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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2533 Session of  
2008

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INTRODUCED BY GEORGE, BELFANTI, BENNINGTON, CALTAGIRONE,  
CARROLL, DeWEESE, GOODMAN, HALUSKA, JOSEPHS, KOTIK, KULA,  
MARSHALL, McILHATTAN, MUNDY, MYERS, PETRONE, READSHAW,  
SIPTROTH, SURRA, SWANGER, THOMAS, WALKO, WHEATLEY, J. WHITE,  
WOJNAROSKI AND YOUNGBLOOD, SEPTEMBER 18, 2008

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
SEPTEMBER 18, 2008

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AN ACT

1 Providing for duties of oil and gas well operators, for notice  
2 of operations and surface use and compensation agreement, for  
3 entry without surface use compensation agreement, for  
4 restriction on issuance of permits for wells, for attorney  
5 fees and costs and for emergency situations.

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the Surface  
10 Owners' Protection Act.

11 Section 2. Definitions.

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

15 "Department." The Department of Environmental Protection of  
16 the Commonwealth.

17 "Gas." Fluid, either combustible or noncombustible, which is

1 produced in a natural state from the earth and which maintains a  
2 gaseous or rarified state at a standard temperature of 60  
3 degrees Fahrenheit and a pressure of 14.7 PSIA, manufactured  
4 gas, byproduct gas or any mixture of gases.

5 "Oil" or "petroleum." Hydrocarbons in liquid form at a  
6 standard temperature of 60 degrees Fahrenheit and a pressure of  
7 14.7 PSIA.

8 "Oil or gas operations" or "operations." Activities  
9 affecting land or water sources, no matter how slight, that are  
10 associated with oil or gas exploration or production, including,  
11 but not limited to:

12 (1) Construction, installation, maintenance or removal  
13 of oil or gas wells.

14 (2) Construction, installation, maintenance or removal  
15 of pipelines and equipment for gas, oil or water.

16 (3) Installation, maintenance and removal of all access  
17 or service roads.

18 (4) Installation, maintenance or removal of oil or gas  
19 production or storage equipment and facilities.

20 (5) Rework of oil and gas wells.

21 (6) Plugging of oil or gas wells.

22 (7) Actions taken to reclaim well sites.

23 (8) Actions taken regarding road and pipeline rights-of-  
24 way.

25 "Person." Any natural person, association, partnership,  
26 corporation, political subdivision or agency of the Federal or  
27 State Government or other legal entity.

28 "Reclaim." To restore any portion of land affected by oil or  
29 gas operations to the same, or substantially similar, condition  
30 that existed prior to oil or gas operations, or as otherwise

1 agreed to in a memorialized agreement between the operator and  
2 the landowner or tenants.

3 "Surface." The uppermost portion of the earth's crust,  
4 including land and aquatic features.

5 "Surface owner." A person who holds legal or equitable title  
6 to the surface of a parcel of real property.

7 "Surface use and compensation agreement." An agreement  
8 written, signed and notarized between a surface owner and an  
9 operator stipulating the location of proposed oil or gas wells,  
10 access roads and any other uses of the surface during oil or gas  
11 exploration and production. An oil or gas operation lease  
12 agreement entered into by a surface owner and an operator, which  
13 pays the surface owner at least a one-eighth royalty on gas or  
14 oil extracted from areas under the surface of the surface  
15 owner's real property, shall be deemed a surface use and  
16 compensation agreement for the purposes of this act.

17 "Tenant." A person who occupies a parcel of real property  
18 belonging to the surface owner in subordination to the surface  
19 owner's title and with the surface owner's assent, expressed or  
20 implied.

21 "Water sources." Rivers, streams, creeks, rivulets,  
22 impoundments, ditches, water courses, storm sewers, lakes,  
23 dammed water, ponds, springs or all other bodies of surface  
24 water, or parts thereof, whether natural or artificial, within  
25 or on the boundaries of the surface owner.

26 "Well." A bore hole drilled or being drilled for the purpose  
27 of or to be used for producing, extracting or injecting any gas,  
28 petroleum or other liquid related to oil or gas production or  
29 storage, including brine disposal, but excluding bore holes  
30 drilled to produce potable water to be used as such. The term

1 does not include a bore hole drilled or being drilled for the  
2 purpose of or to be used for systems of monitoring, producing or  
3 extracting gas from solid waste disposal facilities, as long as  
4 the wells are subject to the act of July 7, 1980 (P.L.380,  
5 No.97), known as the Solid Waste Management Act, and do not  
6 penetrate a workable coal seam. The term also does not include a  
7 bore hole drilled or being drilled for the purpose of or to be  
8 used for degasifying coal seams if the following conditions are  
9 satisfied:

10 (1) The bore hole is used to vent methane to the outside  
11 atmosphere from an operating coal mine.

12 (2) The bore hole is regulated as part of the mining  
13 permit pursuant to the act of June 22, 1937 (P.L.1987,  
14 No.394), known as The Clean Streams Law, and the act of May  
15 31, 1945 (P.L.1198, No.418), known as the Surface Mining  
16 Conservation and Reclamation Act.

17 (3) The bore hole is drilled by the operator of the  
18 operating coal mine for the purpose of increased safety.

19 (4) The bore hole is used to vent methane to the outside  
20 atmosphere pursuant to a federally funded or State-funded  
21 abandoned mine reclamation project.

22 "Well operator" or "operator." The person designated as the  
23 well operator or operator on the permit application or well  
24 registration. Where a permit or registration was not issued, the  
25 term shall mean any person who owns, manages, leases, controls  
26 or possesses any well or coal property, or any person who  
27 locates, drills, operates, alters or plugs any well or  
28 reconditions any well with the purpose of production from the  
29 well.

30 Section 3. Duties of operators.

1 (a) Nonlease extraction agreements.--Except to the extent  
2 otherwise provided in a surface use and compensation agreement  
3 duly executed by a surface owner and an operator, where oil or  
4 gas are not leased for extraction from the surface owner by the  
5 operator in a lease paying at least a one-eighth royalty to the  
6 surface owner, an operator shall:

7 (1) Compensate fully the surface owner for damages  
8 resulting in any diminution in value of the real property and  
9 any real estate upon the tract, including, but not limited  
10 to:

11 (i) Lost agricultural production and income.

12 (ii) Lost timber production.

13 (iii) Lost land value.

14 (iv) Lost use of and access to the surface owner's  
15 land or water sources.

16 (v) Lost value of property improvements caused by  
17 operations.

18 (2) Reclaim entirely the surface affected by oil or gas  
19 operations within nine months of the cessation of extracting  
20 oil or gas from any well on a surface owner's tract of land.

21 (b) Compensation.--An operator shall not be responsible for  
22 negotiating or allocating compensation between the surface owner  
23 and any tenant, except that an operator shall compensate fully  
24 any tenant of the surface owner for any diminution in value of  
25 leasehold improvements, made by said tenant, damaged as a result  
26 of the operator's oil or gas operations.

27 Section 4. Notice of operations and surface use and  
28 compensation agreement.

29 (a) Prior to entry.--No less than 15 business days prior to  
30 initial entry upon a tract of land for activities that will not

1 disturb the surface, including inspections, staking, surveys,  
2 measurements and general evaluations of proposed routes and  
3 sites for oil or gas operations, an operator shall provide  
4 notice by certified mail to the surface owner of each tract on  
5 which the operator proposes activity as well as a statement  
6 citing deeds, leases, rights-of-way, easements and other rights  
7 relating to the right of access of the operator to the tract of  
8 land.

9 (b) Prior to application.--Prior to submission of an  
10 application for a permit to the department under section 201 of  
11 the act of December 19, 1984 (P.L.1140, No.223), known as the  
12 Oil and Gas Act, and no less than 45 days before entering the  
13 surface of the land to conduct any oil or gas operations, an  
14 operator shall, by certified mail, provide the surface owner  
15 with notice of the planned operations. Copies of the notice  
16 shall also be sent to surface owners within a half-mile radius  
17 of each proposed well site. The notice shall include:

18 (1) Sufficient disclosure of the planned operations,  
19 including topographical and underground maps of the relevant  
20 areas, permits and materials submitted by the operator to  
21 obtain permits to enable the surface owner to evaluate the  
22 effects the operations might have on the lands of the surface  
23 owner.

24 (2) A copy of this act and a copy of the Oil and Gas  
25 Act.

26 (3) The name, address, telephone number and, if  
27 available, facsimile number and electronic mail address of  
28 the operator and the authorized representative of the  
29 operator.

30 (4) Information regarding required or recommended

1       predrilling surveys and other provisions relating to:

2               (i)   Protection of water sources.

3               (ii)   Well location restrictions.

4               (iii)   Casing, cementing and plugging plans for wells  
5       and production-related horizontal bore holes pursuant to  
6       the Oil and Gas Act.

7       (5)   A proposed surface use and compensation agreement  
8       addressing, to the extent known, the following:

9               (i)   Placement, specifications, maintenance and  
10       design of well pads, gathering pipelines, water  
11       pipelines, storage facilities for water, oil or gas,  
12       compressor stations, pump stations, meter pits and roads  
13       to be constructed and other facilities of every type to  
14       be constructed and utilized either temporarily or  
15       permanently for operations.

16              (ii)   The proposed frequency of ingress and egress  
17       across or under the surface of the land for operations,  
18       including pipelines, and the routes for the same.

19              (iii)   Construction, maintenance and placement of  
20       pits used or planned for operations.

21              (iv)   Use and impoundment of water on the surface of  
22       the land.

23              (v)   Removal and restoration of the species of plant  
24       life existing prior to commencement of any operations on  
25       areas to be impacted by those operations.

26              (vi)   Surface water drainage changes.

27              (vii)   Plans and actions to limit and effectively  
28       control precipitation runoff, sedimentation and erosion.

29              (viii)   Control and management of noise, weeds, dust,  
30       traffic, trespass, litter and other interferences with

1 the use and enjoyment of the surface by the surface owner  
2 or tenant.

3 (ix) Interim and final proposals to reclaim the  
4 surface.

5 (x) Plans or actions to be undertaken to minimize  
6 damages to the surface.

7 (xi) Operator indemnification for injury to persons  
8 or properties other than that of the surface owner when  
9 caused by the operations.

10 (xii) Efforts to restrict access to the land of the  
11 surface owner by third parties utilizing the access roads  
12 and rights-of-way of the operator.

13 (xiii) An offer of compensation for damages to the  
14 surface affected by operations.

15 (6) A plat that shows:

16 (i) The tract of land upon which each well is to be  
17 located.

18 (ii) The name of the surface landowner of record and  
19 lessor, if any.

20 (iii) The name of all surface landowners or water  
21 purveyors whose water supplies are within one half-mile  
22 of the proposed well location.

23 (iv) The location of water sources.

24 (v) Placement of well pads, gathering pipelines,  
25 water pipelines, storage facilities for oil, gas or  
26 water, compressor stations, meter pits and pump stations  
27 and roads to be constructed for oil and gas operations.

28 (vi) Placement of pits and equipment used or  
29 planned, and use and impoundment of water on the surface  
30 of the land.

1           (vii) The workable coal seams, if any, underlying  
2           the tract of land upon which the well is to be drilled or  
3           altered, which are to be cased off in accordance with  
4           section 207 of the Oil and Gas Act.

5           (viii) The name of the owner of record or operator  
6           of known underlying workable coal seams, if any.

7           (ix) The acreage in the tract to be drilled.

8           (x) The proposed location of each well determined by  
9           survey.

10          (xi) The courses and distances of the proposed well  
11          locations from two or more permanent identifiable points  
12          or landmarks on the tract boundary corners.

13          (xii) The proposed angle and direction of a well, if  
14          the well is to be deviated substantially from the  
15          vertical course.

16          (xiii) The number or other identification to be  
17          given to the wells.

18       (c) Persons to be notified.--The notices required under this  
19       section shall be sent to the surface owner at the address shown  
20       by the property tax records at the time the notice is given. If  
21       the property tax records for the county or the records in the  
22       recorder's office for the county where the property is located  
23       disclose that legal and equitable title of the land are not held  
24       by the same person, notice shall be given to both the holder of  
25       the legal title and to the holder of the equitable title at the  
26       addresses shown by the property tax records at the time the  
27       notice is given.

28       (d) Surface owner options.--Upon receipt of the notice  
29       required under subsection (b), the surface owner may:

30           (1) agree to the proposed surface use and compensation

1 agreement within 45 days of receipt; or

2 (2) reject the proposed surface use and compensation  
3 agreement and enter into a mutually acceptable surface use  
4 and compensation agreement that sets forth the rights and  
5 obligations of the parties.

6 (e) Presumption of receipt.--Notices to the surface owners  
7 required under this act shall be deemed to have been received 15  
8 days after mailing by certified mail.

9 Section 5. Entry without surface use and compensation  
10 agreement.

11 (a) Requirements.--If, after 45 days from the date on which  
12 a surface owner receives notice pursuant to section 4(b), no  
13 surface use and compensation agreement has been executed by the  
14 operator and surface owner, the operator may file applications  
15 for permits with the department for the oil or gas wells  
16 proposed to be located on the surface owner's property after  
17 depositing a surety bond, letter of credit from a banking  
18 institution, cash or certificate of deposit with a Pennsylvania  
19 surety company or financial institution for the benefit of a  
20 surface owner in an amount equal to the greater of:

21 (1) 120% of the operator's best compensation offer as to  
22 each oil or gas production facility's location; or

23 (2) \$250,000 per production facility location.

24 (b) Release.--The surety bond, letter of credit, cash or  
25 certificate of deposit shall only be released by the surety  
26 company or financial institution back to the operator if:

27 (1) the surface owner provides an affidavit that  
28 compensation for use of and damages to the surface owner's  
29 land have been paid in full to the surface owner;

30 (2) the surface owner and the operator have executed a

1 surface use and compensation agreement or otherwise agreed  
2 the surety should be released;

3 (3) there has been a final resolution of the judicial  
4 appeal in any action for damages brought by the surface owner  
5 and any awarded damages have been paid; or

6 (4) all wells on the land of the surface owner have been  
7 plugged and abandoned in accordance with law and the operator  
8 has not conducted oil or gas operations on the property of  
9 the surface owner for a period of four years.

10 Section 6. Restriction on issuance of permits for wells.

11 The department shall not issue new permits or renew existing  
12 permits for wells where an operator is not complying with the  
13 terms of this act. The department may resume issuing permits to  
14 the operator only when the operator demonstrates to the  
15 department it is in compliance with this act.

16 Section 7. Attorney fees and costs.

17 (a) General rule.--In an action brought pursuant to this  
18 act, if a court finds that compensation is owed under section 3,  
19 the court may also award the prevailing party attorney fees and  
20 costs if:

21 (1) the operator conducted operations without providing  
22 notice as required under section 4(b);

23 (2) the operator conducted operations without a surface  
24 use and compensation agreement and before either depositing  
25 or maintaining a bond or other surety as required under  
26 section 5;

27 (3) the operator conducted operations outside the scope  
28 of a surface use and compensation agreement and, when  
29 entering into the agreement, knew or should have known that  
30 operations would be conducted outside the scope of the

1 agreement; or

2 (4) the surface owner failed to exercise good faith in  
3 complying with the provisions of this act or the terms of a  
4 surface use and compensation agreement.

5 (b) Clear and convincing evidence standard.--In an action  
6 brought pursuant to this act, if a court finds that compensation  
7 is owed under section 3, the court may also award the prevailing  
8 party attorney fees, costs and treble damages if the court  
9 finds, by clear and convincing evidence, that:

10 (1) the operator willfully and knowingly entered upon  
11 the premises for the purpose of commencing the drilling of a  
12 well:

13 (i) without giving notice as required under section  
14 4(b); or

15 (ii) without a surface use and compensation  
16 agreement with the surface owner and before depositing a  
17 bond or other surety pursuant to section 5; or

18 (2) either the surface owner or the operator willfully  
19 and knowingly violated the terms of a surface use and  
20 compensation agreement between them.

21 Section 8. Protection of water supplies.

22 (a) Restoration and replacement.--A well operator who  
23 affects a public or private water supply by pollution or  
24 diminution shall restore or replace the affected supply with an  
25 alternate source of water adequate in quantity and quality for  
26 the purposes served by the supply.

27 (b) Investigation requests.--A landowner or water purveyor  
28 suffering pollution or diminution of a water supply as a result  
29 of the drilling, alteration or operation of an oil or gas well  
30 may so notify the department and request that an investigation

1 be conducted. Within ten days of the notification, the  
2 department shall investigate the claim and shall, within 45 days  
3 following notification, make a determination. If the department  
4 finds that the pollution or diminution was caused by the  
5 drilling, alteration or operation activities, or if the  
6 department presumes the well operator responsible for pollution  
7 pursuant to subsection (c), then the department shall issue  
8 orders to the well operator necessary to assure compliance with  
9 subsection (a). The orders may include orders requiring the  
10 temporary replacement of a water supply where it is determined  
11 that the pollution or diminution may be of limited duration.

12 (c) Presumption.--Unless rebutted by one of the five  
13 defenses established under subsection (d), it shall be presumed  
14 that a well operator is responsible for the pollution of a water  
15 supply that is within 2,500 feet of the oil or gas well, where  
16 the pollution occurred within six months after the completion of  
17 drilling or alteration of the well.

18 (d) Defenses.--In order to rebut the presumption of  
19 liability established under subsection (c), the well operator  
20 must affirmatively prove one of the following five defenses:

21 (1) The pollution existed prior to the drilling or  
22 alteration activity as determined by a predrilling or  
23 prealteration survey.

24 (2) The landowner or water purveyor refused to allow the  
25 operator access to conduct a predrilling or prealteration  
26 survey.

27 (3) The water supply is not within 2,500 feet of the  
28 well.

29 (4) The pollution occurred more than six months after  
30 completion of drilling or alteration activities.

(5) The pollution occurred as the result of some cause other than the drilling or alteration activity.

(e) Preservation of defenses.--Any operator electing to preserve its defenses under subsection (d)(1) or (2) shall retain the services of an independent certified laboratory to conduct the predrilling or prealteration survey of water supplies. A copy of the results of the survey shall be submitted to the department and the landowner or water purveyor in a manner prescribed by the department.

(f) Equitable remedies.--Nothing in this section shall prevent any landowner or water purveyor who claims pollution or diminution of a water supply from seeking any other remedy that may be provided by law or in equity.

#### Section 9. Remedies not exclusive.

The remedies provided by this act are not exclusive and do not preclude a person from utilizing any other remedies allowed by statute, common law, deed or contract.

#### Section 10. Emergency situations.

Notwithstanding any provision of this act to the contrary, no notice, surface use and compensation agreement or bond shall be required in emergency situations for activities determined by the department to be necessary to protect public health and safety or the environment.

#### Section 11. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

#### Section 20. Effective date.

1        This act shall take effect in 120 days.