

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13 provisions of this act or of any of the acts repealed or amended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16 the acts repealed or amended hereby as indicated by past or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

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

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

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

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

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

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

* * *

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