

Veto No. 1990-13

HB 329

December 20, 1990

To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:

I hereby publicly proclaim and file with the Secretary of the Commonwealth my disapproval of House Bill 329, Printer's No.4299, entitled "An act amending the act of May 31, 1945 (P.L.1198, No.418), entitled, as amended, 'An act providing for the conservation and improvement of land affected in connection with surface mining; regulating such mining; providing for the establishment of an Emergency Bond Fund for anthracite deep mine operators; and providing penalties,' further providing for proceedings involving contamination or diminution of water supplies; providing for pollutional discharges and bonds; extending the Emergency Bond Fund to anthracite surface mines; and making an appropriation."

House Bill 329 makes important changes to the Surface Mining Conservation and Reclamation Act of 1945 which would result in the replacement of water for those whose water is lost due to surface mining activities, encourage re-mining in previously mined areas, provide technical and financial assistance to mine operators for re-mining operations and allow mining without a permit where it is a necessary part of a government-financed reclamation contract.

The bill, however, also contains provisions which could result in significant degradation to the waters of the Commonwealth, the loss of the Department of Environmental Resources' jurisdiction over several major environmental programs and an unacceptable fiscal burden on taxpayers of this Commonwealth.

House Bill 329 adds to the potential degradation of the waters of the Commonwealth through the definition of "pollutional discharge." A "pollutional discharge" is defined as a discharge entering the waters of the Commonwealth and for which the Department of Environmental Resources demonstrates both a violation of water quality standards and degradation of the receiving stream.

The Federal Clean Water Act requires that all discharges comply with water quality standards, period. The second criterion, namely the degradation of the receiving stream, is not included in the Federal Clean Water Act and is, in fact, inconsistent with it. The United States Environmental Protection Agency, in a letter to Secretary Arthur Davis, states, "The goal of improving the quality of the nation's waters cannot be achieved...if the only standard for regulation is degradation of waters below existing levels of quality."

Also, the burden of proving that a discharge meets water quality standards under the Federal act is on the discharger, while House Bill 329 would place it on the Department of Environmental Resources. Again, this is in direct contradiction to the Federal Clean Water Act.

Under House Bill 329, point source discharges from mining sites permitted before March 31, 1983, would no longer have to meet the technology-based standards or water quality effluent limits established by the Federal Clean Water Act. This bifurcation of the standards and limits is unacceptable not only to the Department of Environmental Resources, but also to the United States Environmental Protection Agency and the United States Department of Interior, Office of Surface Mining.

This provision, coupled with others, presents the very real prospect of Pennsylvania losing both the delegation from the Environmental Protection Agency to manage the point source discharge permitting program and the recognition from the Office of Surface Mining to conduct a coal surface mining regulatory program. In the same letter to Secretary Arthur Davis, the Environmental Protection Agency stated their belief that these provisions are "inconsistent with these requirements of the Clean Water Act and the authorization to Pennsylvania to administer the NPDES permit program." The Office of Surface Mining also stated "it appears that several provisions of the bill are inconsistent with the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA) or its implementing regulations." Loss of the coal mining regulatory program alone could result in the loss of \$37.2 million annually in Federal funds. But, this bill portends a loss of greater magnitude than can be measured just in terms of dollars. That is the possible loss of all authority delegated by the Federal Government to the Commonwealth to regulate and control water pollution from coal mining activities in the Commonwealth.

A second related concern is that the bill provides, in part, that "the permittee shall not be required to make any provisions for the current or future treatment of drainage from previous mining" for all mine operators operating under permits issued prior to March 31, 1983. Presently, operators engaged in remining are liable for all drainage pollution without proof of fault. House Bill 329 provides that operators can only be held liable for "additional pollution."

The problem here is that in many cases, the Department of Environmental Resources lacks premining water quality data and thus would be unable to demonstrate "additional pollution." Also, it is virtually impossible to ascertain which portion of a discharge emanates from previous mining, and which portion emanates from current mining. Mine operators would be able to discontinue existing treatment of mine drainage at sites where the department could not meet this burden of proof. This elimination of operator liability will result in a cost to the Commonwealth of an estimated \$13 million annually for the treatment of discharge at approximately 700 sites. The Pennsylvania Fish Commission, in a letter urging my veto of this bill, has termed these provisions as "a step backward in our efforts to protect Pennsylvania waters."

A final fiscal concern is that House Bill 329 contains four appropriations, totaling \$5,650,000 and retroactive to July 1, 1990, which are not included in the Executive Budget for 1990-1991.

As I indicated initially, there are several aspects of House Bill 329 which I support. Therefore, I am directing the Department of Environmental Resources to prepare a new legislative package for introduction early next year, which can serve as the basis for continuing this dialogue. This package should include the provisions of House Bill 329 which deal with water replacement, encourage remining and in other ways address legitimate economic and regulatory concerns in ways that do not create a threat to the environment.

The bill before me, however, does create a threat to the waters of the Commonwealth, as well as jeopardizing several major environmental protection programs within the Department of Environmental Resources. For these reasons, I am withholding my approval of House Bill 329.

ROBERT P. CASEY