
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, BOSCOLA, ALLOWAY AND DINNIMAN, FEBRUARY 4, 2013

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, FEBRUARY 4, 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 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

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

13 § 8104. Definitions.

14 The following words and phrases when used in this chapter
15 shall have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 * * *

18 "Eligible land and water." Land and water adversely affected
19 by mining or oil or gas extraction and left or abandoned in an

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

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

24 * * *

25 "Mine operator." The permittee of an active or closed mine
26 that treats mine drainage under a permit issued by the
27 department.

28 * * *

29 "Other beneficial use." Any use of water for a purpose that
30 produces any economic, environmental, ecological or other

1 benefits, including irrigation, silvaculture, cooling water,
2 flow maintenance and augmentation, consumptive use makeup, and
3 any other use of water deemed to be a beneficial use under
4 common law.

5 * * *

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

15 * * *

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

27 "Water pollution abatement project." A [plan] project for
28 treatment or abatement of water pollution located on eligible
29 lands and water[. These plans include, but are not limited to,
30 the practices to be followed and the installation, operation and

1 maintenance of facilities to reduce, treat or abate such water
2 pollution.], including, but not limited to, the practices to be
3 followed and the installation, operation and maintenance of
4 facilities and activities to:

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

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

12 (3) withdraw, divert and use treated mine drainage from
13 a permitted mining activity site for the hydraulic fracturing
14 or other development of a gas well, industrial or other water
15 supply or other beneficial use of the water.

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

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

21 § 8105. Eligibility and project inventory.

22 * * *

23 (d) Departmental review.--The department shall review each
24 proposed reclamation project and approve the project if the
25 department determines the proposed project:

26 (1) will result in the regrading of the land to stable
27 contours that blend in and complement the drainage pattern of
28 the surrounding terrain with no highwalls, spoil piles or
29 depressions to accumulate water;

30 (2) will result in the appropriate revegetation of the

1 site; and

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

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

13 * * *

14 Section 3. Section 8106 heading and (a) (3) of Title 27 are
15 amended and the section is amended by adding a subsection to
16 read:

17 § 8106. [Landowner liability] Liability limitation and
18 exceptions.

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

24 * * *

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

1 * * *

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

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

17 § 8107. Project liability limitation [and], exceptions and
18 exemptions.

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

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

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

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

3 * * *

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

14 (6) May not be considered to be engaging in the
15 processing, treatment or disposal of a solid waste under the
16 act of July 7, 1980 (P.L.380, No.97), known as the Solid
17 Waste Management Act, or in the discharge of industrial waste
18 or pollutants under the act of June 22, 1937 (P.L.1987,
19 No.394), known as The Clean Streams Law, when using mine
20 drainage, mine pool water or treated mine drainage for
21 hydraulic fracturing or other development of a gas well,
22 industrial or other water supply or other beneficial use of
23 the water.

24 (7) May not be considered an owner or operator of the
25 project site for purposes of a State law that imposes
26 reclamation or remediation obligations on the basis of past
27 or present ownership or operation of the site, solely by
28 reason of a water pollution abatement project involving the
29 use of mine drainage or mine pool water for hydraulic
30 fracturing or other development of a gas well, industrial or

1 other water supply or other beneficial use of the water.

2 * * *

3 (c) Exemptions.--A person qualifying for immunity under this
4 chapter, provided that the person's actions comply with the
5 water pollution abatement project as approved by the department,
6 is not deemed to be releasing hazardous waste or hazardous
7 substances and is not subject to enforcement under the Solid
8 Waste Management Act or the act of October 18, 1988 (P.L.756,
9 No.108), known as the Hazardous Sites Cleanup Act.

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

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

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

20 (2) implements any such project.

21 "Hazardous substances." As defined in the Hazardous Sites
22 Cleanup Act.

23 "Hazardous waste." As defined in the Hazardous Sites Cleanup
24 Act.

25 Section 5. Section 8111(a) of Title 27 is amended to read:
26 § 8111. Exceptions.

27 (a) General [rule] rules.--The following shall not be
28 eligible for nor shall that person receive the benefit of the
29 protections and immunities available under this chapter,
30 provided that, any person who uses and any person who allows the

1 use of or provides mine drainage, mine pool water or treated
2 mine water, as part of a water pollution abatement project,
3 including a mine operator or water pollution abatement project
4 operator that provides for payment or otherwise treated mine
5 drainage for hydraulic fracturing or other development of a gas
6 well, industrial or other water supply or other beneficial use
7 of the water shall receive the benefit of the protections and
8 immunities available under this chapter:

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

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

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

23 * * *

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