

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 411 Session of 2013

INTRODUCED BY KASUNIC, YUDICHAK, SOLOBAY, WOZNIAK, BREWSTER, ARGALL, WHITE, BAKER, HUTCHINSON, ERICKSON, VULAKOVICH, VOGEL, FERLO AND ALLOWAY, FEBRUARY 4, 2013

AS AMENDED ON SECOND CONSIDERATION, NOVEMBER 19, 2013

AN ACT

~~1 Amending Title 27 (Environmental Resources) of the Pennsylvania <--~~
~~2 Consolidated Statutes, further providing for definitions, for~~
~~3 eligibility and project inventory, for landowner liability~~
~~4 limitation and exceptions, for project liability limitation~~
~~5 and exceptions and for exceptions.~~

6 AMENDING TITLE 27 (ENVIRONMENTAL RESOURCES) OF THE PENNSYLVANIA <--
7 CONSOLIDATED STATUTES, IN GOOD SAMARITAN, FURTHER PROVIDING
8 FOR FINDINGS, FOR DEFINITIONS, FOR ELIGIBILITY AND PROJECT
9 INVENTORY, FOR LANDOWNER LIABILITY LIMITATION AND EXCEPTIONS,
10 FOR PROJECT LIABILITY LIMITATION AND EXCEPTIONS, FOR
11 EXCEPTIONS AND FOR WATER SUPPLY REPLACEMENT; AND MAKING
12 EDITORIAL CHANGES.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 ~~Section 1. The definitions of "eligible land and water," <--~~
16 ~~"water pollution abatement facilities" and "water pollution~~
17 ~~abatement project" in section 8104 of Title 27 of the~~
18 ~~Pennsylvania Consolidated Statutes are amended and the section~~
19 ~~is amended by adding definitions to read:~~

20 ~~§ 8104. Definitions.~~

21 ~~The following words and phrases when used in this chapter~~
22 ~~shall have the meanings given to them in this section unless the~~

1 ~~context clearly indicates otherwise:~~

2 ~~* * *~~

3 ~~"Eligible land and water." Land and water adversely affected~~
4 ~~by mining or oil or gas extraction and left or abandoned in an~~
5 ~~unreclaimed or inadequately reclaimed condition or left~~
6 ~~discharging water pollution and for which no person has a~~
7 ~~continuing reclamation or water pollution abatement obligation.~~
8 ~~The term shall also include land and water adversely affected by~~
9 ~~mining or oil or gas extraction and left in an unreclaimed or~~
10 ~~inadequately reclaimed condition or left discharging water~~
11 ~~pollution for which the Department of Environmental Protection~~
12 ~~has forfeited and collected the operators bonds and there is no~~
13 ~~outstanding litigation concerning the bond forfeiture. Without~~
14 ~~limiting the foregoing, for purposes of water pollution~~
15 ~~abatement projects involving the use of mine drainage or mine~~
16 ~~pool water for hydraulic fracturing or other development of a~~
17 ~~gas well, industrial or other water supply or other beneficial~~
18 ~~use of the water, the term also includes land and water~~
19 ~~adversely affected by mining and left in an unreclaimed or~~
20 ~~inadequately reclaimed condition, or left discharging water~~
21 ~~pollution for which a treatment trust fund naming the department~~
22 ~~as the beneficiary of the trust has been established.~~

23 ~~"Industrial or other water supply." The supply of water for~~
24 ~~use by any lawful industrial, commercial or agricultural~~
25 ~~facility or activity or by any public water supply as defined in~~
26 ~~the act of May 1, 1984 (P.L.206, No.43), known as the~~
27 ~~Pennsylvania Safe Drinking Water Act.~~

28 ~~* * *~~

29 ~~"Mine operator." The permittee of an active or closed mine~~
30 ~~that treats mine drainage under a permit issued by the~~

1 ~~department.~~

2 ~~* * *~~

3 ~~"Other beneficial use." Any use of water for a purpose that~~
4 ~~produces any economic, environmental, ecological or other~~
5 ~~benefits, including irrigation, silvaculture, cooling water,~~
6 ~~flow maintenance and augmentation, consumptive use makeup, and~~
7 ~~any other use of water deemed to be a beneficial use under~~
8 ~~common law.~~

9 ~~* * *~~

10 ~~"Treated mine drainage." Water from an active or closed mine~~
11 ~~that is treated by the mine operator or water pollution~~
12 ~~abatement project operator under a permit issued by the~~
13 ~~department. Treated mine drainage that meets the effluent limits~~
14 ~~for the National Pollutant Discharge Elimination System permit~~
15 ~~for the source mine is not a solid waste as defined in section~~
16 ~~103 of the act of July 7, 1980 (P.L.380, No.97), known as the~~
17 ~~Solid Waste Management Act, and the regulations promulgated~~
18 ~~thereunder.~~

19 ~~* * *~~

20 ~~"Water pollution abatement facilities." The methods for~~
21 ~~treatment or abatement of water pollution located on or~~
22 ~~associated with eligible lands and water. These methods include,~~
23 ~~but are not limited to, a structure, system, practice, technique~~
24 ~~or method constructed, installed or followed to reduce, treat or~~
25 ~~abate such water pollution. The methods also include a~~
26 ~~structure, system, practice, technique or method constructed,~~
27 ~~installed or followed to enable the use of mine drainage or mine~~
28 ~~pool water from eligible land and water for hydraulic fracturing~~
29 ~~or other development of a gas well, industrial or other water~~
30 ~~supply or other beneficial use of the water.~~

1 ~~"Water pollution abatement project." A [plan] project for~~
2 ~~treatment or abatement of water pollution located on eligible~~
3 ~~lands and water[. These plans include, but are not limited to,~~
4 ~~the practices to be followed and the installation, operation and~~
5 ~~maintenance of facilities to reduce, treat or abate such water~~
6 ~~pollution.], including, but not limited to, the practices to be~~
7 ~~followed and the installation, operation and maintenance of~~
8 ~~facilities and activities to:~~

9 ~~(1) reduce, treat or abate the water pollution;~~

10 ~~(2) withdraw, divert and use mine drainage or mine pool~~
11 ~~water from eligible land and water for hydraulic fracturing~~
12 ~~or other development of a gas well, industrial or other water~~
13 ~~supply or other beneficial use of the water, with or without~~
14 ~~treatment, that may or may not be located on eligible lands~~
15 ~~and water; or~~

16 ~~(3) withdraw, divert and use treated mine drainage from~~
17 ~~a permitted mining activity site for the hydraulic fracturing~~
18 ~~or other development of a gas well, industrial or other water~~
19 ~~supply or other beneficial use of the water.~~

20 ~~"Water pollution abatement project operator." The owner or~~
21 ~~operator of a water pollution abatement project approved by the~~
22 ~~department, and a person acting as a contractor to the owner or~~
23 ~~operator of a water pollution abatement project.~~

24 ~~Section 2. Section 8105(d) of Title 27 is amended to read:~~

25 ~~§ 8105. Eligibility and project inventory.~~

26 ~~* * *~~

27 ~~(d) Departmental review. The department shall review each~~
28 ~~proposed reclamation project and approve the project if the~~
29 ~~department determines the proposed project:~~

30 ~~(1) will result in the regrading of the land to stable~~

1 ~~contours that blend in and complement the drainage pattern of~~
2 ~~the surrounding terrain with no highwalls, spoil piles or~~
3 ~~depressions to accumulate water;~~

4 ~~(2) will result in the appropriate revegetation of the~~
5 ~~site; and~~

6 ~~(3) is not likely to result in water pollution as~~
7 ~~defined in section 1 of the act of June 22, 1937 (P.L.1987,~~
8 ~~No.394), known as The Clean Streams Law.~~

9 ~~The department shall review each proposed water pollution~~
10 ~~abatement project and approve the project if the department~~
11 ~~determines the proposed project is likely to improve the water~~
12 ~~quality [and is not likely to make the water pollution worse] or~~
13 ~~reduce the volume or loading of mine water or an existing~~
14 ~~discharge of pollution of mine water pollutants or will likely~~
15 ~~have a beneficial impact on water resources in this~~
16 ~~Commonwealth.~~

17 ~~* * *~~

18 ~~Section 3. Section 8106 heading and (a) (3) of Title 27 are~~
19 ~~amended and the section is amended by adding a subsection to~~
20 ~~read:~~

21 ~~§ 8106. [Landowner liability] Liability limitation and~~
22 ~~exceptions.~~

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

28 ~~* * *~~

29 ~~(3) Shall be immune from liability for any [injury to]~~
30 ~~cost incurred by a third party, injury to a third party or~~

1 ~~damage suffered by a third party, including a downstream~~
2 ~~riparian landowner, which arises out of or occurs as a result~~
3 ~~of a reclamation project or a water pollution abatement~~
4 ~~project.~~

5 * * *

6 ~~(d) Mine water for beneficial uses. Notwithstanding any~~
7 ~~other provision of this chapter, landowners, mine operators and~~
8 ~~water pollution abatement project operators that are involved in~~
9 ~~treating mine drainage or mine pool water from a permitted~~
10 ~~mining activity site or water pollution abatement project shall~~
11 ~~not be deemed to assume legal responsibility for or to incur~~
12 ~~liability with respect to a cost, injury or damage that arises~~
13 ~~out of or occurs in connection with the use of mine drainage,~~
14 ~~mine pool water or treated mine water in connection with the~~
15 ~~hydraulic fracturing process or other development of a gas well,~~
16 ~~industrial or other water supply or other beneficial use of the~~
17 ~~water.~~

18 ~~Section 4. Section 8107 heading and (a) (1) of Title 27 are~~
19 ~~amended, the subsection is amended by adding paragraphs and the~~
20 ~~section is amended by adding a subsection to read:~~

21 ~~§ 8107. Project liability limitation [and], exceptions and~~
22 ~~exemptions.~~

23 ~~(a) General rule. Except as specifically provided in~~
24 ~~subsection (b), a water pollution abatement project operator or~~
25 ~~other person who provides equipment, funding, materials or~~
26 ~~services at no cost [or at cost] to the Commonwealth for a~~
27 ~~reclamation project or a water pollution abatement project or~~
28 ~~who implements any such project at no cost to the Commonwealth:~~

29 ~~(1) Shall be immune from liability for any injury to or~~
30 ~~damage suffered by a person, including a downstream riparian~~

1 ~~landowner, which arises out of or occurs as a result of:~~

2 ~~(i) the water pollution abatement facilities~~
3 ~~constructed or installed during the water pollution~~
4 ~~abatement project; and~~

5 ~~(ii) a reclamation project or a water pollution~~
6 ~~abatement project.~~

7 * * *

8 ~~(5) May not be considered to be engaging in surface or~~
9 ~~underground mining activities under the act of May 31, 1945~~
10 ~~(P.L.1198, No.418), known as the Surface Mining Conservation~~
11 ~~and Reclamation Act, or the act of April 27, 1966 (1st~~
12 ~~Sp.Sess., P.L.31, No.1), known as The Bituminous Mine~~
13 ~~Subsidence and Land Conservation Act, when the water~~
14 ~~pollution abatement project involves the use of mine drainage~~
15 ~~or mine pool water for hydraulic fracturing or other~~
16 ~~development of a gas well, industrial or other water supply~~
17 ~~or other beneficial use of the water.~~

18 ~~(6) May not be considered to be releasing a hazardous~~
19 ~~substance or contaminant under the act of October 18, 1988~~
20 ~~(P.L.756, No.108), known as the Hazardous Sites Cleanup Act,~~
21 ~~or engaging in the processing, treatment or disposal of a~~
22 ~~solid waste under the act of July 7, 1980 (P.L.380, No.97),~~
23 ~~known as the Solid Waste Management Act, or in the discharge~~
24 ~~of industrial waste or pollutants under The Clean Streams~~
25 ~~Law, when using mine drainage, mine pool water or treated~~
26 ~~mine drainage for hydraulic fracturing or other development~~
27 ~~of a gas well, industrial or other water supply or other~~
28 ~~beneficial use of the water.~~

29 ~~(7) May not be considered an owner or operator of the~~
30 ~~project site for purposes of a State law that imposes~~

~~reclamation or remediation obligations on the basis of past or present ownership or operation of the site, solely by reason of a water pollution abatement project involving the use of mine drainage or mine pool water for hydraulic fracturing or other development of a gas well, industrial or other water supply or other beneficial use of the water.~~

~~* * *~~

~~(c) Exemptions. A person qualifying for immunity under this chapter, provided that the person's actions comply with the water pollution abatement project as approved by the department, is not deemed to be releasing hazardous waste or hazardous substances and is not subject to enforcement under the Solid Waste Management Act or the Hazardous Sites Cleanup Act.~~

~~(d) Definitions. As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:~~

~~"Cost to the Commonwealth." The term does not include the awarding of grant funds by the department or a Commonwealth agency to a water pollution abatement project operator or other person who:~~

~~(1) provides equipment, funding, materials or services to the Commonwealth for a reclamation project or a water pollution abatement project; or~~

~~(2) implements any such project.~~

~~"Hazardous substances." As defined in the Hazardous Sites Cleanup Act.~~

~~"Hazardous waste." As defined in the Hazardous Sites Cleanup Act.~~

~~Section 5. Section 8111(a) of Title 27 is amended to read:~~

~~§ 8111. Exceptions.~~

1 ~~(a) General [rule] rules. The following shall not be~~
2 ~~eligible for nor shall that person receive the benefit of the~~
3 ~~protections and immunities available under this chapter,~~
4 ~~provided that, any person who uses and any person who allows the~~
5 ~~use of or provides mine drainage, mine pool water or treated~~
6 ~~mine water, as part of a water pollution abatement project,~~
7 ~~including a mine operator or water pollution abatement project~~
8 ~~operator that provides for payment or otherwise treated mine~~
9 ~~drainage for hydraulic fracturing or other development of a gas~~
10 ~~well, industrial or other water supply or other beneficial use~~
11 ~~of the water shall receive the benefit of the protections and~~
12 ~~immunities available under this chapter:~~

13 ~~[Any] (1) any person who under existing law shall be or~~
14 ~~may become responsible to reclaim the land or treat or abate~~
15 ~~the water pollution [or];~~

16 ~~(2) any person who [for] receives payment [or],~~
17 ~~consideration or [who receives] some other benefit through a~~
18 ~~contract [or] to reclaim the land or treat or abate the water~~
19 ~~pollution except as provided by the opening paragraph of this~~
20 ~~subsection; or~~

21 ~~(3) any person who through a consent order and agreement~~
22 ~~or otherwise agrees or is ordered to perform or complete~~
23 ~~reclamation or treat or abate water pollution as well as a~~
24 ~~surety which provided a bond for the site [shall not be~~
25 ~~eligible for nor shall that person receive the benefit of the~~
26 ~~protections and immunities available under this chapter].~~

27 ~~* * *~~

28 ~~Section 6. This act shall take effect in 60 days.~~

29 SECTION 1. SECTION 8102(5) OF TITLE 27 OF THE PENNSYLVANIA <--
30 CONSOLIDATED STATUTES IS AMENDED TO READ:

1 § 8102. FINDINGS.

2 THE GENERAL ASSEMBLY FINDS AND DECLARES AS FOLLOWS:

3 * * *

4 (5) NUMEROUS LANDOWNERS, CITIZENS, WATERSHED ASSOCIATIONS,
5 ENVIRONMENTAL ORGANIZATIONS, PRIVATE ENTITIES AND GOVERNMENTAL
6 ENTITIES WHO DO NOT HAVE A LEGAL RESPONSIBILITY TO RECLAIM THE
7 ABANDONED LANDS OR TO ABATE THE WATER POLLUTION ARE INTERESTED
8 IN ADDRESSING THESE PROBLEMS BUT ARE RELUCTANT TO ENGAGE IN SUCH
9 RECLAMATION AND ABATEMENT ACTIVITIES BECAUSE OF POTENTIAL
10 LIABILITIES ASSOCIATED WITH THE RECLAMATION AND ABATEMENT
11 ACTIVITIES.

12 * * *

13 SECTION 2. THE DEFINITIONS OF "ELIGIBLE LAND AND WATER,"
14 "WATER POLLUTION ABATEMENT FACILITIES" AND "WATER POLLUTION
15 ABATEMENT PROJECT" IN SECTION 8104 OF TITLE 27 ARE AMENDED AND
16 THE SECTION IS AMENDED BY ADDING DEFINITIONS TO READ:

17 § 8104. DEFINITIONS.

18 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
19 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
20 CONTEXT CLEARLY INDICATES OTHERWISE:

21 * * *

22 "BENEFICIAL USE." ANY USE OF WATER FOR A PURPOSE THAT
23 RESULTS IN AN ECONOMIC OR ENVIRONMENTAL BENEFIT, INCLUDING THE
24 SUPPLY OF WATER FOR USE BY AN INDUSTRIAL OR COMMERCIAL FACILITY
25 OPERATING IN ACCORDANCE WITH THE LAWS OF THIS COMMONWEALTH.

26 * * *

27 "ELIGIBLE LAND AND WATER." LAND AND WATER ADVERSELY AFFECTED
28 BY MINING OR OIL OR GAS EXTRACTION [AND LEFT OR ABANDONED IN AN
29 UNRECLAIMED OR INADEQUATELY RECLAIMED CONDITION OR LEFT
30 DISCHARGING WATER POLLUTION AND] FOR WHICH NO PERSON HAS A

1 CONTINUING RECLAMATION OR WATER POLLUTION ABATEMENT OBLIGATION.
2 THE TERM [SHALL ALSO INCLUDE] INCLUDES LAND AND WATER ADVERSELY
3 AFFECTED BY MINING OR OIL OR GAS EXTRACTION [AND LEFT IN AN
4 UNRECLAIMED OR INADEQUATELY RECLAIMED CONDITION OR LEFT
5 DISCHARGING WATER POLLUTION] FOR WHICH THE DEPARTMENT OF
6 ENVIRONMENTAL PROTECTION HAS FORFEITED AND COLLECTED THE
7 OPERATORS BONDS AND THERE IS NO OUTSTANDING LITIGATION
8 CONCERNING THE BOND FORFEITURE, OR FOR WHICH A TREATMENT TRUST
9 FUND NAMING THE DEPARTMENT AS THE BENEFICIARY HAS BEEN
10 ESTABLISHED.

11 * * *

12 "MINE DRAINAGE" OR "MINE POOL WATER." WATER CONTAINED IN A
13 MINE POOL, OR A SURFACE DISCHARGE OF WATER CAUSED BY MINING
14 ACTIVITIES THAT POLLUTES OR MAY CREATE A THREAT OF POLLUTION TO
15 WATERS OF THIS COMMONWEALTH.

16 * * *

17 "MINE OPERATOR." THE PERMITTEE OF AN ACTIVE OR CLOSED MINE
18 THAT TREATS MINE DRAINAGE OR MINE POOL WATER UNDER A PERMIT
19 ISSUED BY THE DEPARTMENT.

20 * * *

21 "RECLAMATION PROJECT OPERATOR." A PERSON WHO UNDERTAKES OR
22 PERFORMS A RECLAMATION PROJECT APPROVED BY THE DEPARTMENT.

23 "TREATED MINE DRAINAGE." WATER FROM AN ACTIVE OR CLOSED MINE
24 THAT IS TREATED BY THE MINE OPERATOR UNDER A PERMIT ISSUED BY
25 THE DEPARTMENT. TREATED MINE DRAINAGE THAT MEETS THE EFFLUENT
26 LIMITS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
27 PERMIT FOR THE SOURCE MINE IS NOT A SOLID WASTE AS DEFINED IN
28 SECTION 103 OF THE ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN
29 AS THE SOLID WASTE MANAGEMENT ACT, AND THE REGULATIONS
30 PROMULGATED THEREUNDER.

1 * * *

2 "WATER POLLUTION ABATEMENT FACILITIES." THE METHODS FOR
3 TREATMENT OR ABATEMENT OF WATER POLLUTION LOCATED ON ELIGIBLE
4 LANDS AND WATER. THESE METHODS INCLUDE, BUT ARE NOT LIMITED TO,
5 A STRUCTURE, SYSTEM, PRACTICE, TECHNIQUE OR METHOD CONSTRUCTED,
6 INSTALLED OR FOLLOWED TO REDUCE, TREAT OR ABATE SUCH WATER
7 POLLUTION, AND FACILITIES TO WITHDRAW MINE DRAINAGE OR MINE POOL
8 WATER FOR USE IN GAS WELL DEVELOPMENT OR ANOTHER BENEFICIAL USE.

9 "WATER POLLUTION ABATEMENT PROJECT." ANY OF THE FOLLOWING:

10 (1) A PLAN FOR TREATMENT OR ABATEMENT OF WATER POLLUTION
11 LOCATED ON ELIGIBLE LANDS AND WATER. THESE PLANS INCLUDE, BUT
12 ARE NOT LIMITED TO, THE PRACTICES TO BE FOLLOWED AND THE
13 INSTALLATION, OPERATION AND MAINTENANCE OF FACILITIES TO
14 REDUCE, TREAT OR ABATE SUCH WATER POLLUTION.

15 (2) A PLAN FOR THE WITHDRAWAL OF MINE DRAINAGE OR MINE
16 POOL WATER LOCATED ON ELIGIBLE LANDS AND WATER, PROVIDED THAT
17 THE USE IS FOR GAS WELL DEVELOPMENT OR ANOTHER BENEFICIAL
18 USE. THESE PLANS INCLUDE THE INSTALLATION, OPERATION AND
19 MAINTENANCE OF FACILITIES TO WITHDRAW SUCH MINE DRAINAGE OR
20 MINE POOL WATER.

21 "WATER POLLUTION ABATEMENT PROJECT OPERATOR." A PERSON WHO
22 UNDERTAKES OR PERFORMS A WATER POLLUTION ABATEMENT PROJECT
23 APPROVED BY THE DEPARTMENT.

24 SECTION 3. SECTION 8105(A), (B) AND (D) OF TITLE 27 ARE
25 AMENDED TO READ:

26 § 8105. ELIGIBILITY AND PROJECT INVENTORY.

27 (A) GENERAL RULE.--A LANDOWNER OR PERSON WHO [VOLUNTARILY]
28 PROVIDES EQUIPMENT, FUNDING, MATERIALS OR SERVICES [AT NO CHARGE
29 OR AT COST] FOR A RECLAMATION PROJECT OR A WATER POLLUTION
30 ABATEMENT PROJECT IN ACCORDANCE WITH THIS CHAPTER MAY BE IMMUNE

1 FROM CIVIL LIABILITY AND MAY RAISE THE PROTECTIONS AFFORDED BY
2 THIS CHAPTER IN ANY SUBSEQUENT LEGAL PROCEEDING WHICH IS BROUGHT
3 TO ENFORCE ENVIRONMENTAL LAWS OR OTHERWISE IMPOSE LIABILITY. A
4 LANDOWNER OR OTHER PERSON IS ONLY ELIGIBLE FOR THE PROTECTIONS
5 AND IMMUNITIES PROVIDED BY SECTIONS 8106 (RELATING TO LANDOWNER
6 LIABILITY LIMITATION AND EXCEPTIONS) AND 8107 (RELATING TO
7 PROJECT LIABILITY LIMITATION AND EXCEPTIONS) IF A DETAILED
8 WRITTEN PLAN OF THE PROPOSED RECLAMATION PROJECT OR WATER
9 POLLUTION ABATEMENT PROJECT IS SUBMITTED TO AND APPROVED BY THE
10 DEPARTMENT. THE PROJECT PLAN SHALL INCLUDE THE OBJECTIVE OF THE
11 PROJECT AND A DESCRIPTION OF THE WORK THAT WILL BE PERFORMED TO
12 ACCOMPLISH THE OBJECTIVE AND MUST IDENTIFY THE PROJECT LOCATION,
13 PROJECT BOUNDARIES, THE PROJECT PARTICIPANTS AND THE OWNERS OF
14 THE LAND.

15 (B) NOTICE.--UPON RECEIPT OF EACH PROJECT PLAN, THE
16 DEPARTMENT SHALL REQUIRE A WATER POLLUTION ABATEMENT PROJECT
17 OPERATOR OR A RECLAMATION PROJECT OPERATOR TO EITHER GIVE
18 WRITTEN NOTICE BY CERTIFIED MAIL TO ADJACENT PROPERTY OWNERS AND
19 RIPARIAN LAND OWNERS LOCATED DOWNSTREAM OF THE PROPOSED PROJECT
20 OR [WILL] PROVIDE PUBLIC NOTICE OF THE PROPOSED PROJECT IN A
21 NEWSPAPER OF GENERAL CIRCULATION, PUBLISHED IN THE LOCALITY OF
22 THE PROPOSED PROJECT, ONCE A WEEK FOR FOUR CONSECUTIVE WEEKS
23 [AND]. THE DEPARTMENT SHALL GIVE PUBLIC NOTICE IN THE
24 PENNSYLVANIA BULLETIN. [THE PERSON PROPOSING THE PROJECT MAY
25 ALSO PROVIDE PUBLIC NOTICE. ANY] ALL NOTICE UNDER THIS
26 SUBSECTION SHALL INDICATE THAT ANY PERSON HAVING AN INTEREST
27 WHICH MAY BE ADVERSELY AFFECTED BY THE PROPOSED PROJECT HAS THE
28 RIGHT TO FILE WITH THE DEPARTMENT WRITTEN OBJECTION TO THE
29 PROPOSED PROJECT WITHIN 30 DAYS AFTER RECEIPT OF THE WRITTEN
30 NOTICE OR THE LAST PUBLICATION OF THE ABOVE NOTICE, WHICH SHALL

1 CONCLUDE THE PUBLIC COMMENT PERIOD. THE DEPARTMENT SHALL PROVIDE
2 TO THE PERSON PROPOSING THE PROJECT A COPY OF EACH WRITTEN
3 OBJECTION RECEIVED DURING THE PUBLIC COMMENT PERIOD.

4 * * *

5 (D) DEPARTMENTAL REVIEW.--THE DEPARTMENT SHALL REVIEW EACH
6 PROPOSED RECLAMATION PROJECT AND APPROVE THE PROJECT IF THE
7 DEPARTMENT DETERMINES THE PROPOSED PROJECT:

8 (1) WILL RESULT IN THE REGRADING OF THE LAND TO STABLE
9 CONTOURS THAT BLEND IN AND COMPLEMENT THE DRAINAGE PATTERN OF
10 THE SURROUNDING TERRAIN WITH NO HIGHWALLS, SPOIL PILES OR
11 DEPRESSIONS TO ACCUMULATE WATER;

12 (2) WILL RESULT IN THE APPROPRIATE REVEGETATION OF THE
13 SITE; AND

14 (3) IS NOT LIKELY TO RESULT IN WATER POLLUTION AS
15 DEFINED IN SECTION 1 OF THE ACT OF JUNE 22, 1937 (P.L.1987,
16 NO.394), KNOWN AS THE CLEAN STREAMS LAW.

17 THE DEPARTMENT SHALL REVIEW EACH PROPOSED WATER POLLUTION
18 ABATEMENT PROJECT AND APPROVE THE PROJECT IF THE DEPARTMENT
19 DETERMINES THE PROPOSED PROJECT IS LIKELY TO IMPROVE THE WATER
20 QUALITY OF MINE DRAINAGE OR MINE POOL WATER ON ELIGIBLE LAND AND
21 WATER OR WILL LIKELY HAVE A BENEFICIAL IMPACT ON WATER RESOURCES
22 IN THIS COMMONWEALTH AND IS NOT LIKELY TO MAKE THE WATER
23 POLLUTION WORSE.

24 * * *

25 SECTION 4. SECTIONS 8106 HEADING, (A) AND (C) AND 8107 OF
26 TITLE 27 ARE AMENDED AND THE SECTIONS ARE AMENDED BY ADDING
27 SUBSECTIONS TO READ:

28 § 8106. [LANDOWNER LIABILITY] LIABILITY LIMITATION AND
29 EXCEPTIONS.

30 (A) GENERAL RULE.--EXCEPT AS SPECIFICALLY PROVIDED IN

1 SUBSECTIONS (B) AND (C), A LANDOWNER WHO PROVIDES ACCESS TO THE
2 LAND[, WITHOUT CHARGE OR OTHER CONSIDERATION,] WHICH RESULTS IN
3 THE IMPLEMENTATION OF A RECLAMATION PROJECT OR A WATER POLLUTION
4 ABATEMENT PROJECT:

5 (1) SHALL BE IMMUNE FROM LIABILITY FOR ANY INJURY OR
6 DAMAGE SUFFERED BY THE PERSON IMPLEMENTING THE RECLAMATION
7 PROJECT OR THE WATER POLLUTION ABATEMENT PROJECT WHILE THE
8 PERSON IS WITHIN THE PROJECT WORK AREA.

9 (2) SHALL BE IMMUNE FROM LIABILITY FOR ANY INJURY TO OR
10 DAMAGE SUFFERED BY A THIRD PARTY WHICH ARISES OUT OF OR
11 OCCURS AS A RESULT OF AN ACT OR OMISSION OF A PERSON
12 IMPLEMENTING A RECLAMATION PROJECT OR WATER POLLUTION
13 ABATEMENT PROJECT WHICH OCCURS DURING THE IMPLEMENTATION OF
14 THE RECLAMATION PROJECT OR THE WATER POLLUTION ABATEMENT
15 PROJECT.

16 (3) SHALL BE IMMUNE FROM LIABILITY FOR ANY INJURY TO OR
17 DAMAGE SUFFERED BY A THIRD PARTY, INCLUDING ADJACENT
18 LANDOWNERS OR DOWNSTREAM RIPARIAN LANDOWNERS, WHICH ARISES
19 OUT OF OR OCCURS AS A RESULT OF A RECLAMATION PROJECT OR A
20 WATER POLLUTION ABATEMENT PROJECT.

21 (4) SHALL NOT BE DEEMED TO ASSUME LEGAL RESPONSIBILITY
22 FOR OR INCUR LIABILITY FOR ANY POLLUTION RESULTING FROM A
23 RECLAMATION PROJECT OR WATER POLLUTION ABATEMENT PROJECT.

24 (5) SHALL NOT BE SUBJECT TO A CITIZEN SUIT FILED
25 PURSUANT TO SECTION 601 OF THE ACT OF JUNE 22, 1937
26 (P.L.1987, NO.394), KNOWN AS THE CLEAN STREAMS LAW, FOR
27 POLLUTION RESULTING FROM A RECLAMATION PROJECT OR WATER
28 POLLUTION ABATEMENT PROJECT.

29 (6) SHALL BE IMMUNE FROM LIABILITY FOR THE OPERATION,
30 MAINTENANCE OR REPAIR OF THE WATER POLLUTION ABATEMENT

1 FACILITIES CONSTRUCTED OR INSTALLED DURING THE PROJECT UNLESS
2 THE LANDOWNER NEGLIGENTLY DAMAGES OR DESTROYS THE WATER
3 POLLUTION ABATEMENT FACILITIES OR DENIES ACCESS TO THOSE
4 PERSONS WHO OPERATE, MAINTAIN OR REPAIR THE WATER POLLUTION
5 ABATEMENT FACILITIES.

6 * * *

7 (C) EXCEPTIONS TO LANDOWNER IMMUNITY.--NOTHING IN THIS
8 CHAPTER SHALL LIMIT [IN ANY WAY] OR AFFECT A LANDOWNER'S
9 LIABILITY WHICH RESULTS FROM A RECLAMATION PROJECT OR WATER
10 POLLUTION ABATEMENT PROJECT AND WHICH WOULD OTHERWISE EXIST:

11 (1) FOR INJURY OR DAMAGE RESULTING FROM THE LANDOWNER'S
12 ACTS OR OMISSIONS WHICH ARE RECKLESS OR CONSTITUTE GROSS
13 NEGLIGENCE OR WILLFUL MISCONDUCT.

14 [(2) WHERE THE LANDOWNER CHARGES AN ACCESS FEE OR
15 REQUIRES OTHER CONSIDERATION BEFORE ALLOWING ACCESS TO THE
16 LAND FOR THE PURPOSE OF IMPLEMENTING A RECLAMATION PROJECT OR
17 WATER POLLUTION ABATEMENT PROJECT OR TO OPERATE, MAINTAIN OR
18 REPAIR WATER POLLUTION ABATEMENT FACILITIES CONSTRUCTED OR
19 INSTALLED DURING A WATER POLLUTION ABATEMENT PROJECT.]

20 (3) FOR THE LANDOWNER'S UNLAWFUL ACTIVITIES.

21 [(4) FOR DAMAGE TO ADJACENT LANDOWNERS OR DOWNSTREAM
22 RIPARIAN LANDOWNERS WHICH RESULTS FROM A RECLAMATION PROJECT
23 OR WATER POLLUTION ABATEMENT PROJECT WHERE WRITTEN NOTICE OR
24 PUBLIC NOTICE OF THE PROPOSED PROJECT WAS NOT PROVIDED.]

25 (D) MINE DRAINAGE IMMUNITY.--A MINE OPERATOR WHO PROVIDES
26 TREATED MINE DRAINAGE FROM A PERMITTED MINING ACTIVITY SITE
27 SHALL BE IMMUNE FROM LIABILITY FOR ANY COST, INJURY OR DAMAGE
28 ARISING OUT OF THE USE OF THE TREATED MINE DRAINAGE IF:

29 (1) THE TREATED MINE DRAINAGE IS FOR USE OUTSIDE THE
30 BOUNDARIES OF THE PERMITTED MINING ACTIVITY SITE;

1 (2) THE TREATED MINE DRAINAGE IS FOR THE DEVELOPMENT OF
2 A GAS WELL OR ANOTHER BENEFICIAL USE; AND

3 (3) THE MINE OPERATOR IS NOT THE SAME PERSON USING THE
4 TREATED MINE DRAINAGE FOR GAS WELL DEVELOPMENT OR ANOTHER
5 BENEFICIAL USE.

6 (E) WATER POLLUTION ABATEMENT IMMUNITY.--A WATER POLLUTION
7 ABATEMENT PROJECT OPERATOR WHO PROVIDES MINE DRAINAGE OR MINE
8 POOL WATER FROM ELIGIBLE LAND AND WATER SHALL BE IMMUNE FROM
9 LIABILITY FOR ANY COST, INJURY OR DAMAGE ARISING OUT OF THE USE
10 OF THE MINE DRAINAGE OR MINE POOL WATER IF:

11 (1) THE MINE DRAINAGE OR MINE POOL WATER IS FOR USE
12 OUTSIDE THE BOUNDARIES OF THE WATER POLLUTION ABATEMENT
13 PROJECT;

14 (2) THE MINE DRAINAGE OR MINE POOL WATER IS FOR THE
15 DEVELOPMENT OF A GAS WELL OR ANOTHER BENEFICIAL USE; AND

16 (3) THE WATER POLLUTION ABATEMENT PROJECT OPERATOR IS
17 NOT THE SAME PERSON USING THE MINE DRAINAGE OR MINE POOL
18 WATER FOR GAS WELL DEVELOPMENT OR ANOTHER BENEFICIAL USE.

19 (F) ACQUISITION OF WATER.--A PERSON WHO ACQUIRES MINE
20 DRAINAGE OR MINE POOL WATER FROM ELIGIBLE LAND AND WATER FOR USE
21 IN GAS WELL DEVELOPMENT OR ANOTHER BENEFICIAL USE MAY NOT BE
22 HELD LIABLE FOR THE TREATMENT OR ABATEMENT OF THE MINE DRAINAGE
23 OR MINE POOL WATER DUE TO THE ACQUISITION OR USAGE.

24 (G) LIABILITY LIMITATION.--EXCEPT AS PROVIDED IN SUBSECTIONS
25 (D) AND (E), NOTHING IN THIS CHAPTER SHALL LIMIT THE LIABILITY
26 OF A PERSON FOR UNLAWFUL SPILLS OR RELEASES OF MINE DRAINAGE OR
27 MINE POOL WATER CAUSED BY THE PERSON AFTER ITS WITHDRAWAL OF THE
28 WATER THAT OCCURS ON INELIGIBLE LAND AND WATER IN THIS
29 COMMONWEALTH.

30 § 8107. PROJECT LIABILITY LIMITATION AND EXCEPTIONS.

1 (A) GENERAL RULE.--EXCEPT AS SPECIFICALLY PROVIDED IN
2 SUBSECTION (B), A [PERSON] RECLAMATION PROJECT OPERATOR OR WATER
3 POLLUTION ABATEMENT PROJECT OPERATOR WHO PROVIDES EQUIPMENT,
4 FUNDING, MATERIALS OR SERVICES AT NO COST [OR AT COST] TO THE
5 COMMONWEALTH FOR A RECLAMATION PROJECT OR A WATER POLLUTION
6 ABATEMENT PROJECT:

7 (1) SHALL BE IMMUNE FROM LIABILITY FOR ANY INJURY TO OR
8 DAMAGE SUFFERED BY A PERSON WHICH ARISES OUT OF OR OCCURS AS
9 A RESULT OF THE WATER POLLUTION ABATEMENT FACILITIES
10 CONSTRUCTED OR INSTALLED DURING THE WATER POLLUTION ABATEMENT
11 PROJECT.

12 (2) SHALL BE IMMUNE FROM LIABILITY FOR ANY POLLUTION
13 EMANATING FROM THE WATER POLLUTION ABATEMENT FACILITIES
14 CONSTRUCTED OR INSTALLED DURING THE WATER POLLUTION ABATEMENT
15 PROJECT UNLESS THE PERSON AFFECTS AN AREA THAT IS
16 HYDROLOGICALLY CONNECTED TO THE WATER POLLUTION ABATEMENT
17 PROJECT WORK AREA AND CAUSES INCREASED POLLUTION BY
18 ACTIVITIES WHICH ARE UNRELATED TO THE IMPLEMENTATION OF A
19 WATER POLLUTION ABATEMENT PROJECT.

20 (3) SHALL NOT BE DEEMED TO ASSUME RESPONSIBILITY FOR OR
21 INCUR LIABILITY FOR THE OPERATION, MAINTENANCE AND REPAIR OF
22 THE WATER POLLUTION ABATEMENT FACILITIES CONSTRUCTED OR
23 INSTALLED DURING THE WATER POLLUTION ABATEMENT PROJECT[.] OR
24 FOR THE TREATMENT OR ABATEMENT OF MINE DRAINAGE OR MINE POOL
25 WATER THAT IS THE OBJECT OF THE WATER POLLUTION ABATEMENT
26 PROJECT.

27 (4) SHALL NOT BE SUBJECT TO A CITIZEN SUIT UNDER SECTION
28 601 OF THE ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS
29 THE CLEAN STREAMS LAW, FOR POLLUTION EMANATING FROM THE WATER
30 POLLUTION ABATEMENT FACILITIES CONSTRUCTED OR INSTALLED

1 DURING THE WATER POLLUTION ABATEMENT PROJECT.

2 (B) EXCEPTIONS.--

3 (1) NOTHING IN THIS CHAPTER SHALL LIMIT [IN ANY WAY] THE
4 LIABILITY OF A [PERSON] RECLAMATION PROJECT OPERATOR OR A
5 WATER POLLUTION ABATEMENT PROJECT OPERATOR WHO PROVIDES
6 EQUIPMENT, FUNDING, MATERIALS OR SERVICES [AT NO COST OR AT
7 COST] FOR A RECLAMATION PROJECT OR A WATER POLLUTION
8 ABATEMENT PROJECT [WHICH LIABILITY RESULTS FROM THE
9 RECLAMATION PROJECT OR THE WATER POLLUTION ABATEMENT PROJECT
10 AND WHICH WOULD OTHERWISE EXIST]:

11 (I) FOR INJURY OR DAMAGE RESULTING FROM THE
12 [PERSON'S] WATER POLLUTION ABATEMENT PROJECT OPERATOR'S
13 OR THE RECLAMATION PROJECT OPERATOR'S ACTS OR OMISSIONS
14 WHICH ARE RECKLESS OR CONSTITUTE GROSS NEGLIGENCE OR
15 WILLFUL MISCONDUCT.

16 (II) FOR THE [PERSON'S] WATER POLLUTION ABATEMENT
17 PROJECT OPERATOR'S OR THE RECLAMATION PROJECT OPERATOR'S
18 UNLAWFUL ACTIVITIES.

19 [(III) FOR DAMAGES TO ADJACENT LANDOWNERS OR
20 DOWNSTREAM RIPARIAN LANDOWNERS WHICH RESULT FROM A
21 RECLAMATION PROJECT OR A WATER POLLUTION ABATEMENT
22 PROJECT WHERE WRITTEN NOTICE OR PUBLIC NOTICE OF THE
23 PROPOSED PROJECT WAS NOT PROVIDED.]

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

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

30 (II) THE ACT OF APRIL 27, 1966 (1ST SP.SESS.,

1 P.L.31, NO.1), KNOWN AS THE BITUMINOUS MINE SUBSIDENCE
2 AND LAND CONSERVATION ACT.

3 (C) DEFINITIONS.--AS USED IN THIS SECTION, THE TERM "COST TO
4 THE COMMONWEALTH" DOES NOT INCLUDE THE AWARDING OF GRANT FUNDS
5 BY THE DEPARTMENT OR A COMMONWEALTH AGENCY TO A WATER POLLUTION
6 ABATEMENT PROJECT OPERATOR WHO:

7 (1) PROVIDES EQUIPMENT, FUNDING, MATERIALS OR SERVICES
8 TO THE COMMONWEALTH FOR A RECLAMATION PROJECT OR A WATER
9 POLLUTION ABATEMENT PROJECT; OR

10 (2) IMPLEMENTS ANY SUCH PROJECT.

11 SECTION 5. SECTIONS 8111(A) AND 8112 OF TITLE 27 ARE AMENDED
12 TO READ:

13 § 8111. EXCEPTIONS.

14 (A) GENERAL RULE.--ANY PERSON WHO UNDER EXISTING LAW [SHALL
15 BE] IS OR MAY BECOME RESPONSIBLE TO RECLAIM THE LAND ADVERSELY
16 AFFECTED BY MINING OR OIL OR GAS EXTRACTION, OR TREAT OR ABATE
17 THE WATER POLLUTION [OR ANY PERSON WHO FOR PAYMENT OR
18 CONSIDERATION OR WHO RECEIVES SOME OTHER BENEFIT THROUGH A
19 CONTRACT OR ANY PERSON WHO THROUGH A CONSENT ORDER AND AGREEMENT
20 OR OTHERWISE AGREES OR IS ORDERED TO PERFORM OR COMPLETE
21 RECLAMATION OR TREAT OR ABATE WATER POLLUTION AS WELL AS A
22 SURETY WHICH PROVIDED A BOND FOR THE SITE] CAUSED BY MINING OR
23 OIL OR GAS EXTRACTION SHALL NOT BE ELIGIBLE FOR NOR SHALL THAT
24 PERSON RECEIVE THE BENEFIT OF THE PROTECTIONS AND IMMUNITIES
25 AVAILABLE UNDER THIS CHAPTER, EXCEPT AS SPECIFICALLY PROVIDED
26 FOR IN SECTION 8106(D) (RELATING LIABILITY LIMITATION AND
27 EXCEPTIONS).

28 * * *

29 § 8112. WATER SUPPLY REPLACEMENT.

30 A PUBLIC OR PRIVATE WATER SUPPLY AFFECTED BY CONTAMINATION OR

1 THE DIMINUTION CAUSED BY THE IMPLEMENTATION OF A RECLAMATION
2 PROJECT OR THE IMPLEMENTATION OF A WATER POLLUTION ABATEMENT
3 PROJECT SHALL BE RESTORED OR REPLACED BY THE [DEPARTMENT]
4 RECLAMATION PROJECT OPERATOR OR THE WATER POLLUTION ABATEMENT
5 PROJECT OPERATOR WITH AN ALTERNATE SOURCE OF WATER ADEQUATE IN
6 QUANTITY AND QUALITY FOR THE PURPOSES SERVED BY THE WATER
7 SUPPLY.

8 SECTION 6. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.