

**SURFACE MINING CONSERVATION AND RECLAMATION ACT - MINING PERMIT,
RECLAMATION PLAN AND BOND AND LAND RECLAMATION FINANCIAL
GUARANTEES**

Act of Oct. 24, 2012, P.L. 1276, No. 157

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No. 2012-157

HB 1813

AN ACT

Amending the act of May 31, 1945 (P.L.1198, No.418), entitled, as amended, "An act providing for the conservation and improvement of land affected in connection with surface mining; regulating such mining; providing for the establishment of an Emergency Bond Fund for anthracite deep mine operators; and providing penalties," further providing for mining permit, reclamation plan and bond; and providing for land reclamation financial guarantees.

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

Section 1. Section 4(d) of the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, amended December 18, 1992 (P.L.1384, No.173), is amended to read:

Section 4. Mining Permit; Reclamation Plan; Bond.--* * *

(d) Prior to commencing surface mining, the permittee shall file with the department a bond for the land affected by each operation on a form to be prescribed and furnished by the department, payable to the Commonwealth and conditioned that the permittee shall faithfully perform all of the requirements of this act and of the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," the act of September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act," and, where applicable, of the act of July 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid Waste Management Act," the act of July 7, 1980 (P.L.380, No.97), known as the "Solid Waste Management Act," or the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments 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: And provided further, That the foregoing proviso shall not prohibit the department from requiring additional bond amounts for the permitted area should such an increase be determined by the department to be necessary to meet the requirements of this act. The amount of the bond required shall be in an amount determined by the department based upon the total estimated cost to the Commonwealth of completing the approved reclamation plan, or in such other amount and form as may be established by the department 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 permittee's statement of his estimated cost of fulfilling the plan during the course of his operation, inspection of the application and other documents submitted, inspection of the land area, and such other criteria

as may be relevant, including, but not limited to, the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, the proposed land use and the additional cost to the Commonwealth which may be entailed by being required to bring personnel and equipment to the site after abandonment by the permittee, in excess of the cost to the permittee of performing the necessary work during the course of his surface mining operations. When the plan involves the 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 (\$10,000.00) for the entire permit area. Liability under such bond shall be for the duration of the surface mining at each 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. The bond or collateral required herein must be in an amount and on a form containing such terms and conditions as approved by the department and may be a surety bond executed by the operator and a corporate surety licensed to do business in this Commonwealth and approved by the secretary; it may be cash; it may be automatically renewable irrevocable letters of credit which may be terminated by the bank at the end of the term only upon the bank giving ninety (90) days' prior written notice to the permittee and the department; it may be 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 this Commonwealth; it may be a life insurance policy which is and states on its face that it is fully paid and noncancelable with a cash surrender value irrevocably assigned to the department at least equal to the amount of the required bonds and which shall not be borrowed against and shall not be utilized for any other purpose than financial assurance assuring reclamation; it may be an annuity or trust fund of which the department is the irrevocably named beneficiary; **it may be a land reclamation financial guarantee consistent with section 19.2 of this act and the department's regulations implementing the land reclamation financial guarantee program;** or it may be other instruments which the Environmental Quality Board may authorize through regulation. The stated amount of irrevocable letters of credit and the market value of negotiable securities shall be equal at least to the amount of the required bond. Combinations of bonding instruments may be allowed pursuant to regulations adopted by the Environmental Quality Board. The secretary shall, upon receipt of any such deposit of cash, letters of credit or negotiable bonds 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 permittee making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the secretary, the whole or any portion of any collateral so deposited, upon depositing with him, in lieu thereof, other collateral of the classes herein 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: Provided, however, That where negotiable bonds, deposited as aforesaid, 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 (30) 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 (30) 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

(3) 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 (36) calendar months, the applicant has not defaulted in the payment of any dividend or sinking fund installment or preferred stock or installment on any indebtedness for borrowed money or payment of rentals under long-term leases or any reclamation 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 (10) 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 (10) 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 Surface Mining Conservation and Reclamation Fund to administer this provision.

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

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

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

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

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

* * *

Section 2. The act is amended by adding a section to read:

Section 19.2. Land Reclamation Financial Guarantees.--(a) The department shall establish a program to provide land reclamation financial guarantees to qualified operators to insure reclamation of suitable surface mining activities permitted under this act. A land reclamation financial guarantee may be used by an operator to satisfy the bonding obligation required by section 4(d).

(b) (1) The department shall assess and collect premiums for land reclamation financial guarantees from qualified operators who choose to obtain such guarantees. The amount of the premium, to be determined by the department and established by regulation, shall be sufficient to assure the financial stability of the land reclamation financial guarantee program and to cover the department's costs to administer the program.

(2) A special account is established in the Surface Mining Conservation and Reclamation Fund to be known as the Land Reclamation Financial Guarantee Account. The account shall be used to support land reclamation financial guarantees. Premium payments shall be deposited into the account and to pay the cost of reclamation in the event of operator forfeiture.

(3) (i) Except as noted in this section, the department shall use all the funds previously appropriated and collected for the sum-certain financial guarantees authorized pursuant to section 213 of the act of June 22, 2001 (P.L.979, No.6A), known as the "General Appropriation Act of 2001," as principal funds for the land reclamation financial guarantee program established by this section.

(ii) Any existing sum-certain financial guarantee previously issued by the department shall be converted into a land reclamation financial guarantee established by this section, and the funds in the Land Reclamation Financial Guarantee Account shall be used to cover obligations for all existing sum-certain financial guarantees previously issued by the department.

(4) The department may transfer up to five hundred thousand dollars (\$500,000) of the funds appropriated for the sum-certain financial guarantees authorized pursuant to section 213 of the "General Appropriation Act of 2001," into the Remining Financial

Assurance Fund for use in supporting remaining financial guarantees issued by the department pursuant to section 4.12 of this act.

(5) The department may transfer interest earned on the funds in the Land Reclamation Financial Guarantee Account into the Reclamation Fee O&M Trust Account established pursuant to 25 Pa. Code §§ 86.17 (relating to permit and reclamation fees) and 86.187 (relating to use of money) to be used to supplement the funding of the Reclamation Fee O&M Trust Account.

(6) Consistent with the requirement in this section to assure the financial stability of the land reclamation financial guarantee program, premiums collected and deposited in the Land Reclamation Financial Guarantee Account may be transferred by the department into the Reclamation Fee O&M Trust Account established pursuant to 25 Pa. Code §§ 86.17 and 86.187 to be used to supplement the funding of the Reclamation Fee O&M Trust Account.

(7) Beginning in fiscal year 2013-2014, up to two million dollars (\$2,000,000) collected from the gross receipts tax on sales of electric energy in Pennsylvania authorized by Article XI of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," may be appropriated annually by the General Assembly to the department for transfer to the Reclamation Fee O&M Trust Account established pursuant to 25 Pa. Code §§ 86.17 and 86.187 to be used to supplement the funding of the Reclamation Fee O&M Trust Account. The authority to transfer funds under this clause expires June 30, 2039.

(c) When determining eligibility for a land reclamation financial guarantee, the department shall consider both site and operator eligibility, including factors such as:

(1) The environmental and safety hazards of the site for which a guarantee is proposed.

(2) The availability of coal reserves at the site.

(3) The operator's long-term financial stability.

(4) The operator's prior denial of coverage, if any, by surety bond companies.

(5) The operator's length of time in business and compliance history.

(6) Any other factor the department considers indicative of an operator's ability to complete reclamation and pay required premiums under the program.

(d) (1) The department shall determine the total amount of financial guarantees that can be supported by the Land Reclamation Financial Guarantee Account based on loss reserves established by the application of the historical rate of mine operator bond forfeitures, plus a reasonable margin of safety to protect the account from the risk of forfeiture.

(2) The department shall establish, by regulation, underwriting methods adequate to insure the account against the risk of forfeiture of the guarantees.

(e) (1) The land reclamation financial guarantee program established by this section may be discontinued immediately upon publication of notice in the Pennsylvania Bulletin if twenty-five per cent or greater of the outstanding bond obligation for the land reclamation financial guarantees program is subject to forfeiture.

(2) The Land Reclamation Financial Guarantee Account shall be the sole source of funds underwriting the land reclamation financial guarantees program and the Commonwealth shall not be obligated to expend any funds beyond the amount in the Land Reclamation Financial Guarantee Account.

(f) The Environmental Quality Board shall promulgate regulations to implement the land reclamation financial guarantee program and the provisions and requirements of this section.

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

APPROVED--The 24th day of October, A.D. 2012.

TOM CORBETT