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

Amending Title 27 (Environmental Resources) of the Pennsylvania Consolidated Statutes, further providing for definitions, for eligibility and project inventory, for landowner liability limitation and exceptions, for project liability limitation and exceptions and for exceptions.

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

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

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

§ 8104. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the
"Eligible land and water." Land and water adversely affected by mining or oil or gas extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition or left discharging water pollution and for which no person has a continuing reclamation or water pollution abatement obligation. The term shall also include land and water adversely affected by mining or oil or gas extraction and left in an unreclaimed or inadequately reclaimed condition or left discharging water pollution for which the Department of Environmental Protection has forfeited and collected the operators bonds and there is no outstanding litigation concerning the bond forfeiture. Without limiting the foregoing, for purposes of water pollution abatement projects 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, the term also includes land and water adversely affected by mining and left in an unreclaimed or inadequately reclaimed condition, or left discharging water pollution for which a treatment trust fund naming the department as the beneficiary of the trust has been established.

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

"Mine operator." The permittee of an active or closed mine that treats mine drainage under a permit issued by the
"Other beneficial use." Any use of water for a purpose that produces any economic, environmental, ecological or other benefits, including irrigation, silviculture, cooling water, flow maintenance and augmentation, consumptive use makeup, and any other use of water deemed to be a beneficial use under common law.

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

"Water pollution abatement facilities." The methods for treatment or abatement of water pollution located on or associated with eligible lands and water. These methods include, but are not limited to, a structure, system, practice, technique or method constructed, installed or followed to reduce, treat or abate such water pollution. The methods also include a structure, system, practice, technique or method constructed, installed or followed to enable the use of mine drainage or mine pool water from eligible land and water for hydraulic fracturing or other development of a gas well, industrial or other water supply or other beneficial use of the water.
"Water pollution abatement project." A [plan] project for treatment or abatement of water pollution located on eligible lands and water [. These plans include, but are not limited to, the practices to be followed and the installation, operation and maintenance of facilities to reduce, treat or abate such water pollution.], including, but not limited to, the practices to be followed and the installation, operation and maintenance of facilities and activities to:

1. reduce, treat or abate the water pollution;
2. withdraw, divert and use mine drainage or mine pool water from eligible land and water for hydraulic fracturing or other development of a gas well, industrial or other water supply or other beneficial use of the water, with or without treatment, that may or may not be located on eligible lands and water; or
3. withdraw, divert and use treated mine drainage from a permitted mining activity site for the hydraulic fracturing or other development of a gas well, industrial or other water supply or other beneficial use of the water.

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

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

§ 8105. Eligibility and project inventory.

(d) Departmental review.—The department shall review each proposed reclamation project and approve the project if the department determines the proposed project:

1. will result in the regrading of the land to stable
contours that blend in and complement the drainage pattern of
the surrounding terrain with no highwalls, spoil piles or
depressions to accumulate water;
(2) will result in the appropriate revegetation of the
site; and
(3) is not likely to result in water pollution as
defined in section 1 of the act of June 22, 1937 (P.L.1937,
No.394), known as The Clean Streams Law.
The department shall review each proposed water pollution
abatement project and approve the project if the department
determines the proposed project is likely to improve the water
quality [and is not likely to make the water pollution worse] or
reduce the volume or loading of mine water or an existing
discharge of pollution of mine water pollutants or will likely
have a beneficial impact on water resources in this
Commonwealth.

* * *

Section 3. Section 8106 heading and (a)(3) of Title 27 are
amended and the section is amended by adding a subsection to
read:
§ 8106. [Landowner liability] Liability limitation and
exceptions.

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

* * *

(3) Shall be immune from liability for any [injury to] cost incurred by a third party, injury to a third party or
damage suffered by a third party, including a downstream riparian landowner, which arises out of or occurs as a result of a reclamation project or a water pollution abatement project.

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

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

§ 8107. Project liability limitation [and] exceptions and exemptions.

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

(1) Shall be immune from liability for any injury to or damage suffered by a person, including a downstream riparian
landowner, which arises out of or occurs as a result of:

(i) the water pollution abatement facilities constructed or installed during the water pollution abatement project; and

(ii) a reclamation project or a water pollution abatement project.

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(5) May not be considered to be engaging in surface or underground mining activities under the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, or the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act, when the water pollution abatement project involves 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.

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

(7) May not be considered an owner or operator of the 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.
(a) General [rule] rules. — The following shall not be eligible for nor shall that person receive the benefit of the protections and immunities available under this chapter, provided that, any person who uses and any person who allows the use of or provides mine drainage, mine pool water or treated mine water, as part of a water pollution abatement project, including a mine operator or water pollution abatement project operator that provides for payment or otherwise treated mine drainage for hydraulic fracturing or other development of a gas well, industrial or other water supply or other beneficial use of the water shall receive the benefit of the protections and immunities available under this chapter:

[1] any person who under existing law shall be or may become responsible to reclaim the land or treat or abate the water pollution;

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

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

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

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

20130SB0411PN1596-9-
§ 8102. FINDINGS.

THE GENERAL ASSEMBLY FINDS AND DECLARES AS FOLLOWS:

* * *

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

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

§ 8104. DEFINITIONS.

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

* * *

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

* * *

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

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

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

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

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

20130SB0411PN1596 - 11 -
"WATER POLLUTION ABATEMENT FACILITIES." THE METHODS FOR TREATMENT OR ABATEMENT OF WATER POLLUTION LOCATED ON ELIGIBLE LANDS AND WATER. THESE METHODS INCLUDE, BUT ARE NOT LIMITED TO, A STRUCTURE, SYSTEM, PRACTICE, TECHNIQUE OR METHOD CONSTRUCTED, INSTALLED OR FOLLOWED TO REDUCE, TREAT OR ABATE SUCH WATER POLLUTION, AND FACILITIES TO WITHDRAW MINE DRAINAGE OR MINE POOL WATER FOR USE IN GAS WELL DEVELOPMENT OR ANOTHER BENEFICIAL USE.

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

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

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

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

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

§ 8105. ELIGIBILITY AND PROJECT INVENTORY.

(A) GENERAL RULE.--A LANDOWNER OR PERSON WHO [VOLUNTARILY] PROVIDES EQUIPMENT, FUNDING, MATERIALS OR SERVICES [AT NO CHARGE OR AT COST] FOR A RECLAMATION PROJECT OR A WATER POLLUTION ABATEMENT PROJECT IN ACCORDANCE WITH THIS CHAPTER MAY BE IMMUNE
FROM CIVIL LIABILITY AND MAY RAISE THE PROTECTIONS AFFORDED BY
THIS CHAPTER IN ANY SUBSEQUENT LEGAL PROCEEDING WHICH IS BROUGHT
TO ENFORCE ENVIRONMENTAL LAWS OR OTHERWISE IMPOSE LIABILITY. A
LANDOWNER OR OTHER PERSON IS ONLY ELIGIBLE FOR THE PROTECTIONS
AND IMMUNITIES PROVIDED BY SECTIONS 8106 (RELATING TO LANDOWNER
LIABILITY LIMITATION AND EXCEPTIONS) AND 8107 (RELATING TO
PROJECT LIABILITY LIMITATION AND EXCEPTIONS) IF A DETAILED
WRITTEN PLAN OF THE PROPOSED RECLAMATION PROJECT OR WATER
POLLUTION ABATEMENT PROJECT IS SUBMITTED TO AND APPROVED BY THE
DEPARTMENT. THE PROJECT PLAN SHALL INCLUDE THE OBJECTIVE OF THE
PROJECT AND A DESCRIPTION OF THE WORK THAT WILL BE PERFORMED TO
ACCOMPLISH THE OBJECTIVE AND MUST IDENTIFY THE PROJECT LOCATION,
PROJECT BOUNDARIES, THE PROJECT PARTICIPANTS AND THE OWNERS OF
THE LAND.

(B) NOTICE.—UPON RECEIPT OF EACH PROJECT PLAN, THE
DEPARTMENT SHALL REQUIRE A WATER POLLUTION ABATEMENT PROJECT
OPERATOR OR A RECLAMATION PROJECT OPERATOR TO EITHER GIVE
WRITTEN NOTICE BY CERTIFIED MAIL TO ADJACENT PROPERTY OWNERS AND
RIPARIAN LAND OWNERS LOCATED DOWNSTREAM OF THE PROPOSED PROJECT
OR [WILL] PROVIDE PUBLIC NOTICE OF THE PROPOSED PROJECT IN A
NEWSPAPER OF GENERAL CIRCULATION, PUBLISHED IN THE LOCALITY OF
THE PROPOSED PROJECT, ONCE A WEEK FOR FOUR CONSECUTIVE WEEKS
[AND]. THE DEPARTMENT SHALL GIVE PUBLIC NOTICE IN THE
PENNSYLVANIA BULLETIN. [THE PERSON PROPOSING THE PROJECT MAY
ALSO PROVIDE PUBLIC NOTICE. ANY] ALL NOTICE UNDER THIS
SUBSECTION SHALL INDICATE THAT ANY PERSON HAVING AN INTEREST
WHICH MAY BE ADVERSELY AFFECTED BY THE PROPOSED PROJECT HAS THE
RIGHT TO FILE WITH THE DEPARTMENT WRITTEN OBJECTION TO THE
PROPOSED PROJECT WITHIN 30 DAYS AFTER RECEIPT OF THE WRITTEN
NOTICE OR THE LAST PUBLICATION OF THE ABOVE NOTICE, WHICH SHALL
CONCLUDE THE PUBLIC COMMENT PERIOD. THE DEPARTMENT SHALL PROVIDE
TO THE PERSON PROPOSING THE PROJECT A COPY OF EACH WRITTEN
OBJECTION RECEIVED DURING THE PUBLIC COMMENT PERIOD.

* * *

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

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

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

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

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

* * *

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

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

(A) GENERAL RULE.--EXCEPT AS SPECIFICALLY PROVIDED IN
SUBSECTIONS (B) AND (C), A LANDOWNER WHO PROVIDES ACCESS TO THE LAND[, WITHOUT CHARGE OR OTHER CONSIDERATION,] WHICH RESULTS IN THE IMPLEMENTATION OF A RECLAMATION PROJECT OR A WATER POLLUTION ABATEMENT PROJECT:

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

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

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

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

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

(6) SHALL BE IMMUNE FROM LIABILITY FOR THE OPERATION, MAINTENANCE OR REPAIR OF THE WATER POLLUTION ABATEMENT PROJECT.
FACILITIES CONSTRUCTED OR INSTALLED DURING THE PROJECT UNLESS
THE LANDOWNER NEGLIGENTLY DAMAGES OR DESTROYS THE WATER
POLLUTION ABATEMENT FACILITIES OR DENIES ACCESS TO THOSE
PERSONS WHO OPERATE, MAINTAIN OR REPAIR THE WATER POLLUTION
ABATEMENT FACILITIES.

* * *

(C) EXCEPTIONS TO LANDOWNER IMMUNITY.--NOTHING IS THIS 
CHAPTER SHALL LIMIT [IN ANY WAY] OR AFFECT A LANDOWNER'S
LIABILITY WHICH RESULTS FROM A RECLAMATION PROJECT OR WATER
POLLUTION ABATEMENT PROJECT AND WHICH WOULD OTHERWISE EXIST:
(1) FOR INJURY OR DAMAGE RESULTING FROM THE LANDOWNER'S
ACTS OR OMISSIONS WHICH ARE RECKLESS OR CONSTITUTE GROSS
NEGLIGENCE OR WILLFUL MISCONDUCT.

[(2) WHERE THE LANDOWNER CHARGES AN ACCESS FEE OR
REQUIRES OTHER CONSIDERATION BEFORE ALLOWING ACCESS TO THE
LAND FOR THE PURPOSE OF IMPLEMENTING A RECLAMATION PROJECT OR
WATER POLLUTION ABATEMENT PROJECT OR TO OPERATE, MAINTAIN OR
REPAIR WATER POLLUTION ABATEMENT FACILITIES CONSTRUCTED OR
INSTALLED DURING A WATER POLLUTION ABATEMENT PROJECT.] 
(3) FOR THE LANDOWNER'S UNLAWFUL ACTIVITIES.

[(4) FOR DAMAGE TO ADJACENT LANDOWNERS OR DOWNSTREAM
RIPARIAN LANDOWNERS WHICH RESULTS FROM A RECLAMATION PROJECT
OR WATER POLLUTION ABATEMENT PROJECT WHERE WRITTEN NOTICE OR
PUBLIC NOTICE OF THE PROPOSED PROJECT WAS NOT PROVIDED.] 
(D) MINE DRAINAGE IMMUNITY.--A MINE OPERATOR WHO PROVIDES 
TREATED MINE DRAINAGE FROM A PERMITTED MINING ACTIVITY SITE
SHALL BE IMMUNE FROM LIABILITY FOR ANY COST, INJURY OR DAMAGE
ARISING OUT OF THE USE OF THE TREATED MINE DRAINAGE IF:
(1) THE TREATED MINE DRAINAGE IS FOR USE OUTSIDE THE
BOUNDARIES OF THE PERMITTED MINING ACTIVITY SITE;
(2) the treated mine drainage is for the development of a gas well or another beneficial use; and

(3) the mine operator is not the same person using the treated mine drainage for gas well development or another beneficial use.

(E) Water pollution abatement immunity.--A water pollution abatement project operator who provides mine drainage or mine pool water from eligible land and water shall be immune from liability for any cost, injury or damage arising out of the use of the mine drainage or mine pool water if:

(1) the mine drainage or mine pool water is for use outside the boundaries of the water pollution abatement project;

(2) the mine drainage or mine pool water is for the development of a gas well or another beneficial use; and

(3) the water pollution abatement project operator is not the same person using the mine drainage or mine pool water for gas well development or another beneficial use.

(F) Acquisition of water.--A person who acquires mine drainage or mine pool water from eligible land and water for use in gas well development or another beneficial use may not be held liable for the treatment or abatement of the mine drainage or mine pool water due to the acquisition or usage.

(G) Liability limitation.--Except as provided in subsections (D) and (E), nothing in this chapter shall limit the liability of a person for unlawful spills or releases of mine drainage or mine pool water caused by the person after its withdrawal of the water that occurs on ineligible land and water in this commonwealth.

§ 8107. Project liability limitation and exceptions.

20130SB0411PN1596 - 17 -
(A) GENERAL RULE.--EXCEPT AS SPECIFICALLY PROVIDED IN
SUBSECTION (B), A [PERSON] RECLAMATION PROJECT OPERATOR OR WATER
POLLUTION ABATEMENT PROJECT OPERATOR WHO PROVIDES EQUIPMENT,
FUNDING, MATERIALS OR SERVICES AT NO COST [OR AT COST] TO THE
COMMONWEALTH FOR A RECLAMATION PROJECT OR A WATER POLLUTION
ABATEMENT PROJECT:

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

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

(3) SHALL NOT BE DEEMED TO ASSUME RESPONSIBILITY FOR OR
INFLICT LIABILITY FOR THE OPERATION, MAINTENANCE AND REPAIR OF
THE WATER POLLUTION ABATEMENT FACILITIES CONSTRUCTED OR
INSTALLED DURING THE WATER POLLUTION ABATEMENT PROJECT (.]) OR_
FOR THE TREATMENT OR ABATEMENT OF MINE DRAINAGE OR MINE POOL,
WATER THAT IS THE OBJECT OF THE WATER POLLUTION ABATEMENT
PROJECT.

(4) SHALL NOT BE SUBJECT TO A CITIZEN SUIT UNDER SECTION
THE CLEAN STREAMS LAW, FOR POLLUTION EMMANATING FROM THE WATER
POLLUTION ABATEMENT FACILITIES CONSTRUCTED OR INSTALLED
20130SB0411PN1596
DURING THE WATER POLLUTION ABATEMENT PROJECT.

(B) EXCEPTIONS.--

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

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

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

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

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

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

   (II) THE ACT OF APRIL 27, 1966 (1ST SP.SESS., 20130SB0411PN1596)
P.L.31, NO.1), KNOWN AS THE BITUMINOUS MINE SUBSIDENCE
AND LAND CONSERVATION ACT.

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

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

§ 8111. EXCEPTIONS.

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

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§ 8112. WATER SUPPLY REPLACEMENT.

A PUBLIC OR PRIVATE WATER SUPPLY AFFECTED BY CONTAMINATION OR
THE DIMINUTION CAUSED BY THE IMPLEMENTATION OF A RECLAMATION
PROJECT OR THE IMPLEMENTATION OF A WATER POLLUTION ABATEMENT
PROJECT SHALL BE RESTORED OR REPLACED BY THE [DEPARTMENT]
RECLAMATION PROJECT OPERATOR OR THE WATER POLLUTION ABATEMENT
PROJECT OPERATOR WITH AN ALTERNATE SOURCE OF WATER ADEQUATE IN
QUANTITY AND QUALITY FOR THE PURPOSES SERVED BY THE WATER
SUPPLY.

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