

NONCOAL SURFACE MINING CONSERVATION AND RECLAMATION ACT

Act of Dec. 19, 1984, P.L. 1093, No. 219

Cl. 52

AN ACT

Relating to noncoal surface mining conservation and reclamation.

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

Section 1. Short title.

This act shall be known and may be cited as the Noncoal Surface Mining Conservation and Reclamation Act.

Section 2. Purpose of act.

This act shall be deemed to be an exercise of the police powers of the Commonwealth for the general welfare of the people of this Commonwealth, to provide for the conservation and improvement of areas of land affected in the surface mining of noncoal minerals, to aid in the protection of birds and wildlife, to enhance the value of the land for taxation, to decrease soil erosion, to aid in the prevention of the pollution of rivers and streams, to protect and maintain water supply, to protect land, to enhance land use management and planning, to prevent and eliminate hazards to health and safety and generally to improve the use and enjoyment of the lands.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Active operation." An operation where a minimum of 500 tons of minerals for commercial purposes have been removed in the preceding calendar year.

"Approximate original contour." Contouring as defined in this act.

"Cash." Includes, when used in regard to bond requirements, negotiable certificates of deposit.

"Conservation district." Any county in the Commonwealth whose county governing body has, by resolution, declared the county to be a conservation district under the act of May 15, 1945 (P.L.547, No.217), known as the Soil Conservation Law.

"Contouring." Reclamation of the land affected to approximate original contour so that it closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with no highwall, spoil piles or depressions to accumulate water and with adequate provisions for drainage.

"Degree." The inclination from the horizontal.

"Department." The Department of Environmental Resources.

"Fund." The Noncoal Surface Mining Conservation and Reclamation Fund.

"Land." The surface of the land upon which surface mining is conducted.

"Landowner." The person or municipality in whom legal title to the land is vested.

"Minerals." Any aggregate or mass of mineral matter, whether or not coherent, that is extracted by surface mining. The term includes, but is not limited to, limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite and clay; but it does not include anthracite or bituminous coal or coal refuse, except as provided in section 4, or peat.

"Municipality." Any county, city, borough, incorporated town, township, school district, institution or any authority created by any one or more of the foregoing.

"Operation." The pit located upon a single tract of land or a continuous pit embracing or extending upon two or more contiguous tracts of land.

"Operator." A person or municipality engaged in surface mining as a principal, as distinguished from an agent or independent contractor. Where more than one person is engaged in surface mining activities in a single operation, they shall be deemed jointly and severally responsible for compliance with the provisions of this act.

"Overburden." The strata or material overlying a mineral deposit or in between mineral deposits in its natural state before or after its removal by surface mining.

"Person." Any natural person, partnership, association, corporation or municipality or any agency, instrumentality or entity of Federal or State Government.

"Pit." The place where any minerals are being mined by surface mining.

"Secretary." The Secretary of Environmental Resources.

"Spoil pile." The overburden and reject minerals as piled or deposited in surface mining.

"Surface mining." The extraction of minerals from the earth, from waste or stockpiles or from pits or from banks by removing the strata or material that overlies or is above or between them or otherwise exposing and retrieving them from the surface,

including, but not limited to, strip mining, auger mining, dredging, quarrying and leaching and all surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction and activities related thereto; but it does not include those mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings. The term does not include any of the following:

(1) The extraction of minerals by a landowner for his own noncommercial use from land owned or leased by him.

(2) The extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes of the Pennsylvania Department of Transportation or the extraction of minerals pursuant to construction contracts with the department if the work is performed under a bond, contract and specifications that substantially provide for and require reclamation of the area affected in the manner provided by this act.

(3) The handling, processing or storage of slag on the premises of a manufacturer as a part of the manufacturing process.

(4) Those dredging operations that are carried out in the rivers and streams of the Commonwealth and in Lake Erie.

(5) The extraction, handling, processing or storing of minerals from any building construction excavation on the site of the construction where the minerals removed are incidental to the building construction excavation, regardless of the commercial value of the minerals. ((5) added July 11, 1985, P.L.236, No.59)

"Terracing." Grading where the steepest contour of the highwall is not greater than 35 degrees from the horizontal, with the table portion of the restored area a flat terrace without depressions to hold water and with adequate provision for drainage, unless otherwise approved by the department.

"Tract." A single parcel of land or two or more contiguous parcels of land with common ownership or control.

Compiler's Note: The Department of Environmental Resources, referred to in the def. of "department," was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Compiler's Note: The Secretary of Environmental Resources, referred to in the def. of "secretary," was abolished by Act 18 of 1995. The functions of the secretary were transferred to the Secretary of Conservation and Natural Resources and the Secretary of Environmental Protection.

Section 4. Relationship to coal mining.

(a) General rule.--Except as provided in subsection (b), all surface mining operations where the extraction of coal is incidental to the extraction of minerals and where the coal extracted does not exceed 16 2/3% of the tonnage of materials removed for purposes of commercial use or sale shall be subject to this act and shall not be subject to the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act. For purposes of this section, coal extraction shall be incidental when the coal is geologically located above the mineral to be mined and is extracted in order to mine that mineral.

(b) Certain provisions of Surface Mining Conservation and Reclamation Act applicable.--All surface mining operations where

the extraction of coal is incidental to the extraction of minerals and where the coal extracted does not exceed 16 2/3% of the tonnage of materials removed for purposes of commercial use or sale shall be subject to section 4.5(a) to (g), inclusive, of the Surface Mining Conservation and Reclamation Act.

Section 4.1. Relationship to solid waste.

The excavation, processing, handling and short-term storage of slag pursuant to a permit under this act shall not be subject to the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, if the slag is residual waste as defined by that act, and regulations promulgated pursuant thereto, and if the slag to be excavated, processed, handled or stored on a short-term basis does not contain solid waste other than slag.

(4.1 added July 11, 1985, P.L.236, No.59)

Section 5. Operator's license.

(a) General rule.--No person shall conduct a surface mining operation unless the person has first applied for and obtained a license from the department. The department may require the information in the license application as it deems necessary to carry out the purposes of this act. The application for renewal of a license shall be made annually at least 60 days before the current license expires. The term of the license shall be specified in the license and shall not exceed one year.

(b) Fees.--The initial application for a license shall be accompanied by a fee of \$50 in the case of persons mining 2,000 tons or less of marketable minerals per year and a fee of \$500 in the case of persons mining more than 2,000 tons of marketable minerals per year. All persons having a surface mining operator's license shall renew the license annually and shall pay for each license renewal a fee of \$50 in the case of persons mining 2,000 tons or less of marketable minerals per year and a fee of \$300 in the case of all other persons.

(c) Nonissuance, nonrenewal or amendment.--The department shall not issue any surface mining operator's license or renew or amend any license if it finds, after investigation and an opportunity for informal hearing, that a person, partner, associate, officer, parent corporation or subsidiary corporation has been subject to a bond forfeiture under this act or any of the statutes enumerated in section 7(c)(9) or has failed to comply with an adjudicated proceeding, order, consent order and agreement or decree under this act or any of the statutes enumerated in section 7(c)(9). In addition, the department shall not renew any license for any operator who uses the provisions of section 9(g), unless the operator submits his annual payment under section 9(g) with his license renewal application.

(d) Notification of intent not to renew.--If the department intends not to renew a license, it shall notify the licensee of that fact at least 60 days prior to the expiration of the license. Prior to the expiration, the licensee shall be provided an opportunity for an informal hearing. Any person who opposes the department's decision on issuance or renewal of a license shall have the burden of proof.

(e) Insurance.--The application for license or renewal for operators who extracted more than 2,000 tons of marketable minerals in the previous year or who plan to extract more than 2,000 tons of marketable minerals in the current year shall be accompanied by a certificate of insurance. The certificate shall certify that the applicant has in force a public liability insurance policy, issued by an insurance company authorized to do business in this Commonwealth, covering all surface mining operations of the applicant in this Commonwealth and affording

personal injury and property damage protection, to be written for the term of the license or renewal. The total amount of insurance shall be in an amount adequate to compensate any persons damaged as a result of surface mining operations, including, but not limited to, use of explosives, and entitled to compensation under the applicable provisions of State law. The total amount shall be prescribed by regulation. The operator shall provide liability insurance or bond guarantees for replacement or restoration of water supplies as required under section 11(g) with the license application under this section or as part of each surface mining permit application under section 7 where the department determines that the operation may contaminate, diminish or interrupt one or more water supplies.

(f) Opportunity for hearing before revocation or suspension.--If the department intends to revoke or suspend a license, it shall provide an opportunity for an informal hearing before suspending or revoking the license. Fifteen days notice of the informal hearing shall be given unless the department determines that a shorter period is in the public interest.

Section 6. Specifications for construction projects.

It shall be the duty of the architects, engineers or other persons preparing specifications for construction projects, which specifications include the requirement that the construction contractor supply fill for the project, to include, within the specifications, a specific reference to this act and the regulations pertaining to this act adopted by the department. If such a reference is omitted from the specifications and reclamation and planting of the land from which the fill was removed by the construction contractor is required under this act, any contract based on the specifications may be amended, at the option of the construction contractor, to allow a reasonable price for the reclamation and planting of the land affected in accordance with a plan acceptable to the secretary.

Section 7. Mining permit; reclamation plan.

(a) Permit required.--Except as provided in section 24, no person shall operate a surface mine or allow a discharge from a surface mine unless the person has first obtained a permit from the department in accordance with this act and unless the person is operating in accordance with the conditions provided in the permit as well as the applicable statutes and regulations. The department may impose such permit conditions as are necessary to carry out the purposes of this act. The department is authorized to charge and collect from persons a reasonable filing fee, which shall not exceed the cost of reviewing, administering and enforcing the permit.

(b) Map or plan required.--As a part of each application for a permit, the operator shall furnish an accurately surveyed map or plan, in quadruplicate, on a scale satisfactory to the department, but in no event less than 1:25,000, showing the location of the tract or tracts of land to be affected by the operation contemplated and cross sections at intervals as the department may prescribe. The surveyed map or plan and cross sections shall be certified by a registered professional engineer or a registered professional land surveyor with assistance from experts in related fields and shall include the following:

- (1) The boundaries of the proposed land affected, together with the drainage area above and below the area.

(2) The location and names of all streams, roads, railroads and utility lines on or immediately adjacent to the area.

(3) The location of all buildings within 1,000 feet of the outer perimeter of the area affected and the names and addresses of the owners and present occupants.

(4) The purpose for which each building is used.

(5) The name of the owner of the affected area and the names of adjacent landowners, the municipality and the county.

The map or plan shall also show the results of test borings which the operator has conducted or will conduct at the site of the proposed operation and shall include the nature and depth of the various strata, the thickness of any mineral seam, the crop line of any minerals to be mined, the location of test boring holes and, if required by the department, a complete analysis of the mineral seam or mineral to be mined and an overburden analysis. Aerial photographs of the tract or tracts of land to be affected by the operation shall also be provided if photographs are required by the department.

(c) Reclamation plan.--The applicant shall also submit a complete and detailed plan for the reclamation of the land affected. Each plan shall include the following:

(1) A statement of the uses and productivity of the land proposed to be mined.

(2) A statement of the land use proposed for the affected area after surface mining and reclamation are completed, including a plan for restoring the area to approximate original contour or an alternative to approximate original contour such as terracing. The statement shall include one of the following:

(i) A description of the operator's plan to restore the area to be affected by surface mining to approximate original contour. The statement must demonstrate that the operation will restore the land affected to a condition capable of supporting the uses it was capable of supporting prior to any mining or any higher or better uses.

(ii) A demonstration that the proposed operation will be carried out over a substantial period of time, that the thickness of the mineral deposit proposed to be mined, relative to the volume of overburden, is very large and that the overburden and other spoil materials at the permit area are insufficient to restore the area to approximate original contour. Where the applicant makes that demonstration, he shall also include a description of his alternative to contouring, in conjunction with such proposed land uses as water impoundment, water-oriented real estate development, recreational development, industrial site development or solid waste disposal area development. The applicant must show that the alternative to contouring is likely to be achieved, poses no actual or potential threat to public health or safety or of water diminution, contamination, interruption or pollution and is consistent with applicable land use policies, plans and programs as well as Federal, State or local law. In addition, the applicant must demonstrate that the land affected will, after mining and reclamation has been completed, be capable of supporting the highest or best use it can reasonably support.

(iii) Where the applicant does not meet the requirements of subparagraph (ii), but seeks an alternative to contouring, a description of the operator's alternative to contouring, including a demonstration that the operation will restore the land affected to a condition capable of supporting the uses it was capable of supporting prior to any mining or to any higher or better use. The application must also demonstrate that the alternative is acceptable to the landowner, that no highwalls will remain after mining, that the watershed of the area will be improved and that the proposed use has been designed and certified by a registered professional engineer to assure the stability, drainage and configuration necessary for the intended use of the site. The description of the alternative to contouring shall include such proposed land uses as water impoundment, water-oriented real estate development, recreational development, industrial site development or solid waste disposal area development. The applicant must also demonstrate that the alternative to contouring is likely to be achieved and poses no actual or potential threat to public health or safety or of water diminution, interruption, contamination or pollution.

(3) A description of the manner in which the operation will segregate and conserve topsoil and, if necessary, suitable subsoil or an explanation that the area lacks topsoil and subsoil that can be segregated and conserved. Where the proposed postmining land use does not involve revegetation, the operator shall also state the manner in which he plans to use or sell the topsoil or subsoil to insure its continuing productivity.

(4) Where the proposed land use so requires, a description of the manner in which replacement and compaction of the overburden and soil will be accomplished.

(5) A detailed timetable for the accomplishment of each major step in the reclamation plan and the operator's estimate of the cost of each step and the total cost to the operator of the reclamation program.

(6) A plan for establishing a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area. However, introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. Where the proposed postmining land use is a long-term, intensive, agricultural use, the department may waive the requirements of this paragraph, if the applicant demonstrates that the area will be restored to a condition capable of supporting that use. Where the proposed postmining land use does not involve any vegetation, the applicant shall demonstrate that the area will be stabilized to prevent and control erosion and siltation.

(7) If the permit application is based upon leases not in existence on January 1, 1972, the application shall include, upon a form prepared by the department, the written consent of the landowner to entry upon any land to be affected by the operation and by the Commonwealth and any of its authorized agents, prior to the initiation of surface mining operations, during surface mining operations and for a period of five years after the operation is completed or abandoned for the purpose of reclamation, planting and

inspection or for the construction of any pollution abatement facilities as may be deemed necessary by the department for the purpose of this act. If the permit application is based upon leases in existence on or before January 1, 1972, the application for permit shall include, upon a form prescribed and furnished by the department, a notice of the existence of the lease and a description of the chain of title.

(8) The manner in which the operator plans to control surface water drainage, including a practicable method of preventing or avoiding surface and groundwater pollution.

(9) The manner in which the operator plans to comply with the requirements of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act; the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law; and, where applicable, the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act; the act of July 31, 1968 (P.L.788, No.241), known as the Pennsylvania Solid Waste Management Act, or the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act; the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act; and the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act.

(10) Such other information as the department may require.

Section 8. Permit approval or denial.

(a) General rule.--No permit shall be issued under this act unless the applicant affirmatively demonstrates that:

(1) The permit application is accurate and complete and that all requirements of this act and the regulations promulgated hereunder have been complied with.

(2) The operation and reclamation plan contained in the application can be accomplished as required by this act and regulations.

(3) The operation will not cause pollution to the waters of this Commonwealth.

(b) Other grounds for refusal to issue, renew or amend permit.--

(1) The department shall not issue any surface mining permit or renew or amend any permit if it finds, after investigation and an opportunity for an informal hearing, that:

(i) the applicant has failed and continues to fail to comply with any of the provisions of this act or the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act; or

(ii) the applicant has shown a lack of ability or intention to comply with any provision of this act or the Surface Mining Conservation and Reclamation Act, as indicated by past or continuing violations.

Any person, partnership, association or corporation that has engaged in unlawful conduct, as defined in section 23, or that has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor that has engaged in such unlawful conduct shall be denied any permit required by this act unless the permit application demonstrates that the unlawful conduct is being corrected to the satisfaction of the department.

(2) Persons other than the applicant, including independent subcontractors, who are proposed to operate under the permit shall be listed in the application and those

persons shall be subject to approval by the department prior to their engaging in surface mining operations. The persons shall be jointly and severally liable with the permittee for the violations of this act as the permittee is charged and in which the persons participate.

Section 9. Bonding.

(a) General rule.--After a surface mining permit has been approved, but before the permit is issued, the applicant shall file, with the department, a bond for the land affected by each operation, on a form to be prescribed and furnished by the department, payable to the Commonwealth and conditioned that the permittee shall faithfully perform all of the requirements of this act and of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law; the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act; and, where applicable, the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act; the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act; the act of July 31, 1968 (P.L.788, No.241), known as the Pennsylvania Solid Waste Management Act, or the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act; and the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act.

(b) Separate bonds not required.--An operator posting a bond sufficient to comply with this section shall not be required to post a separate bond for the permitted area under each of the acts enumerated in subsection (a). This subsection shall not prohibit the department from requiring additional bond amounts for the permitted area should such an increase be determined by the department to be necessary to meet the requirements of this act.

(c) Amount of bond.--The amount of the bond required shall be in an amount determined by the department based upon the total estimated cost to the Commonwealth of completing the approved reclamation plan or in such other amount and form as may be established by the department under regulations for an alternate bonding program that shall achieve the objectives and purposes of the bonding program. The estimate shall be based upon the permittee's statement of his estimated cost of fulfilling the plan during the course of his operation, inspection of the application and other documents submitted, inspection of the land area and such other criteria as may be relevant, including, but not limited to, the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, the proposed land use and the additional cost to the Commonwealth which may be entailed by being required to bring personnel and equipment to the site after abandonment by the permittee in excess of the cost to the permittee of performing the necessary work during the course of his surface mining operations. No bond shall be filed for less than \$5,000 for the entire permit area. When the plan involves the reconstruction or relocation of any public road or highway and when the Department of Transportation has required a bond sufficient to fully build or restore the road or highway to a condition approved by that department, no additional bond for building or restoring the road or highway shall be required under this act.

(d) Duration of liability under bond.--Liability under the bond shall be for the duration of the surface mining at each operation and for a period of five years after the last year of augmented seeding and fertilizing and any other work to

complete reclamation to meet the requirements of law and protect the environment, unless released in whole or in part prior thereto as provided in this act.

(e) Bond requirements; alternatives.--The bond shall be executed by the operator and a corporate surety licensed to do business in this Commonwealth and approved by the secretary. The permittee may elect to deposit with the department, in lieu of a corporate surety, cash, automatically renewable irrevocable bank letters of credit, which may be terminated by the bank at the end of a term only upon the bank giving 90 days prior written notice to the permittee and the department, or negotiable bonds of the Federal Government or of the Commonwealth, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority or any municipality within this Commonwealth. The cash deposit amount of the irrevocable letter of credit or market value of the securities shall be equal at least to the sum of the bond. Upon receipt of any such deposit of cash, letters of credit or negotiable bonds, the secretary shall immediately place the same with the State Treasurer, whose duty shall be to receive and hold the deposit in the name of the Commonwealth, in trust, for the purposes for which the deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of the deposits.

(f) Substitution for bond or other collateral.--The permittee making the deposit shall be entitled, from time to time, to demand and receive from the State Treasurer, on the written order of the secretary, the whole or any portion of any collateral so deposited, upon depositing with the State Treasurer, in lieu thereof, other collateral of the classes specified in this section having a market value at least equal to the sum of the bond or, to substitute a bond for the cash, automatically renewable irrevocable bank letters of credit or negotiable bonds and also to demand, receive and recover the interest and income from the negotiable bonds as it becomes due and payable. Where negotiable bonds, deposited as provided in this section, mature or are called, the State Treasurer, at the request of the permittee, shall convert the negotiable bonds into other negotiable bonds of the classes specified in this section as may be designated by the permittee. Where notice of intent to terminate a letter of credit is given, the department shall give the permittee 30 days' written notice to replace the letter of credit with other acceptable bond guarantees as provided in this section and, if the permittee fails to replace the letter of credit within the 30-day notification period, the department shall draw upon and convert the letter of credit into cash and hold it as a collateral bond guarantee.

(g) Self-bond may be accepted.--The department may accept a self-bond from the permittee, without separate surety, if the permittee demonstrates, to the satisfaction of the Insurance Department, a history of financial solvency, continuous business operation and continuous efforts to achieve compliance with all Federal and Pennsylvania environmental laws and Pennsylvania insurance laws, complies with other requirements as the Insurance Department may reasonably require by regulation and meets all of the following requirements:

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

(2) The permittee or, if the permittee does not issue separate audited financial statements, its parent shall

provide audited financial statements, for at least its most recent three fiscal years, prepared by a certified public accountant in accordance with generally accepted accounting principles. Upon request of the permittee, the department shall maintain the confidentiality of the financial statements if the same are not otherwise disclosed to other government agencies or the public.

(3) During the last 36 calendar months, the applicant has not defaulted in the payment of any dividend or sinking fund installment or preferred stock or installment on any indebtedness for borrowed money or payment of rentals under long-term leases or any reclamation fees payment currently due under section 402 of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1232) for each ton of coal produced in the Commonwealth.

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

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

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

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

(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 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 other information regarding its financial solvency, continuous business operation and compliance with environmental laws as the department or the Insurance Department shall require.

(11) The permittee shall certify its present intention to maintain its present corporate status for a period in excess of five 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 Insurance Department, of the cost to review and verify the permittee's application for self-bonding and annual submissions thereafter.

(h) Term of bond in certain cases.--

(1) Notwithstanding subsection (d), in the case of applications for the mining of minerals where the department determines that the mineral to be extracted exceeds the

amount of overburden by a ratio of at least four to one or that the minerals are to be removed by underground mining methods and where the mining operations are reasonably anticipated to continue for a period of at least ten years from the date of the application, the term of the bond shall be for the duration of the mining and reclamation operations and for five years thereafter. The operator, in the case of mining and reclamation operations mentioned in this subsection, may elect to deposit collateral and file a collateral bond as provided in subsections (e) and (f), according to the phased deposit schedule set forth in paragraph (2).

(2) The operator shall, prior to commencing mining operations, deposit \$10,000 or 25% of the amount of the bond determined under subsection (c), whichever is greater. The operator shall, thereafter, annually deposit 10% of the remaining bond amount for a period of ten years. Interest accumulated by the collateral shall become a part of the bond until such time as the collateral, plus accumulated interest, equals the amount of the required bond. The department may require additional bonding at any time to meet the intent of subsection (a). The collateral shall be deposited, in trust, with the State Treasurer as provided in subsection (e) or with a bank selected by the department which shall act as trustee for the benefit of the Commonwealth, according to the regulations promulgated under this act, to guarantee the operator's compliance with this act and the statutes enumerated in subsection (a). The operator shall be required to pay all costs of the trust.

(3) The collateral deposit or part thereof shall be released of liability and returned to the operator, together with a proportional share of accumulated interest, upon the conditions of and under the schedule and criteria for release provided in subsection (j).

(i) Payment in lieu of bond.--

(1) In lieu of the bond otherwise required by this section, the operator may elect to pay to the department, for deposit in the fund established by section 17, an amount equal to the average surety bond premium charged by bonding companies, as determined by the Insurance Commissioner, which the operator would otherwise be required to pay in order to obtain a surety bond under this act, except that the annual payment shall be a pro rata amount of the premiums if the average premium, as determined by the Insurance Commissioner, is for a period longer than one year. Such annual payment, however, shall in no event be lower than the rate being applied by the department to operators on the effective date of this act. The department may annually adjust the amount to insure that there are sufficient funds in this account to reclaim sites for which bonds posted under this subsection were forfeited.

(2) The initial payment for any bonded area shall be made to the department at the time or times the operator would have been required to post a surety bond under this act and shall thereafter be made at the same time that the operator applies for a license renewal under section 5. These payments shall be retained by the Commonwealth and shall not be refundable to the operator.

(3) Payments under this subsection shall excuse the operator from the requirement to post a bond under this act with respect to the operation for which payment is made. No person may make payments under this subsection, unless that

person demonstrates to the department that he is unable to post the bond otherwise required by this section.

(j) Release.--Subject to the public notice requirements in section 10, if the department is satisfied that the reclamation recovered by the bond portion thereof has been accomplished as required by this act, it may, upon request by the permittee, release, in whole or in part, the bond according to the reclamation schedule and criteria for release of bonds set forth in regulations promulgated hereunder. No bond shall be fully released until all requirements of this act are fully met. Upon release of all or part of the bond and collateral as herein provided, the State Treasurer shall immediately return to the operator the amount of cash or securities specified therein.

(k) Forfeiture.--

(1) If the operator fails or refuses to comply with any requirement of this act for which liability has been charged on the bond, the department shall declare the bond forfeited.

(2) Upon certification of surety bond forfeiture by the department, the Office of Attorney General shall promptly collect the bond and pay the proceeds into the fund. Where the operator deposited cash or securities as collateral, the department shall sell the collateral and pay the proceeds into the fund or direct the State Treasurer to pay the proceeds into that fund.

(3) The department shall not accept any surety bond written by a corporate surety that failed to promptly and fully pay a forfeited bond under this act or any of the statutes enumerated in section 7(c)(9).

Section 10. Public notice; informal conferences; and public information.

(a) General rule.--The applicant shall give public notice of every application for a permit and every application for final bond release under this act in a newspaper of general circulation, published in the locality where the permit is applied for, once a week for four consecutive weeks. The department shall prescribe requirements regarding public notice and public hearings on permit applications and final bond releases as it deems appropriate. However, increments within the original permit area upon which operations are initiated shall not be treated as original permit applications with regard to the requirements of this subsection so long as the original permit is in full force and effect at the time the operations are initiated. For the purpose of these public hearings, the department shall have the authority to take evidence, including, but not limited to, inspections of the land proposed to be affected and other operations carried on by the applicant in the general vicinity.

(b) Right to file objections.--Any person having an interest that is or may be adversely affected shall have the right to file written objections to the proposed permit application or final bond release within 30 days after the last publication of the above notice, which shall conclude the public comment period. The objections shall immediately be transmitted to the applicant by the department. If written objections are filed and an informal conference or a public hearing is requested during the public comment period, the department shall then hold an informal conference or a public hearing in the locality of the surface mining operation within 30 days of the request for a conference or hearing for bond release or within 60 days of the last publication of the notice for a permit application.

(c) Date of hearing or conference on final bond release application.--In the case of final bond release applications,

the hearing or conference shall be held within 30 days from the date of request for the hearing or conference. However, all requests for the hearings or conferences that are filed prior to the tenth day following the final date of publication shall have a constructive date of filing as of the tenth day following the final date of publication of the notice. The department shall notify the applicant of its decision within 30 days of the hearing or conference. If there has been no conference or hearing, the department shall notify the applicant for a final bond release of its decision within 60 days of the date of the filing of the application. In the case of permit applications, the hearings or conferences shall be conducted within 60 days of the close of the public comment period. The department, within 60 days of the hearing or conference, shall notify the applicant of its decision to approve or disapprove or of its intent to disapprove unless the applicant submits additional information, within a stated time, to resolve deficiencies. If there has been no informal conference or hearing, the department shall notify the applicant for a permit, within a reasonable time not to exceed 60 days of the close of the public comment period, of the deficiencies in the application or whether the application has been approved or disapproved.

(d) Copy of application to be filed.--Subject to the confidentiality provisions of subsection (e), each applicant for a permit under this act shall file a copy of his application for public inspection with the recorder of deeds at the courthouse of the county, or an appropriate public office approved by the department, where the mining is proposed to occur.

(e) Public records.--All papers, records and documents of the department and applications for permits pending before the department shall be public records open to inspection during business hours. However, information which pertains only to the analysis of the chemical and physical properties of the mineral (excepting information regarding the mineral or elemental content that is potentially toxic to the environment) shall be kept confidential and shall not be made a matter of public record.

Section 11. Rulemaking; orders; public health and safety; and related matters.

(a) Regulations.--The Environmental Quality Board may promulgate such regulations as it deems necessary to carry out the provisions and purposes of this act and for the health and safety of those persons employed at surface mining operations.

(b) Orders.--The department may issue such orders as are necessary to aid in the enforcement of the provisions of this act. The orders shall include, but shall not be limited to, orders modifying, suspending or revoking permits or licenses and orders requiring persons to cease operations immediately. The right of the department to issue an order under this act is in addition to any penalty or requirement that may be imposed under this act. The authority to issue orders includes, but is not limited to, orders requiring the abatement and removal of nuisances. For purposes of this section, any condition that creates a risk of fire, landslide, subsidence, cave-in or other unsafe, dangerous or hazardous condition, including, but not limited to, any unguarded and unfenced open pit area, highwall, water pool, spoil bank, abandoned structure, equipment, machinery, tools and other property used in or resulting from surface mining or other hazard to public health or safety, is hereby declared to be a nuisance.

(c) Distance limitations.--

(1) Except as provided in paragraph (2), no person shall conduct surface mining operations, other than borrow pits for highway construction purposes, within 100 feet of the outside line of right-of-way of any public highway; within 300 feet of any occupied dwelling house or commercial or industrial building, unless released by the owner thereof; within 300 feet of any public building, school or community or institutional building; within 300 feet of a public park; or within 100 feet of any cemetery or the bank of any stream.

(2) The department may allow operators to mine within the distances where mining is prohibited by paragraph (1) where the operator demonstrates:

(i) For opening or expansion of pits, that special circumstances warrant a lesser distance, that the environment and the interests of the public and landowners affected thereby will be adequately protected and that there are no feasible or prudent alternatives to opening the pit within a greater distance. Prior to allowing a lesser distance, the operator shall give public notice of his application therefor in two newspapers of general circulation in the area, once a week for two successive weeks, and shall give notice by mail to the municipality in which the operation is located. Should any person file an objection with the department within 20 days of the last publication thereof, the department shall conduct a public hearing.

(ii) For parts of surface mining operations other than opening or expansion of pits, that special circumstances warrant a lesser distance, that the public health and safety will not be endangered, that the environment and the interests of the public and the landowners affected thereby will be adequately protected and that there are no feasible or prudent alternatives to conducting those aspects of the operation within a lesser distance.

(d) Cleanup.--Upon the completion of any surface mining operation and prior to the release by the secretary of all or any portion of the bond or collateral pertinent thereto, the operator shall remove and clean up all temporary or unused structures, facilities, equipment, machines, tools, parts or other materials, property, debris or junk that were used in or resulted from the surface mining operations.

(e) Explosives.--

(1) The use of explosives for the purpose of blasting in connection with surface mining shall be done in accordance with regulations promulgated by the Environmental Quality Board. These regulations shall include, but not be limited to, provisions relating to public notice, blasting schedules, monitoring and recordkeeping, prevention of injury, prevention of damage to property outside the permit area, prevention of adverse impacts upon any underground mine, prevention of any change in the course, channel or availability of ground or surface water outside the permit area, preblast surveys and certification of blasting personnel.

(2) Precautions shall be taken when blasting in close proximity to any underground mine. Blasting shall be conducted in a manner as to protect the health and safety of persons working underground or to prevent any adverse impact upon an active, inactive or abandoned underground mine.

(3) It shall be unlawful for any blaster to leave a working place after a task completion without first filing a report, known as a blaster's report, with the mine operator. The report shall include the nature of the blasting operation, including, but not limited to, the type and amount of explosives used.

(f) Relocation of public roads.--Nothing contained in this act shall be construed to prohibit the relocation of any public road in the manner provided by law.

(g) Water restoration.--Any surface mining operator who affects a public or private water supply by contamination, interruption or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply. If any operator fails to comply with this subsection, the secretary may issue orders to the operator as are necessary to assure compliance.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 11.

Section 12. Progress report.

Within 90 days after commencement of surface mining operations and each year thereafter, unless modified or waived by the department for cause, the operator shall file, in triplicate, an operations and progress report with the department, on a form prescribed and furnished by the department, setting forth all of the following:

- (1) The name or number of the operation.
- (2) The location of the operation as to county and township and with reference to the nearest public road.
- (3) A description of the tract or tracts.
- (4) The name and address of the landowner or his duly authorized representative.
- (5) An annual report of the type and quantity of mineral produced, number of employees and days worked.
- (6) A report of all fatal and nonfatal accidents for the previous year.
- (7) The current status of the reclamation work performed in pursuance of the approved reclamation plan.
- (8) Such other or further information as the department may reasonably require.

Section 13. Temporary cessation.

(a) General rule.--Except with the express written approval of the department as provided in subsection (b), the operator shall maintain mining and reclamation equipment on the site at all times, shall conduct an active operation and shall conduct surface mining operations on the site on a regular and continuous basis.

(b) Application for temporary cessation.--Before temporary cessation of operations, the operator shall submit a written application to the department, including a statement of the number of acres that have been affected, the reason for cessation, the date on which temporary cessation is anticipated and the date on which the operator anticipates that operations will resume. Except as provided in subsection (c), the

department may not approve the temporary cessation of an operation for a period exceeding 90 days unless the cessation is due to seasonal shutdown or labor strikes.

(c) Operations producing highway or construction aggregates.--For operations producing highway or construction aggregates, where the temporary cessation is due to the absence of a current regional market for the mineral being mined, temporary cessation may not exceed five years.

(d) Cessation not a release of obligations.--Temporary cessation shall not relieve the operator of his obligation to comply with the provisions of this act, the regulations promulgated hereunder and the conditions of his permit, including, but not limited to, compliance with all applicable environmental protection performance standards.

Section 14. Right to enter and inspect.

The department shall have the right to enter and inspect all surface mining operations for the purpose of determining conditions of health or safety and for compliance with the provisions of this act and all rules and regulations promulgated pursuant thereto.

Section 15. Department inspectors.

Department inspectors shall be appointed in accordance with 4 Pa. Code, Part IV (relating to Civil Service Commission). It shall be the duty of the secretary to assign the inspectors to their respective areas of jurisdiction.

Section 16. Local ordinances.

Except with respect to ordinances adopted pursuant to the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, all local ordinances and enactments purporting to regulate surface mining are hereby superseded. The Commonwealth, by this enactment, hereby preempts the regulation of surface mining as herein defined.

Section 17. Noncoal Surface Mining Conservation and Reclamation Fund.

(a) Creation of fund.--All funds received by the secretary under this act from license fees, civil or criminal penalties, permit fees, forfeiture of bonds, cash deposits and securities, as well as costs recovered under the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, shall be held by the State Treasurer in a special fund, separate and apart from all other moneys in the State Treasury, to be known as the Noncoal Surface Mining Conservation and Reclamation Fund; shall be used by the secretary for the purpose of the revegetation or reclaiming of land affected by surface mining of any minerals, for restoration or replacement of water supplies affected by surface mining operations or for any other conservation purposes provided by this act; and, for such purposes, are specifically appropriated to the department by this act.

(b) Earmarked funds.--Funds received from the forfeiture of bonds, both surety and collateral, shall be expended by the secretary for reclaiming and planting the area of land affected by the operation upon which liability was charged on the bond if the secretary determines the expenditure to be reasonable, necessary and physically possible. Any funds received from the forfeited bonds in excess of the amount that is required to reclaim and plant the area of land affected by the operation upon which liability was charged, and funds received from bond forfeitures where reclamation and planting is determined to be unreasonable, unnecessary or physically impossible, may be used by the secretary for any of the purposes provided in subsection (a).

(c) Transfer of existing moneys.--Moneys collected from bond forfeitures for minerals as defined in this act and moneys collected pursuant to section 4(f) of the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, for minerals defined in this act, which moneys are presently in the Surface Mining Conservation and Reclamation Fund, shall be transferred to this fund.

Section 18. Release of operator on transfer of operation.

Where one operator succeeds another at any uncompleted operation, by sale, assignment, lease or otherwise, the secretary may release the first operator from all liability under this act as to that particular operation if both operators have complied with the requirements of this act and the regulations promulgated pursuant hereto, and the successor operator assumes as part of his obligation under this act all liability for grading, planting and reclamation on the land affected by the former operator.

Section 19. Injunctive relief.

In addition to any other remedy at law or in equity or under this act, the department or the Attorney General may apply for relief by injunction to enforce compliance with or to restrain violations of this act or any rule, regulation, permit condition or order made under this act. The remedy prescribed in this section shall be deemed concurrent or contemporaneous with any other remedy, and the existence or exercise of any one remedy shall not prevent the exercise of any other remedy.

Section 20. Remedies of citizens.

(a) Commencement of civil action.--Except as provided in subsection (c), any person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this act or any rule, regulation, order or permit issued pursuant to this act against the department where there is alleged a failure of the department to perform any act that is not discretionary with the department or against any other person who is alleged to be in violation of any provision of this act or any rule, regulation, order or permit issued pursuant to this act. Any other provision of law to the contrary notwithstanding, the courts of common pleas shall have jurisdiction of such actions and venue in such actions shall be as set forth in the Rules of Civil Procedure concerning actions in assumpsit.

(b) Inspection upon information of violation.--Whenever any person presents information to the department that gives the department reason to believe that any person is in violation of any requirement of this act or any condition of any permit issued hereunder or of the statutes enumerated in section 7(c)(9) or any condition of any permit issued thereunder, the department shall immediately order inspection of the operation at which the alleged violation is occurring.

(c) Limitations on commencement of action.--No action pursuant to this section may be commenced prior to 60 days after the plaintiff has given notice, in writing, of the violation to the department and to any alleged violator. In addition, no such action may be commenced if the department has commenced and is diligently prosecuting a civil action in a court of the United States or of the Commonwealth, has issued an order or has entered a consent order and agreement or decree to require compliance with this act or any rule, regulation, order or permit issued under this act, but, in any such action in a court of the United States or of the Commonwealth, any person may intervene as a matter of right.

(d) Imminent threats to health and safety.--The provisions in subsection (c) requiring 60 days' written notice to the contrary notwithstanding, any action under this section may be initiated immediately upon written notification to the department where the violation constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

Section 21. Civil penalties.

(a) Authorization.--

(1) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act or any rule, regulation, order of the department or a condition of any permit issued under this act, the department may assess a civil penalty upon a person for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed \$5,000 per day for each violation that leads to the issuance of a cessation order. For all other violations, the civil penalty so assessed shall not exceed \$1,000 per day for each violation. A penalty may not be assessed for violations that do not lead to the issuance of a cessation order where the operator demonstrates that the violations result in no environmental damage, no injury to person or property and are corrected within the required time.

(2) In determining the amount of the civil penalty, the department shall consider the willfulness of the violation, damage or injury to the lands or to the waters of this Commonwealth or their uses, cost of restoration and other relevant factors.

(3) If the violation leads to the issuance of a cessation order, a civil penalty shall be assessed. If the violation involves the failure to correct, within the period prescribed for its correction, a violation for which a cessation order or other abatement order has been issued, a civil penalty of not less than \$750 shall be assessed for each day the violation continues beyond the period prescribed for its correction. If the violation involves the failure to correct, within the period prescribed for its correction, a violation for which a cessation order or other abatement order was not issued, a civil penalty of not less than \$250 shall be assessed for each day the violation continues beyond the period prescribed for its correction.

(b) Escrow of penalty; judgments.--

(1) When the department proposes to assess a civil penalty, the secretary shall inform the person, within a period of time to be prescribed by rule and regulation, of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the secretary for placement in an escrow account with the State Treasurer or any Pennsylvania bank, or post an appeal bond in the amount of the proposed penalty. The bond shall be executed by a surety licensed to do business in this Commonwealth and be satisfactory to the department. If, through administrative or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the secretary shall, within 30 days, remit the appropriate amount to the person, with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond to the secretary within 30 days

shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(2) The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the Commonwealth and shall be collectible in any manner provided under law for the collection of debts. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a judgment in favor of the Commonwealth upon the property of the person from the date it has been entered and docketed of record by the prothonotary of the county where the property is situated. The department may, at any time, transmit, to the prothonotaries of the respective counties, certified copies of all such judgments, and it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index it as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof.

(3) Any other provision of law to the contrary notwithstanding, there shall be a statute of limitations of five years upon actions brought by the Commonwealth under this section.

Section 22. Criminal penalties.

(a) Mining without a license or permit or in violation of terms of license.--Any person who proceeds to mine minerals by the surface mining method as an operator, without having applied for and received a license or a permit as provided in this act or in violation of the terms of his license, commits a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than \$10,000 or an amount not less than the total profits derived by him as a result of his unlawful activities, as determined by the court, together with the estimated cost to the Commonwealth of any reclamation work that may reasonably be required in order to restore the land to its condition prior to the commencement of unlawful activities or to imprisonment for a period of not more than one year, or both.

(b) Violations generally.--Any person who violates any provision of this act, any rule or regulation of the department, any order of the department or any condition of any permit issued under this act commits a summary offense and, upon conviction, shall be subject to a fine of not less than \$100 nor more than \$10,000 for each separate offense and, in the default of the payment of the fine, a person shall be imprisoned for a period of 90 days.

(c) Willful and knowing violations.--Any person who willfully and knowingly violates any provision of this act, any rule or regulation of the department, any order of the department or any condition of any permit issued under this act commits a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than \$2,500 nor more than \$25,000 for each separate offense or to imprisonment for a period of not more than one year, or both.

(d) Repeat willful and knowing violations.--Any person who, after a conviction of a misdemeanor for any violation within two years as above provided, willfully and knowingly violates any provision of this act, any rule or regulation of the department, any order of the department or any condition of any permit issued under this act commits a misdemeanor of the second degree and, upon conviction, shall be subject to a fine of not less than \$2,500 nor more than \$50,000 for each separate offense

or to imprisonment for a period of not more than two years, or both.

(e) Separate offenses.--Each day of continued violation of any provision of this act, any rule or regulation of the department, any permit condition or order of the department issued under this act shall constitute a separate offense for purposes of subsections (b) through (d).

(f) Jurisdiction; appeals.--All summary proceedings under this act may be brought before any district justice of the county where the offense occurred or any unlawful discharge of industrial waste or pollution was maintained or in the county where the public is affected, and, to that end, jurisdiction is hereby conferred upon the district justices, subject to appeal by either party in the manner provided by law. In the case of any appeal from any such conviction in the manner provided by law for appeals from summary convictions, it shall be the duty of the district attorney of the county to represent the interests of the Commonwealth.

Compiler's Note: Section 28 of Act 207 of 2004 provided that any and all references in any other law to a "district justice" or "justice of the peace" shall be deemed to be references to a magisterial district judge. Section 23. Unlawful conduct.

(a) General rule.--It shall be unlawful to do any of the following:

(1) Violate the provisions of this act or the regulations adopted hereunder.

(2) Fail to comply with any order, permit, or license issued under this act.

(3) Cause air or water pollution in connection with mining and not otherwise proscribed by this act.

(4) Hinder, obstruct, prevent or interfere with the department or its personnel in the performance of any duty hereunder.

(5) Violate the provisions of 18 Pa.C.S. § 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities).

(b) Failure to comply with other statutes.--Failure to comply with the statutes enumerated in section 7(c)(9) during mining or thereafter shall render the operator liable to the sanctions and penalties provided in this act for violations of this act and to the sanctions and penalties provided in the statutes enumerated in section 7(c)(9) for violations of the statutes. Failure to comply shall be cause for suspension or revocation of any approval or permit issued by the department to the operator for the site on which the surface mining operation is located. However, a violation of the statutes in section 7(c)(9) shall not be deemed a violation of this act unless this act's provisions are violated but shall only be cause for suspension or revocation of the operator's permit for the site on which the surface mining operation is located. Compliance with the provisions of this act and the statutes enumerated in section 7(c)(9) shall not relieve the operator of the responsibility for complying with the provisions of all other applicable statutes. Nothing in this subsection shall be construed to limit the department's authority to regulate activities in a coordinated manner.

(c) Provisions violators are subject to.--Any person engaging in conduct prohibited by subsection (a) shall be subject to the provisions of sections 21 and 22 and this section.

(d) Court proceedings authorized.--The department may institute, in a court of competent jurisdiction, proceedings against any person who fails to comply with the provisions of this act, any rule or regulation issued hereunder, any order of the department or the terms and conditions of any license or permit.

Section 24. Existing licenses and permits.

All orders, permits, licenses, decisions and actions of the department and regulations of the Environmental Quality Board pertaining to operations regulated under this act shall remain in full force and effect unless and until modified, repealed, suspended, superseded or otherwise changed under the terms of this act and the regulations promulgated under this act.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 24.

Section 25. Soil conservation districts.

(a) Delegation of functions.--In accordance with regulations promulgated by the Environmental Quality Board, the department may, by agreement, delegate to a conservation district one or more of its regulatory functions under this act for surface mining operators licensed to mine less than 2,000 tons of marketable minerals per year. Any conservation district acting pursuant to a delegation agreement shall have the same powers and duties otherwise vested in the department to implement this act to the extent delegated by agreement.

(b) Activities to be monitored and supervised.--The department shall monitor and supervise the activities of each conservation district conducted pursuant to a delegation agreement.

(c) Appeals.--Any person aggrieved by an action of a district under a delegation agreement may appeal the action as provided by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure) within 30 days following notice of the action.

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 25.

Section 26. Waiver of permit requirements; general permits.

(a) Waiver of permit requirements.--The Environmental Quality Board may, by regulation, waive the permit requirements for any category of surface mining operation under this act which it determines has an insignificant effect upon the safety and protection of life, health, property and the environment.

(b) Issuance of general permits.--The department may, in accordance with rules adopted by the Environmental Quality Board, issue general permits on a regional or Statewide basis for any category of surface mining operation under this act if

the department determines that the operations in the category are similar in nature and can be adequately regulated utilizing standardized specifications and conditions. General permits shall specify the design, operating and monitoring conditions as are necessary to adequately protect life, health, property and the environment, under which the operations may be conducted without applying for and obtaining individual permits. The department may require the registration of any operation constructed pursuant to a general permit. All general permits shall be published in the Pennsylvania Bulletin at least 30 days prior to the effective date of the permit.

Section 27. Repeals.

Except as provided in section 4, the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, is repealed to the extent that it applies to the surface mining of minerals other than bituminous and anthracite coal.

Section 28. Effective date.

This act shall take effect in 60 days.