

A Guide to Water Supply Replacement and Subsidence Damage Repair



A guide to information, rights and responsibilities



pennsylvania

DEPARTMENT OF ENVIRONMENTAL
PROTECTION

A Guide to Water Supply Replacement and Subsidence Damage Repair

A guide to information, rights and responsibilities

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Act 54

Overview

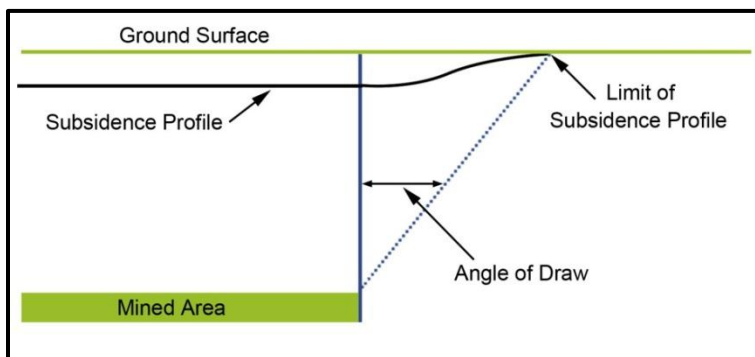
The Department of Environmental Protection (DEP) is responsible for administering the Bituminous Mine Subsidence and Land Conservation Act as well as Act 54. Enacted in 1994, Act 54 describes how and when water loss and mine subsidence damages will be handled and explains the roles of the mine operator and the landowner. This guide is intended to help landowners understand their rights and responsibilities.

Why is Mining Allowed Under Your Property?

Pennsylvania law recognizes separate and distinct property estates between the surface and mineral rights. The owner of the mineral estate has a right to this property, the same as the landowner has rights to the surface property. Land above the ground is considered surface property, which is legally separated from the minerals that are located below the surface property. In most cases, mine operators own the mineral estate for the sole purpose of recovering the coal. This permits operators to mine coal under or adjacent to your surface property, which has the potential to impact surface structures and water supplies.

Notification to Property Owners within a Proposed Mining Area

DEP extends a 30 degree angle from the proposed underground mine permit boundary to the surface to determine if your property will be located within the potential subsidence profile. This angle or “angle of draw” is defined as the angle formed between a vertical line projected upward from the edge of the extracted coal and a line connecting the outer limit of subsidence on the surface. If the property is located within this thirty-degree angle of draw, and the permit is approved, the mine operator is responsible for notifying each property owner of the planned mining operations. The mine company must notify the property owner no less than six months prior to undermining the property.



What Can You Do To Protect Your Property?

In order to protect your rights, granting access to the coal company to perform a pre-mining survey is essential. A landowner may forfeit important protections (damage or replacement cost compensation) if they deny an operator access to perform a pre-mining survey of a structure or water supply within the allotted period.

Pre-Mining and Post-Mining Surveys

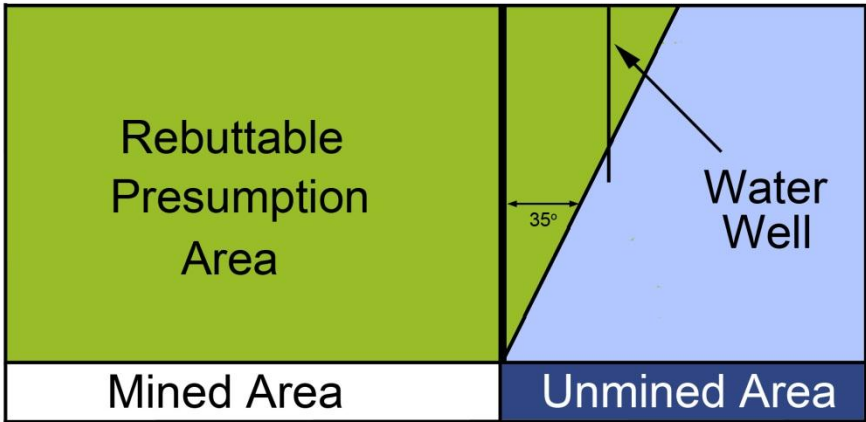
Arranging Access for Surveys: Pre-mining and post-mining surveys of water supplies and structures ensure fair settlement of claims. DEP regulations require the coal companies conduct the pre-mining survey, however, the landowner does have the right to hire a company of their choosing to conduct the pre-mining survey. When this option is selected, the property owner is responsible for submitting the survey to DEP and the coal company prior to the property being undermined. It should also be noted that mine operators and property owners are responsible for agreeing to a mutual time and date to properly conduct a survey.

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

General Requirements: A pre-mining structure survey involves documenting the condition of the structure (walls, floors, ceilings, stairs, etc.) through a written inspection report, video or photographs. A pre-mining water supply survey involves collecting water samples for quality analysis, measuring flows and/or performing pump tests to document the quantity of water delivered by the supply as well as obtaining information concerning the existing and future uses of the water supply.

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

"Rebuttable Presumption Area": DEP uses the term Rebuttable Presumption Area to describe the area within the permitted mine where the mine operator is presumed responsible for affecting a water supply. The area is established by a 35 degree vertical line projected upward from the edge of the extracted mined area to the surface. The area is illustrated in the figure below. It is important to note that the entire water well does not need to be in the rebuttal presumption area, only the wellhead.



Water Supply Impacts

Act 54 requires the mine operators to restore or replace water supplies contaminated, diminished or interrupted by underground mining. Coal mine operators have an obligation under the law to ensure the health and safety of residents affected by mining.

Water Supply Restoration/Replacement

General Requirements: If underground mining causes contamination, diminished or interruption of a water supply within the rebuttable presumption area, the mine operator must restore the water supply or provide a permanent replacement water supply that satisfies the landowner's pre-mining uses. Permanent restoration or replacement must be accomplished promptly. If the mine operator fails to promptly restore or replace the affected water supply, the landowner may notify DEP and request that DEP conduct an investigation.

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

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

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

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

Adequacy: A restored or replacement water supply must provide enough water to satisfy a landowner's pre-mining and reasonably foreseeable water uses. (Reasonably foreseeable uses are those that were within the capacity of the original water supply and can be substantiated based on the attributes of the property (e.g., number of bedrooms, size of barn or pasture area, presence of buildings used for agricultural, commercial or industrial purposes) or on plans for development or expansion that were backed by a financial commitment at the time the original water supply was affected.) A restored or replacement water supply must be similar in quality to the original supply.

Increased Costs: If a restored or replacement water supply has operation and maintenance costs that exceed the original costs, the operator is responsible to provide for the payment of the increased costs. If the mine operator and property owner agree, this obligation may be satisfied by a one time payment equal to the present worth of the cost increase for a period agreed upon by both parties.

A property owner who enters into such an agreement and thereby releases the operator of its obligation of further costs, must by law, include the agreement in any deed in order to make future purchasers aware of the legally binding agreement.

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

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

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

IMPORTANT: The landowner can report an affected water supply from the time a supply is affected by underground mining activity until three years after the last underground mining activity is completed.

Structure Impacts

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

Property owners are expected to allow mine operators access to perform damage minimization measures. If access is denied, the mine operator may be relieved of liability to repair or compensate for damages that may have been prevented through the operator's use of minimization measures.

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

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

Examples of "appurtenant structures" include storage sheds, barns, greenhouses, decks, fences, retaining walls, paved or improved patios, walks, driveways, septic treatment facilities, in-ground swimming pools, lot drainage systems, lawn/garden irrigation systems, and customer-owned utilities and cables. Examples of "improvements" are structures that are not permanently affixed, such as aboveground swimming pools, and items that are not structures, such as shrubbery and landscaping.

After damage occurs, a mine operator has six months to resolve the damage through private negotiations, unless the homeowner chooses to extend the negotiations. Landowners should file damage reports as soon as possible with the mine operator. The mine operator will then submit the damage report to DEP. This helps to preserve the landowner's right to repair or compensation in the event of a breakdown in negotiations. (The law requires that claims for commercial buildings be filed within two years of the date of damage).

Limits of Liability: When repairing or compensating for damage, a mine operator is not liable to pay more than the cost of replacing the structure that was damaged. If a damaged agricultural structure was being used for a purpose other than the purpose for which it was built, a mine operator may replace the structure with one that suffices for the most recent use.

For example, a barn used solely to store a tractor could be replaced with a tractor shed.

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

Land Damage: Mine operators must repair sinkholes, ground cracks, and flooding problems resulting from subsidence, when it is technologically and economically feasible.

DEP's Role in Resolving Damages

Surface Subsidence Agents: DEP employs a staff of Surface Subsidence Agents (commonly referred to as Shadow Inspectors) to assist landowners before, during and after mining. The agents serve as liaisons between landowners and mine operators to facilitate resolution of damages. They help ensure that landowners are aware of their rights and protections under the law, often meeting with landowners. Landowners should contact the surface subsidence agent responsible for their area by calling DEP's California District Mining Office.

Mine operators are required to notify PADEP by email or fax within 24 hours of being notified of a water loss claim and 10 days for a structure damage claim. Landowners should report impacts to the mining company immediately to promote a timely claim resolution. Additionally, timely reporting enables DEP to collect information that may be difficult to recover at a later time.

The law allows damages to be resolved through private negotiations between landowners and mine operators. However, if both parties are unable to resolve damage claims in the specified time periods, DEP will assist landowners in resolution of disputes. In general, a landowner may request DEP assistance at any time to address problems affecting health or safety regardless of any settlement negotiation.

Surface Owner Rights At-A-Glance

Residents living above underground bituminous coal mines are entitled to certain rights and protections under the law. Surface property owners' rights include:

- 1) The right to be notified by the coal company when mining is proposed under your property.
- 2) If DEP approves the permit, you have the right to be notified by the coal company at least six months before mining occurs under your property. You will be given information on who to contact at the coal company for information and resolving problems. You will also be notified by DEP with contact information for your Surface Subsidence Agent or, you can call DEP at 800-922-1678 during normal business hours for information.
- 3) You have the right to a pre-mining survey to record the existing condition of your home and water supply. If future damage or loss of water were to occur, this is valuable information. The pre-mining survey can also help in designing measures that will help prevent damage to your property like bracing, trenching around a building, installing flexible connections to utilities, or provide a replacement water supply after the supply is impacted.
- 4) You will be contacted by a DEP Surface Subsidence Agent before underground bituminous coal mining occurs to answer your questions about damage or water loss and to make sure you are aware of all your rights prior to mining.
- 5) Notify the coal company immediately of any damage or water loss on your property. The coal company must report all mining-related problems to DEP. A DEP Surface Subsidence Agent will contact you to discuss the problem(s) you are experiencing, and what potential steps are being taken by the coal company. A claims file will be opened to track the status of the problem, and DEP will be in contact with you and the coal company to make sure your rights are protected.
- 6) If you cannot occupy your home because of mine subsidence damage, you have the right to have your temporary relocation expenses paid by the coal company.

- 7) If your water is lost as a result of underground mining, you have the right to a temporary replacement supply within 24 hours and a prompt permanent replacement paid for by the coal company.
- 8) If your home is damaged, you have the right to a post-mining survey to determine the scope of the damage and to have that damage repaired to pre-mining condition. This would be paid for by the coal company, or an agreement for compensation negotiated between you and the coal company.
- 9) If you believe, you are not being treated fairly by the coal company for damage that has occurred, at any point in this process you have the right to file a formal claim with DEP up to two years after the date the damage occurred. If you do not file a damage claim with DEP within two years, you forfeit your rights to repair or compensation.
- 10) You have the right to be fully compensated for structural damage or water supply impacts that are the result of underground mining activities.

Claims for water supply impacts, structure impacts, and/or land damage should be filed with DEP at:

California District Mining Office

25 Technology Drive
California Technology Park
Coal Center, PA 15423

Telephone: 724-769-1100 or 800-922-1678

For more information about the Bituminous Coal Mine Subsidence and Land Conservation Act or Act 54, contact:

Bureau of Mining Programs
Rachel Carson State Office Building
400 Market St.
Harrisburg, PA 17105

Telephone: 717-787-5103

Act54

The Department of Environmental Protection (DEP) is responsible for administering Act 54, the Bituminous Mine Subsidence and Land Conservation Act. Act 54 describes how and when water loss and mine subsidence damages will be handled and explains the roles of the mine operator and the landowner. This brochure is intended to help landowners understand their rights and responsibilities.

For additional Information on filing a claims for water supply and/or structure impacts, or land damage should contact DEP at:

California District Mining Office

25 Technology Drive
California Technology Park
Coal Center, PA 15423

Telephone: 724-769-1100 or 800-922-1678

Cover: Templeton Run / East Finley Park, Washington County, PA