
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1346 Session of
2011

INTRODUCED BY KASUNIC, YUDICHAK, SOLOBAY, HUGHES AND FONTANA,
NOVEMBER 21, 2011

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, NOVEMBER 21,
2011

AN ACT

1 Amending Title 27 (Environmental Resources) of the Pennsylvania
2 Consolidated Statutes, providing for use of mine drainage
3 water.

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

6 Section 1. Title 27 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 81A

9 MINE DRAINAGE WATER

10 Sec.

11 81A01. Scope of chapter.

12 81A02. Findings.

13 81A03. Purpose.

14 81A04. Definitions.

15 81A05. Eligibility.

16 81A06. Natural gas operator liability limitation and
17 exceptions.

18 81A07. Landowner liability limitation and exceptions.

1 81A08. Water withdrawal permits.

2 81A09. Relationship to Federal and State programs.

3 81A10. Regulations.

4 § 81A01. Scope of chapter.

5 This chapter relates to the use of mine drainage water.

6 § 81A02. Findings.

7 The General Assembly finds and declares as follows:

8 (1) This Commonwealth is poised for an extensive
9 development of the Marcellus Shale and other conventional and
10 unconventional natural gas reserves through the use of
11 hydraulic fracturing technology.

12 (2) The hydraulic fracturing process utilizes large
13 quantities of water in the preparation and extraction of
14 natural gas from conventional and unconventional wells.

15 (3) This Commonwealth's long history of mining has left
16 some waters unreclaimed and polluted.

17 (4) This Commonwealth does not possess sufficient
18 resources to abate the pollution in these waters.

19 (5) Numerous natural gas operators who do not have a
20 legal responsibility to abate the pollution in these waters
21 are interested in utilizing these polluted waters to
22 hydraulically fracture conventional and unconventional
23 natural gas wells but are reluctant to engage in the usage
24 because of the potential liabilities associated with the
25 usage of the polluted water.

26 (6) It is in the best interest of the health, safety and
27 welfare of the people of this Commonwealth and the
28 environment to encourage the use of the polluted water in the
29 hydraulic fracturing of conventional and unconventional
30 natural gas wells.

1 § 81A03. Purpose.

2 This chapter is intended to encourage the use of polluted
3 water in hydraulic fracturing activity, to aid in the protection
4 of wildlife, to protect water resources, to aid in the
5 prevention of the pollution of rivers and streams, to protect
6 the environmental values of this Commonwealth and to eliminate
7 or abate hazards to health and safety. It is the intent of the
8 General Assembly to encourage voluntary use of polluted water in
9 the hydraulic fracturing of conventional and unconventional
10 natural gas wells. The purpose of this chapter is to protect the
11 quality and availability of fresh water resources by limiting
12 liability which could arise as a result of the voluntary use of
13 polluted water in hydraulic fracturing of natural gas wells.
14 This chapter is not intended to limit the liability of a person
15 who under existing law is or may become responsible to address
16 the polluted water or anyone who by contract, order or otherwise
17 is required to or agrees to perform the reclamation or abate the
18 polluted water.

19 § 81A04. Definitions.

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

23 "Abandoned lands." Land adversely affected by mineral or oil
24 or gas extraction and left or abandoned in an unreclaimed or
25 inadequately reclaimed condition.

26 "Compact basin commission." As defined in section 3102
27 (relating to definitions).

28 "Department." The Department of Environmental Protection of
29 the Commonwealth.

30 "Eligible land and water." Land and water adversely affected

1 by mining or oil and 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 and gas extraction and left in an unreclaimed or
7 inadequately reclaimed condition or left discharging water
8 pollution for which the department has forfeited and collected
9 the operators bonds and there is no outstanding claim, demand or
10 litigation concerning the bond forfeiture.

11 "Landowner." A person who holds either legal or equitable
12 interest in the surface or mineral estate of eligible land and
13 water or other real property. The term includes a mining
14 company.

15 "Mineral." Any aggregate or mass of mineral matter, whether
16 or not coherent, which is extracted by mining, including, but
17 not limited to, limestone, dolomite, sand, gravel, slate,
18 argillite, diabase, gneiss, micaceous sandstone known as
19 bluestone, rock, stone, earth, fill, slag, iron ore, zinc ore,
20 vermiculite, clay and anthracite and bituminous coal.

21 "Mining activity site." A mining site that is abandoned,
22 inactive or is or was permitted by the department under any of
23 the following acts:

24 (1) The act of June 22, 1937 (P.L.1987, No.394), known
25 as The Clean Streams Law.

26 (2) The act of May 31, 1945 (P.L.1198, No.418), known as
27 the Surface Mining Conservation and Reclamation Act.

28 (3) The act of April 27, 1966 (1st Sp.Sess., P.L.31,
29 No.1), known as The Bituminous Mine Subsidence and Land
30 Conservation Act.

1 (4) The act of September 24, 1968 (P.L.1040, No.318),
2 known as the Coal Refuse Disposal Control Act.

3 (5) The act of December 19, 1984 (P.L.1093, No.219),
4 known as the Noncoal Surface Mining Conservation and
5 Reclamation Act.

6 "Natural gas operator." A person who holds a permit issued
7 under the act of December 19, 1984 (P.L.1140, No.223), known as
8 the Oil and Gas Act, to drill an oil or natural gas well in a
9 conventional or unconventional formation.

10 "Person." A natural person, partnership, association,
11 association members, corporation, political subdivision of the
12 Commonwealth, an agency, instrumentality or entity of Federal
13 Government or State government or other legal entity recognized
14 by law as the subject of rights and liabilities.

15 "Polluted water." Water which contains water pollution and
16 which is found in or originates from a mining activity site on
17 eligible land and water.

18 "Water pollution." Waters of this Commonwealth that contain
19 pollution as defined in section 1 of the act of June 22, 1937
20 (P.L.1987, No.394), known as The Clean Streams Law, which was
21 caused by mining activities, oil or gas extraction or
22 exploration for these resources.

23 "Water withdrawal permit." A permit or approval required by
24 a compact basin commission or the department to withdraw water
25 from the surface water or the groundwater.

26 § 81A05. Eligibility.

27 (a) General rule.--The following shall apply:

28 (1) (i) Except as provided under subparagraph (ii), a
29 landowner who allows the withdrawal of polluted water
30 from eligible land and water that originates from a

1 mining activity site, or a natural gas operator who
2 withdraws polluted water from eligible land and water
3 that originates from a mining activity site and, in
4 accordance with this chapter, utilizes the polluted water
5 to hydraulically fracture a conventional or
6 unconventional natural gas well and reuses, recycles and
7 properly disposes of any unutilized hydraulic fracturing
8 waste water shall be immune from liability and may raise
9 the protections afforded by this chapter in any
10 subsequent legal proceeding which is brought to enforce
11 environmental laws or otherwise impose liability in
12 regard to the eligible land and water or any existing
13 water pollution abatement facilities on the eligible land
14 and water.

15 (ii) Nothing under this chapter shall relieve a
16 natural gas operator from liability for the proper
17 utilization and disposal of polluted water withdrawn from
18 eligible land and water that originates from a mining
19 activity site in accordance with this chapter.

20 (2) A natural gas operator shall only be eligible for
21 the protections and immunities provided under section 81A06
22 (relating to natural gas operator liability limitation and
23 exceptions) if a written plan of the polluted water
24 withdrawal, utilization and disposal is submitted to and
25 approved by the department and, where applicable, a compact
26 basin commission. The plan shall include the approximate
27 volume of each withdrawal of polluted water, the locations of
28 eligible land and water where the withdrawals of polluted
29 water will occur, the locations of the natural gas wells
30 where the withdrawn polluted water will be utilized in

1 hydraulic fracturing, whether any processing or pretreatment
2 will be made to the polluted water, and the reuse or
3 treatment and disposal of any of the polluted water that is
4 recovered by the natural gas operator from a well that is
5 hydraulically fractured.

6 (b) Departmental review.--The department shall review each
7 written plan. If the department determines that the plan meets
8 the following criteria, the department shall approve the plan:

9 (1) The plan provides that use of the polluted water
10 will preserve water quality and availability in this
11 Commonwealth through the use of polluted water in hydraulic
12 fracturing of conventional and unconventional natural gas
13 wells.

14 (2) The plan provides for proper storage of the polluted
15 water during its use and the ultimate proper disposal of the
16 polluted water following its use.

17 (3) The plan demonstrates that withdrawal of polluted
18 water will not cause or contribute to water pollution at the
19 site of the withdrawal from eligible land and water or any
20 other location hydrogeologically connected to the withdrawal
21 site and will not otherwise affect or threaten a current or
22 proposed mining operation. The demonstration shall include a
23 closure plan that describes how all wells used to withdraw
24 polluted water will be properly closed and plugged upon
25 conclusion of use.

26 § 81A06. Natural gas operator liability limitation and
27 exceptions.

28 (a) General rule.--Except as provided under subsection (b),
29 a natural gas operator who withdraws polluted water from a
30 mining activity site on eligible land and water for use in

1 hydraulic fracturing natural gas wells:

2 (1) Shall not be deemed to assume legal responsibility
3 for or incur liability for any preexisting water pollution on
4 or hydrogeologically connected to the withdrawal site or for
5 the use of polluted water in hydraulic fracturing a
6 conventional or unconventional natural gas well.

7 (2) Shall not be subject to a citizen suit filed
8 pursuant to section 601 of the act of June 22, 1937
9 (P.L.1987, No.394), known as The Clean Streams Law, for
10 pollution resulting from a withdrawal of polluted water and
11 its subsequent use.

12 (b) Exceptions.--Nothing under this chapter shall limit the
13 liability of a natural gas operator who withdraws polluted water
14 from a mining activity site on eligible land and water for use
15 in hydraulic fracturing conventional or unconventional natural
16 gas wells for liability which results from the withdrawal of the
17 polluted water and which would otherwise exist:

18 (1) For injury or damage resulting from the natural gas
19 operator's acts or omissions which are negligent, reckless or
20 constitute gross negligence or willful misconduct.

21 (2) For the natural gas operator's unlawful activities.

22 (3) For damage to landowners or other persons which
23 result from a withdrawal of polluted water if the written
24 plan described under section 81A05 (relating to eligibility)
25 was not provided to and approved by the department.

26 § 81A07. Landowner liability limitation and exceptions.

27 (a) General rule.--Except as provided under subsections (b)
28 and (c), a landowner who provides access to the land which
29 results in withdrawals of polluted water for use in hydraulic
30 fracturing of conventional or unconventional natural gas wells:

1 (1) Shall be immune from liability for any injury or
2 damage suffered by a natural gas operator withdrawing
3 polluted water while the natural gas operator or its employee
4 is within the land necessary for withdrawal of polluted
5 water.

6 (2) Shall be immune from liability for any injury to or
7 damage suffered by a third party that arises out of or occurs
8 as a result of an act or omission of a natural gas operator
9 withdrawing polluted water which occurs during the
10 withdrawal.

11 (3) Shall be immune from liability for any injury to or
12 damage suffered by a third party which arises out of or
13 occurs as a result of a withdrawal of polluted water.

14 (4) Shall not be deemed to assume legal responsibility
15 to incur liability for any water pollution resulting from a
16 withdrawal of polluted water from a change in environmental
17 conditions at the mining activity site or any site
18 hydrogeologically connected thereto resulting from a
19 withdrawal of polluted water, or from its use in hydraulic
20 fracturing a conventional or unconventional natural gas well.

21 (5) Shall not be subject to a citizen suit filed under
22 section 601 of the act of June 22, 1937 (P.L.1987, No.394),
23 known as The Clean Streams Law, for pollution resulting from
24 a withdrawal of polluted water and its subsequent use.

25 (b) Duty to warn.--A landowner shall warn a natural gas
26 operator withdrawing polluted water of known abnormally
27 dangerous conditions located on the land in the area necessary
28 to withdraw polluted water. Nothing under this chapter shall
29 limit in any way or affect a landowner's liability which results
30 from a landowner's failure to warn of the known abnormally

1 dangerous conditions.

2 (c) Exceptions to immunity.--Nothing under this chapter
3 shall limit in any way or affect a landowner's liability which
4 results from the withdrawal of polluted water and which would
5 otherwise exist:

6 (1) For any injury or damage resulting from the
7 landowner's acts or omissions which are negligent, reckless
8 or constitute gross negligence or willful misconduct.

9 (2) For the landowner's unlawful activities.

10 § 81A08. Water withdrawal permits.

11 Nothing under this chapter shall be construed to affect any
12 requirement for a water withdrawal permit.

13 § 81A09. Relationship to Federal and State programs.

14 The provisions of this chapter shall not prevent the
15 Commonwealth from enforcing requirements necessary or imposed by
16 the Federal Government as a condition to receiving or
17 maintaining program authorization, delegation, primacy or
18 Federal funds.

19 § 81A10. Regulations.

20 The department may promulgate rules and regulations necessary
21 to implement the provisions of this chapter.

22 Section 2. This act shall take effect in 60 days.