

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

**No. 2273** Session of  
2008

INTRODUCED BY R. STEVENSON, BASTIAN, BOYD, CAPPELLI, CAUSER,  
ELLIS, GEIST, GINGRICH, HALUSKA, HARHART, HENNESSEY,  
HUTCHINSON, McILHATTAN, R. MILLER, MILNE, PICKETT, PYLE,  
REICHLEY, ROHRER, SAYLOR, SIPTROTH, S. H. SMITH, SWANGER,  
YOUNGBLOOD AND DENLINGER, FEBRUARY 28, 2008

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
FEBRUARY 28, 2008

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 definitions, for operator's license, withholding or  
8 denying permits or licenses and penalties and for mining  
9 permit, reclamation plan and bond.

10 The General Assembly of the Commonwealth of Pennsylvania  
11 hereby enacts as follows:

12 Section 1. Section 3 of the act of May 31, 1945 (P.L.1198,  
13 No.418), known as the Surface Mining Conservation and  
14 Reclamation Act, is amended by adding a definition to read:

15 Section 3. Definitions.--The following words and phrases,  
16 unless a different meaning is plainly required by the context,  
17 shall have the following meanings:

18 \* \* \*

19 "Lands eligible for remining" shall mean lands that are

1 eligible for expenditures under section 402(g)(4) or 404 of the  
2 Federal Surface Mine Conservation and Reclamation Act (Public  
3 Law 95-87, 30 U.S.C. § 1232(g)(4) or 1234).

4 \* \* \*

5 Section 2. Sections 3.1(d) and 4(d) of the act, amended  
6 December 18, 1992 (P.L.1384, No.173), are amended to read:

7 Section 3.1. Operator's License; Withholding or Denying  
8 Permits or Licenses; Penalty.--\* \* \*

9 (d) The department shall not issue any surface mining permit  
10 or renew or amend any permit if it finds, after investigation  
11 and an opportunity for an informal hearing, that (1) the  
12 applicant has failed and continues to fail to comply with any  
13 provisions of this act or of any of the acts repealed or amended  
14 hereby or (2) the applicant has shown a lack of ability or  
15 intention to comply with any provision of this act or of any of  
16 the acts repealed or amended hereby as indicated by past or  
17 continuing violations. Any person, partnership, association or  
18 corporation which has engaged in unlawful conduct as defined in  
19 section 18.6, which has a partner, associate, officer, parent  
20 corporation, subsidiary corporation, contractor or subcontractor  
21 which has engaged in such unlawful conduct or which controls or  
22 has controlled mining operations with a demonstrated pattern of  
23 wilful violations of any provisions of this act or the Surface  
24 Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30  
25 U.S.C. § 1201 et seq.) shall be denied any permit required by  
26 this act unless the permit application demonstrates that the  
27 unlawful conduct is being corrected to the satisfaction of the  
28 department. Persons other than the applicant, including  
29 independent subcontractors, who are proposed to operate under  
30 the permit shall be listed in the application and those persons

1 shall be subject to approval by the department prior to their  
2 engaging in surface mining operations, and such persons shall be  
3 jointly and severally liable with the permittee for such  
4 violations of this subsection as the permittee is charged and in  
5 which such persons participate. Following the department's  
6 decision whether to approve or deny a renewal, the burden shall  
7 be on the opponents of the department's decision. If the  
8 department intends not to renew a permit, it shall notify the  
9 permittee of that fact at least sixty (60) days prior to final  
10 action on the permit renewal and the permittee shall be provided  
11 an opportunity for an informal hearing prior to final action on  
12 the permit renewal. The department may not deny the issuance or  
13 renewal of a permit application due to any violation resulting  
14 from an unanticipated event or condition at a surface coal  
15 mining operation on lands eligible for remining under a permit  
16 held by the person making such application. For purposes of this  
17 subsection, an "unanticipated event or condition" shall mean an  
18 event: (1) arising after permit issuance; (2) related to prior  
19 mining; and (3) not described in the permit application.

20 \* \* \*

21 Section 4. Mining Permit; Reclamation Plan; Bond.--\* \* \*

22 (d) Prior to commencing surface mining, the permittee shall  
23 file with the department a bond for the land affected by each  
24 operation on a form to be prescribed and furnished by the  
25 department, payable to the Commonwealth and conditioned that the  
26 permittee shall faithfully perform all of the requirements of  
27 this act and of the act of June 22, 1937 (P.L.1987, No.394),  
28 known as "The Clean Streams Law," the act of January 8, 1960  
29 (1959 P.L.2119, No.787), known as the "Air Pollution Control  
30 Act," the act of September 24, 1968 (P.L.1040, No.318), known as

1 the "Coal Refuse Disposal Control Act," and, where applicable,  
2 of the act of July 31, 1968 (P.L.788, No.241), known as the  
3 "Pennsylvania Solid Waste Management Act," the act of July 7,  
4 1980 (P.L.380, No.97), known as the "Solid Waste Management  
5 Act," or the act of November 26, 1978 (P.L.1375, No.325), known  
6 as the "Dam Safety and Encroachments Act": Provided, however,  
7 That an operator posting a bond sufficient to comply with this  
8 section of the act shall not be required to post a separate bond  
9 for the permitted area under each of the acts hereinabove  
10 enumerated: And provided further, That the foregoing proviso  
11 shall not prohibit the department from requiring additional bond  
12 amounts for the permitted area should such an increase be  
13 determined by the department to be necessary to meet the  
14 requirements of this act. The amount of the bond required shall  
15 be in an amount determined by the department based upon the  
16 total estimated cost to the Commonwealth of completing the  
17 approved reclamation plan, or in such other amount and form as  
18 may be established by the department pursuant to regulations for  
19 an alternate coal bonding program which shall achieve the  
20 objectives and purposes of the bonding program. Said estimate  
21 shall be based upon the permittee's statement of his estimated  
22 cost of fulfilling the plan during the course of his operation,  
23 inspection of the application and other documents submitted,  
24 inspection of the land area, and such other criteria as may be  
25 relevant, including, but not limited to, the probable difficulty  
26 of reclamation giving consideration to such factors as  
27 topography, geology of the site, hydrology, the proposed land  
28 use and the additional cost to the Commonwealth which may be  
29 entailed by being required to bring personnel and equipment to  
30 the site after abandonment by the permittee, in excess of the

1 cost to the permittee of performing the necessary work during  
2 the course of his surface mining operations. When the plan  
3 involves the reconstruction or relocation of any public road or  
4 highway, the amount of the bond shall include an amount  
5 sufficient to fully build or restore the road or highway to a  
6 condition approved by the Department of Transportation. No bond  
7 shall be filed for less than ten thousand dollars (\$10,000.00)  
8 for the entire permit area. Liability under such bond shall be  
9 for the duration of the surface mining at each operation, and  
10 for a period of five full years after the last year of augmented  
11 seeding and fertilizing and any other work to complete  
12 reclamation to meet the requirements of law and protect the  
13 environment, unless released in part prior thereto as  
14 hereinafter provided. Provided, That on lands eligible for  
15 remining liability under such bond shall be for the duration of  
16 the surface mining at each operation and, regarding the  
17 responsibility for assuring successful revegetation, for a  
18 period of two full years after the last year of augmented  
19 seeding, fertilizing or other work to assure compliance with  
20 applicable standards. The bond or collateral required herein  
21 must be in an amount and on a form containing such terms and  
22 conditions as approved by the department and may be a surety  
23 bond executed by the operator and a corporate surety licensed to  
24 do business in this Commonwealth and approved by the secretary;  
25 it may be cash; it may be automatically renewable irrevocable  
26 letters of credit which may be terminated by the bank at the end  
27 of the term only upon the bank giving ninety (90) days' prior  
28 written notice to the permittee and the department; it may be  
29 negotiable bonds of the United States Government or the  
30 Commonwealth of Pennsylvania, the Pennsylvania Turnpike

1 Commission, The General State Authority, the State Public School  
2 Building Authority or any municipality within this Commonwealth;  
3 it may be a life insurance policy which is and states on its  
4 face that it is fully paid and noncancelable with a cash  
5 surrender value irrevocably assigned to the department at least  
6 equal to the amount of the required bonds and which shall not be  
7 borrowed against and shall not be utilized for any other purpose  
8 than financial assurance assuring reclamation; it may be an  
9 annuity or trust fund of which the department is the irrevocably  
10 named beneficiary; or it may be other instruments which the  
11 Environmental Quality Board may authorize through regulation.  
12 The stated amount of irrevocable letters of credit and the  
13 market value of negotiable securities shall be equal at least to  
14 the amount of the required bond. Combinations of bonding  
15 instruments may be allowed pursuant to regulations adopted by  
16 the Environmental Quality Board. The secretary shall, upon  
17 receipt of any such deposit of cash, letters of credit or  
18 negotiable bonds immediately place the same with the State  
19 Treasurer, whose duty it shall be to receive and hold the same  
20 in the name of the Commonwealth, in trust, for the purposes for  
21 which such deposit is made. The State Treasurer shall at all  
22 times be responsible for the custody and safekeeping of such  
23 deposits. The permittee making the deposit shall be entitled  
24 from time to time to demand and receive from the State  
25 Treasurer, on the written order of the secretary, the whole or  
26 any portion of any collateral so deposited, upon depositing with  
27 him, in lieu thereof, other collateral of the classes herein  
28 specified having a market value at least equal to the sum of the  
29 bond, and also to demand, receive and recover the interest and  
30 income from said negotiable bonds as the same becomes due and

1 payable: Provided, however, That where negotiable bonds,  
2 deposited as aforesaid, mature or are called, the State  
3 Treasurer, at the request of the permittee, shall convert such  
4 negotiable bonds into such other negotiable bonds of the classes  
5 herein specified as may be designated by the permittee: And,  
6 provided further, That where notice of intent to terminate a  
7 letter of credit is given, the department shall give the  
8 permittee thirty (30) days' written notice to replace the letter  
9 of credit with other acceptable bond guarantees as provided  
10 herein, and if the permittee fails to replace the letter of  
11 credit within the thirty (30) day notification period, the  
12 department shall draw upon and convert such letter of credit  
13 into cash and hold it as a collateral bond guarantee; or the  
14 department, in its discretion, may accept a self-bond from the  
15 permittee, without separate surety, if the permittee  
16 demonstrates to the satisfaction of the department a history of  
17 financial solvency, continuous business operation and continuous  
18 efforts to achieve compliance with all United States of America  
19 and Pennsylvania environmental laws, and, meets all of the  
20 following requirements:

21 (1) The permittee shall be incorporated or authorized to do  
22 business in Pennsylvania and shall designate an agent in  
23 Pennsylvania to receive service of suits, claims, demands or  
24 other legal process.

25 (2) The permittee or if the permittee does not issue  
26 separate audited financial statements, its parent, shall provide  
27 audited financial statements for at least its most recent three

28 (3) fiscal years prepared by a certified public accountant in  
29 accordance with generally accepted accounting principles. Upon  
30 request of the permittee, the department shall maintain the

1 confidentiality of such financial statements if the same are not  
2 otherwise disclosed to other government agencies or the public.

3 (3) During the last thirty-six (36) calendar months, the  
4 applicant has not defaulted in the payment of any dividend or  
5 sinking fund installment or preferred stock or installment on  
6 any indebtedness for borrowed money or payment of rentals under  
7 long-term leases or any reclamation fee payment currently due  
8 under the Federal Surface Mining Control and Reclamation Act of  
9 1977, 30 U.S.C. § 1232, for each ton of coal produced in the  
10 Commonwealth of Pennsylvania.

11 (4) The permittee shall have been in business and operating  
12 no less than ten (10) years prior to filing of application  
13 unless the permittee's existence results from a reorganization,  
14 consolidation or merger involving a company with such longevity.  
15 However, the permittee shall be deemed to have met this  
16 requirement if it is a majority-owned subsidiary of a  
17 corporation which has such a ten (10) year business history.

18 (5) The permittee shall have a net worth of at least six  
19 times the aggregate amount of all bonds applied for by the  
20 operator under this section.

21 (6) The permittee shall give immediate notice to the  
22 department of any significant change in managing control of the  
23 company.

24 (7) A corporate officer of the permittee shall certify to  
25 the department that forfeiture of the aggregate amounts of self-  
26 bonds furnished for all operations hereunder would not  
27 materially affect the permittee's ability to remain in business  
28 or endanger its cash flow to the extent it could not meet its  
29 current obligations.

30 (8) The permittee may be required by the department to

1 pledge real and personal property to guarantee the permittee's  
2 self-bond. The department is authorized to acquire and dispose  
3 of such property in the event of a default to the bond  
4 obligation and may use the moneys in the Surface Mining  
5 Conservation and Reclamation Fund to administer this provision.

6 (9) The permittee may be required to provide third party  
7 guarantees or indemnifications of its self-bond obligations.

8 (10) The permittee shall provide such other information  
9 regarding its financial solvency, continuous business operation  
10 and compliance with environmental laws as the department shall  
11 require.

12 (11) An applicant shall certify to the department its  
13 present intention to maintain its present corporate status for a  
14 period in excess of five (5) years.

15 (12) A permittee shall annually update the certifications  
16 required hereunder and provide audited financial statements for  
17 each fiscal year during which it furnishes self-bonds.

18 (13) The permittee shall pay an annual fee in the amount  
19 determined by the department of the cost to review and verify  
20 the permittee's application for self-bonding and annual  
21 submissions thereafter.

22 \* \* \*

23 Section 3. This act shall take effect in 60 days.