

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 847

Session of
1985

INTRODUCED BY GEORGE, IRVIS, MANDERINO, KUKOVICH, ITKIN,
WOZNIAK, BLAUM, FREEMAN, JAROLIN, LUCYK, MICHLOVIC, MURPHY,
SHOWERS, STEIGHNER, STEWART, REBER, SAURMAN, RYBAK, JACKSON,
CAWLEY, STABACK, GALLAGHER, SEVENTY, F. E. TAYLOR, HALUSKA,
PISTELLA, PRATT, FEE, FOX, MORRIS, BELARDI, JOHNSON, ARTY,
ACOSTA, COHEN, LIVENGOD, GANNON, LINTON, MRKONIC, PETRARCA,
DeLUCA, HOWLETT, TELEK, COLAFELLA, RICHARDSON AND SERAFINI,
APRIL 9, 1985

AS REPORTED FROM COMMITTEE ON CONSERVATION, HOUSE OF
REPRESENTATIVES, AS AMENDED, JANUARY 21, 1986

AN ACT

1 Amending the act of May 31, 1945 (P.L.1198, No.418), entitled,
2 as amended, "An act providing for the conservation and
3 improvement of land affected in connection with surface
4 mining; regulating such mining; and providing penalties,"
5 further providing for the protection of water supplies.

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

8 Section 1. Section 4.2 of the act of May 31, 1945 (P.L.1198,
9 No.418), known as the Surface Mining Conservation and
10 Reclamation Act, is amended by adding subsections to read:

11 Section 4.2. General Rule Making; Health and Safety.--* * *

12 (h) It shall be presumed, as a matter of law, that any
13 surface mining operator or owner is responsible, without proof
14 of fault, negligence or causation, for all pollution or
15 diminution of public or private water supplies WITHIN 2,640
16 LINEAR FEET (ONE-HALF MILE) OF THE OUTSIDE BOUNDARIES OF THE

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1 ACREAGE ASSIGNED TO THE SURFACE MINING OPERATION BY A PERMIT
2 ISSUED FROM THE DEPARTMENT. There shall be only four defenses to
3 the presumptions of liability provided herein. Any surface
4 mining operator or owner must affirmatively prove by a
5 preponderance of evidence that one of the following conditions
6 exist:

7 (1) The landowner or water supply company refused to allow
8 the surface mining operator or owner access to conduct a survey
9 prior to commencing surface mining activities.

10 ~~(2) The structure or water supply is not within the relevant~~ <—
11 ~~zone of presumed damage.~~

12 (2) THE WATER SUPPLY IS NOT WITHIN 2,640 LINEAR FEET (ONE- <—
13 HALF MILE) OF THE OUTSIDE BOUNDARIES OF THE ACREAGE ASSIGNED TO
14 THE SURFACE MINING OPERATION BY A PERMIT ISSUED FROM THE
15 DEPARTMENT.

16 (3) The pollution or diminution existed prior to the surface
17 mining activities as determined by a survey conducted prior to
18 commencing surface mining activities.

19 (4) The pollution or diminution occurred as a result of some
20 cause other than the surface mining activities.

21 (i) If the secretary finds that immediate replacement of an
22 affected water supply used for potable or domestic needs is
23 required to protect health and safety, and that the operator or
24 owner has appealed or failed to comply with an order issued
25 pursuant to subsection (f), the secretary may restore or replace
26 the affected water supply with an alternate source of water
27 utilizing moneys from the Surface Mining Conservation and
28 Reclamation Fund. The secretary shall recover the costs of
29 restoration or replacement, including costs incurred for design
30 and construction of facilities, from the responsible operators

1 or owners. Any such costs recovered shall be deposited in the
2 Surface Mining Conservation and Reclamation Fund.

3 (j) Any operator or owner aggrieved by the secretary's order
4 issued pursuant to subsection (f) shall have the right within
5 thirty days of receipt of such order to appeal to the
6 Environmental Hearing Board. Hearings under this subsection
7 shall be in accordance with section 1921-A of the act of April
8 9, 1929 (P.L.177, No.175), known as "The Administrative Code of
9 1929," and 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and
10 procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating
11 to judicial review of Commonwealth agency action).

12 (k) Nothing herein shall prevent any landowner or water
13 supply company who claims pollution or diminution of a water
14 supply from seeking any other remedy that may be provided for at
15 law or in equity.

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