

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2803 Session of
1992

INTRODUCED BY STEELMAN, FARGO, DALEY, S. H. SMITH, HALUSKA,
OLASZ, PETRONE AND KOSINSKI, JUNE 3, 1992

REFERRED TO COMMITTEE ON CONSERVATION, JUNE 3, 1992

AN ACT

1 Amending the act of September 24, 1968 (P.L.1040, No.318),
2 entitled, as amended, "An act providing for the protection of
3 the safety, health and welfare of the people, property and
4 public roads and highways of the Commonwealth from conditions
5 on coal refuse disposal areas, or parts thereof, which fail
6 to comply with the established rules, regulations or quality
7 standards adopted to avoid air or water pollution or to
8 protect water supplies, and from the danger of slipping,
9 sliding or burning of coal refuse disposal areas, or parts
10 thereof, sometimes caused by the storage of coal refuse;
11 prescribing for and regulating the operation of coal refuse
12 disposal areas, and parts thereof; prescribing the powers of
13 the Department of Environmental Resources with respect
14 thereto; providing for the power to enjoin the operation of
15 coal refuse disposal areas, or parts thereof, which contain
16 certain conditions; providing for civil and criminal
17 penalties; authorizing the acquisition by condemnation of
18 certain land areas in certain cases; establishing a permit
19 system, authorizing the adoption of rules and regulations,
20 establishing minimum standards and requiring bonds and for
21 the maintenance of primary jurisdiction over surface coal
22 mining in Pennsylvania," providing for special authorization
23 for conducting coal refuse disposal operations on land
24 previously disturbed by surface mining activities.

25 The General Assembly of the Commonwealth of Pennsylvania
26 hereby enacts as follows:

27 Section 1. The title and section 1 of the act of September
28 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal

1 Control Act, amended October 11, 1980 (P.L.807, No.154), are
2 amended to read:

3 AN ACT

4 Providing for the protection of the safety, health and welfare
5 of the people, property and public roads and highways of the
6 Commonwealth from conditions on coal refuse disposal areas,
7 or parts thereof, which fail to comply with the established
8 rules, regulations or quality standards adopted to avoid air
9 or water pollution or to protect water supplies, and from the
10 danger of slipping, sliding or burning of coal refuse
11 disposal areas, or parts thereof, sometimes caused by the
12 storage of coal refuse; prescribing for and regulating the
13 operation of coal refuse disposal areas, and parts thereof;
14 providing for special authorization for conducting coal
15 refuse disposal operations on land previously disturbed by
16 surface mining activities; prescribing the powers of the
17 Department of Environmental Resources with respect thereto;
18 providing for the power to enjoin the operation of coal
19 refuse disposal areas, or parts thereof, which contain
20 certain conditions; providing for civil and criminal
21 penalties; authorizing the acquisition by condemnation of
22 certain land areas in certain cases; establishing a permit
23 system, authorizing the adoption of rules and regulations,
24 establishing minimum standards and requiring bonds and for
25 the maintenance of primary jurisdiction over surface coal
26 mining in Pennsylvania.

27 Section 1. Findings and Declaration of Policy.--It is hereby
28 determined by the General Assembly of Pennsylvania and declared
29 as a matter of legislative finding that:

30 (1) The accumulation and storage of coal refuse material can

1 cause a condition which fails to comply with the established
2 rules, regulations or quality standards adopted to avoid air or
3 water pollution and can create a danger to persons, property or
4 public roads or highways, either by reason of shifting or
5 sliding, or by exposing persons walking onto the refuse to the
6 danger of being burned.

7 (2) No coal refuse disposal area, or part thereof, should be
8 operated in such manner as to cause a condition which fails to
9 comply with the established rules, regulations or quality
10 standards adopted to avoid air or water pollution or to cause a
11 danger to persons, property or public roads or highways, and
12 such condition and danger must be prevented and eliminated by
13 the control and regulation of coal refuse disposal so as to
14 effectuate the policy declared in this section.

15 (3) The mining of coal is and has been an important and
16 necessary industry, which has provided and will continue to
17 provide for the effective use and development of a valuable
18 natural resource underlying a large part of the Commonwealth of
19 Pennsylvania.

20 (4) Research and development of methods for reuse,
21 backstowing in underground mines, disposal in inactive surface
22 mines, and surface disposal of coal refuse is essential to
23 continue to develop the technology necessary to assure adequate
24 environmental protection and the utilization of active and
25 inactive surface and underground coal mines for coal refuse
26 disposal should be encouraged as an alternative to surface coal
27 refuse disposal because it may conserve the land resources and
28 it can improve the Commonwealth's air and water quality.

29 The General Assembly of Pennsylvania therefore declares it to
30 be the policy of the Commonwealth of Pennsylvania that the

1 prevention and elimination of certain conditions resulting from
2 the operation of coal refuse disposal areas is directly related
3 to the safety, health and welfare of the people of the
4 Commonwealth, making it necessary to control and regulate coal
5 refuse disposal and to encourage the siting of coal refuse
6 disposal operations on land previously disturbed by surface
7 mining activities or coal refuse disposal operations.

8 Section 2. Section 3(1) of the act, amended October 11, 1980
9 (P.L.807, No.154) is amended and the section is amended by
10 adding a clause to read:

11 Section 3. Definitions.--The following words and terms shall
12 have the following meanings unless the context clearly indicates
13 otherwise:

14 (1) "Actual improvement" means the reduction of baseline
15 pollution load resulting from the implementation of an approved
16 abatement plan, including any reduction of the baseline
17 pollution load achieved by water treatment.

18 ~~[(1)]~~ (1.1) "Air pollution" and "water pollution" shall,
19 respectively, have the definitions ascribed to them under
20 applicable laws, as amended, from time to time.

21 * * *

22 Section 3. Section 3.1 of the act is amended by adding a
23 subsection to read:

24 Section 3.1. Powers and Duties of the Department.--The
25 department shall have the power and its duty shall be to:

26 * * *

27 (k) Encourage the reuse of abandoned coal refuse disposal
28 areas.

29 Section 4. The act is amended by adding a section to read:

30 Section 5.1. Land Previously Disturbed by Surface Mining

1 Activities or Coal Refuse Disposal Operations.--(a) Any
2 operator who proposed to repermit an area on which there are
3 preexisting pollution discharges resulting from previous mining
4 or coal refuse disposal activities may request special
5 authorization from the department to proceed to conduct coal
6 refuse disposal activities under this section. Except as
7 specifically modified by this section and the rules and
8 regulations adopted hereunder, the provisions of this act shall
9 apply to special authorizations to conduct coal refuse disposal
10 activities on areas with preexisting pollution discharges.

11 (b) The department may grant special authorization under
12 this section if such special authorization is part of:

13 (1) a permit issued under section 4 of this act, except for
14 permit transfers, after the effective date of this section, if
15 the request is made at the time of submittal of a permit
16 application or prior to a department decision to issue or deny
17 that permit; or

18 (2) a permit revision pursuant to department regulations,
19 but only if the operator affirmatively demonstrates to the
20 satisfaction of the department that:

21 (i) the operator has discovered pollution discharges within
22 the permit area that came into existence after its permit
23 application was approved;

24 (ii) the operator has not caused or contributed to the
25 pollutional discharges;

26 (iii) the proposed pollution abatement area is not
27 hydrologically connected to any area where coal refuse disposal
28 activities have been conducted pursuant to the permit;

29 (iv) the operator has not affected the proposed pollution
30 abatement area by coal refuse disposal activities; and

1 (v) the department has not granted a bonding authorization
2 and mining approval for the area.

3 (c) The department shall not grant special authorization
4 under this section unless the operator making such request
5 affirmatively demonstrates all of the following:

6 (1) Neither the operator, nor any officer, principal
7 shareholder, agent, partner, associate, parent corporation,
8 contractor or subcontractor or any related party:

9 (i) has any legal responsibility or liability as an operator
10 for treating the pollutional discharges from or on the proposed
11 pollution abatement area; or

12 (ii) has any statutory responsibility or liability for
13 reclaiming the proposed pollution abatement area.

14 (2) The proposed pollution abatement plan will result in a
15 significant reduction of the baseline pollution load and
16 represents best technology.

17 (3) The land within the proposed pollution abatement area
18 can be reclaimed.

19 (4) The coal refuse disposal operation on the proposed
20 pollution abatement area will not cause any additional
21 groundwater degradation.

22 (5) The coal refusal disposal operation on permitted areas
23 other than the proposed pollution abatement area will not cause
24 any surface water pollution or groundwater degradation.

25 (6) There are one or more preexisting pollutional discharges
26 from or on the pollution abatement area.

27 (7) All requirements of this act and the regulations
28 promulgated hereunder that are not inconsistent with this
29 section have been met.

30 (d) An authorization may be denied under this section if

granting it will, or is likely to, affect any legal responsibility or liability for abating the pollutional discharges from or near the pollution abatement area.

(e) Except as specifically modified by this section, an operator requesting special authorization under this section shall comply with the permit application requirements of section 5 and the regulations promulgated thereunder and shall also provide such additional information as required by the department relating to:

(1) a delineation of the proposed pollution abatement area, including the location of the preexisting discharges;

(2) a description of the hydrologic balance for the proposed pollution abatement area, including water quality and quantity monitoring data; and

(3) a description of the abatement plan that represents best technology.

(f) An operator granted special authorization under this section shall:

(1) implement the approved water quality and quantity monitoring program for the pollution abatement area as required by the department;

(2) implement the approved abatement plan;

(3) notify the department immediately prior to the completion of each step of the abatement plan; and

(4) provide progress reports to the department within thirty days after the completion of each step of the abatement program in a manner prescribed by the department.

(g) An operator granted special authorization under this section shall be responsible for the treatment of discharges in the following manner:

1 (1) Except for preexisting discharges which are not
2 encountered during the coal refuse disposal operation or in the
3 implementation of the abatement plan, the operator shall comply
4 with all applicable regulations of the department.

5 (2) The operator shall treat preexisting discharges which
6 are not encountered during the coal refuse disposal operation or
7 in the implementation of the abatement plan to meet the baseline
8 pollution load when the baseline pollution load is exceeded:

9 (i) Prior to final bond release, if the operator is in
10 compliance with the pollution abatement plan, where the
11 department demonstrates that the operator has caused the
12 baseline pollution load to be exceeded. The department shall
13 have the burden of proving that the operator caused the baseline
14 pollution load to be exceeded.

15 (ii) Prior to final bond release, if the operator is not in
16 compliance with the pollution abatement plan, unless the
17 operator affirmatively demonstrates that the reason for
18 exceeding the baseline pollution load is a cause other than the
19 operator's coal refusal disposal operation and abatement
20 activities.

21 (iii) Subsequent to final bond release, where the department
22 demonstrates that the operator has caused the baseline pollution
23 load to be exceeded. The department shall have the burden of
24 proving that the operator caused the baseline pollution load to
25 be exceeded.

26 (iv) An allegation that the operator caused the baseline
27 pollution to be exceeded under subclause (i), (ii) or (iii)
28 shall not prohibit the department from issuing, renewing or
29 amending the operator's coal refuse disposal permit or approving
30 a bond release until a final administrative determination has

been made of any such alleged violation.

(3) For purposes of this subsection, the term "encountered" shall not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the abatement plan which would otherwise drain into the affected areas, provided such diversions are designed, operated and maintained in accordance with all applicable regulations of the department.

(h) An operator required to treat preexisting discharges pursuant to subsection (g) will be allowed to discontinue treating such discharges when the operator demonstrates that:

(1) The baseline pollution load is no longer being exceeded as shown by all ground and surface water monitoring.

(2) All requirements of the permit and the special authorization have been or are being met.

(3) The operator has implemented each step of the abatement plan as approved in the authorization.

(4) The operator did not cause or allow any additional groundwater degradation by reaffected the pollution abatement area.

(i) If any condition set forth in subsection (g) occurs after discontinuance of treatment pursuant to subsection (h), the operator shall reinstitute treatment in accordance with subsection (g). An operator who reinstitutes treatment under this subsection shall be allowed to discontinue treatment if the requirements of subsection (h) are met.

(j) For pollution abatement areas subject to a grant of special authorization under this section, the operator shall comply with all requirements relating to bonds set forth in section 6, except that the criteria and schedule for release of

1 bonds shall be as follows:

2 (1) Up to fifty per cent of the amount of bond if the
3 operator demonstrates that:

4 (i) all activities were conducted in accordance with all
5 applicable requirements;

6 (ii) the operator has satisfactorily completed regrading and
7 drainage control in accordance with the approved reclamation
8 plan;

9 (iii) the operator has properly implemented each step of the
10 approved abatement plan;

11 (iv) the operator has not caused the baseline pollution load
12 to be exceeded for a period of a minimum of six months prior to
13 the submittal of a request for bond release and until the bond
14 release is approved as shown by all ground and surface water
15 monitoring; and

16 (v) the operator has not caused or contributed to any ground
17 or surface water pollution by re-affecting the pollution
18 abatement area.

19 (2) Up to an additional thirty-five per cent of the amount
20 of bond if the operator demonstrates that:

21 (i) the operator has placed final cover material, completed
22 final grading, planting and achieved successful revegetation in
23 accordance with the approved reclamation plan;

24 (ii) the operator has not caused or contributed to any
25 ground or surface water pollution by re-affecting the pollution
26 abatement area; and

27 (iii) the operator has achieved the actual improvement of
28 the baseline pollution load described in the abatement plan and
29 shown by all ground and surface water monitoring for the period
30 of time provided in the abatement plan, or has achieved all of

1 the following:

2 (A) at a minimum, has not caused the baseline pollution load
3 to be exceeded as shown by all ground and surface water
4 monitoring for a period of twelve months from the date of the
5 initial bond release pursuant to clause (1) or from the date of
6 discontinuance of treatment pursuant to subsection (h);

7 (B) conducted all measures provided in the abatement plan
8 and any additional measures specified by the department in
9 writing at the time of initial bond release pursuant to clause
10 (1);

11 (C) caused aesthetic or other environmental improvements or
12 the elimination of public health and safety problems by
13 reaffecting the pollution abatement area; and

14 (D) stabilized the pollution abatement area.

15 (3) The remaining amount of bond if the operator
16 demonstrates that:

17 (i) the operator has not caused the baseline pollution load
18 to be exceeded from the time of bond release pursuant to clause
19 (2), or, if treatment has been initiated any time after such
20 release, for a period of five years from the date of
21 discontinuance of treatment pursuant to subsection (h); and

22 (ii) the applicable liability period set forth in section
23 6(a) of this act has expired.

24 (k) For reclamation plans approved as part of a grant of
25 special authorization under this section, the standard of
26 success for revegetation shall be, at a minimum, the
27 establishment of ground cover of living plants not less than can
28 be supported by the best available topsoil or other suitable
29 material in the reaffected area, shall not be less than the
30 ground cover existing before disturbance, and shall be adequate

1 to control erosion: Provided, however, That the department may
2 require that the standard of success comply with section 5(e) of
3 this act where it determines such compliance is integral to the
4 proposed pollution abatement plan.

5 (l) In establishing an appropriate bond amount for any area
6 subject to a grant of special authorization under this section,
7 the department shall apply as a credit to such bond amount any
8 funds paid into the Surface Mining Conservation and Reclamation
9 Fund as a result of a prior forfeiture on such area, which area
10 shall also be exempted from permit reclamation fees prescribed
11 by the regulations promulgated under this act.

12 (m) An operator granted special authorization under this
13 section shall be permanently relieved from the requirements of
14 subsection (g) and the act of June 22, 1937 (P.L.1987, No.394),
15 known as "The Clean Streams Law," for all preexisting
16 discharges, identified in subsection (e), to the extent of the
17 baseline pollution load if the operator complies with the terms
18 and conditions of the pollution abatement plan and the baseline
19 pollution load has not been exceeded at the time of final bond
20 release. Relief of liability under this subsection shall not act
21 or be construed to relieve any person other than the operator
22 granted special authorization from liability for the preexisting
23 discharge; nor shall it be construed to relieve the operator
24 granted special authorization from liability pursuant to
25 subsection (g)(2)(iii) if the baseline pollution load is
26 exceeded.

27 (n) In order to maintain primary jurisdiction over surface
28 coal mining in Pennsylvania, the department shall suspend
29 implementation of any provision of this section found to be
30 inconsistent with Federal law by the Secretary of the United

1 States Department of the Interior pursuant to section 505 of the
2 Surface Mining Control and Reclamation Act of 1977 (Public law
3 95-87, 30 U.S.C. § 1201 et seq.) or the Administrator of the
4 Environmental Protection pursuant to section 402 of the Federal
5 Water Pollution Control Act of 1972 (Public Law 92-500, 33
6 U.S.C. § 1251 et seq.). It shall be the duty of the Attorney
7 General, the General Counsel and the department to defend the
8 legality of this act so as to prevent its suspension or
9 abrogation in the absence of a controlling decision by a court
10 of competent jurisdiction.

11 Section 5. This act shall take effect in 60 days.