

SMCRA sections on water supply replacement

52 P.S. § 1396.4b

[...]

(f) (1) Any surface mining operator or any person engaged in government-financed reclamation who affects a public or private water supply by contamination or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply. If any operator shall fail to comply with this provision, the secretary may issue such orders to the operator as are necessary to assure compliance.

(2) It shall be presumed, as a matter of law, that a surface mine operator or owner is responsible without proof of fault, negligence or causation for all pollution, except bacteriological contamination, or diminution of public or private water supplies within one thousand (1,000) linear feet of the boundaries of the areas bonded and affected by coal mining operations, areas of overburden removal and storage and support areas except for haul and access roads. If surface mining activities are conducted on areas which are not permitted and bonded, this presumption applies to all water supplies within one thousand (1,000) linear feet of the land affected by such operations. There shall be only five defenses to the presumption of liability provided in this clause. A mine owner or operator must affirmatively prove by a preponderance of evidence that one of the following conditions exists:

(i) The landowner or water supply company refused to allow the surface mining operator or owner access to conduct a survey prior to commencing mining activities.

(ii) The water supply is not within one thousand (1,000) linear feet of the boundaries of the areas bonded and affected by coal mining operations, areas of overburden removal and storage and support areas except for haul and access roads.

(iii) The pollution or diminution existed prior to the surface mining activities as determined by a survey conducted prior to commencing surface mining activities.

(iv) The pollution or diminution occurred as a result of some cause other than the surface mining activities.

(v) The landowner, water supply user or water supply company refused to allow the surface mining operator or owner access to determine the cause of pollution or diminution or to replace or restore the water supply.

(3) If the secretary finds that immediate replacement of an affected water supply used for potable or domestic needs is required to protect public health or safety and the owner or operator has appealed or failed to comply with an order issued pursuant to this subsection, the secretary may restore or replace the affected water supply with an alternative source of water-utilizing moneys from the Surface Mining Conservation and Reclamation Fund. The secretary shall recover the costs of restoration or replacement, including costs incurred for design and

construction of facilities, from the responsible owners or operators. Costs recovered shall be deposited in the Surface Mining Conservation and Reclamation Fund.

(4) An operator or owner aggrieved by the secretary's order issued pursuant to this subsection shall have the right within thirty (30) days of receipt of the order to appeal to the Environmental Hearing Board. The secretary's order, when appealed by the operator or owner, shall not be used to block the issuance of new permits or the release of bonds when a stage of reclamation work is completed. Hearings under this subsection shall be in accordance with the act of July 13, 1988 (P.L. 530, No. 94),⁵ known as the "Environmental Hearing Board Act," and 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

(5) Repealed by 2000, Dec. 20, P.L. 980, No. 138, § 2, effective in 60 days.

(6) Nothing in this subsection shall prevent any landowner or water supply company who claims pollution or diminution of a water supply from seeking any other remedy that may be provided for at law or in equity.

(7) A surface mining operation conducted under a surface mining permit issued by the department before the effective date of this act shall not be subject to the provisions of clauses (2), (3), (4), (5) and (6), but shall be subject to clause (1).