

COAL REFUSE DISPOSAL CONTROL ACT
Act of Sep. 24, 1968, P.L. 1040, No. 318
AN ACT

Cl. 52

Providing for the protection of the safety, health and welfare of the people, property and public roads and highways of the Commonwealth from conditions on coal refuse disposal areas, or parts thereof, which fail to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution or to protect water supplies, and from the danger of slipping, sliding or burning of coal refuse disposal areas, or parts thereof, sometimes caused by the storage of coal refuse; prescribing for and regulating the operation of coal refuse disposal areas, and parts thereof; prescribing the powers of the Department of Environmental Resources with respect thereto; providing for the power to enjoin the operation of coal refuse disposal areas, or parts thereof, which contain certain conditions; providing for civil and criminal penalties; authorizing the acquisition by condemnation of certain land areas in certain cases; establishing a permit system, authorizing the adoption of rules and regulations, establishing minimum standards ; requiring bonds and for the maintenance of primary jurisdiction over surface coal mining in Pennsylvania; providing incentives for coal refuse disposal activities on previously affected areas; and providing for coal refuse disposal research. (Title amended Dec. 7, 1994, P.L.808, No.114)

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

Section 1. Findings and Declaration of Policy.--It is hereby determined by the General Assembly of Pennsylvania and declared as a matter of legislative finding that:

(1) The accumulation and storage of coal refuse material can cause a condition which fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution and can create a danger to persons, property or public roads or highways, either by reason of shifting or sliding, or by exposing persons walking onto the refuse to the danger of being burned. In order to minimize the exposure to these conditions and dangers, it is better to have a few large coal refuse disposal sites as opposed to numerous small coal refuse disposal sites.

(2) No coal refuse disposal area, or part thereof, should be operated in such manner as to cause a condition which fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution or to cause a danger to persons, property or public roads or highways, and such condition and danger must be prevented and eliminated by the control and regulation of coal refuse disposal so as to effectuate the policy declared in this section.

(3) The mining of coal is and has been an important and necessary industry, which has provided and will continue to provide for the effective use and development of a valuable natural resource underlying a large part of the Commonwealth of Pennsylvania.

(4) Research and development of methods for reuse, backstowing in underground mines, disposal in inactive surface mines, and surface disposal of coal refuse is essential to continue to develop the technology necessary to assure adequate environmental protection and the utilization of active and inactive surface and underground coal mines for coal refuse disposal should be encouraged as an alternative to surface coal refuse disposal because it may conserve the land resources and it can improve the Commonwealth's air and water quality.

(5) Incentives are needed to encourage research and development of technology to enhance environmental protection in the disposal of coal refuse, to develop methods for reuse or environmentally safe disposal of coal refuse and to encourage disposal of coal refuse on areas previously affected by coal mining activities where available and practicable.

(6) The Commonwealth has already secured approval of a remining incentive program from the Office of Surface Mining and the United States Environmental Protection Agency under the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et seq.) and the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.) for surface coal mining activities, and the Commonwealth intends to establish a similar program for coal refuse operations to the extent authorized by Federal law.

(7) Section 301(p) of the Federal Water Pollution Control Act authorizes the issuance of a modified permit under section 402 of the Federal Water Pollution Control Act for coal remining operations.

(8) The reuse of areas that have been affected by past coal mining activities and remain unreclaimed should be encouraged for future coal refuse disposal to minimize impact on unaffected areas.

(9) It is important to protect aquatic and terrestrial wildlife and their habitats during site selection and operation of coal refuse disposal areas.

(10) It is the purpose in part of this act to establish an alternative procedure to court action for consideration and resolution of objections to the location of certain coal bed methane wells or roads associated with those wells to be constructed on surface lands and to modify the procedure for review of well permit applications to the extent necessary to allow for the procedure for alternative dispute resolution.

((10) added Feb. 1, 2010, P.L.126, No.4)

The General Assembly of Pennsylvania therefore declares it to be the policy of the Commonwealth of Pennsylvania that the prevention and elimination of certain conditions resulting from the operation of coal refuse disposal areas is directly related to the safety, health and welfare of the people of the Commonwealth, making it necessary to control and regulate coal refuse disposal and to encourage the siting of coal refuse disposal operations on land previously disturbed by mining activities or coal refuse disposal operations.

(1 amended Dec. 7, 1994, P.L.808, No.114)

Section 2. Short Title.--This act shall be known and may be cited as the "Coal Refuse Disposal Control Act."

Section 3. Definitions.--The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

(1) "Abatement plan" shall mean, for the purposes of section 6.2 of this act, any individual technique or combination of techniques, the implementation of which will result in reduction of the baseline pollution load. ((1) added Dec. 7, 1994, P.L.808, No.114)

(1.1) "Actual improvement" shall mean, for the purposes of section 6.2 of this act, the reduction of the baseline pollution load resulting from the implementation of the approved abatement plan except that any reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement: Provided, however, That treatment approved by the department of the coal refuse before, during or after placement in the coal refuse disposal area shall not be considered to be water treatment. ((1.1) added Dec. 7, 1994, P.L.808, No.114)

(1.2) "Air pollution" and "water pollution" shall, respectively, have the definitions ascribed to them under applicable laws, as amended, from time to time. ((1.2) added Dec. 7, 1994, P.L.808, No.114)

(1.3) "Alternative dispute resolution" shall mean the procedure for dispute resolution provided in section 6.5. ((1.3) amended Feb. 1, 2010, P.L.126, No.4)

(1.4) "Baseline pollution load" shall mean, for the purposes of section 6.2 of this act, the characterization of the polluttional material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter deemed relevant by the department, including seasonal variations and variations in response to precipitation events. ((1.4) amended Feb. 1, 2010, P.L.126, No.4)

(1.5) "Best technology" means, for the purposes of section 6.2 of this act, measures and practices which will abate or ameliorate, to the maximum extent possible, discharges from or on the pollution abatement area. ((1.5) added Feb. 1, 2010, P.L.126, No.4)

(1.6) " Board " shall mean the Coal Bed Methane Review Board established in section 6.4 of this act. ((1.6) added Feb. 1, 2010, P.L.126, No.4)

(1.7) " Coal bed methane " shall mean gas which can be produced from a coal seam, a mined-out area or a gob well.

((1.7) added Feb. 1, 2010, P.L.126, No.4)

(1.8) " Coal bed methane well " shall mean a hole or well which is sunk, drilled, bored or dug into the earth for the production of coal bed methane from a coal seam, a mined-out area or a gob well for consumption or sale. The term includes a horizontal borehole. The term does not include any of the following:

(i) A shaft, hole or well which is sunk, drilled, bored or dug into the earth for core drilling or production of coal or water.

(ii) A borehole drilled or being drilled for the purpose of or to be used for degasifying coal seams if a condition in one of the following subclauses is met:

(A) The borehole is:

(I) Used to vent methane to the outside atmosphere from an operating coal mine.

(II) Regulated as part of the mining permit under the act of June 22, 1937 (P.L.1987, No.394) , known as "The Clean Streams Law," and the act of May 31, 1945 (P.L.1198, No.418) , known as the "Surface Mining Conservation and Reclamation Act."

(III) Drilled by the operator of the operating coal mine for the purpose of increased safety.

(B) The borehole is used to vent methane to the outside atmosphere under a federally funded or Commonwealth-funded abandoned mine reclamation project.

(iii) A well or borehole drilled in a coal seam from within an underground coal mine for the production of coal bed methane. This clause includes a well or borehole connected to a well or borehole which is sunk, drilled or dug from the surface.

((1.8) added Feb. 1, 2010, P.L.126, No.4)

(2) "Coal refuse" means any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay and related materials, associated with or near a coal seam, which are either brought above ground or otherwise removed from a coal mine in the process of mining coal or which are separated from coal during the cleaning or preparation operations. Coal refuse shall not mean overburden from surface mining operations.

(2.1) "Coal refuse disposal activities" shall mean, for the purposes of section 6.2 of this act, the storage, dumping or disposal of any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay, underground development wastes, coal processing wastes, excess soil and related materials, associated with or near a coal seam, which are either brought above ground or otherwise removed from a coal mine in the process of mining coal or which are separated from coal during the cleaning or preparation operations. The term shall not include the removal or storage of overburden from surface mining activities. ((2.1) added Dec. 7, 1994, P.L.808, No.114)

(3) "Coal refuse disposal area" means any general area or plot of land used as a place for disposing, dumping or storage of coal refuse and all land thereby affected, including but not limited to any deposit of coal refuse on or buried in the earth and intended as permanent disposal of or long-term storage of such material, but not including coal refuse deposited within an active mine itself or coal refuse never removed from a mine, and all other land area in which the natural land surface has been disturbed as a result of or incidental to the coal refuse disposal activities of the operator, including but not limited to, private ways and roads appurtenant to any such area, land

excavations, workings, tailings, repair areas, storage areas, processing areas, shipping areas, and areas in which structures, facilities, equipment, machines, tools or other materials or property which result from, or are used in, coal refuse disposal operations are situated.

(4) "Department" means the Department of Environmental Resources.

(5) "Maintain" means the maintenance of the site for as long as necessary after completion of the operation to prevent health, safety or pollution hazards or nuisances from occurring. Maintenance shall include but not be limited to repair of cracks or fissures, repair of areas where settling occurs, repair of erosion areas, treatment of acid drainage or runoff, extinguishment of fires or hot spots, reseeding and soil treatment until adequate vegetative cover is established.

(6) "Municipality" shall be construed to include any county, city, borough, town, township, school district, institution, or any authority created by any one or more of the foregoing.

(7) "Operate" means to enter upon a coal refuse disposal area for the purpose of disposing, storage or dumping coal refuse except for the purpose of reclaiming or removing coal refuse, ashes, or red dog or other material from a coal refuse disposal area pursuant to the requirements of the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act."

(8) "Operator" means any person operating any coal refuse disposal area, or part thereof.

(9) "Person" shall be construed to include any natural person, partnership, association or corporation or any agency, instrumentality or entity of Federal or State Government. Whenever used in any section or clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term "person" shall not exclude the members of an association and the directors, officers or agents of a corporation.

(9.1) "Pollution abatement area" shall mean, for the purposes of section 6.2 of this act, that part of the permit area which is causing or contributing to the baseline pollution load, which shall include adjacent and nearby areas that must be affected to bring about significant improvement of the baseline pollution load and which may include the immediate location of the discharges. ((9.1) added Dec. 7, 1994, P.L.808, No.114)

(10) "Property" means real or personal property.

(10.1) "Public recreational impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water and which is owned, rented or leased by the Federal Government, the Commonwealth or a political subdivision of the Commonwealth and which is used for swimming, boating, water skiing, hunting, fishing, skating or other similar activities. ((10.1) added Dec. 7, 1994, P.L.808, No.114)

(11) "Secretary" means the head of the Department of Environmental Resources.

(12) "Stability" means the maintenance of a condition which prevents danger to the safety, health or welfare of persons, property or public roads or highways because of slipping, shifting or sliding of coal refuse deposited on coal refuse disposal areas.

(13) "Surface owner" shall mean a person who owns any of the following interests in the surface upon which a coal bed methane well or associated access road may be constructed:

(i) A fee interest.

- (ii) An interest for life.
- (iii) A remainder interest.

The term does not include:

- (i) The Federal or State Government or any agency or political subdivision thereof.
- (ii) A person who is entitled to royalties for removal or recovery of coal bed methane.

(iii) A person who owns a lease, easement, right-of-way, license, privilege or other similar interest in the surface.

((13) added Feb. 1, 2010, P.L.126, No.4)

(14) " Well operator " shall mean a person who has filed or who is required to file for a well permit under the act of December 19, 1984 (P.L.1140, No.223) , known as the "Oil and Gas Act." ((14) added Feb. 1, 2010, P.L.126, No.4)

(15) "Well p ermit " shall mean a well permit issued pursuant to the act of December 19, 1984 (P.L.1140, No.223) , known as the "Oil and Gas Act." ((15) added Feb. 1, 2010, P.L.126, No.4)

(3 amended Oct. 10, 1980, P.L.807, No.154)

Compiler's Note: The Department of Environmental Resources, referred to in this section, 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 this section, 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 3.1. Powers and Duties of the Department.--The department shall have the power and its duty shall be to:

(a) Administer the coal refuse disposal control program pursuant to the provisions of this act.

(b) Cooperate with appropriate Federal, State, interstate and local units of government and with appropriate private organizations in carrying out its duties under this act.

(c) Adopt such policies, standards and procedures, consistent with the rules and regulations of the Environmental Quality Board, as shall be necessary for effective coal refuse disposal, to conserve the air, water and land resources of the Commonwealth, protect the public health and safety, prevent and eliminate public nuisances, and enable it to carry out the purposes and provisions of this act.

(d) Report to the Legislature from time to time on further assistance that may be needed to administer this act.

(e) Initiate, conduct and support research, demonstration projects, and investigations and coordinate all State agency research programs pertaining to coal refuse disposal systems.

(f) Issue such permits and orders and conduct such inspections as may be necessary to implement the provisions of this act and the policies, rules and regulations, and standards adopted pursuant to the act.

(g) Review all Commonwealth research programs pertaining to coal refuse disposal, including but not limited to water quality and air pollution control: Provided, however, That this section shall not be construed to limit the authority of each department to conduct research programs and operations as authorized by law.

(h) Review and take appropriate action on all permit applications submitted pursuant to the provisions of this act and to issue orders to cease operations, to issue, modify,

suspend or revoke permits pursuant to this act and to the rules and regulations adopted hereto.

(i) Enter upon, examine and inspect each and every coal refuse disposal area in the Commonwealth, as often as necessary, to determine whether coal refuse disposal areas are being operated in accordance with the provisions of this act.

(j) Establish limitations on the duration of permits in accord with rules and regulations and establish conditions for permit issuance and renewals.

(3.1 added Oct. 10, 1980, P.L.807, No.154)

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 3.1.

Section 3.2. Powers and Duties of the Environmental Quality Board.--(a) The Environmental Quality Board shall have the power and its duties shall be to adopt rules and regulations to accomplish the purposes of this act, including but not limited to the protection of the safety, health, welfare, and property of the public, and the air and waters of the Commonwealth. Such rules and regulations shall be adopted pursuant to the provisions of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, upon such notice and after such public hearings as the Environmental Quality Board deems appropriate.

(b) To implement section 6.2 of this act, the Environmental Quality Board shall adopt regulations that are consistent with the requirements of section 301(p) of the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1311(p)) and the State remaining regulations for surface coal mining activities.

(3.2 amended Dec. 7, 1994, P.L.808, No.114)

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 3.2.

Section 3.3. Powers and Duties of the Environmental Hearing Board.--The Environmental Hearing Board shall have the power and its duties shall be to hear and determine all appeals from actions of the department taken in accordance with the provisions of this act. Any and all actions taken by the Environmental Hearing Board with reference to any such appeal shall be in the form of an adjudication, and all such actions shall be subject to the provisions of Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(3.3 added Oct. 10, 1980, P.L.807, No.154)

Section 4. Permits.--(a) No person shall establish or operate a coal refuse disposal area or enter upon an inactive coal refuse disposal area or reactivate an inactive operation

for the purposes of coal refuse disposal without first having obtained a permit from the department.

(b) The department shall not issue any coal refuse disposal permit or renew or amend any permit if it finds, after investigation and an opportunity for informal hearing, that:

(1) the applicant has failed and continues to fail to comply with any of the provisions of this act or of any of the acts repealed or amended hereby; or

(2) the applicant has shown a lack of ability or intention to comply with such laws as indicated by past or continuing violations. Any person, partnership, association or corporation which has engaged in unlawful conduct as defined in section 7 of this act or which has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor which 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. 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 coal refuse disposal operations, and such persons shall be jointly and severally liable with the permittee for violations of this act with which the permittee is charged and in which such persons participate.

(4 amended Oct. 10, 1980, P.L.807, No.154)

Section 4.1. Site Selection.--(a) Preferred sites shall be used for coal refuse disposal unless the applicant demonstrates to the department another site is more suitable based upon engineering, geology, economics, transportation systems and social factors and is not adverse to the public interest. A preferred site is one of the following:

(1) A watershed polluted by acid mine drainage.

(2) A watershed containing an unreclaimed surface mine but which has no mining discharge.

(3) A watershed containing an unreclaimed surface mine with discharges that could be improved by the proposed coal refuse disposal operation.

(4) Unreclaimed coal refuse disposal piles that could be improved by the proposed coal refuse disposal operation.

(5) Other unreclaimed areas previously affected by mining activities.

(6) An area adjacent to or an expansion of an existing coal refuse disposal site.

Where, however, the adverse environmental impacts of the preferred site clearly outweigh the public benefits, the site shall not be considered a preferred site.

((a) amended Feb. 1, 2010, P.L.126, No.4)

(b) Except if it is a preferred site, coal refuse disposal shall not occur on prime farm lands, in sites known to contain Federal threatened or endangered plants or animals or State threatened or endangered animals, in watersheds designated as exceptional value under 25 Pa. Code Ch. 93 (relating to water quality standards), in areas hydrologically connected to and which contribute at least five per cent of the drainage to wetlands designated as exceptional value under 25 Pa. Code Ch. 105 (relating to dam safety and waterway management) unless a larger percentage is approved by the department in consultation with the Pennsylvania Fish and Boat Commission and in watersheds less than four square miles in area upstream of the intake of public water supplies or the upstream limit of public recreational impoundments.

(c) For new refuse disposal areas to support an existing coal mining activity, the applicant shall identify the alternative sites considered within a one mile radius and the basis for their consideration. Where there are no preferred sites within a one mile radius or where the applicant, under subsection (a), demonstrates that a nonpreferred site is more suitable, the applicant shall demonstrate the basis for the exclusion of other sites and shall, based on reasonably available data, demonstrate to the department that the proposed site is the most suitable on the basis of environmental, economic, technical, transportation and social factors and that the proposed site meets the requirements of subsection (b). However, where the adverse environmental impacts of the proposed site clearly outweigh the public benefits, the department shall not approve the site.

(d) For other new coal refuse disposal activities, the applicant shall identify the alternative sites considered within a twenty-five square mile area and the basis for their consideration. Where there are no preferred sites in an area of twenty-five square miles or where the applicant, under subsection (a), demonstrates that a nonpreferred site is more suitable, the applicant shall demonstrate the basis for the exclusion of other sites and shall, based on reasonably available data, demonstrate to the department that the proposed site is the most suitable on the basis of environmental, economic, technical, transportation and social factors and that the proposed site meets the requirements of subsection (b). However, where the adverse environmental impacts of the proposed site clearly outweigh the public benefits, the department shall not approve the site.

(e) The alternatives analysis required by this section satisfies the requirement for an alternatives analysis under the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act," and regulations promulgated under the act.

(4.1 added Dec. 7, 1994, P.L.808, No.114)

Section 5. Applications.--(a) Applications for permits shall be in writing and shall be made on a form prescribed, prepared and furnished by the department and shall set forth such information and be accompanied by such data as the department may require including but not limited to maps, geological reports, soil reports, design and operational plans, and shall be prepared by or under the supervision of and bear the seal and signature of a registered professional engineer or professional geologist, with assistance from experts in related fields.

(b) The department is authorized to charge and collect from persons and municipalities in accordance with rules and regulations reasonable fees for applications filed and for permits issued.

(c) The application shall specify the manner in which topsoil and subsoil will be conserved and restored.

(d) The application shall include a statement specifying whether or not disposal of coal refuse in deep mines and inactive, abandoned or unreclaimed surface mines is proposed for the operation, and if not, detailing the reasons why underground disposal was not proposed. Subject to the provisions of subsection (g) of this section, unless the applicant demonstrates to the satisfaction of the department that such disposal will be economically or technically infeasible, the operator shall maximize disposal of coal refuse by underground disposal.

(e) The application shall also set forth the manner in which the operation will establish on the areas proposed to be affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land 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: Provided, however, That introduced species may be used in the vegetation process where desirable and necessary to achieve the approved postmining land use plan. The application shall in addition set forth the manner in which the operation will achieve a final contour of the coal refuse disposal area which will be compatible with natural surroundings.

(f) The application shall include a statement of the uses and productivity of the land proposed to be affected, and a statement of the land use proposed for the affected area after reclamation is completed. No post-operational land use or uses shall be approved unless the application demonstrates that the use or uses are likely to be achieved, are proposed in the operator's permit application as the post-operational land use for the affected area, do not present any actual or potential threat to public health or safety, or any actual or potential threat of water contamination, diminution, interruption or pollution, are consistent with applicable land use policies and plans and involve no unreasonable delay in implementation.

(g) The application shall also set forth 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," the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act," the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," and where applicable 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 (No.97), known as the "Solid Waste Management Act." No approval shall be granted unless the plan provides for compliance with the statutes hereinabove enumerated, and failure to comply with the statutes hereinabove enumerated 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 hereinabove enumerated for violations of such statutes. Such failure to comply shall be cause for revocation of any approval or permit issued by the department to the operator: Provided, however, That a violation of the statutes hereinabove enumerated shall not be deemed a violation of this act unless this statute's provisions are violated but shall only be cause for revocation of the operator's permit. Nothing in this subsection, however, shall be construed to limit the department's authority to regulate activities in a coordinated manner. Compliance with the provisions of this subsection and with the provisions of this act and the provisions of the statutes hereinabove enumerated shall not relieve the operator of the responsibility for complying with the provisions of all other applicable statutes, including but not limited to the act of July 17, 1961 (P.L.659, No.339), known as the "Pennsylvania Bituminous Coal Mine Act," the act of November 10, 1965 (P.L.721, No.346), known as the "Pennsylvania Anthracite Coal Mine Act," and the act of July 9, 1976 (P.L.931, No.178), entitled "An act providing for emergency medical

personnel; employment of emergency medical personnel and emergency communications in coal mines."

(h) For those lands in the permit application which a reconnaissance inspection suggests may be prime farmlands, a soil survey shall be made or obtained by the permit applicant according to standards established by the United States Secretary of Agriculture in order to confirm the exact location of any such farmlands. The department shall grant a permit to affect prime farmland only after consultation with the United States Department of Agriculture and only if the Department of Environmental Resources finds in writing that the operator has the technological capability to restore such affected area, within a reasonable time, to equivalent or higher levels of yield as nonaffected prime farmland in the surrounding area under equivalent levels of management and can meet such soil reconstruction standards as the department may by rule and regulation prescribe.

(i) Public notice of every application for a permit or bond release under this act shall be given by notice published 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 such requirements regarding public notice and public hearings on permit applications and bond releases as it deems appropriate. For the purpose of these public hearings, the department shall have the authority and is hereby empowered to administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses, or production of witnesses, or production of materials, and 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. 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 coal refuse disposal is proposed to occur. Should any person having an interest which is or may be adversely affected by any action of the department under this subsection, or by the failure of the department to act upon an application for a permit, he may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law, and from the adjudication of said board he may further appeal as provided by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). The Environmental Hearing Board, upon the request of any party, may in its discretion order the payment of costs and attorney's fees it determines to have been reasonably incurred by such party in proceedings pursuant to this section.

(j) Permit applications shall specify how the coal refuse disposal area will be maintained.

(k) Permits shall specify how the operation shall provide for stability within the meaning of this act.

(l) 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: Provided, however, That information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

(m) The application for a permit shall include, upon a form prepared and furnished by the department, the written consent

of the landowner to entry upon any land to be affected by the operation of the operator, by the Commonwealth and by any of its authorized agents prior to the initiation of coal refuse disposal operations, during coal refuse disposal 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 such pollution abatement facilities as may be deemed necessary by the department for the prevention of pollution from coal refuse. Such forms shall be deemed to be recordable documents, and prior to the initiation of coal refuse disposal operations under the permit, such forms shall be recorded at the office of the recorder of deeds in the county or counties in which the area to be affected under the permit is situate.

(n) Permit applications shall contain such other information as the department may require.

(5 amended Oct. 10, 1980, P.L.807, No.154)

Compiler's Note: The Department of Environmental Resources, referred to in subsec. (h), 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.

Section 6. Bonding.--(a) Prior to commencing coal refuse disposal operations, the operator shall file with the department a bond for the land to be affected by the coal refuse disposal area on a form to be prescribed and furnished by the department, payable to the Commonwealth and conditioned that the operator shall faithfully perform all of the requirements of this act, the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," 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," 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 July 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid Waste Management Act" or the act of July 7, 1980 (No.97), known as the "Solid Waste Management Act": Provided, however, That an operator posting a bond sufficient to comply with this section of the act shall not be required to post a separate bond for the permitted area under each of the acts hereinabove enumerated. The foregoing proviso shall not, however, 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. The amount of the bond required shall be in an amount determined by the secretary 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 pursuant to regulations for an alternate coal bonding program which shall achieve the objectives and purposes of the bonding program. Said estimate shall be based upon the operator'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, and vegetation potential, 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 operator, in excess of the cost to the operator of performing the necessary work during the course of his surface mining operations. When the plan involves reconstruction or relocation of any public road or highway, the amount of the bond shall include an amount sufficient to fully build or restore the road or highway to a condition approved by the Department of Transportation. No bond shall be filed for less than ten thousand dollars (\$10,000). Liability under such bond shall be for the duration of the operation, and for a period of five full 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 part prior thereto as hereinafter provided. Such bond shall be executed by the operator and a surety licensed to do business in the Commonwealth and approved by the secretary: And, provided further, That the operator may elect to deposit 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 ninety days prior written notice to the permittee and the department, or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, The General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth, with the department in lieu of a corporate surety. The cash deposit, amount of letter of credit, or market value of such negotiable bonds shall be equal at least to the sum of the bond. The secretary shall, upon receipt of any such deposit of cash, letter of credit or negotiable securities, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The operator 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 him, in lieu thereof, other collateral of the classes specified having a market value at least equal to the sum of the bond, and also to demand, receive and recover the interest and income from said negotiable bonds as the same becomes due and payable: And, provided further, That where negotiable bonds as the same becomes due and mature or are called, the State Treasurer, at the request of the permittee, shall convert such negotiable bonds into such other negotiable bonds of the classes herein specified as may be designated by the permittee: And provided further, That where notice of intent to terminate a letter of credit is given, the department shall give the permittee thirty days written notice to replace the letter of credit with other acceptable bond guarantees as provided herein, and if the permittee fails to replace the letter of credit within the thirty-day notification period, the department shall draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee; or the department, in its discretion, may accept a self-bond from the permittee, without separate surety, if the permittee demonstrates to the satisfaction of the department a history of financial solvency, continuous business operation and continuous efforts to achieve compliance with all United States of America and Pennsylvania environmental laws, 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 such financial statements if the same are not otherwise disclosed to other government agencies or the public.

(3) During the last thirty-six 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 fee payment currently due under the Federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1232, for each ton of coal produced in the Commonwealth of Pennsylvania.

(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 which 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 Coal Refuse Disposal Control Fund to administer this provision.

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

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

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

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

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

is reasonably anticipated to continue for a period of at least ten years from the date of application, the permittee may elect to deposit collateral and file a collateral bond as provided in the following phased deposit schedule. The permittee shall, prior to commencing coal refuse disposal operations, deposit ten thousand dollars (\$10,000) or twenty-five per cent of the amount determined under this subsection, whichever is greater. The operator shall, thereafter, annually deposit ten per cent of the remaining bond amount for a period of ten years. Interest accumulated by such collateral shall become a part of the bond. The department may require additional bonding at any time to meet the intent of this section. The collateral shall be deposited, in trust, with the State Treasurer as provided in this subsection, or with a bank, selected by the department, which shall act as trustee for the benefit of the Commonwealth, according to rules and regulations promulgated hereunder, to guarantee the operator's compliance with this act and the statutes hereinabove enumerated. The operator shall be required to pay all costs of the trust. 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 pursuant to the schedule and criteria for release provided in subsection (c) of this section.

(b) If the operator abandons the operation or fails or refuses to comply with the requirements of the act in any respect for which liability has been charged on the bond, the secretary shall declare the bond forfeited, and shall certify the same to the Department of Justice, which shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operator has deposited cash or securities as collateral in lieu of a corporate surety, the secretary shall declare said collateral forfeited, and shall direct the State Treasurer to pay said funds into the Coal Refuse Disposal Control Fund, or to proceed to sell said securities to the extent forfeited and pay the proceeds thereon into the Coal Refuse Disposal Control Fund. Should any corporate surety fail to promptly pay, in full, a forfeited bond, it shall be disqualified from writing any further surety bonds under this act. Any operator aggrieved by reason of forfeiting the bond or converting collateral, as herein provided, may appeal to the Environmental Hearing Board in the manner provided by law, and from the adjudication of said board he may further appeal as provided by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). For the purposes of this subsection the standards for determining whether a coal refuse disposal operation has been abandoned shall be as prescribed by rules and regulations promulgated hereunder.

(c) Subject to the public notice requirements of section 5(i) of this act, if the department is satisfied that the reclamation covered by the bond or portion thereof has been accomplished as required by this act, the department may release in whole or in part the bond or deposit according to the following schedule:

(1) when the operator has completed the grading, planting and drainage control of a bonded area in accordance with his approved reclamation plan, the release of sixty per cent of the bond for the applicable permit area;

(2) when the vegetation has been established on the affected area in accordance with the approved reclamation plan, the department shall retain the amount of bond for the vegetated area which would be sufficient for the cost to the Commonwealth

of reestablishing vegetation. Such retention of bond shall be for the duration of liability under the bond as prescribed in subsection (a) of this section. No part of the bond shall be released under this subsection so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirement of law. Where a permanent impoundment is to be retained, the portion of bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the department; and

(3) when the operator has completed successfully all coal refuse disposal and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in subsection (a) of this section: Provided, however, That bond shall not be fully released until all requirements of the act are 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.

(6 amended Oct. 10, 1980, P.L.807, No.154)

Section 6.1. Designating Areas Unsuitable for Coal Refuse Disposal.--(a) Pursuant to the procedures set forth in subsection (f) of this section, the department shall designate an area as unsuitable for all or certain types of coal refuse disposal if the department determines that reclamation pursuant to the requirements of this act is not technologically and economically feasible.

(b) Upon petition pursuant to subsection (f) of this section, a surface area may be designated unsuitable for all or certain types of coal refuse disposal operations if such operations will:

(1) be incompatible with existing State or local land use plans or programs;

(2) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems;

(3) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(4) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(c) The department shall forthwith develop a process to meet the requirements of this act. The process shall include:

(1) review by the department of surface coal refuse disposal lands;

(2) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to support and permit reclamation of coal refuse disposal operations;

(3) a method or methods for implementing land use planning decisions concerning coal refuse disposal operations; and

(4) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(d) Determinations of the unsuitability of land for coal refuse disposal as provided for in this section, shall be

integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State and local levels.

(e) The requirements of this section shall not apply to lands on which coal refuse disposal operations are being conducted on the date of enactment of this act or under a permit issued pursuant to this act, or where substantial legal and financial commitments as they are defined under § 522 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq. in such operation were in existence prior to January 4, 1977.

(f) Any person having an interest which is or may be adversely affected shall have the right to petition the department to have an area designated as unsuitable for coal refuse disposal operations, or to have such a designation terminated. Pursuant to the procedure set forth in this subsection, the department may initiate proceedings seeking to have an area designated as unsuitable for coal refuse disposal operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the department shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the department shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefore. In the event that all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, such hearing need not be held.

(g) Prior to designating any land areas as unsuitable for coal refuse disposal operations, the department shall prepare a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal.

(h) Subject to valid existing rights as they are defined under § 522 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq., no coal refuse disposal operations except those which exist on August 3, 1977, shall be permitted:

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act 16 U.S.C. § 1274 et seq. and National Recreation Areas designated by act of Congress;

(2) on any Federal lands within the boundaries of any National forest: Provided, however, That coal refuse disposal operations may be permitted on such lands if the Department of the Interior and the department find that there are no significant recreational, timber, economic, or other values which may be incompatible with such coal refuse disposal operations;

(3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites

unless approved jointly by the department and the Federal, State or local agency with jurisdiction over the park or the historic site;

(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(5) within three hundred feet of any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public park, public building, school, church, community or institutional building, nor within one hundred feet of a cemetery, nor within one hundred feet of the bank of any stream. Notwithstanding this one hundred foot stream buffer zone, if consistent with section 4.1 of this act, the department may grant a variance to dispose of coal refuse and to relocate or divert streams in the stream buffer zone if the operator demonstrates to the satisfaction of the department that there will be no significant adverse hydrologic or water quality impacts as a result of the variance. The variance shall be issued as a written order specifying the methods and techniques that must be employed to prevent or mitigate adverse impacts. Prior to granting any such variance, the operator shall be required to give public notice of his application for the variance in two newspapers of general circulation in the area once a week for two successive weeks. Should any person file any exception to the proposed variance within twenty days of the last publication of the notice, the department shall conduct a public hearing with respect to the application within thirty days of receipt of the exception. The department shall also consider any information or comments submitted by the Pennsylvania Fish and Boat Commission prior to taking action on any variance request. ((5) amended Dec. 7, 1994, P.L.808, No.114)

(i) All new coal refuse disposal areas shall include a system to prevent adverse impacts to surface and ground water and to prevent precipitation from contacting the coal refuse and shall allow for revegetation and the prevention of erosion. The system for preventing precipitation from contacting the coal refuse shall be installed:

(1) as phases of the coal refuse disposal area reach capacity;

(2) as specified in the permit;

(3) when the operator temporarily ceases operation of the coal refuse disposal area for a period in excess of ninety days unless the department approves an operator's request for a longer period; or

(4) when the operator permanently ceases operation of the coal refuse disposal area.

((i) amended Oct. 4, 2019, P.L.452, No.74)

(j) For the purposes of this act and the policies, rules and regulations and standards adopted pursuant to this act, the requirements pertaining to temporary cessation of coal refuse disposal areas shall be in conformance with regulations and standards adopted by the United States Office of Surface Mining Reclamation and Enforcement pursuant to Federal law, namely the Surface Mining Control and Reclamation Act of 1977. However, the department may promulgate regulations to provide for the

connection of coal refuse or related material to the coal refuse disposal area. ((j) added Oct. 4, 2019, P.L.452, No.74)

(6.1 added Oct. 10, 1980, P.L.807, No.154)

Section 6.2. Coal Refuse Disposal Activities on Previously Affected Areas.--(a) Any operator who proposes to engage in coal refuse disposal activities on an area on which there are preexisting polluttional discharges resulting from previous mining may request special authorization from the department to proceed to conduct coal refuse disposal activities under this section. Except as specifically modified by this section and the rules and regulations adopted under this section, the provisions of this act shall apply to special authorizations to conduct coal refuse disposal activities on areas with preexisting polluttional discharges.

(b) The department may grant special authorization under this section if such special authorization is part of:

(1) a permit issued under section 4 of this act, except for permit transfers after the effective date of this section, if the request is made at the time of submittal of a permit application or prior to a department decision to issue or deny that permit; or

(2) a permit revision pursuant to department regulation, but only if the operator affirmatively demonstrates to the satisfaction of the department that:

(i) the operator has discovered polluttional discharges within the permit area that came into existence after its permit application was approved;

(ii) the operator has not caused or contributed to the polluttional discharges;

(iii) the proposed pollution abatement area is not hydrologically connected to any area where coal refuse disposal activities have been conducted pursuant to the permit;

(iv) the operator has not affected the proposed pollution abatement area by coal refuse disposal activities; and

(v) the department has not granted a bonding authorization and coal refuse disposal approval for the area.

(c) The department shall not grant special authorization under this section unless the operator making the request affirmatively demonstrates all of the following:

(1) Neither the operator nor any officer, principal shareholder, agent, partner, associate, parent corporation, subsidiary or affiliate, sister corporation, contractor or subcontractor or any related party:

(i) has any legal responsibility or liability as an operator under section 315 of the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," for treating the polluttional discharges from or on the proposed pollution abatement area; or

(ii) has any statutory responsibility or liability for reclaiming the proposed pollution abatement area.

(2) The proposed pollution abatement plan will result in a significant reduction of the baseline pollution load and represents best technology.

(3) The land within the proposed polluttional abatement area can be reclaimed.

(4) The coal refuse disposal activities on the proposed pollution abatement area will not cause any additional surface water pollution or groundwater degradation.

(5) The coal refuse disposal activities on permitted areas other than the proposed pollution abatement area will not cause any surface water pollution or groundwater degradation.

(6) There are one or more preexisting pollutional discharges from or on the pollution abatement area.

(7) All requirements of this act and the regulations promulgated under this act that are not inconsistent with this section have been met.

(d) An authorization may be denied under this section if granting it will or is likely to affect any legal responsibility or liability for abating the pollutional discharges from or near the pollution abatement area.

(e) Except as specifically modified by this section, an operator requesting special authorization under this section shall comply with the permit application requirements of sections 4 and 5 of this act and the regulations promulgated under sections 4 and 5 of this act and shall also provide such additional information as may be required by the department relating to:

(1) a delineation of the proposed pollution abatement area, including the location of the preexisting discharges;

(2) a description of the hydrologic balance for the proposed pollution abatement area, including water quality and quantity monitoring data; and

(3) a description of the abatement plan that represents the best technology.

(f) An operator who is granted special authorization under this section shall:

(1) implement the approved water quality and quantity monitoring program for the pollution abatement area as required by the department;

(2) implement the approved abatement plan;

(3) notify the department immediately prior to the completion of each step of the abatement plan; and

(4) provide progress reports to the department within thirty days after the completion of each step of the abatement program in a manner prescribed by the department.

(g) (1) An operator granted special authorization under this section shall be responsible for the treatment of discharges in the following manner:

(i) Except for preexisting discharges which are not encountered during coal refuse disposal activities or the implementation of the abatement plan, the operator shall comply with all applicable regulations of the department.

(ii) The operator shall treat preexisting discharges which are not encountered during coal refuse disposal activities or implementation of the abatement plan to meet the baseline pollution load when the baseline pollution load is exceeded according to the following schedule:

(A) prior to final bond release, if the operator is in compliance with the pollution abatement plan, where the department demonstrates that the operator has caused the baseline pollution load to be exceeded; the department shall have the burden of proving that the operator caused the baseline pollution load to be exceeded;

(B) prior to final bond release, if the operator is not in compliance with the pollution abatement plan, unless the operator affirmatively demonstrates that the reason for exceeding the baseline pollution load is a cause other than the operator's coal refuse disposal and abatement activities; and

(C) subsequent to final bond release where the department demonstrates that the operator has caused the baseline pollution load to be exceeded; the department shall have the burden of proving that the operator caused the baseline pollution load to be exceeded.

(2) an allegation that the operator caused the baseline pollution load to be exceeded under subclause (ii) of clause (1) shall not prohibit the department from issuing, renewing or amending the operator's license and permits or approving a bond release until a final administrative determination has been made of an such alleged violation.

(3) For purposes of this subsection, the term "encountered" shall not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the abatement plan which would otherwise drain into the affected area, provided such diversions are designed, operated and maintained in accordance with all applicable regulations of the department.

(h) An operator required to treat preexisting discharges under subsection (g) will be allowed to discontinue treating preexisting discharges when the operator demonstrates that:

(1) the baseline pollution load is no longer being exceeded as shown by all ground and surface water monitoring;

(2) all requirements of the permit and the special authorization have been or are being met;

(3) the operator has implemented each step of the abatement plan as approved in the authorization; and

(4) the operator did not cause or allow any additional surface water pollution or groundwater degradation by re-affecting the pollution abatement area.

(i) If any condition set forth in subsection (g) of this section occurs after discontinuance of treatment under subsection (h) of this section, the operator shall reinstitute treatment in accordance with subsection (g) of this section. An operator who reinstitutes treatment under this subsection shall be allowed to discontinue treatment if the requirements of subsection (h) of this section are met.

(j) 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 6 of this act, except that the criteria and schedule for release of bonds shall be as follows:

(1) Up to fifty per cent of the amount of bond if the operator demonstrates that:

(i) all activities were conducted in accordance with all applicable requirements;

(ii) the operator has satisfactorily completed installing the water impermeable cover, grading, planting and drainage control in accordance with the approved reclamation plan;

(iii) the operator has properly implemented each step of the approved abatement plan;

(iv) the operator has not caused the baseline pollution load to be exceeded for a period of a minimum of six months prior to the submittal of a request for bond release and until the bond release is approved as shown by all ground and surface water monitoring; and

(v) the operator has not caused or contributed to any ground or surface water pollution by re-affecting the pollution abatement area.

(2) Up to an additional thirty-five per cent of the amount of bond if the operator demonstrates that:

(i) the operator has replaced topsoil, completed final grading and achieved successful vegetation in accordance with the approved reclamation plan;

(ii) the operator has not caused or contributed to any ground or surface water pollution by re-affecting the pollution abatement area; and

(iii) the operator has achieved the actual improvement of the baseline pollution load described in the abatement plan and shown by all ground and surface water monitoring for the period of time provided in the abatement plan or has achieved all of the following:

(A) At a minimum, the operator has not caused the baseline pollution load to be exceeded as shown by all ground and surface water monitoring for a period of twelve months from the date of initial bond release under clause (1) or from the date of discontinuance of treatment under subsection (h) of this section.

(B) The operator has conducted all measures provided in the abatement plan and any additional measures specified by the department in writing at the time of initial bond release under clause (1).

(C) The operator has caused aesthetic or other environmental improvements and the elimination of public health and safety problems by engaging in coal refuse disposal activities and reaffected the pollution abatement area.

(D) The operator has stabilized the pollution abatement area.

(3) The remaining amount of bond if the operator demonstrates that:

(i) the operator has not caused the baseline pollution load to be exceeded from the time of bond release under clause (2) or, if treatment has been initiated any time after release of the bond, for a period of five years from the date of discontinuance of treatment under subsection (h) of this section; and

(ii) the applicable liability period of section 6 of this act has expired and the operator has successfully completed all coal refuse disposal and reclamation activities.

(k) For reclamation plans approved as part of a grant of special authorization under this section, the standard of successful revegetation shall be, as a minimum, the establishment of ground cover of living plants not less than can be supported by the best available topsoil or other suitable material in the reaffected area, shall not be less than ground cover existing before disturbance and shall be adequate to control erosion: Provided, however, That the department may require that the standard of success comply with section 5(c) and (e) of this act where it determines compliance is integral to the proposed pollution abatement plan.

(1) In establishing an appropriate bond amount for coal refuse disposal in any area subject to a grant of special authorization under this section, the department shall apply as a credit to the bond amount any funds paid into the Surface Mining Conservation and Reclamation Fund as a result of a prior forfeiture on the area. The area shall also be exempt from permit reclamation fees prescribed by regulations promulgated under this act.

(m) An operator granted special authorization under this section shall be permanently relieved from the requirements of subsection (g) of this section and the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," for all preexisting discharges, identified in subsection (e) of this section, to the extent of the baseline pollution load if the operator complies with the terms and conditions of the pollution abatement plan and the baseline pollution load has not been exceeded at the time of final bond release. Relief of liability under this subsection shall not act or be construed to relieve any person other than the operator granted special authorization

from liability for the preexisting discharge; nor shall it be construed to relieve the operator granted special authorization from liability under subsection (g)(1)(ii) of this section if the baseline pollution load is exceeded.

(6.2 added Dec. 7, 1994, P.L.808, No.114)

Section 6.3. Experimental Practices.--In order to encourage advances in coal refuse disposal practices and advances in technology or practices which will enhance environmental protection with respect to coal refuse disposal activities, the department may grant permits approving experimental practices and demonstration projects. The department may grant such permits if:

(1) the environmental protection provided will be potentially more protective or at least as protective as required by this act and department regulations;

(2) the coal refuse disposal activities approved under the permits are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices or demonstration projects; and

(3) the experimental practices or demonstration projects do not reduce the protection afforded public health and safety below that provided by this act and department regulations.

(6.3 added Dec. 7, 1994, P.L.808, No.114)

Section 6.4. Coal Bed Methane Review Board.--(a) There is established the Coal Bed Methane Review Board.

(b) The following shall apply:

(1) The board shall consist of the following members:

(i) One member appointed by the Governor from a list of three individuals submitted by the Pennsylvania Farm Bureau.

(ii) One member appointed by the Governor from a list of three individuals prepared jointly by the Pennsylvania Oil and Gas Association, the Independent Oil and Gas Association of Pennsylvania and the Pennsylvania Coal Association.

(iii) One member appointed by the Governor who is an individual with expertise in petroleum geology or petroleum engineering with at least three years of experience in practice in Pennsylvania who is appointed from a list of three individuals prepared jointly by the deans of the College of Agricultural Sciences and the College of Earth and Mineral Sciences of The Pennsylvania State University.

(2) The lists required by clause (1) shall be submitted to the Governor within thirty days of the effective date of this section, and the Governor's appointments shall be made within ninety days of the effective date of this section.

(3) Upon occurrence of a vacancy, the appropriate entity shall submit a new list within thirty days of the vacancy, and the Governor shall make an appointment within thirty days of receipt of the list.

(c) The term of appointment of a board member shall be three years or until a successor is duly appointed. A board member may be appointed for successive terms.

(d) The Department of Environmental Protection shall provide administrative and clerical support to the board as requested.

(e) The purpose of the board shall be to consider objections and attempt to reach agreement on or determine a location for the coal bed methane well or access road.

(f) Members of the board shall be compensated at the appropriate per diem rate based on the prevailing formula administered by the Commonwealth, but not less than one hundred fifty dollars (\$150) per day, plus all reasonable expenses incurred while performing their official duties. Compensation shall be adjusted annually by the Secretary of Environmental

Protection to account for inflation based on the rate of inflation identified by the Consumer Price Index published by the United States Department of Labor. The individual member may waive his right to all or part of the compensation set forth in this subsection.

(6.4 added Feb. 1, 2010, P.L.126, No.4)

Compiler's Note: Section 5 of Act 4 of 2010, which added section 6.4, provided that the Department of Environmental Protection shall publish a notice in the Pennsylvania Bulletin when all initial members of the board established in section 6.4 have been appointed.

Section 6.5. Procedures.--(a) A well operator who intends to drill a coal bed methane well or construct an access road associated with a coal bed methane well shall provide written notification to the surface owner in the manner prescribed in section 201(b) of the act of December 19, 1984 (P.L.1140, No.223) , known as the "Oil and Gas Act." The notification shall also include the following statement on a form provided by the Department of Environmental Protection in at least twelve-point print:

Right to Participate in
Alternative Dispute Resolution

You have the right to have your objections to the well operator's proposed location of the well or of the access road associated with the well heard and decided by the three-member Coal Bed Methane Review Board, created under the act of _____, (P.L. _____, No. _____), known as the "Coal Bed Methane Well Dispute Resolution Act." You may participate with or without a lawyer in any conference session the board may hold to hear your objections.

Important: To exercise this right, you must file your objections in writing with the Coal Bed Methane Review Board through the Department of Environmental Protection at:

(Address)

(City, State, Zip)

within fifteen days of the date you received this notification. Otherwise, you will be considered to have waived this right to resolve your objections through the Coal Bed Methane Review Board. Your objection may be filed in person or by certified mail.

(b) A surface owner who intends to invoke alternative dispute resolution shall file written objections to the well operator's proposed location for the coal bed methane well or access road with the board within fifteen days of the date of receipt of the written notification and plat described in subsection (a). The written objections may indicate an alternative location at which the proposed coal bed methane well could be drilled or the access road could be located to overcome the objections. If no objections are filed in the time prescribed in this subsection, the Department of Environmental Protection shall accept an application from the operator and proceed to issue or deny that the well permit, provided that the department shall not accept a well permit application unless the applicant demonstrates that the notification requirements of subsection (a) have been satisfied.

(c) If objections are filed by a surface owner pursuant to subsection (b), an employee of the Department of Environmental Protection responsible for receiving such objections on behalf of the board shall, within two days, notify the operator and the board of the objections, and the board shall fix a time and place for holding the dispute resolution conference and shall

notify the surface owner and well operator of the time and place where the conference will be held. The conference shall be scheduled to commence not more than ten business days from the date of service of the objections on the well operator, provided, however, that, if the board cannot be fully convened for a conference within this time, the conference shall be scheduled to commence on the earliest reasonable date in which the board can be fully convened, but no later than fifteen business days from the date of the service of the objections on the well operator. For purposes of this section, the term "fully convened" shall mean the participation of all three members of the board. The conference shall be held at the applicable regional or district office of the Department of Environmental Protection closest to the tract which is the subject of the objection. The board may use, and the Department of Environmental Protection shall provide, clerical assistance and the use of regional or district offices for the board in conducting conference sessions.

(d) At the conference the well operator and surface owner or owners as are present or represented shall consider the objections and attempt to agree upon a location for the coal bed methane well or access road. The board may hold more than one conference session. The conference shall be completed within ten business days of the date that the conference is originally commenced. However, the board, in its sole discretion, may extend the time for completion of the conference by an additional five business days, and the parties to the conference may extend the time for completion of the conference to a date mutually agreed upon. Any agreement reached at the conference shall be consistent with the requirements of the "Oil and Gas Act" and shall be reduced to writing by the board and submitted to the Department of Environmental Protection within ten business days of the date that the conference is completed. Upon receipt of notice that the board's conference resulted in a mutual agreement between the operator and the surface owner, the Department of Environmental Protection shall accept an application with a plat showing the agreed-upon location of the coal bed methane well and access road from the operator and shall proceed to issue or deny the well permit. If the parties to the conference before the board fail to agree upon a location of the coal bed methane well or access road or if only the party requesting review participates in the conference, the board shall make a determination in writing establishing a location of the coal bed methane well or access road that, in the judgment of the majority of the board, will cause only those surface impairments that are reasonably necessary for purposes of extracting the underlying coal bed methane. Issuance of the written determination shall be made within ten business days of the date of completion of the conference and shall be served on the date of issuance by certified mail upon the surface owner, the well operator and the Department of Environmental Protection. Within fifteen business days of the date of completion of the conference, the board shall issue a written statement setting forth findings of fact and reasons in support of its determination and shall serve copies of the written statement by certified mail upon the surface owner, the well operator and the Department of Environmental Protection. Failure by the board to issue the written statement of findings of fact and reasons in support of its determination within the prescribed period of fifteen business days shall not preclude an aggrieved person from exercising the right of appeal to a court of common pleas as provided under subsection (f). If no

appeal of the board's determination is filed under subsection (f), the Department of Environmental Protection shall accept an application with a plat showing the location of the coal bed methane well and access road as determined by the board from the operator and shall proceed to issue or deny the well permit.

(e) Any determination by the board , made under subsection (d), shall be binding on the Department of Environmental Protection. The board's determination shall not limit or otherwise affect the Department of Environmental Protection's regulatory authority under the "Oil and Gas Act," the act of June 22, 1937 (P.L.1987, No.394) , known as "The Clean Streams Law," or any other applicable law administered by the department.

(f) Any person aggrieved by a determination of the board issued under subsection (d) shall have the right, within fifteen days of receipt of the written or final determination, to appeal the determination to the court of common pleas in the judicial district in which the affected property is located. A copy of the appeal shall be served upon all the parties to the conference. The board or the Department of Environmental Protection shall not be a party to the appeal. The court shall hold a hearing on the appeal within thirty days of filing of the appeal and shall render its decision in the appeal within sixty days of filing of the appeal. In any appeal, the only issue to be determined by the court is whether the location of the disputed coal bed methane well or access road, as the case may be, determined by the board, will cause only those surface impairments that are reasonably necessary for purposes of extracting the underlying coal bed methane. If the court agrees that the board's determination meets this standard, it shall affirm the board's determination. If the court determines that the board's determination does not meet this standard, it shall issue an order indicating the location of the disputed coal bed methane well or access road, as the case may be, that, in the opinion of the court, will cause only those surface impairments that are reasonably necessary for purposes of extracting the underlying coal bed methane. Upon issuance of an order by the court, the Department of Environmental Protection shall accept an application from the operator and shall proceed to issue or deny the well permit.

(g) This section supersedes the ordinances and resolutions of political subdivisions dealing with material regulated by this section.

(h) The provisions of this section shall not be construed to affect, limit or impair any enforcement action taken by the Department of Environmental Protection under the act of December 19, 1984 (P.L.1140, No.223) , known as the "Oil and Gas Act."

(i) Nothing in this section precludes a person from seeking other remedies allowed by statute, common law, deed or contract, nor does this section diminish or alter rights previously established or granted by statute, common law, deed or contract.

(6.5 added Feb. 1, 2010, P.L.126, No.4)

Compiler's Note: The Coal Bed Methane Well Dispute Resolution Act, referred to in subsection (a), does not exist.

Section 7. Unlawful Conduct.--It shall be unlawful to establish, operate or maintain a coal refuse disposal area in a manner which fails to comply or for any person to fail to comply with any rule or regulation of the department or fail to comply with any order or permit of the department, to violate

any of the provisions of this act or rules and regulations adopted hereunder, orders or permits of the department, to cause air or water pollution in connection with coal refuse disposal operations and not otherwise proscribed by this act, or to hinder, obstruct, prevent or interfere with the department or its personnel in the performance of any duty hereunder, including violations of 18 Pa.C.S. § 4903 (relating to false swearing) and 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). Any person or municipality engaging in such conduct shall be subject to the provisions of this section and sections 8, 9, 10, 11 and 12 of this act.

(7 amended Oct. 10, 1980, P.L.807, No.154)

Section 8. Cessation Orders.--The department shall have the authority to order the immediate cessation of any operation that is started without the operator thereof having first obtained a permit as required by this act, or where the public welfare or safety calls for the immediate halt of the operation until corrective steps have been undertaken by the operator to the satisfaction of the department.

(8 amended Oct. 10, 1980, P.L.807, No.154)

Section 9. Enforcement Orders.--The department may issue such orders as are necessary to aid in the enforcement of the provisions of this act. Such orders shall include, but not be limited to, orders requiring persons to cease operations and orders modifying, suspending or revoking permits. The right of the department to issue an order under this act is in addition to any penalty which may be imposed pursuant to this act.

(9 amended Oct. 10, 1980, P.L.807, No.154)

Section 10. Injunctive Relief; Remedies not Exclusive.--(a) In addition to any other remedies provided for in this act, the department may petition the Commonwealth Court or the court of common pleas in the county in which the defendant resides or has his place of business for an injunction to restrain all violations and to that end jurisdiction is hereby conferred in law and equity upon such courts.

(b) The penalties and remedies prescribed by this act shall be deemed concurrent and the existence of or exercise of any remedy shall not prevent the department from exercising any other remedy hereunder, at law or in equity.

(10 amended Oct. 10, 1980, P.L.807, No.154)

Section 11. Civil Penalties.--In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act, rule, regulation, order of the department, or a condition of any permit issued pursuant to this act, the department may assess a civil penalty upon a person or municipality for such violation. Such a penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed five thousand dollars (\$5,000) per day for each violation. In determining the amount of the civil penalty the department shall consider the willfulness of the violation, damage or injury to the waters of the Commonwealth or their uses, cost of restoration and other relevant factors. 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, other abatement order or notice of violation has been issued, a civil penalty of not less than seven hundred fifty dollars (\$750) shall be assessed for each day the violation continues beyond the period prescribed for its correction: Provided, however, That correction of a violation within the period prescribed for its correction shall not extinguish

liability for the violation. Upon the issuance of a notice or order charging that a violation of the act has occurred, the secretary shall inform the person within a period of time to be prescribed by rule and regulation of the proposed amount of said penalty. The person charged with the penalty shall then have thirty 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, such bond shall be executed by a surety licensed to do business in the Commonwealth and be satisfactory to the department. If through administrative hearing 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 thirty 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 thirty days shall result in a waiver of all legal rights to contest the fact of the violation or the amount of the penalty. The amount assessed after administrative hearing or waiver of administrative hearing shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided by law for the collection of debts. If any person liable to pay 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 such person from the date it has been entered and docketed of record by the prothonotary of the county where such 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. 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 pursuant to this subsection.

(11 amended Oct. 10, 1980, P.L.807, No.154)

Section 12. Penalties.--(a) 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 pursuant to this act is guilty of a summary offense and, upon conviction, such person shall be subject to a fine of not less than one hundred dollars (\$100) nor more than ten thousand dollars (\$10,000) for each separate offense, and, in default of the payment of such fine, a person shall be imprisoned for a period of ninety days.

(b) Any person who willfully or negligently 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 pursuant to the act is guilty of a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than two thousand five hundred dollars (\$2,500) nor more than twenty-five thousand dollars (\$25,000) for each separate offense or to imprisonment in the county jail for a period of not more than one year, or both.

(c) Any person who, after a conviction of a misdemeanor for any violation within two years as above provided, willfully or negligently 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 pursuant to this act is guilty of a misdemeanor of the second degree and, upon conviction, shall be subject to a fine of not less than two thousand five hundred dollars (\$2,500) nor more than fifty thousand dollars (\$50,000) for each separate offense or to imprisonment for a period of not more than two years, or both.

(d) Each day of continued violation of any provision of this act, any rule or regulation of the department, any order of the department or any condition of any permit issued pursuant to this act shall constitute a separate offense.

(e) All summary proceedings under the provisions of 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 said district justices, subject to appeal by either party 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 in such actions.

(12 amended Oct. 10, 1980, P.L.807, No.154)

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 13. Citizens' Suits.--(a) Except as provided in subsection (c) of this section, any person having an interest which 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 which is not discretionary with the department or against any 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) Whenever any person presents information to the department which 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 acts enumerated in section (5)(g) of this act or any condition or any permit issued thereunder, the department shall immediately order inspection of the operation at which the alleged violation is occurring, and the department shall notify the person presenting such information and such person shall be allowed to accompany the inspector during the inspection.

(c) No action pursuant to this section may be commenced prior to sixty days after the plaintiff has given notice in writing of the violation to the department and to any alleged violator, nor may such action be commenced if the department has commenced and is diligently prosecuting a civil action in a court of the United States or a state to require compliance with this act or any rule, regulation, order or permit issued pursuant to 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) The provisions of subsection (c) of this section to the contrary notwithstanding, any action pursuant to this section may be initiated immediately upon written notification to the department in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(e) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accord with the Rules of Civil Procedure.

(13 added Oct. 10, 1980, P.L.807, No.154)

Section 14. Coal Refuse Disposal Control Fund.--All fines, civil penalties, bond forfeitures and fees collected under this act shall be paid into the Treasury of the Commonwealth in a special fund known as the "Coal Refuse Disposal Control Fund," hereby established, which shall be administered by the department for use in the elimination of pollution, the abatement of health and safety hazards and nuisances and such other purposes as are necessary to implement the provisions of this act pursuant to the rules and regulations adopted by the Environmental Quality Board. Moneys deposited into the Coal Refuse Disposal Control Fund are hereby appropriated to the Department of Environmental Resources to carry out the purposes provided in this act.

(14 added Oct. 10, 1980, P.L.807, No.154)

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 14.

Section 15. Savings Clause.--(a) Nothing in this act shall be construed as estopping the Commonwealth, or any district attorney from proceeding in the courts of law or equity to abate pollutions forbidden under this act, or abate nuisances under existing law. It is hereby declared to be the purpose of this act to provide additional and cumulative remedies to control the disposal of coal refuse in this Commonwealth and nothing contained in this act shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or statutory law, criminal or civil, nor shall any provision of this act be construed as estopping the Commonwealth, persons or municipalities, in the exercise of their rights under the common law or decisional law or in equity, from proceeding in courts of law or equity to suppress nuisances, or to abate any pollution now or hereafter existing, or enforce common law or statutory rights. No courts of this Commonwealth having jurisdiction to abate public or private nuisances shall be deprived of such jurisdiction to abate any private or public nuisance instituted by any person for the reason that such nuisance constitutes air or water pollution.

(b) In order to maintain primary jurisdiction over coal mining in Pennsylvania, it is hereby declared that for a period of two years from the effective date of this act the department

shall not enforce any provision of this act which was enacted by these amendments solely to secure for Pennsylvania primary jurisdiction to enforce Public Law 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, if the corresponding provision of that act is declared unconstitutional or otherwise invalid due to a final judgment by a Federal court of competent jurisdiction and not under appeal or is otherwise repealed or invalidated by final action of the Congress of the United States. If any such provision of Public Law 95-87 is declared unconstitutional or invalid, the corresponding provision of this act enacted by these amendments solely to secure for Pennsylvania primary jurisdiction to enforce the Federal Surface Mining Control and Reclamation Act of 1977, Public Law 95-87 shall be invalid and the secretary shall enforce this act as though the law in effect prior to these amendments remained in full force and effect.

It is hereby determined that it is in the public interest for Pennsylvania to secure primary jurisdiction over the enforcement and administration of Public Law 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, and that the General Assembly should amend this act in order to obtain approval of the Pennsylvania program by the United States Department of the Interior. It is the intent of this act to preserve existing Pennsylvania law to the maximum extent possible.

(15 added Oct. 10, 1980, P.L.807, No.154)

Section 15.1. Suspension of Implementation of Certain Provisions.--In order to maintain primary jurisdiction over surface coal mining in Pennsylvania, the department shall suspend implementation of any provision of this act found to be inconsistent with Federal law by the Secretary of the United States Department of the Interior under section 505 of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et seq.) or the Administrator of the Environmental Protection Agency under section 402 of the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.). To maintain primary jurisdiction over coal mining operations the department shall develop a regulatory program and program amendments under the Surface Mining Control and Reclamation Act and the Federal Water Pollution Control Act that are consistent with the requirements of section 301(p) of the Federal Water Pollution Control Act and the State remaining regulations for surface mining activities.

(15.1 added Dec. 7, 1994, P.L.808, No.114)

Section 16. Severability Clause.--The provisions of this act are severable and if any provision or part thereof shall be held invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of the act.

(16 added Oct. 10, 1980, P.L.807, No.154)

APPENDIX

Supplementary Provisions of Amendatory Statutes

Section 7. To the full extent provided by section 529 of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), the surface mining of anthracite shall continue to be governed by the Pennsylvania law in effect on August 3, 1977.

Compiler's Note: Act 154 amended the title and added or amended sections 1, 3, 3.1, 3.2, 3.3, 4, 5, 6, 6.1, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Act 318.

Section 8. In order to maintain primary jurisdiction over surface coal mining in Pennsylvania pursuant to the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, the Environmental Quality Board shall have the authority to adopt initial regulations on an emergency basis in accordance with section 204(3) (relating to omission of notice of proposed rule making) of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law. Provided, however, within 30 days after the Secretary of the United States Department of Interior grants such primary jurisdiction to Pennsylvania, the Environmental Quality Board shall repropose the regulations adopted on an emergency basis, shall submit the regulations to the Senate Environmental Resources and House Mines and Energy Management Committees of the General Assembly for their review and comments, and shall schedule public hearings within 90 days after such grant of primary jurisdiction for the purpose of hearing public comment on any appropriate revisions.

At least 30 days prior to consideration by the Environmental Quality Board of any revised regulations or any new regulations under this act other than those initial regulations promulgated on an emergency basis, the department shall submit such regulation to the Senate Environmental Resources and House Mines and Energy Management Committees of the General Assembly for their review and comment.