

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 329 Session of
1989

INTRODUCED BY GEORGE, FEE, FREEMAN, WOZNIAK, LUCYK, BOWLEY,
BROUJOS, MICHLOVIC, BELARDI, LEVDANSKY, DeWEESE, KUKOVICH,
SERAFINI, MICOZZIE, TIGUE, BELFANTI, STABACK, SAURMAN,
BILLOW, CAWLEY, PISTELLA, LAUGHLIN, SALOOM, MELIO, RITTER,
LANGTRY, GIGLIOTTI AND MRKONIC, FEBRUARY 8, 1989

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 13, 1990

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; providing for the
5 establishment of an Emergency Bond Fund for anthracite deep
6 mine operators; and providing penalties," further providing
7 for proceedings involving contamination or diminution of
8 water supplies.

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

11 Section 1. Section 4.2(f) of the act of May 31, 1945
12 (P.L.1198, No.418), known as the Surface Mining Conservation and
13 Reclamation Act, amended October 10, 1980 (P.L.835, No.155), is
14 amended to read:

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

16 (f) (1) Any surface mining operator who affects a public or
17 private water supply by contamination or diminution shall
18 restore or replace the affected supply with an alternate source
19 of water adequate in quantity and quality for the purposes

1 served by the supply. If any operator shall fail to comply with
2 this provision, the secretary may issue such orders to the
3 operator as are necessary to assure compliance.

4 ~~(2) Any operator aggrieved by the secretary's order issued~~ <—
5 ~~pursuant to this subsection shall have the right within thirty~~
6 ~~(30) days of receipt of such order to appeal to the~~
7 ~~Environmental Hearing Board. Hearings under this subsection and~~
8 ~~any subsequent appeal shall be in accordance with section~~
9 ~~1921(a) of the act of April 9, 1929 (P.L.177, No.175), known as~~
10 ~~"The Administrative Code of 1929," and 2 Pa.C.S. (relating to~~
11 ~~administrative law and procedure).~~

12 ~~(3) If the secretary finds:~~

13 ~~(i) that immediate replacement of an affected water supply~~
14 ~~used for potable or domestic needs is required to protect health~~
15 ~~and safety; and~~

16 ~~(ii) that the operator has appealed or failed to comply with~~
17 ~~an order issued pursuant to this subsection;~~
18 ~~the secretary may, in his discretion, restore or replace the~~
19 ~~affected water supply with an alternate source of water~~
20 ~~utilizing moneys from the surface mining conservation and~~
21 ~~reclamation fund. The secretary shall recover the costs of~~
22 ~~restoration or replacement, including costs incurred for design~~
23 ~~and construction of facilities, from the responsible operator or~~
24 ~~operators. Any such costs recovered shall be deposited in the~~
25 ~~fund.~~

26 ~~(2) IT SHALL BE PRESUMED, AS A MATTER OF LAW, THAT ANY~~ <—
27 ~~SURFACE MINING OPERATOR OR OWNER IS RESPONSIBLE, WITHOUT PROOF~~
28 ~~OF FAULT, NEGLIGENCE OR CAUSATION, FOR ALL POLLUTION, EXCEPT~~
29 ~~BACTERIOLOGICAL CONTAMINATION, OR DIMINUTION OF PUBLIC OR~~
30 ~~PRIVATE WATER SUPPLIES, WITHIN ONE THOUSAND LINEAR FEET OF THE~~

BOUNDARIES OF THE LAND AFFECTED OR ACREAGE ASSIGNED TO THE
SURFACE MINING OPERATION UNDER SECTION 3.1 BY A PERMIT ISSUED BY
THE DEPARTMENT. THERE SHALL BE ONLY FIVE DEFENSES TO THE
PRESUMPTIONS OF LIABILITY PROVIDED HEREIN. ANY SURFACE MINING
OPERATOR OR OWNER MUST AFFIRMATIVELY PROVE BY A PREPONDERANCE OF
EVIDENCE THAT ONE OF THE FOLLOWING CONDITIONS EXIST:

(I) THE LANDOWNER OR WATER SUPPLY COMPANY REFUSED TO ALLOW
THE SURFACE MINING OPERATOR OR OWNER ACCESS TO CONDUCT A SURVEY
PRIOR TO COMMENCING SURFACE MINING ACTIVITIES.

(II) THE WATER SUPPLY IS NOT WITHIN ONE THOUSAND LINEAR FEET
OF THE BOUNDARIES OF THE LAND AFFECTED OR THE ACREAGE ASSIGNED
TO THE SURFACE MINING OPERATION UNDER SECTION 3.1 BY A PERMIT
ISSUED BY THE DEPARTMENT.

(III) THE POLLUTION OR DIMINUTION EXISTED PRIOR TO THE
SURFACE MINING ACTIVITIES AS DETERMINED BY A SURVEY CONDUCTED
PRIOR TO COMMENCING SURFACE MINING ACTIVITIES.

(IV) THE POLLUTION OR DIMINUTION OCCURRED AS A RESULT OF
SOME CAUSE OTHER THAN THE SURFACE MINING ACTIVITIES.

(V) THE LANDOWNER, WATER SUPPLY USER OR WATER SUPPLY COMPANY
REFUSES TO ALLOW THE SURFACE MINING OPERATOR OR OWNER ACCESS TO
DETERMINE THE CAUSE OF POLLUTION OR DIMINUTION OR TO REPLACE OR
RESTORE THE WATER SUPPLY.

(3) IF THE SECRETARY FINDS THAT IMMEDIATE REPLACEMENT OF AN
AFFECTED WATER SUPPLY USED FOR POTABLE OR DOMESTIC NEEDS IS
REQUIRED TO PROTECT HEALTH AND SAFETY, AND THAT THE OPERATOR OR
OWNER HAS APPEALED OR FAILED TO COMPLY WITH AN ORDER ISSUED
PURSUANT TO THIS SUBSECTION, THE SECRETARY MAY RESTORE OR
REPLACE THE AFFECTED WATER SUPPLY WITH AN ALTERNATE SOURCE OF
WATER UTILIZING MONEYS FROM THE SURFACE MINING CONSERVATION AND
RECLAMATION FUND. THE SECRETARY SHALL RECOVER THE COSTS OF

1 RESTORATION OR REPLACEMENT, INCLUDING COSTS INCURRED FOR DESIGN
2 AND CONSTRUCTION OF FACILITIES, FROM THE RESPONSIBLE OPERATORS
3 OR OWNERS. ANY SUCH COSTS RECOVERED SHALL BE DEPOSITED IN THE
4 SURFACE MINING CONSERVATION AND RECLAMATION FUND.

5 (4) ANY OPERATOR OR OWNER AGGRIEVED BY THE SECRETARY'S ORDER
6 ISSUED PURSUANT TO THIS SUBSECTION SHALL HAVE THE RIGHT WITHIN
7 THIRTY DAYS OF RECEIPT OF SUCH ORDER TO APPEAL TO THE
8 ENVIRONMENTAL HEARING BOARD. THE SECRETARY'S ORDER, WHEN
9 APPEALED BY ANY OPERATOR OR OWNER, SHALL NOT BE USED TO BLOCK
10 THE ISSUANCE OF NEW PERMITS OR THE RELEASE OF BONDS WHEN A STAGE
11 OF RECLAMATION WORK IS COMPLETED. HEARINGS UNDER THIS SUBSECTION
12 SHALL BE IN ACCORDANCE WITH THE ACT OF JULY 13, 1988 (P.L.530,
13 NO.94), KNOWN AS THE "ENVIRONMENTAL HEARING BOARD ACT," AND 2
14 PA.C.S. CH. 5 SUBCH. A (RELATING TO PRACTICE AND PROCEDURE OF
15 COMMONWEALTH AGENCIES) AND CH. 7, SUBCH. A (RELATING TO JUDICIAL
16 REVIEW OF COMMONWEALTH AGENCY ACTION).

17 (5) A SURFACE MINING OPERATOR OR OWNER WHO PROVIDES A
18 SUCCESSFUL DEFENSE TO THE PRESUMPTION OF LIABILITY SHALL BE
19 ENTITLED TO RECOVER THE COSTS INCURRED, INCLUDING, BUT NOT
20 LIMITED TO, THE COSTS OF TEMPORARY WATER SUPPLY, DESIGN,
21 CONSTRUCTION, RESTORATION OR REPLACEMENT COSTS, ATTORNEY FEES
22 AND EXPERT WITNESS FEES FROM THE DEPARTMENT.

23 (6) NOTHING HEREIN SHALL PREVENT ANY LANDOWNER OR WATER
24 SUPPLY COMPANY WHO CLAIMS POLLUTION OR DIMINUTION OF A WATER
25 SUPPLY FROM SEEKING ANY OTHER REMEDY THAT MAY BE PROVIDED FOR AT
26 LAW OR IN EQUITY.

27 (7) A SURFACE MINING OPERATION CONDUCTED UNDER A SURFACE
28 MINING PERMIT ISSUED BY THE DEPARTMENT BEFORE THE EFFECTIVE DATE
29 OF THIS ACT SHALL NOT BE SUBJECT TO THE PROVISIONS OF CLAUSES
30 (2), (3), (4), (5) AND (6) OF THIS SUBSECTION, BUT SHALL BE

1 SUBJECT TO CLAUSE (1) OF THIS SUBSECTION.

2 * * *

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