
Landowners' Guide to Subsidence Damage Repair and Water Supply Replacement

Disclaimer: This guide is not intended as, and is not, legal advice. Nothing in this guide is meant to, or can, serve as a substitute for obtaining legal representation.

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Introduction and Overview

The Pennsylvania Department of Environmental Protection (“DEP”) is responsible for administering and enforcing the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act (“Act 54”). Act 54 represented a compromise. It acknowledges that longwall mining causes subsidence that results in damages to land, water supplies, and surface structures, and describes how and when mine subsidence damage will be repaired. Act 54 explains the roles and responsibilities of the mine operator and the landowner. This guide is intended to help landowners better understand their rights and responsibilities.

Longwall Mining vs. Development Mining

Longwall mining is a type of full extraction mining. Large machines within a defined rectangular area called a “panel” remove virtually all the coal. As the longwall machine removes the block of coal, the area where the coal has been removed collapses or subsides, resulting in changes to, among other things, the surface contour of the land.

Development mining is performed by continuous mining machines in order to establish gate roads, ventilation shafts, openings, entries, and access to the working sections of the underground mine in preparation for longwall mining. Unlike longwall mining, development mining leaves coal pillars to support the surface.

Why is mining allowed under your property?

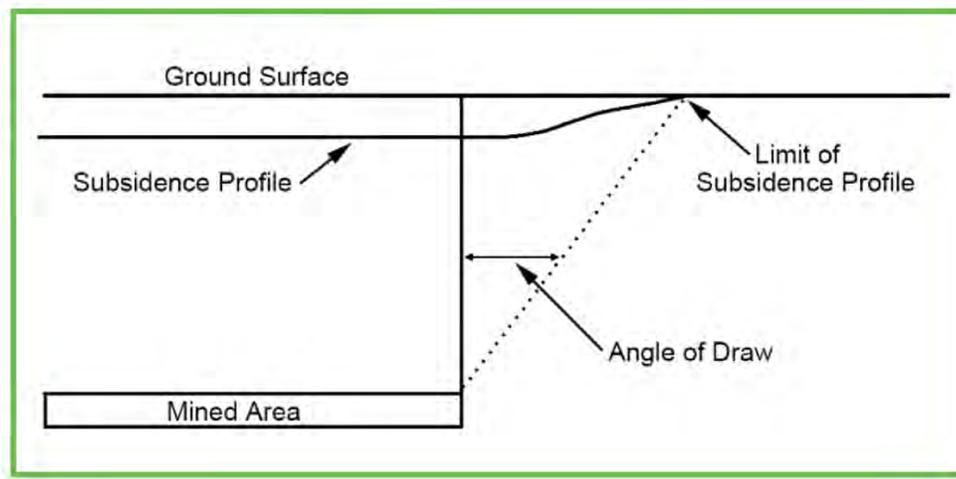
Under Pennsylvania law, the surface and the mineral (e.g., coal) rights are separate and distinct property estates. Surface rights specifically refer to ownership of the surface of the land and include ownership of the most visible aspects on the property (e.g. physical structures, trees, plants, and water). Dig below the surface of a property and you’ll reach the zone where mineral rights begin. The mineral rights owner has the legal ability to explore, extract and sell naturally occurring deposits found beneath the land surface. This allows coal operators to mine coal under or adjacent to your surface property, which has the potential to impact your surface structures and water supplies.

Notification to Landowners within a Proposed Underground Mine

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 mine subsidence area.¹ This angle or “angle of draw” is defined as the angle formed between a vertical line

¹ 25 Pa. Code § 89.141

projected upward from the edge of the extracted coal and a line connecting to the typically outer limit of subsidence on the surface.



If your property is located within this 30-degree angle of draw and the permit is approved, the mine operator is required to notify each property owner of the planned mining operations.² The mine operator must notify the property owner no more than five years and no less than six months before undermining the property.

The coal operator and the Department of Environmental Protection also publish public notice of underground coal mining permit applications.³ The coal operator is required to publish a public notice of its application in the local newspaper. The Department of Environmental Protection publishes notice of permit applications and permit approvals in the Pennsylvania Bulletin. CCJ reviews the public notices every week and posts them on our [blog](#).

² 25 Pa. Code § 89.155

³ *Id.*

How You Can Protect Your Property

To protect your rights, granting access to the coal company to perform a pre-mining and post-mining survey is essential. Pre-mining and post-mining surveys of water supplies and structures ensure fair settlement of damage claims. To the extent that underground mining operations cause damage to overlying structures, the operator is required to repair such damage or compensate the landowner for the cost of repair post-mining. A coal mine operator will not be required to repair a structure if the landowner denied the operator access to the property upon which the structure is located to conduct a pre-mining survey or a post-mining survey of the structure and surrounding property.⁴

Pre-Mining and Post-Mining Surveys

Coal mine operators must identify the structures, facilities, or features that may be damaged by mine subsidence in their permit application.⁵ Operators are required to conduct pre-mining surveys of structures that may be impacted by underground coal mining operations.⁶ The pre-mining structure survey must document the existing conditions of each structure (walls, floors, ceilings, stairs, windows, etc.) through a written inspection report, video, or photographs. The pre-mining survey can also help the coal operator design measures that could help prevent damage to your property, like bracing, trenching around a building, installing flexible connections to utilities, or providing a replacement water supply after the supply is impacted. The pre-mining survey must be completed before the time that a structure falls within a 30-degree angle of draw of underground mining operations.⁷

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 water supply, and obtaining information from the property owner concerning the existing and future uses of the water supply. Landowners should ensure that the pre-mining survey includes all water supplies located on the property and their respective uses.

Post-mining surveys allow the operator to evaluate the scope and severity of damage by comparing the pre-mining survey results to the post-mining condition of the structure or water supply.

Arranging Access for Surveys

Mine operators and property owners should agree to a mutual time and date to conduct the pre-mining and post-mining surveys. Mine operators must request the landowner's

⁴ 25 Pa. Code § 89.144a(a) – (b); see also 25 Pa. Code § 89.142a(b)(2) (A coal mine operator will be relieved of its duty to conduct a pre-mining survey if the landowner refuses access to the site.)

⁵ 25 Pa. Code § 89.141(d)

⁶ 25 Pa. Code § 89.142a(b), (f)

⁷ 25 Pa. Code 89.142a(b)(1)(i)-(ii)

permission to conduct the surveys. If the landowner denies access or does not respond, the mine operator must provide written notice to the landowner by certified mail. That written notice must describe the landowner's rights under the law.

Landowners must grant mine operators timely access to conduct a pre-mining survey. After receiving written notice, a landowner has ten (10) days to provide or authorize access. We encourage landowners to be present during pre-mining surveys and to take their own notes and photographs alongside the coal company representatives.

The mine operator is required to provide landowners with the results of the pre-mining surveys within 30 days.⁸ It is important for landowners to review and agree to the accuracy of the pre-mining survey.

Pre-mining surveys may be conducted many months or years before undermining.⁹ If significant improvements or repairs are made to the home or other structures after the pre-mining survey was completed, but before undermining, we encourage landowners to request another pre-mining survey. Again, the purpose of pre-mining surveys is to document the pre-mining condition of structures and water supplies. Post-mining, the coal operator must restore the structure to its pre-mining condition or replace it with a structure that suffices the pre-mining use.

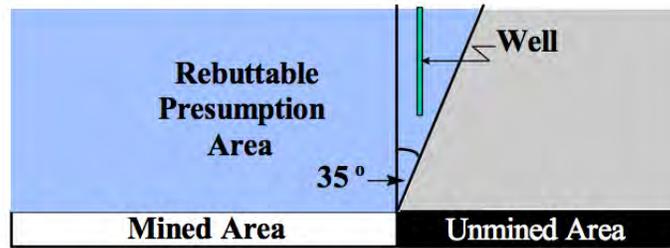
Note: Access to the pre-mining survey information is limited to the landowner, appropriate mining company representatives, and DEP investigators unless the landowner consents to allow others to view this information. Mine operators are required to keep pre-mining survey results confidential because the results may include sensitive information about the contents of dwellings or other structures.

Rebuttable Presumption Area

Act 54 requires mine operators to restore or replace water supplies contaminated, diminished, or interrupted by its underground coal mining operations. Rebuttable presumption area refers to the area within a permitted mine where the mine operator is **presumed responsible** for adverse impacts to water supplies. The area is established by a 35-degree line projected upward from the edge of the mined area to the surface. The area is illustrated in the figure below.

⁸ 25 Pa. Code § 89.142a(b)(1)(ii)

⁹ 25 Pa. Code § 89.142a(b)(1)(iii) ("The results of a pre-mining survey shall be submitted to the landowner within 30 days of completion and to the Department upon Department request.")



(It is important to note that the entire well does not need to be in the rebuttal presumption area – only the wellhead.)

Pre-Mining Agreements

Pre-mining agreements are negotiated and signed before longwall mining beneath a landowner's surface property. Pre-mining agreements typically include compensation for the anticipated subsidence impacts to structures and water supplies. In exchange, the landowner releases the operator of its obligation to repair subsidence-induced damage post-mining. Instead, the landowner will be responsible for making repairs post-mining using the lump sum payment agreed upon in the pre-mining agreement. Importantly, the extent and severity of observed subsidence damage and the cost to repair such damage may be more or less than the one-time payment agreed upon by the landowner and coal operator. It is an educated gamble. If the one-time payment is more than the cost to perform repairs, the landowner keeps any remaining money. If the one-time payment is less than the repair cost, the landowner will be responsible for paying the difference.

Coal operators may offer landowners another type of pre-mining agreement that it characterizes as "keep DEP out." It is critical that landowners review these agreements carefully. These kinds of pre-mining agreements may transfer the coal operator's obligations from a statutory (Act 54) obligation to a contractual one. In other words, rather than relying on Act 54, which DEP enforces, landowners may need to enforce the contract in the Court of Common Pleas in the event of a breakdown in negotiations or a disagreement between the landowner and the operator. For example, the landowner may need to prove that damage was caused by underground mining in the Court of Common Pleas if the coal operator determines that certain damage was not caused by its underground mining operations. Absent a "keep DEP out" pre-mining agreement, the DEP would investigate and determine whether underground coal mining operations caused the damage. The cost to enforce the pre-mining contract in the event of a dispute may be higher than the payment offered by the coal operator in exchange for "keeping DEP out."

Water Supply Impacts and Restoration/Replacement

Landowners should report water supply impacts to the coal operator as soon as practicable.¹⁰ The operator is obligated to notify DEP of the affected water supply within 24 hours of receiving a landowner's claim.¹¹ Landowners may also report the impact to DEP after notifying the coal company. This helps preserve the landowner's right to restoration or replacement if negotiations breakdown.

If underground coal mining causes contamination, diminution, or interruption of a water supply located 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 and reasonably foreseeable uses of that water supply.¹² The law requires operators to permanently restore or replace affected water supplies "promptly." The federal Office of Surface Mining Restoration and Enforcement has interpreted "promptly" to mean within three (3) years.

Temporary Water Supply

A mine operator must provide a landowner with a temporary water supply when (1) 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, and (2) when an operator or DEP determines that underground mining has caused contamination, diminution or interruption to a water supply outside of the rebuttable presumption area and the landowner is without a readily available alternate source.¹³

Temporary water supplies must be sufficient in quality and quantity to serve the landowner's needs and must be maintained until one of the following occurs:

- A permanent replacement water supply is developed
- The claim is resolved by a private agreement between the landowner and the operator
- 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 impact by the landowner or DEP. If an affected water supply lies outside the rebuttable presumption area, DEP will investigate the claim and, if appropriate, require the operator to quickly provide temporary water.

¹⁰ 25 Pa. Code § 89.146a(a)

¹¹ 25 Pa. Code § 89.145a(c)

¹² 25 Pa. Code §§ 89.145a(b); 89.153(a)-(b)

¹³ 25 Pa. Code § 89.145a(e)

Permanent Water Supply Restoration or Replacement

A restored or replacement water supply must provide water sufficient in quantity and quality to satisfy the landowner's pre-mining and reasonably foreseeable uses of that water supply.¹⁴ Reasonably foreseeable uses are those within the capacity of the pre-mining water supply and can be substantiated based on property attributes or on plans for development or expansion that were supported by a financial commitment at the time the pre-mining supply was impacted.¹⁵

Operation and Maintenance Costs

If a restored or replacement water supply has operation and maintenance costs (commonly referred to as O&M costs) that exceed the pre-mining costs, the coal operator is obligated to provide for the payment of those increased costs.¹⁶ For example, suppose a landowner relied on a private water well before mining, and the coal operator replaced the water supply with public water. In that case, the operation and maintenance costs will almost certainly exceed the pre-mining costs. This obligation to pay for increased operation and maintenance costs may be satisfied by a one-time payment equal to the present cost increase for a period of time agreed upon by the landowner and coal operator.¹⁷

Special Provisions/Exceptions

If a mine operator reports that it is impossible to provide the landowner with an adequate replacement water supply, the landowner should seek a DEP determination as to the likelihood of successful restoration or replacement. DEP will investigate and issue a final determination within 60 days.

If it is impossible for the mine operator to restore or replace an impacted water supply, Act 54 provides the landowner the option to choose one of the following:

- 1) The mine operator purchases the property at its fair market value before the loss of the water supply.
- 2) The mine operator pays for the reduction in the property's fair market value resulting from the water supply loss.
- 3) Enter into a private written agreement that provides compensation acceptable to the landowner.

¹⁴ 25 Pa. Code § 89.145a(f)

¹⁵ 25 Pa. Code § 89.145a(b)

¹⁶ 25 Pa. Code § 89.145a(f)(5)

¹⁷ 25 Pa. Code § 89.145a(f)(5)(iii)

Structure Impacts and Repairs

Landowners should notify the coal operator of any subsidence-induced damage to structures as soon as practicable.¹⁸ The mine operator will conduct a post-mining survey to determine the scope and severity of the damage. The mine operator should notify DEP of the structure damage within ten (10) days of receiving the landowner's claim. The landowner may also notify DEP after notifying the operator. This helps preserve the landowner's right to repair or compensation for repairs if negotiations breakdown.

The mine operator must promptly repair damage or compensate the structure owner for the reasonable cost of repairs if mining causes damage to any of the following structures:

- Buildings that are accessible to the public, including commercial, industrial, and recreational buildings.
- Noncommercial buildings like churches, schools, hospitals, public buildings, museums, correctional facilities, water and sewage treatment facilities, community buildings used for social and recreational activities, firehouses, healthcare facilities, etc.
- Barns, silos, and other permanently affixed agricultural structures.
- Dwellings and appurtenant structures and improvements. Examples of appurtenant structures "include storage sheds, barns, decks, greenhouses, fences, retaining walls, paved or improved patios, driveways, etc. Examples of "improvements" are aboveground swimming pools and other structures that are not permanently affixed.

Limits of Coal Operator Liability

The coal operator is not liable to pay more than the cost of replacing the structure that was damaged when repairing or compensating for damage. Additionally, if a damaged agricultural structure was being used for a purpose other than the purpose it was built, the coal operator may replace the structure with one that suffices for the most recent pre-mining use. For example, a barn used solely to store equipment before mining could be replaced with a shed of similar capacity.

¹⁸ 25 Pa. Code § 89.143a(a)

Summary of Landowner Rights and Responsibilities

Residents living above underground coal mines in Pennsylvania are entitled to certain rights and protections under Act 54. Landowner owner rights and responsibilities include:

- The right to be notified by the coal company when mining is proposed under your property.
- The right to submit comments to DEP on the operator's permit application.
- The right to be notified by the coal company at least six months before mining occurs under your property if DEP approves the permit. The operator should provide contact information for the coal company representative that you should contact to report and resolve subsidence damage.
- The right to a pre-mining survey to record the existing condition of your home, other structures, and water supply. This pre-mining survey will be used post-mining to determine whether longwall mining caused structure damage or a change in your water supply.
- The responsibility to notify the coal company immediately of any structure damage or water loss on your property. The operator is obligated to report any subsidence damage to DEP. Landowners may also report the damage to DEP after notifying the coal company.
- The right to a temporary water supply within 24 hours and a prompt permanent replacement water supply if underground mining causes you to lose your water supply.
- The right to a post-mining survey to determine the scope and severity of subsidence-induced damage.
- The right to have subsidence damage repaired to pre-mining condition, and to have those repairs paid for by the coal operator.
- The right to be fully compensated for structural damage or water supply impacts caused by underground mining activities.
- The right to file a formal claim with DEP at any point during the post-mining process. Claims for water supply impacts, structure damage, and/or land damage should be filed with DEP's California District Mining Office.

California District Mining Office
25 Technology Drive
California Technology Park
Coal Center, PA 15423
Phone: (724) 769-1100

For additional information on water supply and/or structure impacts contact us at:

Center for Coalfield Justice

31 E. Chestnut St.

Suite 102

Washington, PA 15301

Phone: (724) 229-3550

E-mail: coalteam@centerforcoalfieldjustice.org

Website: www.centerforcoalfieldjustice.org

