

POPULATION COMPARISON

The following materials compare the populations of Greene and Washington Counties, Pennsylvania, the only counties in Pennsylvania where full extraction longwall mining currently conducted, with the populations of several counties in western Maryland, West Virginia and western Virginia where longwall mining also is conducted.

Washington County, PA *	Garrent County, Maryland	Buchanan County, Virginia	Dickerson County, Virginia	Wetzel County, West Virginia	Marshal County, West Virginia
202,897	29,846	26,978	16,395	17,693	35,519
Greene County, PA					
40,672					

* 2000 U.S. Census as reported by the Real Estate Center of Texas A&M University. See attached materials.

Similarly sparse populations are present in other counties in neighboring States where longwall mining is practiced.



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**Washington County, PA
 Population by Decades**

Date	Population	Population Change	Annual % Change
1900	92,181	-	-
1910	143,680	51,499	4.5
1920	188,992	45,312	2.8
1930	204,802	15,810	0.8
1940	210,852	6,050	0.3
1950	209,628	-1,224	-0.1
1960	217,271	7,643	0.4
1970	210,876	-6,395	-0.3
1980	217,074	6,198	0.3
1990	204,584	-12,490	-0.6
2000	202,897	-1,687	-0.1

Source: U.S. Bureau of Census

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**Greene County, PA
Population by Decades**

Date	Population	Population Change	Annual % Change
1900	28,281	-	-
1910	28,882	601	0.2
1920	30,804	1,922	0.6
1930	41,767	10,963	3.1
1940	44,671	2,904	0.7
1950	45,394	723	0.2
1960	39,424	-5,970	-1.4
1970	36,090	-3,334	-0.9
1980	40,476	4,386	1.2
1990	39,550	-926	-0.2
2000	40,672	1,122	0.3

Source: U.S. Bureau of Census

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**Garrett County, MD
 Population by Decades**

Date	Population	Population Change	Annual % Change
1900	17,701	-	-
1910	20,105	2,404	1.3
1920	19,678	-427	-0.2
1930	19,908	230	0.1
1940	21,981	2,073	1.0
1950	21,259	-722	-0.3
1960	20,420	-839	-0.4
1970	21,476	1,056	0.5
1980	26,498	5,022	2.1
1990	28,138	1,640	0.6
2000	29,846	1,708	0.6

Source: U.S. Bureau of Census

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**Buchanan County, VA
Population by Decades**

Date	Population	Population Change	Annual % Change
1900	9,692	-	-
1910	12,334	2,642	2.4
1920	15,441	3,107	2.3
1930	16,740	1,299	0.8
1940	31,477	14,737	6.5
1950	35,748	4,271	1.3
1960	36,724	976	0.3
1970	32,071	-4,653	-1.3
1980	37,989	5,918	1.7
1990	31,333	-6,656	-1.9
2000	26,978	-4,355	-1.5

Source: U.S. Bureau of Census

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**Dickenson County, VA
Population by Decades**

Date	Population	Population Change	Annual % Change
1900	7,747	-	-
1910	9,199	1,452	1.7
1920	13,542	4,343	3.9
1930	16,163	2,621	1.8
1940	21,266	5,103	2.8
1950	23,393	2,127	1.0
1960	20,211	-3,182	-1.5
1970	16,077	-4,134	-2.3
1980	19,806	3,729	2.1
1990	17,620	-2,186	-1.2
2000	16,395	-1,225	-0.7

Source: U.S. Bureau of Census

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**Wetzel County, WV
 Population by Decades**

Date	Population	Population Change	Annual % Change
1900	22,880	-	-
1910	23,855	975	0.4
1920	23,069	-786	-0.3
1930	22,334	-735	-0.3
1940	22,342	8	0.0
1950	20,154	-2,188	-1.0
1960	19,347	-807	-0.4
1970	20,314	967	0.5
1980	21,874	1,560	0.7
1990	19,258	-2,616	-1.3
2000	17,693	-1,565	-0.8

Source: U.S. Bureau of Census

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**Marshall County, WV
Population by Decades**

Date	Population	Population Change	Annual % Change
1900	26,444	-	-
1910	32,388	5,944	2.0
1920	33,681	1,293	0.4
1930	39,831	6,150	1.7
1940	40,189	358	0.1
1950	36,893	-3,296	-0.9
1960	38,041	1,148	0.3
1970	37,598	-443	-0.1
1980	41,608	4,010	1.0
1990	37,356	-4,252	-1.1
2000	35,519	-1,837	-0.5

Source: U.S. Bureau of Census

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Attached is a copy of the Legislative and Regulatory History of the BMSLCA, which appears on DEP's web site, www.dep.pa.us. It discusses in detail how the DMMP process led to the passage of Act 54 and how, subsequently, Pennsylvania worked to develop regulations to implement Act 54 which were consistent with both State and Federal law. It was these efforts (nearly 8 years of consensus building) which OSM's December 2001 Disapproval Rulemaking effectively invalidated and which the current proposed regulation seeks to supercede, in part.

Also attached is a copy of the DMMP Final Report.

III. Legislative and Regulatory History

Legislative History of BMSLCA

In 1966 at a Special Session, the General Assembly enacted the Bituminous Mine Subsidence and Land Conservation Act (BMSLCA). BMSLCA established various requirements for bituminous underground mines such as permitting, mapping, protection of certain structures from subsidence damage, repair of subsidence damage to certain structures, and the right for surface owners to purchase support for their structures.

The legislative findings associated with BMSLCA explain that it was enacted because the General Assembly had determined that mine subsidence and coal mining laws had failed to protect the public interest in Pennsylvania in preserving the land. Damage from uncontrolled mine subsidence was seriously impeding land development, was eroding the tax base and had caused a clear and present danger to health, safety and welfare of the people. BMSLCA was enacted to protect the public health, safety and general welfare while allowing the continued growth and development of the bituminous coal industry.

Section 4 of BMSLCA prohibited bituminous coal from being mined in a manner that would cause subsidence damage to certain structures. Homes, public buildings, noncommercial structures customarily used by the public (such as churches and schools) and cemeteries were protected if they were in place on April 27, 1966.

If the Department-approved measures taken by a mine operator to protect a structure were unsuccessful and a protected structure was damaged by subsidence, then the permittee of the mine was required to repair the damages. Section 6 of BMSLCA required the permittee to repair the damage within six months and satisfy all claims arising from the subsidence damage or to deposit with the Department, as security for the claim, a sum of money equal to the amount of damage. The law also authorized the Department to require mine operators to post a surety bond to cover possible future property damage.

Section 15 of BMSLCA provided certain owners the right to purchase the coal located beneath their property that was necessary to provide surface support to protect the structures from subsidence damage. The structures in this group included those erected before April 27, 1966 that were not otherwise protected, such as agricultural and commercial structures, and all structures erected after April 27, 1966.

Finally, as enacted in 1966, BMSLCA did not contain any provisions addressing water supplies affected by underground mining.

In 1980, BMSLCA, along with the other coal mining statutes, was amended. It was amended to include various provisions to meet the minimum requirements of the federal Surface Mining Control and Reclamation Act so that Pennsylvania could maintain primary responsibility for regulating coal mining within the Commonwealth. Among other things, there were changes to the provisions governing subsidence damage.

Section 4, which provided protection to certain structures, was amended to allow the current owner of the structure to consent to subsidence damage, but the damage had to be repaired or the owner compensated. Section 5 was amended to require an operator of an underground mine to adopt measures to prevent subsidence causing material damage to the extent technologically and economically feasible, to maximize mine stability and to maintain the value and reasonably foreseeable use of the surface. These measures were to be described in the permit application. The new language also specifically provided that the new subsection was not to be construed to prohibit planned subsidence or standard room-and-pillar mining.

In 1986, in response to dissatisfaction with the existing law, the Deep Mine Mediation Project (Project) was convened by Arthur A. Davis, then Goddard Professor of Forestry and Environmental Resources at the Pennsylvania State University. The Project brought together deep mine industry, agricultural, and public interest organizations to discuss and attempt to reach consensus on ways to change BMSLCA. Organizations that accepted the invitation and participated in the Project included Beth Energy Mines, Inc., Consolidation Coal Company, League of Women Voters of Pennsylvania, Pennsylvania Coal Association, Pennsylvania Environmental Council, Inc., Pennsylvania Farmers Association, Rochester and Pittsburgh Coal Company, USX Corporation and the Western Pennsylvania Conservancy. In addition, Citizens Against Water Loss Due to Mining initially participated and then withdrew from the Project, while the Pennsylvania Federation of Sportsmen's Clubs withdrew after the final proposal was developed.

After three years of work, the participants reached a consensus on a set of recommendations and specific statutory language to address water supply replacement, enhance remedies for structural damage and statutory changes to eliminate impediments to mining. The General Assembly approved the statutory amendments in 1992. However, because of a procedural problem, the bill was not presented to the governor for signature. Subsequently, the amendments, commonly referred to as Act 54, were reintroduced and passed with unanimous votes in both the House and Senate in mid-June, 1994. The bill was approved by Governor Casey on June 22, 1994 and became effective 60 days thereafter, on August 21, 1994. The law was self-implementing, since its detailed guidelines on the process for applying its major provisions precluded the need to promulgate regulations. A copy of the statute is included in Appendix A.

The 1994 amendments provide for water supply replacement and limit the number of structures protected from subsidence while expanding the class of structures damaged by subsidence which must be repaired by the mine operator.

The 1994 water supply replacement provisions generally provide:

- Mine operators must restore or replace public or private water supplies for homeowners and farmers where the underground mining activity caused contamination, diminution or interruption.
- There is a rebuttable presumption that the underground mining activity caused the contamination, diminution or interruption of affected water supplies that are located above an underground mine.
- Where the presumption applies, landowners are entitled to a temporary water supply within 24 hours pending the completion of investigations and the restoration or replacement of a permanent supply by the mine operator.
- For the rebuttable presumption to apply, landowners must allow surveys to be conducted to determine the premining quality and quantity of their water supply.
- Where the rebuttable presumption does not apply and the water supply has been affected, the mine operator is responsible to restore or replace the supply. However, if the operator contests liability, the burden of proving causation falls on the landowner or Department.
- Landowners and mine operators can execute voluntary agreements, under certain conditions, and of limited duration, which provide for alternate restoration, replacement or compensation mechanisms when a water supply is affected. Notice of any such agreements must be given to subsequent purchasers of the property by reference of such agreement in the deed of conveyance.
- If an operator does not provide for permanent restoration or replacement within three years, and the operator and landowner cannot agree on terms for compensation, the landowner has two

options. The landowner may opt to have the operator purchase the property at its fair market value prior to the time the supply was affected. Alternatively, the landowner may have the operator make a one-time payment equal to the difference between the property's fair market value immediately prior to the time the water supply was affected and at the time payment is made.

The 1994 revised structural damage repair provisions are summarized as follows:

- Mine operators are required to repair or compensate for subsidence damage to any building which is accessible to the public (including industrial and recreational buildings), noncommercial buildings customarily used by the public (such as schools and churches), dwellings used for human habitation and permanently affixed pertinent structures and improvements, and certain agricultural structures.
- The structure owner or occupant is also entitled to payments for temporary relocation and other incidental expenses.
- In order for the structure owner to have the repairs made or to be compensated for the damages, he must allow the mine operator to conduct a premining survey of the structure prior to beginning of mining.
- Structure owners and mine operators are authorized to enter into voluntary agreements specifying the terms and conditions for restoration of or compensation for subsidence damage. Notice of such agreements must be given to subsequent purchasers of the property by reference to the agreement in the deed of conveyance.

The 1994 statutory changes to eliminate impediments to mining permitted mining under pre-1966 structures. As a consequence, underground mining can now occur beneath and damage any structure, except a certain limited class of structures and features, as long as the damages are not irreparable and are repaired. Irreparable damage can only occur with the consent of the owner.

Regulatory History and Development

Act 54 was passed in June 1994 and became effective on August 21, 1994. The final steps in the implementation of the Act 54 amendments to BMSLCA were two rulemakings. Although the provisions authorized by the statute were self-implementing, the first rulemaking was necessary to eliminate inconsistencies between the existing regulations and the law. The second rulemaking was undertaken to resolve certain ambiguities within the law and to bring Pennsylvania's regulations into conformance with their federal counterparts. Both rulemakings amended the Department's regulations in 25 Pa Code Chapter 89. The amendments, sometimes referred to as the Act 54 regulations, were formally titled "Mine Subsidence Control, Subsidence Damage Repair and Water Supply Replacement."

Initially, the Department developed a policy to smooth the transition into the amendments' new provisions and requirements. Subsequently, in March 1997, the Department submitted an "expedited rulemaking" to remove those parts of Chapter 89 that were statutorily repealed by the amendments. The rulemaking completed the phase-in process by adding to Chapter 89 new provisions and requirements arising from the amendments to BMSLCA.

Development of the final regulations was accomplished with extensive public participation. In March 1996, the Department convened a meeting of interested parties to discuss the matters to be addressed in the rulemaking. Draft regulations were then prepared and made available for public review and comment through an Advanced Notice of Proposed Rulemaking (ANPR). The notice of availability for the ANPR regulations appeared in the *PA Bulletin* on September 28, 1996. The notice initially provided for a 30-day comment period. This period was subsequently extended to six weeks at the request of commentators. Following the ANPR, proposed regulations were prepared and submitted to the Environmental Quality

Board (EQB) in March 1997. The proposed regulations were published in the *Pa. Bulletin* on May 10, 1997, this time with a 60-day period for public review and comment. The EQB also held a public hearing on June 18, 1997 to receive comments on the proposed rulemaking. In addition to these outreach efforts, the Department met with representatives of the Citizens Advisory Council and the Public Utility Commission to discuss remaining issues as the regulations entered the final phase of rulemaking.

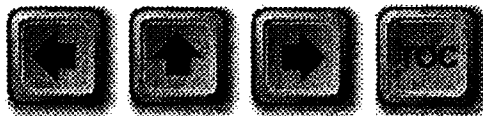
Additions to the regulations included new subsidence damage repair and compensation requirements; new water supply replacement requirements; new requirements relating to the control of irreparable damage; and additional requirements relating to the prevention of imminent hazards to human safety. The regulations also reflected the amended statutory provisions concerning the prevention of material damage and reduction in the reasonably foreseeable uses of certain structures and features listed in Section 9.1 of the amendments to BMSLCA. These damage prevention standards were for the most part carried over from the previous regulations; although "public facilities" were added and "coal refuse disposal areas" were deleted in keeping with the specific language of the statute.

The regulations also contained provisions that were necessary to clarify requirements and improve the Department's ability to enforce the provisions of BMSLCA. Definitions were provided for key terms such as "irreparable damage," "permanently affixed appurtenant structures" and "public buildings and facilities." The terms "underground mining" and "underground mining operations" were defined and used so as to correlate specific activities with requirements and liabilities. The regulations included mandatory survey requirements for all water supplies and structures to ensure that baseline information would be available for evaluating reported impacts. The regulations also included standards for the reliability, cost, maintenance and control of replacement water supplies. These standards were based on case law in the Department's surface mining program where water supply replacement requirements have been in place for many years.

The amendments included changes to better clarify some of the requirements of Chapter 89. Information requirements were revised to correlate more directly with performance standards. Requirements for mining beneath protected structures such as public buildings were revised to clarify the options an operator may pursue in preventing material damage. Language was revised to clarify the conditions that must be met in order to mine beneath a structure where the cover is less than 100 feet (30.48 meters).

The regulations were published in the *Pennsylvania Bulletin* and became effective on June 13, 1998. A copy of the regulations is included in Appendix B.

The final objective of the rulemaking was to make Pennsylvania's program as effective as its federal counterpart. As a general observation, Pennsylvania's statute requires mine operators to address impacts to more types of structures and more types of water supplies than the federal program. Although BMSLCA does not allow an exact match with every aspect of the federal regulations, in the Department's view the regulations provide protections that are as effective as those required by the federal program. On July 29, 1998, the revised regulations were submitted to the federal Office of Surface Mining (OSM) for incorporation into Pennsylvania's approved program.



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DEEP MINE MEDIATION PROJECT

CONSENSUS PROPOSAL

MARCH 18, 1990

Thomas W. Beauduy, Esq.
Project Mediator

DEEP MINE MEDIATION PROJECT

EXECUTIVE SUMMARY

The Deep Mine Mediation Project (Project) was convened in 1986 by Arthur A. Davis, then Goddard Professor of Forestry and Environmental Resources at Pennsylvania State University.

The Project was designed to bring together representatives of the deep mine industry and environmental, agricultural and public interest organizations to discuss and attempt to reach consensus on a set of public policy considerations related to the regulation of deep mining in the Commonwealth.

Invitation to participate in the Project was extended by the Convenor to several organizations perceived to have an interest in the subject matter of the Project. The following organizations accepted that invitation and participated in the Project:

- BethEnergy Mines, Inc.
- Consolidation Coal Company
- League of Women Voters of Pennsylvania
- Pennsylvania Coal Association
- Pennsylvania Environmental Council, Inc.
- Pennsylvania Farmers Association
- Rochester & Pittsburgh Coal Company
- USX Corporation
- Western Pennsylvania Conservancy

One organization, Citizens Against Water Loss Due to Mining (CAWLM), initially participated but withdrew midway through the Project. Another participant, the Pennsylvania Federation of Sportsmen's Clubs, was involved throughout the entire negotiation process, but withdrew after a final proposal was drafted. The PFSC withdrew after determining that the final proposal represents a balancing of property rights, rather than environmental standards, which were its primary interest.

Central to the interests of all participants in the Project was a dissatisfaction with the existing statutory framework in Pennsylvania relative to deep mining and a desire to recommend changes to the status quo, albeit for varied reasons. Hence, it was the objective of the Project to bring together diverse interest groups to facilitate dialogue, to determine common

ground, and to endeavor to reach consensus on a set of recommendations on specific statutory language of how best to amend the Bituminous Mine Subsidence and Land Conservation Act of 1966 (1966 Act) to achieve the following purposes:

1. To develop an adequate statutory remedy for the restoration or replacement of water supplies affected by underground mining.
2. To develop an enhanced statutory remedy for the restoration or replacement of, or compensation for, surface structures damaged by underground mining.
3. To modify the existing prevention of subsidence damage standard contained in the 1966 Act, which inhibits the utilization of full extraction mining technology in Pennsylvania.
4. Attendant with any modification of current legal standards, to ensure that the surface features and water resources of the Commonwealth are adequately protected.

After three years of deliberation and due consideration, the Participants have reached consensus on a set of recommendations and specific statutory language which address these issues as follows:

I. Water Supply Replacement

* Mine operators would be required to restore or replace public or private water supplies for homeowners and farmers where mining activity caused contamination, diminution or interruption of such supplies. (No such requirement exists under the current law).

* For affected supplies located above a mine, there is a rebuttable presumption that the mining activity caused the contamination, diminution or interruption.

* Where the presumption applies, landowners are entitled to the provision of an immediate, temporary supply pending the completion of investigations and the restoration or replacement of a permanent supply.

* In order for landowners to avail themselves of the rebuttable presumption, they must allow a pre-mining survey to be conducted to determine the quality and quantity of their supply prior to the commencement of mining activity.

* Where a supply has been affected and the presumption does not apply, the mine operator is responsible to restore or replace the supply where causation is established.

* Landowners and mine operators would be able to execute voluntary agreements, under certain conditions, and of limited duration, which provide for alternate restoration, replacement or compensation mechanisms where water supplies are affected, and notice of any such agreements must be given to subsequent purchasers of the property by reference to such agreement in the deed of conveyance.

* Where an operator does not provide for restoration or replacement within three years, the landowner has the option of having the operator purchase the property at its fair market value immediately prior to the time the supply was affected or make a payment equal to the difference between its fair market value before and after the supply was affected.

II. Enhanced Remedies for Structural Damage

* Mine operators would be required to restore, replace or compensate for certain surface structures damaged by subsidence. Eligible structures would include publicly owned buildings and those used for public purposes (such as schools, churches and hospitals), residential dwellings and appurtenant structures, and most agricultural structures. (Currently, operators are not responsible for damage to agricultural structures or residential dwellings built after the effective date of the 1966 Act. These owners must obtain subsidence insurance or purchase the coal under their structures.)

* Beyond a structure's replacement value, the landowner or occupant would also be entitled to payments for temporary relocation and other incidental expenses.

* In order for landowners to avail themselves of this remedy, they must allow a pre-mining survey to be conducted to determine the condition of their structure(s) prior to the commencement of mining activity.

* Landowners and mine operators would be able to execute voluntary agreements, under certain conditions and of limited duration, which provide for alternate restoration, replacement or compensation mechanisms where structures are damaged, and notice of any such agreements must be given to subsequent purchasers of the property by reference to such

agreement in the deed of conveyance.

III. Statutory Changes to Eliminate Impediments to Mining

* Mining activity will be controlled where it is determined that subsidence may result creating an imminent hazard to human safety.

* Where it is determined that a proposed mining activity would cause subsidence resulting in irreparable damage to structures, the operator may only mine if the landowner consents or the operator modifies the mining plan to incorporate measures approved by the Department of Environmental Resources to minimize or reduce impacts from subsidence to the surface structures. (Under current law, mine operators are prohibited from damaging dwellings built prior to 1966, but there is no damage standard applicable to post-'66 structures. This proposal extends the minimize damage standard to all residential structures, as well as to agricultural structures for the first time in exchange for elimination of the prohibition against mining under pre-'66' structures and a repeal of Section 15 of the 1966 Act.)

* Mining activity would be prohibited beneath or adjacent to public buildings; churches, schools and hospitals; impoundments with a storage capacity of 20 acre-feet or more; or bodies of water with a volume of 20 acre-feet or more, unless the mining plan demonstrates that subsidence will not cause material damage to, or reduce the foreseeable use of, such features or facilities.

IV. Water Resources

* It was determined that the prevention of subsidence damage standard was in fact a structural damage standard, not an environmental protection one, and that the hydrologic balance requirements under both state and federal law may be adequate, on their face, to ensure protection of water resources if properly implemented.

* It was further determined that the effectiveness of the hydrologic balance requirements in extending that protection is directly dependent on their proper interpretation and administration by both state and federal regulators. Several of the participants felt that these provisions could in fact be more protectively and aggressively applied.

* It was also felt that additional knowledge about the long term impact of full extraction mining on water resources is desirable to make public policy choices with confidence. Therefore, to enhance our state of knowledge and better assess the long term impacts of underground mining on the Commonwealth's water resources, (as well as on the subsidence of surface features and structures) obligations are imposed on the Department of Environmental Resources to more comprehensively compile and analyze data being generated by mining activity in Pennsylvania.

The accompanying Proposal sets forth the specific language agreed to by the Participants to replace the existing language of Sections 4, 6(a) and 15 of the 1966 Act, which would effectuate the recommendations noted above.

This proposal, and the discussions that led to it, do not deal with subsidence damage from abandoned mines or the adequacy of Pennsylvania's subsidence insurance program to compensate for that damage.

The participants agreed that a better understanding by surface landowners of their rights and responsibilities when coal mining is to occur would provide a better framework for responsible decision making. Industry, government and public interest groups should develop programs to facilitate that understanding.

The participants recognize that they do not fully represent all with an interest in these issues but understand that all interested parties should have the opportunity to comment on the proposed legislation. Much time was spent reviewing other states' laws to see how these issues have been approached elsewhere. On review, what the participants have determined is that while some states may provide remedies to more interests, none provide as comprehensive a set of remedies as those contained in this Proposal for homeowners and farmers, the two groups most likely to be affected by mining impacts. For that reason, they feel it represents a responsible and equitable approach.

Ultimately, it is the Legislative process itself which will shape the final balance on these important public policy issues.

DEEP MINE MEDIATION PROJECT

PROPOSAL

(Amendments to the
Mine Subsidence & Land Conservation Act of 1966)

I. **Water Supply Provision**

(a) After the effective date of this act, any mine operator who, as a result of underground mining operations, affects a public or private water supply by contamination, diminution, or interruption shall restore or replace the affected supply with an alternate source which adequately serves in quantity and quality the pre-mining uses of the supply. For the purpose of this section, the term "water supply" shall include any existing source of water used for domestic purposes or for agricultural uses, excluding irrigation, or which serves any public building or any noncommercial structure customarily used by the public, including but not limited to churches, schools, and hospitals. A restored or replacement water supply shall be deemed adequate where it differs in quality from the pre-mining supply, providing it meets Pennsylvania Safe Drinking Water Act standards or is comparable to the pre-mining supply where that supply did not meet such standards. If an operator fails to comply with this provision, the Secretary shall issue such orders to the operator as are necessary to assure compliance.

(b) A mine operator shall not be liable to restore or replace a water supply under the provisions of this act if

a claim of contamination, diminution or interruption is made more than two years after the supply has been adversely affected.

(c) Whenever a landowner or water user experiences contamination, diminution or interruption of a water supply which is believed to have occurred as a result of underground coal mining operations, said landowner or water user shall notify the mine operator who shall with reasonable diligence investigate the water loss. Where the presumption of Subsection (e) applies and the user is without a readily available alternate source, the operator shall provide a temporary water supply within 24 hours of being contacted by the landowner or water user. If a temporary water supply is not provided within 24 hours, the Department, after notice by the landowner or water user, shall order the operator to provide temporary water within 24 hours. The operator shall notify the Department of any claim of contamination, diminution or interruption made to it by a landowner or water user and its disposition.

(d) If the affected water supply has not been restored or an alternate source has not been provided by the operator, or if an operator ceases to provide an alternate source, the landowner or water user may so notify the Department and request that an investigation be conducted. Within ten days of such notification, the Department shall investigate any such claim and shall, within 45 days following notification, make a determination of whether the contamination, diminution or

interruption was caused by the underground mining operation and so notify all affected parties. If it finds causation, it shall issue such orders to the mine operator as are necessary to assure compliance with this section. Such orders may include orders requiring the temporary replacement of a water supply where it is determined that the contamination, diminution or interruption may be of limited duration, orders requiring the provision of immediate temporary water to the landowner, or orders requiring the provision of a permanent alternate source where the contamination, diminution or interruption does not abate within three years of the date on which the supply was adversely affected.

(e) In any determination or proceeding under this section, it shall be presumed that an underground mine operator is responsible for the contamination, diminution or interruption of a water supply that is within an area above the mine determined by projecting a 35 degree angle from the vertical from the outside of any coal removal area. The mine operator may successfully rebut the presumption by affirmatively proving that access was denied to the property on which the supply is located to conduct pre-mining and post-mining surveys of the supply; the mine operator thereafter served notice upon the landowner by certified mail or personal service, which notice identified the rights established by this Section and that access had been denied; and the landowner failed to provide or authorize access within ten (10) days after receipt thereof.

(f) Unless the presumption contained in Subsection (e) applies, a landowner, the Department or any affected user asserting contamination, diminution or interruption shall have the burden to affirmatively prove that underground mining activity caused the contamination, diminution or interruption. Wherever a mine operator upon request, has been denied access to conduct a pre-mining survey; the mine operator thereafter served notice upon the landowner by certified mail or personal service; said notice identified the rights established by this Section and that access had been denied; and the landowner failed to provide or authorize access within ten (10) days after receipt thereof, then such affirmative proof shall include pre-mining baseline data, provided by the landowner or the Department, relative to the affected water supply.

(g) A mine operator shall be relieved of liability under this Section by affirmatively proving one of the following defenses:

- (1) The contamination, diminution or interruption existed prior to the mining activity as determined by a pre-mining survey.
- (2) The contamination, diminution or interruption occurred more than three years after mining activity occurred.
- (3) The contamination, diminution or interruption occurred as the result of some cause other than the mining activity.

(h) Any mine operator who obtains water samples in a pre-mining or post-mining survey shall utilize a certified laboratory to analyze such samples and shall submit copies of the results of such analysis, as well as the results of any quantitative analysis, to the department and to the landowner within 30 days of their receipt; Provided, however, that nothing contained herein shall be construed as prohibiting a landowner or water user from utilizing an independent certified laboratory to sample and analyze the water supply.

(i) Nothing contained herein shall prohibit the mine operator and landowner at any time after the effective date of this Act from voluntarily entering into an agreement establishing the manner and means by which an affected water supply is to be restored or an alternate supply is to be provided or providing fair compensation for such contamination, diminution, or interruption. Any release contained in such an agreement shall only be valid in releasing the operator from liability under this Section if:

- (1) It clearly states what rights are established by this Section; and
- (2) The landowner expressly acknowledges their release for the consideration rendered; and
- (3) The contamination, diminution or interruption of the water supply occurs as a result of the mining contemplated by the agreement; and

(4) The term of the release does not exceed thirty-five years.

(j) In every deed for the conveyance of property for which an agreement executed pursuant to subsection (i) is effective at the time of transfer, the grantor shall include in the deed a recital of the agreement and any release contained therein.

(k) Nothing contained herein shall prevent any landowner or water user who claims contamination, diminution or interruption of a water supply from seeking any other remedy that may be provided at law or in equity; Provided, however, that in any proceedings in pursuit of a remedy other than as provided herein, the provisions of this section shall not apply and the party or parties against whom liability is sought to be imposed may assert in defense any rights or waivers arising from provisions contained in deeds, leases or agreements pertaining to mining rights or coal ownership on the property in question.

(l) The Department may require an operator to describe how water supplies will be replaced; Provided, however, that nothing contained herein shall be construed as authorizing the department to require a mine operator to provide a replacement water supply prior to mining as a condition of securing a permit to conduct underground coal mining.

(m) If an affected water supply is not restored or reestablished or a permanent alternate source is not provided within three years, the mine operator may be relieved of further responsibility by entering into a written agreement providing compensation acceptable to the landowner. If no agreement is reached, the mine operator, at the option of the landowner, shall:

- (1) purchase the property for a sum equal to its fair market value immediately prior to the time the water supply was affected, or
- (2) make a one-time payment equal to the difference between the property's fair market value immediately prior to the time the water supply was affected and at the time payment is made;

Whereupon the mine operator shall be relieved of further obligation regarding contamination, diminution, or interruption of the affected water supply under this Act; Provided, however, that any measures taken under this Section to relieve a mine operator of further obligation regarding contamination, diminution or interruption of an affected water supply shall not be deemed to bar a subsequent purchaser of the land on which the affected water supply was located or any water user on such land from invoking rights under this Act for contamination, diminution or interruption of a water supply resulting from subsequent mining activity other than that

contemplated by the mine plan in effect at the time the original supply was affected.

(n) For purposes of Section (I), a permanent alternate source shall include any well, spring, cistern, municipal water supply system, or other supply approved by the Department, which is adequate in quantity, quality and of reasonable cost to serve the pre-mining uses of the affected water supply.

(o) Any landowner, water user or mine operator aggrieved by an order or determination of the Department issued under this section shall have the right to appeal such order to the Environmental Hearing Board within 30 days of receipt of the order.

II. Repair of certain surface buildings damaged by subsidence

(a) Whenever underground mining operations conducted under this act cause damage to the following surface buildings overlying or in the proximity of the mine:

- (1) any publicly owned building;
- (2) any non-commercial buildings customarily used by the public, including, but not limited to, schools, churches and hospitals;
- (3) dwellings used for human habitation and permanently affixed appurtenant structures or improvements in place on the effective date

of this Act or on the date of first publication of the application for a Mine Activity Permit for the operations in question and within the boundary of the entire mine as depicted in said application;

(4) the following agricultural structures: all barns and silos, and all permanently affixed structures of 500 or more square feet in area that are used for raising livestock, poultry, or agricultural products, for storage of animal waste, or for the processing or retail marketing of agricultural products produced on the farm on which such structures are located;

The operator of such coal mine shall repair such damage or compensate the the owner of such building for the reasonable cost of its repair or the reasonable cost of its replacement where the damage is irreparable. For any irreparably damaged agricultural structure identified in subsection (a)(4) which, at the time of damage the operator can affirmatively prove was being used for a different purpose than the purpose for which such structure was originally constructed, the operator may provide for the reasonable cost to replace the damaged structure with a structure satisfying the functions and purposes served by the damaged structure before such damage occurred.

(b) A mine operator shall not be liable to repair or compensate for subsidence damage if the mine operator, upon

request, is denied access to the property upon which the building is located to conduct pre-mining and post-mining surveys of the building and surrounding property, and thereafter serves notice upon the landowner by certified mail or personal service, which notice identifies the rights established by this section, that access has been denied, and the landowner fails to provide or authorize access within ten (10) days after receipt thereof.

(c) The owner of any building enumerated in Subsection (a) who believes that the removal of coal has caused mine subsidence resulting in damage to such building and who wishes to secure repair of or compensation for such damage shall notify the mine operator. If the mine operator agrees that mine subsidence damaged such building, he shall cause such damage to be fully repaired or compensate the owner for such damage in accordance with Section 2(a) or an agreement reached between the parties either prior to mining or after the damage has occurred.

(d) If the parties are unable to agree within six months of the date of notice to the cause of the damage or the reasonable cost of repair or compensation, the owner of the building may file a claim in writing with the Department, a copy of which shall be sent to the operator. Such claims shall be filed within two years of the date damage to the building occurs.

(e) The Department shall make an investigation of the claim within 30 days of receipt of such claim and shall within 60 days following said investigation make a determination in writing

of whether the damage was caused by subsidence due to underground coal mining and, if so, the reasonable cost of repairing or replacing the damaged structure. If the Department finds the damage to be so caused, it shall issue a written order directing the operator to compensate or to cause repairs to be made within six months or a longer period if the Department finds that occurrence of subsidence or subsequent damage may occur to the same building as a result of mining.

(f) In no event shall the mine operator be liable for repairs or compensation in an amount exceeding the cost of replacement of the damaged structure; Provided however, that the occupants thereof shall also be entitled to additional payment for reasonable, actual expenses incurred for temporary relocation and for other actual reasonable, incidental costs agreed to by the parties or approved by the Department.

(g) If either the landowner or the mine operator is aggrieved by an order issued by the Department under this section, such person shall have the right to appeal such order to the Environmental Hearing Board within 30 days of receipt of the order; Provided, however, that a mine operator's appeal shall not be considered to be perfected unless within 60 days of the date on which the mine operator received the Department's order the operator has deposited an amount equal to the cost of repair or the compensation amount ordered by the Department in an interest bearing escrow account administered for such purposes by the Department.

(h) If the mine operator shall fail to repair or compensate for subsidence damage within six months or such longer period as the Department has established, or shall fail to perfect an appeal of the Department's order directing such repair or compensation, the Department shall issue such orders and take such actions as are necessary to compel compliance with the requirements hereof, including but not limited to, cessation orders and permit revocation. If the mine operator fails to repair or compensate for damage after exhausting its right of appeal, the Department shall pay the escrow deposit made with respect to the particular claim involved and accrued interest to the owner of the damaged building.

(i) Except as provided in Subsection (h), the existence of unresolved claims of subsidence damage shall not be used by the Department as a basis for withholding permits from or suspending review of permit applications submitted by the mine operator against whom such claims have been made.

(j) Nothing contained in this section shall prohibit the mine operator and the landowner at any time after the effective date of this Act from voluntarily entering into an agreement establishing the manner and means by which repair or compensation for subsidence damage is to be provided. Any release contained in such an agreement shall only be valid in releasing the operator from liability under this Section if it clearly states what rights are established by this Section and the

landowner expressly acknowledges their release as consideration for the alternate remedies provided under the agreement. Any such release shall be null and void if no mining occurs for a period of thirty-five years within the coal field of which the coal underlying the affected surface property forms a part.

(k) In every deed for the conveyance of property for which an agreement executed pursuant to Subsection (j) is effective at the time of transfer, the grantor shall include in the deed a recital of the agreement and any release contained therein.

(l) The duty created by this Act to repair or compensate for subsidence damage to the buildings enumerated in Subsection (a) shall be the sole and exclusive remedy for such damage and shall not be diminished by the existence of contrary provisions in deeds, leases or agreements which relieved mine operators from such duty; Provided, however, that nothing herein shall impair agreements entered into after April 27, 1966 and prior to the effective date of this Act, which, for valid consideration, provide for a waiver or release of any duty to repair or compensate for subsidence damage. Provided, however, that any such waiver or release shall only be valid with respect to damage resulting from the mining activity contemplated by the Agreement.

(m) In every deed for the conveyance of property for which an agreement executed pursuant to Subsection (l) is

effective at the time of transfer, the grantor shall include in the deed a recital of the agreement and any release contained therein.

III. **Prevention of hazards to human safety and material damage to certain buildings.**

(a) If the Department determines, and so notifies the mine operator, that a proposed mining technique or extraction ratio will result in subsidence which creates an imminent hazard to human safety, utilization of such technique or extraction ratio will not be permitted unless the mine operator, prior to mining, takes measures approved by the Department to eliminate the imminent hazard to human safety.

(b) If the Department determines, and so notifies the mine operator, that a proposed mining technique or extraction ratio will cause subsidence which will result in irreparable damage to buildings enumerated in Section II (a)(3) or (4) above, utilization of such technique or extraction ratio shall not be permitted unless the building owner, prior to mining, consents to such mining, or the mine operator, prior to mining, agrees to take measures approved by the Department to minimize or reduce impacts resulting from subsidence to such buildings.

(c) Underground mining activities shall not be conducted beneath or adjacent to (1) public buildings and facilities; (2) churches, schools, and hospitals; or (3) impoundments with a storage capacity of 20 acre-feet or more

or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the department determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

IV. Compilation and Analysis of Data.

(a) The Department shall compile, on an ongoing basis, the information contained in deep mine permit applications, in monitoring reports and other data submitted by operators, from enforcement actions, and from any other appropriate source for the purposes set forth below.

(b) Such data shall be analyzed by the Department, utilizing the services of professionals or institutions recognized in the field, for the purpose of determining, to the extent possible, the affects of deep mining on subsidence of surface structures and features and on water resources, including sources of public and private water supplies.

(c) The analysis of such data and any relevant findings shall be presented in report form to the Governor, the General

Assembly and to the Citizens Advisory Council of the Department at five year intervals, commencing in 1990.

(d) Nothing contained herein shall be construed as authorizing the Department to require a mine operator to submit additional information or data, except that it shall require reporting of all water loss incidents or claims of water loss.

SENATE MESSAGE

**SENATE CONCURRENCE
IN HOUSE RESOLUTION**

The clerk of the Senate, being introduced, informed that the Senate has concurred in HR 360, PN 3855.

SENATE MESSAGE

**HOUSE BILL
CONCURRED IN BY SENATE**

The clerk of the Senate, being introduced, returned HB 2166, PN 2707, with information that the Senate has passed the same without amendment.

CALENDAR

BILL ON SECOND CONSIDERATION

The following bill, having been called up, was considered for the second time and agreed to, and ordered transcribed for third consideration:

SB 1812, PN 2330.

BILLS ON THIRD CONSIDERATION

The House proceeded to third consideration of HB 1828, PN 3304, entitled:

An Act amending the act of April 27, 1966 (1st Sp. Sess., P. L. 31, No. 1), known as "The Bituminous Mine Subsidence and Land Conservation Act," providing for the restoration or replacement of water supplies materially affected by mining; further providing for the replacement or repair of certain structures affected by mine subsidence; further providing for appeals and departmental action; and making repeals.

On the question,
Will the House agree to the bill on third consideration?
Mr. COY offered the following amendment No. A2498:

Amend Sec. 7 (Sec. 9.1), page 26, by inserting between lines 8 and 9

(d) Nothing in this act shall be construed to amend, modify or otherwise supersede standards related to prevailing hydrologic balance contained in the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et seq.) and regulations promulgated by the Environmental Quality Board for the purpose of obtaining or maintaining primary jurisdiction over the enforcement and administration of that act, nor any standard contained in the act of June 22, 1937 (P.L. 1987, No. 394), known as "The Clean Streams Law," or any regulation promulgated thereunder by the Environmental Quality Board.

On the question,
Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes Mr. Coy.

Mr. COY. Thank you, Mr. Speaker.

This amendment, I understand, is the first in a series of amendments which will be offered to this bill. I believe it to be probably the simplest in the series.

The amendment clarifies that nothing in HB 1828 shall be construed to either amend, supersede, or repeal the water protection standards in our current Clean Streams Law nor the hydrologic balance standards contained in the Federal and State surface mining laws and our regulatory program as it currently exists.

The amendment was originally suggested by the Sportsmen's Federation to the folks who were participating in the mediation efforts in this legislation. They fully support the amendment because it declares and clarifies what they intended all along; that is, that all natural resource protections contained in existing law be preserved so that nothing that is done in this legislation will impinge on, modify, diminish, or for that matter, increase the current standards that are required by either current regulations, current law, or any other, for that matter, regulations that may be promulgated. Our concern is that what we have already, in terms of water protection standards, remain and that nothing that is done in this act or this proposed law should modify those standards.

Mr. Speaker, I ask for support of the amendment.

The SPEAKER. The Chair recognizes Mr. Daley.

Mr. DALEY. Thank you, Mr. Speaker.

I think Mr. Coy has very succinctly articulated what is going to happen this morning with regard to HB 1828. This is the first in a series of amendments. This is probably the most important amendment in terms of the one that I can offer support to, and I ask the members to vote for Representative Coy's amendment.

The SPEAKER. Is the gentleman, Mr. George, seeking recognition?

The gentleman is in order.

Mr. GEORGE. Mr. Speaker, shortly we will be dealing with some amendments that are very important, and I am most certain that logical minds will prevail where we want to help the coal industry, but by the same token we want to protect these people who find themselves without water and find that their properties have been obliterated. Mr. Coy's amendment, in my opinion, does not do any harm whatsoever to the fact that we want to prevail and help the coal industry. I am only hopeful that those who provide this amendment will also, Mr. Speaker, be able to back those of us that recognize the need for these kinds of controls that we will be introducing.

I support the amendment, Mr. Speaker.

The SPEAKER. The Chair recognizes Mr. Hasay.

Mr. HASAY. Thank you, Mr. Speaker.

Mr. Speaker, the minority supports the Coy amendment and asks for the members' support. Thank you.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—191

Adolph	Donatucci	Langtry	Ryan
Allen	Durham	Laughlin	Saloom
Anderson	Evans	Lawless	Saurman
Angstadt	Fairchild	Leh	Scheetz
Argall	Fajt	Lescovitz	Schuler

Arinstrong	Fargo	L. sky	Scrimenti
Arnold	Farmer	Linton	Semmel
Barley	Fee	Lloyd	Serafini
Battisto	Fleagle	Lucyk	Smith, B.
Belardi	Flick	McCall	Smith, S. H.
Belfanti	Foster	McGeehan	Snyder, D. W.
Billow	Freeman	McHale	Snyder, G.
Birmelin	Gallen	McHugh	Staback
Bishop	Gamble	McNally	Stairs
Black	Gannon	Majale	Steelman
Blaum	Geist	Markosek	Steighner
Bowley	George	Marsico	Stetler
Boyes	Gerlach	Mayermik	Stish
Broujos	Gigliotti	Melio	Strittmatter
Brown	Gladeck	Merry	Stuban
Bunt	Godshall	Michlovic	Sturla
Bush	Gruppo	Micozzie	Surra
Butkovitz	Hagarty	Mihalich	Tangretti
Caltagirone	Haluska	Mundy	Taylor, E. Z.
Cappabianca	Hanna	Murphy	Taylor, F.
Carlson	Harley	Nahill	Taylor, J.
Carn	Hasay	Nailor	Telek
Carone	Hayden	Nickol	Thomas
Cawley	Hayes	Nyce	Tigue
Cessar	Heckler	Olasz	Tomlinson
Chadwick	Herman	Oliver	Trello
Civera	Hershey	Perzel	Trich
Clark	Hess	Pesci	Tulli
Clymer	Hughes	Petrarca	Uliana
Cohen	Itkin	Petrone	Van Horne
Colafiglia	Jadlowiec	Phillips	Vance
Colaizzo	Jarolin	Piccola	Veon
Cole	Johnson	Pistella	Vroon
Cornell	Josephs	Pitts	Wambach
Corrigan	Kaiser	Raymond	Williams
Cowell	Kasunic	Reber	Wilson
Coy	Kenney	Reinard	Wogan
DeLuca	King	Richardson	Wozniak
DeWeese	Kosinski	Rieger	Wright, D. R.
Daley	Krebs	Ritter	Wright, M. N.
Davies	Kruszewski	Robinson	O'Donnell,
Dempsey	Kukovich	Roebuck	Speaker
Dent	LaGrotta	Rudy	
Dermody			

NAYS—0

NOT VOTING—6

Acosta	Harper	O'Brien	Preston
Gruitza	James		

EXCUSED—4

Freind	Lee	Mrkonic	Noye
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The question was determined in the affirmative, and the amendment was agreed to.

On the question,

Will the House agree to the bill on third consideration as amended?

Ms. STEELMAN offered the following amendments No. A1353:

Amend Title, page 1, lines 21 through 26, by striking out "providing for the" in line 21, all of lines 22 through 26, and inserting changing the title of the act; further providing for legislative purpose; providing for definitions; further providing for protection of surface structures and for permits and financial security; providing for restoration or replacement of water supplies or structures affected by underground mining; further providing for repair of damage or satisfaction of claims; providing for prevention of safety and property hazards; repealing procedures on pro-

tection of surface structures; further providing for penalties; and providing for data compilation and analysis.

Amend Sec. 1 (Title), page 2, line 8, by striking out the bracket before "forbidding"

Amend Sec. 1 (Title), page 2, line 8, by inserting brackets before and after "existing"

Amend Sec. 1 (Title), page 2, line 9, by inserting after "structures"

and features

Amend Sec. 1 (Title), page 2, line 9, by striking out the bracket after "coal;"

Amend Sec. 2 (Sec. 3), page 5, line 19, by inserting after "whereby"

specified classes of

Amend Sec. 2 (Sec. 3), page 5, lines 20 and 21, by inserting a bracket before "erected" in line 20 and after "be" in line 21 and inserting immediately thereafter

are

Amend Bill, page 5, lines 22 through 28, by striking out all of said lines and inserting

Section 3. The act is amended by adding a section to read:

Section 3.1. Definitions.—The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Material damage." Subsidence-caused functional impairment of a structure or feature. The term includes, but is not limited to, subsidence effects which impair the use of a structure or feature or which cause a structure or feature to become structurally unstable. The term denotes a higher degree of impairment than the term "damage."

"Structure." A piece of work or construction artificially built up or composed of parts joined together in some definite manner for occupancy, use or ornamentation. The term includes, but is not limited to, all of the following:

- (1) Dwellings and permanently affixed appurtenant structures or improvements.
- (2) Noncommercial buildings customarily used by the public. This paragraph includes public buildings and facilities, churches, schools and hospitals.
- (3) Commercial buildings.
- (4) Agricultural structures.
- (5) Cemeteries.
- (6) Water towers.
- (7) Agricultural drain tile fields.
- (8) Septic systems.

Section 4. Sections 4 and 5(a) and (b) of the act, amended October 10, 1980 (P.L. 874, No. 156), are amended to read:

Section 4. Protection of surface structures against damage from cave-in, collapse or subsidence.—In order to guard the health, safety and general welfare of the public, no owner, operator, lessor, lessee, or general manager, superintendent or other person in charge of or having supervision over any bituminous coal mine shall mine bituminous coal so as to cause damage as a result of the caving-in, collapse or subsidence of the following surface structures [in place on April 27, 1966,] overlying or in the proximity of the mine:

- (1) Any public building or any noncommercial structure customarily used by the public, including but not being limited to churches, schools, hospitals, and municipal utilities or municipal public service operations.
- (2) Any dwelling used for human habitation[; and]
- (3) Any cemetery or public burial ground[;] unless the current owner of the structure consents and the resulting damage is fully repaired or compensated.
- (4) Any impoundment with a storage capacity of twenty acre-feet or more and any body of water with a volume of twenty acre-feet or more.

(5) Any body of water that serves as a significant source for a public water supply system.

(6) Any aquifer that serves as a significant source for a public water supply system.

(7) Any coal refuse pile with an underdrain system.

Section 5. Permit; application; map or plan; bond or other security; filing; general rulemaking authority; prevention of damage; mine stability; maintenance of use and value of lands.— (a) Before any bituminous coal mine subject to the provisions of this act is opened, reopened, or continued in operation, the owner, operator, lessor, lessee, general manager, superintendent or other person in charge of or having supervision over such mine or mining operation shall apply to the Department of Environmental Resources, on a form prepared and furnished by the department, for a permit for each separate bituminous coal mine or mining operation. As a part of such application for a permit the applicant shall furnish, in duplicate, a map or plan of a scale and in a manner in accordance with rules and regulations of the Department of Environmental Resources showing the location of the mine or mining operation, the extent to which mining operations presently have been completed, and the extent to which mining operations will be conducted under the permit being requested. Such map or plan shall show the boundaries of the area of surface land overlying the mine or mining operation[.]; the location [and/or designation] of all [structures in place on the effective date of this act] buildings, cemeteries and coal refuse piles which overlie the proposed mine or mining operation; the location of all utility lines, including, but not limited to, electric, gas, water and sewer lines, which overlie the proposed mine or mining operation[.]; the name of the record owner or owners of said surface structures[.]; the identification of all structures and features identified in section 4; the location of all bodies of water, rivers and streams, roads and railroads[.]; the outlines of aquifers that serve as significant sources for public water supplies; and the political subdivision and county in which said structures and features are located. Such map or plan shall include, in addition to the information specified above, such information on the character of the mining operation, overburden, rock strata, proximity of and conditions in overlying or underlying coal seams and other geological conditions as the department, by rules and regulations, shall direct. The department shall have the power to require the updating of such maps from time to time as it shall prescribe by rule and regulation. The map or plan must set forth a detailed description of the manner, if any, by which the applicant proposes to support the surface structures overlying the bituminous mine or mining operation. Upon receipt of such application in proper form the department shall cause a permit to be issued or reissued if, in its opinion, the application discloses that sufficient support will be provided for the protected structures and that the operation will comply with the provisions of this act and the rules and regulations issued thereunder. All permits issued under this act shall contain such terms and shall be issued for such duration as the department may prescribe.

Amend Sec. 4 (Sec. 5), page 6, line 2, by striking out the brackets before “, in” and after “4” and inserting immediately thereafter

, this section and section 6

Amend Sec. 5 (Sec. 5.5), page 15, line 7, by inserting after “structure

, but the building owner shall receive not less than the documented costs of repair

Amend Sec. 7 (Sec. 9.1), page 25, lines 22 through 30; page 26, lines 1 through 8, by striking out all of said lines on said pages

On the question,

Will the House agree to the amendments?

The SPEAKER. The Chair recognizes the lady, Steelman, on the amendment.

Ms. STEELMAN. Thank you, Mr. Speaker.

This amendment extends the protection now offered in to homes constructed before 1966 to all homes. Those of who do not live in coal country may wonder, well, what kind of protection are pre-1966 homes offered now? In law, deep mine coal operators are not permitted to mine in such a way to cause damage to pre-1966 homes, but homes built after 1966 are not protected in current law, nor are coal operators required under HB 1828 to mine in such a way as to prevent damage specifically.

What is the rationale for trying to require that deep mine operators prevent damage to homes? It is very simple. Most Pennsylvanians—and that means most of your constituents—own one valuable thing whose value does not depreciate over time, and that one valuable thing that most Pennsylvanians own is their home. For people who live in rural areas where coal operations are conducted, the risk of losing their home to deep mining is a significant one.

This amendment does not absolutely prohibit mining under rural homes. What it does do is to require the coal operator to have the permission of the current owner of the home and to have an agreement to the effect that damage will be compensated for and that damage will be compensated for at the full cost of repairs.

Because people's homes have not only an economic value to them but also a critical psychological value, I ask you to support this amendment to protect the homes and the lives of families living in our rural coal mining areas. Thank you.

The SPEAKER. The Chair recognizes Mr. Daley.

Mr. DALEY. Thank you, Mr. Speaker.

Will the maker of the amendment stand for a brief interrogation?

The SPEAKER. The lady indicates she will. The gentleman may proceed.

Mr. DALEY. Thank you, Mr. Speaker.

Mr. Speaker, can you tell the members of the General Assembly, if this amendment passes, what impact it is going to have on the coal industry in Pennsylvania specifically and in the bituminous region?

Ms. STEELMAN. No; I do not think that anyone can tell the General Assembly exactly what effect this amendment is going to have. We have differing sets of predictions from people who will be differently affected by the bill.

Mr. DALEY. How do you feel, Mr. Speaker, regarding what this amendment actually is going to do? How do you think it is going to— Is it going to impact adversely? Is it going to help the industry? Is it going to hurt the industry? What is it going to do?

Ms. STEELMAN. It is going to make life more complicated for people in the coal industry, because they will be required to get agreement from people whose homes they plan to undermine to permit them to do so, and of course, getting an agreement in advance is more difficult than undermining, causing damage, and then coming in and negotiating about

how much they are willing to pay for the damage that they have caused. But I do not think that that means that they are not going to be able to get agreement from people. I think that the coal companies can make a case that they can mine safely, that they can protect homes, and that they can offer adequate compensation, and that, I think, people in Pennsylvania have a right to.

Mr. DALEY. I do not think the question is regarding getting the permits and getting the agreements from the homeowners, Mr. Speaker. Will you assume then by this amendment that this amendment will have an adverse effect on the coal industry in Pennsylvania?

Ms. STEELMAN. Not necessarily.

Mr. DALEY. Would you tell us what is going to happen to longwall mining in Pennsylvania if this amendment passes?

Ms. STEELMAN. The people who are longwall mining will have to get agreement from the people whose homes they plan to undermine.

Mr. DALEY. Will this have an adverse effect on longwall mining?

Ms. STEELMAN. I do not know.

Mr. DALEY. That is all the questions I have, Mr. Speaker.

The SPEAKER. The gentleman wishes to speak on the issue?

Mr. DALEY. Yes, Mr. Speaker.

The SPEAKER. The gentleman may proceed.

Mr. DALEY. Thank you, Mr. Speaker.

I think Ms. Steelman is not really relating all the facts to the General Assembly before us. She is avoiding the answer to the question I am asking, which is, is this going to have an adverse effect on the coal industry? And I submit to you it is. It is going to kill longwall mining. As a matter of fact, Mr. Speaker, I have a letter that was sent to Ms. Steelman from a coal operator in her district saying that the economic competitiveness of the entire coalfield, especially in Indiana County, will be affected by the passage of this amendment.

Ms. Steelman submits to this General Assembly that this is going to be an environmentally sound amendment that is going to help to improve the environment. However, I submit to the body here the Pennsylvania Environmental Council in a letter states that from an environmental point of view, it is questionable whether leaving random pillars of coal undermining, depending on the location in the houses, thereby creating underground voids, is environmentally desirable.

And I lastly submit to you that we are the only State in the country and the only place in the world that will place such adverse requirements upon the mining of coal.

I ask for the defeat of the Steelman amendment.

The SPEAKER. The Chair recognizes Mr. Wozniak.

Mr. WOZNIAK. Thank you, Mr. Speaker.

I rise to oppose the Steelman amendment.

This amendment will literally shut down underground mining in Pennsylvania forever. HB 1828 was worked on for over 4 years by a number of interested parties, both the environmentalists, the industry itself, and other interested people. HB 1828 does address the issue of loss of water, damage to

homes, both pre-1966 and pre-1966. This issue is already addressed in the legislation better than present law is.

We have a crisis in our coalfields now. We are at a competitive disadvantage with the other States. We have thousands of miners out of work, and this General Assembly will not be doing those workers or the industry any favor by saying you will not be able to mine coal in Pennsylvania unless you get permission from every single owner of property on the surface. It is unrealistic to think that that will be accomplished.

I would ask all my colleagues to put up a negative vote for this particular amendment. Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes Mr. Smith.

Mr. S. H. SMITH. Thank you, Mr. Speaker.

Mr. Speaker, it is with a lot of thought and work that I rise reluctantly to oppose the Steelman amendment.

As many of us that are involved in this issue, it is kind of we are all over the board because of the industry having an impact on our districts and our concerns for environmental and structural damage to homes in the countryside.

I believe, Mr. Speaker, that in order to fully grasp this issue, you have to reflect on what the law currently says, and it is inconsistent. Currently the law protects pre-1966 homes for subsidence damage, but it is silent in regards to water and water protection and water replacement.

When you look at what Representative Steelman is proposing in her amendment, on the surface it appears to make sense that we should protect all of these structures under the same mechanism, under the same type of law, and in fact the bill, as it currently reads without the amendment, does just that; it puts everything on an even playing field. However, in order to get to that even playing field, the deep mine mediation project people came to an agreement, and in that agreement the industry is giving up the rebuttable presumption of water loss within a certain field above the area that is being mined. Now, a rebuttable presumption is a situation where—just for clarification to the members—the rebuttable presumption is a situation where, if someone loses their water in that zone above the mining area, the coal operator is presumed to have caused the water loss unless the coal company can prove otherwise. That is a very significant feature.

Again, the current law does not speak to water. This bill as it is currently drafted does. In return for that, in return for the equal protection of water and subsidence damage, the industry needs to be able to mine more of the coal that is under there. Currently Pennsylvania's law—actually it is more a policy or regulation—requires them to leave 50 percent of the coal in the ground. On average for a deep mine, either a longwall mine or a conventional room-and-pillar-type mine, if they were operating with a mine that has about 500 feet in depth, at the current selling price of \$35 a ton, the 50-percent requirement that the Steelman amendment places back into this bill would cost the coal operator, the company, the miners, approximately 26,600 tons, which comes out to around \$931,000 at today's current market price. The key is that in return for equal protection for water and subsidence, the industry needs to be able to mine more of the coal.

It also should be noted that no other jurisdiction in the world other than Pennsylvania requires leaving this much coal in place under these scattered dwellings. And in fact, I think that it is very questionable whether it is good environmental policy to have columns of coal and areas that were mined out around it. That does not provide for any more environmental protection from subsidence or water protection than if they take the coal out and we know what is going to happen immediately or within a short period of time.

The critical thing about this amendment is that while the Steelman amendment attempts to put water and subsidence protection and pre-1966 and post-1966 houses on an equal footing, it continues to limit the industry's ability to mine the coal, and that goes to the property issue. Someone owns that coal, and I believe that they have a right to mine that coal. Someone else also owns the structure and uses the water, and they have a right to compensation and protection for that subsidence damage potentially or that potential water loss. The bill as it currently reads provides that protection and it also allows the industry to mine the coal.

With that in mind, Mr. Speaker, I strongly urge the defeat of the Steelman amendment. Thank you, Mr. Speaker.

THE SPEAKER PRO TEMPORE (JEFFREY W. COY) PRESIDING

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Westmoreland County, Mr. Stairs.

Mr. STAIRS. Thank you, Mr. Speaker.

I rise to oppose this amendment, and I urge my colleagues also to oppose this. The Pennsylvania Farmers' Association, the Grange representing rural interests also oppose this legislation.

Certainly farmers and landowners under this bill as it is presently written receive greater protection than is currently under the present law. So as many people may lead you to believe, there is not a weakening of the current law but actually a strengthening of the current law, and unfortunately, if this amendment is approved, the good faith and the reasoning that has gone into the compromise by the industry and non-industry spokesmen will be to no avail.

Certainly I would urge all the members to vote against this amendment and to vote for the bill on final passage. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Bucks County, Mr. Clymer.

Mr. CLYMER. Thank you, Mr. Speaker.

Mr. Speaker, would Representative Daley stand for a brief interrogation?

The SPEAKER pro tempore. The gentleman would like to interrogate Representative Daley. He is not the maker of the amendment.

Mr. CLYMER. Well, I know that.

The SPEAKER pro tempore. Will the gentleman stand for interrogation? The gentleman indicates that he will. The gentleman, Mr. Clymer, is in order and may proceed.

Mr. CLYMER. Thank you.

Mr. Speaker, who are the major purchasers of the coal that you are concerned about? Who buys much of the coal that we are talking about today? Like U.S. Steel and the utilities, would they be some of the major suppliers that would purchase the coal? Do you think they would be?

Mr. DALEY. Absolutely. Our coal is metallurgical coal. It is used for powerplant generation of power and a number of other reasons.

Mr. CLYMER. Fine. Thank you.

The point is that under those circumstances, that coal could be more expensive if indeed they had to go through all these new environmental standards that are being proposed in this bill, and so the spinoff effect is, those people who buy the coal could ultimately be paying more money, who in turn would have to pass that on to the consumer. That is my point. There is a spinoff effect, in addition to the jobs that conceivably could be lost as well. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Hasay.

Mr. HASAY. Thank you, Mr. Speaker.

Mr. Speaker, I rise in opposition to this amendment.

Presently the Department of Environmental Resources has already declared that over 100,000 acres in this Commonwealth of coal reserve land is now prohibited from being mined. Since 1986 there have been 7,000 mining jobs that have been lost through stricter regulations and stronger policy in the Department of Environmental Resources. Coal reserve production since 1990 has dropped 5 1/2 million tons, so that tells you right there the sluggish economy of the coal production in Pennsylvania, which now ranks fourth in the Nation.

So I am asking you, please look at this amendment for the coal production industry, to consider that. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Allegheny County, Mr. Michlovic.

Mr. MICHLOVIC. Thank you, Mr. Speaker.

Mr. Speaker, the figures you have heard in the loss of coal production in the Commonwealth cannot be attributed entirely to the regulations in Pennsylvania or any such thing. You have got to understand that there has been a major industrial shift in our Commonwealth as well as in the Nation. A lot of the production of the coal was used in the steel industry. With the closedown of much of the steel industry, there has been a backoff of production for the bituminous mining as well.

I think you should also understand that this legislation today, and this amendment in particular, affects only certain regions of the State. The underground mining that goes on today, particularly the longwall mining in the bituminous region, is really confined to the western end of the State, in several counties - Greene County, Washington County, parts

of Fayette County, Indiana County, and Cambria County as well. There may be one or two others in that general region where there is underground mining going on today.

It is very difficult—and put yourself in a position of being a Representative there—it is very difficult having to explain to people whose homes have been damaged severely by an underground mine—there are cracks in the home, cracks in the foundation; there may be crumbling occurring—and to tell their neighbors that some of them are protected; those people are protected whose homes were built prior to 1966, but those people whose homes were built after 1966, their homes are not so protected. Then they ask you, why? Why is this so? Well, it is so because of the laws of Pennsylvania which at one point set up a contract and arrangement between the Commonwealth and the coal industry that those homes would be protected prior to that point, but anything from here on in would not be so protected. It is a little difficult if you are in that position, if you are the Representative there, to explain that to people and to give them any kind of satisfaction that they could get any protection out of Pennsylvania law at all.

I think it is important that we understand the position we are placing our colleagues in from those regions, and for that reason I strongly support the Steelman amendment. I think you really have to be able to protect people in their homes. I think the right to protection of surface rights, particularly in someone's home, is more important than the protection of the mineral rights under it, and for that reason I am going to support the Steelman amendment. I ask everybody else to do so likewise.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Clearfield County, Mr. George.

Mr. GEORGE. Mr. Speaker, I thank you for recognizing me, and I am most certain, with all the noise that prevails, that there will not be many that will listen.

Now, all of those individuals who stood here today and said this is in reality going to stop mining, then I must say to those individuals, why do you not really tell the truth about this matter in that pre-1966 and, as the lady wishes, post-1966 does not in every aspect remove the operator's right to mine and that pre-1966 forces the homeowner to buy that coal.

I would wonder as legislators, when you go back home after your fine tenure, how many of you would sit there where a deep mine would be proposed and do nothing when you know very well that the sanctity and the preservation of your water and your home would not for long be there. No one is trying to hurt the coal industry; not Bud George, I will guarantee you. In fact, some of you might be causing your coal industry and your mining company to go defunct, if in fact they remove or cause a disturbance for an individual that can afford to take the case to court.

Now, what we are doing is that we are merely saying that years ago there was a group of individuals in our seats that said, let us do something that will give the homeowner a right, should he choose, to protect his home. Rather than spend \$10,000 to refurbish or repair, let him spend that \$10,000 to

that coal mining enterprise so they do not lose the benefit of their investment and he can protect his home. Nobody said that. Let us say it, because it is the truth. That is all the lady is asking for - the same thing that you would want as protection to your home. Under the present law, pre-1966 is there. If you do not pass her next amendment, you will even be removing that. Oh, I know with 20 of you who claim you are going to protect the mining industry, there is another industry that you ought to concern yourself about, and that is the people's industry.

I think you ought to vote for this amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Daley, for the second time.

Mr. DALEY. Thank you, Mr. Speaker.

Do not be fooled by all the rhetoric, by all the fiery words, by all the wonderful things that the former speaker has said. Make no doubt about it - this will have an adverse effect on the coal industry. Make no doubt about it - this will be the death knell to the Pennsylvania coal industry in the world market.

I ask for a "no" vote.

The SPEAKER pro tempore. The Chair thanks the gentleman from Washington County and recognizes the gentleman from Jefferson County, Mr. Smith, for the second time.

Mr. S. H. SMITH. Thank you, Mr. Speaker.

Mr. Speaker, I again rise in opposition to this amendment.

I believe, in response to some of the comments made, that we have in place in Pennsylvania something known as the Mine Subsidence Insurance Act, which helps to provide homeowners with protection from the problems they might incur from mine subsidence.

I would also point out briefly that in the mining industry, it is unquestionable that there are changes in the environment due to the impact of the industry itself, but we must have a balance of environmental and economic forces, and the bill as it currently reads, without this amendment, does that. It provides the balance of protection for the homeowner, it provides the balance of protection for the environment of the water, and it allows the industry to compete outside of this Commonwealth and worldwide. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the amendment, the gentlelady from Indiana, for the second time, Ms. Steelman.

Ms. STEELMAN. In response to many of the comments that have been raised about the amendment, I want to clarify that this is not primarily an environmental issue. This is an issue of property rights. This issue speaks to what in the United States Constitution is described as the right of the people to be secure in their homes. In the Constitution, that reference was to the ability of people to be protected from their government, but it also applies to their ability to be protected against other influences that may damage the most important thing that most people own.

What I am asking for in this amendment is not to prevent the coal operators from mining. Despite the fact that some of the people who have stood up have said that this will cause the death of the coal industry, that is not true unless the coal industry desires, of its own free will, to commit suicide, which I do not think is the case. What it is going to require is that the coal operators go to the people whose homes they propose to undermine and explain to them what they are going to do and work out a system by which they can either reduce the damage adequately or compensate them for the damage. It does not seem to me that when you have a company that is coming in and potentially taking away the most important thing in the world that most people own, that it is excessive for the company to get permission from the people whose home is potentially going to be destroyed before they proceed with that destruction.

Now, a couple of people who spoke on the amendment have referred to the negotiating process by which the deep mine bill was developed. The problem is that from the point of view of the homeowner, there was not significant representation at that table for the people whose homes are at risk of being undermined. The situation, if I may draw an analogy, would be a little as if, suppose that you had been in an automobile accident and the other driver responsible suggested a mediation process. When you get to the mediation process, you discover that the other driver and his attorney are going to be there and sitting down at the table, but also invited to sit down at the table representing you are your cousin, Mitchell, and your dentist, and under those circumstances, although these are people who mean well towards you and perhaps have a general knowledge of the issues affecting the situation, they are not going to be the most effective advocates for your position. Under the circumstances, who do you think is going to come out with the better settlement?

Well, that is the way HB 1828 looks at this point. It is a compromise, but it is a compromise in which the positions on the two sides were defined by individuals with different levels of knowledge and commitment to the issues that are addressed in the bill. It is because, I think, the property owners were least represented in those negotiations that I believe it is important that we pass this amendment.

The question has also been raised, why does Pennsylvania need these stringent standards for property protection, and why are we perhaps risking putting ourselves at a competitive disadvantage? The reason that we need the protection is historical. It is because Pennsylvania is one of the few States in which if you buy a piece of property, you do not buy that property all the way to the center of the earth. You buy the surface of the property, and the oil and gas rights to that property may have been sold off separately. The coal rights to that property may have been and in the overwhelming majority of cases in western Pennsylvania have been sold off separately. So there is no way that if you want to live in a rural area in Pennsylvania you have much chance of getting a piece of property that you can protect, that you can actually hold if this bill passes.

If this bill passes without amendment, we are making rural property owners vulnerable to whatever the coal operator believe they need to do in order to mine coal at the absolute cheapest rate. If we are looking at this as an economic issue, if we pass HB 1828 without amendment, we are not going to retain jobs in the coal fields. We are going, at best, to very slightly slow the decrease of jobs, because we will be promoting a type of mining that uses the fewest possible individuals and therefore reducing the number of jobs.

So I am saying, I am quoting actually, what my esteemed colleague from Jefferson County said earlier: "On the surface it seems to make sense." All of us live on the surface; all of our constituents live on the surface, and I am asking you to vote for this amendment and offer those of us who live on the surface in coal country the right to negotiate with the coal operators before our homes are destroyed. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentle-lady.

On the question recurring,
Will the House agree to the amendments?

The following roll call was recorded:

YEAS—45

Anderson	Fairchild	Levdansky	Steelman
Battisto	Fee	Linton	Steighner
Belardi	Freeman	McHale	Surra
Bishop	Gamble	McNally	Tangretti
Blaum	George	Michlovic	Tigue
Bowley	Haluska	Mundy	Van Horn
Caltagirone	Harper	Murphy	Veon
Carone	Hayden	Pesci	Wright, D. R.
Cawley	Josephs	Pistella	
Cowell	Kukovich	Ritter	O'Donnell,
DeWeese	LaGrotta	Saloom	Speaker
Evans	Lawless	Staback	

NAYS—149

Adolph	Donatucci	Kruszewski	Roebuck
Allen	Durham	Langtry	Rudy
Angstadt	Fajt	Laughlin	Ryan
Argall	Fargo	Leh	Saurman
Armstrong	Farmer	Lescovitz	Scheetz
Arnold	Fleagle	Lloyd	Schuler
Barley	Flick	Lucyk	Scrimenti
Belfanti	Foster	McCall	Semmel
Billow	Gallen	McGeehan	Serafini
Birmelin	Gannon	McHugh	Smith, B.
Black	Geist	Maiale	Smith, S. H.
Boyes	Gerlach	Markosek	Snyder, D. W.
Broujos	Gigliotti	Marsico	Snyder, G.
Brown	Gladeck	Mayernik	Stairs
Bunt	Godshall	Melio	Stetler
Bush	Gruitza	Merry	Stish
Butkovitz	Gruppo	Micozzie	Strittmatter
Cappabianca	Hagarty	Mihalich	Stuban
Carlson	Hanna	Nahill	Sturla
Carn	Harley	Nailor	Taylor, E. Z.
Cesar	Hasay	Nickol	Taylor, F.
Chadwick	Hayes	Nyce	Taylor, J.
Civera	Heckler	O'Brien	Telek
Clark	Herman	Olasz	Thomas
Clymer	Hershey	Oliver	Tomlinson
Cohen	Hess	Perzel	Trello
Colaella	Itkin	Petrarca	Trich
Colaizzo	Jadlowiec	Petrone	Tulli
Cole	James	Phillips	Uliana
Cornell	Jarolin	Piccola	Vance

Corrigan	Johnson		Vroon
Coy	Kaiser	Preston	Wambach
DeLuca	Kasunic	Raymond	Williams
Daley	Kenney	Reber	Wilson
Davies	King	Reinard	Wogan
Dempsey	Kosinski	Rieger	Wozniak
Dent	Krebs	Robinson	Wright, M. N.
Dermody			

NOT VOTING—3

Acosta	Hughes	Richardson
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EXCUSED—4

Freind	Lee	Mrkonic	Noye
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The question was determined in the negative, and the amendments were not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Ms. STEELMAN offered the following amendments No. A1743:

Amend Title, page 1, lines 21 through 26, by striking out "providing for the" in line 21, all of lines 22 through 26, and inserting changing the title of the act; further providing for legislative purpose; providing for definitions; further providing for protection of surface structures and for permits and financial security; providing for restoration or replacement of water supplies or structures affected by underground mining; further providing for repair of damage or satisfaction of claims; providing for prevention of safety and property hazards; repealing procedures on protection of surface structures; further providing for penalties; and providing for data compilation and analysis.

Amend Sec. 1 (Title), page 2, line 8, by striking out the bracket before "forbidding"

Amend Sec. 1 (Title), page 2, line 8, by inserting brackets before and after "existing"

Amend Sec. 1 (Title), page 2, line 9, by inserting after "structures"

and features

Amend Sec. 1 (Title), page 2, line 9, by striking out the bracket after "coal;"

Amend Sec. 2 (Sec. 3), page 5, line 19, by inserting after "whereby"

specified classes of

Amend Sec. 2 (Sec. 3), page 5, lines 20 and 21, by inserting a bracket before "erected" in line 20 and after "be" in line 21 and inserting immediately thereafter

are

Amend Bill, page 5, lines 22 through 28, by striking out all of said lines and inserting

Section 3. The act is amended by adding a section to read:

Section 3.1. Definitions.—The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Material damage." Subsidence-caused functional impairment of a structure or feature. The term includes, but is not limited to, subsidence effects which impair the use of a structure or feature or which cause a structure or feature to become structurally unstable. The term denotes a higher degree of impairment than the term "damage."

"Structure." A piece of work or construction artificially built up or composed of parts joined together in some definite manner for occupancy, use or ornamentation. The term includes, but is not limited to, all of the following:

(1) Dwelling and permanently affixed appurtenant structures or improvements.

(2) Noncommercial buildings customarily used by the public. This paragraph includes public buildings and facilities, churches, schools and hospitals.

(3) Commercial buildings.

(4) Agricultural structures.

(5) Cemeteries.

(6) Water towers.

(7) Agricultural drain tile fields.

(8) Septic systems.

Section 4. Sections 4 and 5(a) and (b) of the act, amended October 10, 1980 (P.L. 874, No. 156), are amended to read:

Section 4. Protection of surface structures against damage from cave-in, collapse or subsidence.—In order to guard the health, safety and general welfare of the public, no owner, operator, lessor, lessee, or general manager, superintendent or other person in charge of or having supervision over any bituminous coal mine shall mine bituminous coal so as to cause damage as a result of the caving-in, collapse or subsidence of the following surface structures in place on April 27, 1966, overlying or in the proximity of the mine:

(1) Any public building or any noncommercial structure customarily used by the public, including but not being limited to churches, schools, hospitals, and municipal utilities or municipal public service operations.

(2) Any dwelling used for human habitation[; and].

(3) Any cemetery or public burial ground[;] unless the current owner of the structure consents and the resulting damage is fully repaired or compensated.

(4) Any impoundment with a storage capacity of twenty acre-feet or more and any body of water with a volume of twenty acre-feet or more.

(5) Any body of water that serves as a significant source for a public water supply system.

(6) Any aquifer that serves as a significant source for a public water supply system.

(7) Any coal refuse pile with an underdrain system.

Section 5. Permit; application; map or plan; bond or other security; filing; general rulemaking authority; prevention of damage; mine stability; maintenance of use and value of lands.—

(a) Before any bituminous coal mine subject to the provisions of this act is opened, reopened, or continued in operation, the owner, operator, lessor, lessee, general manager, superintendent or other person in charge of or having supervision over such mine or mining operation shall apply to the Department of Environmental Resources, on a form prepared and furnished by the department, for a permit for each separate bituminous coal mine or mining operation. As a part of such application for a permit the applicant shall furnish, in duplicate, a map or plan of a scale and in a manner in accordance with rules and regulations of the Department of Environmental Resources showing the location of the mine or mining operation, the extent to which mining operations presently have been completed, and the extent to which mining operations will be conducted under the permit being requested. Such map or plan shall show the boundaries of the area of surface land overlying the mine or mining operation[;] the location [and/or designation] of all [structures in place on the effective date of this act] buildings, cemeteries and coal refuse piles which overlie the proposed mine or mining operation; the location of all utility lines, including, but not limited to, electric, gas, water and sewer lines, which overlie the proposed mine or mining operation[;] the name of the record owner or owners of said surface structures[;] the identification of all structures and features identified in section 4; the location of all bodies of water, rivers and streams, roads and railroads[;] the outlines of aquifers that serve as significant sources for public water supplies; and the political subdivision and county in which said structures and fea-

tures are located. Such map or plan shall include, in addition to the information specified above, such information on the character of the mining operation, overburden, rock strata, proximity of and conditions in overlying or underlying coal seams and other geological conditions as the department, by rules and regulations, shall direct. The department shall have the power to require the updating of such maps from time to time as it shall prescribe by rule and regulation. The map or plan must set forth a detailed description of the manner, if any, by which the applicant proposes to support the surface structures overlying the bituminous mine or mining operation. Upon receipt of such application in proper form the department shall cause a permit to be issued or reissued if, in its opinion, the application discloses that sufficient support will be provided for the protected structures and that the operation will comply with the provisions of this act and the rules and regulations issued thereunder. All permits issued under this act shall contain such terms and shall be issued for such duration as the department may prescribe.

Amend Sec. 4 (Sec. 5), page 6, line 2, by striking out the brackets before "in" and after "4" and inserting immediately thereafter

this section and section 6

Amend Sec. 5 (Sec. 5.5), page 15, line 16, by inserting after "structure"

, nor shall the building owner receive less than the documented costs of repair

Amend Sec. 5 (Sec. 5.6), page 16, lines 22 and 23, by striking out "at any time after the effective date of this section"

Amend Sec. 5 (Sec. 5.6), page 16, line 23, by inserting after "agreement"

after damage has occurred,

Amend Sec. 5 (Sec. 5.6), page 16, line 30; page 17, lines 1 through 3, by striking out "Any" in line 30, page 16; and all of lines 1 through 3, page 17

Amend Sec. 7 (Sec. 9.1), page 25, lines 22 through 30; page 26, lines 1 through 8, by striking out all of said lines on said pages

On the question,

Will the House agree to the amendments?

The SPEAKER pro tempore. On the amendment, the Chair recognizes the gentlelady, Ms. Steelman.

Ms. STEELMAN. Thank you, Mr. Speaker.

This amendment is a modified version of the first amendment; that instead of extending protection to post-1966 homes, retains it for those homes built before 1966. Essentially, it grandfathers the right of people living in pre-1966 homes to retain some control over coal operations under their property by insisting that the coal operators need to get permission before they can mine under pre-1966 homes, which, of course, are becoming a smaller and smaller percentage of rural residences and which in many cases were purchased by people who were under the impression that they did have some protection against coal operations.

So I am asking you to support this amendment and maintain that protection at least for the people who have been historically protected by the law.

The SPEAKER pro tempore. The Chair thanks the gentlelady and recognizes the gentleman from Washington County, Mr. Daley.

Mr. DALEY. Thank you, Mr. Speaker.

I ask for a "no" vote.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Jefferson County, Mr. Smith.

Mr. SMITH. Thank you, Mr. Speaker.

I also ask for a "no" vote. This amendment is very similar to the one we just defeated, and I believe we should defeat also. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Cambridge County, Mr. Wozniak.

Mr. WOZNIAK. In keeping with my other two colleagues a very similar amendment, very similar arguments - I ask for negative vote.

On the question recurring,
Will the House agree to the amendments?

The following roll call was recorded:

YEAS—42

Battisto	Fairchild	Linton	Staback
Belardi	Fee	Lloyd	Steelman
Billow	Freeman	McHale	Steighner
Bishop	George	McNally	Surra
Blaum	Hajuska	Michlovic	Tangretti
Bowley	Hanna	Mundy	Tigue
Caltagirone	Harper	Murphy	Veon
Carone	Hayden	Ritter	Wright, D. R.
Cawley	Josephs	Saloom	O'Donnell, Speaker
Cowell	Kukovich	Scrimenti	
DeWeese	Levdansky		

NAYS—154

Adolph	Durham	LaGrotta	Robinson
Allen	Evans	Langtry	Roebuck
Anderson	Fajt	Laughlin	Rudy
Angstadt	Fargo	Lawless	Ryan
Argall	Farmer	Leh	Saurman
Armstrong	Fleagle	Lescovitz	Scheetz
Arnold	Flick	Lucy	Schuler
Barley	Foster	McCall	Semmel
Belfanti	Galka	McGeehan	Serafini
Birmelin	Gamble	McHugh	Smith, B.
Black	Gannon	Maiale	Smith, S. H.
Boyes	Geist	Markosek	Snyder, D. W.
Broujos	Gerlach	Marsico	Snyder, G.
Brown	Gigliotti	Mayernik	Stairs
Bunt	Gladeck	Melio	Stetler
Bush	Godshall	Merry	Stish
Butkovitz	Gruitza	Micozzie	Strittmatter
Cappabianca	Gruppo	Mihalich	Struban
Carlson	Hagarty	Nahill	Sturla
Carn	Harley	Nailor	Taylor, E. Z.
Cessar	Hasay	Nickol	Taylor, F.
Chadwick	Hayes	Nyce	Taylor, J.
Civera	Heckler	O'Brien	Telek
Clark	Herman	Olasz	Thomas
Clymer	Hershey	Oliver	Tomlinson
Cohen	Hess	Perzel	Trello
Colafella	Hughes	Petrarca	Trich
Colaizzo	Itkin	Petrone	Tulli
Cole	Jadlowiec	Phillips	Uliana
Cornell	James	Piccola	Van Horne
Corrigan	Jarolin	Pistella	Vance
Coy	Johnson	Pitts	Vroon
DeLuca	Kaiser	Preston	Wambach
Daley	Kasunic	Raymond	Williams
Davies	Kenney	Reber	Wilson
Dempsy	King	Reinard	Wogan
Dent	Kosinski	Richardson	Wozniak
Dermody	Krebs	Rieger	Wright, M. N.
Donatucci	Kruszewski		

NOT VOT. J-1

Acosta

EXCUSED—4

Freind Lee Mrkonic Noye

The question was determined in the negative, and the amendments were not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Ms. STEELMAN offered the following amendments No. A1744:

Amend Sec. 5 (Sec. 5.5), page 15, line 16, by inserting after "structure"

, nor shall the building owner receive less than the documented costs of repair

Amend Sec. 5 (Sec. 5.6), page 16, lines 22 and 23, by striking out "at any time after the effective date of this section"

Amend Sec. 5 (Sec. 5.6), page 16, line 23, by inserting after "agreement"

after damage has occurred,

Amend Sec. 5 (Sec. 5.6), page 16, line 30; page 17, lines 1 through 3, by striking out "Any" in line 30, page 16; and all of lines 1 through 3, page 17

On the question,

Will the House agree to the amendments?

The SPEAKER pro tempore. On the amendment, the gentlelady from Indiana County, Ms. Steelman.

Ms. STEELMAN. Thank you, Mr. Speaker.

This amendment simply makes it an explicit part of HB 1828 that the coal operators must completely pay the costs of repair on a structure that they damage, and the rationale behind this is that in some circumstances there exists the potential for abuse in that the operators may be in a situation where, of course, it is profitable for them to go in and try and beat the homeowner, who is already in a distressed condition owing to the devastation of his home, down to the lowest possible dollar figure that he can possibly be induced to accept. The rationale behind this amendment is to prevent the operators from doing that but requiring at least that when they cause damage—and under the circumstances in which this bill is apparently going to become law, there will be massive damage to homes—that that damage at least is compensated for in terms of the costs of repair. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentlelady and recognizes the gentleman from Washington County, Mr. Daley.

Mr. DALEY. Will the maker of the amendment stand for a brief interrogation?

The SPEAKER pro tempore. The gentlelady indicates that she will. The gentleman from Washington County is in order and may proceed.

Mr. DALEY. Mr. Speaker, could you answer a couple questions.

First of all, it appears to me that you are taking out of the language of the present law or out of this bill at least the homeowner's option, that option being that if he goes in and

presently has an agreement with the coal operator, he is provided compensation prior to the mining. Am I correct?

Ms. STEELMAN. Yes.

Mr. DALEY. And what you are simply doing, you are taking that option away; he will no longer be able to get that compensation prior to that mining operation.

Ms. STEELMAN. That is right.

Mr. DALEY. Then could you tell all of us, what advantage would this be to the homeowner?

Ms. STEELMAN. The advantage to the homeowner is that when he accepts a certain amount of compensation from the coal company, he or she will know that that compensation is in fact adequate to cover the cost of repairs on the home. I want to avoid the situation in which, for one reason or another, the homeowner makes a premining agreement and then discovers to his horror, after the mining operation has concluded, that in fact the cost of repairs is 5 times or 10 times the amount of compensation that he has actually received, but because he has signed a quitclaim, there is no way that he can come back for further damages.

Now, the rationale for specifically saying that after the damage has occurred the homeowner and the mine operator could negotiate as to the amount of compensation is so that both of them are negotiating from a position in which they know what the actual costs are, and if under those circumstances the homeowner wants to accept less than the actual costs, that would be an available alternative.

Mr. DALEY. Let me address the 35-year language that you are taking out. Just for the members, for all of our understanding, let me provide a hypothetical and you correct me as I go.

For an example, let us say Mr. Michlovic signs an agreement with the Steelman coal company in 1950. He has that protection from 1950 to 1985. Am I correct?

Ms. STEELMAN. Yes.

Mr. DALEY. And what happens then if Mr. Michlovic sells that property to Mr. Hanna? My understanding of what you are trying to do here is, Mr. Hanna now no longer has the protection that was given to Mr. Michlovic because you have taken the language out of this bill.

Ms. STEELMAN. No. My understanding is that the protection would not be voided by the sale.

Mr. DALEY. Well, my understanding, Mr. Speaker, is that it would and Mr. Hanna would not have the protection.

I have concluded all my questions, Mr. Speaker, and I wish to make a comment.

The SPEAKER pro tempore. The gentleman is in order and may proceed.

Mr. DALEY. Thank you, Mr. Speaker.

The language that is being deleted by this amendment was the language that was inserted by the nonindustry participants at the meetings that created this legislation. I ask for a "no" vote.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Jefferson County, Mr. Smith.

Mr. S. H. SMITH. Thank you, Mr. Speaker.

I also rise in opposition to this amendment. I urge a "no" vote.

I believe that this amendment will actually hurt the property owner. I believe that the ability to come to an agreement with the coal company is something that should remain between those two entities, and I would urge a "no" vote on the amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Cambria County, Mr. Haluska.

Mr. HALUSKA. Mr. Speaker, I rise to support this amendment.

I have had considerable experience with constituents in my area who have tried to get settlements with the coal companies on their properties that have been destroyed practically. Some of the people, one person in particular, a widow, had to be moved out of her house for approximately a year to have the foundation restored, but there are other costs that are never considered in these settlements, such as driveways, sidewalks, and shrubbery. I think this should become a part of the reimbursement, because these are added costs that the person suffers when they have destruction cave-ins of the property, and it is only fair that the constituents be reimbursed for all the costs that they have incurred in maintaining their properties over the years.

I think it is only fair; it is just, and I think we should have a positive reaction to this and we should vote "yes" on this amendment. If you lived in these homes and you had this occur to your property, I am sure you would want reimbursed for all the additional costs, not only the property itself but all the work that you had done with the sidewalks, the driveways, and the shrubbery that it costs money to replace, and under the current settlements, these factors are not considered, and I think that they should be.

I ask for an affirmative vote. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Cambria County, Mr. Wozniak.

Mr. WOZNIAK. Thank you, Mr. Speaker.

On page 16, subchapter (f) addresses that: "If the mine operator shall fail to repair or compensate for subsidence damage within six months or such longer period as the department has established, or shall fail to perfect an appeal of the department's order directing such repair or compensation, the department"—which means DER (Department of Environmental Resources), our friend and yours—"shall issue such orders and take such actions as are necessary to compel compliance with the requirements..., including, but not limited to, cessation orders and permit revocation."

I think that is enough of a hammer for the actors involved to take care of the problems on the surface.

Thank you, Mr. Speaker. I urge a negative vote.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Allegheny County, Mr. Michlovic.

Mr. MICHLOVIC. Thank you, Mr. Speaker.

Mr. Speaker, the removal of the 35-year language that gentleman from Washington County referred to simply extends the liability on forever. Right now that 35-year language defines a 35-year liability. By removing the 35-year language, that liability continues on ad infinitum for any damages. There is no reason to put a 35-year limit in the language.

Amendment 1744 is a very important amendment. Let us not be cruel in our attempt to generate this legislation. If we take a look at the language of the bill, immediately preceding what the amendment is going to give, we give protection to the coal companies. We say, "In no event shall the mine operator be liable for repairs or compensation in an amount exceeding the cost of replacement of the damaged structure." The Steelman amendment simply provides an equal kind of protection for the homeowner whose home has been damaged. It says, "nor shall the building owner receive less than the documented costs of repair."

If you do not pass the Steelman amendment and you leave the bill as it is, you protect the coal operator, all right; you do not do anything for homeowners. You show, obviously, where your prejudice is, and I think that this amendment is simply an amendment of balance, an amendment for fairness. Give the homeowner the same break that you are giving to the coal operator here. Allow the homeowner to receive and be fully compensated for their loss.

For that reason I ask you, in the sake of balance, to support the Steelman amendment. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Jefferson County, Mr. Smith, for the second time.

Mr. S. H. SMITH. Thank you, Mr. Speaker.

Again I rise in opposition to this amendment. I believe, as I said before, that this amendment will hurt the homeowners. I believe it will also cause an increase. There will be a cost attached to this amendment, and that will show up in terms of an increase in the price of the mine subsidence insurance that already is available to help these people protect the value of their homes.

Again I urge a "no" vote on the amendment. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the amendment, the gentlelady from Indiana, for the second time, Ms. Steelman.

Ms. STEELMAN. Thank you, Mr. Speaker.

This amendment, as Representative Michlovic pointed out, simply extends the same equity to the homeowners that is already extended in the bill to the coal operators; that is, they should pay for the cost of repair when they have created the damage.

Why does the section on page 16 not fully address this issue? Because in the first place, it does not specify what repair or compensation means. It just says, "...shall fail to repair or compensate for subsidence damage,..." which

potentially would seem to me that the coal operator could offer compensation in the sum of \$5,000 to make up to the homeowner for 50,000 dollars' worth of damage and still fulfill that provision. Compensation has been offered. Alternatively, the coal operator needs only to perfect an appeal from the process in order to extend the period of determination of costs and keep the homeowner, who has no place to live and no prospect of getting immediate recovery, from being able to bring anything home to the coal operator.

Therefore, I do not think that this section solves the problem that my amendment attempts to solve, and I ask you in the interest of simply enabling the people whose homes have been damaged or destroyed to at least receive the cost of repairing those homes. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the amendments?

The following roll call was recorded:

YEAS—69

Argall	Dent	Lucyk	Staback
Arnold	Dermody	McCall	Steelman
Battisto	Evans	McHale	Steighner
Belardi	Fee	McNally	Stetler
Belfanti	Freeman	Melio	Sturla
Billow	George	Michlovic	Surra
Bishop	Haluska	Mihalich	Tangretti
Blaum	Hanna	Mundy	Tigue
Bowley	Harley	Murphy	Trello
Bunt	Harper	Pesci	Trich
Caltagirone	Hayden	Petrarca	Van Horne
Cappabianca	Hughes	Pistella	Yeon
Carn	Josephs	Richardson	Wambach
Carone	Krebs	Ritter	Wright, D. R.
Cawley	Kukovich	Robinson	
Cohen	Levdansky	Saloom	O'Donnell,
Cowell	Linton	Scrimenti	Speaker
DeWeese	Lloyd	Snyder, D. W.	

NAYS—127

Adolph	Fajt	Kosinski	Rieger
Allen	Fargo	Kruszewski	Roebuck
Anderson	Farmer	LaGrotta	Rudy
Angstadt	Fleagle	Langtry	Ryan
Armstrong	Flick	Laughlin	Saurman
Barley	Foster	Lawless	Scheetz
Birmelin	Gallen	Leh	Schuler
Black	Gamble	Lescovitz	Semmel
Boyes	Gannon	McGeehan	Serafini
Broujos	Geist	McHugh	Smith, B.
Brown	Gertlach	Maiale	Smith, S. H.
Bush	Gigliotti	Markosek	Snyder, G.
Butkovitz	Gladeck	Marsico	Snyder, G.
Carlson	Godshall	Mayernik	Stairs
Cessar	Gruitza	Merry	Stish
Chadwick	Gruppo	Micozzie	Strittmatter
Civera	Hagarty	Nahill	Stuban
Clark	Hasay	Nailor	Taylor, E. Z.
Clymer	Hayes	Nickol	Taylor, F.
Colaifella	Heckler	Nyce	Taylor, J.
Colaizzo	Herman	O'Brien	Telek
Cole	Hershey	Olasz	Thomas
Cornell	Hess	Oliver	Tomlinson
Corrigan	Itkin	Perzel	Tulli
Coy	Jadlowiec	Petrone	Uliana
DeLuca	James	Phillips	Vance
Daley	Jarolin	Piccola	Vroon
Davies	Johnson	Pitts	Williams
			Wilson

Dempsey	Kaiser	Preston	Wogan
Donatucci	Kasunic	Raymond	Wozniak
Durham	Kenney	Reber	Wright, M. N.
Fairchild	King	Reinard	

NOT VOTING—1

Acosta

EXCUSED—4

Freind	Lee	Mrkonic	Noye
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The question was determined in the negative, and the amendments were not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Ms. STEELMAN offered the following amendment No. A1742:

Amend Sec. 5 (Sec. 5.1), page 6, lines 11 through 13, by striking out all of said lines and inserting
that adequately duplicates in quantity and quality the premining supply.

On the question,

Will the House agree to the amendment?

The SPEAKER pro tempore. On the amendment, the gentlemanly from Indiana County.

Ms. STEELMAN. Thank you, Mr. Speaker.

Well, now we get off property rights, which we have so signally failed to protect, and on to water rights.

This amendment simply requires that the replacement supply, in case water supplies are disrupted, "...adequately duplicates in quantity and quality the premining supply."

Those of us who have experience in coal country know that although this represents a problem sometimes for the coal operators because coal mining does tend to have a degrading effect on water supplies, nevertheless, we are looking at a situation here where there is the potential for destroying not only a resource that is critically important to the homeowner but that is important to future generations of Pennsylvanians as well. I think that we need to look to offering all the protection that we can for the water supplies that in some sense are the property and the responsibility of all the residents of the Commonwealth. Thank you.

The SPEAKER pro tempore. The gentleman from Washington County, Mr. Daley.

Mr. DALEY. Thank you, Mr. Speaker.

I ask for a "no" vote on this amendment.

Ms. Steelman would like us to duplicate the quality and quantity of a premining water supply. That is like a fingerprint. I do not think you can actually duplicate anything in this world.

The language in this bill is adequate. It was proposed by the Pennsylvania Conservancy, the Farmers' Association, the Grange, the Environmental Council, and the mining professionals in the Greene County Rural Development Committee.

I ask for a "no" vote.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Jefferson County, Mr. Smith.

Mr. S. H. SMITH. Thank you, Mr. Speaker.

I also ask for a "no" vote.

As the gentleman, Mr. Daley, indicated, "duplicate" does indicate something like a fingerprint. It is very hard to say what that means.

I would also add that I do not believe that there is anyone in the industry or in the regulatory agency, DER, who believes otherwise. What they want to do is put that water back to the people like it was before, but to say that it must be duplicated is confusing and could complicate the process and be more costly in the long run.

I urge a "no" vote. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Cambria, Mr. Wozniak.

Mr. WOZNIAK. Thank you, Mr. Speaker.

I think the question here that needs to be addressed is, will HB 1828 make the property owner whole? I think the present language saying "...in quantity and quality..." an adequate amount of water, is making that individual whole. When we use the term "duplicate," once again, we are using an intangible term that might be very difficult to duplicate in real world processes.

Under policy, DER now demands for surface mine operators that they give back equal amounts of water in quality and quantity for those that have lost their water in surface mine operations, and there is no reason to believe that the policy would be in any way altered when HB 1828 is empowered into law. HB 1828 takes care of the most complex issue, and for the first time, the Commonwealth of Pennsylvania is going to address the loss of water to her citizens from mining operations.

I ask for a negative vote on this amendment. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Elk County, Mr. Surra.

Mr. SURRA. Thank you, Mr. Speaker.

Mr. Speaker, would Mr. Daley please stand for a brief interrogation?

The SPEAKER pro tempore. The gentleman, Mr. Daley, indicates that he will. The gentleman, Mr. Surra, is in order and may proceed.

Mr. SURRA. Mr. Speaker, under HB 1828, a household which is out in a very rural area that is a considerable distance from any public water supply and their water is ruined, would adequate water, under this bill, be like bringing in a water buffalo? Is that considered a replacement water supply?

Mr. DALEY. I would think, after reading the language of section 5—and of course, I am not the writer of this bill nor the sponsor of this amendment—it says that when an underground mining operation affects a public or private water supply by contamination, and so forth, the "...quantity and quality the premining uses of..." prior to, and I do not think that would be necessarily premining quality and quantity.

Mr. SURRA. Thank you, Mr. Speaker.

Mr. Speaker, may I comment on the amendment?

The SPEAKER pro tempore. The gentleman is in order may proceed.

Mr. SURRA. Mr. Speaker, oftentimes the deep mining surface mining areas are very rural places and places where it is difficult, if not impossible, to come up with a public water supply, and because of the degradation to the ground water in the area, it is difficult, if not impossible, to drill an existing well. To simply replace someone's water supply with a water buffalo or a water tank is not acceptable to a homeowner, and I think in light of the way we disregard the homeowner in other amendments, I rise in support of the Steelman amendment. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Washington County, Mr. Daley, for the second time.

Mr. DALEY. The last speaker, I did find in the language of the bill— If I could get his attention for a second.

The SPEAKER pro tempore. Will the gentleman suspend. The gentleman, Mr. Daley.

Mr. DALEY. Thank you, Mr. Speaker.

The gentleman may want to reconsider asking for an affirmative vote, because the language of the legislation specifically addresses his issue. It says on page 11, "For purpose of this section, a permanent alternate source shall include an well, spring, municipal water supply system or other supply approved by the department...." I am quite sure that a water buffalo is not approved by the department as a water supply only in emergency situations, on a temporary basis.

So I think that might answer your question, sir.

Mr. SURRA. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the amendment, is the gentlelady seeking recognition? For the second time, Ms. Steelman.

Ms. STEELMAN. Thank you, Mr. Speaker.

I think that the gentlemen who rose to oppose the amendment are stating it in stronger terms than the actual language. It is important to consider the effect of the adverb "adequately" in relation to the verb "duplicates." What this amendment asks for is not for an identical water supply. It is asking for a water supply that serves essentially the same purposes and has the same quality that the original water supply did. One of the reasons that I believe that this is important is because in the coal country it is not uncommon to see people who are in theory covered under the Surface Mining Act but who are experiencing severe difficulties in getting restoration of their water supply.

Just this past week a constituent came into my district office whose well was destroyed by surface mining in the near area. Now, DER has already ruled and the mine owner has accepted the proposition that the destruction of the water supply was the responsibility of the mine owner. The original well was reasonable quality drinking water that flowed at 6 gallons a minute. At present, after the drilling of a new well,

the establishment of a treatment system and a reverse osmosis system on the new well, the homeowner, his wife, their two children, and their cat and dog are getting along on 2 1/2 gallons of potable water a day. That is not an adequate duplication of their previous water supply, and yet this is the protection that they are afforded by the surface mining law.

I think it is very important that we address this issue as we consider preserving water supplies for people who live in deep-mined areas, and I hope that you will accept the amendment. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentlemanly.

LEAVE OF ABSENCE CANCELED

The SPEAKER pro tempore. Without objection, the gentleman, Mr. Lee, will be added to the master roll.

The clerk will add the gentleman, Mr. Lee, to the master roll. A technical problem; that is all.

CONSIDERATION OF HB 1828 CONTINUED

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—65

Acosta	Freeman	Linton	Saloom
Belardi	George	Lloyd	Scrimenti
Belfanti	Godshall	McHale	Staback
Billow	Haluska	McNally	Steelman
Bishop	Hanna	Melio	Steighner
Blaum	Harley	Michlovic	Stetler
Bowley	Harper	Mihalich	Sturla
Bunt	Hayden	Mundy	Surra
Caltagirone	Hughes	Murphy	Tangretti
Cappabianca	Jarolin	Nailor	Tigue
Carone	Josephs	Pesci	Trich
Cawley	King	Petrarca	Veon
Cohen	Krebs	Pistella	Wright, D. R.
Cowell	Kruszewski	Richardson	
DeWeese	Kukovich	Ritter	O'Donnell,
Fairchild	Lawless	Robinson	Speaker
Fee	Levdansky	Rudy	

NAYS—133

Adolph	Dermody	Kosinski	Roebuck
Allen	Donarucci	LaGrotta	Ryan
Anderson	Durham	Langtry	Saurman
Angstadt	Evans	Laughlin	Scheetz
Argall	Fajt	Lee	Schuler
Armstrong	Fargo	Leh	Semmel
Arnold	Farmer	Lescovitz	Serafini
Barley	Fleagle	Lucyk	Smith, B.
Battisto	Flick	McCall	Smith, S. H.
Birmelin	Foster	McGeehan	Snyder, D. W.
Black	Gallen	McHugh	Snyder, G.
Boyes	Gamble	Maiale	Stairs
Broujos	Gannon	Markosek	Stish
Brown	Geist	Marsico	Strittmatter
Bush	Gerlach	Mayermik	Suban
Butkovitz	Gigliotti	Merry	Taylor, E. Z.
Carlson	Gladeck	Micozzie	Taylor, F.
Carn	Gruitza	Nahill	Taylor, J.
Cessar	Gruppo	Nickol	Telek
Chadwick	Hagarty	Nyce	Thomas
Civera	Hasay	O'Brien	Tomlinson
Clark	Hayes	Olasz	Trello

Clymer	...eckler	Oliver	Tulli
Colaifella	Herman	Perzel	Uliana
Colaizzo	Hershey	Petrone	Van Horne
Cole	Hess	Phillips	Vance
Cornell	Irkin	Piccola	Vroon
Corrigan	Jadlowiec	Pitts	Wambach
Coy	James	Preston	Williams
DeLuca	Johnson	Raymond	Wilson
Daley	Kaiser	Reber	Wogan
Davies	Kasunic	Reinard	Wozniak
Dempsey	Kenney	Rieger	Wright, M. N.
Dent			

NOT VOTING—0

EXCUSED—3

Freind Mrkonic Noye

The question was determined in the negative, and the amendment was not agreed to.

ANNOUNCEMENT BY MR. HAYES

The SPEAKER pro tempore. For what purpose does the gentleman, Mr. Hayes, rise?

Mr. HAYES. Mr. Speaker, if I could, I would like to interrupt this very important debate for a second.

You just mentioned that we were having a technical problem over here with that roll-call machine. Well, the gentleman, Mr. Lee, has been having a technical problem for about the last, what was it, Ken, 25 hours or something like that? Or should we more properly say his wife was having a technical problem. A new baby girl, Kelsey Elizabeth Lee, 9 pounds 9 ounces.

Mr. Speaker, as you can tell from the weight - 9 pounds 9 ounces - everyone can appreciate the technical problem.

The SPEAKER pro tempore. And as well as the degree thereof.

CONSIDERATION OF HB 1828 CONTINUED

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. MICHLOVIC offered the following amendments No. A2218:

Amend Bill, page 5, by inserting between lines 21 and 22 Section 3. The act is amended by adding a section to read:

Section 3.1. Definitions.—The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Replacement." The actions taken to provide a permanent alternative water supply of equal or better quality and quantity and equal or greater ease of procurement to surface owners whose water supply has been contaminated, diminished or disrupted.

"Restoration." The actions taken to return a water supply to the quality, quantity and ease of procurement associated with that water supply prior to its contamination, diminution or disruption.

Amend Sec. 3, page 5, line 22, by striking out "3" and inserting

Amend Sec. 4, page 5, 23, by striking out "4" and inserting

5

Amend Sec. 4 (Sec. 5), page 5, line 30, by inserting a bracket before "section"

Amend Sec. 4 (Sec. 5), page 5, line 30, by striking out the bracket before "6(b)"

Amend Sec. 4 (Sec. 5), page 5, line 30, by striking out "6(a)" and inserting

sections 5.1(b) and 6(a)

Amend Sec. 5, page 6, line 4, by striking out "5" and inserting

6

Amend Sec. 5, page 6, by inserting between lines 4 and 5

Section 5.1. Permit Application Information.—(a) All applications for underground mining operations submitted pursuant to the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," and this act shall include a water supply impact study conducted by an independent agency, approved by the department, which shall identify the extent to which the proposed underground mining activities may result in contamination, diminution or interruption of a water supply within or adjacent to the proposed permit area. If this study finds that the proposed underground mining activity may cause contamination, diminution or interruption of a water supply, the department shall require the independent agency to develop plans to restore or replace the water supplies in question. The plans shall include a financial estimate for their implementation. Copies of the results of this study shall be sent to all affected property owners, the department and the operator.

(b) A new, revised or renewed permit to conduct the proposed underground mining activities shall not be issued by the department until the operator has filed with the department a bond payable to, and approved by, the department. This bond shall be in the amount of 125% of the estimate for the implementation of the plan as provided for in subsection (a) or 100% of the estimates for the implementation of the plan as provided for in subsection (a) if the operator commits to periodically monitoring groundwater levels and quality and reporting the results of the monitoring to the department. The reports will include measurements from a sufficient number of wells and chemical analyses of water from aquifers and hydrologic testing, including, but not limited to, drilling, infiltration tests, aquifer tests and chemical and mineralogical analyses. This bond may consist of either a collateral or surety bond or a combination thereof. The operator of an underground mining activity may apply for release of the bond required by this subsection no sooner than three years after cessation of mining activities within the permitted area if all other requirements of this act and "The Clean Streams Law" are satisfied.

Amend Sec. 5 (Sec. 5.1), page 6, line 5, by striking out "5.1" and inserting

5.2

Amend Sec. 5 (Sec. 5.1), page 6, line 12, by striking out "uses of the"

Amend Sec. 5 (Sec. 5.1), page 6, lines 14 through 19, by striking out "A restored or replacement water supply shall be deemed" in line 14, all of lines 15 through 18 and "did not meet such standards." in line 19

Amend Sec. 5 (Sec. 5.2), page 7, line 11, by striking out "5.2" and inserting

5.3

Amend Sec. 5 (Sec. 5.2), page 8, lines 23 through 25, by striking out "that is within an area above the mine determined" in line 23, all of line 24 and "the outside of any coal removal area." in line 25 and inserting

as determined by the water supply impact study required by section 5.1(a).

Amend Sec. 5 (Sec. 5.2), page 8, line 28, by inserting after "premining"

water impact studies

Amend Sec. 5 (Sec. 5.2), page 9, lines 1 and 2, by striking out "5.1, 5.2 and 5.3" and inserting

5.2, 5.3 and 5.4

Amend Sec. 5 (Sec. 5.2), page 9, line 14, by striking out "5.2 and 5.3" and inserting

5.2, 5.3 and 5.4

Amend Sec. 5 (Sec. 5.2), page 9, line 30; page 10, lines through 5, by striking out "Any mine operator who obtains water samples in a" in line 30, page 9, all of lines 1 through 4 and "within thirty days of their receipt." in line 5, page 10

Amend Sec. 5 (Sec. 5.2), page 10, line 10, by striking out "reestablished" and inserting

replaced

Amend Sec. 5 (Sec. 5.2), page 10, line 25, by striking out "5.1, 5.2 and 5.3" and inserting

5.2, 5.3 and 5.4

Amend Sec. 5 (Sec. 5.2), page 11, line 7, by striking out "adequate" and inserting

equal to or better

Amend Sec. 5 (Sec. 5.2), page 11, line 7, by striking out "of reasonable" and inserting

at no additional

Amend Sec. 5 (Sec. 5.2), page 11, lines 9 through 15, by striking out all of lines 9 through 14 and "(j)" in line 15 and inserting

(i)

Amend Sec. 5 (Sec. 5.3), page 11, line 20, by striking out "5.3" and inserting

5.4

Amend Sec. 5 (Sec. 5.4), page 12, line 25, by striking out "5.4" and inserting

5.5

Amend Sec. 5 (Sec. 5.4), page 14, lines 9 and 10, by striking out "5.4, 5.5 and 5.6" and inserting

5.5, 5.6 and 5.7

Amend Sec. 5 (Sec. 5.5), page 14, line 13, by striking out "5.5" and inserting

5.6

Amend Sec. 5 (Sec. 5.5), page 14, line 16, by striking out "5.4(a)" and inserting

5.5(a)

Amend Sec. 5 (Sec. 5.5), page 14, line 23, by striking out "5.4(a)" and inserting

5.5(a)

Amend Sec. 5 (Sec. 5.5), page 15, line 23, by striking out "sections 5.4 or 5.5" and inserting

section 5.5 or 5.6

Amend Sec. 5 (Sec. 5.6), page 16, line 19, by striking out "5.6" and inserting

5.7

Amend Sec. 5 (Sec. 5.6), page 17, line 8, by striking out "5.5" and inserting

5.6

Amend Sec. 5 (Sec. 5.6), page 17, line 10, by striking out "5.4(a)" and inserting

5.5(a)

Amend Sec. 6, page 17, line 24, by striking out "6" and inserting

7

Amend Sec. 6 (Sec. 6), page 18, line 22, by inserting after "5,"

5.1(b),

Amend Sec. 7, page 25, line 3, by striking out "7" and inserting

8

Amend Sec. 7 (Sec. 9.1) age 25, line 16, by striking out "5.4(a)(3)" and inserting 5.5(a)(3)

Amend Sec. 8, page 26, line 9, by striking out "8" and inserting

9

Amend Sec. 9, page 26, line 10, by striking out "9" and inserting

10

Amend Sec. 10, page 26, line 25, by striking out "10" and inserting

11

Amend Sec. 11, page 27, line 16, by striking out "11" and inserting

12

On the question,

Will the House agree to the amendments?

The SPEAKER pro tempore. On the amendment, the gentleman Mr. Michlovic.

Mr. MICHLOVIC. Thank you, Mr. Speaker.

Mr. Speaker, my amendment essentially does two things: One, it defines the words "replacement" and "restoration" within the context of water supplies and places them into the act; and secondly and perhaps more importantly, it establishes the kinds of protections that we already have under the Surface Mining Act and establishes those kinds of protections for water loss for underground mining.

Essentially what the amendment does is it requires that in any permitting process there shall be a water supply impact study that is conducted by an independent agency which is approved by DER and that impact study will identify the extent to which the proposed underground mining activity may result in the contamination, diminution, or interruption of a water supply.

Mr. Speaker, I offer this amendment in the hopes that we could finally bring to a close a sorely needed reform in our Bituminous Mine Act, and that is to provide some guarantee to the property owners that their wells and their water can be protected. In a time when we have year after year drought conditions, when the Lieutenant Governor is calling upon the citizens of this Commonwealth to preserve their water, to cut back on their water usage, we should not be allowing the loss or the destruction, the contamination, of one of our biggest supplies of water, and that is underground water supplies.

This amendment is designed, before the mining occurs, to assure the homeowners, the residential owners on the surface, the farmers, that they will not lose their water not only above the mining but adjacent to the mining area, because oftentimes that aquifer that is underground can be above the mine but your property is not above the mine; it is adjacent to the mining area.

And so this particular amendment is sorely needed, particularly in those areas where we have bituminous coal mining, and I would urge all of us in the House to understand the problem and to support this amendment. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman, Mr. Daley.

Mr. DAI Thank you, Mr. Speaker.

Would the maker of the amendment stand for a brief interrogation?

The SPEAKER pro tempore. The gentleman, Mr. Michlovic, indicates that he will stand. The gentleman, Mr. Daley, is in order and may proceed.

Mr. DALEY. Mr. Speaker, could you define for all of us what you mean by "independent agency" and could you answer a couple of questions regarding who would operate that independent agency? Who would it report to? Are the conclusions of that agency appealable? How quickly would they operate—some of those questions surrounding this independent agency—and what kind of expertise will these people have, because the language of your legislation, your amendment, seems not to address that.

Mr. MICHLOVIC. The independent agency would be essentially a consultant that probably would have expertise in the areas of geology and coal mining operations. And the idea of the independent agency, which would be approved, I might add, by DER, is to provide an independent source, some information that will be public, that will be part of the permit application information so that the homeowner can have an assessment, in that agency's best judgment, of whether there is going to be a loss.

As to the qualifications, the certifications, the kind of information you asked about the particulars of those agencies, I would expect that those would be a matter of the regulations that will be promulgated pursuant to the passage of this legislation. We are not going to get into specific detail as to how much expertise or what kind of certification these people need.

Mr. DALEY. The second part of that question would be then, Mr. Speaker, why did you not put "consultant" as opposed to "independent agency," as an agency has a different definition in terms of how we define what an agency is as opposed to an independent consultant? I mean, the language is quite confusing, and it seems like we are setting up a special agency, another agency in DER through your amendment, which seems absolutely ludicrous to place another level, another part of that permitting procedure that the operators have to jump through.

Mr. MICHLOVIC. I chose "independent agency" because those words appear to provide the most comfort to the advocates for the water loss protection, and that is the background of that.

Mr. DALEY. May I make a few comments, Mr. Speaker?

The SPEAKER pro tempore. The gentleman is in order and may proceed.

Mr. DALEY. Thank you, Mr. Speaker.

I think that Mr. Michlovic quite inadequately explained to all of us why he has placed the language of "independent agency," quasi-expert consultant, another layer of bureaucracy in DER.

I ask for a "no" vote.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Jefferson County, Mr. Smith.

Mr. S. H. SMITH. Thank you, Mr. Speaker.

Mr. Speaker, I also rise in opposition to this amendment and ask for a "no" vote.

I think the key points are that currently the 1966 law is silent in regard to water replacement. HB 1828, as it is right now without this amendment, provides for a rebuttable presumption within the 35-degree angle of the mine. It is consistent with what the surface mine law says, and HB 1828, the current bill, provides that protection.

This amendment would confuse the issue, as was previously questioned, with the creation of an independent agency, an unknown entity. I would ask, whose approval are we putting this program, this plan, into? Is this going to still be controlled by DER? Is this independent agency going to control it? At what expense is this going to be to the coal mining industry at a time when we have been trying to speed up the permitting process to make them, allow them to be more competitive with our neighbors in Eastern United States? And I would also question where this expertise would come from. The people that do the permitting generally are engineering-type people. I do not see where this independent agency can exist without giving them the power outside our existing governmental body, the DER.

I urge a "no" vote on the amendment. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Cambria County, Mr. Wozniak.

Mr. WOZNIAK. Thank you, Mr. Speaker.

I can see another line item for Penn State: hydrological consultation courses. All we are doing here is creating another level of bureaucracy, and it is not quite clear in that amendment as to who the independent agency is going to be. I learned a long time ago you dance with the girl who brung you, so whatever answer you want, it depends who pays for that agency's independent study. This also creates a bond issue and creates another expense for the industry itself.

HB 1828 was worked on by numerous actors from the farmers to the industry itself and everybody in between. It adequately addresses an issue that has not been addressed in Pennsylvania, and that deals with water supplies.

This particular amendment is going to be very expensive, very bureaucratically heavy, and will probably be impossible to be able to ascertain its ramifications if it is enacted into law. Ergo, I ask for a negative vote on this amendment. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Clearfield County, Mr. George.

Mr. GEORGE. Thank you, Mr. Speaker.

Mr. Speaker, it seems the die has been cast, but that is how we do our work. There are days when we eat the bear and there are days when the bear eats us. I would assume those of us who are trying very hard to make others understand how significant water preservation is, we have failed somewhat.

What Mr. Michlovic is attempting to do, where there is a 35-degree angle, as the mining industry insists is sufficient, what he is saying is, just suppose that the aquifer that supplies your potable source is beyond that 35 degrees. What he wants is an independent survey to come in and make that judgment and then post the bond.

Please remember, three times it has been said that farmers are for this bill. There are more people that can be affected other than farmers.

Water is a very unpredictable thing. It seems like in my argument I have lost you, but I am simply trying to get you not to be a part of losing water. His amendment does not do anything other than what the Federal Government does with top-of-the-ground mining. They say to DER, if in fact there is a chance of a loss of water, you must show us a guarantee of supply and the ability to supply it. That is what the gentleman is trying to do for bottom-of-the-ground mining, where most water supplies are lost the moment that the coal is pulled away from the strata, which in some effect was a sealant, and that is why you are losing water.

I am going to vote "yes," and I hope you would do that too.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Cumberland County, Mr. Broujos.

Mr. BROUJOS. Would the gentleman, Mr. Michlovic, stand for interrogation?

The SPEAKER pro tempore. Will the gentleman, Mr. Michlovic, stand for interrogation? The gentleman, Mr. Broujos, is in order and may proceed.

Mr. BROUJOS. The question I have is, in section 5.1 where it states, "If this study finds that the proposed underground mining activity may cause contamination," et cetera, "the department shall require the independent agency to develop plans..." by what authority can DER require an independent agency consultant to perform a task which may be contrary to what the operator desires to be done? Or in the event that the operator wants to have a separate agency develop plans, how do you give that section with that dilemma?

Mr. MICHLOVIC. Mr. Speaker, that is why we have the provisions for the bonding in subsection (b) right below. The bonding guarantees that the agent, which is the consultant, is independent and responds to the demands of the situation. Once there is a reason, there is a cause for that agent, in their best judgment—in their best independent judgment, I might add—that there will be a loss of water diminution or contamination, then the department proceeds with the next step. Okay; can you design a plan to protect that water if this mining occurs? And the independent agent does not have to worry about the loss of revenues or the loss of the payment of that contract because the operator might not like what he prescribes.

Mr. BROUJOS. Mr. Speaker, that concludes my interrogation. I would like to make a statement.

The SPEAKER pro tempore. The gentleman is in order and may proceed.

Mr. BROUJOS. I believe the department would have no authority to require an independent agency to perform any task. The department could only require the operator to perform the task. If in fact the independent agency is paid by the operator, then it is very difficult to conceive of the authority of the department to take an independent consultant, who may not then be under contract with the operator, and require them to perform a task. I think this is a fatal flaw in draftsmanship, and although it is a commendable objective and should be the subject of substantial hearings on the merits of the independent study and bonding and of the cost of the independent study and bonding, I would ask for a "no" vote.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Luzerne, Mr. Hasay.

Mr. HASAY. Thank you, Mr. Speaker.

Mr. Speaker, I rise in opposition to this amendment.

You can already receive information or obtain a study with the Department of Environmental Resources through the Environmental Quality Board. You as a citizen can petition that board for information about a proposed mine and information how it would affect water, et cetera. In fact, in many instances permits were denied through the Environmental Quality Board.

So I ask for a "no" vote. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the amendment, the gentleman, Mr. Michlovic, for the second time.

Mr. MICHLOVIC. Thank you, Mr. Speaker.

The gentleman who spoke just prior to me is quite correct. You could obtain information from the department about a proposed mining area, but you may not be able as a layman to digest it, to interpret it, to analyze it, and to come up with a recommendation as to how to correct the problem. That is why we are asking for an independent agent, and I want to emphasize the word "independent" here.

The gentleman from Cumberland County inquired earlier about the arrangement for payment of that independent agent, and I want to clarify that the reason we have set up that perhaps cumbersome bonding process is to provide the very much needed independence for that consultant so that they, in their best judgment and not because they are hired by a particular operator or paid by that particular operator, but they in their best judgment, having the assurance that the bonded revenues are in hand and the department has the control over the release of that bond, they in their independent judgment, best judgment, can make recommendations that may be costly to the operator. Without that kind of independence, you do not get the assurance for the homeowner, for the property owner, and for the well owner, for the farmer that indeed their water is going to be protected.

Once again, I remind you that this State over the last several years has faced drought after drought after drought, and we have been asked to cut back on our water usage. Why should we now jeopardize our underground sources of water, which are perhaps our most pristine, which oftentimes are our best

sources of water for well usage, and in fact are the major source of water and drinking water for over 2 million Pennsylvanians in this Commonwealth?

I urge you to adopt this amendment. Thank you, Mr. Speaker.

The SPEAKER pro tempore. On the amendment, the Chair recognizes the majority leader, Mr. DeWeese.

Mr. DeWEESE. Mr. Speaker, I think that the controversy here should be focused upon with this amendment.

Representing a series of rural counties in the southwestern part of the State, I am acutely aware, as many of you are acutely aware, of the devastating personal challenge of losing one's water. Some of my neighbors and some of my friends and many of my constituents have had to confront this dilemma.

Now, amendment after amendment has not been met with support, and yet this amendment, this amendment, seems the most palatable of all. And I would ask that you take one last look at the amendment relative to what Mr. Hasay said about going to the Environmental Quality Board and asking for a hearing. How many of your constituents, how many of my constituents would have the knowledge, would have the expertise to go through that kind of hearing, that kind of setting?

I think water loss, water loss, is one of the most devastating personal confrontations that anyone can have, and what we are asking for in this amendment is not all that much: an independent consulting team approved by DER coming in and getting involved in the process early on.

I do not think that this amendment is onerous, and I think that this amendment will make the law much more effective, and I would ask personally and collectively from our caucus and from our House perspective for an affirmative vote for the Michlovic amendment. Thank you.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the amendments?

The following roll call was recorded:

YEAS—77

Anderson	Dermody	Lawless	Saloom
Battisto	Evans	Levdansky	Scrimenti
Belardi	Fairchild	Lloyd	Snyder, D. W.
Belfanti	Fec	Lucyk	Staback
Billow	Freeman	McCall	Steelman
Bishop	George	McHale	Steighner
Blaum	Godshall	McNally	Stetler
Bowley	Gruitza	Melio	Sturla
Bunt	Haluska	Michlovic	Surra
Butkovitz	Hanna	Mihalich	Tangretti
Caltagirone	Harley	Mundy	Trich
Cappabianca	Hayden	Murphy	Van Horne
Carn	Heckler	Nailor	Vance
Caronc	Jarolin	Nickol	Veon
Cawley	Josephs	Pesci	Wambach
Cohen	Krebs	Petrarca	Wright, D. R.
Corrigan	Kruszewski	Pistella	
Cowell	Kukovich	Ritter	O'Donnell,
DeLuca	LaGrotta	Robinson	Speaker
DeWeese	Laughlin	Rudy	

NAYS—120

Acosta	Durham	King	Roebuck
Adolph	Fajt	Kosinski	Ryan
Allen	Fargo	Langtry	Saurman
Angstadt	Farmer	Lee	Scheetz
Argall	Fleagle	Leh	Schuler
Armstrong	Flick	Lescovitz	Semmel
Arnold	Foster	McGeehan	Serafini
Barley	Gallen	McHugh	Smith, B.
Birmelin	Gamble	Maiale	Smith, S. H.
Black	Gannon	Markosek	Snyder, G.
Boyes	Geist	Marsico	Stairs
Broujos	Gerlach	Mayernik	Stish
Brown	Gigliotti	Merry	Strittmatter
Bush	Gladeck	Micozzie	Stuban
Carlson	Gruppo	Nahill	Taylor, E. Z.
Cessar	Hagarty	Nyce	Taylor, F.
Chadwick	Harper	O'Brien	Taylor, J.
Civera	Hasay	Olasz	Telek
Clark	Hayes	Oliver	Thomas
Clymer	Herman	Perzel	Tigue
Colaella	Hershey	Petrone	Tomlinson
Colaizzo	Hess	Phillips	Trello
Cole	Hughes	Piccola	Tulli
Cornell	Itkin	Pitts	Uliana
Coy	Jadlowiec	Preston	Vroon
Daley	James	Raymond	Williams
Davies	Johnson	Reber	Wilson
Dempsey	Kaiser	Reinard	Wogan
Dent	Kasunic	Richardson	Wozniak
Donatucci	Kenney	Rieger	Wright, M. N.

NOT VOTING—1

Linton

EXCUSED—3

Freind Mrkonic Noye

The question was determined in the negative, and the amendments were not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. PESCI offered the following amendments No. A2481:

Amend Title, page 1, line 25, by inserting after "action;" providing for the dissemination of certain information;

Amend Sec. 5 (Sec. 5.1), page 6, line 12, by striking out "uses of the"

Amend Sec. 5 (Sec. 5.2), page 8, line 25, by inserting after "area."

Outside the thirty-five degree angle of draw and within one mile downgradient hydrologically or one-half mile upgradient hydrologically or laterally hydrologically, it shall be presumed that the underground mine operator is responsible for contamination, diminution or interruption when no other cause can be affirmatively proven to have resulted in the contamination, diminution or interruption. Beyond one mile downgradient and one-half mile upgradient or laterally, the mine operator shall not be considered liable except where clear and convincing evidence shows mine drainage pollution or other activities of the mining operation have resulted in contamination, diminution or interruption after the date of inception of mining activities.

Amend Sec. 5 (Sec. 5.2), page 9, lines 26 through 28, by striking out all of lines 26 and 27 and "(3)" in line 28 and inserting

(2)

Amend Sec. 5 (Sec. 5.2), page 10, line 9, by inserting after "If"

the operator determines and the department concurs

Amend Sec. 5 (Sec. 5.2), page 10, line 9, by striking "not" and inserting

cannot be

Amend Sec. 5 (Sec. 5.2), page 10, line 10, by striking "not" and inserting

cannot be

Amend Sec. 5 (Sec. 5.2), page 10, lines 22 through 23, by striking out all of lines 22 and 23 and "of the affected supply under this act." in line 24 and inserting

The operator shall be required to adjust his mining plan to water supply replacement is feasible on adjacent land mined.

Amend Sec. 5 (Sec. 5.2), page 11, line 9, by striking "may" and inserting

shall

Amend Sec. 5 (Sec. 5.3), page 11, line 21, by striking out "deed recital"

Amend Sec. 5 (Sec. 5.3), page 11, lines 27 through 30; page 12, lines 1 through 15, by striking out "Any release contained in line 27 and all of lines 28 through 30, page 11, all of lines 1 through 14 and "(c)" in line 15, page 12 and inserting

(b)

Amend Sec. 5 (Sec. 5.3), page 12, lines 18 through 24, by striking out "In any proceedings in" in line 18, all of lines 19 through 24 and inserting

An action arising under this section shall be commenced within five years of notification of the mine operator that a water supply has been affected, provided that the mine operator has been notified pursuant to section 5.1(b) of this act.

Amend Sec. 5 (Sec. 5.4), page 14, line 2, by inserting after "occurred"

with the approval of the owner

Amend Sec. 5 (Sec. 5.5), page 14, line 23, by inserting after "5.4(a)"

and this section

Amend Sec. 5 (Sec. 5.5), page 14, line 24, by inserting after "occurred"

, provided that all parties recognize the total costs of repair or replacement and incidental expenses

Amend Sec. 5 (Sec. 5.5), page 15, lines 19 and 20, by striking out "agreed to by the parties or"

Amend Sec. 5 (Sec. 5.5), page 16, lines 4 through 6, by striking out "or shall fail to perfect an" in line 4, all of line 5 and "compensation," in line 6

Amend Sec. 5 (Sec. 5.5), page 16, lines 14 through 18, by striking out all of said lines

Amend Sec. 5 (Sec. 5.6), page 17, lines 13 through 19, by striking out "Nothing herein shall impair agreements" in line 13 and all of lines 14 through 19

Amend Sec. 6 (Sec. 6), page 17, line 27, by striking out the bracket before "(a)"

Amend Sec. 6 (Sec. 6), page 18, line 17, by striking out the bracket after "subsection."

Amend Sec. 10, page 26, line 25, by striking out "a section" and inserting

sections

Amend Sec. 10, page 27, by inserting between lines 15 and 16 Section 18.2. Preparation and dissemination of information.—The Department of Environmental Resources shall prepare and disseminate information, upon request, to individuals who may suffer from subsidence or diminution, contamination or interruption of their water supply as a result of underground mining operations. The information shall include, but not be limited to, a description of the rights of and remedies for such individuals.

On the question,
Will the House agree to the amendments?

The SPEAKER pro tempore. On the question, the gentleman from Armstrong, Mr. Pesci.

Mr. PESCI. Mr. Speaker, I stand here representing almost 60,000 people such as you do, and until you run into the problem, as the previous speaker said, about losing water, you do not know how devastating that is to especially some of my people in Indiana County now and also in Armstrong.

But what this amendment does is it expands the protected area to which a rebuttal presumption regarding water loss would apply. It also removes the provisions relieving an operator from liability for affecting a public water supply, and it provides that an operator's appeal shall not stay an order of DER and that the operator repair or provide compensation for repair of the damages which have been determined to have been caused by subsidence.

Also, it requires the department to prepare and disseminate information to the individuals who may have suffered from subsidence or water loss or contamination, which information shall include a description of the rights and remedies for such individuals.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Washington County, Mr. Daley.

Mr. DALEY. Will the gentleman stand for a brief interrogation?

The SPEAKER pro tempore. The gentleman indicates that he will. The gentleman, Mr. Daley, is in order and may proceed.

Mr. DALEY. Thank you, Mr. Speaker.

I would like to question the maker of the amendment concerning his getting the scientific data that was necessary to decide how he would change the 35-degree angle that was drawn. On what basis was this accumulated and provided for this amendment, Mr. Speaker?

Mr. PESCI. The amendment was drawn up and helped to be drawn up by a hydrologist, somebody who is a professional in the field.

Mr. DALEY. Will you not also assume though that the language of the bill itself was drawn up by the professionals - the hydrologists, the DER, the Conservancy, the Grange - all those people that provided the language that is now in the law and also in this bill? What basis is there or reason to change that, going outside the 35-degree angle?

Mr. PESCI. Well, this is representing an opposing view. I am representing 60,000 people, of which some of those people have already lost their water due to some of the things that have happened in deep mining.

Mr. DALEY. Is there any scientific need that you could provide to this body that would call for the expansion of this 35-degree angle?

Mr. PESCI. According to some of my people, and one of them being the hydrologist that helped to develop the amendment, the need is there. That has been told to us, the need is there. That is why I had inserted that in the amendment.

Mr. DALEY. . . question further on your amendment. It requires DER to approve agreements for subsidence repairs and compensation. Does DER want to get involved in that?

Mr. PESCI. I think DER would do what we tell them to do.

Mr. DALEY. Well, I would submit to you and to the rest of the members of the Assembly that DER does not want to get involved in those private agreements between individuals and the operators.

My last question for you, Mr. Speaker, is that you provide that all of the agreements that were entered into prior to the passing of this legislation will now become null and void. How can you legally do that?

Mr. PESCI. Would you please repeat the question?

Mr. DALEY. Yes. The language of your amendment provides that agreements entered into prior to the effective date of this act which provide for a waiver or release of any duty to repair or compensate for repair must be renegotiated. In essence, they would be rendered null and void. How can you legally do that? How can you—

Mr. PESCI. I think that those people who entered into those agreements prior to did not have the knowledge and/or the rights. What we are doing now is inserting that.

Mr. DALEY. Well, Mr. Speaker, that is an assumption on your part. What I am saying to you is, how can you legally step in and tell these people they have to renegotiate all those contracts, because if those contracts were drawn where reasonable parties agreed, how can you now force those people to renegotiate those contracts? Is that legal?

Mr. PESCI. They can renegotiate exactly what their agreement says now or they can renegotiate a better agreement. We are giving them that opportunity.

Mr. DALEY. I have no further questions, Mr. Speaker. I wish to make a comment on the amendment.

The SPEAKER pro tempore. The gentleman is in order and may proceed.

Mr. DALEY. I think it is readily apparent, from the information provided by Mr. Pesci, first of all, that there is no scientific need to expand the rebuttable presumption area, number one. Number two, we are placing DER in a position where they do not want to be in terms of involved in negotiations between private individuals and companies. And thirdly, we are rendering contracts, in essence, null and void, and I do not think that that is what the General Assembly is all about.

I ask for a "no" vote.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Jefferson County, Mr. Smith.

Mr. S. H. SMITH. Thank you, Mr. Speaker.

I, too, rise in opposition to this amendment and ask for a "no" vote.

I think the key provision that we are dealing with here is what was stated by the gentleman from Washington in terms of the 35-degree angle. Briefly, if you could imagine the seam of coal being 500 feet below the surface and from the edge of that mined area taking an angle of 35 degrees and going upward, you create a trough more or less. In that trough, the

bill as it currently would provide the rebuttable presumption for water protection. That means the coal operator is responsible for any loss unless the coal company can prove otherwise. Outside of that angle, the individual is still legally allowed and can go after the coal company for a loss of water, but they lose the rebuttable presumption at that point.

The fact is that the 35-degree angle of draw is not just a number that was drawn out of thin air. It is something that has been documented over the history of watching deep coal mining operations. It is a statement that has been developed by hydrological experts. I believe that that is the key ingredient in this amendment that causes it to be harmful to the bill, and I would urge a "no" vote on that basis. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Cambria County, Mr. Wozniak.

Mr. WOZNIAK. Thank you, Mr. Speaker.

I rise to oppose my good friend on this particular amendment.

Pennsylvania coal is the most heavily regulated coal industry in this Nation. HB 1828 is attempting to address heretofore unaddressed issues of water and its replacement. We do not want to create more bureaucracy. We do not want to create more onus upon the industry. We do want to protect the water sources of the people on the surface.

We have a lineage of many, many years of coal operations, and I think the knowledge that went into this bill adequately or even overly takes care of those concerns. If down the line we find that this legislation is not adequate, we can always come back with remedial legislation. But let us move forward and try to address this issue with the groups that have worked on it and oppose this particular amendment.

This bill was hard fought. A lot of compromises were made along the way. I think we have an opportunity to send a message that we are protecting the rights of water to the citizens and at the same time showing that as the Commonwealth of Pennsylvania we are indeed interested in putting our miners back to work.

I come from an area where I have more former steelworkers and more former miners than there are people presently in those fields, and I think if we want to do anything, we want to send a message that we are trying to stimulate business in our Commonwealth and at the same time protect our environment. Thank you, Mr. Speaker.

The SPEAKER pro tempore. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the amendments?

The following roll call was recorded:

YEAS—64

Anderson	Fec	Lloyd	Scrimenti
Belardi	Freeman	McHale	Serafini
Belfanti	George	McNally	Staback
Billow	Gigliotti	Melio	Steelman
Bishop	Godshall	Michlovic	Steighner
Blaum	Haluska	Mihalich	Sturla
Bowley	Hanna	Mundy	Surra

Bunt	Harley	Murphy	Tangretti
Caltagirone	Hayden	Olasz	Tigue
Cappabianca	Josephs	Pesci	Trello
Carn	Kosinski	Petrarca	Veon
Cawley	Kruszewski	Petrone	Williams
Cowell	Kukovich	Pistella	Wright, D. R.
DeLuca	LaGrotta	Ritter	
DeWeese	Laughlin	Roebuck	O'Donnell,
Dermody	Lawless	Saloom	Speaker
Evans	Linton		

NAYS—133

Acosta	Durham	King	Robinson
Adolph	Fairchild	Krebs	Rudy
Allen	Fajt	Langtry	Ryan
Angstadt	Fargo	Lee	Saurman
Argall	Farmer	Leh	Scheetz
Armstrong	Fleagle	Lescovitz	Schuler
Arnold	Flick	Levdansky	Semmel
Barley	Foster	Lucyk	Smith, B.
Battisto	Gallen	McCall	Smith, S. H.
Birmelin	Gamble	McGeehan	Snyder, D. W.
Black	Gannon	McHugh	Snyder, G.
Boyes	Geist	Maiale	Stairs
Broujos	Gerlach	Markosek	Stetler
Brown	Gladeck	Marsico	Stish
Bush	Gruitza	Mayernik	Strittmatter
Carlson	Gruppo	Merry	Suban
Carone	Hagarty	Micozzie	Taylor, E. Z.
Cessar	Harper	Nahill	Taylor, F.
Chadwick	Hasay	Nailor	Taylor, J.
Civera	Hayes	Nickol	Teick
Clark	Heckler	Nyce	Thomas
Clymer	Herman	O'Brien	Tomlinson
Cohen	Hershey	Oliver	Trich
Colafiglia	Hess	Perzel	Tulli
Colaizzo	Hughes	Phillips	Uliana
Cole	Itkin	Piccola	Van Horne
Cornell	Jadlowiec	Pitts	Vance
Corrigan	James	Preston	Vroon
Coy	Jarolin	Raymond	Wambach
Daley	Johnson	Reber	Wilson
Davies	Kaiser	Reinard	Wogan
Dempsey	Kasunic	Richardson	Wozniak
Dent	Kenney	Rieger	Wright, M. N.
Donatucci			

NOT VOTING—1

Butkovitz

EXCUSED—3

Freind Mrkonic Noye

The question was determined in the negative, and the amendments were not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Mr. PESCI offered the following amendments No. A2742:

Amend Title, page 1, line 25, by inserting after "action;" providing for the dissemination of certain information;

Amend Sec. 5 (Sec. 5.1), page 6, line 12, by striking out "uses of the"

Amend Sec. 5 (Sec. 5.2), page 9, lines 26 through 28, by striking out all of lines 26 and 27, "(3)" in line 28 and inserting

(2)

Amend Sec. 5 (Sec. 5.2), page 10, line 9, by inserting after "If"

the operator determines and the department concurs

Amend Sec. 5 (Sec. 5.2), page 10, line 9, by striking out "is not" and inserting

cannot be

Amend Sec. 5 (Sec. 5.2), page 10, line 10, by striking out "is not" and inserting

cannot be

Amend Sec. 5 (Sec. 5.2), page 10, lines 22 through 24, by striking out all of lines 22 and 23 and "of the affected water supply under this act." in line 24 and inserting

The operator shall be required to adjust his mining plan to assure water supply replacement is feasible on adjacent land to be mined.

Amend Sec. 5 (Sec. 5.3), page 11, line 21, by striking out "deed recital" and inserting

other remedies

Amend Sec. 5 (Sec. 5.3), page 11, lines 27 through 30; page 12, lines 1 through 15, by striking out "Any release contained" in line 27, all of lines 28 through 30, page 11; all of lines 1 through 14 and "(c)" in line 15, page 12 and inserting

(b)"

Amend Sec. 5 (Sec. 5.3), page 12, lines 18 through 24, by striking out "In any proceedings in" in line 18, all of lines 19 through 24 and inserting

An action arising under this section shall be commenced within five years of notification of the mine operator that a water supply has been affected, provided that the mine operator has been notified pursuant to section 5.1(b).

Amend Sec. 5 (Sec. 5.4), page 14, line 2, by inserting after "occurred"

with the approval of the owner

Amend Sec. 5 (Sec. 5.5), page 14, line 23, by inserting after "5.4(a)"

and this section

Amend Sec. 5 (Sec. 5.5), page 14, line 24, by inserting after "occurred"

, provided that all parties recognize the total costs of repair or replacement and incidental expenses

Amend Sec. 5 (Sec. 5.5), page 15, lines 19 and 20, by striking out "agreed to by the parties or"

Amend Sec. 5 (Sec. 5.5), page 16, lines 4 through 6, by striking out "or shall fail to perfect an" in line 4, all of line 5 and "compensation," in line 6

Amend Sec. 5 (Sec. 5.5), page 16, lines 14 through 18, by striking out all of said lines

Amend Sec. 5 (Sec. 5.6), page 17, lines 13 through 19, by striking out "Nothing herein shall impair agreements" in line 13 and all of lines 14 through 19

Amend Sec. 6 (Sec. 6), page 17, line 27, by striking out the bracket before "(a)"

Amend Sec. 6 (Sec. 6), page 18, line 17, by striking out the bracket after "subsection."

Amend Sec. 10, page 26, line 25, by striking out "a section" and inserting

sections

Amend Sec. 10, page 27, by inserting between lines 15 and 16 Section 18.2. Preparation and dissemination of information.—The department shall prepare and disseminate information, upon request, to individuals who may suffer from subsidence or diminution, contamination or interruption of their water supply as a result of underground mining operations. The information shall include, but not be limited to, a description of the rights of and remedies for such individuals.

On the question,

Will the House agree to the amendments?

The SPEAKER pro tempore. On the amendment, the gentleman from Armstrong, Mr. Pesci.

Mr. PESCI. A previous speaker had indicated that there was one special part in that amendment and that that is one of the reasons he spoke against it. This amendment refutes that part. It takes out the— The amendment is identical to the previous one, except it does not expand the protected area to which a rebuttal presumption would apply.

I ask for an affirmative vote on this amendment.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Washington County, Mr. Daley.

Mr. DALEY. Thank you, Mr. Speaker.

I rise to oppose this, the last amendment that is going to be offered, I think.

I made some comments earlier concerning the provision that has the DER step in and have individuals renegotiate their contracts. After the passage of this legislation, it was pointed out to me by my good friend, Representative Hanna, that there is a constitutional question with this Assembly doing that if we pass this amendment, and there very much may be a constitutional question that that may be unconstitutional.

I ask for a "no" vote.

The SPEAKER pro tempore. The Chair thanks the gentleman and recognizes the gentleman from Jefferson County, Mr. Smith.

Mr. S. H. SMITH. Thank you, Mr. Speaker.

I rise in opposition to the amendment. I pretty much follow the lead of the gentleman from Washington County. I urge a "no" vote. Thank you, Mr. Speaker.

The SPEAKER pro tempore. On the amendment, the gentleman from Armstrong, for the second time, Mr. Pesci.

Mr. PESCI. Well, I urge my colleagues to vote "yes" on this.

This is our last attempt. This is the last amendment to give those protected rights that I believe the homeowners deserve. Thank you very much.

On the question recurring,

Will the House agree to the amendments?

The following roll call was recorded:

YEAS—68

Anderson	Fee	Laughlin	Roebuck
Belardi	Freeman	Lawless	Rudy
Belfanti	George	Linton	Saloom
Billow	Gigliotti	Lloyd	Scrimenti
Bishop	Godshall	McHale	Serafini
Blaum	Gruitza	McNally	Staback
Bowley	Haluska	Melio	Steelman
Bunt	Hanna	Michlovic	Steighner
Cappabianca	Harley	Mihalich	Sturla
Carn	Harper	Mundy	Surra
Cawley	Hayden	Murphy	Tangretti
Cohen	Itkin	Olasz	Tigue
Cowell	Jarolin	Pesci	Veon
DeLuca	Josephs	Petrarca	Wright, D. R.
DeWeese	Kosinski	Pistella	
Dermody	Kruszewski	Ritter	O'Donnell,
Evans	Kukovich	Robinson	Speaker
Fairchild	LaGrotta		

AYS—128

Acosta	Dent	Langtry	Saurman
Adolph	Donatucci	Lee	Scheetz
Allen	Durham	Leh	Schuler
Angstadt	Fajt	Lescovitz	Semmel
Argall	Fargo	Levdansky	Smith, B.
Armstrong	Farmer	Lucyk	Smith, S. H.
Arnold	Fleagle	McCall	Snyder, D. W.
Barley	Flick	McGeehan	Snyder, G.
Bartisto	Foster	McHugh	Stairs
Birmelin	Gallen	Markosek	Stetler
Black	Gamble	Marsico	Stish
Boyes	Gannon	Mayernik	Strittmatter
Broujos	Geist	Merry	Suban
Brown	Gerlach	Micozzie	Taylor, E. Z.
Bush	Gladeck	Nahill	Taylor, F.
Caltagirone	Gruppo	Nailor	Taylor, J.
Carlson	Hagarty	Nickol	Telek
Carone	Hasay	Nyce	Thomas
Cessar	Hayes	O'Brien	Tomlinson
Chadwick	Heckler	Oliver	Trello
Civera	Herman	Perzel	Trich
Clark	Hershey	Petrone	Tulli
Clymer	Hess	Phillips	Uliana
Colaella	Hughes	Piccola	Van Horne
Colaizzo	Jadlowiec	Pitts	Vance
Cok	James	Preston	Vroon
Cornell	Johnson	Raymond	Wambach
Corrigan	Kaiser	Reber	Williams
Coy	Kasunic	Reinard	Wilson
Dakey	Kenney	Richardson	Wogan
Davies	King	Rieger	Wozniak
Dempsey	Krebs	Ryan	Wright, M. N.

NOT VOTING—2

Butkovitz Maiale

EXCUSED—3

Freind Mrkonic Noye

The question was determined in the negative, and the amendments were not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration as amended?

Bill as amended was agreed to.

The SPEAKER pro tempore. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

YEAS—189

Final Vote

Acosta	Durham	LaGrotta	Saloom
Adolph	Evans	Langtry	Saurman
Allen	Fairchild	Laughlin	Scheetz
Anderson	Fajt	Lawless	Schuler
Angstadt	Fargo	Lee	Scrimenti
Argall	Farmer	Leh	Semmel
Armstrong	Fee	Lescovitz	Serafini
Arnold	Fleagle	Levdansky	Smith, B.
Barley	Flick	Linton	Smith, S. H.
Bartisto	Foster	Lloyd	Snyder, D. W.
Belardi	Gallen	Lucyk	Snyder, G.
Belfanti	Gamble	McCall	Staback
Billow	Gannon	McGeehan	Stairs
Birmelin	Geist	McHugh	Steelman
Bishop	George	McNally	Steighner
Black	Gerlach	Maiale	Stetler

Bowley	Gigliotti	Markosek	Stish
Boyes	Gladeck	Marsico	Strittmatter
Broujos	Godshall	Mayernik	Suban
Brown	Gruiza	Melio	Sturla
Bunt	Gruppo	Merry	Surra
Bush	Hagarty	Micozzie	Tangretti
Butkovitz	Hajuska	Mihalich	Taylor, E. Z.
Caltagirone	Hanna	Nahill	Taylor, F.
Cappabianca	Harley	Nailor	Taylor, J.
Carlson	Harper	Nickol	Telek
Carn	Hasay	Nyce	Thomas
Carone	Hayden	O'Brien	Tigue
Cessar	Hayes	Olasz	Tomlinson
Chadwick	Heckler	Oliver	Trello
Civera	Herman	Perzel	Trich
Clark	Hershey	Pesci	Tulli
Clymer	Hess	Petrarca	Uliana
Cohen	Hughes	Petrone	Van Horne
Colaella	Itkin	Phillips	Vance
Colaizzo	Jadlowiec	Piccola	Veon
Cole	James	Pistella	Vroon
Cornell	Jarolin	Pitts	Wambach
Corrigan	Johnson	Preston	Williams
Cowell	Josephs	Raymond	Wilson
Coy	Kaiser	Reber	Wogan
DeLuca	Kasunic	Reinard	Wozniak
Daley	Kenney	Richardson	Wright, D. R.
Davies	King	Rieger	Wright, M. N.
Dempsey	Kosinski	Robinson	
Dent	Krebs	Roebuck	O'Donnell,
Dermody	Kruszewski	Rudy	Speaker
Donatucci	Kukovich	Ryan	

NAYS—9

Blaum Freeman Michlovic Murphy
Cawley McHale Mundy Ritter
DeWeese

NOT VOTING—0

EXCUSED—3

Freind Mrkonic Noye

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

The SPEAKER pro tempore. The Chair returns the gavel to the Speaker of the House.

THE SPEAKER (ROBERT W. O'DONNELL)
PRESIDING

SUPPLEMENTAL CALENDAR A
BILL ON CONCURRENCE
IN SENATE AMENDMENTS

The House proceeded to consideration of concurrence in Senate amendments to HB 2140, PN 3636, entitled:

An Act amending the act of June 2, 1915 (P. L. 736, No. 338), known as "The Pennsylvania Workmen's Compensation Act," adding and amending certain definitions; redesignating referees as workers' compensation judges; further providing for contractors, for insurance and self-insurance, for compensation and for payments for medical services; providing for coordinated care organizations; further providing for procedures for the payment of compensation and for medical services and for procedures of

STATEMENT OF GEORGE ELLIS

My name is George Ellis and I am the current President of the Pennsylvania Coal Association ("PCA"). I have been PCA's President and the chief spokesperson for the bituminous underground coal mining industry since the early 1990's and been actively involved with PCA since the mid-1980's. Since the early 1990's I have also been the chief contact between PCA member companies and the Federal Office of Surface Mining Reclamation and Enforcement's Pennsylvania field office. In this latter capacity, I have been responsible for monitoring the extent to which OSM has, during the years since Act 54 was passed, seen the need to initiate "federal enforcement" of the provisions of Section 720 of the Federal Surface Mining Control and Reclamation Act and OSM's regulations implementing the provisions of this section.

Since the mid-1990's OSM has administered what it calls a "dual enforcement" program in Pennsylvania. The nature of this "dual enforcement" program is explained by OSM at 60 Fed.Reg. 44352 (July 28, 1995). Under this "dual enforcement" program OSM has permitted Pennsylvania to administer the provisions of its Bituminous Mine Subsidence and Mine Conservation Act ("BMSCLA") and the regulations which implement that Act, which are currently codified at 25 Pa.Code Chapters 86 and 89 (a majority of which OSM now "objects" to), reserving the right to engage in "federal enforcement" in situations where a Pennsylvania citizen was alleged to have been deprived of a "right" allegedly afforded them by Federal law but not Pennsylvania law.

During this period of time I am aware of only a handful of instances where OSM even felt the need to even initiate an inquiry into the manner in which the provisions of the Pennsylvania program had operated with respect to a claim for subsidence damage or water loss made by a Pennsylvania property owner and only one instance in which OSM ultimately concluded an "enforcement" action was necessary. Furthermore, in most, if not all, of these instances, OSM's "inquiry" was prompted by a "complaint" filed by a property owner whose true purpose was to stop mining, not assert a right not afforded them by State law.

I am not aware of any instance where the statute of limitation provisions of the BMSCLA operated to deny any homeowner of a right to assert either claim for repair or compensation for structural damage or to assert a claim for water loss replacement. Similarly, I am not aware of any instance where a homeowner's refusal to allow a pre-mining inspection resulted in any person losing their right to assert a claim for repair or compensation for structural damage. I am, however, aware of instances where but for the pre-mining inspection requirements of Pennsylvania law, structures would either have not been undermined or more severely damaged but for the implementation of this provision of State law.

I am also familiar with DEP's Report to the General Assembly concerning the effectiveness of Act 54 and DEP's post-Act 54 surface owner protection program, which confirms that the provisions of Act 54 and DEP's regulations (including all the provisions "disapproved" by OSM or proposed for "supercession") have worked as intended--namely to accommodate the interests of landowners and coal operators in a fair and reasonable manner taking into account certain local interests of Pennsylvania.

Given that OSM has had the authority for almost 9 years to "enforce" federal law without seeing a need to do so, confirms, in my opinion, that there exists no need (or basis) for superceding any provision of Pennsylvania's subsidence control program, which was submitted to OSM for approval in the late 1990's.

DATED: _____

George Ellis, President PCA

Attached are copies of correspondence between counsel for a PCA member company and counsel for a property owner relating to a “dispute” over pre-mining access. This particular property owner caused his property to be listed on the National Register of Historic Places after the mine operator’s permit had been approved. This was done solely to preclude mining beneath the surface owner’s property until such time as the operator was willing to meet the owner’s demand for “compensation.” As is clear from these letters, absent the operator’s ability to argue that it would not be liable for any resulting damage if it was not permitted access to implement pre-mining mitigation measures it would not have been able to access the property to implement any pre-mining measures.

In another case, well known to OSM, involving another “historic” property, the owners did, again because of the provisions of Section 5.4(c) of the BMSLCA, eventually allow the operator to enter the property in advance of mining to evaluate the need for and ultimately to implement extensive pre-mining mitigation measures. Had they not done so, the mining which subsequently occurred would likely have caused “material” damage to one or more of the structures on this property. Because they were able to rely upon Section 5.4(c) the operator was ultimately able to conduct its mining in a manner which caused virtually no subsidence damage to the structure and out buildings on this property and comply fully with its obligations.

LAW OFFICES OF
PEACOCK KELLER
70 EAST BEAU STREET
WASHINGTON, PA 15301

PARTNERS

ROGER J. ECKER
ROBERT T. CROTHERS
KENNETH L. BAKER
WESLEY A. CRAMER
MARY DRAKE KORSMEYER
RICHARD J. AMRHEIN
BARBARA A. RIZZO
DOUGLAS R. NOLIN
MARY K. PRUSS
JONATHAN G. HIGIE
JOHN A. RODGERS

724 / 222-4520
IN PA 800 / 242-8897
TELEFAX 724 / 222-3318
peacock@cobweb.net

RALPH W. PEACOCK
1902-1972

WILLIAM C. PORTER
1915-1988

SENIOR COUNSEL
CHARLES C. KELLER
DAVIS G. YOHE

ASSOCIATES

SUSAN T. ROBERTS
SUSAN MONDIK KEY
LISA J. SCIULLO
FRANK G. ADAMS

October 31, 2000

VIA TELEFAX / CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David C. Hook, Esquire
Hook and Hook
189 West High Street
P.O. Box 792
Waynesburg PA 15370

Re: Roy J. ██████ and Diane F. ██████ Property
██████ Township, ██████ County, Pennsylvania

Dear Mr. Hook:

As you are already aware, on October 26, 2000, the Pennsylvania Department of Environmental Protection approved Consolidation Coal Company's six-month mining maps including the mining and removal of the Pittsburgh seam of coal within and underlying the ██████ property referenced above, including those portions of the property upon which the ██████ Mansion, Apple House and other structures are located. Included within the October 26, 2000 approval is Consolidation Coal Company's plan to mitigate the damages that may occur to the ██████ Mansion and ██████ House as a result of the full extraction of the coal beneath and adjacent to the structures. As you know, a copy of the Pa. DEP letter of October 26, 2000, the approved six-month mining maps, and Consolidation Coal Company's October 27, 2000 transmittal letter were hand-delivered between 4:00 p.m. and 5:00 p.m. on October 27, 2000 to your receptionist at your office and also to Mr. ██████ at his residence. Included in that October 27, 2000 letter from Consolidation Coal Company was a notification that Consolidation Coal Company intended to be present at the ██████ property to commence preparatory and mitigation work (collectively, the "mitigation work") on and after Tuesday, October 31, 2000.

Following through with the October 27, 2000 notification letter, this morning at approximately 6:45 a.m. Consolidation Coal Company through its land agents, Neil Jenkins and Anthony Drezewski was met by Mr. ██████ on the outside of his gated driveway at

PEACOCK KELLER ECKER & CROTHERS, LLP

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David C. Hook, Esquire

Page 2

October 31, 2000

the ██████ residence. The Consolidation Coal Company land agents informed Mr. ██████ that they were there pursuant to the October 27, 2000 notification for the purpose of commencing the mitigation work at approximately 9:00 a.m. by the various contractors identified in the October 27, 2000 notification letter. Mr. ██████ clearly refused Consolidation Coal Company access to the ██████ property for the purpose of commencing mitigation efforts. Mr. Jenkins explained to Mr. ██████ the importance of commencing mitigation work immediately in order to complete the implementation of the mitigation plan sufficiently in advance of the mining activities in order to reduce the damages that may occur to the ██████ Mansion and the Apple House. Again, Mr. ██████ clearly refused Consolidation Coal Company access to the ██████ property to commence any kind of mitigation work. At that point, Mr. Jenkins and Mr. Drezewski departed.

It is Consolidation Coal Company's position that Mr. ██████ clear and repeated refusal to permit Consolidation Coal Company access to the Brendel property to commence mitigation work will mean that any damages caused by Consolidation Coal Company's mining activities that would otherwise have been avoided if Consolidation Coal Company were permitted to timely implement its mitigation plan will be the responsibility of the ██████. Consolidation Coal Company is not responsible for any damages that could have been prevented by efforts commencing today toward the full implementation of the mitigation plan.

Mr. ██████ mentioned during the conversation this morning that it is Consolidation Coal Company that has made a "federal case" out of this matter. We take exception to this statement because it is the ██████ who took the initiative to have their property listed on the National Register in 1999, with the apparent intent of using the National Register designation as leverage to extract a large cash settlement from Consolidation Coal Company (the ██████' settlement demand of \$3 million is indicative of that intent) by threatening to either stop or restrict Consolidation Coal Company's mining activities. Presumably, Mr. ██████ was referring to the federal lawsuit filed last Friday by Consolidation Coal Company against certain defendants including the ██████. That case was filed in order to protect Consolidation Coal Company's mining operations from being impeded by what it believes would be a misuse of the National Register designation by the ██████s and you. Consolidation Coal Company is willing to withdraw the lawsuit if Consolidation Coal Company receives immediate written assurance from the ██████ and you that there will be no attempt to restrict or prevent Consolidation Coal Company's mining activities and that mitigation work will be allowed to proceed immediately.

Also, as you are aware, Consolidation Coal Company has made a ██████ cash offer to the ██████ in exchange for a full and complete release for any and all damages that may be

PEACOCK KELLER

David C. Hook, Esquire

Page 3

October 31, 2000

sustained by ████████ and the ████████ property including inconvenience, water loss, structure damage, land damage, etc. Consolidation Coal Company at this time is still willing to proceed with that settlement.

In summary, we strongly recommend that the ████████ reconsider their decision this morning to refuse Consolidation Coal Company access to their property. We believe it is in the best interests of the ████████ to permit Consolidation Coal Company to enter their property so as to commence and fully implement the mitigation plan.

Please advise us immediately as to the intention of the ████████. If ████████ will permit the mitigation work, we will reconvene the contractors on the property as early as practicable. Shortly after you have had an opportunity to review this letter, I will call you to discuss this matter further. Thank you for your immediate attention to this matter.

Very truly yours,

Peacock Keller Ecker & Crothers, LLP

By: 

Wesley A. Cramer

WAC/nrs

cc: Pa. Dept. of Environmental Protection (via telefax)
United States Dept. of the Interior (via first class mail)
(Office of Surface Mining)

bc: Ronald Smith (via first class mail)
Steve Young (via first class mail)
Robert M. Vukas, Esquire (via first class mail)
Neil Jenkins (via first class mail)
Gary Slagel (via first class mail)
William D. Stanhagen (via first class mail)
Thomas C. Reed, Esquire (via first class mail)

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LAW OFFICES
HOOK AND HOOK
180 W HIGH STREET
POST OFFICE BOX 788
WAYNESBURG, PENNSYLVANIA 15370

JOHN J. HOOK, JR.
(1916-1988)

J. WILLIAM HOOK
DAVID G. HOOK
GREGORY C. HOOK

E-mail Address:
hookjw@alltel.net
hookds@alltel.net
hookgc@alltel.net
PHONE: (724) 827-6146
FAX NO: (724) 823-1622

October 31, 2000

FAX: 1-304-285-2205

724/627-6146

Mr. Neil Jenkins
Consolidation Coal Company
Group 2
State Route 7 - U.S. 19
P.O. Box 100
Osage, WV 26543

RE: ~~Consolidation~~ House - Consolidation Coal Company Subsidence Mitigation Plan - Letter of October 27, 2000

Dear Mr. Jenkins:

Your letter and attachments dated October 27, 2000 was hand delivered that Friday, October 27, 2000 to my office at 4:35 p.m.

I would note this letter included "supplemental drawings" which for the first time revealed Consol's plan to cut four (4) two inch wide "slots" from the footer to the eaves of this two storey stone and stucco historic structure. This plan had never been proposed or reviewed previously.

To date the details of the mitigation plan previously outlined in GAI's August 24 report have never been provided even though GAI promised the details would be "forwarded and refined during the design phase." Apparently, you have skipped the design phase and your preliminary plan remains incomplete and inadequate for a proper engineering review.

We could not contact our architect and engineer on Friday. However, your letter of October 27 was faxed to them on October 30 with an urgent request for a response.

Enclosed herewith are the responses of Landmark Design Associates and Taylor Structural Engineers, received late this morning (October 31).

Post-It® Fax Note	7871	Date	10/31/00	# of pages	5
To	Denny Stanhagen		From	Neil Jenkins	
Co./Dept.	Alara Land		Co.		
Phone #			Phone #		
Fax #	4975		Fax #		

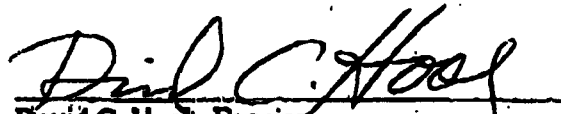
Page Two
October 31, 2000

Because of your late submission of new proposals and failure to "formulate and refine" your previous proposal, it is impossible for the [REDACTED] to evaluate your subsidence mitigation plan in a reasonable manner. Our preliminary evaluation indicates this plan is lacking in detail and threatens the historic character of the house.

Nevertheless, the [REDACTED] will not block your mitigation activities. You may access their property beginning immediately upon receipt of this letter by FAX. ←

However, Consolidation Coal Company must remain responsible for all consequences of its actions. This plan, as proposed, has not been reviewed by the Pa. DEP or the OSM. There is inadequate time for review by our own experts. Your company must proceed entirely at its own risk.

Yours truly,


David C. Hook, Esquire

DCH:cn
Enclosure

cc: [REDACTED]

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Subjects



Supplement to the 1999 Report on the Effects of Undergrou AT A GLANCE

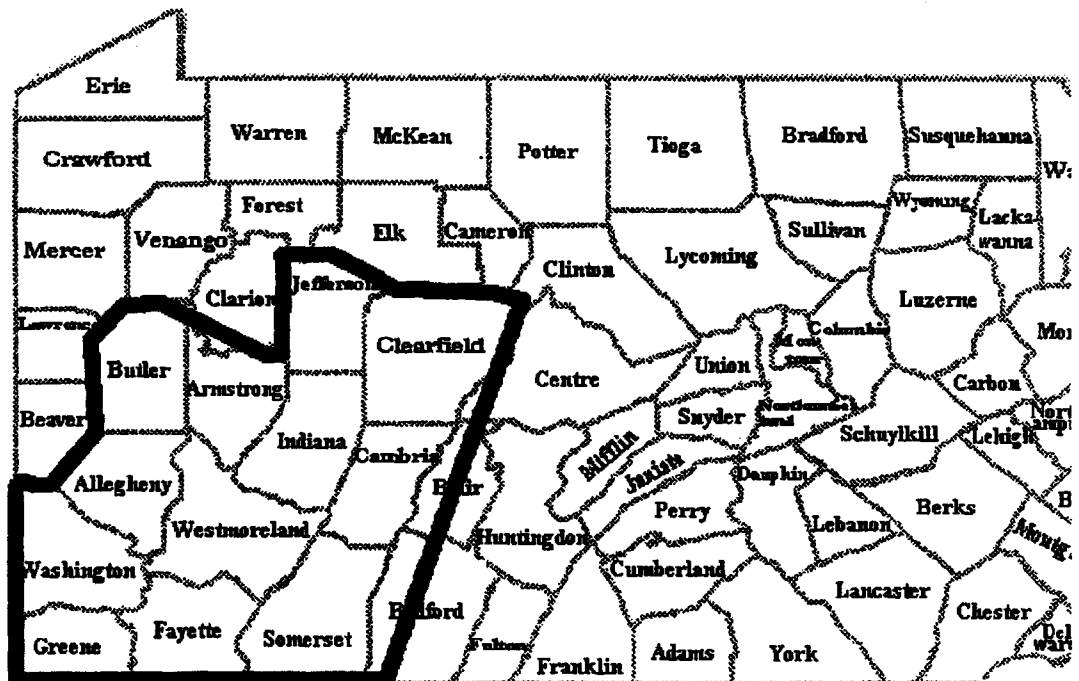
The Pennsylvania Department of Environmental Protection (DEP) has prepared a supplement to its 1999 report *Subsidence Resulting from Underground Bituminous Coal Mining on Surface Structures and Features* and a supplement was prepared to address unresolved issues from the 1999 report and comments received regarding the report.

DEP prepared the 1999 report in accordance with the Act 54 amendments to the Bituminous Mine Subsidence Act, which, for the first time, provided for the replacement of water supplies affected by underground mining classes of structures damaged by mine subsidence.

To complete the initial study, DEP focused data collection on 1,884 properties in a 10-county area in western Pennsylvania. The 10 counties were identified through mine map reviews, mine operator reports, claim records and property owner records. Data collected for the initial report revealed that many cases had been resolved. However, there were other cases and many cases where the status of claims was unclear or in need of investigation. In order to provide a more complete picture, DEP conducted additional investigations and surveys of property owners and mine operators.

The supplemental information reveals that subsidence damage from underground mining was reported on over 1,000 properties in the study area. Underground mining resulted in impacts on overlying land, structures and water resources. Many of the reported damages have been resolved. Mine operators have responded to these impacts by providing temporary repairs and repairing land and structure damage and compensating property owners. To date, enforcement action has been taken requiring compliance with the damage repair and water supply replacement requirements of Act 54.

The Study Area



Updated Findings

The information gained through additional investigations and surveys enabled DEP to compile record refine the scope of study population. The study population was trimmed from 1,884 properties to 1,855 pro duplicates and reports that were not related to mining during the study period (August 1993 – August 1998) with definitive information increased from 1,060 to 1,677. The table below summarizes and contrasts current available at the time of the 1999 report.

Categories	Properties	
	1999	2000
Total Properties	1884	1855
Properties with definitive information	1060 (56%)	1677 (90%)
Properties reporting damage	629	802
Damage (% of total properties)	33%	43%
Damage (% of properties with definitive information)	59%	48%
Damage cases resolved	367 (58%)	558 (70%)
Damage cases "in process"/Other status	262 (42%)	244 (30%)

At the conclusion of data collection, information had been obtained on 90 percent of properties within population. The final count of properties with associated reports of damage was 802, which represents 43 percent of the population or 48 percent of the properties with definitive reports. The information also revealed that 70 percent resolved.

As shown in the accompanying table, the most frequently reported types of impacts were water supply problems. Structure damages were reported less frequently and land damage least frequently. Resolution rates ranged from 74 percent for water cases, 72 percent for structure damage cases and 62 percent for land damage cases.

Types of Reported Impacts		
<i>Water</i>		
Categories	1999	
Total properties	1884	
Properties reporting damage	533	
Cases resolved	373 (70%)	5
Cases "in process"/Other status	160 (30%)	1
<i>Structures</i>		
Categories	1999	
Total properties	1884	
Properties reporting damage	280	
Cases resolved	179 (64%)	2
Cases "in process"/Other status	101 (36%)	1
<i>Land</i>		
Categories	1999	
Total properties	1884	
Properties reporting damage	150	
Cases resolved	39 (26%)	1
Cases "in process"/Other status	111 (74%)	

Longwall vs. Room-and Pillar Mining

To better clarify the effects of longwall mining versus the older room-and-pillar method, information relating to the two mining methods was put into separate categories. Longwall mining is a high-extraction mining method where coal recovery, timing and extent of subsidence is planned and predictable. In room-and-pillar mining, coal pillars are left in place to support the roof and can often lead to unexpected subsidence after the operation ends.

The 1,855 properties within the revised study population included 932 properties that were situated above longwall mines and 923 properties that were situated above room-and-pillar mines. The information collected revealed that 324 properties in the longwall group and 551 properties in the room-and-pillar group had no reported damage. In the longwall group, 523 properties had reported damage compared to 279 from the room-and-pillar group. There were also 49 properties in the longwall group owned by the mine operators and had no reports indicating the presence or absence of damage. There were also 36 longwall and 93 room-and-pillar properties that had no definitive reports.

Account of Damage by Mine Type			
Category	Longwall	Room-and-Pillar	
Properties with no damage	324	551	
Properties with reported damage	523	279	
Properties owned by operators	49	0	
Properties with no information or no usable information	36	93	
Total	932	923	

The extent of impacts varied among the 802 properties with reported damage, as shown in the table below. There were reports of combined impacts to water supplies, structures and land. There were also 188 cases with only one type of impact, with water supply impacts being the most prevalent. The remainder of the cases involved one type of impact, with water supply impacts being the most prevalent. The following table provides a breakdown of impacts among the 802 properties with reported damages and provides a breakdown of impacts by mine type.

Information Relating to Extent of Impact			
Extent of impacts	Longwall	Room-and-Pillar	Total
Water, Structure and Land	104	10	
Water and Structure	138	9	
Structure and Land	18	2	
Water and Land	16	5	
Water only	167	229	
Structure only	61	10	
Land only	19	14	
Total	523	279	

Follow-up Issues

DEP followed up on all cases where mining had reportedly altered the flows of overlying streams. Through this follow-up, a list was refined to 15 streams that were confirmed to be perennial (i.e., flow year-round) prior to mining. Nine streams exhibited pooling conditions resulting from subsidence along their channels, and four streams exhibited diminished flow. Pooling and diminution along undermined segments. Although pooling was the most widely observed subsidence effect on aquatic resources and stream uses were largely uncertain. To determine the effects of mining on wetlands and riparian areas, DEP is contracting with an outside consultant to complete an independent, scientific study.

Through feedback on the 1999 report, DEP found that a high-profile case involving damage to a large, private property was identified.

transmission line had been omitted from damage summary tabulations. In order to ensure coverage of all v re-examined its list of water system operators and contacted 12 water system operators that were not previ additional damages were found.

DEP has implemented changes to improve its data collection programs and improve the quality of future rej regulations to require mine operators to report all incidents of subsidence damage and water supply impact Mining Office. DEP has also made improvements to its databases so that it can readily identify all claims tr and the length of time those cases have gone unresolved. In addition, DEP is contracting with independent separate studies on the effects of subsidence on streams, wetlands and riparian areas; forestland; and pro

For a printed copy of the Supplement or the 1999 report, contact Harold Miller at 717-783-8845, e-mail harr Department of Environmental Protection, Bureau of Mining and Reclamation, P.O. Box 8461, Harrisburg, P.

Mineral Resources Management Homepage				
Abandoned Mine Reclamation 717-783-2267	Deep Mine Safety 724-439-7469	District Mining Operations 724-942-7204	Mining & Reclamation 717-787-5103	

**Questions and Comments can be E-mailed to
MineralResourcesWebmaster@state.pa.us**

**Individuals & Families | Students | Educators | Farmers | Local Government | Business
PA Home Site | GreenWorks.tv | Ask DEP | Plug-Ins | Home Page**

Contact Webmaster

Last Modified on 03/28/

The Effects of Subsidence Resulting from
Underground Bituminous Coal Mining on Surface
Structures and Features and Water Resources

February 2001

Supplement to the June 1999 Report

Prepared Under the Authorization of Section 18a of the Bituminous
Mine Subsidence and Land Conservation Act



Tom Ridge, Governor
Commonwealth of Pennsylvania

James M. Seif, Secretary
Department of Environmental Protection

Robert Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
February 2001

The Secretary

717-787-2814

To Governor Tom Ridge, members of the General Assembly,
Environmental Quality Board and Citizens Advisory Council:

I am pleased to provide you with this copy of DEP's Supplemental Report on the Effects of Underground Coal Mining. The supplement was prepared to fulfill DEP's commitment to address unresolved issues from the 1999 report and to provide additional information on damage claims that originated during the 1993-1998 study period.

Under the 1994 amendments to the Commonwealth's Bituminous Mine Subsidence and Land Conservation Act (Act 54), mine operators are responsible for repairing or compensating for damages to certain structures and water supplies caused by underground mining. The act requires DEP to assess the effects of underground mining every five years. The 1999 report was the first report ever completed on damages caused by deep mine operations, and we are appreciative of the feedback we received regarding that report.

In preparing the supplemental report, DEP again attempted to contact property owners in the study area to develop more information on damage claims that were pending. Through additional investigations and surveys, we are now able to provide a more complete picture of the impacts of underground mining and the resolution rates for damages.

Using this additional data, DEP was able to confirm that damage from underground mining occurred on 173 more properties in the study area than documented in 1999, but the percentage of properties with damage reported decreased by 11 percent overall (from 59 to 48 percent). DEP also found that mine operators are generally complying with their responsibilities under the law to repair damages. At the time the supplemental report was completed, 70 percent of the damages had been resolved, rather than the 58 percent in the original report.

To better clarify the effects of underground mining, DEP is contracting with consultants to perform independent, scientific studies. Three separate studies will evaluate the effects of subsidence on streams, wetlands and riparian areas, forestland, and property values.

The supplemental report is intended to be read in conjunction with the 1999 report to provide the full scope of the study. Included with the supplemental report is an "At A Glance" section that provides a detailed summary of the data. The supplement, as well as the 1999 report, are both available on DEP's website at www.dep.state.pa.us (choose directLINK "Act 54").

Sincerely,

James M. Seif

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Executive Summary

Underground coal mining, like many other human activities, cannot be conducted without some impact on the environment. For underground coal mining, particularly longwall mining, obvious impacts are often seen at the surface, in the form of subsidence. When the coal is removed, the resulting void causes the overlying surface to subside, creating the potential for impacts to structures, land, water supplies and streams.

The process of recovering coal has many complications beyond the technical challenges of operating beneath the surface. One of the most important considerations is the temporary disruption to people's lives as the mining progresses. This disruption is rooted in the complicated provisions of Pennsylvania's laws related to property rights.

Pennsylvania law recognizes three separate estates in land: the mineral estate, the surface estate and the support estate. That is, each estate is a distinct property interest. This arrangement is unique because the support estate can be conveyed apart from either the mineral estate or surface estate. The support estate is always owned by either the mineral estate owner or surface estate owner. If the support owner is a mine operator, the support estate is used to facilitate exploitation of the mineral estate. When the surface owner holds the right of support, he can use it to ensure support for that surface and prevent subsidence. Although Pennsylvania recognizes the support estate as a separate property interest, someone who does not also possess either the mineral estate or the surface estate cannot use it profitably.

An expert in property and mineral rights discussed these provisions at an educational hearing sponsored by the Legislative Coal Caucus in November 1999. In describing the three estates, he pointed out that "...Pennsylvania is the only state in the nation that has that creation, the right of support as a separate ownership right that can be owned independently of both the coal and surface."¹ This characteristic of Pennsylvania law, in conjunction with the provisions of the Bituminous Mine Subsidence and Land Conservation Act, lead to the results that are the subject of so much concern. This reality was recognized by a Citizens Advisory Council (CAC) representative who testified that, "I can think of no other parallel where I, as one property owner, can damage my neighbor and just be given approval to do that as long as I do this. I can't do that anywhere else. But in this instance, the mineral rights owners can damage his surface neighbor with the approval of all of us."² These sentiments were echoed by a resident from Indiana County, who also accurately pointed out that although the law permits damage, it also "...provides for remediation and repair of damage and loss."³

¹ Transcript of *Public Hearing on the Matter of Act 54*, Testimony of Cyril Fox, Professor, University of Pittsburgh School of Law, page 148, line 25. Legislative Coal Caucus, Belle Vernon, PA, Nov. 18, 1999.

² *Ibid.*, Testimony of Susan Wilson, Executive Director, Citizens Advisory Council, page 30, line 3

³ *Ibid.*, Testimony of Donald Cardose, page 289, line 14

The Department of Environmental Protection has prepared this report as a supplement to the 1999 report, *The Effects of Subsidence Resulting from Underground Bituminous Coal Mining on Surface Structures and Features and Water Resources*. The supplement was prepared to address comments received on the 1999 report and to provide information on cases that lacked definitive resolutions in the 1999 report, including more detail on impacts to water, structures and land resulting from underground mining.

One of the key issues addressed by the supplement is more comprehensive accounting of circumstances on properties situated above or near mining in a 10-county area in western Pennsylvania between August 1993 and August 1998. At the close of data collection for the 1999 report, DEP had information on 1,060 of 1,884 properties that were identified as proximate to study period mining. Through additional data collection and analysis, DEP has compiled additional information on 671 properties, bringing the total number of properties accounted for to 1,731 (see Table 1).

Table 1
Statistical Summary

Categories	Properties	
	1999	2000
Total properties	1884	1855
Properties accounted for	1060 (56%)	1731 (93%)
Properties with definitive information	1060 (56%)	1677 (90%)
Properties reporting damage	629	802
Damage (% of total properties)	33%	43%
Damage (% of properties with definitive information)	59%	48%
Damage cases resolved	367 (58%)	558 (70%)
Damage cases in process/Other status	262 (42%)	244 (30%)

As a result, DEP is now able to provide a current account of circumstances on 90 percent of the properties that were proximate to mining during the study period.

There were reports of damage associated with 802 properties. To provide the most accurate picture, this accounting includes all reports of damage, some of which were ultimately found to be unrelated to mining. Not surprisingly, the largest percentage of reported impacts was found to be associated with longwall mining. There were, however, a significant number of reported water supply impacts associated with room-and-pillar mining. As a class, water supply impacts were the most frequently reported type of effects for both longwall and room-and-pillar mines.

Many cases of reported impacts were resolved or in the process of being resolved. In 49 cases, mine operators were identified to be the owners of the properties at the time of mining. Many of

the findings regarding case resolutions were the result of follow-up inquiries and investigations conducted by DEP.

The supplement also presents information on two cases that were not included in the 1999 report. One of these cases involved damage to a segment of railroad in Washington County. The other case involved damage to a large-diameter water transmission line serving the city of Washington. Upon discovering the omission of the Washington water line incident, DEP investigated to see if damage to other privately operated community water systems was excluded. DEP's research revealed 12 privately operated water systems that may have been missed by previous survey efforts. Communications with the operators of all 12 systems turned up no additional impacts to report.

As a final area of investigation, DEP looked into the matter of confidentiality clauses in agreements between mine operators and property owners. Speculation about the impact, if any, that these so-called "gag orders" might have on data collection was expressed at the November 1999 Legislative Coal Caucus hearing. This investigation focused on the issue of whether these clauses may have prevented many property owners from reporting information to DEP.

During the course of the 1999 telephone survey, DEP encountered eight cases where there were not confirmed reports of confidentiality clauses but property owners were unwilling to provide information. DEP had previously identified only seven property owners who reported having confidentiality agreements with mine operators. As is discussed in more detail on page 27, confidentiality agreements did not prove to be a factor in DEP's ability to obtain information on nearly 93 percent of the 1,884 properties in the original survey population. Circumstances among the remaining seven percent of the properties cannot be stated with certainty, although many of these are situations where the property owners did not respond to DEP's survey efforts or the mine operators had gone out of business, leaving no available sources of information.

Like the 1999 report, this supplement relies heavily on statistics to describe the nature and extent of effects caused by underground mining. DEP acknowledges that information relating to the number of impacts reported and the number of cases resolved does not capture the emotional effects that mining impacts have on the lives of area residents and property owners. These emotional effects are real, but are beyond the scope of this report. In addition, these effects would be difficult, if not impossible, to quantify in a scientific manner.

Purpose of the Supplement

This supplement has been prepared as an addition to DEP's June 1999 report, *The Effects of Subsidence Resulting from Underground Bituminous Coal Mining on Surface Structures and Features and Water Resources*. It addresses issues that were raised by reviewers of the 1999 report and cases that were left unresolved at the close of the period covered by the report.

The need for a supplement was acknowledged in the 1999 report. After analyzing the data that had been obtained at that time, DEP recognized that many cases were at an inconclusive stage of resolution and in need of follow-up investigations. DEP surveys conducted during 1998 revealed many cases that had not previously been reported to either the mine operator or the department. There were also cases where determinations of no liability had been reached without DEP involvement. In addition, there were cases that appeared to be stalled because the mine operator and property owner could not come to terms on the means of resolution and also cases where circumstances were unclear. As a result, DEP committed to conducting additional investigations and publishing a supplementary report.

Following the release of the 1999 report, DEP received comments from the Citizens Advisory Council and various citizens' groups. In addition, the Coal Caucus of the Pennsylvania General Assembly held an educational meeting in November 1999, where interested individuals presented commentary on the 1999 report and the Bituminous Mine Subsidence and Land Conservation Act in general. After receiving these comments, DEP decided to expand the scope of the supplement to address, to the extent possible, the additional issues raised.

This supplement is organized into several sections. Following the *Executive Summary* and this section, a discussion of issues raised as part of the commentary of the 1999 report is presented in *Issues Resulting from Comments on the 1999 Report*. The section includes a summary that incorporates information obtained since June 1999. Following that, the section titled *Improvements to Data Gathering Systems* describes the steps DEP has taken to improve data collection and track unresolved cases. Finally, *Follow-up on Issues Identified in the 1999 Report* presents findings on the cases that were targeted in the 1999 report for follow-up investigation.

Issues Resulting from Comments on the 1999 Report

Introduction

This section of the supplement has been prepared to address comments on the 1999 report. Although the information does not address all the issues raised by commentators, DEP has attempted to address those items that could be covered through short-term data collection efforts. The objective was to address as many issues as possible without unduly delaying the release of the supplement.

Additional Details Regarding the Survey Population and Data Sources

The first item addressed by this supplement is an updated accounting of information on the 1,884 properties that made up the survey population for the 1999 report. Table 2 illustrates that the survey population was made up of properties identified through three sources. One group consisted of properties that had study-period mining within 200 feet of their boundaries as depicted on six-month mine maps. This was the group targeted by direct mailing during DEP's 1998 property owner survey.

The second group consisted of property owners who requested property owner survey questionnaires in response to DEP's public outreach efforts. These properties were not within 200 feet of study-period mining and, therefore, outside the range of DEP's direct mailings. Together, these two groups made up the 1,603 properties identified in Table IX.1 of the 1999 report.

The third group consisted of properties identified through DEP's Claims Database. (The Claims Database consists primarily of properties with impacts reported by mine operators and does not include information on properties that had no impacts). Many of the properties in the Claims Database were included in the combined group of 1,603 properties discussed above; however, 281 were not. Consequently, these 281 properties were added to the 1,603 properties to create a total survey population of 1,884.

Table 2
Summary of Properties in Survey Population

Category	Properties
Identified from six-month mine maps	1568
Questionnaires requested by property owners	35
<i>Identified properties, Table IX.1, 1999 report</i>	<i>1603</i>
Records from claims database not included in other groups	281
Total	1884

Some commentators questioned the extent to which DEP had obtained definitive data on the 1,884 properties included in the study population. From the report, they could identify only 779

properties as having associated responses from the 1998 property owners' survey. These commentators further questioned whether it was appropriate to assume that a property had experienced no adverse effects if it did not have an associated survey form or claim record.

After reviewing this matter, DEP recognized that the commentators' concerns were due, in part, to the fact that the 1999 report did not present a detailed discussion of the information obtained from the Claims Database. The Claims Database is the primary repository for reports filed by operators, and the information represented by these records was incorporated into the tabulation of effects reported. DEP gave greater prominence to the efforts made to gather supplementary information from property owners over the routine reports made by operators for two reasons. First, information gathered from property owners was provided voluntarily since property owners are not required to submit such reports. Second, information gleaned from these reports provided a means to crosscheck information that DEP had previously collected and was continuing to collect from operators. Consequently, the 1999 report did not specifically highlight the 493 records from the Claims Database (281 of which were not duplicated elsewhere) that were also used in the data analysis. In many cases, a claim record was available to provide information on a property even though the property owner had not returned a questionnaire. By the time data collection was closed for the 1999 report, information was available in one form or another for 1,060 of the 1,884 properties.

Additional Data Collection Efforts

Even though information was available on 1,060 properties, several commentators questioned the validity of extrapolating observations to the entire survey population. In response, DEP took steps to obtain information on the remaining 824 properties that were unaccounted for at the time of the 1999 report. Databases were reviewed to identify data gaps and updated to include additional information from the 1998 property owners' survey. DEP conducted an additional telephone survey targeting the property owners that had not responded to previous survey efforts. DEP queried mine operators about properties on which it had no available information. In addition to these activities, DEP made numerous contacts with mine operators and property owners in an effort to fill in the gaps for incomplete data records.

The update of DEP's central Act 54 database involved several activities. One activity was the entry of information from questionnaires received after the close of data collection for the 1999 report. Another activity involved a review of partially completed questionnaires from the property owners' survey to gather additional usable information. Through these activities, DEP was able to add reports for 38 properties, thus increasing the total number of properties with available information from 1,060 to 1,098.

DEP's progression in increasing the number of properties where specific information was available is described here and summarized in Table 3. The 1999 telephone survey was conducted in December of that year. These property owners were asked to confirm whether they had or had not experienced adverse effects attributable to mining and to disclose the nature of any observed effects and

the resolution provided by the mine operator. Property owners were also asked if they were prohibited from providing this information under the terms of a signed agreement. By the conclusion of this effort, DEP had successfully contacted 224 property owners, bringing the total number of properties for which some type of contact had been established to 1,322. Of the 224 property owners who were contacted, 211 provided information that was usable, thus increasing the number of properties with available information to 1,309.

Table 3
Summary of Results from Additional Data Collection Efforts

Source of Information	Properties	Cumulative
1999 Report	1060	1060
Late responses to questionnaires and additional questionnaire processing	38	1098
1999 Telephone survey	224	1322
1999 Mine operators' survey	424	1746

After completing the two aforementioned activities, DEP refined the list of 575 properties for which information was still lacking and asked mine operators to report information that they had regarding these properties. The master list was subdivided into smaller lists containing properties associated with individual mines. Mine operators were directed to report whether or not a claim had been received, the nature of any reported damage and the current status of resolutions. This request resulted in responses relating to 424 properties and additional information on 422 of those properties. At the conclusion of this effort, DEP had contacted the owners of 1,746 properties and obtained usable information for 1,731 properties. The 1,731 figure included 49 properties that were owned by mine operators at the time of reporting and for which there were no details regarding the existence or absence of damage.

The effort was highly successful in enabling DEP to fill in gaps to the extent that information was available. The 1,746 properties for which DEP established contact is an increase of 686 properties over the 1,060 that were previously counted and represents nearly 93 percent of the total 1,884 properties. Remaining gaps include situations where the property owners did not respond to DEP surveys and mine operators had gone out of business, and situations where property owners requested but failed to return survey questionnaires.

Summaries of results from the 1998 and 1999 surveys of property owners and mine operators are presented in Table 4 and Table 5. It should be noted that while the Claims Database contains information derived from the 1998 mine operators' survey, it also contains some information derived from property owner complaints filed with the McMurray District Mining Office. For purposes of this analysis, the Claims Database is treated as a mine operator data source.

Table 4
Information Received from Property Owners' Surveys

Information Source	Reported Problem	Reported No Problem	Insufficient Information	Total	Reported Problems /Total (%)
1998 Property Owner Survey (questionnaires and telephone survey)	332	431	40	803	41
1999 Property Owner Survey (telephone survey)	43	168	13	224	19
TOTAL	375	599	53	1027	37

Table 4 and Table 5 present analyses of the information derived from each data source. The information in the two tables is presented separately so that the reader can understand the scope of information reported by each source. Reports are divided into three groups. One group consists of reports that indicated problems. Another group comprises reports that indicated no observed impacts. The final group consists of reports that contained no usable information. The reporting unit for all cases is the property.

The reports provided by property owners and mine operators that are summarized in Table 4 and Table 5 are not mutually exclusive because they include overlap for 160 properties. The overlap reflects the differing types of information provided by each source. For example, during the 1998 survey efforts, property owners were the only group reporting observations of no impact. During the same time interval, mine operators were only asked to report on properties for which they had received reports of impacts. In addition, during the 1998 survey, property owners reported impacts that had not been reported previously to anyone, making it improbable that there would be corresponding reports in the Claims Database. Finally, the 424 reports from the 2000 mine operators' survey represent information that was derived totally from the mine operators. As previously indicated, this survey was conducted after DEP had concluded its efforts in surveying property owners.

Table 5
Information Received from Mine Operators' Surveys

Information Source	Problems	No Problems	Operator Owned Property	Total
1998 Claims Database Records	493	0	0	493
2000 Mine Operators' Survey	95	280	49	424
TOTAL	588	280	49	917

It should be noted that 14 of the additional impacts discovered through the 1999 property owners' survey and the 2000 mine operators' survey occurred after Aug. 31, 1998 (i.e., the close of the 1993-1998 study period).

Table 4 and Table 5 also provide information on the additional impacts identified through the December 1999 and January 2000 surveys. Table 4 shows that 19 percent of property owners contacted in 1999 reported impacts, compared to 41 percent of the earlier group.

Accounting for 1,884 Properties in the Survey Population

Figure 1 provides an accounting of the information obtained for the 1,884 properties that were discussed in the 1999 report. Several matters are addressed in this figure, including information availability, reports of impacts and reports indicating no effects. Information is presented by mine type to facilitate comparisons between longwall mining operations and room-and-pillar mining operations. Details are provided to explain special circumstances relating to the information presented.

Figure 1 shows an adjustment that reduces the study population to 1,855 properties from 1,884 properties. Thirteen of the properties originally included in the 1999 study were actually associated with pre-study period mines (i.e., mines that ceased operations before Aug. 1, 1993). Another 15 properties could not be associated with any mine operating during the study period. This group originated primarily from individuals who requested questionnaires but did not return them. It also included two properties with problems related to surface mining. There was also one property with a duplicate record in the database.

The 1,855 properties were divided into three groups based on the mine types with which they were associated. There was almost an even split between properties situated over longwall mines (932) and properties situated over room-and-pillar mines (923).

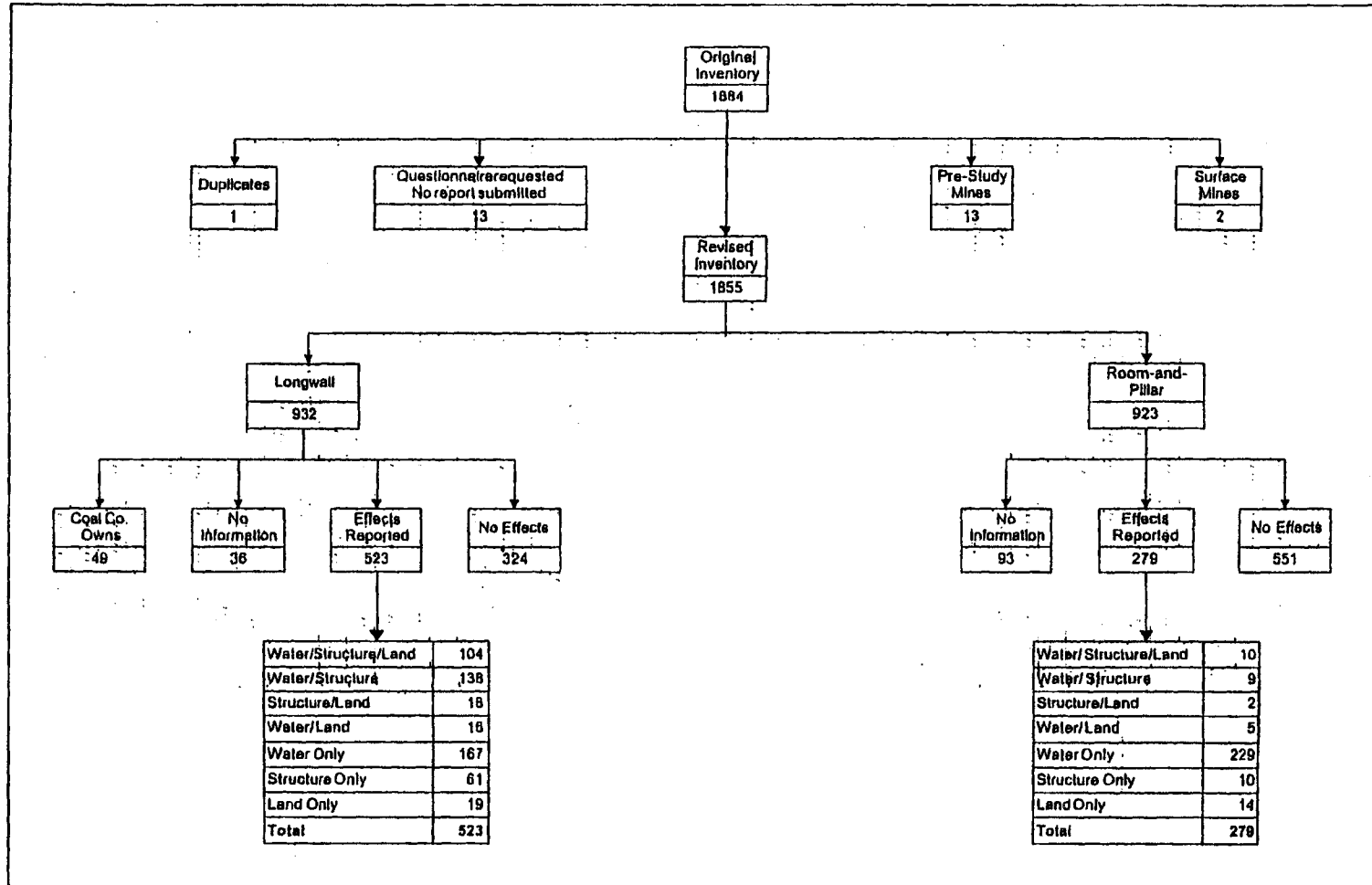
At the next level, Figure 1 illustrates the type of reports filed for properties within each mine type category. These details show the number of properties that had associated reports of impact, the number of properties that had associated reports indicating the absence of impacts, and the number of properties that had no associated report of any kind. The longwall category also has one additional information group. This group includes properties that had no associated report of damage but were owned by the mining companies prior to mining.

The information presented in Figure 1 indicates that 523 of the 932 longwall properties had associated reports of impact. The group of 932 longwall properties also includes 49 properties owned by coal operators that may or may not have had impacts. For room-and-pillar properties, there were 279 impact reports among 923 total properties.

The final set of details on Figure 1 lists the number of properties with associated reports of impacts for each mine type category. In order to describe the extent of impacts, property counts are

based on impact groupings. For example, there were 104 properties in the longwall mine category with associated reports of water, structure and land impacts. Within this same

Figure 1
Summary Accounting for 1,884 Properties



category, there were 138 properties with associated reports of water and structure impacts but no reports of land damage. As indicated by the impact summaries, the largest number of impacts was reported in association with longwall mines.

Additional details regarding impact reports and their resolutions are presented in the following pages. These discussions reference Figure 2 on page 14. Figure 2 presents the same information as in Figure 1, but is structured to segregate properties for which definitive information on status is known. The figure illustrates that DEP now has definitive reports on the status of 1,677 properties or 90 percent of the 1,855 properties that comprise the study population for the 1993 – 1998 period.

Reports of Impacts and Resolutions for 1,677 Properties

Overview

The summary of impacts in Figure-2 is broken down to show type of impact (land, structure or water) by mine type category. When viewed in this perspective, there were 425 reports of water supply impacts, 321 reports of structure damage and 157 reports of land damage in the longwall category (see the longwall column in Table 6, Table 7 and Table 8).

Table 6
Summary of Water Impacts by Mine Type

Category	Longwall	Room-and-pillar
Water/Structure/Land	104	10
Water/Structure	138	9
Water/Land	16	5
Water Only	167	229
Total	425	253

Similarly, the breakdown for room-and-pillar mines presented in the room-and-pillar column in the three tables is 253 water supply impact reports, 31 structure damage reports and 31 land damage reports.

Table 7
Summary of Structure Impacts by Mine Type

Category	Longwall	Room-and-pillar
Water/Structure/Land	104	10
Water/Structure	138	9
Structure/Land	18	2
Structure Only	61	10
Total	321	31

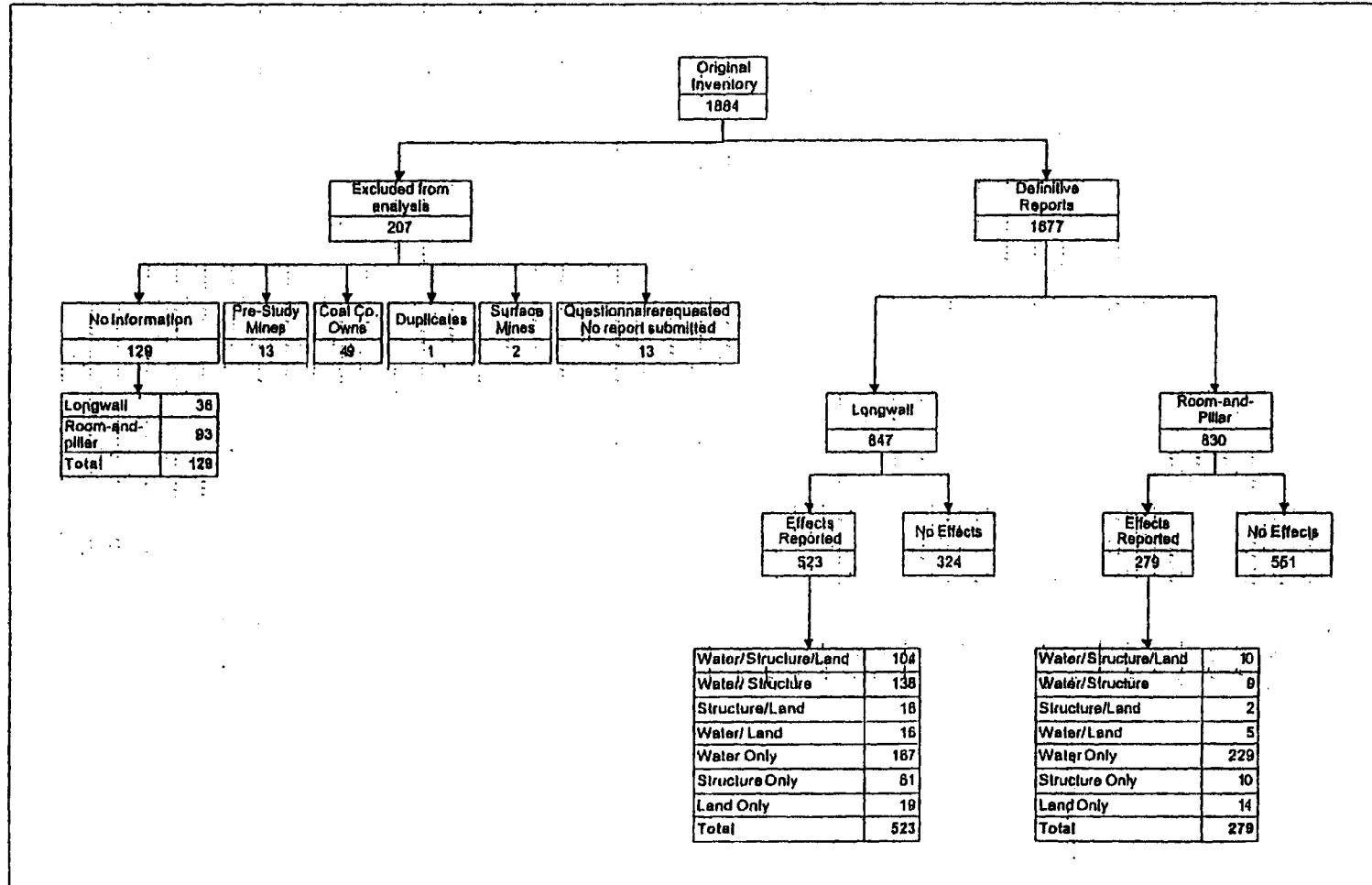
Table 8
Summary of Land Impacts by Mine Type

Category	Longwall	Room-and-pillar
Water/Structure/Land	104	10
Structure/Land	18	2
Water/Land	16	5
Land Only	19	14
Total	157	31

Comments received on the 1999 report indicated that readers were interested in seeing impacts and resolutions tabulated by mine type. The remainder of this subsection is structured in that manner.

In addition, resolution summaries are presented on the basis of the type of report (i.e., water supply impact, structure damage, or land damage). The reporting unit is still the property, but the impacts are separated by type. In some cases, a property owner may have reported structure damage that was repaired and may also have reported a water supply impact that was found to be unrelated to mining. The same relationship may also hold for other types of combinations involving the same property. For this reason, reported impacts are grouped by type.

Figure 2
Summary Status of Study Properties (Revised View)



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Impacts and Resolutions for the 523 Properties Situated Above Longwall Mines

As shown in Figure 2, there were 523 longwall properties that had reported impacts of some type. Water supply impacts were the most commonly reported type of impact associated with longwall mines. There were also 321 reports of structure damage and 157 reports of land damage associated with the longwall category (see Table 6, Table 7 and Table 8). Not surprisingly, there were proportionately more reports of impacts among the properties over longwall mines.

Table 9 presents the outcomes and resolutions for the 425 longwall properties that were reported to have some type of water supply impact. Collected information indicates that 237 cases, or 56 percent of the total, were resolved with some type of remedy to the property owners. Most of these cases were resolved by re-establishing a permanent water supply. There were also 33 cases that were resolved by agreements or compensation. Two cases were settled by the mine operator purchasing the affected property. There were also 33 cases that were reported to be settled but lacked details regarding settlements.

Another 120 cases, or 28 percent of the total, were reportedly in the process of being resolved. These were cases where mine operators had taken positive steps toward reaching settlements, such as providing temporary water, making temporary repairs or negotiating compensation arrangements with property owners. In 90 of these cases, property owners were reported to be on temporary water. In another 30 cases, claims were reported to be in process, but there was no information regarding the provision of temporary water.

In 52 cases, or 12 percent of the total, no remedial action was required. Most of these cases involved situations where the mine operators were not liable to replace the water supplies. Determinations of no liability were typically based on findings that mining was not the cause of conditions at the water supplies or findings that effects occurred prior to the effective date of water supply replacement requirements (i.e., both state and federal requirements). There were also two cases where no problems were found upon follow-up investigation.

The remaining 16 cases, or four percent of the total, fell into six subcategories representing a variety of circumstances. In eight of the cases, DEP was unable to obtain details regarding settlement status despite its efforts. There were four cases in which there was some type of problem or dissatisfaction regarding the remedy provided by the mine operator. One case was referred to the U.S. Office of Surface Mining (OSM) for enforcement under the federal program because the effects occurred after the effective date of federal water supply replacement requirements but before the effective date of Pennsylvania's water supply replacement requirements.⁴ One case was under investigation by the mine operator and pending a determination. Another case was newly reported as a

⁴ In Pennsylvania, the general responsibility to replace certain drinking, domestic and residential water supplies extends back to Oct. 24, 1992, under the National Energy Policy Act (EPACT). These requirements predate the Act 54 amendments to BMSLCA, which did not become effective until Aug. 21, 1994.

result of DEP's most recent survey efforts. There was also one case in which a property owner replaced his water supply without involving the mine operator.

Table 9
Reported Water Supply Impacts and Resolutions (Longwall)

Resolution Type	Number of Cases	Resolution Class	
		Subtotal	%
RESOLVED			
Permanent water supply reestablished	161		
Settled, means not disclosed	41		
Settled by agreement or compensation	33		
Mine operator bought property*	2		
<i>Resolved Subtotal</i>		237	56%
IN PROCESS			
Property owners on temporary water...	90		
Claim in process	30		
<i>In Process Subtotal</i>		120	28%
NO REMEDIAL ACTION REQUIRED			
Mine operator not liable	50		
No actual problem	2		
<i>No Remedial Action Required Subtotal</i>		52	12%
OTHER STATUS			
Current details unavailable	8		
Resolution attempted but problems remain	4		
EPACT case	1		
Mine operator investigating	1		
Newly reported case	1		
Supply restored by property owner	1		
<i>Other Status Subtotal</i>		16	4%
TOTALS	425	425	100%

*These properties were not among the 49 previously referenced as belonging to mine operators

Two groups – the first including cases that had been resolved and the second where no remedial action is required – total 68 percent of the water supply cases associated with longwall mining operations and are considered as having final resolutions. Another 28 percent were in various stages of the resolution process.

There were 321 reports of structure damage associated with the longwall property grouping. Table 10 presents the summary of outcomes and resolutions for these reports. As shown in the table, 204 cases, or 64 percent of the total, were reported to be at the stage of final resolution with some type of remedy or compensation provided to the property owners. In 111 cases, settlements were achieved through compensation or agreements. In 50 cases, the mine operators repaired the structure damages. There were also 43 cases that were reportedly settled but were lacking details regarding the means of settlement.

Table 10
Structure Damage Reports and Resolutions (Longwall)

Resolution Type	Number of Cases	Resolution Class	
		Subtotal	%
RESOLVED			
Settled by agreement or compensation	111		
Repaired	50		
Settled, means not disclosed	43		
<i>Resolved Subtotal</i>		204	64%
IN PROCESS			
Claim in process	63		
<i>In Process Subtotal</i>		63	19%
NO REMEDIAL ACTION REQUIRED			
Mine operator not liable	29		
No actual problem	2		
<i>No Remedial Action Required Subtotal</i>		31	10%
OTHER STATUS			
Current details unavailable	14		
Outcome in dispute	4		
Newly reported case	2		
In litigation	1		
2 year reporting period expired	1		
Covered by Mine Subsidence Insurance	1		
<i>Other Status Subtotal</i>		23	7%
TOTALS	321	321	100%

In addition to those cases that were settled, there were 63 cases in which claims were in the process of being resolved. These were cases where mine operators have taken positive steps toward reaching settlements, such as making temporary repairs or negotiating compensation arrangements with

property owners. This group represented 19 percent of total structure damage cases associated with longwall mining operations.

Table 10 shows that there were 31 cases where no remedial action was required. This group represented 10 percent of the structure damage reports associated with longwall mining operations. Twenty-nine of these cases involved circumstances where the mine operator was not liable to repair or compensate for the damage. Determinations of no liability were based on findings that the damage was not attributable to underground mining or findings that the damage occurred prior to the time mine operators became responsible to repair or compensate for damage under state and federal regulatory programs. There were also two cases where follow-up inquiries revealed that there were no actual problems.

The remaining 23 structure damage cases fell into various categories. In 14 cases, there was no current information regarding the current status of negotiations or resolutions. There were four cases in which property owners were dissatisfied with the remedy offered or provided by the mine operator and one case where the outcome was being litigated. One case was newly discovered as a result of DEP's most recent survey efforts. In another case, neither repair nor compensation was provided because the property owner did not report within the two-year period allowed by Act 54. There was also one case that was settled under DEP's mine subsidence insurance program.

Two groups – the first including cases where some resolution has been effected and the second where no remedial action is required – together total 74 percent of the structure damage cases associated with longwall mining activities and are considered as having final resolutions. Another 19 percent were in the resolution process.

Table 11 shows the outcomes and resolutions for the longwall properties with reported land damage. There were 157 reports of land damage associated with longwall mining operations. The collected information indicates that 83 of these cases, or 53 percent of the total, have been resolved with some type of remedy to the property owners. In 45 cases, the mine operators repaired the land damages. In 21 cases, settlements were achieved through compensation or agreements. There was also one case where the mine operator bought the affected property. In 16 cases, there were settlements but the means of settlement were not provided. There were also 28 cases that were in the process of being resolved. These were cases where mine operators had taken steps toward reaching settlements, such as working on repairs or negotiating compensation arrangements with property owners.

Table 11
Land Damage Reports and Resolutions (Longwall)

Resolution Type	Number of Cases	Resolution Class	
		Subtotal	%
RESOLVED			
Repaired	45		
Settled by agreement or compensation	21		
Settled, means not disclosed	16		
Mine operator bought property*	1		
<i>Resolved Subtotal</i>		83	53%
IN PROCESS			
Claim in process	28		
<i>In Process Subtotal</i>		28	18%
NO REMEDIAL ACTION REQUIRED			
Mine operator not liable	9		
No actual problem	6		
<i>No Remedial Action Required Subtotal</i>		15	9%
OTHER STATUS			
No indication that repairs were made	29		
In litigation	1		
Mine operator investigating	1		
<i>Other Status Subtotal</i>		31	20%
TOTALS	157	157	100%

*These properties were not among the 49 previously referenced as belonging to mine operators

Table 11 also indicates that no remedial action was required in 15 cases. Nine of these cases involved effects that were not attributable to underground mining. In six other cases, follow-up investigations revealed that there were no actual problems.

There were also 31 land damage cases that fell into other resolution categories. In 29 cases, DEP was unable to obtain current information regarding the status of previously reported cases. There was also one case that was in litigation and one case that was under investigation by the mine operator.

Two groups – the first including cases that had been resolved and the second where no remedial action is required – together represent 62 percent of cases and are viewed as having achieved final settlement. Another 18 percent were in the resolution process. In the remaining 20 percent of cases, information was unavailable for providing an updated status.

Impacts and Resolutions for the 279 Properties Situated Above Room-and-Pillar Mines

As shown in Figure 2, there were 279 room-and-pillar properties that had reported impacts of some type. Water supply impacts were by far the most commonly reported type of impact associated with room-and-pillar mines. There were 253 properties with associated reports of water supply impacts (see Table 6 on page 12). There were also 31 reports of structure damage and 31 reports of land damage associated with the room-and-pillar category (see Table 7 and Table 8 on pages 12 and 12).

Table 12 presents the outcomes and resolutions for the 253 properties that were reported to have some type of water supply impact. As indicated on the table, 111 cases, or 44 percent of the total, were resolved through some type of remedial action or compensation. In 97 cases, permanent water supplies had been re-established. There were also 13 cases that were reportedly settled but were lacking details regarding the means of settlement. One case was settled by agreement.

Table 12
Reported Water Supply Impacts and Resolutions (Room-and-Pillar)

Resolution Type	Number of Cases	Resolution Class	
		Subtotal	%
RESOLVED			
Permanent water supply reestablished	97		
Settled, means not disclosed	13		
Settled by agreement or compensation	1		
<i>Resolved Subtotal</i>		<i>111</i>	<i>44%</i>
IN PROCESS			
Property owners on temporary water	9		
Claim in process	3		
<i>In Process Subtotal</i>		<i>12</i>	<i>5%</i>
NO REMEDIAL ACTION REQUIRED			
Mine operator not liable	100		
<i>No Remedial Action Required Subtotal</i>		<i>100</i>	<i>39%</i>
OTHER STATUS			
Current details unavailable	18		
Resolution attempted but problems remain	6		
EPACT case	3		
Replaced by property owner	2		
Newly reported case	1		
<i>Other Status Subtotal</i>		<i>30</i>	<i>12%</i>
TOTALS	253	253	100%

In addition to those cases that had achieved final settlement, there were 12 cases that were in the process of being resolved. In nine of these cases, property owners were reported to be on temporary water. In the other three cases, the claims were still in process.

There were also 100 cases in which no remedial action was required because the mine operators were not liable to replace the water supplies.

The remaining 30 cases had outcomes that did not readily fit within the aforementioned resolution categories. There were 18 cases in which current details were unavailable. In six cases, there was some type of problem or dissatisfaction regarding the remedy provided by the mine operator. Three cases were referred to OSM because impacts occurred prior to the effective date of Act 54 but after the effective date of federal water supply replacement requirements. In two cases, the property owners replaced the water supplies by themselves without involving the mine operators. There was also one case that was newly reported as a result of DEP's latest survey efforts.

Two groups – the first including cases that have been resolved and the second where no remedial action is required – together represent 83 percent of the water supply cases associated with the room-and-pillar mine grouping and may be classified as having final resolutions. Another five percent may be regarded as claims in process.

Table 13 presents the summary of outcomes and resolutions for reported structure damage cases at room-and-pillar mines. There were 31 reports of structure damage associated with room-and-pillar mines. By comparison, this number is substantially smaller than the number of reports associated with the longwall mines. This was not surprising given that room-and-pillar mining plans can be more readily altered to avoid structure damage.

For the group, 23 percent of the cases were resolved through repair or compensation. An additional 19 percent of the cases were in the process of being resolved. In 32 percent of the cases, no remedial action was required because the mine operators were not liable or the property owner regarded the damages as insignificant. The remaining 26 percent of cases were distributed among various other resolution categories. Two groups — the first including cases that have been resolved and the second where no remedial action is required — together represent 55 percent of the reported structure damage cases and are considered to be resolved. Another 19 percent of the cases represent claims in process.

Table 13
Structure Damage Reports and Resolutions (Room-and-Pillar)

Resolution Type	Number of Cases	Resolution Class	
		Subtotal	%
RESOLVED			
Settled by agreement or compensation	4		
Repaired	3		
<i>Resolved Subtotal</i>		7	23%
IN PROCESS			
Claim in process	6		
<i>In Process Subtotal</i>		6	19%
NO REMEDIAL ACTION REQUIRED			
Mine operator not liable	9		
Damage insignificant	1		
<i>No Remedial Action Required Subtotal</i>		10	32%
OTHER STATUS			
Current details unavailable	4		
Outcome in dispute	2		
EPACT cases	2		
<i>Other Status Subtotal</i>		8	26%
TOTALS	31	31	100%

Table 14 shows the outcomes and resolutions for the room-and-pillar properties with reported land damage. There were 31 reports of land damage associated with the room-and-pillar group. As in the cases of structure damage, the number of reports is significantly less than the corresponding number associated with longwall mines. Within this group, 35 percent of cases were reported to be resolved. Another 13 percent of cases were reported to be in the process of being resolved. In 26 percent of the cases no remedial action was required. In one of these cases a ground crack healed without intervention. There were also seven cases representing 26 percent of the total in which there was no indication of remedial action or compensation.

Two groups – the first including cases that have been resolved and the second where no remedial action is required – together represent 61 percent of the land damage cases at room-and-pillar mines. Another 13 percent of the cases are in the resolution process.

Table 14
Land Damage Reports and Resolutions (Room-and-Pillar)

Resolution Type	Number of Cases	Resolution Class	
		Subtotal	%
RESOLVED			
Repaired	6		
Settled, means not disclosed	3		
Settled by agreement or compensation	2		
<i>Resolved Subtotal</i>		11	35%
IN PROCESS			
Claim in process	4		
<i>In Process Subtotal</i>		4	13%
NO REMEDIAL ACTION REQUIRED			
Mine operator not liable	4		
No actual problem	3		
Ground crack healed	1		
<i>No Remedial Action Required Subtotal</i>		8	26%
OTHER STATUS			
No indication that repairs were made	8		
<i>Other Status Subtotal</i>		8	26%
TOTALS	31	31	100%

Effects of Underground Mining on Utilities, Railroads and Other Facilities

The 1999 report included an inventory of damages to roads, natural gas pipelines and public water and sewer systems. Commentators noted that the report failed to mention two high-profile cases that occurred during the study period. One of these cases involved a 24-inch diameter water transmission line near Washington. In this case, the water system operator had to replace segments of the water line as longwall mining advanced beneath it. The other case involved repair of a rail segment that had subsided as a result of longwall mining. The rail line incident was also in Washington County.

The case involving the water transmission line was brought before the Pennsylvania Environmental Hearing Board (EHB Docket No. 95-232-R). A private settlement was reached between the mine operator and the water company. The details of this settlement were not made available to the public or DEP. Although this settlement addressed the interests of the mining company and the water company, it did not address the inconvenience to local residents and property owners who had to deal with having a temporary 24-inch diameter water line above ground during the mining process.

The case involving the rail line was also brought before the Pennsylvania Environmental Hearing Board (EHB Docket No. 97-252-R). In this case, the railroad company sought to recover \$86,000 that it had spent to re-level and re-align the segment that had subsided. The Hearing Board ruled that the underground mining regulations do not authorize DEP to require the mine operator to compensate the railroad for these expenditures.

Based on its findings regarding the water transmission line, DEP investigated the possibility that other private operators of community water systems had been missed during its survey efforts. This investigation involved querying DEP's Geographic Information System for community water systems that were proximate to study-period mining and operated by an entity other than a municipality. (A community water system is defined as one that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.) DEP identified 12 privately operated water systems that fell within one mile (2,000 meters) of a study period mine. Table 15 shows the distribution of these 12 water systems by county. DEP contacted the operators of all 12 community water supply systems. None of the water system operators reported experiencing any mining related problems.

For the future, DEP will expand its survey efforts to include all railroads and privately operated water companies with facilities situated above mine permit areas. The evolution of DEP's Geographic Information System will enhance the ability to identify these types of facilities.

Table 15
Non-municipal Community Water Systems by County

County	No. of Community Water Systems Identified
Indiana	4
Clearfield	2
Somerset	2
Washington	1
Greene	1
Armstrong	1
Butler	1
TOTAL	12

Compliance History

During the period covered by the 1999 report, and up to the time of its publication, DEP had issued one order to force compliance with damage repair and water supply replacement requirements of Act 54. Since that time, DEP has issued five more orders. The six orders issued to date may be summarized as follows:

- One order to continue to provide temporary water.
- Four orders to repair or compensate for subsidence damage.
- One order to provide a permanent solution to a water supply case that had been ongoing for more than three years.

All of the preceding orders were issued to operators of longwall mines.

Observations Regarding Confidentiality Clauses in Agreements

The Citizens Advisory Council and various citizens groups have expressed concern regarding the effect of confidentiality arrangements on DEP's data gathering efforts. Some agreements between mine operators and property owners contain clauses prohibiting property owners from disclosing information about the terms of their settlements. The concern has been that these clauses, sometimes called "gag orders," would prevent property owners from providing information to DEP. There is considerable speculation regarding the pervasiveness of these confidentiality requirements.

To explore this issue, DEP asked property owners during the 1999 telephone survey if they had signed agreements preventing them from disclosing information about the claims or settlements. Conversations with the 224 individuals reached during the survey revealed no reports of confidentiality requirements. There were seven cases where property owners declined to provide any information

without explaining why. These cases may or may not represent situations involving confidentiality requirements. There was also one case where a DEP interviewer speculated that a confidentiality arrangement might have prevented collection of information on the resolution of a claim.

In June 1999, DEP identified seven cases involving confidentiality agreements with mine operators. If these cases are combined with the eight cases previously discussed, there are 15 cases that may be subject to confidentiality agreements. This means that DEP found 15 cases that may have involved confidentiality agreements after making 1,027 direct contacts with property owners (see Table 4 on page 8). Equally important is the fact that, irrespective of the status of confidentiality agreements, DEP was able to collect information on nearly 93 percent of the 1,884 properties in the original survey population (see discussion on page 7.) The role of confidentiality agreements among the remaining seven percent of the properties cannot be stated with certainty. It is notable, however, that many of these cases involved circumstances where the property owners did not respond to DEP's surveys and the mine operators had gone out of business, leaving no available source of information.

Observations Regarding Means of Water Supply Replacement

Another of the concerns raised by various citizens' groups was the extent to which mining is depleting the usable groundwater resources of mined areas. Their concerns stem from the observations that mine operators can buy affected properties, compensate property owners for water loss or replace water supplies via connections to public water supply systems that draw water from remote sources.

As indicated previously, there were cases where mine operators settled water supply cases by compensating property owners or purchasing the properties after mining. Table 9 on page 16 shows 31 longwall cases that were settled through agreement or compensation and one case that was settled by purchasing the property after mining. Table 12 on page 21 shows one room-and-pillar case that was settled through agreement or compensation. Altogether there were 33 cases that were reportedly settled through some form of compensation.

These two tables also present information on 258 cases (161 longwall cases and 97 room-and-pillar cases) that were settled by establishing permanent replacement supplies. DEP researched available information regarding these cases to determine the number of supplies that were replaced by wells or springs compared to the number of supplies that were replaced via connections to public water supply systems. In 134 of the 258 cases, DEP found that the water supplies were reestablished by deepening existing wells, drilling new wells or developing new springs. In 17 cases, water supplies were reestablished via connections to public water supply systems. In the remaining 107 cases, details regarding the means of replacement were not provided (reports simply indicated that the supplies were replaced).

As indicated in Table 6 and Table 9, there were also 54 cases where the final means of settlement were not disclosed. These cases may have been settled by developing on-site water resources, connecting to public water supply systems or through some form of compensation.

Observations Regarding the Cost of Damage

Another issue raised by the CAC, and subsequently reiterated by Representative Sara G. Steelman (D-Cambria and Indiana) at the legislative Coal Caucus hearing, was a desire to see a determination of the magnitude of damage experienced by properties that are undermined. Repair cost was recommended as a possible means of measuring the magnitude of damage. DEP had not previously attempted to collect such cost information from mine operators because of the restriction imposed by section 18.1(d) of Act 54. (DEP has, however, recently implemented procedures to gather cost information on a voluntary basis as described in the next section, *Improvements to Data Gathering Systems*).

While data has not been collected in a systematic fashion, for the sake of completeness DEP reviewed its files to identify any available information. The cost figures that were found are summarized in Table 16. Although there are not enough cases to reveal any meaningful statistics, the information is presented for the benefit of those interested in the available data.

**Table 16
Summary of Cost of Damage to Structures (DEP Files)**

Mine Type	Cost		Basis	Estimated by
	Individual	Group-Average		
Longwall	\$109,990		EPACT	DEP/MSI
	\$60,977			
	\$100,250			
	\$98,250			
	\$5,269			
	\$1,323			
	\$150,250			
	\$84,400			
	\$31,583			
	\$210,128			
	\$9,800			
	\$100,000			
	\$66,000	\$79,094	Property Owner	Property Owner
Room-and-pillar	\$16,810	\$13,380	EPACT	DEP/MSI
	\$9,950			DEP/MSI

Improvements to Data Gathering Systems

DEP has already made improvements to its data collection programs and is planning other improvements to enhance the quality of future reports. These improvements will help DEP address some of the concerns raised regarding the 1999 report.

Regulatory Changes

One improvement that has already been put in place is the requirement for mine operators to report all claims of water supply impacts and subsidence damage to DEP. This change was implemented on June 13, 1998, when amendments to 25 Pa. Code Chapter 89 went into effect.

25 Pa. Code 89.142a(k) sets forth the requirement to report all claims of structure damage and land damage. It requires that:

"Within 10 days of being advised of a claim of subsidence damage to a structure or surface feature, the operator shall provide the Department with a report of the claim which shall include the following information:

- (1) The date of the claim.*
- (2) The name, address and telephone number of the owner of the structure, surface feature or surface land claimed to be damaged.*
- (3) The number assigned to the structure or feature under §89.154(a) (relating to maps)."*

25 Pa. Code 89.145a(c) establishes the requirement to report all claims of water supply contamination, diminution or interruption. It requires that:

"Within 24 hours of an operator's receipt of a claim of water supply contamination, diminution or interruption, the operator shall notify the Department of the claim."

Changes in Report Forms

DEP has modified the form used by mine operators to report information on claims they receive. The revised form, which was put into use in February 2000, solicits information on the cost of compensation provided for repairing subsidence damage. It also asks for information on the cost and nature of any mitigation measures taken to reduce the level of damage sustained by the structure. To date, mine operators have not provided the requested cost information, and DEP is evaluating alternate means of obtaining this information.

Changes in Claims Database

The Claims Database has been modified to automatically identify cases that are pending resolution. Once entered, a case remains opened until it is closed. The system also allows for cases to be reopened in the event of additional problems. These changes enable DEP to identify and track cases and determine how long it takes for cases to reach final settlement.

Independent Studies

DEP is planning several independent, scientific studies to address concerns regarding the effects of longwall mining. These studies include:

- A study to determine the effects of longwall mining on overlying forestland.
- A study to evaluate the effects of longwall mining on streams, wetlands and riparian areas.
- A study to determine the effects of longwall mining on the value of overlying property.

The studies will be conducted by outside consultants under contract to DEP. The forestland study was awarded in March 2000 and has a scheduled completion date of March 31, 2001. The two other studies are in the planning stage and will be performed in the order listed, as funds are available. DEP's intent is to have all studies completed by the end of 2001.

Follow-up on Issues Identified in the 1999 Report

Content of this Section

This section presents DEP's findings regarding those cases that were targeted for follow-up investigations in the 1999 report. The section titled *Issues Resulting from Comments on the 1999 Report* on page 5 summarizes the results of all of the work that has been done to date. It incorporates both the results of additional investigations discussed in that section and the results of follow-up work described here. For the sake of continuity, this follow-up work is presented in detail since it was developed to fulfill DEP's commitment to prepare a supplementary report.

The information presented here pertains to cases from several resolution categories as described in the 1999 report. These categories included:

- Cases involving water supply impacts or structure damages that were first reported through the 1998 property owners' survey.
- Cases involving affected water supplies, structure or land damages, wherein circumstances were unclear based on the information collected.
- Cases involving water supply impacts and structure damages wherein resolutions were attempted but problems remain.
- Cases involving water supply impacts or structure damages wherein mine operators offered no corrective action or compensation.
- Cases involving water supply impacts or structure damage wherein liability was declined without DEP involvement.
- Cases involving stream-related impacts.

Follow-up Inquiries and Investigations

Additional information for this part of the supplement was collected through a combination of follow-up contacts and investigations. All cases involving water supply impacts and structure and land damages were initially pursued by writing to the property owners offering assistance in bringing their claims to resolution. Property owners who responded were contacted to obtain additional details regarding the nature of their problems and the status of resolutions. DEP's surface subsidence agents, engineers or hydrogeologists also made many site visits to collect additional information.

To encourage responses, DEP mailed a second letter to each property owner who did not respond to the first letter. Property owners who did not respond to the second letter were not contacted further. Cases in which property owners failed to respond were labeled, "*No response from property owner.*" They were assigned the final resolution, "*Current details unavailable*" or retained at their previous resolution status.

As part of the data collection, DEP's surface subsidence agents also examined all perennial streams in areas that were undermined by longwall mining methods during the study period. The agents also investigated reports of stream impacts received via the property owners' survey.

Updated Information Regarding Reports of Water Supply Impacts

Focus of Investigations

In conducting follow-up investigations of reported water supply impacts, DEP focused on cases that fell within five of the nine resolution categories depicted of Table X.4 of the 1999 report. These categories included "Mine Operator not Liable," "Claim Not Previously Reported," "Status Unclear From Available Information," "Resolution Attempted but Problems Remain" and "No Corrective Action or Compensation Offered." Statistics previously reported in these categories are shown in Table 17, which is a duplicate of Table X.4.

Table 17
Status of Reported Water Supply Claims (November 1998)

Current Status	Cases by Mine Type				% of Total
	Longwall	Room-and-pillar	Not known	Total	
<i>Completed</i>					
Permanent water supply reestablished	130	89	2	221	41%
Mine operator not liable	39	79	1	119	22%
Settled by agreement or compensation	28	4	1	33	6%
<i>Total completed</i>	<i>197</i>	<i>172</i>	<i>4</i>	<i>373</i>	<i>69%</i>
<i>Pending resolution</i>					
Property owners on temporary water	77	6		83	16%
Claim not previously reported	8	24		32	6%
Status unclear from available information	17	10		27	5%
Resolution attempted but problems remain	4	5		9	2%
Resolution pending	5	0		5	1%
No corrective action or compensation offered	2	2		4	1%
<i>Total pending resolution</i>	<i>113</i>	<i>47</i>		<i>160</i>	<i>31%</i>
TOTAL	310	219	4	533	100%

DEP Findings in Regard to Water Supply Cases

In November 1998, DEP had information relating to 533 cases of reported water supply impacts. Of these cases, 126 were targeted for follow-up investigation. The following discussion presents the updated findings regarding these cases. Information is organized around the resolution categories presented in the 1999 report.

Mine Operator not liable. In November 1998, there were 119 water supply cases that were reportedly settled by finding that the mine operators were not liable to restore or replace the water supplies. DEP had prior involvement in 65 of the 119 cases. In the other 54 cases, the determinations of no liability were made without DEP's involvement. In the 1999 report, DEP committed to making follow-up inquiries into a random sample of these 54 cases, but subsequently decided to investigate all 54 cases to provide a more accurate picture. DEP's findings regarding these cases are presented in Table 18.

Table 18
Updated Findings Relating to Water Supply Cases with Previous
Determinations of "No Liability"

Status	Cases
No response from property owner	26
Problem not due to underground mining	10
Problem predates Act 54 and EPACT	7
Water supply restored or replaced	5
Property owners on temporary water	4
Settled, means not disclosed	1
Mine operator and property owner negotiating	1
TOTAL	54

Findings for 10 of the cases indicated that conditions were not due to underground mining. In another six cases, problems were found to predate the water supply replacement provisions of state and federal law. Eleven of the cases were found to be resolved or on course to resolution with some type of remedy to the property owners. In 26 cases, property owners did not respond to DEP's inquiries or offers of assistance. These 26 cases were retained in the resolution category, "*Mine operator not liable.*"

Claim not previously reported: DEP committed to making follow-up investigations in all cases where property owners reported previously undisclosed problems on survey questionnaires. This effort involved all 32 cases listed in Table 17. DEP's findings regarding these cases are presented in Table 19.

Table 19
Updated Findings Relating to Cases That Were Newly Reported
at the Close of Data Collection in November 1998

Status	Cases
No response from property owner	13
Water supply restored or replaced	4
Property owners on temporary water	3
Mine operator and property owner negotiating	3
Problem not due to underground mining	2
Settled, means not disclosed	2
EPACT case	2
Water supply recovered	1
Problem predates Act 54 and EPACT	1
No actual problem	1
TOTAL	32

Status unclear from available information. In November 1998, there were 27 cases in which information was insufficient to describe the nature of effects or the status of resolutions. Most of these cases came from the property owners' survey. In many instances, property owners reported impacts but provided little or no information about claim resolutions. In a few cases, it was unclear whether the mine operator or the property owner had assumed responsibility for resolving the problem. Some questionnaires simply indicated that the problems were not resolved without providing additional details. Updated information regarding these cases is presented in Table 20.

Table 20
Updated Findings Regarding Water Supply Cases That Were
Listed as Unclear in November 1998

Status	Cases
Problem not due to underground mining	7
No response from property owner	4
Water supply restored or replaced	4
Property owners on temporary water	4
Problem predates Act 54 and EPACT	2
Settled, means not disclosed	1
Mine operator and property owner negotiating	1
Mine operator bought property*	1
No actual problem	1
Mine operator investigating	1
Settled by agreement	1
TOTAL	27

*This property was not among the 49 previously referenced as belonging to mine operators

Resolution attempted but problems remain. This category included cases where the operator had taken some action to resolve the problem or made a settlement offer that was unsatisfactory to the property owner. DEP committed to making follow-up investigations in all nine cases that fell within this category. Table 21 shows the latest information on these nine cases.

Table 21
Updated Findings Regarding Settled Water Supply Cases with Remaining Problems

Status	Cases
No response from property owner	4
EPACT case	2
Water supply restored or replaced	1
Property owners on temporary water	1
Settled by agreement	1
TOTAL	9

No corrective action or compensation offered. The status of this group of cases is shown in Table 22. This group of cases came entirely from the property owners' survey. In these cases, property owners indicated that the mine operators had refused to respond to their claims. There was no information in the Claims Database that could be relied upon to support or refute these reports. As a result, DEP committed to making follow-up investigations for all four cases in this category.

Table 22
Updated Findings Regarding Water Supply Cases with No Corrective Action or Compensation Offered as of November 1998

Status	Cases
No response from property owner	1
Problem not due to underground mining	1
Water supply restored or replaced	1
Settled, means not disclosed	1
TOTAL	4

Revised Tabulation of Water Supply Resolutions

Table 23 presents an updated summary of the resolutions for the 533 water supply cases that were presented in the 1999 report. This table shows the current status of all cases as of Oct. 1, 1999, the completion date for follow-up investigations. Table 23 includes several new resolution categories for purposes of classifying the information obtained. The table also includes figures from Table X.4 of the 1999 report to show the reassignment of cases in the former categories "*Claim not previously reported*," "*Status unclear from available information*," "*Resolution attempted but problems remain*" and "*No corrective action or compensation offered*." The category "*Pending Resolution*" has been renamed "*In process*" to reflect the possibility that a satisfactory resolution may not be imminent and to make the table consistent with those presented in the first section of this report.

In incorporating the new information into Table 23, several "resolutions" that were discussed earlier were grouped into the broader resolution categories. The resolutions, "*Problem not due to underground mining*" and "*Problem predates Act 54 and EPACT*" were incorporated into the general category, "*Mine operator not liable*." The resolution, "*Water supply recovered*" was incorporated into the general category "*Permanent water supply reestablished*." The resolution, "*Operator bought property*" was incorporated into the general category, "*Settled by agreement or compensation*." The resolution, "*Operator and property owner negotiating*" was incorporated into the general category, "*Claim in process*."

At the conclusion of the follow-up investigations, 75 percent of water supply cases were resolved. Another 20 percent were at various stages in the resolution process. In four percent of cases, property owners did not provide information needed to update the status of their cases. The remaining one percent of cases had either been referred to OSM or were being investigated.

Table 23
Status of Reported Water Supply Cases at the Close of Follow-up Investigations

Status	Previous Number	Revised Number	Revised %
<i>Completed</i>			
Permanent water supply reestablished	221	237	44%
Mine operator not liable	119	121	23%
Settled by agreement or compensation	33	35	7%
Settled, means not disclosed	-	5	1%
No actual problem	-	2	0%
Mine operator bought property	-	1	0%
<i>Completed Subtotal</i>	373	401	75%
<i>In process (formerly "Pending Resolution")</i>			
Property owners on temporary water	83	95	18%
Claim in process	5	10	2%
<i>In Process Subtotal</i>	88	105	20%
<i>Other resolutions</i>			
EPACT cases	-	4	1%
Mine operator investigating	-	1	0%
<i>Other Resolutions Subtotal</i>	-	5	1%
<i>Current details unavailable</i>			
From cases not previously reported	32	13	2%
From cases where status was unclear	27	4	1%
From cases with remaining problems	9	4	1%
From cases where no remedy was offered	4	1	0%
<i>Current Details Unavailable Subtotal</i>	72	22	4%
TOTAL	533	533	100%

Note: Percentage total may differ from sum of components because of individual rounding

Updated Information Regarding Reports of Structure Damage

Focus of Investigations

Follow-up investigations of structure damage cases, focused on five of the 11 resolution categories depicted of Table XI.3 of the 1999 report. These categories included "Mine operator not liable," "Claim status or outcome under dispute," "Status unclear from available information," "Claim not previously reported," and "No repair or compensation offered." Statistics regarding these and other resolution categories are shown in Table 24; which is a copy of Table XI.3 from the 1999 report.

Table 24
Status of Reported Structure Damage Cases (November 1998)

Resolution	Claim by Mining Type			Total	% of Total
	Longwall	Room-and-pillar	Not Known		
<i>Completed</i>					
Settled by agreement	52	1	2	55	20%
Damaged structure repaired or replaced	47	3		50	18%
Structure owner compensated	38	6		44	16%
Mine operator not liable	21	7		28	10%
Claim settled under MSI program	1	0		1	0%
Damage insignificant	0	1		1	0%
Total Completed	159	18	2	179	64%
<i>Pending Resolution</i>					
Interim phase of resolution	36	3		39	14%
Claim status or outcome under dispute	17	2		19	7%
Status unclear from available information	17	2		20	7%
Claim not previously reported	8	6		14	5%
No repair or compensation provided	4	5		9	3%
Total Pending Resolution	82	18	1	101	36%
Totals	241	36	3	280	100%

DEP Findings in Regard to Structure Damage Cases

In November 1998, information was available on 280 reported cases of structure damage. Of these cases, 72 were targeted for follow-up investigation. The following discussion presents updated findings regarding these cases. Information and revised statistics are organized by resolution category.

Mine Operator not liable. At the close of data collection for the 1999 report there were 28 reported cases with the resolution "mine operator not liable." DEP had been involved in 18 of these cases and arrived at the same conclusion. DEP felt it appropriate to investigate the other 10 cases to see if it concurred with the operators' determinations of no liability.

Table 25 shows DEP's findings for the 10 cases targeted for follow-up investigations. Four of the cases have now been resolved through agreement, repair or compensation. In one additional case, the mine operator and property were in the process of negotiating a settlement. One case was retained at "No liability" status because the damage was not due to mining. There were also four cases where property owners could not be contacted for follow-up inquiry because DEP could not find current mailing addresses or telephone numbers despite repeated attempts.

Table 25
Updated Findings Relating to Structure Damage Cases with
Previous Determinations of "No Liability"

Status	Cases
Problem not due to underground mining	1
Settled by agreement	2
Damaged structure repaired or replaced	1
Structure owner compensated	1
Mine operator and property owner negotiating	1
No address or telephone number for follow-up contact	4
TOTAL	10

Claim status or outcome under dispute. The data collected for the 1999 report showed 19 cases in which the status or outcome was under dispute. The cases generally involved situations where mine operators and property owners could not come to terms regarding the scope of damage, the amount of compensation, the method of repairs or the contract who would perform the repair work. Updated information regarding these cases is presented in Table 26.

Table 26
Updated Findings Relating to Structure Damage Cases Where
Claim Status or Outcome Was Disputed (November 1998)

Status	Cases
No response from property owner	6
Settled by agreement	5
Mine operator and property owner negotiating	3
Settled, means not disclosed	2
Damage not due to underground mining	1
Claim not filed within two-year limit established by Act 54	1
In litigation	1
TOTAL	19

Status unclear from available information. In November 1998, there were 20 cases in which circumstances were not sufficiently clear to report a resolution status. Through follow-up investigations DEP was able to obtain additional details on these cases. Updated findings are shown in Table 27.

Table 27
Updated Findings Regarding Structure Damage Cases
That Were Unclear in November 1998

Status	Cases
No response from property owner	6
Settled by agreement	2
Structure owner compensated	1
Settled, means not disclosed	1
Mine operator and property owner negotiating	4
Damage not due to underground mining	4
Damage occurred prior to Act 54 and EPACK	1
No actual problem	1
TOTAL	20

Claim not previously reported. The 1998 property owners' survey turned up 14 new cases of structure damage that had not been previously reported to either DEP or the mine operators. DEP sent letters to all 14 property owners offering to investigate their cases and assist in resolving damage claims. Additional details regarding these cases appear in Table 28.

Table 28
Updated Findings Relating to Structure Damage Cases That Were
First Reported During the 1998 Property Owners' Survey

Status	Cases
No response from property owner	5
Settled by agreement	1
Mine operator and property owner negotiating	4
Damage not due to underground mining	2
EPACT case	1
Damage occurred prior to Act 54 and EPACK	1
TOTAL	14

No repair or compensation provided. Data collected from the 1998 property owners' survey also revealed nine cases where mine operators reportedly offered no repair or compensation in regard to the property owners' claims of structure damage. All nine of these cases were targeted for follow-up investigations. Updated information relating to these cases is presented in Table 29.

Table 29
Updated Findings Regarding Disposition of Structure Damage
Cases in Which No Corrective Action or Compensation was
Offered as of November 1998

Status	Cases
No response from property owner	1
Settled by agreement	1
Structure owner compensated	1
Mine operator and property owner negotiating	1
EPACT case	1
Damage not due to underground mining	3
No actual problem	1
TOTAL	9

Revised Tabulation of Structure Damage Resolutions

Table 30 provides an updated accounting of reported structure damage cases after completion of follow-up investigations. The table includes several new resolution categories for purposes of classifying new acquired information. It also includes figures from Table X.4 of the 1999 report to show the reassignment of cases in former categories "Claim status or outcome under dispute," "Status unclear from available information," "Claim not previously reported," and "No repair or compensation offered."

In incorporating the new information in to Table 30, several "resolutions" which appear in Tables 25 through 29 were grouped into the broader resolution categories. The resolutions, "Problem not due to underground mining" and "Damage occurred prior to Act 54 and EPACT," were incorporated into the general category, "Mine operator not liable." The resolution, "Operator and property owner negotiating" was incorporated into the general category, "Claim in process." Other resolution categories are self-explanatory.

Table 30
Status of Reported Structure-Damage Cases at the Close of Follow-up
Investigations (October 1999)

Resolution	Previous Number	Revised Number	Revised %
<i>Completed</i>			
Settled by agreement	55	66	24%
Damaged structure repaired or replaced	50	51	18%
Structure owner compensated	44	47	17%
Mine operator not liable	28	35	13%
Settled, means not disclosed	-	3	1%
No actual damage	-	2	1%
Damage insignificant or nonexistent	1	1	0%
<i>Completed Subtotal</i>	<i>178</i>	<i>205</i>	<i>73%</i>
<i>In Process (formerly "Pending Resolution")</i>			
Claim in process	39	52	19%
<i>In Process Subtotal</i>	<i>39</i>	<i>52</i>	<i>19%</i>
<i>Other Resolutions</i>			
EPACT case	-	2	1%
Claim settled under MSI program	1	1	0%
Claim not reported within 2 years	-	1	0%
In litigation	-	1	0%
<i>Other Resolutions Subtotal</i>	<i>1</i>	<i>5</i>	<i>2%</i>
<i>Current details unavailable</i>			
From <i>Outcome in Dispute</i>	19	6	2%
From <i>Status Unclear</i>	20	6	2%
From <i>Not Previously Reported</i>	14	5	2%
From <i>No Repair or Compensation Offered</i>	9	1	0%
<i>Current Details Unavailable Subtotal</i>	<i>62</i>	<i>18</i>	<i>6%</i>
Totals	280	280	100%

Note: Percentage total may differ from sum of components because of individual rounding

After processing all information obtained through follow-up information and inquiries, DEP found that there were still 18 cases that could not be easily classified. DEP decided to classify this group of cases as "Current details unavailable." These cases all represent situations where the property owners failed to respond to DEP's letters of inquiry (although there were five cases where DEP was unable to find an address or telephone number). These cases were derived from the categories: "Claim status or outcome under dispute," "Status unclear from available information," "Claim not previously reported," and "No repair or compensation offered." (Cases

in the category "*Mine operator not liable*" were retained in that category if the property owners failed to respond.) The follow-up investigations were successful in reducing the number of cases in the four categories from 62 to 18.

At the conclusion of the follow-up investigations, 73 percent of structure damage cases were resolved. Another 19 percent were at various stages in the resolution process. In six percent of cases, information was unavailable to update the status. The remaining two percent of cases involved special resolutions or circumstances.

Updated Information Regarding Reports of Land Damage

Overview of Land Damage Cases

At the close of data collection in November 1998, the status and resolutions of many reported land damage cases were unclear. In many cases, reports of remedial action focused on structure damage and included little, if any, information on the treatment of land damage. Due to this lack of information, DEP did not include a tabulation of land damage resolutions in the 1999 report. DEP did, however, commit to conducting follow-up investigations into as many of these cases as possible.

In November 1998, DEP had reports of land damage associated with 150 properties. As explained in the 1999 report, there were 195 incidents of land damage associated with these properties because some properties had more than one type of land damage. In selecting properties for follow-up inquiries and investigations, DEP focused on properties that also had structure or water supply impacts and properties where land damage was reportedly not repaired.

DEP Findings in Regard to Land Damage Cases

Table 31 shows the final status and resolutions of land damage cases that were reported in time for inclusion in the 1999 report. The table also incorporates figures from those case histories that were complete at the time of DEP's earlier data collection efforts. Since the 1999 report did not include a compilation of land damage resolutions, Table 31 does not include previous summary figures for the various resolution categories.

As shown in the table, details were obtained on 115 of the 150 properties that were reported to have some type of land damage. Most of the resolution categories are self-explanatory or have been described previously in this report. It is notable that there was one incident where a ground crack was reported to have healed on its own. It is also notable that all but one of the reports from the resolution category "*Mine operator not liable*" were found to be unrelated to underground mining.

There were also eight cases where damage was found to be either nonexistent or insignificant. In four of these cases, damage had been recorded by mistake. In two cases, DEP investigators found

no observable damage. In the remaining two cases, the property owner viewed the damages as insignificant.

As shown in Table 31, 46 cases were resolved by repairing the land damage and 15 were settled through agreements or by providing compensation to the property owners. Twenty-eight cases are in the process of being resolved. One case was settled through purchase of the affected property. There was also one case where the resolution was being pursued through litigation and one case that was being investigated by the mine operator.

Table 31
Updated Findings Relating to Reported Land Damage Cases (October 1999)

Resolution	No. of Cases
<i>Completed</i>	
Repaired	46
Settled by agreement	11
Mine operator not liable	9
No actual damage	6
Settled, means not disclosed	5
Property owner compensated	4
Damage insignificant	2
Ground crack healed	1
Mine operator bought property	1
<i>Completed Subtotal</i>	85
<i>In Process (formerly "Pending Resolution")</i>	
Interim phase of resolution	28
<i>In Process Subtotal</i>	28
<i>Other Resolutions</i>	
In litigation	1
Operator investigating	1
<i>Other Resolutions Subtotal</i>	2
Total	115

At the conclusion of the follow-up investigations, 85 of the 115 land damage cases were resolved. Another 28 cases were at various stages in the resolution process.

Updated Information Regarding Reported Effects on Streams

Overview

At the close of data collection for the 1999-report, DEP had information relating to potential effects on 25 streams. Of these reports, 16 came from the property owners' survey and nine cases from observations by DEP's surface subsidence agents. Since most of the property owners' questionnaires did not include the identity of the streams, it was impossible to determine the extent of overlap between these respective groups without additional investigation. In order to develop a final list, DEP identified the streams referenced by the property owners' questionnaires and compared those streams to the ones listed in the surface subsidence agents' reports.

Initially, it was also unclear how many of the 25 streams were perennial. A stream must be perennial (i.e., flow year round) in order to qualify for protection and restoration under DEP's regulations. While the surface subsidence agents limited their reports to streams identified as perennial in permit applications, there was no indication that property owners' reports were limited in the same way. In one case, a property owner described the affected stream as intermittent (i.e., a stream that goes dry periodically due to natural conditions). As part of its follow-up investigations, DEP looked at whether or not the streams in question were documented to be perennial using the flow-based criterion.

In conducting supplementary investigations, DEP also examined all perennial streams that were undetermined by longwall mining methods during the study period. The objective was to identify effects that may have been missed during previous data collection efforts.

DEP Findings in Regard to Reports of Effects on Streams

Table 32 shows the final list of perennial streams that were affected by underground mining during the study period. There were nine cases where streams exhibited pooled conditions due to mine subsidence. There were also four cases where streams experienced flow diminution and two cases where streams exhibited both diminution and pooling.

In regard to restoration, mine operators have regraded two segments along Enlow Fork and Templeton Run to eliminate excessive pooling. DEP continues to monitor the other streams so that it can take appropriate action if there is a need for remedial action in the future. In addition, DEP has solicited proposals for an independent, professional study of the effects of longwall mining on streams, wetlands and riparian areas.

Table 32 does not include many reported effects on streams that, upon investigation, turned out to be intermittent. There were nine cases that fell into this category. Within this group, there were five reports of diminution, two reports of pooling and two reports of diminution combined with pooling or diversion. In one case, a property owner who previously filed a report of diminution withdrew it.

Table 32
Findings Relating to Reported Effects on Streams

Name	County	Observed Effects
Smith Creek	Greene	Diminution
Enlow Fork	Greene	Pooled Diminution
Patterson Run	Greene	Diminution
Hoover Run	Greene	Pooled
Rocky Run	Greene	Pooled
Robinson Run	Greene	Pooled
Muddy Creek	Greene	Pooled
Templeton Fork	Greene	Pooled
Tom's Run	Greene	Pooled
Whiteley Creek	Greene	Pooled
Pursley Creek	Greene	Pooled
Unnamed stream	Washington	Pooled
Unnamed stream	Washington	Pooled Diminution
Unnamed stream	Washington	Diminution
Unnamed stream	Indiana	Diminution

May 5, 1995

Robert J. Biggi, Director
Harrisburg Field Office
Office of Surface Mining
Reclamation and Enforcement
Harrisburg Transportation Center
Third Floor, Suite 3C
Fourth and Market Streets
Harrisburg, PA 17101

Re: **Call for comments regarding the Pennsylvania
and Maryland Regulatory Programs
60 Federal Register 18046 (April 10, 1995)**

Dear Mr. Biggi:

The Pennsylvania Coal Association (PCA) submits the following comments pursuant to the above referenced notice. PCA is a trade association organized and operating under the laws of Pennsylvania representing producers of bituminous coal in Pennsylvania. PCA's members produce over 60 percent of the more than 67,000,000 tons produced annually in Pennsylvania and the vast majority of coal produced by underground mining methods. PCA underground producers use various modern mining methods including room and pillar, continuous haulage and longwall extraction.

The Commonwealth of Pennsylvania began to regulate coal mine subsidence comprehensively in 1966, and has had a well defined regulatory program since that time. Because of Pennsylvania's longstanding and, in many respects, pioneering program, our member companies have insights which should be of particular relevance to OSM in the public comment process.

Obviously, PCA is an important stakeholder in any process that will decide how to implement the amendments to the Federal Surface Mining Control and Reclamation Act of 1977 ("SMCRA") adopted by the passage of the Energy Policy Act ("EPACT") on October 24, 1992. We were encouraged that OSM has returned to the "field" for additional on-site investigations of the scope of the problem and to ascertain how the Department of Environmental Resources ("DER") and deep mine permittees are responding to the concerns of surface owners about subsidence occurrences.

For reasons set forth in detail later, PCA and its member companies believe that with respect to Pennsylvania, OSM should pursue the first option described on page 18047 of the Notice referenced above -- (1) State Program Amendment. PCA was heartened that OSM's final regulations implementing Section 720(a) of SMCRA, published on March 13, 1995, significantly narrow the differences between OSM's program as proposed and the Pennsylvania Program as supplemented on August 21, 1994 by Act 54 and implemented immediately by the DER.

At our meeting with you and Mr. Reiger on April 28, 1995, we discussed the impact of the final regulations and focused on four "differences" in the two programs that warrant further discussion. We are pleased that OSM recognizes that the primacy relationship does not require "word for word" mirror provisions in state programs and that effectiveness is the critical standard against which a program is to be measured. We were also encouraged that OSM acknowledges DER's letter dated January 24, 1995 concerning Act 54 was drafted in response to OSM's proposed regulations implementing Section 720 and as such is not reflective of DER's current position as regards OSM's final regulations which we all recognize were significantly changed.

→ At our meeting we identified and discussed four particular items which reflect differences in approach between the federal program and Pennsylvania's which warrant discussion. These are:

1. Under Pennsylvania's Act 54, a surface owner who, after being made aware of the consequences of refusal, including a DER mandated notification by certified mail, refuses to allow access to his property for a pre-mining investigation of his property, may not recover from a mine operator for subsidence impacts. As we discussed, drafters of Act 54 recognized the importance of premining investigations in the dispute resolution process and it is apparent that OSM similarly recognizes their importance. OSM indicates in the preamble to its final regulations that the "presumption does not change the ultimate burden of proof in a determination (60 Federal Register 16740). The ultimate burden of persuasion still lies with the regulatory authority or OSM." We believe this clearly shows that OSM recognizes that the level of liability cannot be established if access to evaluate premining conditions is denied. Act 54 imposed a statutory presumption of liability on the coal operator for structural damages. Consistent with OSM's rationale, the drafters of Act 54 believed that denying access, with full knowledge of the rights being relinquished, clearly precluded the regulatory authority and the operator from determining where the operator's liability should begin and where it should end. Given the enhanced protection to surface owners provided by Act 54, this approach was deemed both reasonable and acceptable by all parties.

Although a refusal to allow pre-mining access has legal consequences in both the OSM and Act 54 formulations, PCA suggests that Pennsylvania's approach represents a difference in degree. Act 54 only seeks to balance the surface owner's lack of information about mining activities, which are recognized to be uniquely in the possession of mine

operators, against the mine operator's need to have baseline information about pre-mining conditions which is critical in making an accurate determination of the extent of liability.

* * *

2. Under Act 54, a surface owner is not entitled to water replacement if he fails to report within two years that the (domestic) water supply has been affected or if the impact occurs more than three years after mining has taken place. As we discussed, this is a conventional limitation of action which exists in one form or another to control virtually every law or legal principle which creates causes of action under Pennsylvania law. Indeed, it is the same limitation as exists for common law water loss claims. PCA does not believe that such a provision is unreasonable or unfair and, for the reasons set forth in Appendix A, inconsistent with federal law applicable to SMCRA.

Finally, it is difficult to imagine meritorious water loss claims involving domestic supplies that would not be raised by the user of the supply within two years. Indeed, the experience in Pennsylvania is that such claims are raised almost immediately.

3. The Pennsylvania Program provides a mechanism for compensation to the surface owner or purchase of his property at fair market value (with a water supply) if the water supply has not been replaced within three years. At our meeting on April 28, 1995, we described actual if extremely rare situations where a replacement supply is available but can't be extended to the affected surface owner. In that type of situation, either remedy is available -- at the surface owner's choice -- to resolve the problem.

This is likely to be a rarity and would not alter a mine operator's obligation to identify the availability of an alternative water source (See page 16727 and Section 784.20(b)(8).) Indeed, OSM recognizes generally and anticipates that mine operators will be able to comply with the statutory mandate by providing alternative sources. However, OSM does not require replacement in all cases (e.g. if the post-mining land use does not involve use of the supply that is affected). Moreover, hydrologic balance considerations are not implicated (e.g. a well or spring source can be replaced by a public water supply) and the current hydrologic balance protection requirements remain in place. See 60 Federal Register 16727. The Pennsylvania formulation clearly obligates the mine operator to provide water replacement and deals fairly and reasonably with those rare situations where hydrological or institutional circumstances make permanent restoration impossible. It does not diminish the obligation and actually provides greater flexibility for surface owners.

4. Although neither the current Pennsylvania Program nor Act 54 specifically require adjustment of the performance bond amount if subsidence causes damage to protected structures, bond adjustment is clearly authorized by Pennsylvania's primacy regulations (See 25 Pa. Code Section 152.) Act 54, however, following successful historical precedent in Pennsylvania, mandates use of an escrow mechanism to assure funds are available to mitigate damage. If a mine operator has not complied with or wishes to contest the repair compensation obligations within six months, the operator is required to deposit funds (as determined by DER) equal to the amount needed to make

the repairs. Failure to comply with the escrow deposit obligation would subject an operator to immediate and compelling sanctions (e.g. cessation orders, permit blocks and penalties) which will deter recalcitrant conduct. Pennsylvania's track record with the escrow mechanism is very good and certainly effective to guarantee the repair compensation obligations of Section 720 of SMCRA and Pennsylvania's cognate provisions. PCA is confident that DER will seek to convince OSM that this difference in approach is as effective as Section 817.121(c)(8) and indeed is less cumbersome administratively.

* * *

As noted above, PCA believes that, for all practical purposes, the Pennsylvania Program is already as effective as Section 720 and OSM's implementing regulations. The preamble to those regulations (See 60 Federal Register 16743) states that "direct federal enforcement may be unnecessary in states already in the process of promulgating or adopting provisions like Section 720." As we discussed, Pennsylvania already has adopted such provisions by enacting Act 54 which is in effect and being implemented by DER. See Appendices B and C, DER's fact sheet and Program Guidance Manual on Act 54. It is significant that the drafters of Act 54 and the General Assembly saw fit to specify in detail the substantive particulars of Pennsylvania provisions which are "like Section 720" and made them self-executing and immediately enforceable without the need for articulating regulations (as Pennsylvania's subsidence control provisions had been before Primacy). There will be no delay in implementing Pennsylvania's provisions like Section 720 while regulations are developed by DER. This is consistent with the preamble discussion at 60 Federal Register 16743.

At page 16744 of the preamble to the March 31 final regulations, OSM notes that major coal producing states such as Virginia, Pennsylvania, West Virginia and Kentucky have received a total of over 300 complaints of violations of Section 720. PCA contends that ~~complaints~~ ~~complaints~~ reports of violations do not indicate a chronic or pervasive problem requiring direct federal enforcement or are evidence of a compelling reason to even initiate interim enforcement. We respectfully submit that a violation occurs only when an operator fails to promptly repair or compensate for subsidence damage or to promptly replace water supplies affected by mining. PCA believes that DER's investigation of "occurrences" during the "gap" between October 24, 1992 and August 21, 1994 demonstrates that subsidence caused damage to Section 720 structures and water problems are being adequately addressed in Pennsylvania. There has been no pattern of failures to repair damage or replace water. Substantially all and reported occurrences have been or are being resolved in accordance with Section 720. This is entirely consistent with OSM's information that you shared with PCA at our meeting on April 28. Act 54 became effective on August 21, 1994 and is being enforced. PCA is confident that during OSM's investigation of the Pennsylvania Program and consultation with DER in connection with OSM's decision, pursuant to 30 CFR 843.25, as to how enforcement of the new requirements will be accomplished, OSM is entirely justified in concluding that the state program amendment option is best suited for the Pennsylvania situation.

PCA would, of course, be pleased to provide you with any additional information you may require or respond to questions about our members' efforts to respond to and comply with Section 720 and Act 54.

Thank you for your consideration of these comments.

Respectfully submitted

Pennsylvania Coal Association

by: _____