

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

SENATOR YAW, ENVIRONMENTAL RESOURCES AND ENERGY, AS AMENDED,
FEBRUARY 12, 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

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

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

25 * * *

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

29 * * *

30 "Other beneficial use." Any use of water for a purpose that

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

6 * * *

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

16 * * *

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

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

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

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

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

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

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

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

22 § 8105. Eligibility and project inventory.

23 * * *

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

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

1 (2) will result in the appropriate revegetation of the
2 site; and

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

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

14 * * *

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

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

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

25 * * *

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

1 project.

2 * * *

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

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

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

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

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

29 (i) the water pollution abatement facilities
30 constructed or installed during the water pollution

abatement project; and

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

* * *

(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 act of June 22,~~ <--
~~1937~~ (P.L.1987, No.394), known as 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 act of October 18, 1988 (P.L.756,
No.108), known as the Hazardous Sites Cleanup Act.

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(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:

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

(2) any person who [for] receives payment [or],
consideration or [who receives] some other benefit through a
contract [or] 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].

* * *

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