

1 the Code of West Virginia, 1931, as amended, be amended and
2 reenacted, all to read as follows:

3 **ARTICLE 27. ENVIRONMENTAL GOOD SAMARITAN ACT.**

4 **§22-27-3. Definitions.**

5 As used in this article unless used in a context that clearly
6 requires a different meaning, the term:

7 (a) "Abandoned lands" means land adversely affected by mineral
8 extraction and left or abandoned in an unreclaimed or inadequately
9 reclaimed condition.

10 (b) "Consideration" means something of value promised, given
11 or performed in exchange for something which has the effect of
12 making a legally enforceable contract. For the purpose of this
13 article, the term does not include a promise to a landowner to
14 repair damage caused by a reclamation project or water pollution
15 abatement project when the promise is made in exchange for access
16 to the land.

17 (c) "Department" means the West Virginia Department of
18 Environmental Protection.

19 (d) "Eligible land and water" means land and water adversely
20 affected by mineral extraction and left or abandoned in an
21 unreclaimed or inadequately reclaimed condition or causing water
22 pollution and for which no person has a continuing reclamation or
23 water pollution abatement obligation. For purposes of water

1 pollution abatement projects involving the use of mine drainage or
2 mine pool water for hydraulic fracturing or other development of a
3 gas well, industrial or other water supply or other beneficial use
4 of the water, the term also includes, without limiting the
5 foregoing definition, land and water adversely affected by mining
6 and left in an unreclaimed or inadequately reclaimed condition, or
7 left discharging water pollution for which a treatment trust fund
8 naming the department as the beneficiary of the trust has been
9 established.

10 (e) "Eligible landowner" means a landowner that provides
11 access to or use of the project work area at no cost for a
12 reclamation or water pollution abatement project who is not or will
13 not become responsible under state or federal law to reclaim the
14 land or address the water pollution existing or emanating from the
15 land.

16 (f) "Eligible project sponsor" means a person that provides
17 equipment, materials or services at no cost or at cost for a
18 reclamation or water pollution abatement project who is not or will
19 not become responsible under state or federal law to reclaim the
20 land or address the water pollution existing or emanating from the
21 land.

22 (g) "Industrial or other water supply" means the supply of
23 water for use by any lawful industrial, commercial or agricultural

1 facility or activity or by any public water supply."

2 ~~(g)~~ (h) "Landowner" means a person who holds either legal or
3 equitable interest in real property.

4 (i) "Mine operator" means the permittee of an active or closed
5 mine that treats mine drainage under a permit issued by the
6 department.

7 ~~(h)~~ (j) "Mineral" means any aggregate or mass of mineral
8 matter, whether or not coherent, which is extracted by mining.
9 This includes, but is not limited to, limestone, dolomite, sand,
10 gravel, slate, argillite, diabase, gneiss, micaceous sandstone
11 known as bluestone, rock, stone, earth, fill, slag, iron ore, zinc
12 ore, vermiculite, clay and anthracite and bituminous coal.

13 (k) "Other beneficial use" means any use of water for a
14 purpose that produces any economic, environmental, ecological or
15 other benefits, including irrigation, silvaculture, cooling water,
16 flow maintenance and augmentation, consumptive use makeup, and any
17 other use of water deemed to be a beneficial use under common law.

18 ~~(i)~~ (l) "Permitted activity site" means a site permitted by
19 the Department of Environmental Protection under the provisions of
20 article two, three or four of this chapter.

21 ~~(j)~~ (m) "Person" means a natural person, partnership,
22 association, association members, corporation, an agency,
23 instrumentality or entity of federal or state government or other

1 legal entity recognized by law as the subject of rights and
2 liabilities.

3 ~~(k)~~ (n) "Project work area" means that land necessary for a
4 person to complete a reclamation project or a water pollution
5 abatement project.

6 ~~(i)~~ (o) "Reclamation project" means the restoration of
7 eligible land to productive use by regrading and revegetating the
8 land to stable contours that blend in and complement the drainage
9 pattern of the surrounding terrain with no highwalls, spoil piles
10 or depressions to accumulate water, or to decrease or eliminate
11 discharge of water pollution.

12 (p) "Treated mine drainage" means water from an active or
13 closed mine that is treated by the mine operator or water pollution
14 abatement project operator under a permit issued by the department.

15 ~~(m)~~ (q) "Water pollution" means the man-made or man-induced
16 alteration of the chemical, physical, biological and radiological
17 integrity of water located in the state.

18 ~~(n)~~ (r) "Water pollution abatement facilities" means the
19 methods for treatment or abatement of water pollution located on or
20 associated with eligible lands and water. These methods include,
21 but are not limited to, a structure, system, practice, technique or
22 method constructed, installed or followed to reduce, treat or abate
23 water pollution. These methods also include a structure, system,

1 practice, technique or method constructed, installed or followed to
2 enable the use of mine drainage or mine pool water from eligible
3 land and water for hydraulic fracturing or other development of a
4 gas well, industrial or other water supply or other beneficial use
5 of the water.

6 ~~(o)~~ (s) "Water pollution abatement project" means a plan
7 project for treatment or abatement of water pollution located on
8 eligible lands, including, but not limited to, the practices to be
9 followed and the installation, operation and maintenance of
10 facilities and activities to:

11 (1) Reduce, treat or abate the water pollution;

12 (2) Withdraw, divert and use mine drainage or mine pool water
13 from eligible land and water from hydraulic fracturing or other
14 development of a gas well, industrial or other water supply or
15 other beneficial use of the water, with or without treatment, that
16 may or may not be located on eligible land and water; or

17 (3) Withdraw, divert and use treated mine drainage from a
18 permitted mining activity site for the hydraulic fracturing or
19 other development of a gas well, industrial or other water supply
20 or other beneficial use of the water.

21 (t) "Water pollution abatement project operator" means the
22 owner or operator of a water pollution abatement project approved
23 by the department, and a person acting as a contractor to the owner

1 or operator of a water pollution abatement project.

2 **§22-27-4. Eligibility and project inventory.**

3 (a) *General rule.* -- An eligible landowner or eligible project
4 sponsor who voluntarily provides equipment, materials or services
5 at no charge or at cost for a reclamation project or a water
6 pollution abatement project in accordance with the provisions of
7 this article is immune from civil liability and may raise the
8 protections afforded by the provisions of this article in any
9 subsequent legal proceeding which is brought to enforce
10 environmental laws or otherwise impose liability. An eligible
11 landowner or eligible project sponsor is only entitled to the
12 protections and immunities provided by this article after meeting
13 all eligibility requirements and compliance with a detailed written
14 plan of the proposed reclamation project or water pollution
15 abatement project which is submitted to and approved by the
16 department. The project plan shall include the objective of the
17 project and a description of the work to be performed to accomplish
18 the objective and shall, additionally, identify the project
19 location, project boundaries, project participants and all
20 landowners.

21 (b) *Notice.* -- The department shall give written notice by
22 certified mail to adjacent property owners and riparian land owners
23 located downstream of the proposed project, provide Class IV public

1 notice of the proposed project in a newspaper of general
2 circulation, published in the locality of the proposed project, and
3 shall give public notice in the state register. The project
4 sponsor may also provide public notice. Any person having an
5 interest which may be adversely affected by the proposed project
6 has the right to file written objections to the department within
7 thirty days after receipt of the written notice or within thirty
8 days after the last publication of the Class IV notice. The
9 department shall provide to the project sponsor a copy of each
10 written objection received during the public comment period, which
11 shall conclude at the expiration of the applicable thirty-day
12 period provided for in this section.

13 (c) *Advice.* -- The department may provide advice to the
14 landowner or to other interested persons based upon the
15 department's knowledge and experience in performing reclamation
16 projects and water pollution abatement projects.

17 (d) *Departmental review.* -- The department shall review each
18 proposed reclamation project and approve the project if the
19 department determines the proposed project:

20 (1) Will result in the appropriate reclamation and regrading
21 of the land according to all applicable laws and regulations;

22 (2) Will result in the appropriate revegetation of the site;

23 (3) Is not likely to result in pollution as defined in article

1 eleven of this chapter; and

2 (4) Is likely to improve the water quality and is not likely
3 to make the water pollution worse or reduce the volume or loading
4 of mine water or an existing discharge of pollution of mine water
5 pollutants or will likely have a beneficial impact on the water
6 resources of the state.

7 (e) *Project inventory.* -- The department shall develop and
8 maintain a system to inventory and record each project, the project
9 location and boundaries, each landowner and each person identified
10 in a project plan provided to the department. The inventory shall
11 include the results of the department's review of the proposed
12 project and, where applicable, include the department's findings
13 under subsection (b), section ten of this article.

14 (f) *Appeal.* -- A person aggrieved by a department decision to
15 approve or disapprove a reclamation project or a water pollution
16 abatement project has the right to file an appeal with the
17 environmental quality board under the provisions of article one,
18 chapter twenty-two-b of this code.

19 **§22-27-5. Landowner liability limitation and exceptions.**

20 (a) *General rule.* -- Except as specifically provided in
21 subsections (b) and (c) of this section, an eligible landowner who
22 provides access to the land, without charge or other consideration,
23 which results in the implementation of a reclamation project or a

1 water pollution abatement project:

2 (1) Is immune from liability for any injury or damage suffered
3 by persons working under the direct supervision of the project
4 sponsor while such persons are within the project work area;

5 (2) Is immune from liability for any injury to or damage
6 suffered by a third party which arises out of or occurs as a result
7 of an act or omission of the project sponsor which occurs during
8 the implementation of the reclamation project or the water
9 pollution abatement project;

10 (3) Is immune from liability for any injury to, cost incurred
11 by or damage suffered by a third party, including a downstream
12 riparian landowner, which arises out of or occurs as a result of a
13 reclamation project or a water pollution abatement project;

14 (4) Is immune from liability for any pollution resulting from
15 a reclamation project or water pollution abatement project;

16 (5) Is immune from liability for the operation, maintenance or
17 repair of the water pollution abatement facilities constructed or
18 installed during the project unless the eligible landowner
19 negligently damages or destroys the water pollution abatement
20 facilities or denies access to the project sponsor who is
21 responsible for the operation, maintenance or repair the water
22 pollution abatement facilities.

23 (b) *Duty to warn.* -- The eligible landowner shall warn the

1 project sponsor of known, latent, dangerous conditions located on
2 the project work area which are not the subject of the reclamation
3 project or the water pollution abatement project. Nothing in this
4 article shall limit an eligible landowner's liability which results
5 from the eligible landowner's failure to warn of such known,
6 latent, dangerous conditions.

7 (c) Mine water for beneficial uses. -- Notwithstanding any
8 other provision of this chapter, landowners, mine operators and
9 water pollution abatement project operators that are involved in
10 treating mine drainage or mine pool water from a permitted mining
11 activity site or water pollution abatement project shall not be
12 deemed to assume legal responsibility for, or to incur liability
13 with respect to, a cost, injury or damage that arises out of or
14 occurs in connection with the use of mine drainage, mine pool water
15 or treated mine water in connection with the hydraulic fracturing
16 process or other development of a gas well, industrial or other
17 water supply or other beneficial use of the water.

18 ~~(c)~~ (d) Exceptions to immunity. -- Nothing in this article may
19 limit an eligible landowner's liability which results from a
20 reclamation project or water pollution abatement project and which
21 would otherwise exist:

22 (1) For injury or damage resulting from the landowner's acts
23 or omissions which are reckless or constitute gross negligence or

1 willful misconduct.

2 (2) Where the landowner accepts or requires consideration for
3 allowing access to the land for the purpose of implementing a
4 reclamation project or water pollution abatement project or to
5 operate, maintain or repair water pollution abatement facilities
6 constructed or installed during a water pollution abatement
7 project.

8 (3) For the landowner's unlawful activities.

9 (4) For damage to adjacent landowners or downstream riparian
10 landowners which results from a reclamation project or water
11 pollution abatement project where written notice or public notice
12 of the proposed project was not provided.

13 **§22-27-6. Project sponsor liability limitation and exceptions.**

14 (a) *General rule.* -- Except as specifically provided in
15 subsection (b) of this section, a water pollution abatement project
16 operator or project sponsor who provides equipment, funding,
17 materials or services at no cost to the state or at cost for a
18 reclamation project or a water pollution abatement project or who
19 implements any such project at no cost to the state:

20 (1) Is immune from liability for any injury to or damage
21 suffered by a person, including a downstream riparian landowner,
22 which arises out of or occurs as a result of a reclamation project,
23 a water pollution abatement project or the water pollution

1 abatement facilities constructed or installed during the water
2 pollution abatement project;

3 (2) Is immune from liability for any pollution emanating from
4 the water pollution abatement facilities constructed or installed
5 during the water pollution abatement project unless the person
6 affects an area that is hydrologically connected to the water
7 pollution abatement project work area and causes increased
8 pollution by activities which are unrelated to the implementation
9 of a water pollution abatement project, provided that the project
10 sponsor implements, operates, and maintains the project in
11 accordance with the plans approved by the department;

12 (3) Is immune from liability for the operation, maintenance
13 and repair of the water pollution abatement facilities constructed
14 or installed during the water pollution abatement project;

15 (4) May not be considered to be engaging in surface or
16 underground mining activities under the act of May 31, 1945
17 (P.L.1198, No.418), known as the Surface Mining Conservation and
18 Reclamation Act , or the act of April 27, 1966 (1st Sp.Sess.,
19 P.L.31, No.1), known as The Bituminous Mine Subsidence and Land
20 Conservation Act, when the water pollution abatement project
21 involves the use of mine drainage or mine pool water for hydraulic
22 fracturing or other development of a gas well, industrial or other
23 water supply or other beneficial use of the water;

1 (5) May not be considered to be releasing a hazardous
2 substance or contaminant, when using mine drainage, mine pool water
3 or treated mine drainage for hydraulic fracturing or other
4 development of a gas well, industrial or other water supply or
5 other beneficial use of the water; and

6 (6) May not be considered an owner or operator of the project
7 site for purposes of a state law that imposes reclamation or
8 remediation obligations on the basis of past or present ownership
9 or operation of the site, solely by reason of a water pollution
10 abatement project involving the use of mine drainage or mine pool
11 water for hydraulic fracturing or other development of a gas well,
12 industrial or other water supply or other beneficial use of the
13 water.

14 (b) *Exceptions.* --

15 (1) Nothing in this article shall limit in any way the
16 liability of a project sponsor which liability results from the
17 reclamation project or the water pollution abatement project and
18 which would otherwise exist:

19 (A) For injury or damage resulting from the project sponsor's
20 acts or omissions which are reckless or constitute gross negligence
21 or willful misconduct.

22 (B) For the person's unlawful activities.

23 (C) For damages to adjacent landowners or downstream riparian

1 landowners which result from a reclamation project or a water
2 pollution abatement project where written notice or public notice
3 of the proposed project was not provided.

4 (2) Nothing in this article shall limit in any way the
5 liability of a person who the department has found to be in
6 violation of any other provision or provisions of this chapter.

7 **§22-27-10. Exceptions.**

8 (a) *General rule.* -- Any person who under existing law shall
9 be or may become responsible to reclaim the land or treat or abate
10 the water pollution or any person who for consideration or who
11 receives some other benefit through a contract to reclaim land or
12 treat or abate water pollution or any person who through a consent
13 order and agreement or is ordered to perform or complete
14 reclamation or treat or abate water pollution as well as a surety
15 which provided a bond for the site is not eligible nor may receive
16 the benefit of the protections and immunities available under this
17 article.

18 (b) *Projects near mining or coal refuse sites.* -- This article
19 does not apply to a reclamation project or a water pollution
20 abatement project that is located adjacent to, hydrologically
21 connected to or in close proximity to a site permitted under
22 articles two, three or four of this chapter unless:

23 (1) The reclamation project or water pollution abatement

1 project is submitted to the department in writing before the
2 project is started; and

3 (2) The department finds:

4 (A) The reclamation project or the water pollution abatement
5 project will not adversely affect the permittee's obligations under
6 the permit and the applicable law;

7 (B) The activities on the project work area cannot be used by
8 the permittee to avoid the permittee's reclamation or water
9 pollution treatment or abatement obligations; and

10 (3) The department issues a written notice of its findings and
11 the approval of the project.

12 (c) *Projects in lieu of civil or administrative penalties.* --
13 This article shall not apply to a reclamation project or a water
14 pollution abatement project that is performed in lieu of paying
15 civil or administrative penalties.

NOTE: The purpose of this bill is to limit the liability of persons who participate in water pollution abatement projects or make beneficial use of mine drainage, mine pool water and other water supplies for projects such as hydraulic fracturing of gas wells and other industrial purposes.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.