

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1645 Session of
2011

INTRODUCED BY REESE, METZGAR, VULAKOVICH, AUMENT, CALTAGIRONE,
CARROLL, D. COSTA, CUTLER, DUNBAR, EVANKOVICH, GABLER, GRELL,
HALUSKA, HESS, HORNAMAN, KAVULICH, KRIEGER, MAHONEY,
MARSHALL, MULLERY, MURT, MYERS, PAYTON, REICHLEY, STURLA,
WAGNER, WATSON AND WHITE, JUNE 8, 2011

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
JUNE 8, 2011

AN ACT

1 Amending the act of December 19, 1984 (P.L.1140, No.223),
2 entitled "An act relating to the development of oil and gas
3 and coal; imposing duties and powers on the Department of
4 Environmental Resources; imposing notification requirements
5 to protect landowners; and providing for definitions, for
6 various requirements to regulate the drilling and operation
7 of oil and gas wells, for gas storage reservoirs, for various
8 reporting requirements, including certain requirements
9 concerning the operation of coal mines, for well permits, for
10 well registration, for distance requirements, for well casing
11 requirements, for safety device requirements, for storage
12 reservoir obligations, for well bonding requirements, for a
13 Well Plugging Restricted Revenue Account to enforce oil and
14 gas well plugging requirements, for the creation of an Oil
15 and Gas Technical Advisory Board, for oil and gas well
16 inspections, for enforcement and for penalties," in general
17 requirements, further providing for protection of fresh
18 groundwater and casing requirements and for protection of
19 water supplies.

20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 Section 1. Sections 207(a) and 208 of the act of December
23 19, 1984 (P.L.1140, No.223), known as the Oil and Gas Act, are
24 amended to read:

Section 207. Protection of fresh groundwater; casing requirements.

(a) (1) To aid in the protection of fresh groundwater, the well operator shall control and dispose of brines produced from the drilling, alteration or operation of an oil or gas well in a manner consistent with the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, or any rule or regulation promulgated thereunder. The well operator shall store any wastewater resulting from hydraulic fracturing operations in sealed, closed container systems prior to the wastewater being reused or transferred from the well site to an approved treatment and disposal facility.

(2) For the purposes of this subsection, "sealed, closed container systems" shall include pits or impoundments containing a double-walled impermeable liner, perimeter fencing and overhead netting; storage tanks or other containment systems approved by the department.

* * *

Section 208. Protection of water supplies.

(a) Any well operator who affects a public or private water supply by pollution or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity or quality for the purposes served by the supply.

(b) Any landowner or water purveyor suffering pollution or diminution of a water supply as a result of the drilling, alteration or operation of an oil or gas well or pollution resulting from any pit or impoundment used to store any wastewater resulting from hydraulic fracturing operations may so notify the department and request that an investigation be conducted. Within ten days of such notification, the department

1 shall investigate any such claim and shall, within 45 days
2 following notification, make a determination. If the department
3 finds that the pollution or diminution was caused by the
4 drilling, alteration or operation activities, or from any pit or
5 impoundment used to store any wastewater resulting from
6 hydraulic fracturing operations, or if it presumes the well
7 operator responsible for pollution pursuant to subsection (c),
8 then it shall issue such orders to the well operator as are
9 necessary to assure compliance with subsection (a). Such orders
10 may include orders requiring the temporary replacement of a
11 water supply where it is determined that the pollution or
12 diminution may be of limited duration.

13 (c) Unless rebutted by one of the five defenses established
14 in subsection (d), it shall be presumed that a well operator is
15 responsible for the pollution of a water supply that is within
16 1,000 feet of the oil or gas well or 1,000 feet of any pit or
17 impoundment used to store any wastewater resulting from
18 hydraulic fracturing operations, where the pollution occurred
19 within six months after the completion of drilling or alteration
20 of [such well] a well, or storage of wastewater resulting from
21 hydraulic fracturing operations in a pit or impoundment.

22 (d) In order to rebut the presumption of liability
23 established in subsection (c), the well operator must
24 affirmatively prove one of the following five defenses:

25 (1) The pollution existed prior to the drilling [or
26 alteration], alteration or hydraulic fracturing wastewater
27 storage activity as determined by a predrilling [or
28 prealteration survey], prealteration or survey conducted, in
29 accordance with subsection (e.1), prior to the storage of
30 hydraulic fracturing wastewater in a pit or impoundment.

1 (2) The landowner or water purveyor refused to allow the
2 operator access to conduct a predrilling [or prealteration
3 survey], prealteration or survey conducted, in accordance
4 with subsection (e.1), prior to the storage of hydraulic
5 fracturing wastewater in a pit or impoundment.

6 (3) The water supply is not within 1,000 feet of the
7 well or 1,000 feet of any pit or impoundment used to store
8 any wastewater resulting from hydraulic fracturing
9 operations.

10 (4) The pollution occurred more than six months after
11 completion of drilling [or alteration], alteration or
12 hydraulic fracturing wastewater storage activities.

13 (5) The pollution occurred as the result of some cause
14 other than the drilling [or alteration], alteration or
15 hydraulic fracturing wastewater storage activity.

16 (e) Any operator electing to preserve its defenses under
17 subsection (d) (1) or (2) shall retain the services of an
18 independent certified laboratory to conduct the predrilling [or
19 prealteration], prealteration or survey of water supplies
20 conducted, in accordance with subsection (e.1), prior to the
21 storage of hydraulic fracturing wastewater in a pit or
22 impoundment. A copy of the results of any such survey shall be
23 submitted to the department and the landowner or water purveyor
24 in a manner prescribed by the department.

25 (e.1) The department shall establish methods and criteria
26 for surveying water quality before and after the use of pits or
27 impoundments used to store any wastewater resulting from
28 hydraulic fracturing operations.

29 (f) Nothing [herein shall] in this section shall be
30 construed to prevent any landowner or water purveyor who claims

1 pollution or diminution of a water supply from seeking any other
2 remedy that may be provided at law or in equity.

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