

14 ~~(3) Shall be immune from liability for any injury to or~~  
15 ~~damage suffered by a third party which arises out of or~~  
16 ~~occurs as a result of a withdrawal of polluted water.~~

17 ~~(4) Shall not be deemed to assume legal responsibility~~  
18 ~~to incur liability for any water pollution resulting from a~~  
19 ~~withdrawal of polluted water from a change in environmental~~  
20 ~~conditions at the mining activity site or any site~~  
21 ~~hydrogeologically connected thereto resulting from a~~  
22 ~~withdrawal of polluted water, or from its use in hydraulic~~  
23 ~~fracturing a conventional or unconventional natural gas well.~~

24 ~~(5) Shall not be subject to a citizen suit filed under~~  
25 ~~section 601 of the act of June 22, 1937 (P.L.1987, No.394),~~  
26 ~~known as The Clean Streams Law, for pollution resulting from~~  
27 ~~a withdrawal of polluted water and its subsequent use.~~

28 ~~(b) Duty to warn. A landowner shall warn a natural gas~~  
29 ~~operator withdrawing polluted water of known abnormally~~  
30 ~~dangerous conditions located on the land in the area necessary~~

1 ~~to withdraw polluted water. Nothing under this chapter shall~~  
2 ~~limit in any way or affect a landowner's liability which results~~  
3 ~~from a landowner's failure to warn of the known abnormally~~  
4 ~~dangerous conditions.~~

5 ~~(c) Exceptions to immunity. Nothing under this chapter~~  
6 ~~shall limit in any way or affect a landowner's liability which~~  
7 ~~results from the withdrawal of polluted water and which would~~  
8 ~~otherwise exist:~~

9 ~~(1) For any injury or damage resulting from the~~  
10 ~~landowner's acts or omissions which are negligent, reckless~~  
11 ~~or constitute gross negligence or willful misconduct.~~

12 ~~(2) For the landowner's unlawful activities.~~

13 ~~§ 81A08. Water withdrawal permits.~~

14 ~~Nothing under this chapter shall be construed to affect any~~  
15 ~~requirement for a water withdrawal permit.~~

16 ~~§ 81A09. Relationship to Federal and State programs.~~

17 ~~The provisions of this chapter shall not prevent the~~  
18 ~~Commonwealth from enforcing requirements necessary or imposed by~~  
19 ~~the Federal Government as a condition to receiving or~~  
20 ~~maintaining program authorization, delegation, primacy or~~  
21 ~~Federal funds.~~

22 ~~§ 81A10. Regulations.~~

23 ~~The department may promulgate rules and regulations necessary~~  
24 ~~to implement the provisions of this chapter.~~

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

26 SECTION 1. THE DEFINITIONS OF "ELIGIBLE LAND AND WATER," ←  
27 "WATER POLLUTION ABATEMENT FACILITIES" AND "WATER POLLUTION  
28 ABATEMENT PROJECT" IN SECTION 8104 OF TITLE 27 OF THE  
29 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED AND THE SECTION  
30 IS AMENDED BY ADDING DEFINITIONS TO READ:

1 § 8104. DEFINITIONS.

2 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER  
3 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
4 CONTEXT CLEARLY INDICATES OTHERWISE:

5 \* \* \*

6 "ELIGIBLE LAND AND WATER." LAND AND WATER ADVERSELY AFFECTED  
7 BY MINING OR OIL OR GAS EXTRACTION AND LEFT OR ABANDONED IN AN  
8 UNRECLAIMED OR INADEQUATELY RECLAIMED CONDITION OR LEFT  
9 DISCHARGING WATER POLLUTION AND FOR WHICH NO PERSON HAS A  
10 CONTINUING RECLAMATION OR WATER POLLUTION ABATEMENT OBLIGATION.  
11 THE TERM SHALL ALSO INCLUDE LAND AND WATER ADVERSELY AFFECTED BY  
12 MINING OR OIL OR GAS EXTRACTION AND LEFT IN AN UNRECLAIMED OR  
13 INADEQUATELY RECLAIMED CONDITION OR LEFT DISCHARGING WATER  
14 POLLUTION FOR WHICH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION  
15 HAS FORFEITED AND COLLECTED THE OPERATORS BONDS AND THERE IS NO  
16 OUTSTANDING LITIGATION CONCERNING THE BOND FORFEITURE. WITHOUT  
17 LIMITING THE FOREGOING, FOR PURPOSES OF WATER POLLUTION  
18 ABATEMENT PROJECTS INVOLVING THE USE OF MINE DRAINAGE OR MINE  
19 POOL WATER FOR HYDRAULIC FRACTURING OR OTHER DEVELOPMENT OF A  
20 GAS WELL, THE TERM ALSO INCLUDES LAND AND WATER ADVERSELY  
21 AFFECTED BY MINING AND LEFT IN AN UNRECLAIMED OR INADEQUATELY  
22 RECLAIMED CONDITION, OR LEFT DISCHARGING WATER POLLUTION FOR  
23 WHICH A TREATMENT TRUST FUND NAMING THE DEPARTMENT AS THE  
24 BENEFICIARY OF THE TRUST HAS BEEN ESTABLISHED.

25 \* \* \*

26 "MINE OPERATOR." THE PERMITTEE OF AN ACTIVE OR CLOSED MINE  
27 THAT TREATS MINE DRAINAGE UNDER A PERMIT ISSUED BY THE  
28 DEPARTMENT.

29 \* \* \*

30 "TREATED MINE DRAINAGE." WATER FROM AN ACTIVE OR CLOSED MINE

1 THAT IS TREATED BY THE MINE OPERATOR UNDER A PERMIT ISSUED BY  
2 THE DEPARTMENT. TREATED MINE DRAINAGE THAT MEETS THE EFFLUENT  
3 LIMITS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
4 PERMIT FOR THE SOURCE MINE IS NOT A SOLID WASTE AS DEFINED IN  
5 SECTION 103 OF THE ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN  
6 AS THE SOLID WASTE MANAGEMENT ACT, AND THE REGULATIONS  
7 PROMULGATED THEREUNDER.

8 \* \* \*

9 "WATER POLLUTION ABATEMENT FACILITIES." THE METHODS FOR  
10 TREATMENT OR ABATEMENT OF WATER POLLUTION LOCATED ON OR  
11 ASSOCIATED WITH ELIGIBLE LANDS AND WATER. THESE METHODS INCLUDE,  
12 BUT ARE NOT LIMITED TO, A STRUCTURE, SYSTEM, PRACTICE, TECHNIQUE  
13 OR METHOD CONSTRUCTED, INSTALLED OR FOLLOWED TO REDUCE, TREAT OR  
14 ABATE SUCH WATER POLLUTION. THE METHODS ALSO INCLUDE A  
15 STRUCTURE, SYSTEM, PRACTICE, TECHNIQUE OR METHOD CONSTRUCTED,  
16 INSTALLED OR FOLLOWED TO ENABLE THE USE OF MINE DRAINAGE OR MINE  
17 POOL WATER FROM ELIGIBLE LAND AND WATER FOR HYDRAULIC FRACTURING  
18 OR OTHER DEVELOPMENT OF A GAS WELL.

19 "WATER POLLUTION ABATEMENT PROJECT." A PLAN FOR TREATMENT OR  
20 ABATEMENT OF WATER POLLUTION LOCATED ON ELIGIBLE LANDS AND  
21 WATER. THESE PLANS INCLUDE, BUT ARE NOT LIMITED TO, THE  
22 PRACTICES TO BE FOLLOWED AND THE INSTALLATION, OPERATION AND  
23 MAINTENANCE OF FACILITIES TO REDUCE, TREAT OR ABATE SUCH WATER  
24 POLLUTION. THE PLANS ALSO INCLUDE THE USE OF MINE DRAINAGE OR  
25 MINE POOL WATER FROM ELIGIBLE LAND AND WATER FOR HYDRAULIC  
26 FRACTURING OR OTHER DEVELOPMENT OF A GAS WELL THAT MAY OR MAY  
27 NOT BE LOCATED ON ELIGIBLE LANDS AND WATER. THE USE OF TREATED  
28 MINE DRAINAGE FROM A PERMITTED MINING ACTIVITY SITE FOR THE  
29 HYDRAULIC FRACTURING OR OTHER DEVELOPMENT OF A GAS WELL IS  
30 CONSIDERED A WATER POLLUTION ABATEMENT PROJECT SUBJECT TO THE

1 PROVISIONS OF THIS CHAPTER.

2 SECTION 2. SECTION 8105(D) OF TITLE 27 IS AMENDED TO READ:

3 § 8105. ELIGIBILITY AND PROJECT INVENTORY.

4 \* \* \*

5 (D) DEPARTMENTAL REVIEW.--THE DEPARTMENT SHALL REVIEW EACH  
6 PROPOSED RECLAMATION PROJECT AND APPROVE THE PROJECT IF THE  
7 DEPARTMENT DETERMINES THE PROPOSED PROJECT:

8 (1) WILL RESULT IN THE REGRADING OF THE LAND TO STABLE  
9 CONTOURS THAT BLEND IN AND COMPLEMENT THE DRAINAGE PATTERN OF  
10 THE SURROUNDING TERRAIN WITH NO HIGHWALLS, SPOIL PILES OR  
11 DEPRESSIONS TO ACCUMULATE WATER;

12 (2) WILL RESULT IN THE APPROPRIATE REVEGETATION OF THE  
13 SITE; AND

14 (3) IS NOT LIKELY TO RESULT IN WATER POLLUTION AS  
15 DEFINED IN SECTION 1 OF THE ACT OF JUNE 22, 1937 (P.L.1987,  
16 NO.394), KNOWN AS THE CLEAN STREAMS LAW.

17 THE DEPARTMENT SHALL REVIEW EACH PROPOSED WATER POLLUTION  
18 ABATEMENT PROJECT AND APPROVE THE PROJECT IF THE DEPARTMENT  
19 DETERMINES THE PROPOSED PROJECT IS LIKELY TO IMPROVE THE WATER  
20 QUALITY [AND IS NOT LIKELY TO MAKE THE WATER POLLUTION WORSE] OF  
21 AN EXISTING DISCHARGE OF POLLUTION OR WILL LIKELY HAVE A  
22 BENEFICIAL IMPACT ON WATER RESOURCES IN THIS COMMONWEALTH.

23 \* \* \*

24 SECTION 3. SECTION 8106(A) (3) OF TITLE 27 IS AMENDED AND THE  
25 SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

26 § 8106. LANDOWNER LIABILITY LIMITATION AND EXCEPTIONS.

27 (A) GENERAL RULE.--EXCEPT AS SPECIFICALLY PROVIDED IN  
28 SUBSECTIONS (B) AND (C), A LANDOWNER WHO PROVIDES ACCESS TO THE  
29 LAND, WITHOUT CHARGE OR OTHER CONSIDERATION, WHICH RESULTS IN  
30 THE IMPLEMENTATION OF A RECLAMATION PROJECT OR A WATER POLLUTION

1 ABATEMENT PROJECT:

2 \* \* \*

3 (3) SHALL BE IMMUNE FROM LIABILITY FOR ANY INJURY TO OR  
4 DAMAGE SUFFERED BY A THIRD PARTY, INCLUDING A DOWNSTREAM  
5 RIPARIAN LANDOWNER, WHICH ARISES OUT OF OR OCCURS AS A RESULT  
6 OF A RECLAMATION PROJECT OR A WATER POLLUTION ABATEMENT  
7 PROJECT.

8 \* \* \*

9 (D) USE OF MINE WATER FOR HYDRAULIC FRACTURING.--

10 NOTWITHSTANDING A PROVISION OF THIS CHAPTER, LANDOWNERS AND MINE  
11 OPERATORS THAT ARE RESPONSIBLE FOR TREATING MINE DRAINAGE OR  
12 MINE POOL WATER FROM A PERMITTED MINING ACTIVITY SITE SHALL NOT  
13 BE DEEMED TO ASSUME LEGAL RESPONSIBILITY FOR OR TO INCUR  
14 LIABILITY WITH RESPECT TO A COST, INJURY OR DAMAGE THAT ARISES  
15 OUT OF OR OCCURS IN CONNECTION WITH THE USE OF MINE DRAINAGE,  
16 MINE POOL WATER OR TREATED MINE WATER IN CONNECTION WITH THE  
17 HYDRAULIC FRACTURING PROCESS OR OTHER DEVELOPMENT OF A GAS WELL.

18 SECTION 4. SECTIONS 8107(A) (1) OF TITLE 27 IS AMENDED AND  
19 THE SUBSECTION IS AMENDED BY ADDING PARAGRAPHS TO READ:

20 § 8107. PROJECT LIABILITY LIMITATION AND EXCEPTIONS.

21 (A) GENERAL RULE.--EXCEPT AS SPECIFICALLY PROVIDED IN  
22 SUBSECTION (B), A PERSON WHO PROVIDES EQUIPMENT, FUNDING,  
23 MATERIALS OR SERVICES AT NO COST TO THE COMMONWEALTH OR AT COST  
24 FOR A RECLAMATION PROJECT OR A WATER POLLUTION ABATEMENT PROJECT  
25 OR WHO IMPLEMENTS ANY SUCH PROJECT:

26 (1) SHALL BE IMMUNE FROM LIABILITY FOR ANY INJURY TO OR  
27 DAMAGE SUFFERED BY A PERSON, INCLUDING A DOWNSTREAM RIPARIAN  
28 LANDOWNER, WHICH ARISES OUT OF OR OCCURS AS A RESULT OF:

29 (I) THE WATER POLLUTION ABATEMENT FACILITIES  
30 CONSTRUCTED OR INSTALLED DURING THE WATER POLLUTION

1 ABATEMENT PROJECT; AND

2 (II) A RECLAMATION PROJECT OR A WATER POLLUTION  
3 ABATEMENT PROJECT.

4 \* \* \*

5 (5) MAY NOT BE CONSIDERED TO BE ENGAGING IN SURFACE OR  
6 UNDERGROUND MINING ACTIVITIES UNDER THE ACT OF MAY 31, 1945  
7 (P.L.1198, NO.418), KNOWN AS THE SURFACE MINING CONSERVATION  
8 AND RECLAMATION ACT, OR THE ACT OF APRIL 27, 1966 (1ST  
9 SP.SESS., P.L.31, NO.1), KNOWN AS THE BITUMINOUS MINE  
10 SUBSIDENCE AND LAND CONSERVATION ACT, WHEN THE WATER  
11 POLLUTION ABATEMENT PROJECT INVOLVES THE USE OF MINE DRAINAGE  
12 OR MINE POOL WATER FOR HYDRAULIC FRACTURING OR OTHER  
13 DEVELOPMENT OF A GAS WELL.

14 (6) MAY NOT BE CONSIDERED TO BE ENGAGING IN THE  
15 PROCESSING, TREATMENT OR DISPOSAL OF A SOLID WASTE UNDER THE  
16 ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN AS THE SOLID  
17 WASTE MANAGEMENT ACT, OR IN THE DISCHARGE OF INDUSTRIAL WASTE  
18 OR POLLUTANTS UNDER THE ACT OF JUNE 22, 1937 (P.L.1987,  
19 NO.394), KNOWN AS THE CLEAN STREAMS LAW, WHEN USING MINE  
20 DRAINAGE, MINE POOL WATER OR TREATED MINE WATER FOR HYDRAULIC  
21 FRACTURING OR OTHER DEVELOPMENT OF A GAS WELL.

22 \* \* \*

23 SECTION 5. SECTION 8111(A) OF TITLE 27 IS AMENDED TO READ:

24 § 8111. EXCEPTIONS.

25 (A) GENERAL [RULE] RULES.--THE FOLLOWING SHALL NOT BE  
26 ELIGIBLE FOR NOR SHALL THAT PERSON RECEIVE THE BENEFIT OF THE  
27 PROTECTIONS AND IMMUNITIES AVAILABLE UNDER THIS CHAPTER,  
28 PROVIDED THAT, ANY PERSON WHO USES AND ANY PERSON WHO ALLOWS THE  
29 USE OF OR PROVIDES MINE DRAINAGE, MINE POOL WATER OR TREATED  
30 MINE WATER, AS PART OF A WATER POLLUTION ABATEMENT PROJECT,

1 INCLUDING A MINE OPERATOR THAT PROVIDES FOR PAYMENT OR OTHERWISE  
2 TREATED MINE DRAINAGE FOR HYDRAULIC FRACTURING OR OTHER  
3 DEVELOPMENT OF A GAS WELL SHALL RECEIVE THE BENEFIT OF THE  
4 PROTECTIONS AND IMMUNITIES AVAILABLE UNDER THIS CHAPTER:

5       (1) ANY PERSON WHO UNDER EXISTING LAW SHALL BE OR MAY  
6 BECOME RESPONSIBLE TO RECLAIM THE LAND OR TREAT OR ABATE THE  
7 WATER POLLUTION [OR];

8       (2) ANY PERSON WHO [FOR] RECEIVES PAYMENT [OR],  
9 CONSIDERATION OR [WHO RECEIVES] SOME OTHER BENEFIT THROUGH A  
10 CONTRACT [OR] TO RECLAIM THE LAND OR TREAT OR ABATE THE WATER  
11 POLLUTION EXCEPT AS PROVIDED BY THIS SUBSECTION; OR

12       (3) ANY PERSON WHO THROUGH A CONSENT ORDER AND AGREEMENT  
13 OR OTHERWISE AGREES OR IS ORDERED TO PERFORM OR COMPLETE  
14 RECLAMATION OR TREAT OR ABATE WATER POLLUTION AS WELL AS A  
15 SURETY WHICH PROVIDED A BOND FOR THE SITE [SHALL NOT BE  
16 ELIGIBLE FOR NOR SHALL THAT PERSON RECEIVE THE BENEFIT OF THE  
17 PROTECTIONS AND IMMUNITIES AVAILABLE UNDER THIS CHAPTER].

18 \* \* \*

19 SECTION 6. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.