

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 78

Session of
1991

INTRODUCED BY GEORGE, HASAY, JAROLIN, MIHALICH, WOZNIAK, SURRA,
BOWLEY, S. H. SMITH, FREEMAN, ARGALL, SALOOM, FEE AND
BROUJOS, JANUARY 15, 1991

SENATOR BRIGHTBILL, ENVIRONMENTAL RESOURCES AND ENERGY, IN
SENATE, AS AMENDED, NOVEMBER 18, 1992

AN ACT

~~Amending the act of May 31, 1945 (P.L.1198, No.418), entitled,
as amended, "An act providing for the conservation and
improvement of land affected in connection with surface
mining; regulating such mining; providing for the
establishment of an Emergency Bond Fund for anthracite deep
mine operators; and providing penalties," further providing
for proceedings involving contamination or diminution of
water supplies.~~

AMENDING THE ACT OF MAY 31, 1945 (P.L.1198, NO.418), ENTITLED,
AS AMENDED, "AN ACT PROVIDING FOR THE CONSERVATION AND
IMPROVEMENT OF LAND AFFECTED IN CONNECTION WITH SURFACE
MINING; REGULATING SUCH MINING; PROVIDING FOR THE
ESTABLISHMENT OF AN EMERGENCY BOND FUND FOR ANTHRACITE DEEP
MINE OPERATORS; AND PROVIDING PENALTIES," FURTHER PROVIDING
FOR THE PURPOSE OF THE ACT; ADDING AND AMENDING CERTAIN
DEFINITIONS; FURTHER PROVIDING FOR OPERATORS' LICENSES, FOR
MINING PERMITS, FOR SURFACE MINING RECLAMATION AND
RECLAMATION PLANS, FOR PROCEDURES RELATING TO BONDS, TRUST
FUNDS AND OTHER FINANCIAL ASSURANCES, FOR CERTAIN REMINING
AND FOR FURTHER DUTIES OF THE ENVIRONMENTAL HEARING BOARD,
THE ENVIRONMENTAL QUALITY BOARD AND THE DEPARTMENT OF
ENVIRONMENTAL RESOURCES; PROVIDING FOR GOVERNMENT-FINANCED
RECLAMATION CONTRACTS AUTHORIZING INCIDENTAL AND NECESSARY
EXTRACTION OF COAL AND FOR RELATED REMINING AND RECLAMATION
MATTERS; ESTABLISHING THE REMINING ENVIRONMENTAL ENFORCEMENT
FUND AND THE REMINING FINANCIAL ASSURANCE FUND; FURTHER
PROVIDING FOR THE MINING AND RECLAMATION ADVISORY BOARD; AND
MAKING REPEALS.

The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 ~~Section 1. Section 4.2(f) of the act of May 31, 1945~~ <—
3 ~~(P.L.1198, No.418), known as the Surface Mining Conservation and~~
4 ~~Reclamation Act, amended October 10, 1980 (P.L.835, No.155), is~~
5 ~~amended to read:~~

6 ~~Section 4.2. General Rule Making; Health and Safety. * * *~~

7 ~~(f) (1) Any surface mining operator who affects a public or~~
8 ~~private water supply by contamination or diminution shall~~
9 ~~restore or replace the affected supply with an alternate source~~
10 ~~of water adequate in quantity and quality for the purposes~~
11 ~~served by the supply. If any operator shall fail to comply with~~
12 ~~this provision, the secretary may issue such orders to the~~
13 ~~operator as are necessary to assure compliance.~~

14 ~~(2) It shall be presumed, as a matter of law, that a surface~~
15 ~~mining operator or owner is responsible, without proof of fault,~~
16 ~~negligence or causation, for all pollution, except~~
17 ~~bacteriological contamination, or diminution of public or~~
18 ~~private water supplies, within one thousand linear feet of the~~
19 ~~boundaries of the land affected or acreage assigned to the~~
20 ~~surface mining operation under section 3.1 by a permit issued by~~
21 ~~the department. There shall be only five defenses to the~~
22 ~~presumption of liability provided in this paragraph. A surface~~
23 ~~mining operator or owner must affirmatively prove by a~~
24 ~~preponderance of evidence that one of the following conditions~~
25 ~~exists:~~

26 ~~(i) The landowner or water supply company refused to allow~~
27 ~~the surface mining operator or owner access to conduct a survey~~
28 ~~prior to commencing surface mining activities.~~

29 ~~(ii) The water supply is not within one thousand linear feet~~
30 ~~of the boundaries of the land affected or the acreage assigned~~

~~to the surface mining operation under section 3.1 by a permit issued by the department.~~

~~(iii) The pollution or diminution existed prior to the surface mining activities as determined by a survey conducted prior to commencing surface mining activities.~~

~~(iv) The pollution or diminution occurred as a result of some cause other than the surface mining activities.~~

~~(v) The landowner, water supply user or water supply company refuses to allow the surface mining operator or owner access to determine the cause of pollution or diminution or to replace or restore the water supply.~~

~~(3) If the secretary finds that immediate replacement of an affected water supply used for potable or domestic needs is required to protect health and safety, and that the operator or owner has appealed or failed to comply with an order issued pursuant to this subsection, the secretary may restore or replace the affected water supply with an alternate source of water utilizing moneys from the Surface Mining Conservation and Reclamation Fund. The secretary shall recover the costs of restoration or replacement, including costs incurred for design and construction of facilities, from the responsible operators or owners. Costs recovered shall be deposited in the Surface Mining Conservation and Reclamation Fund.~~

~~(4) An operator or owner aggrieved by the secretary's order issued pursuant to this subsection shall have the right within thirty (30) days of receipt of the order to appeal to the Environmental Hearing Board. The secretary's order, when appealed by an operator or owner, shall not be used to block the issuance of new permits or the release of bonds when a stage of reclamation work is completed. Hearings under this subsection~~

~~shall be in accordance with the act of July 13, 1988 (P.L.530, No.94), known as the "Environmental Hearing Board Act," and 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7, Subch. A (relating to judicial review of Commonwealth agency action).~~

~~(5) A surface mining operator or owner who provides a successful defense to the presumption of liability shall be entitled to recover the costs incurred, including, but not limited to, the costs of temporary water supply, design, construction, restoration or replacement costs, attorney fees and expert witness fees from the department.~~

~~(6) Nothing in this subsection shall prevent any landowner or water supply company who claims pollution or diminution of a water supply from seeking any other remedy that may be provided for at law or in equity.~~

~~(7) A surface mining operation conducted under a surface mining permit issued by the department before the effective date of this act shall not be subject to the provisions of clauses (2), (3), (4), (5) and (6) of this subsection, but shall be subject to clause (1) of this subsection.~~

~~* * *~~

~~Section 2. This act shall take effect in 60 days.~~

SECTION 1. SECTION 1 OF THE ACT OF MAY 31, 1945 (P.L.1198, NO.418), KNOWN AS THE SURFACE MINING CONSERVATION AND RECLAMATION ACT, AMENDED OCTOBER 4, 1984 (P.L.727, NO.158), IS AMENDED TO READ:

SECTION 1. PURPOSE OF ACT.--THIS ACT SHALL BE DEEMED TO BE AN EXERCISE OF THE POLICE POWERS OF THE COMMONWEALTH FOR THE GENERAL WELFARE OF THE PEOPLE OF THE COMMONWEALTH, BY PROVIDING FOR THE CONSERVATION AND IMPROVEMENT OF AREAS OF LAND AFFECTED

1 IN THE SURFACE MINING OF BITUMINOUS AND ANTHRACITE COAL AND
2 METALLIC AND NONMETALLIC MINERALS, TO AID THEREBY IN THE
3 PROTECTION OF BIRDS AND WILD LIFE, TO ENHANCE THE VALUE OF SUCH
4 LAND FOR TAXATION, TO DECREASE SOIL EROSION, TO AID IN THE
5 PREVENTION OF THE POLLUTION OF RIVERS AND STREAMS, TO PROTECT
6 AND MAINTAIN WATER SUPPLY, TO PROTECT LAND AND TO ENHANCE LAND
7 USE MANAGEMENT AND PLANNING, TO PREVENT AND ELIMINATE HAZARDS TO
8 HEALTH AND SAFETY, TO PROMOTE AND PROVIDE INCENTIVES FOR THE
9 REMINING OF PREVIOUSLY AFFECTED AREAS, TO ALLOW FOR GOVERNMENT-
10 FINANCED RECLAMATION CONTRACTS AUTHORIZING INCIDENTAL AND
11 NECESSARY COAL EXTRACTION, TO AUTHORIZE A REMINING AND
12 RECLAMATION INCENTIVE PROGRAM, TO PREVENT COMBUSTION OF UNMINED
13 COAL, AND GENERALLY TO IMPROVE THE USE AND ENJOYMENT OF SAID
14 LANDS, TO DESIGNATE LANDS UNSUITABLE FOR MINING AND TO MAINTAIN
15 PRIMARY JURISDICTION OVER SURFACE COAL MINING IN PENNSYLVANIA.
16 IT IS ALSO THE POLICY OF THIS ACT TO ASSURE THAT THE COAL SUPPLY
17 ESSENTIAL TO THE NATION'S AND THE COMMONWEALTH'S ENERGY
18 REQUIREMENTS, AND TO THEIR ECONOMIC AND SOCIAL WELL-BEING, IS
19 PROVIDED AND TO STRIKE A BALANCE BETWEEN PROTECTION OF THE
20 ENVIRONMENT AND AGRICULTURAL PRODUCTIVITY AND THE NATION'S AND
21 THE COMMONWEALTH'S NEED FOR COAL AS AN ESSENTIAL SOURCE OF
22 ENERGY.

23 SECTION 2. THE DEFINITION OF "SURFACE MINING" IN SECTION 3
24 OF THE ACT, AMENDED OCTOBER 10, 1980 (P.L.835, NO.155), IS
25 AMENDED AND THE SECTION IS AMENDED BY ADDING DEFINITIONS TO
26 READ:

27 SECTION 3. DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES,
28 UNLESS A DIFFERENT MEANING IS PLAINLY REQUIRED BY THE CONTEXT,
29 SHALL HAVE THE FOLLOWING MEANINGS:

30 * * *

1 "GOVERNMENT-FINANCED RECLAMATION CONTRACT" SHALL MEAN:

2 (1) FOR THE PURPOSES OF SECTION 4.8, A FEDERALLY FUNDED OR
3 STATE-FUNDED AND APPROVED ABANDONED MINE RECLAMATION CONTRACT
4 ENTERED INTO BETWEEN THE DEPARTMENT AND AN ELIGIBLE PERSON OR
5 ENTITY WHO HAS OBTAINED SPECIAL AUTHORIZATION TO ENGAGE IN
6 INCIDENTAL AND NECESSARY EXTRACTION OF COAL PURSUANT TO
7 GOVERNMENT-FINANCED RECLAMATION WHICH IS EITHER:

8 (I) A STATE-FINANCED RECLAMATION CONTRACT LESS THAN OR EQUAL
9 TO FIFTY THOUSAND DOLLARS (\$50,000.00) TOTAL PROJECT COSTS,
10 WHERE UP TO FIVE HUNDRED (500) TONS OF COAL IS EXTRACTED,
11 INCLUDING A RECLAMATION CONTRACT WHERE LESS THAN FIVE HUNDRED
12 (500) TONS IS REMOVED AND THE GOVERNMENT'S COST OF FINANCING
13 RECLAMATION WILL BE ASSUMED BY THE CONTRACTOR UNDER THE TERMS OF
14 A NO-COST CONTRACT;

15 (II) A STATE-FINANCED RECLAMATION CONTRACT AUTHORIZING THE
16 REMOVAL OF COAL REFUSE, INCLUDING WHERE RECLAMATION IS PERFORMED
17 BY THE CONTRACTOR UNDER THE TERMS OF A NO-COST CONTRACT WITH THE
18 DEPARTMENT, NOT INVOLVING ANY REPROCESSING OF COAL REFUSE ON THE
19 PROJECT AREA OR RETURN OF ANY COAL REFUSE MATERIAL TO THE
20 PROJECT AREA;

21 (III) A STATE-FINANCED RECLAMATION CONTRACT GREATER THAN
22 FIFTY THOUSAND DOLLARS (\$50,000.00) TOTAL PROJECT COSTS OR A
23 FEDERALLY FINANCED ABANDONED MINE RECLAMATION PROJECT: PROVIDED,
24 THAT THE DEPARTMENT DETERMINES IN WRITING THAT EXTRACTION OF
25 COAL IS ESSENTIAL TO PHYSICALLY ACCOMPLISH THE RECLAMATION OF
26 THE PROJECT AREA AND IS INCIDENTAL AND NECESSARY TO RECLAMATION;
27 OR

28 (IV) FEDERALLY FINANCED OR STATE-FINANCED EXTRACTION OF COAL
29 WHICH THE DEPARTMENT DETERMINES IN WRITING TO BE ESSENTIAL TO
30 PHYSICALLY EXTINGUISH AN ABANDONED MINE FIRE THAT POSES A THREAT

1 TO THE PUBLIC HEALTH, SAFETY AND WELFARE.

2 (2) FOR PURPOSES OF DETERMINING WHETHER OR NOT EXTRACTION IS
3 INCIDENTAL AND NECESSARY, UNDER SECTION 4.8, THE DEPARTMENT
4 SHALL CONSIDER STANDARD ENGINEERING FACTORS AND SHALL NOT, IN
5 ANY CASE, CONSIDER THE ECONOMIC BENEFIT DERIVING FROM COAL
6 EXTRACTION. NECESSARY EXTRACTION SHALL, IN NO CASE, INCLUDE:

7 (I) THE EXTRACTION OF COAL IN AN AREA ADJACENT TO THE
8 PREVIOUSLY AFFECTED AREA WHICH WILL BE RECLAIMED; OR

9 (II) THE EXTRACTION OF COAL BENEATH THE PREVIOUSLY AFFECTED
10 AREA WHICH WILL BE RECLAIMED.

11 * * *

12 "MINIMAL IMPACT POST-MINING DISCHARGE" SHALL MEAN, FOR THE
13 PURPOSES OF SECTION 4(G.2), A DISCHARGE OF MINE DRAINAGE
14 EMANATING FROM A SURFACE MINE SITE WHERE ALL OTHER STAGE II
15 RECLAMATION STANDARDS HAVE BEEN ACHIEVED AND WHICH:

16 (1) UNTREATED, DOES NOT ALONE OR IN COMBINATION WITH OTHER
17 DISCHARGES RESULT IN A VIOLATION OF WATER QUALITY STANDARDS; AND

18 (I) HAS A PH WHICH IS ALWAYS GREATER THAN 6.0 AND AN
19 ALKALINITY WHICH ALWAYS EXCEEDS THE ACIDITY; OR

20 (II) HAS ACIDITY WHICH IS ALWAYS LESS THAN ONE HUNDRED (100)
21 MILLIGRAMS PER LITER, IRON CONTENT WHICH IS ALWAYS LESS THAN TEN
22 (10) MILLIGRAMS PER LITER, MANGANESE CONTENT WHICH IS ALWAYS
23 LESS THAN EIGHTEEN (18) MILLIGRAMS PER LITER AND FLOW RATE WHICH
24 IS ALWAYS LESS THAN THREE (3) GALLONS PER MINUTE; OR

25 (2) HAS IN PLACE A FUNCTIONING PASSIVE TREATMENT SYSTEM
26 APPROVED BY THE DEPARTMENT WHICH MEETS THE APPLICABLE EFFLUENT
27 LIMITATIONS IN 25 PA. CODE (RELATING TO ENVIRONMENTAL RESOURCES)
28 OR WHICH MEETS THE EFFLUENT LIMITATIONS DEVELOPED PURSUANT TO
29 SECTION 4.2(J) AND, AS DISCHARGED, DOES NOT RESULT IN A
30 VIOLATION OF THE WATER QUALITY STANDARDS IN THE RECEIVING

1 STREAM.

2 * * *

3 "PASSIVE TREATMENT" SHALL MEAN TREATMENT SYSTEMS THAT DO NOT
4 REQUIRE ROUTINE OPERATIONAL CONTROL OR MAINTENANCE, INCLUDING
5 BIOLOGICAL OR CHEMICAL TREATMENT SYSTEMS, ALONE OR IN
6 COMBINATION, AS APPROVED BY THE DEPARTMENT, SUCH AS ARTIFICIALLY
7 CONSTRUCTED WETLANDS, CASCADE AERATORS, ANOXIC DRAINS OR
8 SEDIMENTATION BASINS.

9 * * *

10 "SURFACE MINING ACTIVITIES" SHALL MEAN THE EXTRACTION OF
11 [MINERALS] COAL FROM THE EARTH OR FROM WASTE OR STOCK PILES OR
12 FROM PITS OR BANKS BY REMOVING THE STRATA OR MATERIAL WHICH
13 OVERLIES OR IS ABOVE OR BETWEEN THEM OR OTHERWISE EXPOSING AND
14 RETRIEVING THEM FROM THE SURFACE, INCLUDING, BUT NOT LIMITED TO,
15 STRIP, AUGER MINING, DREDGING, QUARRYING AND LEACHING, AND ALL
16 SURFACE ACTIVITY CONNECTED WITH SURFACE OR UNDERGROUND MINING,
17 INCLUDING, BUT NOT LIMITED TO, EXPLORATION, SITE PREPARATION,
18 ENTRY, TUNNEL, DRIFT, SLOPE, SHAFT AND BOREHOLE DRILLING AND
19 CONSTRUCTION AND ACTIVITIES RELATED THERETO, BUT NOT INCLUDING
20 THOSE PORTIONS OF MINING OPERATIONS CARRIED OUT BENEATH THE
21 SURFACE BY MEANS OF SHAFTS, TUNNELS OR OTHER UNDERGROUND MINE
22 OPENINGS. "SURFACE MINING ACTIVITIES" SHALL NOT INCLUDE [(I) THE
23 EXTRACTION OF MINERALS (OTHER THAN ANTHRACITE AND BITUMINOUS
24 COAL) BY A LANDOWNER FOR HIS OWN NONCOMMERCIAL USE FROM LAND
25 OWNED OR LEASED BY HIM; OR (II) THE EXTRACTION OF SAND, GRAVEL,
26 ROCK, STONE, EARTH OR FILL FROM BORROW PITS FOR HIGHWAY
27 CONSTRUCTION PURPOSES, SO LONG AS SUCH WORK IS PERFORMED UNDER A
28 BOND, CONTRACT AND SPECIFICATIONS WHICH SUBSTANTIALLY PROVIDE
29 FOR AND REQUIRE RECLAMATION OF THE AREA AFFECTED IN THE MANNER
30 PROVIDED BY THIS ACT; NOR (III) THE HANDLING, PROCESSING OR

1 STORAGE OF SLAG ON THE PREMISES OF A MANUFACTURER AS A PART OF
2 THE MANUFACTURING PROCESS.] ANY OF THE FOLLOWING:

3 (1) COAL EXTRACTION PURSUANT TO A GOVERNMENT-FINANCED
4 RECLAMATION CONTRACT, FOR THE PURPOSES OF SECTION 4.8.

5 (2) COAL EXTRACTION AS AN INCIDENTAL PART OF FEDERAL, STATE
6 OR LOCAL GOVERNMENT-FINANCED HIGHWAY CONSTRUCTION, PURSUANT TO
7 REGULATIONS PROMULGATED BY THE ENVIRONMENTAL QUALITY BOARD.

8 (3) THE RECLAMATION OF ABANDONED MINE LANDS NOT INVOLVING
9 COAL EXTRACTION OR EXCESS SPOIL DISPOSAL, UNDER A WRITTEN
10 AGREEMENT WITH THE PROPERTY OWNER AND APPROVED BY THE
11 DEPARTMENT.

12 (4) ACTIVITIES NOT CONSIDERED TO BE SURFACE MINING AS
13 DETERMINED BY THE UNITED STATES OFFICE OF SURFACE MINING,
14 RECLAMATION AND ENFORCEMENT AND SET FORTH IN DEPARTMENT
15 REGULATIONS.

16 * * *

17 "TOTAL PROJECT COSTS" SHALL MEAN, FOR THE PURPOSES OF SECTION
18 4.8, THE ENTIRE COST OF PERFORMING THE GOVERNMENT-FINANCED
19 RECLAMATION CONTRACT, AS DETERMINED BY THE DEPARTMENT, EVEN IF
20 THE COST IS ASSUMED BY THE CONTRACTOR PURSUANT TO A NO-COST
21 CONTRACT WITH THE DEPARTMENT. IN ESTABLISHING THE FINAL CONTRACT
22 PRICE, THE DEPARTMENT SHALL CONSIDER THE ECONOMIC BENEFIT
23 RESULTING FROM COAL EXTRACTED PURSUANT TO THE GOVERNMENT-
24 FINANCED RECLAMATION CONTRACT AND DEDUCT THIS AMOUNT FROM THE
25 CONTRACT PRICE.

26 * * *

27 SECTION 3. SECTION 3.1(A) AND (D) OF THE ACT, AMENDED
28 OCTOBER 12, 1984 (P.L.916, NO.181), ARE AMENDED TO READ:

29 SECTION 3.1. OPERATOR'S LICENSE; WITHHOLDING OR DENYING
30 PERMITS OR LICENSES; PENALTY.--(A) [AFTER JANUARY 1, 1972, IT

1 SHALL BE UNLAWFUL FOR ANY PERSON TO PROCEED TO MINE COAL OR TO
2 CONDUCT AN ACTIVE OPERATION TO MINE OTHER MINERALS, BY THE
3 SURFACE MINING METHOD AS AN OPERATOR WITHIN THIS COMMONWEALTH
4 WITHOUT FIRST OBTAINING A LICENSE AS A SURFACE MINING OPERATOR
5 FROM THE DEPARTMENT: PROVIDED, HOWEVER, THAT SURFACE MINING
6 OPERATIONS WITHIN THE MEANING OF THIS SUBSECTION SHALL NOT BE
7 CONSTRUED TO INCLUDE SURFACE ACTIVITY CONNECTED WITH UNDERGROUND
8 MINING, INCLUDING, BUT NOT LIMITED TO, EXPLORATION, SITE
9 PREPARATION, ENTRY, TUNNEL, SLOPE, SHAFT AND BOREHOLE DRILLING
10 AND CONSTRUCTION AND ACTIVITIES RELATED THERETO, INCLUDING THOSE
11 PORTIONS OF MINING OPERATIONS CARRIED OUT BENEATH THE SURFACE BY
12 MEANS OF SHAFTS, TUNNELS OR OTHER UNDERGROUND MINE OPENINGS.
13 APPLICATIONS FOR LICENSURE AS SURFACE MINING OPERATORS SHALL BE
14 MADE IN WRITING TO THE DEPARTMENT, UPON FORMS PREPARED AND
15 FURNISHED BY THE DEPARTMENT, AND SHALL CONTAIN SUCH INFORMATION
16 AS TO THE APPLICANT, OR WHEN THE APPLICATION IS MADE BY A
17 CORPORATION, PARTNERSHIP OR ASSOCIATION AS TO ITS OFFICERS,
18 DIRECTORS AND PRINCIPAL OWNERS, AS THE DEPARTMENT SHALL REQUIRE.
19 THE INITIAL APPLICATION FOR LICENSURE SHALL BE ACCOMPANIED BY A
20 FEE OF FIFTY DOLLARS (\$50) IN THE CASE OF PERSONS MINING TWO
21 THOUSAND TONS OR LESS OF MARKETABLE MINERALS, OTHER THAN COAL,
22 PER YEAR AND A FEE OF FIVE HUNDRED DOLLARS (\$500) IN THE CASE OF
23 PERSONS MINING COAL OR MORE THAN TWO THOUSAND TONS OF OTHER
24 MARKETABLE MINERALS PER YEAR. IT SHALL BE THE DUTY OF ALL
25 PERSONS LICENSED AS SURFACE MINING OPERATORS TO RENEW SUCH
26 LICENSE ANNUALLY, AND PAY FOR EACH SUCH LICENSE RENEWAL THE SUM
27 OF FIFTY DOLLARS (\$50) IN THE CASE OF PERSONS MINING TWO
28 THOUSAND TONS OR LESS OF MARKETABLE MINERALS OTHER THAN COAL AND
29 THE SUM OF THREE HUNDRED DOLLARS (\$300) IN THE CASE OF ALL OTHER
30 OPERATORS. THE APPLICATION FOR RENEWAL OF A LICENSE AS A SURFACE

1 MINING OPERATOR SHALL BE MADE ANNUALLY AT LEAST SIXTY (60) DAYS
2 BEFORE THE CURRENT LICENSE EXPIRES.] (1) AFTER JANUARY 1, 1972,
3 IT SHALL BE UNLAWFUL FOR ANY PERSON TO PROCEED TO MINE COAL
4 WITHOUT FIRST OBTAINING A LICENSE FROM THE DEPARTMENT.
5 APPLICATIONS FOR LICENSURE SHALL BE MADE ANNUALLY IN WRITING TO
6 THE DEPARTMENT, UPON FORMS PREPARED AND FURNISHED BY THE
7 DEPARTMENT, AND SHALL CONTAIN SUCH INFORMATION, AS APPLICABLE,
8 FOR THE APPLICANT AND EACH PERSON WHO OWNS OR CONTROLS THE
9 APPLICANT OR IS OWNED OR CONTROLLED BY THE APPLICANT AS THE
10 DEPARTMENT SHALL REQUIRE. THE APPLICATION FOR LICENSURE OR
11 RENEWAL OF LICENSURE SHALL BE ACCOMPANIED BY A FEE OF FIFTY
12 DOLLARS (\$50) IN THE CASE OF PERSONS MINING TWO THOUSAND (2,000)
13 TONS OR LESS OF MARKETABLE COAL PER YEAR, A FEE OF FIVE HUNDRED
14 DOLLARS (\$500) IN THE CASE OF PERSONS MINING THREE HUNDRED
15 THOUSAND (300,000) TONS OR LESS OF MARKETABLE COAL PER YEAR AND
16 A FEE OF ONE THOUSAND DOLLARS (\$1,000) FOR ALL OTHERS. IT SHALL
17 BE THE DUTY OF ALL PERSONS LICENSED UNDER THIS SECTION TO RENEW
18 THE LICENSE ANNUALLY. THE APPLICATION FOR RENEWAL OF A LICENSE
19 SHALL BE MADE ANNUALLY AT LEAST SIXTY (60) DAYS BEFORE THE
20 CURRENT LICENSE EXPIRES.

21 (2) ANY PERSON WHO PROCEEDS TO MINE MINERALS BY THE SURFACE
22 MINING METHOD AS AN OPERATOR WITHOUT HAVING APPLIED FOR AND
23 RECEIVED A LICENSE AS HEREIN PROVIDED OR IN VIOLATION OF THE
24 TERMS THEREOF SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON
25 CONVICTION, SHALL BE SENTENCED TO PAY A FINE OF NOT LESS THAN
26 FIVE THOUSAND DOLLARS (\$5,000) OR IN AN AMOUNT NOT LESS THAN THE
27 TOTAL PROFITS DERIVED BY HIM AS A RESULT OF HIS UNLAWFUL
28 ACTIVITIES, AS DETERMINED BY THE COURT, TOGETHER WITH THE
29 ESTIMATED COST TO THE COMMONWEALTH OF ANY RECLAMATION WORK WHICH
30 MAY REASONABLY BE REQUIRED IN ORDER TO RESTORE THE LAND TO ITS

1 CONDITION PRIOR TO THE COMMENCEMENT OF SAID UNLAWFUL ACTIVITIES,
2 OR UNDERGO IMPRISONMENT NOT EXCEEDING ONE YEAR, OR BOTH. THE
3 FINE SHALL BE PAYABLE TO THE SURFACE MINING CONSERVATION AND
4 RECLAMATION FUND.

5 * * *

6 (D) THE DEPARTMENT SHALL NOT ISSUE ANY SURFACE MINING PERMIT
7 OR RENEW OR AMEND ANY PERMIT IF IT FINDS, AFTER INVESTIGATION
8 AND AN OPPORTUNITY FOR AN INFORMAL HEARING, THAT (1) THE
9 APPLICANT HAS FAILED AND CONTINUES TO FAIL TO COMPLY WITH ANY
10 PROVISIONS OF THIS ACT OR OF ANY OF THE ACTS REPEALED OR AMENDED
11 HEREBY OR (2) THE APPLICANT HAS SHOWN A LACK OF ABILITY OR
12 INTENTION TO COMPLY WITH ANY PROVISION OF THIS ACT OR OF ANY OF
13 THE ACTS REPEALED OR AMENDED HEREBY AS INDICATED BY PAST OR
14 CONTINUING VIOLATIONS. ANY PERSON, PARTNERSHIP, ASSOCIATION OR
15 CORPORATION WHICH HAS ENGAGED IN UNLAWFUL CONDUCT AS DEFINED IN
16 SECTION 18.6 [OR], WHICH HAS A PARTNER, ASSOCIATE, OFFICER,
17 PARENT CORPORATION, SUBSIDIARY CORPORATION, CONTRACTOR OR
18 SUBCONTRACTOR WHICH HAS ENGAGED IN SUCH UNLAWFUL CONDUCT OR
19 WHICH CONTROLS OR HAS CONTROLLED MINING OPERATIONS WITH A
20 DEMONSTRATED PATTERN OF WILFUL VIOLATIONS OF ANY PROVISIONS OF
21 THIS ACT OR THE SURFACE MINING CONTROL AND RECLAMATION ACT OF
22 1977 (PUBLIC LAW 95-87, 30 U.S.C. § 1201 ET SEQ.) SHALL BE
23 DENIED ANY PERMIT REQUIRED BY THIS ACT UNLESS THE PERMIT
24 APPLICATION DEMONSTRATES THAT THE UNLAWFUL CONDUCT IS BEING
25 CORRECTED TO THE SATISFACTION OF THE DEPARTMENT. PERSONS OTHER
26 THAN THE APPLICANT, INCLUDING INDEPENDENT SUBCONTRACTORS, WHO
27 ARE PROPOSED TO OPERATE UNDER THE PERMIT SHALL BE LISTED IN THE
28 APPLICATION AND THOSE PERSONS SHALL BE SUBJECT TO APPROVAL BY
29 THE DEPARTMENT PRIOR TO THEIR ENGAGING IN SURFACE MINING
30 OPERATIONS, AND SUCH PERSONS SHALL BE JOINTLY AND SEVERALLY

1 LIABLE WITH THE PERMITTEE FOR SUCH VIOLATIONS OF THIS SUBSECTION
2 AS THE PERMITTEE IS CHARGED AND IN WHICH SUCH PERSONS
3 PARTICIPATE. FOLLOWING THE DEPARTMENT'S DECISION WHETHER TO
4 APPROVE OR DENY A RENEWAL, THE BURDEN SHALL BE ON THE OPPONENTS
5 OF THE DEPARTMENT'S DECISION. IF THE DEPARTMENT INTENDS NOT TO
6 RENEW A PERMIT, IT SHALL NOTIFY THE PERMITTEE OF THAT FACT AT
7 LEAST SIXTY (60) DAYS PRIOR TO FINAL ACTION ON THE PERMIT
8 RENEWAL AND THE PERMITTEE SHALL BE PROVIDED AN OPPORTUNITY FOR
9 AN INFORMAL HEARING PRIOR TO FINAL ACTION ON THE PERMIT RENEWAL.

10 * * *

11 SECTION 4. SECTION 4(A) INTRODUCTORY PARAGRAPH AND (2)C, (D)
12 INTRODUCTORY PARAGRAPH, (G) AND (H) OF THE ACT, AMENDED OCTOBER
13 10, 1980 (P.L.835, NO.155) AND OCTOBER 12, 1984 (P.L.916,
14 NO.181), ARE AMENDED AND THE SECTION IS AMENDED BY ADDING
15 SUBSECTIONS TO READ:

16 SECTION 4. MINING PERMIT; RECLAMATION PLAN; BOND.--(A)
17 BEFORE ANY PERSON SHALL HEREAFTER PROCEED TO MINE [MINERALS]
18 COAL BY THE SURFACE MINING METHOD, HE SHALL APPLY TO THE
19 DEPARTMENT, ON A FORM PREPARED AND FURNISHED BY THE DEPARTMENT,
20 FOR A PERMIT FOR EACH SEPARATE OPERATION. THE DEPARTMENT IS
21 AUTHORIZED TO CHARGE AND COLLECT FROM PERSONS A REASONABLE
22 FILING FEE. SUCH FEE SHALL NOT EXCEED THE COST OF REVIEWING,
23 ADMINISTERING AND ENFORCING SUCH PERMIT. AS A PART OF EACH
24 APPLICATION FOR A PERMIT, THE OPERATOR SHALL, UNLESS MODIFIED OR
25 WAIVED BY THE DEPARTMENT FOR CAUSE, FURNISH THE FOLLOWING:

26 * * *

27 (2) RECLAMATION PLAN. A COMPLETE AND DETAILED PLAN FOR THE
28 RECLAMATION OF THE LAND AFFECTED. EXCEPT AS OTHERWISE HEREIN
29 PROVIDED, OR UNLESS A VARIANCE FOR CAUSE IS SPECIALLY ALLOWED BY
30 THE DEPARTMENT AS HEREIN PROVIDED, EACH SUCH PLAN SHALL INCLUDE

1 THE FOLLOWING:

2 * * *

3 C. A DESCRIPTION OF THE MANNER IN WHICH THE OPERATION WILL
4 SEGREGATE AND CONSERVE TOPSOIL AND IF NECESSARY SUITABLE SUBSOIL
5 TO ESTABLISH ON THE AREAS PROPOSED TO BE AFFECTED A DIVERSE,
6 EFFECTIVE, AND PERMANENT VEGETATIVE COVER OF THE SAME SEASONAL
7 VARIETY NATIVE TO THE AREA OF LAND TO BE AFFECTED AND CAPABLE OF
8 SELF-REGENERATION AND PLANT SUCCESSION AT LEAST EQUAL IN EXTENT
9 OF COVER TO THE NATURAL VEGETATION OF THE AREA: PROVIDED,
10 HOWEVER, THAT INTRODUCED SPECIES MAY BE USED IN THE REVEGETATION
11 PROCESS WHERE DESIRABLE AND NECESSARY TO ACHIEVE THE APPROVED
12 POST-MINING LAND USE PLAN: AND PROVIDED FURTHER, THAT WHEN THE
13 DEPARTMENT ISSUES A WRITTEN FINDING APPROVING A LONG-TERM,
14 INTENSIVE, AGRICULTURAL POST-MINING LAND USE AS PART OF THE
15 PERMIT APPLICATION, THE DEPARTMENT MAY GRANT AN EXCEPTION TO THE
16 REQUIREMENTS OF THIS CLAUSE[.] FOR AREAS PREVIOUSLY DISTURBED BY
17 SURFACE MINING ACTIVITIES THAT WERE NOT RECLAIMED TO THE
18 STANDARDS OF THIS ACT, AND ARE PROPOSED FOR REMINING, THE
19 DEPARTMENT MAY APPROVE A VEGETATIVE COVER WHICH, AT A MINIMUM,
20 SHALL NOT BE LESS THAN THE GROUND COVER EXISTING BEFORE
21 REDISTURBANCE AND SHALL BE ADEQUATE TO CONTROL EROSION AND
22 ACHIEVE AN APPROVED POST-MINING LAND USE.

23 * * *

24 (D) PRIOR TO COMMENCING SURFACE MINING, THE PERMITTEE SHALL
25 FILE WITH THE DEPARTMENT A BOND FOR THE LAND AFFECTED BY EACH
26 OPERATION ON A FORM TO BE PRESCRIBED AND FURNISHED BY THE
27 DEPARTMENT, PAYABLE TO THE COMMONWEALTH AND CONDITIONED THAT THE
28 PERMITTEE SHALL FAITHFULLY PERFORM ALL OF THE REQUIREMENTS OF
29 THIS ACT AND OF THE ACT OF JUNE 22, 1937 (P.L.1987, NO.394),
30 KNOWN AS "THE CLEAN STREAMS LAW," THE ACT OF JANUARY 8, 1960

1 (1959 P.L.2119, NO.787), KNOWN AS THE "AIR POLLUTION CONTROL
2 ACT," THE ACT OF SEPTEMBER 24, 1968 (P.L.1040, NO.318), KNOWN AS
3 THE "COAL REFUSE DISPOSAL CONTROL ACT," AND, WHERE APPLICABLE,
4 OF THE ACT OF JULY 31, 1968 (P.L.788, NO.241), KNOWN AS THE
5 "PENNSYLVANIA SOLID WASTE MANAGEMENT ACT," [OR] THE ACT OF JULY
6 7, 1980 (P.L.380, NO.97), KNOWN AS THE "SOLID WASTE MANAGEMENT
7 ACT," OR THE ACT OF NOVEMBER 26, 1978 (P.L.1375, NO.325), KNOWN
8 AS THE "DAM SAFETY AND ENCROACHMENTS ACT": PROVIDED, HOWEVER,
9 THAT AN OPERATOR POSTING A BOND SUFFICIENT TO COMPLY WITH THIS
10 SECTION OF THE ACT SHALL NOT BE REQUIRED TO POST A SEPARATE BOND
11 FOR THE PERMITTED AREA UNDER EACH OF THE ACTS HEREINABOVE
12 ENUMERATED: AND PROVIDED FURTHER, THAT THE FOREGOING PROVISIO
13 SHALL NOT PROHIBIT THE DEPARTMENT FROM REQUIRING ADDITIONAL BOND
14 AMOUNTS FOR THE PERMITTED AREA SHOULD SUCH AN INCREASE BE
15 DETERMINED BY THE DEPARTMENT TO BE NECESSARY TO MEET THE
16 REQUIREMENTS OF THIS ACT. THE AMOUNT OF THE BOND REQUIRED SHALL
17 BE IN AN AMOUNT DETERMINED BY THE DEPARTMENT BASED UPON THE
18 TOTAL ESTIMATED COST TO THE COMMONWEALTH OF COMPLETING THE
19 APPROVED RECLAMATION PLAN, OR IN SUCH OTHER AMOUNT AND FORM AS
20 MAY BE ESTABLISHED BY THE DEPARTMENT PURSUANT TO REGULATIONS FOR
21 AN ALTERNATE COAL BONDING PROGRAM WHICH SHALL ACHIEVE THE
22 OBJECTIVES AND PURPOSES OF THE BONDING PROGRAM. SAID ESTIMATE
23 SHALL BE BASED UPON THE PERMITTEE'S STATEMENT OF HIS ESTIMATED
24 COST OF FULFILLING THE PLAN DURING THE COURSE OF HIS OPERATION,
25 INSPECTION OF THE APPLICATION AND OTHER DOCUMENTS SUBMITTED,
26 INSPECTION OF THE LAND AREA, AND SUCH OTHER CRITERIA AS MAY BE
27 RELEVANT, INCLUDING, BUT NOT LIMITED TO, THE PROBABLE DIFFICULTY
28 OF RECLAMATION GIVING CONSIDERATION TO SUCH FACTORS AS
29 TOPOGRAPHY, GEOLOGY OF THE SITE, HYDROLOGY, THE PROPOSED LAND
30 USE AND THE ADDITIONAL COST TO THE COMMONWEALTH WHICH MAY BE

1 ENTAILED BY BEING REQUIRED TO BRING PERSONNEL AND EQUIPMENT TO
2 THE SITE AFTER ABANDONMENT BY THE PERMITTEE, IN EXCESS OF THE
3 COST TO THE PERMITTEE OF PERFORMING THE NECESSARY WORK DURING
4 THE COURSE OF HIS SURFACE MINING OPERATIONS. WHEN THE PLAN
5 INVOLVES THE RECONSTRUCTION OR RELOCATION OF ANY PUBLIC ROAD OR
6 HIGHWAY, THE AMOUNT OF THE BOND SHALL INCLUDE AN AMOUNT
7 SUFFICIENT TO FULLY BUILD OR RESTORE THE ROAD OR HIGHWAY TO A
8 CONDITION APPROVED BY THE DEPARTMENT OF TRANSPORTATION. NO BOND
9 SHALL BE FILED FOR LESS THAN TEN THOUSAND DOLLARS (\$10,000.00)
10 FOR THE ENTIRE PERMIT AREA. LIABILITY UNDER SUCH BOND SHALL BE
11 FOR THE DURATION OF THE SURFACE MINING AT EACH OPERATION, AND
12 FOR A PERIOD OF FIVE FULL YEARS AFTER THE LAST YEAR OF AUGMENTED
13 SEEDING AND FERTILIZING AND ANY OTHER WORK TO COMPLETE
14 RECLAMATION TO MEET THE REQUIREMENTS OF LAW AND PROTECT THE
15 ENVIRONMENT, UNLESS RELEASED IN PART PRIOR THERETO AS
16 HEREINAFTER PROVIDED. [SUCH BOND SHALL BE EXECUTED BY THE
17 OPERATOR AND A CORPORATE SURETY LICENSED TO DO BUSINESS IN THE
18 COMMONWEALTH AND APPROVED BY THE SECRETARY: PROVIDED, HOWEVER,
19 THAT THE PERMITTEE MAY ELECT TO DEPOSIT CASH, AUTOMATICALLY
20 RENEWABLE IRREVOCABLE BANK LETTERS OF CREDIT WHICH MAY BE
21 TERMINATED BY THE BANK AT THE END OF A TERM ONLY UPON THE BANK
22 GIVING NINETY (90) DAYS PRIOR WRITTEN NOTICE TO THE PERMITTEE
23 AND THE DEPARTMENT, OR NEGOTIABLE BONDS OF THE UNITED STATES
24 GOVERNMENT OR THE COMMONWEALTH OF PENNSYLVANIA, THE PENNSYLVANIA
25 TURNPIKE COMMISSION, THE GENERAL STATE AUTHORITY, THE STATE
26 PUBLIC SCHOOL BUILDING AUTHORITY, OR ANY MUNICIPALITY WITHIN THE
27 COMMONWEALTH, WITH THE DEPARTMENT IN LIEU OF A CORPORATE SURETY.
28 THE CASH DEPOSIT AMOUNT OF SUCH IRREVOCABLE LETTER OF CREDIT OR
29 MARKET VALUE OF SUCH SECURITIES SHALL BE EQUAL AT LEAST TO THE
30 SUM OF THE BOND.] THE BOND OR COLLATERAL REQUIRED HEREIN MUST BE

1 IN AN AMOUNT AND ON A FORM CONTAINING SUCH TERMS AND CONDITIONS
2 AS APPROVED BY THE DEPARTMENT AND MAY BE A SURETY BOND EXECUTED
3 BY THE OPERATOR AND A CORPORATE SURETY LICENSED TO DO BUSINESS
4 IN THIS COMMONWEALTH AND APPROVED BY THE SECRETARY; IT MAY BE
5 CASH; IT MAY BE AUTOMATICALLY RENEWABLE IRREVOCABLE LETTERS OF
6 CREDIT WHICH MAY BE TERMINATED BY THE BANK AT THE END OF THE
7 TERM ONLY UPON THE BANK GIVING NINETY (90) DAYS PRIOR WRITTEN
8 NOTICE TO THE PERMITTEE AND THE DEPARTMENT; IT MAY BE NEGOTIABLE
9 BONDS OF THE UNITED STATES GOVERNMENT OR THE COMMONWEALTH OF
10 PENNSYLVANIA, THE PENNSYLVANIA TURNPIKE COMMISSION, THE GENERAL
11 STATE AUTHORITY, THE STATE PUBLIC SCHOOL BUILDING AUTHORITY OR
12 ANY MUNICIPALITY WITHIN THIS COMMONWEALTH; IT MAY BE A LIFE
13 INSURANCE POLICY WHICH IS, AND STATES ON ITS FACE THAT IT IS,
14 FULLY PAID AND NONCANCELABLE WITH A CASH SURRENDER VALUE
15 IRREVOCABLY ASSIGNED TO THE DEPARTMENT AT LEAST EQUAL TO THE
16 AMOUNT OF THE REQUIRED BONDS, AND WHICH SHALL NOT BE BORROWED
17 AGAINST AND SHALL NOT BE UTILIZED FOR ANY OTHER PURPOSE THAN
18 FINANCIAL ASSURANCE ASSURING RECLAMATION; IT MAY BE AN ANNUITY
19 OR TRUST FUND OF WHICH THE DEPARTMENT IS THE IRREVOCABLY NAMED
20 BENEFICIARY; OR IT MAY BE OTHER INSTRUMENTS WHICH THE
21 ENVIRONMENTAL QUALITY BOARD MAY AUTHORIZE THROUGH REGULATION.
22 THE STATED AMOUNT OF IRREVOCABLE LETTERS OF CREDIT AND THE
23 MARKET VALUE OF NEGOTIABLE SECURITIES SHALL BE EQUAL AT LEAST TO
24 THE AMOUNT OF THE REQUIRED BOND. COMBINATIONS OF BONDING
25 INSTRUMENTS MAY BE ALLOWED PURSUANT TO REGULATIONS ADOPTED BY
26 THE ENVIRONMENTAL QUALITY BOARD. THE SECRETARY SHALL, UPON
27 RECEIPT OF ANY SUCH DEPOSIT OF CASH, LETTERS OF CREDIT OR
28 NEGOTIABLE BONDS IMMEDIATELY PLACE THE SAME WITH THE STATE
29 TREASURER, WHOSE DUTY IT SHALL BE TO RECEIVE AND HOLD THE SAME
30 IN THE NAME OF THE COMMONWEALTH, IN TRUST, FOR THE PURPOSES FOR

1 WHICH SUCH DEPOSIT IS MADE. THE STATE TREASURER SHALL AT ALL
2 TIMES BE RESPONSIBLE FOR THE CUSTODY AND SAFEKEEPING OF SUCH
3 DEPOSITS. THE PERMITTEE MAKING THE DEPOSIT SHALL BE ENTITLED
4 FROM TIME TO TIME TO DEMAND AND RECEIVE FROM THE STATE
5 TREASURER, ON THE WRITTEN ORDER OF THE SECRETARY, THE WHOLE OR
6 ANY PORTION OF ANY COLLATERAL SO DEPOSITED, UPON DEPOSITING WITH
7 HIM, IN LIEU THEREOF, OTHER COLLATERAL OF THE CLASSES HEREIN
8 SPECIFIED HAVING A MARKET VALUE AT LEAST EQUAL TO THE SUM OF THE
9 BOND, AND ALSO TO DEMAND, RECEIVE AND RECOVER THE INTEREST AND
10 INCOME FROM SAID NEGOTIABLE BONDS AS THE SAME BECOMES DUE AND
11 PAYABLE: PROVIDED, HOWEVER, THAT WHERE NEGOTIABLE BONDS,
12 DEPOSITED AS AFORESAID, MATURE OR ARE CALLED, THE STATE
13 TREASURER, AT THE REQUEST OF THE PERMITTEE, SHALL CONVERT SUCH
14 NEGOTIABLE BONDS INTO SUCH OTHER NEGOTIABLE BONDS OF THE CLASSES
15 HEREIN SPECIFIED AS MAY BE DESIGNATED BY THE PERMITTEE: AND,
16 PROVIDED FURTHER, THAT WHERE NOTICE OF INTENT TO TERMINATE A
17 LETTER OF CREDIT IS GIVEN, THE DEPARTMENT SHALL GIVE THE
18 PERMITTEE THIRTY (30) DAYS WRITTEN NOTICE TO REPLACE THE LETTER
19 OF CREDIT WITH OTHER ACCEPTABLE BOND GUARANTEES AS PROVIDED
20 HEREIN, AND IF THE PERMITTEE FAILS TO REPLACE THE LETTER OF
21 CREDIT WITHIN THE THIRTY (30) DAY NOTIFICATION PERIOD, THE
22 DEPARTMENT SHALL DRAW UPON AND CONVERT SUCH LETTER OF CREDIT
23 INTO CASH AND HOLD IT AS A COLLATERAL BOND GUARANTEE; OR THE
24 DEPARTMENT, IN ITS DISCRETION, MAY ACCEPT A SELF-BOND FROM THE
25 PERMITTEE, WITHOUT SEPARATE SURETY, IF THE PERMITTEE
26 DEMONSTRATES TO THE SATISFACTION OF THE DEPARTMENT A HISTORY OF
27 FINANCIAL SOLVENCY, CONTINUOUS BUSINESS OPERATION AND CONTINUOUS
28 EFFORTS TO ACHIEVE COMPLIANCE WITH ALL UNITED STATES OF AMERICA
29 AND PENNSYLVANIA ENVIRONMENTAL LAWS, AND, MEETS ALL OF THE
30 FOLLOWING REQUIREMENTS:

1 * * *

2 (D.2) THE DEPARTMENT MAY ESTABLISH ALTERNATIVE FINANCIAL
3 ASSURANCE MECHANISMS WHICH SHALL ACHIEVE THE OBJECTIVES AND
4 PURPOSES OF THE BONDING PROGRAM. THESE MECHANISMS MAY INCLUDE,
5 BUT ARE NOT LIMITED TO, THE ESTABLISHMENT OF A SITE-SPECIFIC
6 TRUST FUND, FUNDED BY THE OPERATOR, FOR THE TREATMENT OF POST-
7 MINING DISCHARGES OF MINE DRAINAGE. WITHIN ONE HUNDRED EIGHTY
8 (180) DAYS AFTER THE EFFECTIVE DATE OF THIS ACT, THE DEPARTMENT
9 SHALL RECOMMEND TO THE GOVERNOR ALTERNATIVE FINANCING MECHANISMS
10 FOR THE PERPETUAL TREATMENT OF POST-MINING DISCHARGES OF MINE
11 DRAINAGE. THIS PROVISION SHALL IN NO WAY AFFECT THE DEPARTMENT'S
12 REVIEW OF PERMIT APPLICATIONS UNDER EXISTING LAW WHICH PROHIBITS
13 THE DEPARTMENT FROM ISSUING A MINING PERMIT UNLESS THE APPLICANT
14 DEMONSTRATES THAT THERE IS NO PRESUMPTIVE EVIDENCE OF POTENTIAL
15 POLLUTION OF THE WATERS OF THIS COMMONWEALTH.

16 * * *

17 (G) SUBJECT TO THE PUBLIC NOTICE REQUIREMENTS OF SUBSECTION
18 (B), IF THE DEPARTMENT IS SATISFIED THE RECLAMATION COVERED BY
19 THE BOND OR PORTION THEREOF HAS BEEN ACCOMPLISHED AS REQUIRED BY
20 THIS ACT, IT MAY, [IN THE CASE OF SURFACE COAL MINING
21 OPERATIONS,] UPON REQUEST BY THE PERMITTEE OR ANY OTHER PERSON
22 HAVING AN INTEREST IN THE BOND, INCLUDING THE DEPARTMENT,
23 RELEASE IN WHOLE OR IN PART THE BOND OR DEPOSIT ACCORDING TO THE
24 FOLLOWING SCHEDULE:

25 (1) AT STAGE I, WHEN THE OPERATOR HAS COMPLETED THE
26 BACKFILLING, REGRADING AND DRAINAGE CONTROL OF A BONDED AREA IN
27 ACCORDANCE WITH HIS APPROVED RECLAMATION PLAN, THE RELEASE OF UP
28 TO SIXTY PER CENT OF THE BOND FOR THE APPLICABLE PERMIT AREA[;],
29 SO LONG AS PROVISIONS FOR TREATMENT OF POLLUTIONAL DISCHARGES,
30 IF ANY, HAVE BEEN MADE BY THE OPERATOR.

1 (2) AT STAGE II, WHEN REVEGETATION HAS BEEN SUCCESSFULLY
2 ESTABLISHED ON THE AFFECTED AREA IN ACCORDANCE WITH THE APPROVED
3 RECLAMATION PLAN, THE DEPARTMENT SHALL RETAIN THAT AMOUNT OF
4 BOND FOR THE REVEGETATED AREA WHICH WOULD BE SUFFICIENT FOR THE
5 COST TO THE COMMONWEALTH OF REESTABLISHING REVEGETATION. SUCH
6 RETENTION OF BOND SHALL BE FOR THE DURATION OF LIABILITY UNDER
7 THE BOND AS PRESCRIBED IN SUBSECTION (D). NO PART OF THE BOND
8 SHALL BE RELEASED UNDER THIS SUBSECTION SO LONG AS THE LANDS TO
9 WHICH THE RELEASE WOULD BE APPLICABLE ARE CONTRIBUTING SUSPENDED
10 SOLIDS TO STREAMFLOW OR RUNOFF OUTSIDE THE PERMIT AREA IN EXCESS
11 OF THE REQUIREMENTS OF LAW OR UNTIL SOIL PRODUCTIVITY FOR PRIME
12 FARMLANDS HAS RETURNED TO EQUIVALENT LEVEL OF YIELD AS NONMINED
13 LAND OF THE SAME SOIL TYPE IN THE SURROUNDING AREA UNDER
14 EQUIVALENT MANAGEMENT PRACTICES AS DETERMINED FROM THE SOIL
15 SURVEY PERFORMED PURSUANT TO SUBSECTION (A)(2)I. WHERE A
16 PERMANENT IMPOUNDMENT IS TO BE RETAINED, THAT PORTION OF BOND
17 UNDER THIS SUBSECTION MAY BE RELEASED UNDER THIS SUBSECTION SO
18 LONG AS PROVISIONS FOR SOUND FUTURE MAINTENANCE BY THE OPERATOR
19 OR THE LANDOWNER HAVE BEEN MADE WITH THE DEPARTMENT[;].

20 (3) AT STAGE III, WHEN THE OPERATOR HAS COMPLETED
21 SUCCESSFULLY ALL MINING AND RECLAMATION ACTIVITIES AND HAS MADE
22 PROVISIONS WITH THE DEPARTMENT FOR THE SOUND FUTURE TREATMENT OF
23 POLLUTIONAL DISCHARGES, IF ANY, THE RELEASE OF THE REMAINING
24 PORTION OF THE BOND, BUT NOT BEFORE THE EXPIRATION OF THE PERIOD
25 SPECIFIED FOR OPERATOR RESPONSIBILITY IN SUBSECTION (D). [IN THE
26 CASE OF NONCOAL SURFACE MINING OPERATIONS, IN LIEU OF THE
27 SCHEDULE AND CRITERIA FOR RELEASE OF BONDS PROVIDED FOR IN THIS
28 SUBSECTION, THE SCHEDULE AND CRITERIA FOR RELEASE OF BONDS SHALL
29 BE AS SET FORTH IN REGULATIONS PROMULGATED HEREUNDER.] NO BOND
30 SHALL BE FULLY RELEASED UNTIL ALL REQUIREMENTS OF THIS ACT ARE

FULLY MET. UPON RELEASE OF ALL OR PART OF THE BOND AND
COLLATERAL AS HEREIN PROVIDED, THE STATE TREASURER SHALL
IMMEDIATELY RETURN TO THE OPERATOR THE AMOUNT OF CASH OR
SECURITIES SPECIFIED THEREIN.

(G.1) (1) WHERE THE OPERATOR DEMONSTRATES THAT ALL
STANDARDS FOR STAGE II BOND RELEASE HAVE BEEN SATISFIED, WITH
THE EXCEPTION OF CONSISTENTLY MEETING THE MINE DRAINAGE EFFLUENT
LIMITATIONS SPECIFIED IN THE PERMIT OR OTHERWISE REQUIRED BY
LAW, THE DEPARTMENT MAY RELEASE THE AMOUNT OF BOND WHICH EXCEEDS
THE COST OF ENSURING TREATMENT TO THE EFFLUENT LIMITATIONS
SPECIFIED IN THE PERMIT, THIS ACT, THE ACT OF JUNE 22, 1937
(P.L.1987, NO.394), KNOWN AS "THE CLEAN STREAMS LAW," THE
FEDERAL WATER POLLUTION CONTROL ACT (62 STAT. 1155, 33 U.S.C. S
1251 ET SEQ.) AND THE RULES AND REGULATIONS PROMULGATED
THEREUNDER, OF ALL THE DISCHARGES EMANATING FROM, OR
HYDROLOGICALLY CONNECTED TO, THE MINE SITE FOR A PERIOD OF AT
LEAST FIFTY (50) YEARS, AS CALCULATED BY THE DEPARTMENT.

(2) THE RELEASE OF ANY BOND PURSUANT TO SUBSECTION (A) OR
PURSUANT TO REGULATIONS PROMULGATED BY THE ENVIRONMENTAL QUALITY
BOARD ESTABLISHING A FINAL PROGRAM IN NO WAY ALLEVIATES THE
OPERATOR'S RESPONSIBILITY TO TREAT DISCHARGES OF MINE DRAINAGE
EMANATING FROM, OR HYDROLOGICALLY CONNECTED TO, THE SITE TO THE
STANDARDS SET FORTH IN THE PERMIT, THIS ACT, THE "CLEAN STREAMS
ACT," THE FEDERAL WATER POLLUTION CONTROL ACT AND THE RULES AND
REGULATIONS PROMULGATED THEREUNDER.

(G.2) (1) UNTIL SUCH TIME AS THE ENVIRONMENTAL QUALITY
BOARD PROMULGATES REGULATIONS CONCERNING RELEASE OF RECLAMATION
BONDS ON MINE SITES WITH MINIMAL IMPACT POST-MINING DISCHARGES,
THE DEPARTMENT MAY RELEASE RECLAMATION BONDS HELD SOLELY FOR
MINIMAL IMPACT POST-MINING DISCHARGES PURSUANT TO THIS SECTION,

1 WHERE AN OPERATOR DEMONSTRATES THAT ALL OF THE FOLLOWING EXIST:

2 (I) ALL THE CRITERIA FOR RECLAMATION BOND RELEASE HAVE BEEN
3 SATISFIED, EXCEPT FOR THE EXISTENCE OF A MINIMAL IMPACT POST-
4 MINING DISCHARGE, UNDER THE DEPARTMENT'S REGULATIONS FOR BOND
5 RELEASE ON SURFACE COAL MINES, EXCEPT AS PROVIDED IN SUBSECTION
6 (G.2)(2)(I).

7 (II) THE DISCHARGE OF MINE DRAINAGE IS A MINIMAL IMPACT
8 POST-MINING DISCHARGE, AS DEMONSTRATED BY A SAMPLING PROTOCOL
9 APPROVED BY THE DEPARTMENT.

10 (III) THE DISCHARGER HAS DESIGNED, CONSTRUCTED AND
11 MAINTAINED A FUNCTIONING PASSIVE TREATMENT SYSTEM, APPROVED BY
12 THE DEPARTMENT, WHICH SUBSTANTIALLY IMPROVED WATER QUALITY OF
13 THE DISCHARGE, AFTER IT ENTERS THE PASSIVE TREATMENT SYSTEM, TO
14 THE SATISFACTION OF THE DEPARTMENT. THE DEPARTMENT SHALL TAKE
15 INTO ACCOUNT THE CUMULATIVE LOADING OF OTHER DISCHARGES IN
16 ASCERTAINING WHETHER WATER QUALITY STANDARDS ARE BEING ACHIEVED.

17 (IV) THE DISCHARGER HAS ESTABLISHED A SITE-SPECIFIC TRUST
18 FUND FOR EACH MINIMAL IMPACT POST-MINING DISCHARGE, IN AN AMOUNT
19 CALCULATED BY THE DEPARTMENT, AT LEAST EQUAL TO ANNUAL OPERATION
20 AND MAINTENANCE COSTS OF A PASSIVE TREATMENT SYSTEM, CAPITAL
21 COSTS FOR REPLACEMENT OF THE PASSIVE TREATMENT SYSTEM IN TWENTY-
22 FIVE (25) YEARS FROM THE DATE OF ITS INSTALLATION, AN INFLATION
23 FACTOR AND THE COST OF TREATMENT OF THE DISCHARGE FOR AT LEAST
24 FIFTY (50) YEARS. THE MINIMUM AMOUNT OF THE FUND SHALL BE TEN
25 THOUSAND DOLLARS (\$10,000.00).

26 (2) UPON A DEMONSTRATION BY THE MINE OPERATOR, APPROVED BY
27 THE DEPARTMENT, THAT THE REQUIREMENTS SET FORTH IN SUBSECTION
28 (G.2)(1) HAVE BEEN MET, THE DEPARTMENT MAY RELEASE THE
29 RECLAMATION BOND ACCORDING TO THE FOLLOWING SCHEDULE:

30 (I) UP TO EIGHTY-FIVE PER CENT OF THE RECLAMATION BOND ON A

1 SITE WITH A MINIMAL IMPACT POST-MINING DISCHARGE UPON A
2 DEMONSTRATION BY THE OPERATOR THAT ALL OF THE FOLLOWING HAVE
3 BEEN MET:

4 (A) THE OPERATOR HAS DEMONSTRATED, AND THE DEPARTMENT HAS
5 FOUND, THAT ALL RECLAMATION STANDARDS FOR STAGES I AND II,
6 EXCEPT FOR THE EXISTENCE OF A MINIMAL IMPACT POST-MINING
7 DISCHARGE, HAVE BEEN MET BY THE OPERATOR.

8 (B) A TRUST FUND, IN AN AMOUNT AND ON A FORM CONTAINING SUCH
9 TERMS AND CONDITIONS APPROVED BY THE DEPARTMENT, HAS BEEN
10 ESTABLISHED AND FULLY FUNDED AS FINANCIAL ASSURANCE FOR
11 MAINTENANCE AND REPLACEMENT OF THE APPROVED PASSIVE TREATMENT
12 SYSTEM.

13 (C) THE OPERATOR HAS DEMONSTRATED, TO THE SATISFACTION OF
14 THE DEPARTMENT, THAT THE PASSIVE TREATMENT SYSTEM HAS BEEN
15 PROPERLY DESIGNED, CONSTRUCTED AND MAINTAINED AND IS FUNCTIONING
16 PROPERLY.

17 (II) UP TO THE ENTIRE AMOUNT OF RECLAMATION BOND ON A SITE
18 WITH A MINIMAL IMPACT POST-MINING DISCHARGE WHERE:

19 (A) THE OPERATOR HAS DEMONSTRATED, AND THE DEPARTMENT HAS
20 FOUND, THAT ALL OF THE RECLAMATION STANDARDS FOR STAGES I, II
21 AND III BOND RELEASE, EXCEPT FOR THE EXISTENCE OF THE MINIMAL
22 IMPACT POST-MINING DISCHARGE, HAVE BEEN MET.

23 (B) A TRUST FUND, IN AN AMOUNT AND ON A FORM CONTAINING SUCH
24 TERMS AND CONDITIONS APPROVED BY THE DEPARTMENT, HAS BEEN
25 ESTABLISHED AND FULLY FUNDED AS FINANCIAL ASSURANCE FOR
26 MAINTENANCE AND REPLACEMENT OF THE APPROVED PASSIVE TREATMENT
27 SYSTEM.

28 (C) THE OPERATOR HAS DEMONSTRATED, TO THE SATISFACTION OF
29 THE DEPARTMENT, THAT THE PASSIVE TREATMENT SYSTEM HAS BEEN
30 PROPERLY DESIGNED, CONSTRUCTED AND MAINTAINED AND IS FUNCTIONING

1 PROPERLY.

2 (3) THE DEPARTMENT MAY, IF THE PASSIVE TREATMENT SYSTEM IS
3 NOT CONSTRUCTED, MAINTAINED OR FUNCTIONING PROPERLY, PURSUE ANY
4 REMEDIES AT LAW OR EQUITY, ORDER THE DISCHARGER TO UPGRADE THE
5 TREATMENT SYSTEM, OR TO PROVIDE CONVENTIONAL TREATMENT, AND
6 INCREASE THE AMOUNT OF THE SITE-SPECIFIC TRUST FUND REQUIRED TO
7 REFLECT THE COST OF ADDITIONAL TREATMENT.

8 (4) THE ENVIRONMENTAL QUALITY BOARD SHALL PROMULGATE FINAL
9 REGULATIONS ESTABLISHING A PROGRAM FOR RELEASING RECLAMATION
10 BONDS HELD SOLELY FOR MINIMAL IMPACT POST-MINING DISCHARGES. IN
11 PROMULGATING SUCH REGULATIONS, THE BOARD SHALL CONSIDER VARIOUS
12 FACTORS, INCLUDING, BUT NOT LIMITED TO, THE FACTORS SET FORTH IN
13 CLAUSE (1).

14 (G.3) THE ENVIRONMENTAL QUALITY BOARD IS AUTHORIZED TO
15 ESTABLISH BY REGULATION SPECIFIC CRITERIA FOR RELEASE OF
16 RECLAMATION BONDS FOR SITES WITH POST-MINING DISCHARGES OF MINE
17 DRAINAGE, INCLUDING MINIMAL IMPACT POST-MINING DISCHARGES:
18 PROVIDED, THAT ALTERNATIVE FINANCIAL ASSURANCES HAVE BEEN POSTED
19 BY THE OPERATOR PURSUANT TO SUBSECTION (D.2).

20 (H) IF THE OPERATOR FAILS OR REFUSES TO COMPLY WITH THE
21 REQUIREMENTS OF THE ACT IN ANY RESPECT FOR WHICH LIABILITY HAS
22 BEEN CHARGED ON THE BOND, THE DEPARTMENT SHALL DECLARE SUCH
23 [PORTION OF THE BOND FORFEITED, AND SHALL CERTIFY THE SAME TO
24 THE DEPARTMENT OF JUSTICE, WHICH SHALL PROCEED TO ENFORCE AND
25 COLLECT THE AMOUNT OF LIABILITY FORFEITED THEREON, AND WHERE]
26 BOND FORFEITED AND THE AMOUNT OF THE FORFEITED BOND SHALL BE
27 PAID OVER TO THE DEPARTMENT WITHIN THIRTY (30) DAYS AFTER NOTICE
28 BY CERTIFIED MAIL FROM THE DEPARTMENT, AND THAT AMOUNT SHALL BE
29 HELD IN ESCROW, WITH ANY INTEREST ON THE BOND ACCRUING TO THE
30 DEPARTMENT, PENDING THE RESOLUTION OF ANY APPEALS, UNLESS IT IS

1 DETERMINED BY A COURT OF COMPETENT JURISDICTION, AFTER
2 EXHAUSTION OF APPEALS, THAT THE COMMONWEALTH WAS NOT ENTITLED TO
3 ALL OR A PORTION OF THE AMOUNT FORFEITED, IN WHICH CASE THE
4 INTEREST SHALL ACCRUE PROPORTIONATELY TO THE SURETY IN THE
5 AMOUNT DETERMINED TO BE IMPROPERLY FORFEITED BY THE DEPARTMENT,
6 IF ANY. WHERE THE OPERATOR HAS DEPOSITED CASH OR SECURITIES AS
7 COLLATERAL IN LIEU OF A [CORPORATE] SURETY BOND, THE DEPARTMENT
8 SHALL DECLARE SUCH PORTION OF SAID COLLATERAL FORFEITED, AND
9 SHALL DIRECT THE STATE TREASURER TO PAY SAID FUNDS INTO THE
10 SURFACE MINING CONSERVATION AND RECLAMATION FUND, OR TO PROCEED
11 TO SELL SAID SECURITIES TO THE EXTENT FORFEITED AND PAY THE
12 PROCEEDS THEREOF INTO THE SURFACE MINING CONSERVATION AND
13 RECLAMATION FUND. SHOULD ANY CORPORATE SURETY FAIL TO PROMPTLY
14 PAY, IN FULL, A FORFEITED BOND, IT SHALL BE DISQUALIFIED FROM
15 WRITING ANY FURTHER SURETY BONDS UNDER THIS ACT. ANY OPERATOR
16 AGGRIEVED BY REASON OF FORFEITING THE BOND OR CONVERTING
17 COLLATERAL, AS HEREIN PROVIDED, SHALL HAVE A RIGHT TO CONTEST
18 SUCH ACTION AND APPEAL THEREFROM AS HEREIN PROVIDED. A CORPORATE
19 SURETY ISSUING SURETY BONDS WHICH ARE FORFEITED BY THE
20 DEPARTMENT SHALL HAVE THE OPTION OF RECLAIMING THE FORFEITED
21 SITE, IN LIEU OF PAYING THE BOND AMOUNT TO THE DEPARTMENT, UPON
22 THE CONSENT AND APPROVAL OF THE DEPARTMENT.

23 * * *

24 SECTION 5. SECTION 4.2(F) OF THE ACT, AMENDED OCTOBER 10,
25 1980 (P.L.835, NO.155), IS AMENDED AND THE SECTION IS AMENDED BY
26 ADDING SUBSECTIONS TO READ:

27 SECTION 4.2. GENERAL RULE MAKING; HEALTH AND SAFETY.--* * *

28 (F) (1) ANY SURFACE MINING OPERATOR OR ANY PERSON ENGAGED
29 IN GOVERNMENT-FINANCED RECLAMATION WHO AFFECTS A PUBLIC OR
30 PRIVATE WATER SUPPLY BY CONTAMINATION OR DIMINUTION SHALL

1 RESTORE OR REPLACE THE AFFECTED SUPPLY WITH AN ALTERNATE SOURCE
2 OF WATER ADEQUATE IN QUANTITY AND QUALITY FOR THE PURPOSES
3 SERVED BY THE SUPPLY. IF ANY OPERATOR SHALL FAIL TO COMPLY WITH
4 THIS PROVISION, THE SECRETARY MAY ISSUE SUCH ORDERS TO THE
5 OPERATOR AS ARE NECESSARY TO ASSURE COMPLIANCE.

6 (2) IT SHALL BE PRESUMED, AS A MATTER OF LAW, THAT A SURFACE
7 MINE OPERATOR OR OWNER IS RESPONSIBLE, WITHOUT PROOF OF FAULT,
8 NEGLIGENCE OR CAUSATION, FOR ALL POLLUTION EXCEPT
9 BACTERIOLOGICAL CONTAMINATION OR DIMINUTION OF PUBLIC OR PRIVATE
10 WATER SUPPLIES, WITHIN ONE THOUSAND (1,000) LINEAR FEET OF THE
11 BOUNDARIES OF THE LAND AFFECTED OR ACREAGE ASSIGNED TO THE
12 SURFACE MINING OPERATION UNDER SECTION 4 BY A PERMIT ISSUED BY
13 THE DEPARTMENT. THERE SHALL BE ONLY FIVE DEFENSES TO THE
14 PRESUMPTION OF LIABILITY PROVIDED IN THIS CLAUSE. A MINE OWNER
15 OR OPERATOR MUST AFFIRMATIVELY PROVE BY A PREPONDERANCE OF
16 EVIDENCE THAT ONE OF THE FOLLOWING CONDITIONS EXISTS:

17 (I) THE LANDOWNER OR WATER SUPPLY COMPANY REFUSED TO ALLOW
18 THE SURFACE MINING OPERATOR OR OWNER ACCESS TO CONDUCT A SURVEY
19 PRIOR TO COMMENCING MINING ACTIVITIES.

20 (II) THE WATER SUPPLY IS NOT WITHIN ONE THOUSAND (1,000)
21 LINEAR FEET OF THE BOUNDARIES OF THE LAND AFFECTED OR ACREAGE
22 ASSIGNED TO THE SURFACE MINING OPERATION UNDER SECTION 4 BY A
23 PERMIT ISSUED BY THE DEPARTMENT.

24 (III) THE POLLUTION OR DIMINUTION EXISTED PRIOR TO THE
25 SURFACE MINING ACTIVITIES AS DETERMINED BY A SURVEY CONDUCTED
26 PRIOR TO COMMENCING SURFACE MINING ACTIVITIES.

27 (IV) THE POLLUTION OR DIMINUTION OCCURRED AS A RESULT OF
28 SOME CAUSE OTHER THAN THE SURFACE MINING ACTIVITIES.

29 (V) THE LANDOWNER, WATER SUPPLY USER OR WATER SUPPLY COMPANY
30 REFUSED TO ALLOW THE SURFACE MINING OPERATOR OR OWNER ACCESS TO

1 DETERMINE THE CAUSE OF POLLUTION OR DIMINUTION OR TO REPLACE OR
2 RESTORE THE WATER SUPPLY.

3 (3) IF THE SECRETARY FINDS THAT IMMEDIATE REPLACEMENT OF AN
4 AFFECTED WATER SUPPLY USED FOR POTABLE OR DOMESTIC NEEDS IS
5 REQUIRED TO PROTECT PUBLIC HEALTH OR SAFETY, AND THE OWNER OR
6 OPERATOR HAS APPEALED OR FAILED TO COMPLY WITH AN ORDER ISSUED
7 PURSUANT TO THIS SUBSECTION, THE SECRETARY MAY RESTORE OR
8 REPLACE THE AFFECTED WATER SUPPLY WITH AN ALTERNATIVE SOURCE OF
9 WATER UTILIZING MONEYS FROM THE SURFACE MINING CONSERVATION AND
10 RECLAMATION FUND. THE SECRETARY SHALL RECOVER THE COSTS OF
11 RESTORATION OR REPLACEMENT, INCLUDING COSTS INCURRED FOR DESIGN
12 AND CONSTRUCTION OF FACILITIES, FROM THE RESPONSIBLE OWNERS OR
13 OPERATORS. COSTS RECOVERED SHALL BE DEPOSITED IN THE SURFACE
14 MINING CONSERVATION AND RECLAMATION FUND.

15 (4) AN OPERATOR OR OWNER AGGRIEVED BY THE SECRETARY'S ORDER
16 ISSUED PURSUANT TO THIS SUBSECTION SHALL HAVE THE RIGHT WITHIN
17 THIRTY (30) DAYS OF RECEIPT OF THE ORDER TO APPEAL TO THE
18 ENVIRONMENTAL HEARING BOARD. THE SECRETARY'S ORDER, WHEN
19 APPEALED BY THE OPERATOR OR OWNER, SHALL NOT BE USED TO BLOCK
20 THE ISSUANCE OF NEW PERMITS OR THE RELEASE OF BONDS WHEN A STAGE
21 OF RECLAMATION WORK IS COMPLETED. HEARINGS UNDER THIS SUBSECTION
22 SHALL BE IN ACCORDANCE WITH THE ACT OF JULY 13, 1988 (P.L.530,
23 NO.94), KNOWN AS THE "ENVIRONMENTAL HEARING BOARD ACT," AND 2
24 PA.C.S. CH. 5 SUBCH. A (RELATING TO PRACTICE AND PROCEDURE OF
25 COMMONWEALTH AGENCIES) AND CH. 7 SUBCH. A (RELATING TO JUDICIAL
26 REVIEW OF COMMONWEALTH AGENCY ACTION).

27 (5) A SURFACE MINING OPERATOR OR OWNER WHO PROVIDES A
28 SUCCESSFUL DEFENSE TO THE PRESUMPTIONS OF LIABILITY SHALL BE
29 ENTITLED TO RECOVER THE COSTS INCURRED, INCLUDING, BUT NOT
30 LIMITED TO, THE COSTS OF TEMPORARY WATER SUPPLY, DESIGN,

1 CONSTRUCTION, RESTORATION OR REPLACEMENT COSTS, ATTORNEY FEES
2 AND EXPERT WITNESS FEES FROM THE DEPARTMENT.

3 (6) NOTHING IN THIS SUBSECTION SHALL PREVENT ANY LANDOWNER
4 OR WATER SUPPLY COMPANY WHO CLAIMS POLLUTION OR DIMINUTION OF A
5 WATER SUPPLY FROM SEEKING ANY OTHER REMEDY THAT MAY BE PROVIDED
6 FOR AT LAW OR IN EQUITY.

7 (7) A SURFACE MINING OPERATION CONDUCTED UNDER A SURFACE
8 MINING PERMIT ISSUED BY THE DEPARTMENT BEFORE THE EFFECTIVE DATE
9 OF THIS ACT SHALL NOT BE SUBJECT TO THE PROVISIONS OF CLAUSES
10 (2), (3), (4), (5) AND (6) OF THIS SUBSECTION, BUT SHALL BE
11 SUBJECT TO CLAUSE (1) OF THIS SUBSECTION.

12 * * *

13 (H) THE ENVIRONMENTAL QUALITY BOARD IS AUTHORIZED TO
14 PROMULGATE RULES AND REGULATIONS, THE GENERAL PURPOSE OF WHICH
15 SHALL BE THE ESTABLISHMENT OF A REMINING AND RECLAMATION
16 INCENTIVE PROGRAM. IN PROMULGATING SUCH REGULATIONS, THE BOARD
17 SHALL HAVE THE AUTHORITY TO ESTABLISH AN OPERATOR QUALIFICATION
18 SYSTEM ESTABLISHING STANDARDS AND CRITERIA FOR OPERATORS WHO
19 DESIRE TO PARTICIPATE IN THE REMINING AND RECLAMATION INCENTIVES
20 PROGRAM. SPECIFIC PURPOSES OF THE REGULATIONS SHALL INCLUDE, BUT
21 NOT BE LIMITED TO, THE PURPOSES SET FORTH IN SECTIONS 4.8, 4.9,
22 4.10, 4.11, 4.12 AND 4.13.

23 (I) THE DEPARTMENT AND ITS AGENTS AND EMPLOYEES SHALL BE
24 AUTHORIZED TO ENTER ANY PROPERTY, PREMISES OR PLACE WHERE
25 SURFACE MINING ACTIVITIES, INCLUDING RECLAMATION, ARE BEING
26 CONDUCTED FOR THE PURPOSES OF MAKING SUCH INVESTIGATION OR
27 INSPECTION AS MAY BE NECESSARY TO ASCERTAIN THE COMPLIANCE OR
28 NONCOMPLIANCE BY ANY PERSON OR MUNICIPALITY WITH THE PROVISIONS
29 OF THE ACTS AND THE RULES AND REGULATIONS PROMULGATED HEREUNDER.
30 IN CONNECTION WITH SUCH INSPECTION OR INVESTIGATION, SAMPLES MAY

1 BE TAKEN OF ANY MATERIAL FOR ANALYSIS.

2 (J) (1) THE ENVIRONMENTAL QUALITY BOARD IS AUTHORIZED TO
3 REVISE THE DEPARTMENT'S EXISTING REGULATIONS TO ESTABLISH
4 TECHNOLOGY-BASED EFFLUENT LIMITATIONS FOR CLASSES OR CATEGORIES
5 OF POST-MINING DISCHARGES EMANATING FROM OR HYDROLOGICALLY
6 CONNECTED TO A SURFACE MINING ACTIVITY SITE THAT HAS ACHIEVED
7 STAGE II RECLAMATION STANDARDS AND THAT THE DEPARTMENT
8 DETERMINES CAN BE ADEQUATELY TREATED USING PASSIVE TREATMENT
9 SYSTEMS.

10 (2) WITHIN TWELVE (12) MONTHS OF THE EFFECTIVE DATE OF THIS
11 ACT, THE DEPARTMENT SHALL PROPOSE REGULATIONS TO THE
12 ENVIRONMENTAL QUALITY BOARD FOR THOSE POST-MINING DISCHARGES
13 WITH:

14 (I) A PH WHICH IS ALWAYS GREATER THAN 6.0 AND AN ALKALINITY
15 WHICH ALWAYS EXCEEDS THE ACIDITY; OR

16 (II) AN ACIDITY WHICH IS ALWAYS LESS THAN ONE HUNDRED (100)
17 MILLIGRAMS PER LITER, AN IRON CONTENT WHICH IS ALWAYS LESS THAN
18 TEN (10) MILLIGRAMS PER LITER, A MANGANESE CONTENT WHICH IS
19 ALWAYS LESS THAN EIGHTEEN (18) MILLIGRAMS PER LITER AND A FLOW
20 RATE WHICH IS ALWAYS LESS THAN THREE (3) GALLONS PER MINUTE.

21 (3) REGULATIONS ESTABLISHED UNDER THIS SUBSECTION SHALL
22 CONTAIN TECHNOLOGY-BASED EFFLUENT LIMITATIONS ESTABLISHED USING
23 BEST PROFESSIONAL JUDGMENT AS AUTHORIZED BY THIS ACT, THE ACT OF
24 JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS "THE CLEAN STREAMS
25 LAW," OR THE FEDERAL WATER POLLUTION CONTROL ACT (62 STAT. 1155,
26 33 U.S.C. 1251 ET SEQ.) AND THE REGULATIONS PROMULGATED UNDER
27 THOSE ACTS.

28 (4) IN ADDITION TO THE REQUIREMENTS OF THIS SUBSECTION,
29 POST-MINING DISCHARGES SHALL COMPLY WITH 25 PA. CODE CHS. 92
30 (RELATING TO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM)

1 AND 93 (RELATING TO WATER QUALITY STANDARDS).

2 (5) A PERSON MAY PETITION THE ENVIRONMENTAL QUALITY BOARD
3 FOR RULEMAKING UNDER THIS SUBSECTION.

4 SECTION 6. SECTION 4.6(J) OF THE ACT, ADDED OCTOBER 4, 1984
5 (P.L.727, NO.158), IS AMENDED TO READ:

6 SECTION 4.6. REMINING OF PREVIOUSLY AFFECTED AREAS.--* * *

7 (J) FOR RECLAMATION PLANS APPROVED AS PART OF A GRANT OF
8 SPECIAL AUTHORIZATION UNDER THIS SECTION, THE STANDARD OF
9 SUCCESS FOR REVEGETATION SHALL BE, AS A MINIMUM, THE
10 ESTABLISHMENT OF GROUND COVER OF LIVING PLANTS NOT LESS THAN CAN
11 BE SUPPORTED BY THE BEST AVAILABLE TOPSOIL OR OTHER SUITABLE
12 MATERIAL IN THE REAFFECTED AREA, SHALL NOT BE LESS THAN THE
13 GROUND COVER EXISTING BEFORE DISTURBANCE, AND SHALL BE ADEQUATE
14 TO CONTROL EROSION: PROVIDED, HOWEVER, THAT THE DEPARTMENT MAY
15 REQUIRE [THAT THE] A HIGHER STANDARD OF SUCCESS [COMPLY WITH
16 SECTION 4(A)(2)(C) OF THIS ACT] WHERE IT DETERMINES SUCH
17 COMPLIANCE IS INTEGRAL TO THE PROPOSED POLLUTION ABATEMENT PLAN.

18 * * *

19 SECTION 7. THE HEADING AND SUBSECTIONS (A), (B), (D) AND (G)
20 OF SECTION 4.7 OF THE ACT, ADDED DECEMBER 12, 1986 (P.L.1570,
21 NO.171), ARE AMENDED TO READ:

22 SECTION 4.7. ANTHRACITE [DEEP] MINE OPERATORS EMERGENCY BOND
23 FUND.--(A) WITHIN THIRTY (30) DAYS OF THE EFFECTIVE DATE OF
24 THIS SECTION, THE DEPARTMENT SHALL ESTABLISH AN EMERGENCY BOND
25 FUND FOR THE PURPOSE OF RECLAIMING ANY ANTHRACITE DEEP MINED OR
26 SURFACE MINED LANDS WHICH MAY BE ABANDONED AFTER THE EFFECTIVE
27 DATE OF THIS SECTION AND ON WHICH THE BOND REQUIRED BY LAW AND
28 ESTABLISHED BY REGULATION HAS NOT BEEN POSTED DUE TO
29 CIRCUMSTANCES SET FORTH IN SUBSECTION (D).

30 (B) THE DEPARTMENT SHALL COLLECT FROM THE FOLLOWING CLASSES

1 OF LICENSED ANTHRACITE DEEP MINE OPERATORS AND ANTHRACITE
2 SURFACE MINE OPERATORS A FEE OF TWENTY-FIVE CENTS (25¢) FOR EACH
3 TON OF COAL EXTRACTED FROM MINING OPERATIONS FOR WHICH THE
4 REQUIRED BOND HAS NOT BEEN POSTED DUE TO THE CIRCUMSTANCES SET
5 FORTH IN SUBSECTION (D):

6 (1) LICENSED ANTHRACITE DEEP MINE OPERATORS AND ANTHRACITE
7 SURFACE MINE OPERATORS WHO SUBMIT TO THE DEPARTMENT THREE
8 LETTERS OF REJECTION FROM THREE SEPARATE BONDING COMPANIES
9 LICENSED TO DO BUSINESS IN THIS COMMONWEALTH, STATING THAT THE
10 OPERATOR HAS BEEN DENIED A BOND AND THE GROUNDS FOR REJECTION.

11 (2) LICENSED ANTHRACITE DEEP MINE OPERATORS AND ANTHRACITE
12 SURFACE MINE OPERATORS WHOSE BONDS ARE CANCELED DUE TO THE
13 INSOLVENCY OR BANKRUPTCY OF ANY INSURANCE COMPANY OR SURETY
14 COMPANY LICENSED TO DO BUSINESS IN THIS COMMONWEALTH.

15 * * *

16 (D) IF THE BONDS OF ANY ANTHRACITE DEEP MINE OPERATOR OR
17 ANTHRACITE SURFACE MINE OPERATOR ARE CANCELED DUE TO THE
18 INSOLVENCY OR BANKRUPTCY OF ANY INSURANCE COMPANY OR SURETY
19 COMPANY AUTHORIZED TO DO BUSINESS IN THIS COMMONWEALTH, AND IF
20 REPLACEMENT BONDS FROM ANY OTHER COMPANY ARE UNAVAILABLE TO THE
21 OPERATOR, EVEN THOUGH THE OPERATOR POSSESSES SUFFICIENT
22 FINANCIAL RESOURCES TO OTHERWISE QUALIFY FOR A BOND, OR IF THE
23 OPERATOR HAS RECEIVED THE LETTERS OF REJECTION PROVIDED FOR IN
24 SUBSECTION (B), THE OPERATOR SHALL SO NOTIFY THE DEPARTMENT IN
25 WRITING. NOTICE TO THE DEPARTMENT IN THE CASE OF AN OPERATOR WHO
26 HAS RECEIVED THE LETTERS OF REJECTION PROVIDED FOR IN SUBSECTION
27 (B) SHALL CONTAIN THE LETTERS OF REJECTION AND SUCH OTHER
28 INFORMATION AS THE ENVIRONMENTAL QUALITY BOARD MAY, BY
29 REGULATION, PRESCRIBE. IN LIEU OF A BOND, THE OPERATOR'S
30 RECLAMATION OBLIGATION FOR EACH SITE FOR WHICH A PERMIT HAS BEEN

1 APPLIED SHALL BE SECURED BY THE EMERGENCY BOND FUND PROVIDED FOR
2 IN SUBSECTION (A) UNTIL SUCH TIME AS THE SITE HAS BEEN RECLAIMED
3 OR UNTIL AN ORIGINAL OR REPLACEMENT BOND, AS THE CASE MAY BE,
4 HAS BEEN OBTAINED BY THE OPERATOR: PROVIDED, HOWEVER, THAT NO
5 PERMIT SHALL BE ISSUED UNDER THIS SUBSECTION UNLESS THE OPERATOR
6 HAS FILED WITH THE DEPARTMENT A MINIMUM PAYMENT OF ONE THOUSAND
7 DOLLARS (\$1,000) TOWARD THE BOND OBLIGATION AND BORROWED THE
8 REMAINING BALANCES FROM THE EMERGENCY BOND FUND TO COVER THE
9 BOND AMOUNTS FOR THE ENTIRE PERMIT AREA, AS REQUIRED BY LAW. AT
10 SUCH TIME AS THE OPERATOR HAS SATISFIED A RECLAMATION OBLIGATION
11 SECURED BY THE FUND PROVIDED FOR IN SECTION 1, THE DEPARTMENT
12 SHALL RELEASE TO THE OPERATOR THE FEES COLLECTED, IN WHOLE OR IN
13 PART, ACCORDING TO THE BOND RELEASE SCHEDULE PROVIDED FOR BY
14 REGULATION. ANY OPERATOR WHOSE BOND OBLIGATION IS MET BY THIS
15 SECTION AND WHOSE PERMIT APPLICATION HAS BEEN APPROVED SHALL,
16 THROUGHOUT THE TERM OF THE PERMIT, UNDERTAKE ALL REASONABLE
17 ACTIONS TO OBTAIN AN ORIGINAL OR REPLACEMENT BOND, AS THE CASE
18 MAY BE, FOR SAID SITE.

19 * * *

20 (G) THE SUM OF FIFTY THOUSAND DOLLARS (\$50,000) IS HEREBY
21 APPROPRIATED TO THE DEPARTMENT FOR IMMEDIATE DEPOSIT INTO THE
22 EMERGENCY BOND FUND TO PROVIDE THE NECESSARY FUNDS FOR LOANS TO
23 QUALIFIED ANTHRACITE DEEP MINE OPERATORS AND ANTHRACITE SURFACE
24 MINE OPERATORS TO PROVIDE THE REQUIRED BONDS TO OBTAIN MINING
25 PERMITS.

26 SECTION 8. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:

27 SECTION 4.8. GOVERNMENT FINANCED RECLAMATION CONTRACTS
28 AUTHORIZING INCIDENTAL AND NECESSARY EXTRACTION OF COAL.--(A)
29 NO PERSON MAY ENGAGE IN COAL EXTRACTION PURSUANT TO A
30 GOVERNMENT-FINANCED RECLAMATION CONTRACT WITHOUT A VALID SURFACE

1 MINING PERMIT ISSUED PURSUANT TO THIS ACT, UNLESS SUCH PERSON
2 AFFIRMATIVELY DEMONSTRATES THAT HE IS ELIGIBLE TO SECURE SPECIAL
3 AUTHORIZATION PURSUANT TO THIS SECTION TO ENGAGE IN A
4 GOVERNMENT-FINANCED RECLAMATION CONTRACT AUTHORIZING INCIDENTAL
5 AND NECESSARY COAL EXTRACTION. THE DEPARTMENT SHALL DETERMINE
6 ELIGIBILITY BEFORE ENTERING INTO A GOVERNMENT-FINANCED
7 RECLAMATION CONTRACT AUTHORIZING INCIDENTAL AND NECESSARY COAL
8 EXTRACTION. THE DEPARTMENT MAY PROVIDE THE SPECIAL AUTHORIZATION
9 AS PART OF THE GOVERNMENT-FINANCED RECLAMATION CONTRACT:
10 PROVIDED, THAT THE CONTRACT CONTAINS AND DOES NOT VIOLATE THE
11 REQUIREMENTS OF THIS SECTION. THE DEPARTMENT SHALL NOT BE
12 REQUIRED TO GRANT A SPECIAL AUTHORIZATION TO ANY ELIGIBLE
13 PERSON. THE DEPARTMENT MAY, HOWEVER, IN ITS DISCRETION, GRANT A
14 SPECIAL AUTHORIZATION ALLOWING INCIDENTAL AND NECESSARY COAL
15 EXTRACTION PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION
16 CONTRACT IN ACCORDANCE WITH THIS SECTION.

17 (B) ONLY ELIGIBLE PERSONS MAY SECURE SPECIAL AUTHORIZATION
18 TO ENGAGE IN INCIDENTAL AND NECESSARY COAL EXTRACTION PURSUANT
19 TO A GOVERNMENT-FINANCED RECLAMATION CONTRACT. A PERSON IS
20 ELIGIBLE TO SECURE A SPECIAL AUTHORIZATION IF HE CAN
21 DEMONSTRATE, AT A MINIMUM, TO THE DEPARTMENT'S SATISFACTION,
22 THAT:

23 (1) THE CONTRACTOR, OR ANY RELATED PARTY OR SUBCONTRACTOR
24 WHICH WILL ACT UNDER ITS DIRECTION, HAS NO HISTORY OF PAST OR
25 CONTINUING VIOLATIONS WHICH SHOW THE CONTRACTOR'S LACK OF
26 ABILITY OR INTENTION TO COMPLY WITH THE ACTS OR THE RULES AND
27 REGULATIONS PROMULGATED THEREUNDER, WHETHER OR NOT SUCH
28 VIOLATION RELATES TO ANY ADJUDICATED PROCEEDING, AGREEMENT,
29 CONSENT ORDER OR DECREE, OR WHICH RESULTED IN A CEASE ORDER OR
30 CIVIL PENALTY ASSESSMENT. FOR THE PURPOSES OF THIS SECTION, THE

1 TERM "RELATED PARTY" SHALL MEAN ANY PARTNER, ASSOCIATE, OFFICER,
2 PARENT CORPORATION, AFFILIATE OR PERSON BY OR UNDER COMMON
3 CONTROL WITH THE CONTRACTOR.

4 (2) THE PERSON HAS SUBMITTED PROOF THAT ANY VIOLATION
5 RELATED TO THE MINING OF COAL BY THE CONTRACTOR, OR ANY RELATED
6 PARTY OR SUBCONTRACTOR WHICH WILL ACT UNDER ITS DIRECTION, OF
7 ANY OF THE ACTS, RULES, REGULATIONS, PERMITS OR LICENSES OF THE
8 DEPARTMENT HAS BEEN CORRECTED OR IS IN THE PROCESS OF BEING
9 CORRECTED TO THE SATISFACTION OF THE DEPARTMENT, WHETHER OR NOT
10 THE VIOLATION RELATES TO ANY ADJUDICATED PROCEEDING, AGREEMENT,
11 CONSENT ORDER OR DECREE OR WHICH RESULTED IN A CEASE ORDER OR
12 CIVIL PENALTY ASSESSMENT. FOR PURPOSES OF THIS SECTION, THE TERM
13 "RELATED PARTY" SHALL MEAN ANY PARTNER, ASSOCIATE, OFFICER,
14 PARENT CORPORATION, SUBSIDIARY CORPORATION, AFFILIATE OR PERSON
15 BY OR UNDER COMMON CONTROL WITH THE CONTRACTOR.

16 (3) THE PERSON HAS SUBMITTED PROOF THAT ANY VIOLATION BY THE
17 CONTRACTOR, OR BY ANY PERSON OWNED OR CONTROLLED BY THE
18 CONTRACTOR, OR BY A SUBCONTRACTOR WHICH ACTS UNDER ITS
19 DIRECTION, OF ANY LAW, RULE OR REGULATION OF THE UNITED STATES
20 OR ANY STATE PERTAINING TO AIR OR WATER POLLUTION HAS BEEN
21 CORRECTED OR IS IN THE PROCESS OF BEING SATISFACTORILY
22 CORRECTED.

23 (4) THE PERSON OR ANY RELATED PARTY OR SUBCONTRACTOR WHICH
24 WILL ACT UNDER THE DIRECTION OF THE CONTRACTOR HAS NO
25 OUTSTANDING UNPAID CIVIL PENALTIES WHICH HAVE BEEN ASSESSED FOR
26 VIOLATIONS OF EITHER THIS ACT OR THE ACT OF JUNE 22, 1937
27 (P.L.1987, NO.394), KNOWN AS "THE CLEAN STREAMS LAW," IN
28 CONNECTION WITH EITHER SURFACE MINING OR RECLAMATION ACTIVITIES.

29 (5) THE PERSON OR ANY RELATED PARTY OR SUBCONTRACTOR WHICH
30 WILL ACT UNDER THE DIRECTION OF THE CONTRACTOR HAS NOT BEEN

1 CONVICTED OF A MISDEMEANOR OR FELONY UNDER THIS ACT OR THE ACTS
2 SET FORTH IN SUBSECTION (F) AND HAS NOT HAD ANY BONDS DECLARED
3 FORFEITED BY THE DEPARTMENT.

4 (C) ANY ELIGIBLE PERSON WHO PROPOSES TO ENGAGE IN COAL
5 EXTRACTION PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION
6 CONTRACT MAY REQUEST AND SECURE SPECIAL AUTHORIZATION FROM THE
7 DEPARTMENT TO CONDUCT SUCH ACTIVITIES UNDER THIS SECTION. THE
8 DEPARTMENT MAY ISSUE THE SPECIAL AUTHORIZATION AS PART OF THE
9 GOVERNMENT-FINANCED RECLAMATION CONTRACT: PROVIDED, THAT THE
10 CONTRACT CONTAINS AND DOES NOT VIOLATE THE REQUIREMENTS OF THIS
11 SECTION. A SPECIAL AUTHORIZATION CAN ONLY BE OBTAINED IF A
12 CLAUSE IS INSERTED IN A GOVERNMENT-FINANCED RECLAMATION CONTRACT
13 AUTHORIZING SUCH EXTRACTION AND THE PERSON REQUESTING SUCH
14 AUTHORIZATION HAS AFFIRMATIVELY DEMONSTRATED, TO THE
15 DEPARTMENT'S SATISFACTION, THAT HE HAS SATISFIED THE PROVISIONS
16 OF THIS SECTION. A SPECIAL AUTHORIZATION SHALL ONLY BE GRANTED
17 BY THE DEPARTMENT PRIOR TO THE COMMENCEMENT OF COAL EXTRACTION
18 ON A PROJECT AREA. IN ORDER TO BE CONSIDERED FOR A SPECIAL
19 AUTHORIZATION BY THE DEPARTMENT, AN ELIGIBLE PERSON MUST
20 DEMONSTRATE, AT A MINIMUM, THAT:

21 (1) THE PRIMARY PURPOSE OF THE OPERATION TO BE UNDERTAKEN IS
22 THE RECLAMATION OF ABANDONED MINE LANDS.

23 (2) THE EXTRACTION OF COAL WILL BE INCIDENTAL AND NECESSARY
24 TO ACCOMPLISH THE RECLAMATION OF ABANDONED MINE LANDS PURSUANT
25 TO A GOVERNMENT-FINANCED RECLAMATION CONTRACT.

26 (3) INCIDENTAL AND NECESSARY COAL EXTRACTION WILL BE
27 CONFINED TO THE PROJECT AREA BEING RECLAIMED.

28 (4) ALL COAL EXTRACTION AND RECLAMATION ACTIVITY UNDERTAKEN
29 PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION PROJECT WILL BE
30 ACCOMPLISHED PURSUANT TO:

1 (I) THE APPLICABLE ENVIRONMENTAL PROTECTION PERFORMANCE
2 STANDARDS PROMULGATED IN THE RULES AND REGULATIONS RELATING TO
3 SURFACE COAL MINING LISTED IN THE GOVERNMENT-FINANCED
4 RECLAMATION CONTRACT; AND

5 (II) ADDITIONAL CONDITIONS INCLUDED IN THE GOVERNMENT-
6 FINANCED RECLAMATION CONTRACT BY THE DEPARTMENT.

7 (D) THE CONTRACTOR WILL PAY ANY APPLICABLE PER-TON
8 RECLAMATION FEE ESTABLISHED BY THE UNITED STATES OFFICE OF
9 SURFACE MINING RECLAMATION AND ENFORCEMENT (OSMRE) FOR EACH TON
10 OF COAL EXTRACTED PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION
11 PROJECT.

12 (E) PRIOR TO COMMENCING COAL EXTRACTION PURSUANT TO A
13 GOVERNMENT-FINANCED RECLAMATION PROJECT, THE CONTRACTOR SHALL
14 FILE WITH THE DEPARTMENT A PERFORMANCE BOND, PAYABLE TO THE
15 COMMONWEALTH AND CONDITIONED UPON THE CONTRACTOR'S PERFORMANCE
16 OF ALL THE REQUIREMENTS OF THE GOVERNMENT-FINANCED RECLAMATION
17 CONTRACT, THIS ACT, "THE CLEAN STREAMS LAW," THE ACT OF JANUARY
18 8, 1960 (1959 P.L.2119, NO.787), KNOWN AS THE "AIR POLLUTION
19 CONTROL ACT," THE ACT OF SEPTEMBER 24, 1968 (P.L.1040, NO.318),
20 KNOWN AS THE "COAL REFUSE DISPOSAL CONTROL ACT," WHERE
21 APPLICABLE, THE ACT OF NOVEMBER 26, 1978 (P.L.1375, NO.325),
22 KNOWN AS THE "DAM SAFETY AND ENCROACHMENTS ACT," AND, WHERE
23 APPLICABLE, THE ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN AS
24 THE "SOLID WASTE MANAGEMENT ACT." AN OPERATOR POSTING A BOND
25 SUFFICIENT TO COMPLY WITH THIS SECTION SHALL NOT BE REQUIRED TO
26 POST A SEPARATE BOND FOR THE PERMITTED AREA UNDER EACH OF THE
27 ACTS HEREINABOVE ENUMERATED. FOR A NO-COST RECLAMATION CONTRACT,
28 THE CRITERIA FOR ESTABLISHING THE AMOUNT OF THE PERFORMANCE BOND
29 SHALL BE THE ENGINEERING ESTIMATE, DETERMINED BY THE DEPARTMENT,
30 OF MEETING THE ENVIRONMENTAL OBLIGATIONS ENUMERATED ABOVE:

1 PROVIDED, HOWEVER, THAT THE DEPARTMENT MAY ESTABLISH A LESSER
2 BOND AMOUNT FOR LONG-TERM, NO-COST RECLAMATION PROJECTS IN WHICH
3 THE RECLAMATION SCHEDULE EXTENDS BEYOND TWO (2) YEARS. IN THESE
4 CONTRACTS, THE DEPARTMENT MAY, IN THE ALTERNATIVE, ESTABLISH A
5 BOND AMOUNT WHICH REFLECTS THE COST OF THE PROPORTIONATE AMOUNT
6 OF RECLAMATION WHICH WILL OCCUR DURING A PERIOD SPECIFIED. THE
7 PERFORMANCE BOND WHICH IS PROVIDED BY THE CONTRACTOR UNDER A
8 FEDERALLY FINANCED OR STATE-FINANCED RECLAMATION CONTRACT SHALL
9 BE DEEMED TO SATISFY THE REQUIREMENTS OF THIS SECTION: PROVIDED,
10 THAT THE AMOUNT OF SUCH BOND IS EQUIVALENT TO OR GREATER THAN
11 THE AMOUNT DETERMINED BY THE CRITERIA SET FORTH IN THIS
12 SUBSECTION.

13 (F) THE DEPARTMENT SHALL INSERT IN GOVERNMENT-FINANCED
14 RECLAMATION CONTRACTS CONDITIONS WHICH PROHIBIT COAL EXTRACTION
15 PURSUANT TO GOVERNMENT-FINANCED RECLAMATION IN AREAS SUBJECT TO
16 THE RESTRICTIONS OF SECTION 4.2, EXCEPT AS SURFACE COAL MINING
17 IS ALLOWED PURSUANT TO THAT SECTION.

18 (G) ANY PERSON ENGAGING IN COAL EXTRACTION PURSUANT TO A NO-
19 COST GOVERNMENT-FINANCED RECLAMATION CONTRACT AUTHORIZED UNDER
20 THIS SECTION WHO AFFECTS A PUBLIC OR PRIVATE WATER SUPPLY BY
21 CONTAMINATION OR DIMINUTION SHALL RESTORE OR REPLACE THE
22 AFFECTED SUPPLY WITH AN ALTERNATE SUPPLY ADEQUATE IN QUANTITY
23 AND QUALITY FOR THE PURPOSES SERVED.

24 (H) EXTRACTION PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION
25 CONTRACT CANNOT BE INITIATED WITHOUT THE CONSENT OF THE SURFACE
26 OWNER FOR RIGHT OF ENTRY AND CONSENT OF THE MINERAL OWNER FOR
27 EXTRACTION OF COAL. NOTHING IN THIS SECTION SHALL PROHIBIT THE
28 DEPARTMENT'S ENTRY ONTO LAND WHERE SUCH ENTRY IS NECESSARY IN
29 THE EXERCISE OF POLICE POWERS.

30 SECTION 4.9. DESIGNATING AREAS SUITABLE FOR RECLAMATION BY

1 REMINING.--(A) THE DEPARTMENT MAY, PURSUANT TO THE INTERIM
2 PROGRAM ESTABLISHED BY THIS SECTION, DESIGNATE AREAS OF THIS
3 COMMONWEALTH SUITABLE FOR RECLAMATION BY REMINING SURFACE MINING
4 ACTIVITIES, INCLUDING BOND FORFEITURE AREAS, WHERE THE
5 DEPARTMENT DETERMINES THAT RECLAMATION PURSUANT TO THE
6 REQUIREMENTS OF THIS ACT IS TECHNOLOGICALLY AND ECONOMICALLY
7 FEASIBLE. THIS SECTION SHALL CONSTITUTE AN INTERIM PROGRAM
8 ALLOWING THE DEPARTMENT TO DECLARE AREAS SUITABLE FOR REMINING
9 PURSUANT TO THE CRITERIA IN SUBSECTION (B). THE ENVIRONMENTAL
10 QUALITY BOARD MAY, BY REGULATION, PROMULGATE CRITERIA AND
11 PROCEDURES, IN ADDITION TO THE INTERIM CRITERIA AND PROCEDURES
12 SET FORTH IN THIS SECTION, FOR DECLARING AN AREA SUITABLE FOR
13 REMINING.

14 (B) IN DESIGNATING AREAS SUITABLE FOR RECLAMATION BY
15 REMINING, THE DEPARTMENT SHALL CONSIDER THE FOLLOWING:

16 (1) THOSE LANDS WHICH WERE AFFECTED BY SURFACE OR DEEP
17 MINING ACTIVITIES, INCLUDING COAL REFUSE PILES, AND WHICH ARE
18 CAUSING OR CONTRIBUTING TO THE POLLUTION OF THE WATERS OF THIS
19 COMMONWEALTH.

20 (2) AREAS WHICH, IF REMINED, WOULD RESULT IN ENHANCEMENT OF
21 NEARBY RECREATION, NATURAL OR SCENIC AREAS.

22 (3) AREAS WHERE REMINING WOULD RESULT IN SIGNIFICANT
23 ENVIRONMENTAL AND ECONOMIC OR SOCIAL ENHANCEMENT OF THE
24 SURROUNDING REGION.

25 (4) AREAS THAT DO NOT MEET WATER QUALITY STANDARDS BUT
26 WHICH, IF REMINING OCCURS, ARE LIKELY TO MAINTAIN OR ENHANCE
27 EXISTING DOWNSTREAM WATER USES AND MEET WATER QUALITY STANDARDS
28 AND WHICH WILL NOT CAUSE FURTHER DEGRADATION OF RECEIVING STREAM
29 WATER QUALITY.

30 (5) THE PRESENCE OF ECONOMICALLY VIABLE COAL RESERVES IN AN

1 AREA WHICH COULD BE EXTRACTED BY SURFACE MINING ACTIVITIES, WITH
2 RECLAMATION BEING TECHNOLOGICALLY AND ECONOMICALLY FEASIBLE.

3 (C) (1) THE DEPARTMENT MAY ACCEPT PROPOSALS FOR DECLARING
4 AREAS SUITABLE FOR RECLAMATION BY REMINING FROM ANY PERSON OR
5 THE DEPARTMENT MAY PROPOSE AREAS ITSELF. PRIOR TO THE
6 DEPARTMENT'S ACCEPTING A PROPOSAL TO DECLARE AN AREA SUITABLE
7 FOR REMINING PURSUANT TO THE CRITERIA IN SUBSECTION (B), THE
8 PERSON PROPOSING DESIGNATION OF AN AREA AS SUITABLE FOR REMINING
9 MUST:

10 (I) IF THE PETITIONER IS A COAL OPERATOR, AGREE TO PROVIDE
11 DRILLING SERVICES TO OBTAIN INFORMATION NECESSARY FOR THE
12 DEPARTMENT TO DETERMINE WHETHER AN AREA SHOULD BE DECLARED
13 SUITABLE FOR REMINING; OR

14 (II) DESCRIBE, IN HIS PROPOSAL, IN TECHNICAL DETAIL, HOW THE
15 PROPOSED AREA MEETS THE CRITERIA SET FORTH IN THIS SECTION FOR
16 DESIGNATION.

17 (2) THE DEPARTMENT SHALL DETERMINE WITHIN THIRTY (30) DAYS
18 WHETHER TO ACCEPT THE PROPOSAL FOR FURTHER STUDY.

19 (3) THE DEPARTMENT SHALL PREPARE A DETAILED REPORT ON THE
20 PROPOSED AREA, WITHIN TWO HUNDRED FORTY (240) DAYS OF ITS
21 ACCEPTANCE OF A PROPOSAL FOR STUDY, BASED ON THE CRITERIA
22 OUTLINED IN SUBSECTION (B). THE REPORT SHALL CONTAIN ENOUGH
23 BACKGROUND INFORMATION ON THE PROPOSED AREA TO ALLOW A MINE
24 OPERATOR TO DIRECTLY USE ITS CONTENTS IN THE PREPARATION OF A
25 PROPOSAL OR PERMIT APPLICATION TO REMINE ALL OR PART OF THE
26 AREA.

27 (4) PRIOR TO MAKING ANY DESIGNATION, THE DEPARTMENT WILL
28 PUBLISH A NOTICE IN THE PENNSYLVANIA BULLETIN ESTABLISHING A
29 PUBLIC COMMENT PERIOD OF AT LEAST THIRTY (30) DAYS ON THE
30 REPORT. THE COMMENT PERIOD SHALL ALSO BE ADVERTISED AT LEAST

1 ONCE A WEEK FOR TWO WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION
2 IN THE PROPOSED DESIGNATION AREA.

3 (5) NO LATER THAN TWELVE (12) MONTHS AFTER ITS ACCEPTANCE OF
4 A PROPOSED AREA FOR STUDY, THE DEPARTMENT WILL MAKE A DECISION
5 ON WHETHER TO DESIGNATE AN AREA AS SUITABLE FOR REMINING.

6 (D) THE DESIGNATION OF AN AREA AS SUITABLE FOR REMINING
7 CREATES NO PRESUMPTION THAT A MINING PERMIT WILL BE ISSUED IN A
8 DESIGNATED AREA. APPLICANTS FOR MINING PERMITS IN AREAS
9 DESIGNATED SUITABLE FOR REMINING MUST DEMONSTRATE, TO THE
10 DEPARTMENT'S SATISFACTION, THAT ALL REQUIREMENTS OF THE ACTS AND
11 REGULATIONS PROMULGATED THEREUNDER, RELATING TO PERMIT ISSUANCE,
12 HAVE BEEN MET PRIOR TO PERMIT ISSUANCE.

13 (E) THE SPECIAL ACCOUNT ESTABLISHED IN THE REMINING
14 ENVIRONMENTAL ENHANCEMENT FUND FOR THE AREAS SUITABLE FOR
15 REMINING PROGRAM SHALL BE THE SOLE SOURCE OF FUNDS FOR THE
16 PROGRAM, AND THE COMMONWEALTH SHALL NOT BE OBLIGATED TO EXPEND
17 ANY FUNDS BEYOND THE AMOUNT OF THE SPECIAL ACCOUNT.

18 SECTION 4.10. REMINING OPERATOR'S ASSISTANCE PROGRAM.--THE
19 DEPARTMENT SHALL ESTABLISH A PROGRAM TO ASSIST AND PAY FOR THE
20 PREPARATION OF APPLICATIONS FOR LICENSED MINE OPERATORS
21 OTHERWISE ELIGIBLE TO OBTAIN A PERMIT FOR REMINING ABANDONED
22 MINE LAND, INCLUDING REMINING OF LAND SUBJECT TO BOND
23 FORFEITURES AND COAL REFUSE PILES. THE INTERIM PROGRAM SHALL
24 CONSIST OF THE REIMBURSEMENT OF EXPENSES FOR THE SAME PURPOSES
25 AS SET FORTH IN THE SMALL OPERATOR ASSISTANCE PROGRAM. THE
26 ENVIRONMENTAL QUALITY BOARD MAY, BY PROMULGATING REGULATIONS,
27 EXPAND THE SCOPE OF THE PROGRAM TO INCLUDE PURPOSES OTHER THAN
28 THE PURPOSES OF THE SMALL OPERATOR ASSISTANCE PROGRAM,
29 INCLUDING, BUT NOT LIMITED TO, THE REIMBURSEMENT OF EXPENSES FOR
30 ADDITIONAL INFORMATION ON GEOLOGY AND HYDROLOGY AND OTHER

1 INFORMATION NECESSARY TO SUPPORT A REMINING PERMIT APPLICATION,
2 BUT NOT INCLUDING DRILLING AND RELATED ACTIVITIES, IN ORDER TO
3 SUPPORT A PROPOSAL OR APPLICATION. THE DEPARTMENT MAY ENTER INTO
4 AGREEMENTS WITH OPERATORS PURSUANT TO THE REMINING OPERATOR
5 ASSISTANCE PROGRAM ONLY TO THE EXTENT THAT FUNDS ARE AVAILABLE.

6 SECTION 4.11. PENNSYLVANIA RECLAMATION AND REMINING
7 PROGRAM.--(A) THE ENVIRONMENTAL QUALITY BOARD SHALL PUBLISH
8 PROPOSED REGULATIONS WITHIN ONE HUNDRED EIGHTY (180) DAYS FROM
9 THE EFFECTIVE DATE OF THIS ACT WHICH SHALL CONSTITUTE AN INTERIM
10 RECLAMATION AND REMINING PROGRAM WHICH PROVIDES INCENTIVES AND
11 ASSISTANCE TO RECLAIM ABANDONED MINE LANDS AND LAND THAT IS
12 SUBJECT TO BOND FORFEITURES. THE DEPARTMENT IS AUTHORIZED TO
13 EXPEND MONEYS FROM THE REMINING ENVIRONMENTAL ENHANCEMENT FUND
14 FOR THIS PROGRAM. THE PROPOSED REGULATIONS AND ANY FINAL
15 REGULATIONS PROMULGATED UNDER THIS SECTION SHALL INCLUDE, BUT
16 NOT BE LIMITED TO, THE FOLLOWING ELEMENTS:

17 (1) THE ENCOURAGEMENT OF THE RECLAMATION OF ABANDONED MINE
18 LANDS BY ACTIVE SURFACE COAL MINE OPERATORS.

19 (2) THE ENCOURAGEMENT OF THE RECOVERY OF REMAINING COAL
20 RESOURCES ON ABANDONED MINE LANDS AND MAXIMIZING RECLAMATION OF
21 SUCH LANDS IN THE PROCESS.

22 (3) THE DEVELOPMENT OF AN OPERATOR QUALIFICATION SYSTEM.

23 (4) THE ENCOURAGEMENT OF LOCAL GOVERNMENT PARTICIPATION IN
24 ABANDONED MINE LAND AGREEMENTS.

25 (B) THE DEPARTMENT SHALL PREPARE A REPORT TO THE
26 ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE OF THE SENATE AND
27 THE CONSERVATION COMMITTEE OF THE HOUSE OF REPRESENTATIVES ON
28 JULY 1 OF EACH YEAR, GIVING A STATUS REPORT ON ACTIVITIES
29 COVERING THE DEPARTMENT'S RECLAMATION AND REMINING PROGRAMS
30 UNDER THIS SECTION AND SECTIONS 4.8, 4.9, 4.10, 4.11, 4.12, 4.13

1 AND 18.

2 (C) THE REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO:

3 (1) THE NUMBER AND NAMES OF OPERATORS PARTICIPATING IN THE
4 PROGRAMS UNDER SECTIONS 4.8, 4.9, 4.10, 4.11, 4.12, 4.13 AND
5 THIS SECTION AND THE RECLAMATION PROGRAMS UNDER SECTION 18.

6 (2) THE NUMBER OF ACRES OF ABANDONED MINE LAND, LAND SUBJECT
7 TO BOND FORFEITURE AND COAL REFUSE PILES RECLAIMED.

8 (3) THE DOLLAR VALUE OF THESE RECLAMATION ACTIVITIES.

9 (4) RECOMMENDATIONS FOR PROVIDING ADDITIONAL INCENTIVES FOR
10 THE RECLAMATION OF AREAS PREVIOUSLY MINED.

11 (5) THE COMMENTS OF THE MINING AND RECLAMATION ADVISORY
12 BOARD ON THE ANNUAL REPORT, IF ANY.

13 SECTION 4.12. PAYMENT IN LIEU OF BOND.--(A) THE
14 ENVIRONMENTAL QUALITY BOARD SHALL PUBLISH PROPOSED REGULATIONS
15 WITHIN ONE HUNDRED EIGHTY (180) DAYS OF THE EFFECTIVE DATE OF
16 THIS ACT WHICH SHALL CONSTITUTE AN INTERIM PROGRAM ALLOWING
17 CERTAIN MINE OPERATORS PROPOSING TO REMINE ABANDONED MINE LANDS
18 TO BE ELIGIBLE TO MAKE PAYMENTS TO THE DEPARTMENT, IN LIEU OF
19 THE BOND REQUIRED BY THIS ACT. THE DEPARTMENT SHALL REVIEW
20 OPERATOR REQUESTS TO PARTICIPATE IN THE PROGRAM ON A CASE-BY-
21 CASE BASIS AND SHALL ALLOW OPERATOR PARTICIPATION IN THE PAYMENT
22 IN LIEU OF BOND PROGRAM ONLY WHEN THE PAYMENT IN LIEU OF BOND
23 SPECIAL ACCOUNT IN THE REMINING ENVIRONMENTAL ENHANCEMENT FUND
24 IS EQUAL TO OR EXCEEDS THE TOTAL RECLAMATION OBLIGATION OF THE
25 COMMONWEALTH WHICH WOULD BE INCURRED UNDER THE PAYMENT IN LIEU
26 OF BOND PROGRAM IF ALL PARTICIPANTS FAILED TO COMPLETE THEIR
27 RECLAMATION OBLIGATIONS. IN PROMULGATING PROPOSED AND FINAL
28 REGULATIONS, THE ENVIRONMENTAL QUALITY BOARD SHALL CONSIDER
29 VARIOUS FACTORS, INCLUDING, BUT NOT LIMITED TO, SITE
30 ELIGIBILITY, SUCH AS ENVIRONMENTAL HAZARDS, SAFETY HAZARDS AND

1 THE AVAILABILITY OF COAL RESERVES AND OPERATOR ELIGIBILITY, SUCH
2 AS FINANCIAL TESTS AND CRITERIA FOR PARTICIPATION IN THE
3 PROGRAM, INCLUDING AN OPERATOR'S OPERATING RATIO, LONG-TERM
4 FINANCIAL STABILITY, DENIAL OF COVERAGE BY SURETY BOND
5 COMPANIES, FINANCIAL RATIO, COMPLIANCE HISTORY, LENGTH OF TIME
6 IN BUSINESS AND ANY OTHER FACTORS INDICATIVE OF AN OPERATOR'S
7 ABILITY TO COMPLETE RECLAMATION AND PAYMENTS INTO THE FUND UNDER
8 THE PROGRAM. PAYMENTS INTO THE FUND SHALL BE EQUAL TO AT LEAST
9 FIFTY DOLLARS (\$50.00) PER ACRE PER YEAR IN THE INTERIM PROGRAM
10 AND MAY BE MODIFIED BY FINAL REGULATIONS PROMULGATED BY THE
11 ENVIRONMENTAL QUALITY BOARD IN ORDER TO ASSURE THE FINANCIAL
12 STABILITY OF THE PAYMENT IN LIEU OF BOND PROGRAM AND TO PROVIDE
13 ADEQUATE FUNDS IN CASE OF FORFEITURE BUT WILL REQUIRE NO
14 COLLATERALIZATION.

15 (B) PREMIUM PAYMENTS WILL BE DEPOSITED INTO THE REMINING
16 ENVIRONMENTAL ENHANCEMENT FUND AND WILL BE RESERVED IN A SPECIAL
17 ACCOUNT TO BE USED IN CASE OF OPERATOR FORFEITURE. WHEN THE
18 SPECIAL ACCOUNT BECOMES ACTUARIALLY SOUND, EXCESS PAYMENTS MAY
19 BE USED PURSUANT TO SECTION 18(A.1) AND (A.2).

20 (C) PAYMENTS UNDER THIS SUBSECTION SHALL EXCUSE THE OPERATOR
21 FROM THE REQUIREMENT TO POST A BOND UNDER THIS ACT WITH RESPECT
22 TO THE REMINING PERMIT FOR WHICH PAYMENT IS MADE.

23 (D) THE PAYMENT IN LIEU OF BOND PROGRAM MAY BE DISCONTINUED
24 IMMEDIATELY AND NOTICE PUBLISHED IN THE PENNSYLVANIA BULLETIN,
25 IF TWENTY-FIVE PER CENT OR GREATER OF THE OUTSTANDING BOND
26 OBLIGATION FOR THE PAYMENT IN LIEU OF BOND PROGRAM IS SUBJECT TO
27 FORFEITURE. THE SPECIAL ACCOUNT ESTABLISHED IN THE REMINING
28 ENVIRONMENTAL ENHANCEMENT FUND FOR THE PAYMENT IN LIEU OF BOND
29 PROGRAM SHALL BE THE SOLE SOURCE OF FUNDS UNDERWRITING THE
30 PAYMENT IN LIEU OF BOND PROGRAM, AND THE COMMONWEALTH SHALL NOT

1 BE OBLIGATED TO EXPEND ANY FUNDS BEYOND THE AMOUNT OF THE
2 SPECIAL ACCOUNT.

3 SECTION 4.13. RECLAMATION BOND CREDITS.--(A) A BOND CREDIT,
4 FINANCIALLY BACKED BY A SPECIAL ACCOUNT FOR THAT PURPOSE
5 ESTABLISHED IN SECTION 18(A.2), IN THE FORM OF A BOND LETTER,
6 MAY BE ISSUED BY THE DEPARTMENT TO A LICENSED MINE OPERATOR, FOR
7 VOLUNTARY RECLAMATION OF ABANDONED MINE LANDS, AS APPROVED BY
8 THE DEPARTMENT. THE DEPARTMENT SHALL, IN DETERMINING WHETHER OR
9 NOT TO ISSUE A BOND CREDIT:

10 (1) WHERE A COAL MINING ACTIVITY PERMIT IS NOT REQUIRED,
11 REQUIRE A LICENSED MINE OPERATOR TO SUBMIT A PROPOSAL TO THE
12 DEPARTMENT TO RECLAIM A SPECIFIC AREA, TOGETHER WITH THE
13 ESTIMATED COST OF THE RECLAMATION BASED ON CURRENT BONDING
14 RATES.

15 (2) REVIEW THE PROPOSAL AND FIND IN WRITING THAT THE
16 OPERATOR'S ESTIMATED COST OF RECLAMATION IS ACCURATE AND THAT
17 THE PROPOSED LOCATION OF THE PROJECT IS ACCEPTABLE TO THE
18 DEPARTMENT.

19 (3) NOT ISSUE ANY BOND CREDITS TO AN OPERATOR IF ANY ONE OR
20 MORE OF THE FOLLOWING APPLY:

21 (I) THE OPERATOR HAS NOT FULLY COMPLETED RECLAMATION OF THE
22 SITE TO THE STANDARDS SET FORTH IN THE APPROVED RECLAMATION PLAN
23 FOR THE SITE;

24 (II) THE OPERATOR, ANY RELATED PARTY OR ANY PERSON WHO IS
25 DIRECTED OR CONTROLLED BY THE OPERATOR OR DIRECTS OR CONTROLS
26 THE OPERATOR BEARS ANY RECLAMATION RESPONSIBILITY UNDER FEDERAL
27 OR STATE LAW FOR AN AREA PROPOSED TO BE RECLAIMED, INCLUDING,
28 BUT NOT LIMITED TO, OBLIGATIONS PURSUANT TO A MINING PERMIT,
29 RECLAMATION PURSUANT TO SECTION 18 OR RECLAMATION PURSUANT TO
30 ANY CONTRACT WITH THE DEPARTMENT, INCLUDING ABANDONED MINE LAND

1 RECLAMATION CONTRACTS; OR

2 (III) ANY OTHER REQUIREMENT OF THIS SECTION HAS NOT BEEN
3 MET.

4 (B) AN OPERATOR MAY APPLY BOND CREDITS WHICH HAVE BEEN
5 ISSUED TO HIM BY THE DEPARTMENT AGAINST ANY RECLAMATION BOND
6 OBLIGATION SELECTED BY THE OPERATOR ON UNMINED OR PREVIOUSLY
7 MINED AREAS, EXCEPT AS SPECIFIED IN THIS SECTION.

8 (C) THE DEPARTMENT MAY APPROVE UTILIZATION OF A BOND CREDIT
9 IN COMBINATION WITH CONVENTIONAL COLLATERAL OR SURETY
10 AGREEMENTS.

11 (D) THE DEPARTMENT MAY REQUIRE, AS A CONDITION OF GRANTING
12 THE BOND CREDIT, THAT THE OPERATOR POST A CONTRACT PERFORMANCE
13 BOND TO INSURE THAT THE OPERATOR COMPLETES THE RECLAMATION
14 PROPOSED TO RESULT IN THE BOND CREDIT. THE PERFORMANCE BOND IS
15 TO BE AT LEAST IN AN AMOUNT NECESSARY TO ENSURE RECLAMATION OF
16 THOSE AREAS PROPOSED TO BE RECLAIMED AND SHALL BE RELEASED BY
17 THE DEPARTMENT UPON COMPLETION OF THE WORK DESCRIBED IN THE
18 APPROVED RECLAMATION PLAN.

19 (E) BOND CREDITS ARE NOT TRANSFERABLE.

20 (F) THE SPECIAL ACCOUNT ESTABLISHED IN THE REMINING
21 FINANCIAL ASSURANCE FUND FOR THE BOND CREDIT PROGRAM SHALL BE
22 THE SOLE SOURCE OF FUNDS UNDERWRITING THE BOND CREDIT PROGRAM,
23 AND THE COMMONWEALTH SHALL NOT BE OBLIGATED TO EXPEND ANY FUNDS
24 BEYOND THE AMOUNT OF THE SPECIAL ACCOUNT.

25 SECTION 9. THE HEADING AND SUBSECTIONS (A), (F) AND (G)(4)
26 AND (5) OF SECTION 18 OF THE ACT, AMENDED OCTOBER 10, 1980
27 (P.L.835, NO.155) AND OCTOBER 12, 1984 (P.L.916, NO.181), ARE
28 AMENDED AND THE SECTION IS AMENDED BY ADDING SUBSECTIONS TO
29 READ:

30 SECTION 18. SURFACE MINING CONSERVATION AND RECLAMATION

1 FUND; [PAYMENTS TO CLEAN WATER FUND] REMINING ENVIRONMENTAL
2 ENHANCEMENT FUND; REMINING FINANCIAL ASSURANCE FUND.--(A) [ALL]
3 EXCEPT AS PROVIDED IN SUBSECTION (A.1), ALL FUNDS RECEIVED BY
4 THE SECRETARY FROM LICENSE FEES, FROM PERMIT FEES, INCLUDING ALL
5 RECLAMATION FEES COLLECTED BY THE DEPARTMENT UNDER THIS ACT
6 PURSUANT TO THE DEPARTMENT'S ALTERNATE BONDING PROGRAM, FROM
7 FORFEITURE OF BONDS, FROM ALL FINES COLLECTED UNDER SECTION 18.5
8 AND ALL CIVIL PENALTIES COLLECTED UNDER SECTION 18.4, AND OF
9 CASH DEPOSITS AND SECURITIES, AND FROM COSTS RECOVERED UNDER THE
10 ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS "THE CLEAN
11 STREAMS LAW," SHALL BE HELD BY THE STATE TREASURER IN A SPECIAL
12 FUND, SEPARATE AND APART FROM ALL OTHER MONEYS IN THE STATE
13 TREASURY, TO BE KNOWN AS THE "SURFACE MINING CONSERVATION AND
14 RECLAMATION FUND," AND SHALL BE USED BY THE SECRETARY FOR [THE
15 PURPOSE OF]:

16 (1) THE REVEGETATION OR RECLAIMING OF LAND AFFECTED BY
17 SURFACE MINING OF ANY COAL [OR METALLIC OR NONMETALLIC
18 MINERALS];

19 (2) FOR RESTORATION OR REPLACEMENT OF WATER SUPPLIES
20 AFFECTED BY SURFACE MINING [OPERATIONS,] ACTIVITIES; OR

21 (3) FOR ANY OTHER CONSERVATION PURPOSES PROVIDED BY THIS
22 ACT, AND FOR SUCH PURPOSES ARE HEREBY SPECIFICALLY APPROPRIATED
23 TO THE DEPARTMENT. [COSTS] EXCEPT AS PROVIDED IN SECTION 18
24 (A.1), COSTS RECOVERED UNDER SECTION [315(E)] 315(B) OF "THE
25 CLEAN STREAMS LAW" FROM A DEEP MINE OPERATOR OR OPERATORS SHALL
26 BE PAID INTO THE CLEAN WATER FUND.

27 (A.1) (1) THERE IS HEREBY CREATED A SPECIAL FUND IN THE
28 STATE TREASURY TO BE KNOWN AS THE REMINING ENVIRONMENTAL
29 ENHANCEMENT FUND. THE SECRETARY OF ENVIRONMENTAL RESOURCES IS
30 AUTHORIZED TO TRANSFER, AT THE COMMENCEMENT OF EACH FISCAL YEAR,

1 A TOTAL OF ONE MILLION DOLLARS (\$1,000,000.00) INTO THE REMINING
2 ENVIRONMENTAL ENHANCEMENT FUND, AGGREGATED FROM THE FOLLOWING
3 SOURCES:

4 (I) LICENSE AND PERMIT FEES, EXCEPT RECLAMATION FEES PAID TO
5 THE DEPARTMENT UNDER THIS ACT PURSUANT TO THE DEPARTMENT'S
6 ALTERNATE BONDING PROGRAM.

7 (II) FINES AND PENALTIES COLLECTED UNDER THIS ACT.

8 (III) FEES, FINES AND PENALTIES COLLECTED PURSUANT TO
9 SECTION 315 OF "THE CLEAN STREAMS LAW," INCLUDING FINES AND
10 PENALTIES FROM MINING OPERATIONS COLLECTED UNDER SECTION 605 OR
11 OTHER PROVISIONS OF THAT ACT.

12 (IV) FEES, FINES AND PENALTIES COLLECTED PURSUANT TO THE ACT
13 OF SEPTEMBER 24, 1968 (P.L.1040, NO.318), KNOWN AS THE "COAL
14 REFUSE DISPOSAL CONTROL ACT."

15 (V) FEES, FINES AND PENALTIES COLLECTED PURSUANT TO THE ACT
16 OF ACT OF APRIL 27, 1966 (1ST SP.SESS., P.L.31, NO.1), KNOWN AS
17 "THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT," NOT
18 INCLUDING FUNDS RECEIVED PURSUANT TO SECTION 6(A) OF THAT ACT.

19 (2) ALL MONEYS PLACED IN THE REMINING RECLAMATION
20 ENHANCEMENT FUND, AND THE INTEREST IT ACCRUES, ARE HEREBY
21 APPROPRIATED, UPON AUTHORIZATION BY THE GOVERNOR, TO THE
22 DEPARTMENT FOR THE COSTS OF OPERATING A REMINING AND RECLAMATION
23 INCENTIVE PROGRAM, INCLUDING DESIGNATING AREAS SUITABLE FOR
24 RECLAMATION BY REMINING, AND ESTABLISHING AND OPERATING A
25 REMINING OPERATOR'S ASSISTANCE PROGRAM, BUT NOT INCLUDING A BOND
26 CREDIT OR PAYMENT IN LIEU OF BOND PROGRAM.

27 (A.2) (1) THERE IS HEREBY CREATED A SPECIAL FUND IN THE
28 STATE TREASURY TO BE KNOWN AS THE REMINING FINANCIAL ASSURANCE
29 FUND. THE GOVERNOR IS AUTHORIZED TO TRANSFER UP TO FIVE MILLION
30 DOLLARS (\$5,000,000.00) FROM THE ALLOTMENT SET FORTH IN SECTION

1 16(A)(91) OF THE ACT OF JANUARY 19, 1968 (1967 P.L.996, NO.443),
2 KNOWN AS "THE LAND AND WATER CONSERVATION AND RECLAMATION ACT,"
3 TO THE REMINING FINANCIAL ASSURANCE FUND FOR THE PURPOSES OF THE
4 REMINING FINANCIAL ASSURANCE FUND. ALL MONEYS PLACED IN THE
5 MINING FINANCIAL ASSURANCE FUND ARE HEREBY APPROPRIATED, UPON
6 AUTHORIZATION BY THE GOVERNOR, TO THE DEPARTMENT FOR THE PURPOSE
7 OF:

8 (I) PROVIDING FINANCIAL ASSURANCE FOR THE RECLAMATION BOND
9 CREDIT PROGRAM SET FORTH IN SECTION 4.13.

10 (II) PROVIDING FINANCIAL ASSURANCE FOR THE PAYMENT IN LIEU
11 OF BOND PROGRAM SET FORTH IN SECTION 4.12. INTEREST WHICH
12 ACCRUES FROM THE REMINING FINANCIAL ASSURANCE FUND SHALL BE
13 TRANSFERRED INTO THE LAND AND WATER DEVELOPMENT SINKING FUND
14 ESTABLISHED IN SECTION 10 OF "THE LAND AND WATER CONSERVATION
15 AND RECLAMATION ACT" AND SHALL BE USED FOR THE PURPOSES
16 ESTABLISHED THEREIN.

17 (2) MINE OPERATORS WHOSE APPLICATIONS FOR FINANCIAL
18 ASSURANCE HAVE BEEN APPROVED BY THE DEPARTMENT TO PARTICIPATE IN
19 THE REMINING FINANCIAL ASSURANCE FUND SHALL NOT BE REQUIRED TO
20 PAY ANY PER-ACRE RECLAMATION FEES ESTABLISHED BY THE DEPARTMENT
21 FOR THE ABANDONED MINE AREA COVERED BY THE PROPOSAL OR PERMIT
22 APPLICATION.

23 (A.3) AN OPERATOR MUST DEMONSTRATE, IN ORDER TO UTILIZE ANY
24 FUNDS FROM, OR PARTICIPATE IN ANY PROGRAMS FUNDED BY THE
25 REMINING ENVIRONMENTAL ENHANCEMENT FUND OR THE REMINING
26 FINANCIAL ASSURANCE FUND, INCLUDING ANY OF THE REMINING
27 INCENTIVE PROGRAMS SPECIFIED IN SECTIONS 4.8, 4.9, 4.10 AND
28 4.11, OR THE REMINING FINANCIAL ASSURANCE PROGRAMS SET FORTH IN
29 SECTION 4.12 OR 4.13, OR REMINING INCENTIVES PROMULGATED IN
30 REGULATIONS PURSUANT TO THOSE SECTIONS, THAT HE MEETS ALL OF THE

FOLLOWING REQUIREMENTS:

(1) THE OPERATOR, ANY RELATED PARTY, OR ANY PERSON WHO OWNS OR CONTROLS THE OPERATOR, OR IS OWNED OR CONTROLLED BY THE OPERATOR, HAS NO LIABILITY FOR RECLAMATION OR POLLUTION AT THE PROPOSED ABANDONED MINE SITE.

(2) THE PROPOSED ACTIVITY IN TECHNOLOGICALLY AND ECONOMICALLY FEASIBLE AT THE PROPOSED ABANDONED MINE SITE AND WILL NOT VIOLATE EFFLUENT LIMITATIONS OR WATER QUALITY STANDARDS.

(3) THE OPERATOR IS A LICENSED MINE OPERATOR WHO IS OTHERWISE ELIGIBLE TO OBTAIN A PERMIT.

(4) WHERE APPLICABLE, THE OPERATOR HAS SUBMITTED A MINING APPLICATION TO THE DEPARTMENT CLEARLY INDICATING WHICH AREAS THE OPERATOR INTENDS TO REMINE AND WHICH AREAS, IF ANY, ARE TO BE MINED FOR THE FIRST TIME.

(5) WHERE APPLICABLE, THE OPERATOR HAS ACCURATELY CALCULATED THE AMOUNT OF BOND THAT WOULD BE NEEDED TO COVER THE TOTAL AREA TO BE REMINED AND THE AMOUNT NEEDED TO COVER THE INITIAL AREA OF REMINING.

(6) THE OPERATOR HAS REQUESTED TO BE CONSIDERED BY THE DEPARTMENT FOR PARTICIPATION IN THE REMINING ENVIRONMENTAL ENHANCEMENT FUND, THE REMINING FINANCIAL ASSURANCE FUND, OR BOTH FUNDS.

(A.4) PRIORITY FOR PARTICIPATION IN THE REMINING ENVIRONMENTAL ENHANCEMENT FUND AND THE REMINING FINANCIAL ASSURANCE FUND SHALL BE GIVEN TO LICENSED MINE OPERATORS PROPOSED REMINING WITHIN AREAS DESIGNATED SUITABLE FOR RECLAMATION BY REMINING.

* * *

(F) WHEN [AN OPERATOR] A LICENSED MINE OPERATOR DESIRES TO

1 RECLAIM PROPERTY ON WHICH THE DEPARTMENT HAS FORFEITED BONDS FOR
2 FAILURE TO COMPLETE THE RECLAMATION PLAN OR IS GRANTED A PERMIT
3 ON PROPERTY CONTIGUOUS TO A PROPERTY ON WHICH THE DEPARTMENT HAS
4 FORFEITED BONDS FOR FAILURE TO COMPLETE THE RECLAMATION PLAN,
5 THE OPERATOR OR PERMITTEE SHALL BE PROVIDED THE OPPORTUNITY TO
6 MAKE A PROPOSAL TO COMPLETE THE RECLAMATION PLAN OF THE
7 FORFEITED BOND AREA. THE PROPOSAL SHALL CONTAIN ESTIMATED COSTS
8 AND THE NECESSARY INFORMATION UPON WHICH THE DEPARTMENT CAN
9 DETERMINE THE COST EFFECTIVENESS OF THE PROPOSAL. UPON RECEIPT
10 OF THE PROPOSAL, THE SECRETARY MAY NEGOTIATE AND ENTER INTO A
11 CONTRACT WITH THE OPERATOR OR PERMITTEE TO COMPLETE THE
12 RECLAMATION PLAN. A DETERMINATION WHETHER TO NEGOTIATE SHALL BE
13 MADE BY THE DEPARTMENT WITHIN THIRTY (30) DAYS OF RECEIPT OF THE
14 PROPOSAL; AND CONTRACT NEGOTIATIONS SHALL BEGIN WITHIN THIRTY
15 (30) DAYS OF THE DETERMINATION TO NEGOTIATE.

16 (G) THERE IS HEREBY CREATED A MINING AND RECLAMATION
17 ADVISORY BOARD TO ASSIST THE SECRETARY TO EXPEND THE FUNDS FOR
18 THE PURPOSES PROVIDED BY THIS ACT AND TO ADVISE THE SECRETARY ON
19 ALL MATTERS PERTAINING TO MINING AND RECLAMATION WHICH SHALL
20 INCLUDE, BUT NOT BE LIMITED TO, EXPERIMENTAL PRACTICES,
21 ALTERNATE METHODS OF BACKFILLING, SELECTION OF RECLAMATION
22 PROJECTS, ALTERNATE RECLAMATION METHODS, OBLIGATIONS FOR
23 PREEXISTING POLLUTION LIABILITY, ALTERATION OF RECLAMATION
24 PLANS, RECLAMATION FEES AND BONDING RATES AND METHODS.

25 * * *

26 (4) [THE BOARD SHALL MEET AT TIMES FIXED BY THE SECRETARY
27 BUT NOT LESS THAN ONCE PER YEAR. THE MINING AND RECLAMATION
28 ADVISORY BOARD SHALL REPLACE THE MINING ADVISORY COMMITTEE AND
29 ANY OTHER COMMITTEE CONSTRUED TO BE ADVISORY FOR MATTERS
30 HEREIN.] ALL ACTIONS OF THE BOARD SHALL BE BY MAJORITY VOTE. THE

1 BOARD SHALL MEET UPON THE CALL OF THE SECRETARY, BUT NOT LESS
2 THAN QUARTERLY, TO CARRY OUT ITS DUTIES UNDER THIS ACT. THE
3 BOARD SHALL SELECT FROM AMONG ITS MEMBERS A CHAIRPERSON AND SUCH
4 OTHER OFFICERS AS IT DEEMS APPROPRIATE.

5 (5) THE BOARD SHALL PREPARE AN ANNUAL REPORT ON ITS
6 ACTIVITIES AND SUBMIT THE REPORT TO THE SENATE ENVIRONMENTAL
7 RESOURCES AND ENERGY COMMITTEE AND THE HOUSE [MINES AND ENERGY
8 MANAGEMENT] CONSERVATION COMMITTEE.

9 * * *

10 SECTION 10. SECTION 18.7 OF THE ACT, ADDED OCTOBER 10, 1980
11 (P.L.835, NO.155), IS AMENDED TO READ:

12 SECTION 18.7. CREATION OF SMALL OPERATORS' ASSISTANCE
13 FUND.--ALL MONEYS RECEIVED BY THE DEPARTMENT UNDER SECTIONS
14 507(C) AND 401(B)(1) OF THE SURFACE MINING CONTROL AND
15 RECLAMATION ACT OF 1977, 30 U.S.C. §§ 1257(C) AND 1232(B)(1),
16 SHALL BE HELD BY THE STATE TREASURER IN A SPECIAL FUND, SEPARATE
17 AND APART FROM ALL OTHER MONEYS IN THE STATE TREASURY, TO BE
18 KNOWN AS THE "SMALL OPERATORS' ASSISTANCE FUND," AND SHALL BE
19 USED BY THE DEPARTMENT FOR THE PURPOSES SET FORTH AND SUBJECT TO
20 THE LIMITATIONS IN SECTION 507(C) OF THE SURFACE MINING CONTROL
21 AND RECLAMATION ACT OF 1977, 30 U.S.C. § 1257(C). THE DEPARTMENT
22 MAY UTILIZE SUCH FUNDS AS AUTHORIZED BY THE UNITED STATES
23 DEPARTMENT OF INTERIOR, OFFICE OF SURFACE MINING RECLAMATION AND
24 ENFORCEMENT PURSUANT TO THE SURFACE MINING CONTROL AND
25 RECLAMATION ACT OF 1977.

26 SECTION 11. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:

27 SECTION 18.9. SEARCH WARRANTS.--AN AGENT OR EMPLOYEE OF THE
28 DEPARTMENT MAY APPLY FOR A SEARCH WARRANT TO ANY COMMONWEALTH
29 OFFICIAL AUTHORIZED TO ISSUE A SEARCH WARRANT FOR THE PURPOSES
30 OF INSPECTING OR EXAMINING ANY PROPERTY, PREMISES, PLACE,

BUILDING, BOOK, RECORD OR OTHER PHYSICAL EVIDENCE, OF CONDUCTING
TESTS, OF TAKING SAMPLES OR OF SEIZING BOOKS, RECORDS AND OTHER
PHYSICAL EVIDENCE. SUCH WARRANT SHALL BE ISSUED UPON PROBABLE
CAUSE. IT SHALL BE SUFFICIENT PROBABLE CAUSE TO SHOW ANY ONE OR
MORE OF THE FOLLOWING:

(1) THAT THE AGENT OR EMPLOYE HAS REASON TO BELIEVE THAT A
VIOLATION OF THIS ACT HAS OCCURRED OR MAY OCCUR.

(2) THAT THE AGENT OR EMPLOYE HAS BEEN REFUSED ACCESS TO THE
PROPERTY, PREMISES, PLACE, BUILDING, BOOK, RECORD OR PHYSICAL
EVIDENCE OR HAS BEEN PREVENTED FROM CONDUCTING TESTS OR TAKING
SAMPLES.

SECTION 18.10. CONSTRUCTION OF ACT.--ANY PROVISIONS TO THE
CONTRARY NOTWITHSTANDING, IT SHALL BE THE INTENT OF THE GENERAL
ASSEMBLY, AND THIS ACT SHALL NOT BE CONSTRUED, TO VIOLATE ANY OF
THE REQUIREMENTS OF THE CLEAN WATER ACT OF 1977 (PUBLIC LAW 95-
217, 33 U.S.C. 1251 ET SEQ.) AND THE SURFACE MINING CONTROL AND
RECLAMATION ACT OF 1977 (PUBLIC LAW 95-87, 30 U.S.C. § 1201, ET
SEQ.).

SECTION 12. (A) THE FOLLOWING ACTS AND PARTS OF ACTS ARE
REPEALED INsofar AS THEY ARE INCONSISTENT WITH THIS ACT:

SECTION 8 OF THE ACT OF JUNE 22, 1937 (P.L.1987, NO.394),
KNOWN AS THE CLEAN STREAMS LAW.

SECTION 17.2 OF THE ACT OF APRIL 27, 1966 (1ST SP.SESS.,
P.L.31, NO.1), KNOWN AS THE BITUMINOUS MINE SUBSIDENCE AND LAND
CONSERVATION ACT.

SECTIONS 10 AND 16(A)(1) OF THE ACT OF JANUARY 19, 1968 (1967
P.L.996, NO.443), KNOWN AS THE LAND AND WATER CONSERVATION AND
RECLAMATION ACT,

SECTION 14 OF THE ACT OF SEPTEMBER 24, 1968 (P.L.1040,
NO.318), KNOWN AS THE COAL REFUSE DISPOSAL CONTROL ACT.

1 (B) ALL OTHER ACTS AND PARTS OF ACTS ARE REPEALED INsofar AS
2 THEY ARE INCONSISTENT WITH THIS ACT.
3 SECTION 13. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.