

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 1940 Session of  
1995

INTRODUCED BY S. H. SMITH, GEORGE, LYNCH, COLAIZZO, STEELMAN,  
FARGO, LUCYK, SEMMEL, HUTCHINSON, HERMAN, WOZNIAK, JADLOWIEC  
AND DEWEESE, JUNE 29, 1995

SENATOR BRIGHTBILL, ENVIRONMENTAL RESOURCES AND ENERGY, IN  
SENATE, AS AMENDED, DECEMBER 5, 1995

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, FOR BONDS, FOR  
8 HEALTH AND SAFETY AND FOR REMINING OF PREVIOUSLY AFFECTED  
9 AREAS; AUTHORIZING REMOVAL OF COAL REFUSE; AND further  
10 providing for ~~payment in lieu of bond and~~ FINANCIAL <—  
11 GUARANTEES, for reclamation bond credits AND FOR REMINING <—  
12 ENVIRONMENTAL ENHANCEMENT FUND.

13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 ~~Section 1. Sections 4.12 and 4.13 of the act of May 31, 1945 <—~~  
16 ~~(P.L.1198, No.418), known as the Surface Mining Conservation and~~  
17 ~~Reclamation Act, added December 18, 1992 (P.L.1384, No.173), are~~  
18 ~~amended to read:-~~

19 SECTION 1. THE DEFINITIONS OF "GOVERNMENT-FINANCED <—  
20 RECLAMATION CONTRACT" AND "SURFACE MINING ACTIVITIES" IN SECTION  
21 3 OF THE ACT OF MAY 31, 1945 (P.L.1198, NO.418), KNOWN AS THE

1 SURFACE MINING CONSERVATION AND RECLAMATION ACT, AMENDED OR  
2 ADDED DECEMBER 18, 1992 (P.L.1384, NO.173), ARE AMENDED AND THE  
3 SECTION IS AMENDED BY ADDING A DEFINITION TO READ:

4 SECTION 3. DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES,  
5 UNLESS A DIFFERENT MEANING IS PLAINLY REQUIRED BY THE CONTEXT,  
6 SHALL HAVE THE FOLLOWING MEANINGS:

7 \* \* \*

8 "GOVERNMENT-FINANCED RECLAMATION CONTRACT" SHALL MEAN:

9 (1) FOR THE PURPOSES OF SECTION 4.8, A FEDERALLY FUNDED OR  
10 STATE-FUNDED AND -APPROVED ABANDONED MINE RECLAMATION CONTRACT  
11 ENTERED INTO BETWEEN THE DEPARTMENT AND AN ELIGIBLE PERSON OR  
12 ENTITY WHO HAS OBTAINED SPECIAL AUTHORIZATION TO ENGAGE IN  
13 INCIDENTAL AND NECESSARY EXTRACTION OF COAL OR IN REMOVAL OF  
14 COAL REFUSE PURSUANT TO GOVERNMENT-FINANCED RECLAMATION WHICH IS  
15 EITHER:

16 (I) A STATE-FINANCED RECLAMATION CONTRACT LESS THAN OR EQUAL  
17 TO FIFTY THOUSAND DOLLARS (\$50,000) TOTAL PROJECT COSTS, WHERE  
18 UP TO FIVE HUNDRED (500) TONS OF COAL IS EXTRACTED, INCLUDING A  
19 RECLAMATION CONTRACT WHERE LESS THAN FIVE HUNDRED (500) TONS IS  
20 REMOVED AND THE GOVERNMENT'S COST OF FINANCING RECLAMATION WILL  
21 BE ASSUMED BY THE CONTRACTOR UNDER THE TERMS OF A NO-COST  
22 CONTRACT;

23 (II) A STATE-FINANCED RECLAMATION CONTRACT AUTHORIZING THE  
24 REMOVAL OF COAL REFUSE, INCLUDING WHERE RECLAMATION IS PERFORMED  
25 BY THE CONTRACTOR UNDER THE TERMS OF A NO-COST CONTRACT WITH THE  
26 DEPARTMENT, NOT INVOLVING ANY REPROCESSING OF COAL REFUSE ON THE  
27 PROJECT AREA OR RETURN OF ANY COAL REFUSE MATERIAL TO THE  
28 PROJECT AREA;

29 (III) A STATE-FINANCED RECLAMATION CONTRACT GREATER THAN  
30 FIFTY THOUSAND DOLLARS (\$50,000) TOTAL PROJECT COSTS OR A

FEDERALLY FINANCED ABANDONED MINE RECLAMATION PROJECT: PROVIDED,  
THAT THE DEPARTMENT DETERMINES IN WRITING THAT EXTRACTION OF  
COAL IS ESSENTIAL TO PHYSICALLY ACCOMPLISH THE RECLAMATION OF  
THE PROJECT AREA AND IS INCIDENTAL AND NECESSARY TO RECLAMATION;  
OR

(IV) FEDERALLY FINANCED OR STATE-FINANCED EXTRACTION OF COAL  
WHICH THE DEPARTMENT DETERMINES IN WRITING TO BE ESSENTIAL TO  
PHYSICALLY EXTINGUISH AN ABANDONED MINE FIRE THAT POSES A THREAT  
TO THE PUBLIC HEALTH, SAFETY AND WELFARE.

(2) FOR PURPOSES OF DETERMINING WHETHER OR NOT EXTRACTION OF  
COAL IS INCIDENTAL AND NECESSARY UNDER SECTION 4.8, THE  
DEPARTMENT SHALL CONSIDER STANDARD ENGINEERING FACTORS AND SHALL  
NOT IN ANY CASE CONSIDER THE ECONOMIC BENEFIT DERIVING FROM  
[COAL] EXTRACTION OF COAL. NECESSARY EXTRACTION OF COAL SHALL IN  
NO CASE INCLUDE:

(I) THE EXTRACTION OF COAL IN AN AREA ADJACENT TO THE  
PREVIOUSLY AFFECTED AREA WHICH WILL BE RECLAIMED; OR

(II) THE EXTRACTION OF COAL BENEATH THE PREVIOUSLY AFFECTED  
AREA WHICH WILL BE RECLAIMED.

\* \* \*

"NO-COST RECLAMATION CONTRACT" SHALL MEAN A CONTRACT ENTERED  
INTO BETWEEN THE DEPARTMENT AND AN ELIGIBLE PERSON FOR THE  
PURPOSE OF RECLAIMING UNRECLAIMED ABANDONED MINE LANDS AND WHICH  
DOES NOT INVOLVE THE EXPENDITURE OF COMMONWEALTH FUNDS.

\* \* \*

"SURFACE MINING ACTIVITIES" SHALL MEAN THE EXTRACTION OF COAL  
FROM THE EARTH OR FROM WASTE OR STOCK PILES OR FROM PITS OR  
BANKS BY REMOVING THE STRATA OR MATERIAL WHICH OVERLIES OR IS  
ABOVE OR BETWEEN THEM OR OTHERWISE EXPOSING AND RETRIEVING THEM  
FROM THE SURFACE, INCLUDING, BUT NOT LIMITED TO, STRIP, AUGER

1 MINING, DREDGING, QUARRYING AND LEACHING, AND ALL SURFACE  
2 ACTIVITY CONNECTED WITH SURFACE OR UNDERGROUND MINING,  
3 INCLUDING, BUT NOT LIMITED TO, EXPLORATION, SITE PREPARATION,  
4 ENTRY, TUNNEL, DRIFT, SLOPE, SHAFT AND BOREHOLE DRILLING AND  
5 CONSTRUCTION AND ACTIVITIES RELATED THERETO, BUT NOT INCLUDING  
6 THOSE PORTIONS OF MINING OPERATIONS CARRIED OUT BENEATH THE  
7 SURFACE BY MEANS OF SHAFTS, TUNNELS OR OTHER UNDERGROUND MINE  
8 OPENINGS. "SURFACE MINING ACTIVITIES" SHALL NOT INCLUDE ANY OF  
9 THE FOLLOWING:

10 (1) [COAL EXTRACTION] EXTRACTION OF COAL OR COAL REFUSE  
11 REMOVAL PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION CONTRACT  
12 FOR THE PURPOSES OF SECTION 4.8.

13 (2) [COAL EXTRACTION] EXTRACTION OF COAL AS AN INCIDENTAL  
14 PART OF FEDERAL, STATE OR LOCAL GOVERNMENT-FINANCED HIGHWAY  
15 CONSTRUCTION PURSUANT TO REGULATIONS PROMULGATED BY THE  
16 ENVIRONMENTAL QUALITY BOARD.

17 (3) THE RECLAMATION OF ABANDONED MINE LANDS NOT INVOLVING  
18 [COAL EXTRACTION] EXTRACTION OF COAL OR EXCESS SPOIL DISPOSAL  
19 UNDER A WRITTEN AGREEMENT WITH THE PROPERTY OWNER AND APPROVED  
20 BY THE DEPARTMENT.

21 (4) ACTIVITIES NOT CONSIDERED TO BE SURFACE MINING AS  
22 DETERMINED BY THE UNITED STATES OFFICE OF SURFACE MINING,  
23 RECLAMATION AND ENFORCEMENT AND SET FORTH IN DEPARTMENT  
24 REGULATIONS.

25 \* \* \*

26 SECTION 2. SECTION 3.1(A)(2), (B) AND (C) OF THE ACT,  
27 AMENDED OCTOBER 12, 1984 (P.L.916, NO.181) AND DECEMBER 18, 1992  
28 (P.L.1384, NO.173), ARE AMENDED TO READ:

29 SECTION 3.1. OPERATOR'S LICENSE; WITHHOLDING OR DENYING  
30 PERMITS OR LICENSES; PENALTY.--(A) \* \* \*

1       (2) ANY PERSON WHO PROCEEDS TO MINE [MINERALS BY THE SURFACE  
2 MINING METHOD] COAL AS AN OPERATOR WITHOUT HAVING APPLIED FOR  
3 AND RECEIVED A LICENSE AS HEREIN PROVIDED OR IN VIOLATION OF THE  
4 TERMS THEREOF SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON  
5 CONVICTION, SHALL BE SENTENCED TO PAY A FINE OF NOT LESS THAN  
6 FIVE THOUSAND DOLLARS (\$5,000) OR IN AN AMOUNT NOT LESS THAN THE  
7 TOTAL PROFITS DERIVED BY HIM AS A RESULT OF HIS UNLAWFUL  
8 ACTIVITIES, AS DETERMINED BY THE COURT, TOGETHER WITH THE  
9 ESTIMATED COST TO THE COMMONWEALTH OF ANY RECLAMATION WORK WHICH  
10 MAY REASONABLY BE REQUIRED IN ORDER TO RESTORE THE LAND TO ITS  
11 CONDITION PRIOR TO THE COMMENCEMENT OF SAID UNLAWFUL ACTIVITIES,  
12 OR UNDERGO IMPRISONMENT NOT EXCEEDING ONE YEAR, OR BOTH. THE  
13 FINE SHALL BE PAYABLE TO THE SURFACE MINING CONSERVATION AND  
14 RECLAMATION FUND.

15       (B) THE DEPARTMENT SHALL NOT ISSUE [ANY SURFACE MINING  
16 OPERATOR'S LICENSE OR], RENEW OR AMEND [ANY] THE LICENSE OF ANY  
17 PERSON WHO MINES COAL BY THE SURFACE MINING METHOD IF IT FINDS,  
18 AFTER INVESTIGATION, AND AN OPPORTUNITY FOR AN INFORMAL HEARING  
19 THAT A PERSON, PARTNER, ASSOCIATE OFFICER, PARENT CORPORATION OR  
20 SUBSIDIARY CORPORATION HAS FAILED AND CONTINUES TO FAIL TO  
21 COMPLY OR HAS SHOWN A LACK OF ABILITY OR INTENTION TO COMPLY  
22 WITH AN ADJUDICATED PROCEEDING, CESSATION ORDER, CONSENT ORDER  
23 AND AGREEMENT OR DECREE, OR AS INDICATED BY A WRITTEN NOTICE  
24 FROM THE DEPARTMENT OF A DECLARATION OF FORFEITURE OF A PERSON'S  
25 BONDS. IF THE DEPARTMENT INTENDS NOT TO RENEW A LICENSE, IT  
26 SHALL NOTIFY THE LICENSEE OF THAT FACT AT LEAST SIXTY (60) DAYS  
27 PRIOR TO THE EXPIRATION OF THE LICENSE; PRIOR TO THE EXPIRATION,  
28 THE LICENSEE SHALL BE PROVIDED AN OPPORTUNITY FOR AN INFORMAL  
29 HEARING. THIS NOTICE REQUIREMENT SHALL NOT PRECLUDE THE  
30 DEPARTMENT FROM DENYING AN APPLICATION TO RENEW A LICENSE WITHIN

1 THE SIXTY (60) DAY PERIOD SO LONG AS THE DEPARTMENT PROVIDES AN  
2 OPPORTUNITY FOR AN INFORMAL HEARING PRIOR TO NOT RENEWING THE  
3 LICENSE. ANY PERSON WHO OPPOSES THE DEPARTMENT'S DECISION ON  
4 ISSUANCE OR RENEWAL OF A LICENSE SHALL HAVE THE BURDEN OF PROOF.

5 (C) THE APPLICATION FOR LICENSE, RENEWAL OR PERMIT SHALL BE  
6 ACCOMPANIED BY A CERTIFICATE OF INSURANCE CERTIFYING THAT THE  
7 APPLICANT HAS IN FORCE A PUBLIC LIABILITY INSURANCE POLICY  
8 ISSUED BY AN INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN  
9 PENNSYLVANIA COVERING ALL SURFACE MINING [OPERATIONS] ACTIVITIES  
10 OF THE APPLICANT IN THIS STATE AND AFFORDING PERSONAL INJURY AND  
11 PROPERTY DAMAGE PROTECTION, TO BE WRITTEN FOR THE TERM OF THE  
12 LICENSE, RENEWAL OR PERMIT. THE TOTAL AMOUNT OF INSURANCE SHALL  
13 BE IN AN AMOUNT ADEQUATE TO COMPENSATE ANY PERSONS DAMAGED AS A  
14 RESULT OF SURFACE MINING [OPERATIONS] ACTIVITIES, INCLUDING BUT  
15 NOT LIMITED TO USE OF EXPLOSIVES, AND ENTITLED TO COMPENSATION  
16 UNDER THE APPLICABLE PROVISIONS OF STATE LAW. THE TOTAL AMOUNT  
17 SHALL BE AS PRESCRIBED BY RULES AND REGULATIONS: PROVIDED, THAT  
18 THE INSURANCE OR A BOND GUARANTEE SHALL BE REQUIRED AS PART OF A  
19 [SURFACE] MINING PERMIT APPLICATION IF THE DEPARTMENT DETERMINES  
20 IN ITS BEST CONSERVATIVE ESTIMATE THAT THE [MINING OPERATION]  
21 SURFACE MINING ACTIVITIES MAY AFFECT A PUBLIC OR PRIVATE WATER  
22 SUPPLY. HOWEVER, IT IS FURTHER PROVIDED THAT THE OPERATOR  
23 RETAINS THE OPTION TO INCLUDE THE REQUIRED LIABILITY INSURANCE  
24 RELATED TO SECTION 4.2(F) OF THIS ACT, PERTAINING TO REPLACEMENT  
25 OR RESTORATION OF WATER SUPPLIES AS PART OF THE APPLICATION FOR  
26 OR RENEWAL OF A LICENSE.

27 (1) THE DEPARTMENT SHALL ACCEPT A CERTIFICATE OF SELF-  
28 INSURANCE FROM THE APPLICANT, IN LIEU OF A CERTIFICATE FOR A  
29 PUBLIC LIABILITY INSURANCE POLICY, ACCOMPANIED BY SATISFACTORY  
30 EVIDENCE FROM THE APPLICANT THAT IT MEETS ONE OF THE FOLLOWING

1 TWO FINANCIAL REQUIREMENTS FOR SUCH SELF-INSURANCE:

2 (I) THE APPLICANT HAS:

3 (A) A NET WORKING CAPITAL AND TANGIBLE NET WORTH EACH AT  
4 LEAST SIX TIMES THE AMOUNT OF THE LIABILITY COVERAGE TO BE  
5 DEMONSTRATED;

6 (B) TANGIBLE NET WORTH OF AT LEAST TEN MILLION DOLLARS  
7 (\$10,000,000); AND

8 (C) ASSETS IN THE UNITED STATES OF AT LEAST NINETY PER CENT  
9 OF TOTAL ASSETS OR AT LEAST SIX TIMES THE AMOUNT OF LIABILITY  
10 COVERAGE.

11 (II) THE APPLICANT MAINTAINS:

12 (A) A CURRENT BOND RATING EQUAL TO OR BETTER THAN BBB  
13 (STANDARD AND POOR'S) OR BAA (MOODY'S);

14 (B) TANGIBLE NET WORTH OF AT LEAST TEN MILLION DOLLARS  
15 (\$10,000,000);

16 (C) TANGIBLE NET WORTH AT LEAST SIX TIMES THE AMOUNT OF THE  
17 LIABILITY COVERAGE TO BE DEMONSTRATED; AND

18 (D) PRIME ASSETS IN THE UNITED STATES OF AT LEAST NINETY PER  
19 CENT OF TOTAL ASSETS OR SIX TIMES THE LIABILITY COVERAGE TO BE  
20 DEMONSTRATED.

21 (2) FOR PURPOSES OF THIS SUBSECTION, SATISFACTORY EVIDENCE  
22 FROM THE APPLICANT SHALL BE SATISFIED BY SUBMISSION OF A FORM  
23 10-K ANNUAL REPORT, AS SUBMITTED TO THE SECURITIES AND EXCHANGE  
24 COMMISSION OR VALIDATION BY AN INDEPENDENT CERTIFIED PUBLIC  
25 ACCOUNTANT.

26 (3) CLAUSES (1) AND (2) OF THIS SUBSECTION SHALL BE VOID ONE  
27 YEAR AFTER THE EFFECTIVE DATE OF THIS AMENDATORY ACT.

28 \* \* \*

29 SECTION 3. SECTIONS 4(G.1) AND (G.2) AND 4.2(F)(2) OF THE  
30 ACT, AMENDED OR ADDED DECEMBER 18, 1992 (P.L.1384, NO.173), ARE

1 AMENDED TO READ:

2 SECTION 4. MINING PERMIT; RECLAMATION PLAN; BOND.--\* \* \*

3 (G.1) (1) WHERE THE OPERATOR DEMONSTRATES THAT ALL  
4 STANDARDS FOR STAGE II BOND RELEASE HAVE BEEN SATISFIED WITH THE  
5 EXCEPTION OF CONSISTENTLY MEETING THE MINE DRAINAGE EFFLUENT  
6 LIMITATIONS SPECIFIED IN THE PERMIT OR OTHERWISE REQUIRED BY  
7 LAW, THE DEPARTMENT MAY RELEASE THE AMOUNT OF BOND WHICH EXCEEDS  
8 THE COST OF ENSURING TREATMENT TO THE EFFLUENT LIMITATIONS  
9 SPECIFIED IN THE PERMIT, THIS ACT, THE ACT OF JUNE 22, 1937  
10 (P.L.1987, NO.394), KNOWN AS "THE CLEAN STREAMS LAW," THE  
11 FEDERAL WATER POLLUTION CONTROL ACT (62 STAT. 1155, 33 U.S.C. §  
12 1251 ET SEQ.) AND THE RULES AND REGULATIONS PROMULGATED  
13 THEREUNDER, OF ALL THE DISCHARGES EMANATING FROM OR  
14 HYDROLOGICALLY CONNECTED TO THE MINE SITE FOR A PERIOD OF AT  
15 LEAST FIFTY (50) YEARS, AS CALCULATED BY THE DEPARTMENT.

16 (2) THE RELEASE OF ANY BOND PURSUANT TO [SUBSECTION (A)]  
17 CLAUSE (1) OR PURSUANT TO REGULATIONS PROMULGATED BY THE  
18 ENVIRONMENTAL QUALITY BOARD ESTABLISHING A FINAL PROGRAM IN NO  
19 WAY ALLEVIATES THE OPERATOR'S RESPONSIBILITY TO TREAT DISCHARGES  
20 OF MINE DRAINAGE EMANATING FROM OR HYDROLOGICALLY CONNECTED TO  
21 THE SITE TO THE STANDARDS SET FORTH IN THE PERMIT, THIS ACT,  
22 "THE CLEAN STREAMS LAW," THE FEDERAL WATER POLLUTION CONTROL ACT  
23 AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

24 (G.2) (1) UNTIL SUCH TIME AS THE ENVIRONMENTAL QUALITY  
25 BOARD PROMULGATES REGULATIONS CONCERNING RELEASE OF RECLAMATION  
26 BONDS ON MINE SITES WITH MINIMAL-IMPACT POST-MINING DISCHARGES,  
27 THE DEPARTMENT MAY RELEASE RECLAMATION BONDS HELD SOLELY FOR  
28 MINIMAL-IMPACT POST-MINING DISCHARGES PURSUANT TO THIS SECTION,  
29 WHERE AN OPERATOR DEMONSTRATES THAT ALL OF THE FOLLOWING EXIST:

30 (I) ALL THE CRITERIA FOR RECLAMATION BOND RELEASE HAVE BEEN



1 SATISFIED, EXCEPT FOR THE EXISTENCE OF A MINIMAL-IMPACT POST-  
2 MINING DISCHARGE, UNDER THE DEPARTMENT'S REGULATIONS FOR BOND  
3 RELEASE ON SURFACE COAL MINES EXCEPT AS PROVIDED IN CLAUSE  
4 (2)(I).

5 (II) THE DISCHARGE OF MINE DRAINAGE IS A MINIMAL-IMPACT  
6 POST-MINING DISCHARGE, AS DEMONSTRATED BY A SAMPLING PROTOCOL  
7 APPROVED BY THE DEPARTMENT.

8 (III) THE [DISCHARGER] OPERATOR HAS DESIGNED, CONSTRUCTED  
9 AND MAINTAINED A FUNCTIONING PASSIVE TREATMENT SYSTEM APPROVED  
10 BY THE DEPARTMENT WHICH SUBSTANTIALLY IMPROVED WATER QUALITY OF  
11 THE DISCHARGE AFTER IT ENTERS THE PASSIVE TREATMENT SYSTEM TO  
12 THE SATISFACTION OF THE DEPARTMENT. THE DEPARTMENT SHALL TAKE  
13 INTO ACCOUNT THE CUMULATIVE LOADING OF OTHER DISCHARGES IN  
14 ASCERTAINING WHETHER WATER QUALITY STANDARDS ARE BEING ACHIEVED.

15 (IV) THE [DISCHARGER] OPERATOR HAS ESTABLISHED A SITE-  
16 SPECIFIC TRUST FUND FOR EACH MINIMAL-IMPACT POST-MINING  
17 DISCHARGE IN AN AMOUNT CALCULATED BY THE DEPARTMENT AT LEAST  
18 EQUAL TO ANNUAL OPERATION AND MAINTENANCE COSTS OF A PASSIVE  
19 TREATMENT SYSTEM, CAPITAL COSTS FOR REPLACEMENT OF THE PASSIVE  
20 TREATMENT SYSTEM IN TWENTY-FIVE (25) YEARS FROM THE DATE OF ITS  
21 INSTALLATION, AN INFLATION FACTOR AND THE COST OF TREATMENT OF  
22 THE DISCHARGE FOR AT LEAST FIFTY (50) YEARS. THE MINIMUM AMOUNT  
23 OF THE FUND SHALL BE TEN THOUSAND DOLLARS (\$10,000).

24 (2) UPON A DEMONSTRATION BY THE MINE OPERATOR, APPROVED BY  
25 THE DEPARTMENT, THAT THE REQUIREMENTS SET FORTH IN CLAUSE (1)  
26 HAVE BEEN MET, THE DEPARTMENT MAY RELEASE THE RECLAMATION BOND  
27 ACCORDING TO THE FOLLOWING SCHEDULE:

28 (I) UP TO EIGHTY-FIVE PER CENT OF THE RECLAMATION BOND ON A  
29 SITE WITH A MINIMAL-IMPACT POST-MINING DISCHARGE UPON A  
30 DEMONSTRATION BY THE OPERATOR THAT ALL OF THE FOLLOWING HAVE

1 BEEN MET:

2 (A) THE OPERATOR HAS DEMONSTRATED AND THE DEPARTMENT HAS  
3 FOUND THAT ALL RECLAMATION STANDARDS FOR STAGES I AND II, EXCEPT  
4 FOR THE EXISTENCE OF A MINIMAL-IMPACT POST-MINING DISCHARGE,  
5 HAVE BEEN MET BY THE OPERATOR.

6 (B) A TRUST FUND IN AN AMOUNT AND ON A FORM CONTAINING SUCH  
7 TERMS AND CONDITIONS APPROVED BY THE DEPARTMENT HAS BEEN  
8 ESTABLISHED AND FULLY FUNDED AS FINANCIAL ASSURANCE FOR  
9 MAINTENANCE AND REPLACEMENT OF THE APPROVED PASSIVE TREATMENT  
10 SYSTEM.

11 (C) THE OPERATOR HAS DEMONSTRATED TO THE SATISFACTION OF THE  
12 DEPARTMENT THAT THE PASSIVE TREATMENT SYSTEM HAS BEEN PROPERLY  
13 DESIGNED, CONSTRUCTED AND MAINTAINED AND IS FUNCTIONING  
14 PROPERLY.

15 (II) UP TO THE ENTIRE AMOUNT OF RECLAMATION BOND ON A SITE  
16 WITH A MINIMAL-IMPACT POST-MINING DISCHARGE WHERE:

17 (A) THE OPERATOR HAS DEMONSTRATED AND THE DEPARTMENT HAS  
18 FOUND THAT ALL OF THE RECLAMATION STANDARDS FOR STAGES I, II AND  
19 III BOND RELEASE, EXCEPT FOR THE EXISTENCE OF THE MINIMAL-IMPACT  
20 POST-MINING DISCHARGE, HAVE BEEN MET.

21 (B) A TRUST FUND IN AN AMOUNT AND ON A FORM CONTAINING SUCH  
22 TERMS AND CONDITIONS APPROVED BY THE DEPARTMENT HAS BEEN  
23 ESTABLISHED AND FULLY FUNDED AS FINANCIAL ASSURANCE FOR  
24 MAINTENANCE AND REPLACEMENT OF THE APPROVED PASSIVE TREATMENT  
25 SYSTEM.

26 (C) THE OPERATOR HAS DEMONSTRATED TO THE SATISFACTION OF THE  
27 DEPARTMENT THAT THE PASSIVE TREATMENT SYSTEM HAS BEEN PROPERLY  
28 DESIGNED, CONSTRUCTED AND MAINTAINED AND IS FUNCTIONING  
29 PROPERLY.

30 (3) THE DEPARTMENT MAY, IF THE PASSIVE TREATMENT SYSTEM IS

1 NOT CONSTRUCTED, MAINTAINED OR FUNCTIONING PROPERLY, PURSUE ANY  
2 REMEDIES AT LAW OR EQUITY, ORDER THE [DISCHARGER] OPERATOR TO  
3 UPGRADE THE TREATMENT SYSTEM OR TO PROVIDE CONVENTIONAL  
4 TREATMENT AND INCREASE THE AMOUNT OF THE SITE-SPECIFIC TRUST  
5 FUND REQUIRED TO REFLECT THE COST OF ADDITIONAL TREATMENT.

6 (4) THE ENVIRONMENTAL QUALITY BOARD SHALL PROMULGATE FINAL  
7 REGULATIONS ESTABLISHING A PROGRAM FOR RELEASING RECLAMATION  
8 BONDS HELD SOLELY FOR MINIMAL-IMPACT POST-MINING DISCHARGES. IN  
9 PROMULGATING SUCH REGULATIONS, THE BOARD SHALL CONSIDER VARIOUS  
10 FACTORS, INCLUDING, BUT NOT LIMITED TO, THE FACTORS SET FORTH IN  
11 CLAUSE (1).

12 SECTION 4.2. GENERAL RULE MAKING; HEALTH AND SAFETY.--\* \* \*

13 (F) \* \* \*

14 (2) IT SHALL BE PRESUMED, AS A MATTER OF LAW, THAT A SURFACE  
15 MINE OPERATOR OR OWNER IS RESPONSIBLE WITHOUT PROOF OF FAULT,  
16 NEGLIGENCE OR CAUSATION FOR ALL POLLUTION, EXCEPT  
17 BACTERIOLOGICAL CONTAMINATION, OR DIMINUTION OF PUBLIC OR  
18 PRIVATE WATER SUPPLIES WITHIN ONE THOUSAND (1,000) LINEAR FEET  
19 OF THE BOUNDARIES OF THE [LAND AFFECTED OR ACREAGE ASSIGNED TO  
20 THE SURFACE MINING OPERATION UNDER SECTION 4 BY A PERMIT ISSUED  
21 BY THE DEPARTMENT.] AREAS BONDED AND AFFECTED BY COAL MINING  
22 OPERATIONS, AREAS OF OVERBURDEN REMOVAL AND STORAGE AND SUPPORT  
23 AREAS EXCEPT FOR HAUL AND ACCESS ROADS. IF SURFACE MINING  
24 ACTIVITIES ARE CONDUCTED ON AREAS WHICH ARE NOT PERMITTED AND  
25 BONDED, THIS PRESUMPTION APPLIES TO ALL WATER SUPPLIES WITHIN  
26 ONE THOUSAND (1,000) LINEAR FEET OF THE LAND AFFECTED BY SUCH  
27 OPERATIONS. THERE SHALL BE ONLY FIVE DEFENSES TO THE PRESUMPTION  
28 OF LIABILITY PROVIDED IN THIS CLAUSE. A MINE OWNER OR OPERATOR  
29 MUST AFFIRMATIVELY PROVE BY A PREPONDERANCE OF EVIDENCE THAT ONE  
30 OF THE FOLLOWING CONDITIONS EXISTS:

(I) THE LANDOWNER OR WATER SUPPLY COMPANY REFUSED TO ALLOW THE SURFACE MINING OPERATOR OR OWNER ACCESS TO CONDUCT A SURVEY PRIOR TO COMMENCING MINING ACTIVITIES.

(II) THE WATER SUPPLY IS NOT WITHIN ONE THOUSAND (1,000) LINEAR FEET OF THE BOUNDARIES OF THE [LAND AFFECTED OR ACREAGE ASSIGNED TO THE SURFACE MINING OPERATION UNDER SECTION 4 BY A PERMIT ISSUED BY THE DEPARTMENT] AREAS BONDED AND AFFECTED BY COAL MINING OPERATIONS, AREAS OF OVERBURDEN REMOVAL AND STORAGE AND SUPPORT AREAS EXCEPT FOR HAUL AND ACCESS ROADS.

(III) THE POLLUTION OR DIMINUTION EXISTED PRIOR TO THE SURFACE MINING ACTIVITIES AS DETERMINED BY A SURVEY CONDUCTED PRIOR TO COMMENCING SURFACE MINING ACTIVITIES.

(IV) THE POLLUTION OR DIMINUTION OCCURRED AS A RESULT OF SOME CAUSE OTHER THAN THE SURFACE MINING ACTIVITIES.

(V) THE LANDOWNER, WATER SUPPLY USER OR WATER SUPPLY COMPANY REFUSED TO ALLOW THE SURFACE MINING OPERATOR OR OWNER ACCESS TO DETERMINE THE CAUSE OF POLLUTION OR DIMINUTION OR TO REPLACE OR RESTORE THE WATER SUPPLY.

\* \* \*

SECTION 4. SECTION 4.6(I) OF THE ACT, ADDED OCTOBER 4, 1984 (P.L.727, NO.158), IS AMENDED TO READ:

SECTION 4.6. REMINING OF PREVIOUSLY AFFECTED AREAS.--\* \* \*

(I) 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 4, EXCEPT THAT THE CRITERIA AND SCHEDULE FOR RELEASE OF BONDS SHALL BE AS FOLLOWS:

(1) UP TO [FIFTY] SIXTY PER CENT OF THE AMOUNT OF BOND IF THE OPERATOR DEMONSTRATES THAT:

(A) ALL ACTIVITIES WERE CONDUCTED IN ACCORDANCE WITH ALL

1 APPLICABLE REQUIREMENTS;

2 (B) THE OPERATOR HAS SATISFACTORILY COMPLETED BACKFILLING,  
3 REGRADING AND DRAINAGE CONTROL IN ACCORDANCE WITH THE APPROVED  
4 RECLAMATION PLAN;

5 (C) THE OPERATOR HAS PROPERLY IMPLEMENTED EACH STEP OF THE  
6 APPROVED ABATEMENT PLAN;

7 (D) THE OPERATOR HAS NOT CAUSED THE BASELINE POLLUTION LOAD  
8 TO BE EXCEEDED [FOR] AT ANY TIME OVER A PERIOD OF A MINIMUM OF  
9 SIX (6) MONTHS PRIOR TO THE SUBMITTAL OF A REQUEST FOR BOND  
10 RELEASE AND UNTIL THE BOND RELEASE IS APPROVED AS SHOWN BY ALL  
11 GROUND AND SURFACE WATER MONITORING; AND

12 (E) THE OPERATOR HAS NOT CAUSED OR CONTRIBUTED TO ANY GROUND  
13 OR SURFACE WATER POLLUTION BY REAFFECTING OR MINING THE  
14 POLLUTION ABATEMENT AREA.

15 (2) [UP TO AN ADDITIONAL THIRTY-FIVE PER CENT OF THE AMOUNT  
16 OF BOND] AN ADDITIONAL AMOUNT OF BOND BUT RETAINING AN AMOUNT  
17 SUFFICIENT TO COVER THE COST TO THE COMMONWEALTH OF  
18 REESTABLISHING VEGETATION IF COMPLETED BY A THIRD PARTY IF THE  
19 OPERATOR DEMONSTRATES THAT:

20 (A) THE OPERATOR HAS REPLACED TOPSOIL, COMPLETED FINAL  
21 GRADING, PLANTING AND ACHIEVED SUCCESSFUL REVEGETATION IN  
22 ACCORDANCE WITH THE APPROVED RECLAMATION PLAN;

23 (B) THE OPERATOR HAS NOT CAUSED OR CONTRIBUTED TO ANY GROUND  
24 OR SURFACE WATER POLLUTION BY REAFFECTING OR MINING THE  
25 POLLUTION ABATEMENT AREA; AND

26 (C) THE OPERATOR HAS ACHIEVED THE ACTUAL IMPROVEMENT OF THE  
27 BASELINE POLLUTION LOAD DESCRIBED IN THE ABATEMENT PLAN AND  
28 SHOWN BY ALL GROUND AND SURFACE WATER MONITORING FOR THE PERIOD  
29 OF TIME PROVIDED IN THE ABATEMENT PLAN, OR HAS ACHIEVED ALL OF  
30 THE FOLLOWING: (I) AT A MINIMUM, HAS NOT CAUSED THE BASELINE

1 POLLUTION LOAD TO BE EXCEEDED AS SHOWN BY ALL GROUND AND SURFACE  
2 WATER MONITORING FOR A PERIOD OF TWELVE (12) MONTHS [FROM THE  
3 DATE OF INITIAL BOND RELEASE PURSUANT TO CLAUSE (1)] PRIOR TO  
4 THE DATE OF APPLICATION FOR BOND RELEASE AND UNTIL THE BOND  
5 RELEASE IS APPROVED PURSUANT TO CLAUSE (2) OR FROM THE DATE OF  
6 DISCONTINUANCE OF TREATMENT PURSUANT TO SUBSECTION (G); (II)  
7 CONDUCTED ALL MEASURES PROVIDED IN THE ABATEMENT PLAN AND ANY  
8 ADDITIONAL MEASURES SPECIFIED BY THE DEPARTMENT IN WRITING AT  
9 THE TIME OF INITIAL BOND RELEASE PURSUANT TO CLAUSE (1); (III)  
10 CAUSED AESTHETIC OR OTHER ENVIRONMENTAL IMPROVEMENTS OR THE  
11 ELIMINATION OF PUBLIC HEALTH AND SAFETY PROBLEMS BY REMINING AND  
12 REAFFECTING THE POLLUTION ABATEMENT AREA; AND (IV) STABILIZED  
13 THE POLLUTION ABATEMENT AREA.

14 (3) THE REMAINING AMOUNT OF BOND IF THE OPERATOR  
15 DEMONSTRATES THAT:

16 (A) THE OPERATOR HAS NOT CAUSED THE BASELINE POLLUTION LOAD  
17 TO BE EXCEEDED FROM THE TIME OF BOND RELEASE PURSUANT TO CLAUSE  
18 (2) OR, IF TREATMENT HAS BEEN INITIATED ANY TIME AFTER SUCH  
19 RELEASE, FOR A PERIOD OF FIVE (5) YEARS FROM THE DATE OF  
20 DISCONTINUANCE OF TREATMENT PURSUANT TO SUBSECTION (G); AND

21 (B) THE APPLICABLE LIABILITY PERIOD SECTION 4(D) OF THIS ACT  
22 HAS EXPIRED.

23 \* \* \*

24 SECTION 5. SECTIONS 4.8, 4.12, 4.13 AND 18(A.1), (A.2)(1)  
25 AND (A.4) OF THE ACT, ADDED DECEMBER 18, 1992 (P.L.1384,  
26 NO.173), ARE AMENDED TO READ:

27 SECTION 4.8. GOVERNMENT-FINANCED RECLAMATION CONTRACTS  
28 AUTHORIZING INCIDENTAL AND NECESSARY EXTRACTION OF COAL OR  
29 AUTHORIZING REMOVAL OF COAL REFUSE.--(A) NO PERSON MAY ENGAGE  
30 IN [COAL] EXTRACTION OF COAL OR IN REMOVAL OF COAL REFUSE

1 PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION CONTRACT WITHOUT A  
2 VALID SURFACE MINING PERMIT ISSUED PURSUANT TO THIS ACT UNLESS  
3 SUCH PERSON AFFIRMATIVELY DEMONSTRATES THAT HE IS ELIGIBLE TO  
4 SECURE SPECIAL AUTHORIZATION PURSUANT TO THIS SECTION TO ENGAGE  
5 IN A GOVERNMENT-FINANCED RECLAMATION CONTRACT AUTHORIZING  
6 INCIDENTAL AND NECESSARY [COAL] EXTRACTION OF COAL OR  
7 AUTHORIZING REMOVAL OF COAL REFUSE. THE DEPARTMENT SHALL  
8 DETERMINE ELIGIBILITY BEFORE ENTERING INTO A GOVERNMENT-FINANCED  
9 RECLAMATION CONTRACT AUTHORIZING INCIDENTAL AND NECESSARY [COAL]  
10 EXTRACTION OF COAL OR AUTHORIZING REMOVAL OF COAL REFUSE. THE  
11 DEPARTMENT MAY PROVIDE THE SPECIAL AUTHORIZATION AS PART OF THE  
12 GOVERNMENT-FINANCED RECLAMATION CONTRACT: PROVIDED, THAT THE  
13 CONTRACT CONTAINS AND DOES NOT VIOLATE THE REQUIREMENTS OF THIS  
14 SECTION. THE DEPARTMENT SHALL NOT BE REQUIRED TO GRANT A SPECIAL  
15 AUTHORIZATION TO ANY ELIGIBLE PERSON. THE DEPARTMENT MAY,  
16 HOWEVER, IN ITS DISCRETION, GRANT A SPECIAL AUTHORIZATION  
17 ALLOWING INCIDENTAL AND NECESSARY [COAL] EXTRACTION OF COAL OR  
18 ALLOWING REMOVAL OF COAL REFUSE PURSUANT TO A GOVERNMENT-  
19 FINANCED RECLAMATION CONTRACT IN ACCORDANCE WITH THIS SECTION.

20 (B) ONLY ELIGIBLE PERSONS MAY SECURE SPECIAL AUTHORIZATION  
21 TO ENGAGE IN INCIDENTAL AND NECESSARY [COAL] EXTRACTION OF COAL  
22 OR TO ENGAGE IN REMOVAL OF COAL REFUSE PURSUANT TO A GOVERNMENT-  
23 FINANCED RECLAMATION CONTRACT. A PERSON IS ELIGIBLE TO SECURE A  
24 SPECIAL AUTHORIZATION IF HE CAN DEMONSTRATE, AT A MINIMUM, TO  
25 THE DEPARTMENT'S SATISFACTION THAT:

26 (1) THE CONTRACTOR OR ANY RELATED PARTY OR SUBCONTRACTOR  
27 WHICH WILL ACT UNDER ITS DIRECTION HAS NO HISTORY OF PAST OR  
28 CONTINUING VIOLATIONS WHICH SHOW THE CONTRACTOR'S LACK OF  
29 ABILITY OR INTENTION TO COMPLY WITH THE ACTS OR THE RULES AND  
30 REGULATIONS PROMULGATED THEREUNDER, WHETHER OR NOT SUCH

1 VIOLATION RELATES TO ANY ADJUDICATED PROCEEDING, AGREEMENT,  
2 CONSENT ORDER OR DECREE, OR WHICH RESULTED IN A CEASE ORDER OR  
3 CIVIL PENALTY ASSESSMENT. FOR THE PURPOSES OF THIS SECTION, THE  
4 TERM "RELATED PARTY" SHALL MEAN ANY PARTNER, ASSOCIATE, OFFICER,  
5 PARENT CORPORATION, AFFILIATE OR PERSON BY OR UNDER COMMON  
6 CONTROL WITH THE CONTRACTOR.

7 (2) THE PERSON HAS SUBMITTED PROOF THAT ANY VIOLATION  
8 RELATED TO THE MINING OF COAL BY THE CONTRACTOR OR ANY RELATED  
9 PARTY OR SUBCONTRACTOR WHICH WILL ACT UNDER ITS DIRECTION OF ANY  
10 OF THE ACTS, RULES, REGULATIONS, PERMITS OR LICENSES OF THE  
11 DEPARTMENT HAS BEEN CORRECTED OR IS IN THE PROCESS OF BEING  
12 CORRECTED TO THE SATISFACTION OF THE DEPARTMENT, WHETHER OR NOT  
13 THE VIOLATION RELATES TO ANY ADJUDICATED PROCEEDING, AGREEMENT,  
14 CONSENT ORDER OR DECREE OR WHICH RESULTED IN A CEASE ORDER OR  
15 CIVIL PENALTY ASSESSMENT. FOR PURPOSES OF THIS SECTION, THE TERM  
16 "RELATED PARTY" SHALL MEAN ANY PARTNER, ASSOCIATE, OFFICER,  
17 PARENT CORPORATION, SUBSIDIARY CORPORATION, AFFILIATE OR PERSON  
18 BY OR UNDER COMMON CONTROL WITH THE CONTRACTOR.

19 (3) THE PERSON HAS SUBMITTED PROOF THAT ANY VIOLATION BY THE  
20 CONTRACTOR OR BY ANY PERSON OWNED OR CONTROLLED BY THE  
21 CONTRACTOR OR BY A SUBCONTRACTOR WHICH ACTS UNDER ITS DIRECTION  
22 OF ANY LAW, RULE OR REGULATION OF THE UNITED STATES OR ANY STATE  
23 PERTAINING TO AIR OR WATER POLLUTION HAS BEEN CORRECTED OR IS IN  
24 THE PROCESS OF BEING SATISFACTORILY CORRECTED.

25 (4) THE PERSON OR ANY RELATED PARTY OR SUBCONTRACTOR WHICH  
26 WILL ACT UNDER THE DIRECTION OF THE CONTRACTOR HAS NO  
27 OUTSTANDING UNPAID CIVIL PENALTIES WHICH HAVE BEEN ASSESSED FOR  
28 VIOLATIONS OF EITHER THIS ACT OR THE ACT OF JUNE 22, 1937  
29 (P.L.1987, NO.394), KNOWN AS "THE CLEAN STREAMS LAW," IN  
30 CONNECTION WITH EITHER SURFACE MINING OR RECLAMATION ACTIVITIES.



(5) THE PERSON OR ANY RELATED PARTY OR SUBCONTRACTOR WHICH WILL ACT UNDER THE DIRECTION OF THE CONTRACTOR HAS NOT BEEN CONVICTED OF A MISDEMEANOR OR FELONY UNDER THIS ACT OR THE ACTS SET FORTH IN SUBSECTION (E) AND HAS NOT HAD ANY BONDS DECLARED FORFEITED BY THE DEPARTMENT.

(C) ANY ELIGIBLE PERSON WHO PROPOSES TO ENGAGE IN [COAL] EXTRACTION OF COAL OR IN REMOVAL OF COAL REFUSE PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION CONTRACT MAY REQUEST AND SECURE SPECIAL AUTHORIZATION FROM THE DEPARTMENT TO CONDUCT SUCH ACTIVITIES UNDER THIS SECTION. THE DEPARTMENT MAY ISSUE THE SPECIAL AUTHORIZATION AS PART OF THE GOVERNMENT-FINANCED RECLAMATION CONTRACT: PROVIDED, THAT THE CONTRACT CONTAINS AND DOES NOT VIOLATE THE REQUIREMENTS OF THIS SECTION. A SPECIAL AUTHORIZATION CAN ONLY BE OBTAINED IF A CLAUSE IS INSERTED IN A GOVERNMENT-FINANCED RECLAMATION CONTRACT AUTHORIZING SUCH EXTRACTION OF COAL OR AUTHORIZING REMOVAL OF COAL REFUSE AND THE PERSON REQUESTING SUCH AUTHORIZATION HAS AFFIRMATIVELY DEMONSTRATED TO THE DEPARTMENT'S SATISFACTION THAT HE HAS SATISFIED THE PROVISIONS OF THIS SECTION. A SPECIAL AUTHORIZATION SHALL ONLY BE GRANTED BY THE DEPARTMENT PRIOR TO THE COMMENCEMENT OF [COAL] EXTRACTION OF COAL OR COMMENCEMENT OF REMOVAL OF COAL REFUSE ON A PROJECT AREA. IN ORDER TO BE CONSIDERED FOR A SPECIAL AUTHORIZATION BY THE DEPARTMENT, AN ELIGIBLE PERSON MUST DEMONSTRATE AT A MINIMUM THAT:

(1) THE PRIMARY PURPOSE OF THE OPERATION TO BE UNDERTAKEN IS THE RECLAMATION OF ABANDONED MINE LANDS.

(2) THE EXTRACTION OF COAL WILL BE INCIDENTAL AND NECESSARY, OR THE REMOVAL OF COAL REFUSE WILL BE REQUIRED, TO ACCOMPLISH THE RECLAMATION OF ABANDONED MINE LANDS PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION CONTRACT.

(3) INCIDENTAL AND NECESSARY [COAL] EXTRACTION OF COAL OR IN  
REMOVAL OF COAL REFUSE WILL BE CONFINED TO THE PROJECT AREA  
BEING RECLAIMED.

(4) ALL [COAL] EXTRACTION OF COAL OR IN REMOVAL OF COAL  
REFUSE AND RECLAMATION ACTIVITY UNDERTAKEN PURSUANT TO A  
GOVERNMENT-FINANCED RECLAMATION PROJECT WILL BE ACCOMPLISHED  
PURSUANT TO:

(I) THE APPLICABLE ENVIRONMENTAL PROTECTION PERFORMANCE  
STANDARDS PROMULGATED IN THE RULES AND REGULATIONS RELATING TO  
SURFACE COAL MINING LISTED IN THE GOVERNMENT-FINANCED  
RECLAMATION CONTRACT; AND

(II) ADDITIONAL CONDITIONS INCLUDED IN THE GOVERNMENT-  
FINANCED RECLAMATION CONTRACT BY THE DEPARTMENT.

(D) THE CONTRACTOR WILL PAY ANY APPLICABLE PER-TON  
RECLAMATION FEE ESTABLISHED BY THE UNITED STATES OFFICE OF  
SURFACE MINING RECLAMATION AND ENFORCEMENT (OSMRE) FOR EACH TON  
OF COAL EXTRACTED PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION  
PROJECT.

(E) PRIOR TO COMMENCING [COAL] EXTRACTION OF COAL OR  
COMMENCEMENT OF REMOVAL OF COAL REFUSE PURSUANT TO A GOVERNMENT-  
FINANCED RECLAMATION PROJECT, THE CONTRACTOR SHALL FILE WITH THE  
DEPARTMENT A PERFORMANCE BOND PAYABLE TO THE COMMONWEALTH AND  
CONDITIONED UPON THE CONTRACTOR'S PERFORMANCE OF ALL THE  
REQUIREMENTS OF THE GOVERNMENT-FINANCED RECLAMATION CONTRACT,  
THIS ACT, "THE CLEAN STREAMS LAW," THE ACT OF JANUARY 8, 1960  
(1959 P.L.2119, NO.787), KNOWN AS THE "AIR POLLUTION CONTROL  
ACT," THE ACT OF SEPTEMBER 24, 1968 (P.L.1040, NO.318), KNOWN AS  
THE "COAL REFUSE DISPOSAL CONTROL ACT," WHERE APPLICABLE, THE  
ACT OF NOVEMBER 26, 1978 (P.L.1375, NO.325), KNOWN AS THE "DAM  
SAFETY AND ENCROACHMENTS ACT," AND, WHERE APPLICABLE, THE ACT OF

1 JULY 7, 1980 (P.L.380, NO.97), KNOWN AS THE "SOLID WASTE  
2 MANAGEMENT ACT." AN OPERATOR POSTING A BOND SUFFICIENT TO COMPLY  
3 WITH THIS SECTION SHALL NOT BE REQUIRED TO POST A SEPARATE BOND  
4 FOR THE PERMITTED AREA UNDER EACH OF THE ACTS HEREINABOVE  
5 ENUMERATED. FOR GOVERNMENT-FINANCED RECLAMATION CONTRACTS OTHER  
6 THAN A NO-COST RECLAMATION CONTRACT, THE CRITERIA FOR  
7 ESTABLISHING THE AMOUNT OF THE PERFORMANCE BOND SHALL BE THE  
8 ENGINEERING ESTIMATE, DETERMINED BY THE DEPARTMENT, OF MEETING  
9 THE ENVIRONMENTAL OBLIGATIONS ENUMERATED ABOVE[: PROVIDED,  
10 HOWEVER, THAT]. THE PERFORMANCE BOND WHICH IS PROVIDED BY THE  
11 CONTRACTOR UNDER A CONTRACT OTHER THAN A GOVERNMENT-FINANCED  
12 RECLAMATION CONTRACT SHALL BE DEEMED TO SATISFY THE REQUIREMENTS  
13 OF THIS SECTION PROVIDED THAT THE AMOUNT OF THE BOND IS  
14 EQUIVALENT TO OR GREATER THAN THE AMOUNT DETERMINED BY THE  
15 CRITERIA SET FORTH IN THIS SUBSECTION. FOR NO-COST RECLAMATION  
16 PROJECTS IN WHICH THE RECLAMATION SCHEDULE IS SHORTER THAN TWO  
17 (2) YEARS THE BOND AMOUNT SHALL BE A PER ACRE FEE, WHICH IS  
18 EQUAL TO THE DEPARTMENT'S AVERAGE PER ACRE COST TO RECLAIM  
19 ABANDONED MINE LANDS; PROVIDED, HOWEVER, FOR COAL REFUSE REMOVAL  
20 OPERATIONS, THE BOND AMOUNT SHALL ONLY APPLY TO EACH ACRE  
21 AFFECTED BY THE COAL REFUSE REMOVAL OPERATIONS. FOR LONG-TERM,  
22 NO-COST RECLAMATION PROJECTS IN WHICH THE RECLAMATION SCHEDULE  
23 EXTENDS BEYOND TWO (2) YEARS, THE DEPARTMENT MAY ESTABLISH A  
24 LESSER BOND AMOUNT [FOR LONG-TERM, NO-COST RECLAMATION PROJECTS  
25 IN WHICH THE RECLAMATION SCHEDULE EXTENDS BEYOND TWO (2) YEARS].  
26 IN THESE CONTRACTS, THE DEPARTMENT MAY IN THE ALTERNATIVE  
27 ESTABLISH A BOND AMOUNT WHICH REFLECTS THE COST OF THE  
28 PROPORTIONATE AMOUNT OF RECLAMATION WHICH WILL OCCUR DURING A  
29 PERIOD SPECIFIED. [THE PERFORMANCE BOND WHICH IS PROVIDED BY THE  
30 CONTRACTOR UNDER A FEDERALLY FINANCED OR STATE-FINANCED

1 RECLAMATION CONTRACT SHALL BE DEEMED TO SATISFY THE REQUIREMENTS  
2 OF THIS SECTION: PROVIDED, THAT THE AMOUNT OF SUCH BOND IS  
3 EQUIVALENT TO OR GREATER THAN THE AMOUNT DETERMINED BY THE  
4 CRITERIA SET FORTH IN THIS SUBSECTION.]

5 (F) THE DEPARTMENT SHALL INSERT IN GOVERNMENT-FINANCED  
6 RECLAMATION CONTRACTS CONDITIONS WHICH PROHIBIT COAL EXTRACTION  
7 PURSUANT TO GOVERNMENT-FINANCED RECLAMATION IN AREAS SUBJECT TO  
8 THE RESTRICTIONS OF SECTION 4.2 EXCEPT AS SURFACE COAL MINING IS  
9 ALLOWED PURSUANT TO THAT SECTION.

10 (G) ANY PERSON ENGAGING IN [COAL] EXTRACTION OF COAL  
11 PURSUANT TO A NO-COST GOVERNMENT-FINANCED RECLAMATION CONTRACT  
12 AUTHORIZED UNDER THIS SECTION WHO AFFECTS A PUBLIC OR PRIVATE  
13 WATER SUPPLY BY CONTAMINATION OR DIMINUTION SHALL RESTORE OR  
14 REPLACE THE AFFECTED SUPPLY WITH AN ALTERNATE SUPPLY ADEQUATE IN  
15 QUANTITY AND QUALITY FOR THE PURPOSES SERVED.

16 (H) EXTRACTION OF COAL OR REMOVAL OF COAL REFUSE PURSUANT TO  
17 A GOVERNMENT-FINANCED RECLAMATION CONTRACT CANNOT BE INITIATED  
18 WITHOUT THE CONSENT OF THE SURFACE OWNER FOR RIGHT OF ENTRY AND  
19 CONSENT OF THE MINERAL OWNER FOR EXTRACTION OF COAL. NOTHING IN  
20 THIS SECTION SHALL PROHIBIT THE DEPARTMENT'S ENTRY ONTO LAND  
21 WHERE SUCH ENTRY IS NECESSARY IN THE EXERCISE OF POLICE POWERS.

22 Section 4.12. [Payment in Lieu of Bond.--(a) The  
23 Environmental Quality Board shall publish proposed regulations  
24 within one hundred eighty (180) days of the effective date of  
25 this act which shall constitute an interim program allowing  
26 certain mine operators proposing to remine abandoned mine lands  
27 to be eligible to make payments to the department in lieu of the  
28 bond required by this act. The department shall review operator  
29 requests to participate in the program on a case-by-case basis  
30 and shall allow operator participation in the payment-in-lieu-

1 of-bond program only when the payment-in-lieu-of-bond special  
2 account in the Remining Environmental Enhancement Fund is equal  
3 to or exceeds the total reclamation obligation of the  
4 Commonwealth which would be incurred under the payment-in-lieu-  
5 of-bond program if all participants failed to complete their  
6 reclamation obligations.] Financial Guarantees to Insure  
7 Reclamation; Payments to the Remining Financial Assurance  
8 Fund.--(a) The department is authorized under this section to  
9 establish programs to provide financial guarantees TO INSURE <—  
10 RECLAMATION for qualified operators who reclaim abandoned mine  
11 lands through remining and to assess and collect payments from  
12 qualified operators who choose to purchase such financial  
13 guarantees. The financial guarantees are to be supported by a  
14 special account in the Remining Financial Assurance Fund. The  
15 department shall determine the total amount of financial  
16 guarantees that can be supported by the special account based on  
17 loss reserves established by the application of the historical  
18 rate of mine operator bond forfeitures plus a reasonable margin  
19 of safety. The department shall establish underwriting methods  
20 which are in keeping with the intent of this section. In  
21 promulgating proposed and final regulations, the Environmental  
22 Quality Board shall consider various factors, including, but not  
23 limited to, site eligibility, such as environmental hazards,  
24 safety hazards and the availability of coal reserves and  
25 operator eligibility, such as financial tests and criteria for  
26 participation in the program, including an operator's operating  
27 ratio, long-term financial stability, denial of coverage by  
28 surety bond companies, financial ratio, compliance history,  
29 length of time in business and any other factors indicative of  
30 an operator's ability to complete reclamation and payments into

1 the fund under the program. [Payments] REQUIREMENTS FOR MAKING <—  
2 PAYMENTS into the fund shall be [equal to at least fifty dollars <—  
3 (\$50) per acre per year in the interim program and may be  
4 modified by final] ESTABLISHED IN regulations promulgated by the <—  
5 Environmental Quality Board in order to assure the financial  
6 stability of the [payment-in-lieu-of-bond] financial guarantees  
7 program and to provide adequate funds in case of forfeiture but  
8 will require no collateralization.

9 (b) Premium payments will be deposited into the Remining  
10 [Environmental Enhancement] FINANCIAL ASSURANCE Fund and will be <—  
11 reserved in a special account to be used in case of operator  
12 forfeiture. When the special account becomes actuarially sound,  
13 excess payments may be used pursuant to section 18(a.1) and  
14 (a.2).

15 (c) Payments under this subsection shall excuse the operator  
16 from the requirement to post a bond under this act with respect  
17 to the remining permit for which payment is made.

18 (d) The [payment-in-lieu-of-bond] financial guarantees  
19 program may be discontinued immediately and notice published in  
20 the Pennsylvania Bulletin if twenty-five per cent or greater of  
21 the outstanding bond obligation for the [payment-in-lieu-of-  
22 bond] financial guarantees program is subject to forfeiture. The  
23 special account established in the Remining [Environmental <—  
24 Enhancement] FINANCIAL ASSURANCE Fund for the [payment-in-lieu- <—  
25 of-bond] financial guarantees program shall be the sole source  
26 of funds underwriting the [payment-in-lieu-of-bond] financial  
27 guarantees program, and the Commonwealth shall not be obligated  
28 to expend any funds beyond the amount of the special account.

29 Section 4.13. Reclamation Bond Credits.--(a) A bond credit,  
30 financially backed by a special account for that purpose

1 established in section 18(a.2), in the form of a bond letter,  
2 may be issued by the department to a licensed mine operator for  
3 voluntary reclamation of abandoned mine lands as approved by the  
4 department. The department shall in determining whether or not  
5 to issue a bond credit:

6 (1) Where a coal mining activity permit is not required,  
7 require a licensed mine operator to submit a proposal to the  
8 department to reclaim a specific area, together with the  
9 estimated cost of the reclamation based on current bonding  
10 rates.

11 (2) Review the proposal and find in writing that the  
12 operator's estimated cost of reclamation is accurate and that  
13 the proposed location of the project is acceptable to the  
14 department.

15 (3) Not issue any bond credits to an operator if any one or  
16 more of the following apply:

17 (i) the operator has not fully completed reclamation of the  
18 site to the standards set forth in the approved reclamation plan  
19 for the site;

20 (ii) the operator, any related party or any person who is  
21 directed or controlled by the operator or directs or controls  
22 the operator bears any reclamation responsibility under Federal  
23 or State law for an area proposed to be reclaimed, including,  
24 but not limited to, obligations pursuant to a mining permit,  
25 reclamation pursuant to section 18 or reclamation pursuant to  
26 any contract with the department, including abandoned mine land  
27 reclamation contracts; or

28 (iii) any other requirement of this section has not been  
29 met.

30 (b) An operator may apply bond credits which have been

1 issued to him by the department against any reclamation bond  
2 obligation selected by the operator on unmined or previously  
3 mined areas except as specified in this section.

4 (c) The department may approve utilization of a bond credit  
5 in combination with conventional collateral or surety  
6 agreements.

7 (d) The department may require as a condition of granting  
8 the bond credit that the operator post a contract performance  
9 bond to insure that the operator completes the reclamation  
10 proposed to result in the bond credit. The performance bond is  
11 to be at least in an amount necessary to ensure reclamation of  
12 those areas proposed to be reclaimed and shall be released by  
13 the department upon completion of the work described in the  
14 approved reclamation plan.

15 (e) Bond credits are [not] transferable[.] to another  
16 qualified operator approved by the department.

17 (f) The special account established in the Remining  
18 Financial Assurance Fund for the bond credit program shall be  
19 the sole source of funds underwriting the bond credit program,  
20 and the Commonwealth shall not be obligated to expend any funds  
21 beyond the amount of the special account.

22 (g) Bond credits earned by a qualified operator may be used  
23 on a single permit or on multiple permits, whichever the  
24 operator chooses. A bond credit may be used two times; however,  
25 the bond credit cannot be used a second time until the  
26 department releases the bond credit from its first use. Any bond  
27 credit that is not used within five years from the date that it  
28 is earned or released will expire, including bond credits that  
29 have been transferred.

30 SECTION 18. SURFACE MINING CONSERVATION AND RECLAMATION

<—



1 FUND; REMINING ENVIRONMENTAL ENHANCEMENT FUND; REMINING  
2 FINANCIAL ASSURANCE FUND.--\* \* \*

3 (A.1) (1) THERE IS HEREBY CREATED A SPECIAL FUND IN THE  
4 STATE TREASURY TO BE KNOWN AS THE "REMINING ENVIRONMENTAL  
5 ENHANCEMENT FUND." THE SECRETARY OF ENVIRONMENTAL RESOURCES IS  
6 AUTHORIZED TO TRANSFER AT THE COMMENCEMENT OF EACH FISCAL YEAR A  
7 TOTAL OF ONE MILLION DOLLARS (\$1,000,000) INTO THE REMINING  
8 ENVIRONMENTAL ENHANCEMENT FUND AGGREGATED FROM THE FOLLOWING  
9 SOURCES:

10 (I) LICENSE AND PERMIT FEES EXCEPT RECLAMATION FEES PAID TO  
11 THE DEPARTMENT UNDER THIS ACT PURSUANT TO THE DEPARTMENT'S  
12 ALTERNATE BONDING PROGRAM.

13 (II) FINES AND PENALTIES COLLECTED UNDER THIS ACT.

14 (III) FEES, FINES AND PENALTIES COLLECTED PURSUANT TO  
15 SECTION 315 OF "THE CLEAN STREAMS LAW," INCLUDING FINES AND  
16 PENALTIES FROM MINING OPERATIONS COLLECTED UNDER SECTION 605 OR  
17 OTHER PROVISIONS OF THAT ACT.

18 (IV) FEES, FINES AND PENALTIES COLLECTED PURSUANT TO THE ACT  
19 OF SEPTEMBER 24, 1968 (P.L.1040, NO.318), KNOWN AS THE "COAL  
20 REFUSE DISPOSAL CONTROL ACT."

21 (V) FEES, FINES AND PENALTIES COLLECTED PURSUANT TO THE ACT  
22 OF APRIL 27, 1966 (1ST SP.SESS., P.L.31, NO.1), KNOWN AS "THE  
23 BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT," NOT  
24 INCLUDING FUNDS RECEIVED PURSUANT TO SECTION 6(A) OF THAT ACT.

25 (2) ALL MONEYS PLACED IN THE REMINING [RECLAMATION]  
26 ENVIRONMENTAL ENHANCEMENT FUND AND THE INTEREST IT ACCRUES ARE  
27 HEREBY APPROPRIATED UPON AUTHORIZATION BY THE GOVERNOR TO THE  
28 DEPARTMENT FOR THE COSTS OF OPERATING A REMINING AND RECLAMATION  
29 INCENTIVE PROGRAM, INCLUDING DESIGNATING AREAS SUITABLE FOR  
30 RECLAMATION BY REMINING AND ESTABLISHING AND OPERATING A

1 REMINING OPERATOR'S ASSISTANCE PROGRAM, BUT NOT INCLUDING A BOND  
2 CREDIT OR [PAYMENT-IN-LIEU-OF-BOND] FINANCIAL GUARANTEES  
3 PROGRAM.

4 (A.2) (1) THERE IS HEREBY CREATED A SPECIAL FUND IN THE  
5 STATE TREASURY TO BE KNOWN AS THE "REMINING FINANCIAL ASSURANCE  
6 FUND." THE GOVERNOR IS AUTHORIZED TO TRANSFER UP TO FIVE MILLION  
7 DOLLARS (\$5,000,000) FROM THE ALLOTMENT SET FORTH IN SECTION  
8 16(A)(1) OF THE ACT OF JANUARY 19, 1968 (1967 P.L.996, NO.443),  
9 KNOWN AS "THE LAND AND WATER CONSERVATION AND RECLAMATION ACT,"  
10 TO THE REMINING FINANCIAL ASSURANCE FUND FOR THE PURPOSES OF THE  
11 REMINING FINANCIAL ASSURANCE FUND. ALL MONEYS PLACED IN THE  
12 REMINING FINANCIAL ASSURANCE FUND ARE HEREBY APPROPRIATED UPON  
13 AUTHORIZATION BY THE GOVERNOR TO THE DEPARTMENT FOR THE PURPOSE  
14 OF:

15 (I) PROVIDING FINANCIAL ASSURANCE FOR THE RECLAMATION BOND  
16 CREDIT PROGRAM SET FORTH IN SECTION 4.13.

17 (II) PROVIDING FINANCIAL ASSURANCE FOR THE [PAYMENT-IN-LIEU-  
18 OF-BOND] FINANCIAL GUARANTEES PROGRAM SET FORTH IN SECTION 4.12.  
19 INTEREST WHICH ACCRUES FROM THE REMINING FINANCIAL ASSURANCE  
20 FUND SHALL BE TRANSFERRED INTO THE LAND AND WATER DEVELOPMENT  
21 SINKING FUND ESTABLISHED IN SECTION 10 OF "THE LAND AND WATER  
22 CONSERVATION AND RECLAMATION ACT" AND SHALL BE USED FOR THE  
23 PURPOSES ESTABLISHED THEREIN.

24 \* \* \*

25 (A.4) PRIORITY FOR PARTICIPATION IN THE REMINING  
26 ENVIRONMENTAL ENHANCEMENT FUND AND THE REMINING FINANCIAL  
27 ASSURANCE FUND SHALL BE GIVEN TO LICENSED MINE OPERATORS  
28 [PROPOSED] PROPOSING REMINING WITHIN AREAS DESIGNATED SUITABLE  
29 FOR RECLAMATION BY REMINING.

30 \* \* \*

1       Section ~~2~~ 6.   This act shall take effect in 60 days.

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