

Surface Owner Rights and Responsibilities Summary

Bituminous Mine Subsidence and Land Conservation Act

Commonwealth of Pennsylvania



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DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Bureau of Mining Programs

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Landowners and water supply users have certain legal rights and responsibilities relating to water supplies and structures that are affected by underground mining operations. This document is intended to provide information about surface owner's rights and responsibilities under the Bituminous Mine Subsidence and Land Conservation Act (commonly referred to as Act 54 or the Subsidence Act) by summarizing sections of the law that address damage to water supplies and structures from underground mining operations.

I. Water Supplies Affected by Underground Mining Operations

A. Rights of the Landowner or Water Supply User

The Subsidence Act requires a mine operator who affects a public or private water supply to either restore or replace the supply. For example, if a water supply located on your land or one that you use has been contaminated, diminished, or interrupted by underground mining operations, surface owners are entitled to have that water supply either fully restored or replaced with a permanent alternate source. The permanent water supply replacement must adequately meet the quantity and quality of the pre-mining uses of the supply or any reasonably foreseeable uses.

For more information about Act 54:

1. Visit this link for the Surface Owner Rights and Responsibilities fact sheet:
www.dep.state.pa.us/Tools/eLibrary/watersupplyreplacementandsubsidedamagedamagerepair
2. For a copy of the entire Act 54, please contact the Pennsylvania Department of Environmental Protection's Bureau of Mining Programs.

The following water supplies are covered under the Act's restoration and replacement provisions:

1. Domestic and residential water supplies;
2. Commercial and industrial water supplies;
3. Recreational supplies;
4. Water supplies used for agricultural purposes; and
5. Water supplies that serve a public building or a noncommercial building customarily used by the public.

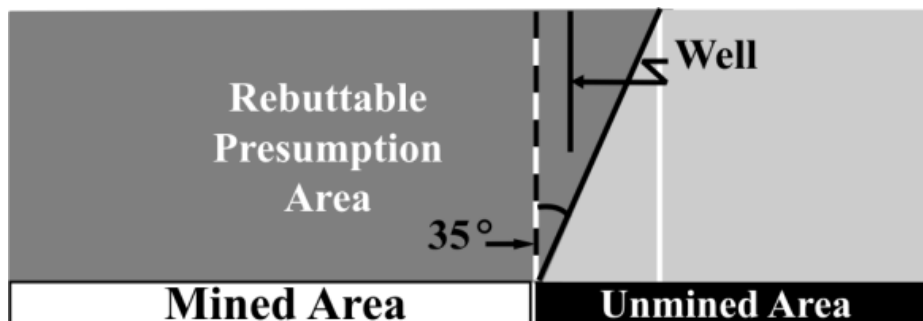
The Energy Policy Act of 1992 (EPACT) requires underground coal mining operations to promptly repair, or compensate for, material damage resulting from subsidence to domestic and residential water supplies in existence prior to the date of the mining permit application. The EPACT includes wells and springs that supply water for direct human consumption, human sanitation, or household use. A subset of the above water supplies are referred to as "EPACT water supplies" and are subject to special provisions under the law, as described later in this document.

The law requires that any permanent replacement water supply must adequately serve, in quantity and quality, both the pre-mining uses and any reasonably foreseeable uses of the affected water supply. To be adequate in quantity, the replacement supply must deliver the amount of water necessary to satisfy the user's needs and the demands of any reasonably foreseeable uses. The quality of the restored or replacement water supply will be considered adequate as long as it meets the standards of the Pennsylvania Safe Drinking Water Act, or it is comparable to the quality of the pre-mining water supply if that supply did not meet those standards.

The mine operator is responsible for paying the costs of restoring or replacing a water supply affected by underground mining operations. The restored or replacement water supply may not cost the landowner or water user more to operate and maintain than the previous water supply. If the operation and maintenance costs of the restored or replacement water supply are more than the costs of the previous water supply the mine operator must provide for the permanent payment of the cost increase.

The landowner or water user may also be entitled to a presumption that relieves him of the burden of having to prove that underground mining operations caused a negative impact on the water supply. If the affected water supply is located within a certain area above the mine called the “rebuttable presumption area” the underground mining operations are presumed to have caused any post-mining impact on the water supply. In that case, the landowner does not have to prove that underground mining operations were the cause of any harm to the supply. Rather, to be relieved of liability the operator would have to prove the water supply was not impacted by underground mining operations. (This rebuttable presumption area is determined by projecting a 35-degree angle upward from the outside of any coal removal area.)

“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 figure below. It is important to note that the entire water well does not need to be in the rebuttal presumption area, only the wellhead.



The mine operator is required by law to provide a temporary water supply within 24-hours of being contacted by the water supply owner or user, if certain conditions apply. If the water supply is within the rebuttable presumption area and the water supply user is without a readily available alternate source, the operator is required to provide a temporary water supply within 24-hours. For EPACT water supplies, the operator must promptly provide a temporary water supply if the operator or Department of Environmental Protection (DEP) finds that the supply has been affected by underground mining operations and the user is without a readily available

alternate source. This requirement applies even if the EPACT water supply is outside the rebuttable presumption area.

The landowner or water user is also entitled to an investigation to determine if a protected water supply has been affected by underground mining operations. Upon receiving notice from the landowner or water user that a supply has been impacted, the mine operator must notify DEP within 24 hours of its receipt of the case, and the operator must diligently investigate the water complaint. If the operator does not restore or adequately replace the affected supply in response to the water complaint, the landowner or water user may request that DEP conduct an investigation. Upon receiving the request, DEP must initiate an investigation of the case within 10 days, and must notify all affected parties within 45 days of its decision on whether the underground mining operations affected the water supply. If DEP determines after investigation that underground mining operations affected the water supply, it will issue any orders necessary to assure that the operator complies with its legal obligations under the Subsidence Act.

Finally, the mine operator is required to provide the landowner with the results of laboratory analyses of samples of the landowner's water supply collected during water supply surveys.

B. Responsibilities of the Landowner or Water Supply User

The Subsidence Act gives a landowner or water supply user legal rights in connection with water supplies affected by underground mining operations. However, those rights are coupled with certain responsibilities.

A landowner who receives a request by the mine operator to conduct pre-mining and post-mining surveys of the water supplies on the property should provide the operator access to the site for the purpose of conducting the surveys. Pre-mining surveys compile information on the quantity and quality of the water supply that is necessary to establish standards for restoration or replacement in the event the supply is affected by underground mining operations. A landowner who denies access for the surveys, after being properly notified by the mine operator, stands to lose some of the rights given by the Subsidence Act. The presumption that the mine operator is responsible for adverse impacts to a water supply located within the rebuttable presumption area will not apply where the mine operator has been denied access to conduct pre-mining or post-mining surveys. In such cases, the landowner, the water supply user, or DEP must prove that the underground mining activity caused the adverse impact.

Whenever a water supply owner or user experiences contamination, interruption or reduction of water supply or flow and he believes it was caused by underground mining operations, he is required to notify the mine operator. Upon receiving notice, the mine operator must then diligently investigate the water loss and must notify DEP that a water complaint has been made. For all water supplies except EPACT water supplies (i.e. agricultural supplies), the owner must make a water complaint within two years of when the supply has been adversely affected or he will lose the right to restoration or replacement. There is no two-year time limit on water complaints for EPACT water supplies.

When it is determined that a mine operator is responsible for adverse impacts to a water supply, the water supply restoration includes permanently paying for any increases in operation and maintenance. DEP assures that the operator fulfills this legal obligation to pay increased operation and maintenance costs by requiring the operator to post a bond in an amount sufficient to provide for payment of the increased costs in perpetuity. The obligation for increased

operation and maintenance costs for a water supply remains with the water supply unless the mine operator and water supply owner reach a voluntary agreement and DEP is provided with proper documentation as described in technical guidance “Increased Operation and Maintenance Costs of Replacement Water Supplies (on All Coal and Surface Noncoal Sites) 562-4000-102.”

If the affected water supply is located outside the rebuttable presumption area, the landowner, the water user or DEP must prove that the underground mining operations caused the impact to the water supply in order to trigger the operator’s obligation to restore or permanently replace the affected water supply.

C. General Limitations on Operator Liability for Water Supply Effects

The Subsidence Act provides that the mine operator is not responsible for restoring or replacing a water supply if he can demonstrate one of the following:

1. The contamination, interruption, or reduction of the water supply or flow existed before mining and was not made worse by underground mining operations.
2. The contamination, interruption, or reduction of water supply or flow occurred more than three years after underground mining activities took place.
3. The contamination, interruption, or reduction of water supply or flow was the result of some cause other than underground mining operations.

D. Voluntary Agreements between the Operator and the Landowner

At any time, the operator and a landowner may enter into a voluntary agreement that establishes the manner by which an affected water supply will be restored or permanently replaced with an adequate alternate source. The parties may reach this kind of agreement before or after any investigation by DEP.

The landowner and the mine operator may also enter a voluntary agreement at any time, which does not require the operator to restore or replace an affected water supply and instead provides fair compensation for the harm. These types of agreements may release the operator of its legal obligation to restore or replace the affected water supply. However, any release that a landowner grants to a mine operator in such an agreement will only be valid if all of the following conditions are met:

1. The agreement clearly states what rights are established by the Subsidence Act.
2. The landowner expressly acknowledges the release for the consideration rendered.
3. The contamination, interruption, or reduction of water supply or flow occurs as a result of the underground mining operations contemplated by the agreement.
4. The term of the release does not exceed 35 years.

If property subject to a water supply agreement is sold, the seller must include in the deed a description of the agreement and any release that was given.

There are situations where it may not be possible to restore or permanently replace an affected water supply with an alternate source that is adequate in quantity and quality. If the operator concludes that the water supply cannot be reasonably restored or replaced, the landowner may enter into an agreement with the operator providing for fair compensation and releasing the operator of its obligation. However, prior to entering an agreement in this situation, the

landowner may submit a written request to DEP asking for review of the operator's conclusion that a water supply cannot be reasonably restored or replaced with an adequate permanent alternate source. DEP will then commence an investigation and will provide the landowner with an advisory opinion within 60 days of receiving the request.

Notwithstanding the provisions of a voluntary agreement entered into between an operator and water user, if the water supply cannot be adequately restored or permanently replaced within three years of being affected, the landowner may require the mine operator to:

1. Purchase the property for an amount equal to its fair market value immediately prior to the time the water supply was affected; or
2. Make a one-time payment to the landowner equal to the difference between the property's fair market value immediately prior to the time the water supply was affected and the time payment is made.

If the landowner decides to require the operator to perform options (1) or (2), the operator will be released from its obligation to restore or replace the affected water supply once it performs the required action. For EPACT water supplies, the landowner may release the operator by completing one of the actions in (1) or (2), only if DEP first determines that an adequate replacement water supply cannot possibly be developed.

II. Surface Structures Affected by Underground Mining Operations

A. Rights of the Structure Owner

The Subsidence Act requires a mine operator who causes damage to certain surface structures to either fully repair the damage or compensate the structure owner for the reasonable cost of repairs. If the structure is irreparably damaged, the mine operator may satisfy its legal obligation by replacing the structure or compensating the structure owner for the cost of replacement. The operator is not responsible to pay an amount for repairs that would exceed the cost to replace the damaged structure.

The law provides for the repair or replacement of the following types of structures when they are damaged by underground mining operations:

1. Dwellings used for human habitation and structures that are used in connection with dwellings (such as garages, storage sheds, greenhouses, fences and other enclosures, retaining walls, paved or improved patios, walks and driveways, septic sewage treatment facilities, inground swimming pools, lot drainage systems, and lawn and garden irrigation systems);
2. Buildings and structures that are accessible to the public (such as commercial, industrial and recreational buildings), which are securely attached to the land surface and used in connection with these buildings;
3. Noncommercial buildings (such as schools, churches, hospitals, and community and institutional buildings);
4. Barns and silos; and
5. Certain agricultural buildings of 500 square feet or more in area.

A subset of the aforementioned structures called "EPACT structures", are subject to special provisions under the law, as described later in this document. EPACT structures include

dwellings and related structures from Category 1 above and noncommercial buildings from Category 3

The occupants of a damaged structure are also entitled to an additional payment for reasonable expenses they incur for temporary relocation and for other reasonable incidental costs agreed to by the parties or approved by the DEP.

The structure owner is entitled to an investigation to determine if a structure on the land has been damaged by underground mining operations. Within 30 days of receiving a structure damage complaint, DEP is required to investigate the case. DEP must promptly provide the structure owner with the results of its investigation. After concluding its investigation, DEP must make a determination in writing whether the mine operator is responsible for the damage; this determination must be made within 60 days of completing the investigation. If DEP decides that the mine operator was responsible, DEP must then determine the reasonable cost of repairing or replacing the damaged structure. DEP will then issue an order directing the mine operator to promptly make repairs or compensate the structure owner for the damage.

The structure owner has a right to receive the results of any structure surveys taken by the mine operator within 30 days of the completion of the surveys, and he is entitled to confidentiality of those survey results. The mine operator may only provide the survey results to the structure owner and DEP, unless the structure owner consents to giving the results to another person. The operator is also required by law to store the survey results in a secure location and to limit access only to authorized personnel.

B. Responsibilities of the Structure Owner

The Subsidence Act gives structure owners legal rights in connection with damage to structures caused by underground mining operations. However, those rights are coupled with certain responsibilities.

A structure owner who receives a request by the mine operator to conduct pre-mining and post-mining surveys of the structures on the property should provide the operator access to the site for that purpose. Surveys compile necessary information on the pre-mining condition of the structure and the nature of any damage caused by underground mining operations. A structure owner can lose the right to repair or lose the right to compensation for damage to structures on the property if he denies access to the mine operator to conduct pre-mining and post-mining surveys. The mine operator must initially request access to conduct the surveys. If access to the first request is denied, the mine operator must then properly deliver a second notice to the landowner explaining their rights established by the Subsidence Act. If the structure owner still does not authorize access within 10 days after receipt of the second notice, the structure owner will be deemed to have denied access for a survey and may forfeit the right to repair or compensation for damages.

A structure owner who denies access for a pre-mining or post-mining survey of the structure loses the statutory right to repair or compensation for damage, except in cases involving EPACT structures. For an EPACT structure, the structure owner may preserve the right to repair or compensation if the owner or DEP can prove that the damage was caused by the operator's underground mining operations. The failure to establish such proof relieves the operator of liability to repair or compensate for damage to an EPACT structure.

In addition to allowing access for pre-mining and post-mining surveys, a structure owner is also responsible for allowing an operator access to perform damage minimization measures if the operator requests access to perform such measures. A structure owner who denies access for damage minimization measures may forfeit the right to repair or compensation for damage that could have been prevented had the operator been allowed access to perform those measures. This responsibility to allow access for damage minimization measures applies to both EPACT structures and non-EPACT structures.

A structure owner who believes that the structure has been damaged as the result of underground mining operations is required to notify the mine operator. During the six-month period following notification, the structure owner and the mine operator should discuss the potential for an agreement on the cause of damage, and the type and cost of repairs or the amount of compensation. If the structure owner and mine operator cannot reach an agreement during that period, the structure owner must then file a structure damage claim form in writing with DEP to initiate further action to address the structure damage. For non-EPACT structures, the owner's structure damage claim must be filed with DEP within two years of the date the structure damage occurred or the structure owner may forfeit the right to repair or compensation for the structure damage. The obligation to pursue negotiations with the operator over a six-month period does not prohibit the structure owner from filing a structure damage claim with DEP at any time to address safety hazards or other urgent situations.

C. General Limitations on Operator Liability for Structure Damage

The mine operator is not responsible for structural conditions that existed prior to mining. The operator is not responsible for damage to the structure that occurred prior to the mining activities, nor is the operator responsible for structure damage that was not the result of underground mining operations.

D. Voluntary Agreements between the Landowner and the Operator

At any time, a landowner and the mine operator may enter into a voluntary agreement to establish the means of providing compensation for subsidence damage to structures covered by the Subsidence Act. In such agreements, the compensation paid to the landowner must be at least equal to the reasonable cost of repairing the structure or the reasonable cost of its replacement if the damage is irreparable.

These voluntary agreements may release the operator of their legal obligations under the Subsidence Act. However, any release that a landowner grants to a mine operator in such an agreement will be valid only if all of the following conditions are met:

1. The agreement clearly states what rights are established by the Subsidence Act.
2. The landowner expressly acknowledges that the release is being given in exchange for the alternate remedies provided by the agreement.
3. The release will be null and void if no mining occurs for a period of 35 years within the coal field of which the coal underlying the landowner's property is a part.

If property subject to a subsidence damage agreement is sold, the seller must include in the deed a description of the agreement and any release that was given.