

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 868

Session of
1999

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COLAFELLA, LESCOVITZ, FARGO AND DeWEESE, MARCH 10, 1999

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
OCTOBER 5, 1999

AN ACT

1 Providing immunity for certain persons who reclaim certain
2 abandoned lands or abate certain water pollution.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the Environmental
7 Good Samaritan Act.

8 Section 2. Findings.

9 The General Assembly finds and declares as follows:

10 (1) This Commonwealth's long history of mining and the
11 extraction of oil and gas has left some lands and waters
12 unreclaimed and polluted.

13 (2) These abandoned lands and polluted waters are
14 unproductive, erode the tax base and are serious impediments
15 to the economic welfare and growth of this Commonwealth.

16 (3) The unreclaimed lands and polluted waters present a

1 danger to the health, safety and welfare of the people and
2 the environment.

3 (4) This Commonwealth does not possess sufficient
4 resources to reclaim all the abandoned lands and to abate the
5 water pollution.

6 (5) Numerous landowners, citizens, watershed
7 associations, environmental organizations and governmental
8 entities who do not have a legal responsibility to reclaim
9 the abandoned lands or to abate the water pollution are
10 interested in addressing these problems but are reluctant to
11 engage in such reclamation and abatement activities because
12 of potential liabilities associated with the reclamation and
13 abatement activities.

14 (6) It is in the best interest of the health, safety and
15 welfare of the people of this Commonwealth and the
16 environment to encourage reclamation of the abandoned lands
17 and abatement of water pollution.

18 Section 3. Purpose.

19 This act is intended to encourage the improvement of land and
20 water adversely affected by mining and oil and gas extraction,
21 to aid in the protection of wildlife, to decrease soil erosion,
22 to aid in the prevention and abatement of the pollution of
23 rivers and streams, to protect and improve the environmental
24 values of this Commonwealth and to eliminate or abate hazards to
25 health and safety. It is the intent of the General Assembly to
26 encourage voluntary reclamation of lands adversely affected by
27 mining or oil or gas extraction. The purpose of this act is to
28 improve water quality and to control and eliminate water
29 pollution resulting from mining or oil or gas extraction or
30 exploration by limiting the liability which could arise as a

1 result of the voluntary reclamation of abandoned lands or the
2 reduction and abatement of water pollution. This act is not
3 intended to limit the liability of a person who under existing
4 law is or may become responsible to reclaim the land or address
5 the water pollution or anyone who by contract, order or
6 otherwise is required to or agrees to perform the reclamation or
7 abate the water pollution.

8 Section 4. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Approved project." A reclamation project or water pollution
13 abatement project approved by the Department of Environmental
14 Protection prior to completion.

15 "Consideration." Something of value promised, given or
16 performed in exchange for something which has the effect of
17 making a legally enforceable contract. For the purpose of this
18 act, the term does not include a promise to a landowner to
19 repair damage caused by a reclamation project or water pollution
20 abatement project when the promise is made in exchange for
21 access to the land.

22 "Department." The Department of Environmental Protection of
23 the Commonwealth.

24 "Eligible land and water." Land and water adversely affected
25 by mining or oil or gas extraction and left or abandoned in an
26 unreclaimed or inadequately reclaimed condition or left
27 discharging water pollution and for which no person has a
28 continuing reclamation or water pollution abatement obligation.
29 The term shall also include land and water adversely affected by
30 mining or oil or gas extraction and left in an unreclaimed or

1 inadequately reclaimed condition or left discharging water
2 pollution for which the Department of Environmental Protection
3 has forfeited and collected the operators bonds and there is no
4 outstanding litigation concerning the bond forfeiture.

5 "Landowner." A person who holds either legal or equitable
6 interest in real property.

7 "Mineral." Any aggregate or mass of mineral matter, whether
8 or not coherent, which is extracted by mining, including, but
9 not limited to, limestone, dolomite, sand, gravel, slate,
10 argillite, diabase, gneiss, micaceous sandstone known as
11 bluestone, rock, stone, earth, fill, slag, iron ore, zinc ore,
12 vermiculite, clay and anthracite and bituminous coal.

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

18 "Project work area." That land necessary for a person to
19 complete a reclamation project or a water pollution abatement
20 project.

21 "Reclamation project." The restoration of eligible lands and
22 water to productive use by regrading and revegetating the land
23 to stable contours that blend in and complement the drainage
24 pattern of the surrounding terrain with no highwalls, spoil
25 piles or depressions to accumulate water AND BY PLUGGING
26 ABANDONED OIL OR GAS WELLS AND REMOVING PRODUCTION OF STORAGE
27 FACILITIES, SUPPLIES AND EQUIPMENT FROM AREAS DISTURBED IN
28 SITING, DRILLING, COMPLETING AND PRODUCING SUCH WELLS.

29 "Water pollution abatement facilities." The methods for
30 treatment or abatement of water pollution located on eligible

1 lands and water. These methods include, but are not limited to,
2 a structure, system, practice, technique or method constructed,
3 installed or followed to reduce, treat or abate such water
4 pollution.

5 "Water pollution abatement project." A plan for treatment or
6 abatement of water pollution located on eligible lands and
7 water. These plans include, but are not limited to, the
8 practices to be followed and the installation, operation and
9 maintenance of facilities to reduce, treat or abate such water
10 pollution.

11 Section 5. Consultation with department.

12 (a) General rule.--Landowners and persons planning a
13 reclamation project or a water pollution abatement project may
14 notify the department of their proposed project. If notified,
15 the department shall review its files and advise whether any
16 person is legally responsible for the unreclaimed land or the
17 water pollution and whether the proposed project would be
18 located on eligible lands and water.

19 (b) Inventory of projects.--The department shall develop and
20 maintain a system to inventory and record each water pollution
21 abatement project and each reclamation project which is
22 submitted in writing, reviewed and approved by the department
23 before each project is completed. The approved project inventory
24 shall identify the land containing the project work area and
25 each landowner and each person who, through participation in the
26 reclamation project or water pollution abatement project, is
27 entitled to the protections and immunities provided by this act.

28 (c) Nature of department approval and identification.--For
29 the purposes of 2 Pa.C.S. Ch. 5 Subch. A (relating to practice
30 and procedure of Commonwealth agencies), the act of July 13,

1 1988 (P.L.530, No.94), known as the Environmental Hearing Board
2 Act, and the Environmental Hearing Board's regulation at 25 Pa.
3 Code Ch. 1021 (relating to practice and procedures), the
4 following shall not be an adjudication or an action:

5 (1) The department's approval or disapproval of a
6 reclamation project or a water pollution abatement project.

7 (2) The department's identification or failure to
8 identify in the approved project inventory land containing
9 the project work area or a landowner or a person who
10 participated in a reclamation project or in a water pollution
11 abatement project.

12 (d) Presumptions.--

13 (1) Every landowner and person identified in the
14 approved project inventory shall be presumed to be covered by
15 the protections and immunities provided by this act. This
16 presumption may be rebutted by clear and convincing evidence
17 that the landowner or person did not participate in an
18 approved reclamation project or water pollution abatement
19 project.

20 (2) A landowner or a person who participates in a
21 reclamation project or a water pollution abatement project
22 which is not an approved project is eligible for the
23 protections and immunities provided by this act but shall not
24 be entitled to the presumption provided by paragraph (1).

25 Section 6. Landowner liability limitation and exceptions.

26 (a) General rule.--Except as specifically provided in
27 subsections (b) and (c), a landowner who provides access to the
28 land, without charge or other consideration, which results in
29 the implementation of a reclamation project or a water pollution
30 abatement project:

1 (1) Shall be immune from liability for any injury or
2 damage suffered by the person implementing the reclamation
3 project or the water pollution abatement project while the
4 person is within the project work area.

5 (2) Shall be immune from liability for any injury to or
6 damage suffered by a third party which arises out of or
7 occurs as a result of an act or omission of a person
8 implementing a reclamation project or water pollution
9 abatement project which occurs during the implementation of
10 the reclamation project or the water pollution abatement
11 project.

12 (3) Shall be immune from liability for any injury to or
13 damage suffered by a third party which arises out of or
14 occurs as a result of a reclamation project or a water
15 pollution abatement project.

16 (4) Shall not be deemed to assume legal responsibility
17 for or incur liability for any pollution resulting from a
18 reclamation project or water pollution abatement project.

19 (5) Shall not be subject to a citizen suit filed
20 pursuant to section 601 of the act of June 22, 1937
21 (P.L.1987, No.394), known as The Clean Streams Law, for
22 pollution resulting from a reclamation project or water
23 pollution abatement project.

24 (6) Shall be immune from liability for the operation,
25 maintenance or repair of the water pollution abatement
26 facilities constructed or installed during the project unless
27 the landowner negligently damages or destroys the water
28 pollution abatement facilities or denies access to those
29 persons who operate, maintain or repair the water pollution
30 abatement facilities.

1 (b) Duty to warn.--A landowner shall warn a person
2 implementing a reclamation project or water pollution abatement
3 project of known, latent, dangerous conditions located on the
4 project work area which known, latent, dangerous conditions are
5 not the subject of the reclamation project or the water
6 pollution abatement project. Nothing in this act shall limit in
7 any way or affect a landowner's liability which results from the
8 landowner's failure to warn of such known, latent, dangerous
9 conditions.

10 (c) Exceptions to immunity.--Nothing in this act shall limit
11 in any way or affect a landowner's liability which results from
12 a reclamation project or water pollution abatement project and
13 which would otherwise exist:

14 (1) For injury or damage resulting from the landowner's
15 acts or omissions which are reckless or constitute gross
16 negligence or willful misconduct.

17 (2) Where the landowner charges an access fee or
18 requires other consideration before allowing access to the
19 land for the purpose of implementing a reclamation project or
20 water pollution abatement project or to operate, maintain or
21 repair water pollution abatement facilities constructed or
22 installed during a water pollution abatement project.

23 (3) For the landowner's unlawful activities.

24 Section 7. Project liability limitation and exceptions.

25 (a) General rule.--Except as specifically provided in
26 subsection (b), a person who implements or participates in a
27 reclamation project or a water pollution abatement project:

28 (1) Shall be immune from liability for any injury to or
29 damage suffered by a person which arises out of or occurs as
30 a result of the water pollution abatement facilities

constructed or installed during the water pollution abatement project.

(2) Shall be immune from liability for any pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project unless the person affects an area that is hydrologically connected to the water pollution abatement project work area and causes increased pollution by activities which are unrelated to the implementation of a water pollution abatement project.

(3) Shall not be deemed to assume responsibility for or incur liability for the operation, maintenance and repair of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(4) Shall not be subject to a citizen suit under section 601 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, for pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(b) Exceptions.--

(1) Nothing in this act shall limit in any way the liability of a person who implements or participates in a reclamation project or a water pollution abatement project which liability results from the reclamation project or the water pollution abatement project and which would otherwise exist:

~~(1)~~ (I) For injury or damage resulting from the person's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

~~(2)~~ (II) For the person's unlawful activities.

(2) NOTHING IN THIS ACT SHALL LIMIT IN ANY WAY THE
LIABILITY OF A PERSON WHO THE DEPARTMENT HAS FOUND TO BE IN
VIOLATION OF ANY OF THE FOLLOWING ACTS:

(I) THE ACT OF MAY 31, 1945 (P.L.1198, NO.418),
KNOWN AS THE SURFACE MINING CONSERVATION AND RECLAMATION
ACT.

(II) THE ACT OF APRIL 27, 1966 (1ST SP.SESS.,
P.L.31, NO.1), KNOWN AS THE BITUMINOUS MINE SUBSIDENCE
AND LAND CONSERVATION ACT.

(III) THE ACT OF JULY 7, 1980 (P.L.380, NO.97),
KNOWN AS THE SOLID WASTE MANAGEMENT ACT.

(IV) ANY OTHER FEDERAL OR STATE STATUTE RELATING TO
ENVIRONMENTAL PROTECTION OR TO THE PROTECTION OF THE
PUBLIC HEALTH, SAFETY AND WELFARE.

Section 8. Permits and zoning.

Nothing in this act shall be construed as waiving any
existing permit requirements or waiving any local zoning
requirements.

Section 9. Relationship to Federal and State programs.

The provisions of this act shall not prevent the Commonwealth
from enforcing requirements necessary or imposed by the Federal
Government as a condition to receiving or maintaining program
authorization, delegation, primacy or Federal funds.

Section 10. General permits.

If the department determines it will further the purposes of
this act, the department may issue a general permit for each
reclamation project or water pollution abatement project, which
general permit shall:

(1) Encompass all of the activities included in that
reclamation project or water pollution abatement project.

(2) Be issued in place of any required stream encroachment, earth disturbance or national pollution discharge elimination system permits.

Section 11. Exceptions.

(a) General rule.--Any person who under existing law shall be or may become responsible to reclaim the land or treat or abate the water pollution or any person who for payment or consideration or who receives some other benefit through a contract, or any person who through a consent order and agreement or otherwise agrees or is ordered to perform or complete reclamation or treat or abate water pollution as well as a surety which provided a bond for the site shall not be eligible for nor shall that person receive the benefit of the protections and immunities available under this act.

(b) Projects near mining or coal refuse sites.--This act shall not apply to a reclamation project or a water pollution abatement project that is located adjacent to, hydrologically connected to or in close proximity to a site permitted under the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act, the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act, or the act of December 19, 1984 (P.L.1093, No.219), known as the Noncoal Surface Mining Conservation and Reclamation Act, unless:

(1) The reclamation project or water pollution abatement project is submitted to the department in writing before the project is started.

(2) The department finds:

1 (i) The reclamation project or the water pollution
2 abatement project will not adversely affect the
3 permittee's obligations under the permit and the
4 applicable law.

5 (ii) The activities on the project work area cannot
6 be used by the permittee to avoid the permittee's
7 reclamation or water pollution treatment or abatement
8 obligations.

9 (3) The department issues a written notice of its
10 findings and the approval of the project.

11 (c) Projects in lieu of civil penalties.--This act shall not
12 apply to a reclamation project or a water pollution abatement
13 project that is performed in lieu of paying civil penalties.

14 (d) Land Recycling and Environmental Remediation Standards
15 Act.--The act of May 19, 1995 (P.L.4, No.2), known as the Land
16 Recycling and Environmental Remediation Standards Act to
17 reclamation projects or water pollution abatement projects
18 implemented under this act.

19 Section 12. Regulations.

20 The department may promulgate rules and regulations necessary
21 to implement the provisions of this act.

22 Section 13. Repeal.

23 All acts and parts of acts are repealed insofar as they are
24 inconsistent with this act.

25 Section 14. Effective date.

26 This act shall take effect in 60 days.