

Overview

Underground mine operators have an obligation under the law to ensure the health and safety of residents affected by mining. The Bituminous Mine Subsidence and Land Conservation Act, as amended in 1994, requires mine operators to restore or replace water supplies contaminated, diminished or interrupted by underground mining and to repair or compensate for subsidence damage to certain structures.

The Department of Environmental Protection (DEP) is responsible for administering Pennsylvania's mining laws and created this fact sheet to help landowners understand their rights. The law allows damages to be resolved through private negotiations between landowners and mine operators. However, if both parties are unable to resolve damage claims in the specified time periods, DEP will assist landowners in resolution of disputes.

Why is Mining Allowed Under Your Property?

Pennsylvania law recognizes separate and distinct property estates between the surface and minerals. The owner of the mineral estate (most commonly coal) has a right to this property, the same as you have rights to the surface property. In most cases, mine operators own the mineral estate for the sole purpose of recovering the coal.

Prior to the current law, homeowners who built their houses after 1966 were not protected from or compensated for damages from underground mining. Today, mining companies that own the mineral under your property are allowed by law to recover the coal, but they must repair, replace or compensate for any damages to water supplies and certain structures.

Water Supply Restoration/Replacement

General Requirements -- If underground mining causes contamination, diminution or interruption of a water supply, the mine operator must restore the water supply or provide a permanent replacement water supply that satisfies the landowner's pre-mining and reasonably foreseeable uses. Permanent restoration or replacement must be accomplished as promptly as possible. If the mine operator fails to promptly restore or replace the affected water supply, the landowner may notify DEP and request that DEP conduct an

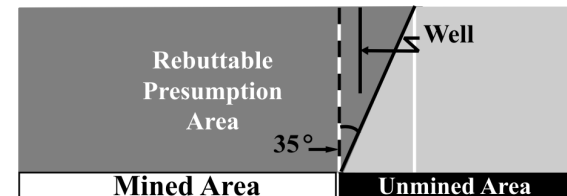
investigation. Within 45 days of receiving notification DEP will conduct an investigation and determine whether the effects on the water supply were caused by underground mining. If DEP determines that the negative impact on the water supply was caused by mining, DEP will issue any orders necessary to assure that the mine operator complies with his legal obligations.

In the event that it is impossible for the mine operator to restore or replace an affected water supply within 3 years of the date of effect, the law provides the landowner the option to choose one of the following:

- Having the mine operator buy the property at its fair market value before the loss of the water supply.
- Having the mine operator pay for the reduction in the fair market value of the property resulting from the water loss.
- Entering a written agreement providing compensation acceptable to the landowner.

Special Provisions -- If a mine operator reports that it is impossible to provide the landowner with an adequate restored or replacement water supply, the landowner may seek a DEP determination as to the likelihood of successful restoration or replacement. DEP will issue a determination within 60 days. A determination by DEP that a water supply could be restored or replaced is only advisory, except in cases involving drinking, domestic and residential water supplies in place prior to the date of permit application, in which cases DEP has authority to order the operator to restore or replace the affected water supply.

"Rebuttable Presumption" Area -- A mine operator is presumed responsible for affecting a water supply if the water supply is within a 35-degree angle of influence of underground mining. The area is illustrated in the drawing below.



(It is important to note that the entire well does not need to be in the rebuttal presumption area – only the wellhead.)

Temporary Water -- A mine operator must provide a landowner with a temporary water supply under the following circumstances:

- When a water supply located within the rebuttable presumption area becomes contaminated, diminished or interrupted and the landowner is without a readily available alternate source of water.
- When an operator or DEP determines that the operator's underground mining has caused contamination, diminution or interruption of a water supply and the landowner is without a readily available alternate source of water.

The temporary water supply must be sufficient in quality and quantity to serve the landowner's needs and must be maintained until a permanent water supply is developed, the claim is resolved by an agreement between the operator and the landowner, or DEP dismisses the claim of liability against the operator. If an affected water supply lies within the rebuttable presumption area, an operator must provide temporary water within 24 hours of being notified of the existence of a problem by the landowner or DEP. If an affected water supply lies outside the rebuttable presumption area, DEP will investigate the claim and, if appropriate, issue an order requiring the operator to make prompt provision of temporary water.

Adequacy -- A restored or replacement water supply must provide enough water to satisfy a landowner's pre-mining and reasonably foreseeable water uses. (Reasonably foreseeable uses are those that were within the capacity of the original water supply and can be substantiated based on the attributes of the property (e.g., number of bedrooms, size of barn or pasture area, presence of buildings used for agricultural, commercial or industrial purposes) or on plans for development or expansion that were backed by a financial commitment at the time the original water supply was affected.) A restored or replacement water supply must provide water that meets the quality standards in DEP's safe drinking water regulations, unless the original supply did not meet those standards. If the original supply did not meet safe drinking water standards, the restored or replacement water supply must be at least similar in quality to the original supply.

Increased Costs -- If a restored or replacement water supply has operation and maintenance costs

that exceed the original costs, the operator is responsible to provide for the permanent payment of the increased costs. If the mine operator and property owner agree, this obligation may be satisfied by a one-time payment equal to the present worth of the cost increase for a period agreed upon by both parties. A property owner who enters into such an agreement and thereby releases the operator of its obligation to permanently pay the increased costs, must, by law, include in any deed conveying the property a recital of the agreement and release, in order to put subsequent purchasers on notice.

Caution! It is important that a landowner report water supply impacts to the mine operator or DEP within two years of their occurrence. Failure to do so may relieve the mine operator of liability for impacts, depending on the type of supply and its date of installation.

Subsidence Damage Repair/Compensation

General Requirements -- If mining causes damage to any of the following structures, the mine operator must promptly repair the damage or compensate the structure owner for the reasonable cost of repairs. (This provision applies to initial damage from mining and any subsequent damage caused by subsidence.)

- Buildings that are accessible to the public, including commercial, industrial and recreational buildings, and permanently affixed appurtenant structures associated with those buildings.
- Noncommercial buildings (e.g., churches, schools, hospitals, public buildings, museums, correctional facilities, water and sewage treatment facilities, buildings used by the YMCA, YWCA, or Kiwanis Club; firehouses, health care facilities, etc.)
- Barns, silos and certain other permanently affixed agricultural structures of 500 square feet or more in area.
- Dwellings and appurtenant structures and improvements.

Examples of "appurtenant structures" include storage sheds, barns, greenhouses, decks, fences, retaining walls, paved or improved patios, walks, driveways, septic treatment facilities, in-ground swimming pools, lot drainage systems, lawn/garden irrigation systems, and customer-owned utilities and

cables. Examples of "improvements" are structures that are not permanently affixed, such as aboveground swimming pools, and items that are not structures, such as shrubbery and landscaping.

After structure damage occurs, a mine operator has six months to resolve the damage through private negotiations with the landowner. Landowners should also file timely reports of damage with DEP to preserve their right to repair or compensation in the event of a breakdown in negotiations with the mine operator. (The law requires that claims for many types of structures be filed within two years of the date of damage).

Irrespective of the six-month period set aside for settlement negotiations, a landowner may request DEP assistance at any time to address problems affecting health or safety.

Limits of Liability -- When repairing or compensating for damage, a mine operator is not liable to pay more than the cost of replacing the structure that was damaged. If a damaged agricultural structure was being used for a purpose other than the purpose for which it was built, a mine operator may replace the structure with one that suffices for the most recent use. For example, a barn used solely to store a tractor could be replaced with a tractor shed.

Additional Compensation -- Occupants of damaged structures may be entitled to payment for the costs of temporary relocation and other reasonable incidental expenses actually incurred.

Land Damage -- Mine operators must repair sinkholes, ground cracks and flooding problems resulting from subsidence if it is technologically and economically feasible to do so.

Pre-Mining and Post-Mining Surveys

General Requirements -- Mine operators are required to conduct pre-mining surveys of structures and water supplies that may be susceptible to the effects of underground mining. Pre-mining surveys must be completed prior to the time a structure or water supply is susceptible to mining related effects. A pre-mining structure survey usually involves documenting the condition of the structure through a written inspection report, video or still photographs. A pre-mining water supply survey usually involves taking water samples and measuring flows or performing pump tests to document the quality and quantity of water

delivered by the supply and obtaining information about the existing and proposed uses of the water supply.

Mine operators must provide landowners with the results of pre-mining surveys within 30 days of obtaining them. Mine operators are required to keep structure survey results confidential because the results may include sensitive information about the contents of dwellings or other structures. Access to structure survey information is limited to the landowner, appropriate mining company representatives and DEP investigators, unless the landowner consents to allowing others to view this information.

Arranging Access for Surveys -- Pre-mining and post-mining surveys of water supplies and structures ensure fair settlement of claims. Mine operators and property owners are mutually responsible for timely and properly conducted surveys.

- **Mine operators** must request the landowner's permission to conduct the survey. If the landowner denies access or does not respond, the mine operator must provide a written notice to the landowner by certified mail or personal service. The written notice must describe the landowner's rights under the law.
- **Property owners** must grant mine operators timely access for the purpose of performing pre-mining and post-mining surveys. After receiving the second notice, a landowner has 10 days to provide or authorize access.

Caution! A landowner may forfeit important protections if he or she denies an operator access to perform a pre-mining or post-mining survey of a structure or water supply within the allotted time frame. The effects of denying access are:

- In the case of a noncommercial building, dwelling, or a structure or improvement appurtenant to a dwelling, the owner incurs responsibility for proving that damage was caused by subsidence.
- In the case of a structure other than those listed in the preceding item, the owner forfeits the right to repair or compensation for damages.
- In the case of a water supply, the owner loses the benefit of the rebuttable presumption and

incurs responsibility for establishing the pre-mining quality and quantity of the water supply.

Minimization of Subsidence Damage

If mining is likely to result in subsidence damage to a dwelling, structure appurtenant to a dwelling, or noncommercial building, a mine operator is expected to take measures to minimize the level of resultant damage. A mine operator may be relieved of the obligation to perform these measures if the company obtains a written waiver from the structure owner or can demonstrate to DEP that the cost of the measures would exceed the cost of repairing the anticipated damage, provided the anticipated damage will not create a threat to health or safety.

Property owners are expected to allow mine operators access to perform damage minimization measures. The operator may be relieved of liability to repair or compensate for damages that would have been prevented through the use of the proposed minimization measures.

DEP's Role in Resolving Damages

Mine operators are required to notify DEP of all reported water supply impacts and structure damage claims. Landowners should also report impacts immediately so that DEP can provide assistance and promote timely resolution of claims. Additionally, early involvement enables DEP to collect information that may be difficult to recover at a later time. Claims should be filed with DEP at:

California District Mining Office
25 Technology Drive
California Technology Park
Coal Center, PA 15423
Telephone: 724-769-1100 or 800-922-1678

Surface Subsidence Agents. DEP employs a staff of Surface Subsidence Agents to assist landowners before, during and after mining. The agents serve as liaisons between landowners and mine operators to facilitate resolution of damages. They ensure that landowners are aware of their rights and protections under the law – often meeting with landowners. Landowners can contact the surface subsidence agent responsible for their area by calling DEP's California District Mining Office or by visiting DEP's website at www.depweb.state.pa.us, (Keyword: "Subsidence Agents").



WATER SUPPLY REPLACEMENT AND SUBSIDENCE DAMAGE REPAIR

UNDERGROUND BITUMINOUS COAL MINING OPERATIONS

Edward G. Rendell, Governor
Commonwealth of Pennsylvania

Kathleen A. McGinty, Secretary
Department of Environmental Protection