

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1349 Session of  
1991

INTRODUCED BY DALEY, KOSINSKI, TRICH, TRELLO, ALLEN, BELARDI AND  
BILLOW, MAY 8, 1991

REFERRED TO COMMITTEE ON CONSERVATION, MAY 8, 1991

AN ACT

1 Amending the act of May 31, 1945 (P.L.1198, No.418), entitled,  
2 as amended, "An act providing for the conservation and  
3 improvement of land affected in connection with surface  
4 mining; regulating such mining; providing for the  
5 establishment of an Emergency Bond Fund for anthracite deep  
6 mine operators; and providing penalties," further providing  
7 for mining operations involving prime farmland.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Section 4(a) of the act of May 31, 1945  
11 (P.L.1198, No.418), known as the Surface Mining Conservation and  
12 Reclamation Act, amended October 12, 1984 (P.L.916, No.181) and  
13 December 12, 1986 (P.L.1570, No.171), is amended to read:

14 Section 4. Mining Permit; Reclamation Plan; Bond.--(a)  
15 Before any person shall hereafter proceed to mine minerals by  
16 the surface mining method, he shall apply to the department, on  
17 a form prepared and furnished by the department, for a permit  
18 for each separate operation. The department is authorized to  
19 charge and collect from persons a reasonable filing fee. Such  
20 fee shall not exceed the cost of reviewing, administering and

1 enforcing such permit. As a part of each application for a  
2 permit, the operator shall, unless modified or waived by the  
3 department for cause, furnish the following:

4 (1) Map and Related Information. An accurately surveyed map  
5 or plan, in duplicate, on a scale satisfactory to the  
6 department, but in no event less than 1:25,000, in a manner  
7 satisfactory to the department, showing the location of the  
8 tract or tracts of land to be affected by the operation  
9 contemplated, and such cross-sections at such intervals as the  
10 department may prescribe. Such surveyed map or plan and cross-  
11 sections shall be prepared and certified by a registered  
12 professional engineer, registered professional land surveyor or  
13 professional geologist with assistance from experts in related  
14 fields and shall show the boundaries of the proposed land  
15 affected, together with the drainage area above and below such  
16 area, the location and names of all streams, roads, railroads  
17 and utility lines on or immediately adjacent to the area, the  
18 location of all buildings within one thousand feet of the outer  
19 perimeter of the area affected, the names and addresses of the  
20 owners and present occupants thereof, the purpose for which each  
21 such building is used, the name of the owner of the area and the  
22 names of adjacent landowners, the municipality or township and  
23 county, and if in a township, the nearest municipality. Such map  
24 or plan shall also show the results of test borings which the  
25 operator has conducted or will conduct at the site of the  
26 proposed operation and shall include the nature and depth of the  
27 various strata, the thickness of any coal or mineral seam, a  
28 complete analysis of any coal, the mineral seam, an analysis of  
29 the overburden, the crop line of any coal, or mineral or  
30 minerals to be mined and the location of test boring holes. All

1 papers, records, and documents of the department, and  
2 applications for permits pending before the department, shall be  
3 public records open to inspection during business hours:  
4 Provided, however, That information which pertains only to the  
5 analysis of the chemical and physical properties of the coal  
6 (excepting information regarding such mineral or elemental  
7 content which is potentially toxic in the environment) shall be  
8 kept confidential and not made a matter of public record. Aerial  
9 photographs of the tract or tracts of land to be affected by the  
10 operation shall also be provided if such photographs are  
11 required by the department.

12 (2) Reclamation Plan. A complete and detailed plan for the  
13 reclamation of the land affected. Except as otherwise herein  
14 provided, or unless a variance for cause is specially allowed by  
15 the department as herein provided, each such plan shall include  
16 the following:

17 A. A statement of the uses and productivity of the land  
18 proposed to be affected;

19 B. Where the proposed land use so requires, the manner in  
20 which compaction of the soil and fill will be accomplished;

21 C. A description of the manner in which the operation will  
22 segregate and conserve topsoil and if necessary suitable subsoil  
23 to establish on the areas proposed to be affected a diverse,  
24 effective, and permanent vegetative cover of the same seasonal  
25 variety native to the area of land to be affected and capable of  
26 self-regeneration and plant succession at least equal in extent  
27 of cover to the natural vegetation of the area: Provided,  
28 however, That introduced species may be used in the revegetation  
29 process where desirable and necessary to achieve the approved  
30 post-mining land use plan: And provided further, That when the

1 department issues a written finding approving a long-term,  
2 intensive, agricultural postmining land use as part of the  
3 permit application, the department may grant an exception to the  
4 requirements of this clause.

5 D. A detailed timetable for the accomplishment of each major  
6 step in the reclamation plan, and the operator's estimate of the  
7 cost of each such step and the total cost to him of the  
8 reclamation program;

9 E. Unless the reclamation plan provides for contouring, as  
10 herein defined, it shall contain a full explanation of the  
11 conditions which do not permit contouring and:

12 (i) In the case of anthracite or bituminous coal mining, the  
13 reclamation plan shall provide for contouring except that  
14 terracing shall be permitted if the operator demonstrates and  
15 the department finds in writing, that the area proposed to be  
16 affected had previously been mined prior to current practices  
17 and standards, the area proposed to be affected cannot be  
18 reclaimed by contouring, and re-affecting the area is likely to  
19 produce an environmental benefit. Other alternatives to  
20 contouring or terracing may be proposed to attempt to obtain a  
21 variance in cases where the land is proposed to be made suitable  
22 after mining and reclamation for currently planned or designated  
23 industrial, commercial, agricultural, residential, recreational  
24 or public use. In the discretion of the department, diversion  
25 structures and impoundments may be constructed on the reclaimed  
26 area of the operation if they are part of an approved drainage  
27 control plan and meet all applicable requirements of law. Any  
28 such variance shall be granted by the department in writing only  
29 after such conditions as the department shall prescribe are met,  
30 including but not limited to conditions relating to backfilling,

1 highwall elimination, watershed protection, surface owner's  
2 consent, consultation with appropriate land use planning  
3 agencies, equal or better economic or public use, and  
4 certification of the project by a registered professional  
5 engineer or professional geologist, with assistance from experts  
6 in related fields. Such alternatives shall not be approved if  
7 the proposed alternative or use is not likely to be achieved,  
8 poses an actual or potential threat to public health or safety  
9 or of water diminution, interruption, contamination or  
10 pollution, is inconsistent with applicable land use policies,  
11 plans and programs and Federal, State and local law or involves  
12 unreasonable delay in implementation; or

13 (ii) In the case of surface mining for other than anthracite  
14 or bituminous coal, other alternatives to contouring or  
15 terracing may be proposed, in conjunction with such proposed  
16 land uses as water impoundment, water-oriented real estate  
17 development, recreational area development, industrial site  
18 development or solid waste disposal area development, and unless  
19 such proposed alternatives or uses are not likely to be  
20 achieved, pose an actual or potential threat to public health or  
21 safety or of water diminution, interruption, contamination or  
22 pollution, are inconsistent with applicable land use policies,  
23 plans and programs and Federal, State or local law or involve  
24 unreasonable delay in implementation: Provided, however, That  
25 the variance procedure set out in clause (1) shall not be  
26 applicable to the department's determination to grant or deny a  
27 permit application under this clause.

28 F. Except for permit applications based upon leases in  
29 existence on January 1, 1964 for bituminous coal surface mines,  
30 or leases in existence on January 1, 1972 for anthracite coal

1 surface mining operations and all noncoal surface mining  
2 operations, the application for a permit shall include, upon a  
3 form prepared and furnished by the department, the written  
4 consent of the landowner to entry upon any land to be affected  
5 by the operation by the operator and by the Commonwealth and any  
6 of its authorized agents prior to the initiation of surface  
7 mining operations, during surface mining operations and for a  
8 period of five years after the operation is completed or  
9 abandoned for the purpose of reclamation, planting, and  
10 inspection or for the construction of any pollution abatement  
11 facilities as may be deemed necessary by the department for the  
12 purposes of this act. In the case of leases in existence in  
13 January 1, 1964, for bituminous coal surface mines, or leases in  
14 existence on January 1, 1972 for anthracite coal surface mining  
15 operations and all noncoal surface mining operations, the  
16 application for permit shall include upon a form prescribed and  
17 furnished by the department, a notice of the existence of such  
18 lease and a description of the chain of title:

19 (i) Such forms shall be deemed to be recordable documents,  
20 and prior to the initiation of surface mining operations under  
21 the permit, such forms shall be recorded by the applicant at the  
22 office of the recorder of deeds in the county or counties in  
23 which the area to be affected under the permit is situate.

24 (ii) The forms shall require the information and execution  
25 necessary to provide entry upon land to be affected by the  
26 operation without constraints pertaining to the assignability,  
27 transferability or duration of the consent except as provided  
28 for in this act. Furthermore, this form shall not be construed  
29 to alter or constrain the contractual agreements and rights of  
30 the parties thereto: Provided, however, That, in the case of

1 permit applications for coal refuse disposal areas, coal  
2 preparation facilities which are not situated on a surface  
3 mining permit area and the surface activities of underground  
4 mines, the applicant shall submit a description of the documents  
5 upon which the applicant bases the right to enter upon the  
6 surface land and conduct mining activities. During the mining  
7 activities and for a period of five (5) years after completion  
8 or abandonment of the mining and reclamation activities, the  
9 department shall have access to permitted surface facilities and  
10 lands for the purpose of reclamation, planting and inspection or  
11 for the construction of pollution-abatement facilities deemed  
12 necessary by the department for the purposes of this act. If a  
13 landowner fails or refuses to comply with an order issued under  
14 this section, the landowner shall be liable for reasonable legal  
15 expenses incurred by the department in enforcing the order. For  
16 purposes of this section, "landowner" includes a person holding  
17 title to or having a proprietary interest in either surface or  
18 subsurface rights. Compliance with this section shall satisfy  
19 the requirements of subsection (g) of section 315 of the act of  
20 June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams  
21 Law," and subsection (m) of section 5 of the act of September  
22 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal  
23 Control Act."

24 G. The application shall also set forth the manner in which  
25 the operator plans to divert surface water from draining into  
26 the pit and the manner in which he plans to prevent water from  
27 accumulating in the pit. No approval shall be granted unless the  
28 plan provides for a practicable method of avoiding acid mine  
29 drainage and preventing avoidable siltation or other stream  
30 pollution. Failure to prevent water from draining into or

1 accumulating in the pit, or to prevent stream pollution, during  
2 surface mining or thereafter, shall render the operator liable  
3 to the sanctions and penalties provided in this act and in "The  
4 Clean Streams Law," and shall be cause for revocation of any  
5 approval license or permit issued by the department to the  
6 operator.

7 H. The application shall also set forth the manner in which  
8 the operator plans to comply with the requirements of the act of  
9 January 8, 1960 (1959 P.L.2119, No.787), known as the "Air  
10 Pollution Control Act," the act of June 22, 1937 (P.L.1987,  
11 No.394), known as "The Clean Streams Law," the act of September  
12 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal  
13 Control Act," and where applicable, the act of July 31, 1968  
14 (P.L.788, No.241), known as the "Pennsylvania Solid Waste  
15 Management Act," or the act of July 7, 1980 (P.L.380, No.97),  
16 known as the "Solid Waste Management Act," the act of November  
17 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and  
18 Encroachments Act." No approval shall be granted unless the plan  
19 provides for compliance with the statutes hereinabove  
20 enumerated, and failure to comply with the statutes hereinabove  
21 enumerated during mining or thereafter shall render the operator  
22 liable to the sanctions and penalties provided in this act for  
23 violations of this act and to the sanctions and penalties  
24 provided in the statutes hereinabove enumerated for violations  
25 of such statutes. Such failure to comply shall be cause for  
26 revocation of any approval or permit issued by the department to  
27 the operator: Provided, however, That a violation of the  
28 statutes hereinabove enumerated shall not be deemed a violation  
29 of this act unless this statute's provisions are violated but  
30 shall only be cause for revocation of the operator's permit: And



1 provided further, That nothing in this clause shall be read to  
2 limit the department's authority to regulate activities in a  
3 coordinated manner. Compliance with the provisions of this  
4 clause and with the provisions of this act and the provisions of  
5 the statutes hereinabove enumerated shall not relieve the  
6 operator of the responsibility for complying with the provisions  
7 of all other applicable statutes, including but not limited to  
8 the act of July 17, 1961 (P.L.659, No.339), known as the  
9 "Pennsylvania Bituminous Coal Mine Act," the act of November 10,  
10 1965 (P.L.721, No.346), known as the "Pennsylvania Anthracite  
11 Coal Mine Act," and the act of July 9, 1976 (P.L.931, No.178),  
12 entitled "An act providing for emergency medical personnel;  
13 employment of emergency medical personnel and emergency  
14 communications in coal mines."

15 I. In the case of surface coal mining, the application shall  
16 also include a statement of the land use proposed for the  
17 affected area after mining and reclamation are completed. The  
18 department shall not approve any post-mining land use unless the  
19 application demonstrates that the operation will restore the  
20 land affected to a condition capable of supporting the uses it  
21 was capable of supporting prior to any mining, or to any higher  
22 or better uses. No post-mining land use or uses shall be  
23 approved unless the application demonstrates that the use or  
24 uses are reasonably likely to be achieved, do not present any  
25 actual or potential threat to public health or safety or to fish  
26 and wildlife or of water diminution, interruption, contamination  
27 or pollution, are consistent with applicable land use policies,  
28 plans and programs and Federal, State or local law, and involve  
29 no unreasonable delay in implementation. In the case of noncoal  
30 surface mining, the application shall include such information

1 concerning post-mining land use as may be prescribed by  
2 regulations promulgated hereunder.

3 J. In the case of surface coal mining, for those lands  
4 identified in the permit application which a reconnaissance  
5 inspection suggests may be prime farmlands, a soil survey shall  
6 be made or obtained by the permit applicant according to  
7 standards established by the United States Secretary of  
8 Agriculture in order to confirm the exact location of any such  
9 farmlands. In such case the applicant shall conduct a  
10 preapplication investigation of the proposed permit area to  
11 determine whether lands within the area may be prime farmland.  
12 Land shall not be considered prime farmland when the applicant  
13 can demonstrate one of the following:

14 (i) the land has not been historically used as cropland;  
15 (ii) other factors exist, such as a very rocky surface, or  
16 the land is frequently flooded during the growing season, more  
17 often than once in two years, and the flooding has reduced crop  
18 yields; or

19 (iii) on the basis of a soil survey of lands within the  
20 permit area, there are no soil map units that have been  
21 designated prime farmland by the United States Soil Conservation  
22 Service.

23 If the investigation establishes that the lands are not prime  
24 farmland, the applicant shall submit a statement that no prime  
25 farmland is present. That statement shall identify the basis  
26 upon which such a conclusion was reached. In no case shall the  
27 department grant a permit to affect prime farmland unless after  
28 consultation with the United States Department of Agriculture  
29 the department finds in writing that the operator has the  
30 technological capability to restore such affected area, within a

1 reasonable time, to equivalent or higher levels of yield as  
2 nonaffected prime farmland in the surrounding area under  
3 equivalent levels of management, meets all relevant regulations  
4 of the United States Department of the Interior, and can meet  
5 such soil reconstruction standards as the department may  
6 prescribe by rule and regulation promulgated hereunder. In the  
7 case of noncoal surface mining, the application shall include  
8 such information concerning prime farmlands as may be prescribed  
9 by regulations promulgated hereunder.

10 K. The application shall also demonstrate that the proposed  
11 operation will be conducted so as to maximize the utilization  
12 and conservation of the solid fuel resource being recovered so  
13 that reaffected the land in the future can be minimized:  
14 Provided, however, That such resource utilization and  
15 conservation shall not excuse in any manner the operator from  
16 complying in full with all environmental protection and health  
17 and safety standards.

18 L. Such other or further information as the department may  
19 require.

20 \* \* \*

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