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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 40 Session of  
2019

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INTRODUCED BY SCHWANK, FONTANA, SANTARSIERO, FARNESE, DINNIMAN,  
HUGHES AND COSTA, JANUARY 11, 2019

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REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JANUARY 11, 2019

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AN ACT

1 Providing for the protection of water supplies.

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

4 Section 1. Short title.

5 This act shall be known and may be cited as the Pipeline  
6 Impact Water Resource Protection Act.

7 Section 2. Definitions.

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

11 "Board." The Environmental Quality Board established under  
12 section 1920-A of the act of April 9, 1929 (P.L.177, No.175),  
13 known as The Administrative Code of 1929.

14 "Common carrier." As the term is defined under 66 Pa.C.S. §  
15 102 (relating to definitions).

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

1 "Natural gas." A fossil fuel consisting of a mixture of  
2 hydrocarbon gases, primarily methane, which may include ethane,  
3 propane, butane, pentane, carbon dioxide, oxygen, nitrogen and  
4 hydrogen sulfide and other gas species. The term includes  
5 natural gas from oil fields known as associated gas or casing  
6 head gas, natural gas fields known as nonassociated gas, coal  
7 beds, shale beds and other formations. The term does not include  
8 coal bed methane.

9 "Operator." An operator or owner of a pipeline.

10 "Pipeline." Any of the following:

11 (1) A pipeline used for transporting or conveying  
12 natural or artificial gas, crude oil, gasoline or petroleum  
13 products for the public for compensation which is operated or  
14 owned by a common carrier that is regulated by one or both of  
15 the following:

16 (i) the Pennsylvania Public Utility Commission, as a  
17 public utility, as the term is defined in paragraph (1)

18 (v) of the definition of public utility under 66 Pa.C.S.  
19 § 102; or

20 (ii) the Federal Government under the Interstate  
21 Commerce Act of 1887 (49 U.S.C § 10101 et seq.).

22 (2) A pipeline subject to regulation under the act of  
23 December 22, 2011 (P.L.586, No.127), known as the Gas and  
24 Hazardous Liquids Pipelines Act.

25 "Pipeline construction." The term includes the use of  
26 horizontal directional drilling technology and the use of trench  
27 or ditch techniques.

28 "Water purveyor." Any of the following:

29 (1) The owner or operator of a public water system as  
30 defined under section 3 of the act of May 1, 1984 (P.L.206,

1 No.43), known as the Pennsylvania Safe Drinking Water Act.

2 (2) A person subject to the act of June 24, 1939

3 (P.L.842, No.365), referred to as the Water Rights Law.

4 Section 3. Protection of water supplies.

5 (a) Restoration or replacement.--An operator that affects a  
6 public or private water supply by pollution or diminution during  
7 pipeline construction shall restore or replace the affected  
8 supply with an alternate source of water adequate in quantity or  
9 quality for the purposes served by the supply.

10 (b) Duties of department.--The department shall ensure that  
11 the quality of a restored or replaced water supply meets the  
12 standards established under the act of May 1, 1984 (P.L.206,  
13 No.43), known as the Pennsylvania Safe Drinking Water Act, or is  
14 comparable to the quality of the water supply before it was  
15 affected by the operator if the water supply exceeded those  
16 standards. The board shall promulgate regulations necessary to  
17 meet the requirements of this section.

18 Section 4. Pollution or diminution of water supply.

19 (a) Notification and request.--A landowner or water purveyor  
20 affected by pollution or diminution of a water supply during  
21 pipeline construction may notify the department of the pollution  
22 and request that an investigation be conducted. The department  
23 shall notify the operator of the investigation.

24 (b) Investigation.--Within 10 days of notification, the  
25 department shall investigate the claim and make a determination  
26 within 45 days following notification.

27 (c) Findings.--If the department finds that the pollution or  
28 diminution was caused by the pipeline construction or if the  
29 department presumes the operator responsible for pollution under  
30 section 5, the department shall issue orders to the operator

1 necessary to ensure compliance with section 3(a), including  
2 orders requiring temporary replacement of a water supply if it  
3 is determined that pollution or diminution may be of limited  
4 duration.

5 Section 5. Presumption of liability.

6 Unless rebutted by a defense established under section 7, it  
7 shall be presumed that an operator is responsible for pollution  
8 or diminution of a water supply if:

9 (1) the water supply is within 2,500 feet of a pipeline;

10 and

11 (2) the pollution or diminution occurred within 12  
12 months after completion of the pipeline construction.

13 Section 6. Temporary water supply.

14 If the affected water supply is within 2,500 feet of a  
15 pipeline and the rebuttable presumption applies, the operator  
16 shall provide a temporary water supply if the water user is  
17 without a readily available alternative source of water. The  
18 temporary water supply provided under this subsection shall be  
19 adequate in quantity and quality for the purposes served by the  
20 supply.

21 Section 7. Defenses.

22 To rebut the presumption established under section 5, an  
23 operator must affirmatively prove one of the following:

24 (1) the pollution existed prior to the pipeline  
25 construction as determined by a preconstruction survey;

26 (2) the landowner or water purveyor refused to allow the  
27 operator access to conduct a preconstruction survey;

28 (3) the water supply is not within 2,500 feet of the  
29 pipeline;

30 (4) the pollution or diminution occurred more than 12

1 months after completion of the pipeline construction; or  
2 (5) the pollution or diminution occurred as the result  
3 of a cause other than the pipeline construction.

4 Section 8. Preconstruction survey.

5 (a) Requirement.--An operator electing to preserve a defense  
6 under section 7(1) shall retain an independent certified  
7 laboratory to conduct a preconstruction survey of the water  
8 supply. For the purposes of this subsection, the term survey  
9 means all of the water supply samples associated with a single  
10 private or public water supply taken before pipeline  
11 construction.

12 (b) Preconstruction survey.--A person that wishes to  
13 document the quality of a water supply to support a future claim  
14 that the drilling or alteration of the well affected the water  
15 supply by pollution may conduct a preconstruction survey in  
16 accordance with this section.

17 (c) Independent Pennsylvania-accredited laboratory.--The  
18 survey shall be conducted by an independent Pennsylvania-  
19 accredited laboratory. A person that is not the operator or an  
20 employee of the independent Pennsylvania-accredited laboratory  
21 may collect the sample and document the condition of the water  
22 supply if the laboratory affirms that the sampling and  
23 documentation is performed in accordance with the laboratory's  
24 approved sample collection, preservation and handling procedure  
25 and chain of custody.

26 (d) Sample results.--An operator electing to preserve a  
27 defense under section 7 shall provide a report containing a copy  
28 of all sample results taken as part of the survey to the  
29 department within 10 business days of receipt of the results.  
30 The operator shall provide a copy of any sample results to the

1 landowner or water purveyor within 10 business days of receipt  
2 of the sample results. Survey sample results not received by the  
3 department within 10 business days may not be used to preserve  
4 the operator's defenses under section 7.

5 (e) Report.--A report containing the survey sample results  
6 must contain the following information:

7 (1) The location of the water supply and the name of the  
8 landowner or water purveyor.

9 (2) The date of the survey.

10 (3) The name of the independent Pennsylvania-accredited  
11 laboratory performing the survey.

12 (4) The individual who conducted the survey.

13 (5) A description of where and how the samples were  
14 collected.

15 (6) A description of the type and age, if known, of the  
16 water supply and, if any, treatment.

17 (7) The name of the well operator, name and number of  
18 the well to be drilled and the permit number, if known.

19 (8) The results of the laboratory analysis.

20 (9) A measurement of the quantity of water produced from  
21 the water source prior to pipeline construction.

22 Section 9. Notice.

23 (a) Written notice required.--

24 (1) An operator must provide written notice to the  
25 landowner or water purveyor indicating that the presumption  
26 established under section 5 may be void if the landowner or  
27 water purveyor refused to allow the operator access to  
28 conduct a preconstruction survey. Proof of written notice to  
29 the landowner or water purveyor must be provided to the  
30 department for the operator to preserve the defenses under

1 section 7. Proof of written notice to a landowner or water  
2 purveyor shall be presumed if provided in accordance with  
3 paragraph (2).

4 (2) A well operator that wishes to preserve the defense  
5 under section 7(2) must issue a notice to the landowner or  
6 water purveyor by certified mail. The notice must include the  
7 following:

8 (i) The operator's intention to drill or alter a  
9 well.

10 (ii) The operator's desire to conduct a  
11 preconstruction survey.

12 (iii) The name of the person who requested and was  
13 refused access to conduct the survey and the date of the  
14 request and refusal.

15 (iv) The name and address of the well operator.

16 (v) The address of the department should the  
17 landowner or water purveyor wish to respond.

18 (b) Presumption.--Receipt of notice by a landowner or water  
19 purveyor under subsection (a) shall be presumed to have occurred  
20 15 days from the date of the certified mailing if the operator  
21 submits a copy of the certified mail receipt sent to the  
22 landowner or water purveyor and an affidavit certifying that the  
23 address to which notice was sent is the same as the address  
24 listed in the assessment books in the county where the property  
25 is located.

26 Section 10. Other remedies preserved.

27 Nothing in this act shall be construed to prevent a landowner  
28 or water purveyor claiming pollution or diminution of a water  
29 supply from seeking any other remedy at law or in equity.

30 Section 11. Regulations.

1 (a) Duties of board.--In order to facilitate the prompt  
2 implementation of this act, the board shall have the authority  
3 to promulgate temporary regulations which shall expire not later  
4 than two years following the publication of the temporary  
5 regulation in the Pennsylvania Bulletin and on the board's  
6 publicly accessible Internet website.

7 (b) Temporary regulations.--The board may promulgate  
8 temporary regulations not subject to:

9 (1) Sections 201, 202, 203, 204 and 205 of the act of  
10 July 31, 1968 (P.L.769, No.240), referred to as the  
11 Commonwealth Documents Law.

12 (2) Section 204(b) of the act of October 15, 1980  
13 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

14 (3) The act of June 25, 1982 (P.L.633, No.181), known as  
15 the Regulatory Review Act.

16 (c) Publication.--The board shall begin publishing temporary  
17 regulations within 45 days of the effective date of this  
18 subsection.

19 (d) Expiration.--The board's authority to adopt temporary  
20 regulations under subsection (b) shall expire two years after  
21 publication of the temporary regulations. Regulations adopted  
22 after this period shall be promulgated as provided by law.

23 Section 12. Effective date.

24 This act shall take effect in 60 days.