

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1431 Session of
1989

INTRODUCED BY DALEY, COLAIZZO, KASUNIC, SAURMAN, BISHOP AND
ROBINSON, MAY 22, 1989

REFERRED TO COMMITTEE ON CONSERVATION, MAY 22, 1989

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 reaffected 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 (No.97), known as
16 the "Solid Waste Management Act," the act of November 26, 1978
17 (P.L.1375, No.325), known as the "Dam Safety and Encroachments
18 Act." No approval shall be granted unless the plan provides for
19 compliance with the statutes hereinabove enumerated, and failure
20 to comply with the statutes hereinabove enumerated during mining
21 or thereafter shall render the operator liable to the sanctions
22 and penalties provided in this act for violations of this act
23 and to the sanctions and penalties provided in the statutes
24 hereinabove enumerated for violations of such statutes. Such
25 failure to comply shall be cause for revocation of any approval
26 or permit issued by the department to the operator: Provided,
27 however, That a violation of the statutes hereinabove enumerated
28 shall not be deemed a violation of this act unless this
29 statute's provisions are violated but shall only be cause for
30 revocation of the operator's permit: And provided further, That

1 nothing in this clause shall be read to limit the department's
2 authority to regulate activities in a coordinated manner.
3 Compliance with the provisions of this clause and with the
4 provisions of this act and the provisions of the statutes
5 hereinabove enumerated shall not relieve the operator of the
6 responsibility for complying with the provisions of all other
7 applicable statutes, including but not limited to the act of
8 July 17, 1961 (P.L.659, No.339), known as the "Pennsylvania
9 Bituminous Coal Mine Act," the act of November 10, 1965
10 (P.L.721, No.346), known as the "Pennsylvania Anthracite Coal
11 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.