

WATER SUPPLY REPLACEMENT AND SUBSIDENCE DAMAGE REPAIR UNDERGROUND BITUMINOUS COAL MINING OPERATIONS

Underground mine operators have obligations under the law to ensure the health and safety of residents affected by their mining. These obligations are required by the Bituminous Mine Subsidence and Land Conservation Act. As amended in 1994, the act 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. If the parties are unable to resolve damage claims in the specified time periods, DEP can assist landowners in resolution.

Why is Mining Allowed Under Your Property?

Pennsylvania law recognizes separate and distinct property estates between the surface and the mineral. 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.

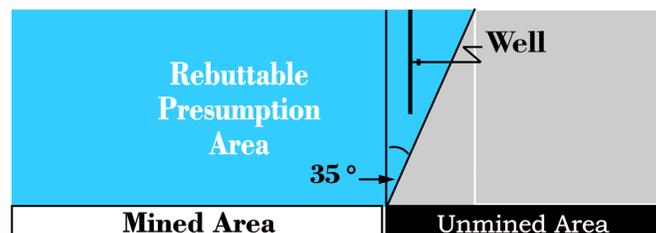
Water Supply Restoration/Replacement

General Requirements. If underground mining results in the contamination, diminution, or interruption of a water supply, the mine operator must promptly restore or replace the water supply. During the period while a permanent water supply is being arranged, the mine operator must provide a temporary supply. In the event that the mine operator cannot promptly restore or replace the water supply, the mine operator must either reach a settlement with the landowner or give the landowner the choice of the following options:

- 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.

Special Provisions. Prior to entering into an agreement with a mine operator, the landowner may submit a written request to DEP asking DEP to review the operator's findings that an affected water supply cannot be restored or that a permanent supply cannot be reasonably provided. DEP will issue an opinion within 60 days. This opinion is advisory and will not prevent the landowner from entering into a private agreement with the mine operator.

"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 suitable temporary water supply when an affected water supply lies within the rebuttable presumption area and the affected party is without a readily available alternate source of water. The mine operator must provide the temporary water within 24 hours of receiving notification.

For water supplies outside the rebuttable presumption area, DEP will investigate the claim and order the operator to provide temporary water if mining is responsible for the impact and the landowner is without an alternate source.

Adequacy. A restored or replacement water supply must satisfy the landowner's current needs and reasonably foreseeable needs. Water must meet the quality standards in DEP's safe drinking water regulations, unless the original water supply did not meet those standards. If the original supply did not meet safe drinking water standards, the restored or replaced 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 are higher than the original cost, then the operator is responsible for the increase in cost.

Caution. It is important that a landowner must 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 to restore or replace the water supply.

Subsidence Damage Repair/Compensation

General Requirements. If mining causes damage to any of the following structures, the mine operator must 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 customarily used by the public, such as churches, schools, and hospitals.
- Barns, silos, and certain other permanently affixed agricultural structures of 500 square feet or more in area.
- Dwellings and permanently affixed appurtenant structures.
- Improvements that are appurtenant to dwellings and in place on August 21, 1994, or on the date the notice of a permit application or permit renewal application is first published in a local newspaper.

Examples of "permanently affixed 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, mine operators have six months to resolve the damage through private negotiations with the landowner. Landowners should also report the damage to DEP. However, landowners must report the damage to DEP within two years of the date of damage or risk forfeiting some of the protections afforded by law.

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.

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 water supplies and structures that are covered by repair and compensation requirements. Operators must complete the survey prior to the time a structure or water supply is susceptible to subsidence damage. A structure survey usually involves

documenting the condition of the structure through a written report, video, or still photographs. Water supply surveys should include tests to document the yield, quality, and uses.

Mine operators must provide structure owners with copies of pre-mining survey results within 30 days of completing the survey. Mine operators must also treat survey results in a confidential manner. Unless the structure owner consents, access to survey results is limited to appropriate mining company staff and DEP.

Caution. A structure owner who denies a mine operator access to conduct a pre-mining or post-mining survey forfeits his or her right to repair or compensation. A landowner who denies a mine operator access to conduct a pre-mining or post-mining survey of a water supply loses the benefit of the rebuttable presumption. In addition, the landowner becomes responsible to document the pre-mining quality and yield of the supply in the event of any future impact.

Responsibilities of Mine Operators and Landowners

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

Mine Operators. 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. Landowners must grant access to mine operators or forfeit important protections provided by law. After receiving the second notice, a landowner has 10 days to provide or authorize access.

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. Specifically, 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.dep.pa.gov.

Damages Covered by Federal Law. Some structures and water supplies referenced in this fact sheet are covered by federal law as well as state law. The U.S. Office of Surface Mining (OSM) handles cases that are enforceable only under the federal program.

For more information, visit www.dep.pa.gov.