

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 989

Session of
1979

INTRODUCED BY MELLOW, HOLL, KURY, O'PAKE, LINCOLN, O'CONNELL,
STOUT, GURZENDA, MURRAY AND STAPLETON, OCTOBER 2, 1979

SENATOR MELLOW, ENVIRONMENTAL RESOURCES, AS AMENDED,
MAY 13, 1980

AN ACT

1 Amending the act of September 24, 1968 (P.L.1040, No.318),
2 entitled "An act providing for the protection of the safety,
3 health and welfare of the people, property and public roads
4 and highways of the Commonwealth from conditions on coal
5 refuse disposal piles, or parts thereof, which fail to comply
6 with the established rules, regulations or quality standards
7 adopted to avoid air or water pollution and from the danger
8 of slipping, sliding or burning of coal refuse disposal
9 piles, or parts thereof, sometimes ~~cause~~ CAUSED by the <—
10 storage of coal refuse; prescribing for and regulating the
11 operation of coal refuse disposal piles, and parts thereof;
12 prescribing the powers of the Department of Mines and Mineral
13 Industries and the Secretary of Mines and Mineral Industries
14 with respect thereto; prescribing the duties of mine
15 inspectors with respect thereto; providing for the power to
16 enjoin the operation of coal refuse disposal piles, or parts
17 thereof, which contain certain conditions; providing for
18 criminal penalties; and authorizing the acquisition by
19 condemnation of certain land areas in certain cases," adding
20 definitions, granting additional powers to the Department of
21 Environmental Resources, providing for the powers and duties
22 of the Environmental Quality Board and the Environmental
23 Hearing Board, requiring permits for the operation of coal
24 refuse disposal areas, prescribing procedures for permit
25 applications, prohibiting coal refuse disposal areas in
26 certain locations, increasing penalties, providing for
27 cessation and enforcement orders, authorizing citizens'
28 suits, establishing the Coal Refuse Disposal Control Fund,
29 EXEMPTING THE SURFACE MINING OF ANTHRACITE and making an <—
30 appropriation.

31 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. The title, section 1 and section 3, act of
3 September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse
4 Disposal Control Act," are amended to read:

5 AN ACT

6 Providing for the protection of the safety, health and welfare
7 of the people, property and public roads and highways of the
8 Commonwealth from conditions on coal refuse disposal [piles]
9 areas, or parts thereof, which fail to comply with the
10 established rules, regulations or quality standards adopted
11 to avoid air or water pollution or to protect water supplies, <—
12 and from the danger of slipping, sliding or burning of coal
13 refuse disposal [piles] areas, or parts thereof, sometimes
14 ~~cause~~ CAUSED by the storage of coal refuse; prescribing for <—
15 and regulating the operation of coal refuse disposal [piles]
16 areas, and parts thereof; prescribing the powers of the
17 Department of [Mines and Mineral Industries and the Secretary
18 of Mines and Mineral Industries] Environmental Resources with
19 respect thereto; [prescribing the duties of mine inspectors
20 with respect thereto;] providing for the power to enjoin the
21 operation of coal refuse disposal [piles] areas, or parts
22 thereof, which contain certain conditions; providing for
23 civil and criminal penalties; [and] authorizing the
24 acquisition by condemnation of certain land areas in certain
25 cases; establishing a permit system, authorizing the adoption
26 of rules and regulations, establishing minimum standards and
27 requiring bonds AND FOR THE MAINTENANCE OF PRIMARY <—
28 JURISDICTION OVER SURFACE COAL MINING IN PENNSYLVANIA.

29 Section 1. Findings and Declaration of Policy.--It is hereby
30 determined by the General Assembly of Pennsylvania and declared

1 as a matter of legislative finding that:

2 [(1) As a normal consequence of coal mining in some areas,
3 it is and has been necessary to deposit, on the surface, refuse
4 material which is removed from the subsurface along with the
5 coal.

6 (2)] (1) The accumulation and storage of coal refuse
7 material can cause a condition which fails to comply with the
8 established rules, regulations or quality standards adopted to
9 avoid air or water pollution and can create a danger to persons,
10 property or public roads or highways, either by reason of
11 shifting or sliding, or by exposing persons walking onto the
12 refuse to the danger of being burned.

13 [(3)] (2) No coal refuse disposal [pile] area, or part
14 thereof, should be operated in such manner as to cause a
15 condition which fails to comply with the established rules,
16 regulations or quality standards adopted to avoid air or water
17 pollution or to cause a danger to persons, property or public
18 roads or highways, and such condition and danger must be
19 prevented and eliminated by the control and regulation of coal
20 refuse disposal so as to effectuate the policy declared in this
21 section.

22 [(4)] (3) The mining of coal is and has been an important
23 and necessary industry, which has provided and will continue to
24 provide for the effective use and development of a valuable
25 natural resource underlying a large part of the Commonwealth of
26 Pennsylvania.

27 (4) Research and development of methods for reuse,
28 backstowing in underground mines, disposal in inactive surface
29 mines, and surface disposal of coal refuse is essential to
30 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.

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 [piles] 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.

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

[(1) "Department" means the Department of Mines and Mineral Industries organized and operating in the Commonwealth of Pennsylvania.

(2) "Secretary of Mines and Mineral Industries" means the head of the Department of Mines and Mineral Industries appointed and commissioned by the Governor and hereinafter referred to as the secretary.

(3) "Mine inspector" means the person commissioned by the Governor to be supervisor of mines as described in the act of July 17, 1961 (P.L.659), known as the "Pennsylvania Bituminous Coal Mine Act," or the act of November 10, 1965 (P.L.721), known as the "Pennsylvania Anthracite Coal Mine Act," as amended and supplemented.

(4) "Commission" means an investigating commission consisting of at least three mine inspectors appointed by the

1 secretary for the purpose of investigating and making a
2 determination with respect to the propriety of any cease-work
3 order issued by any mine inspector under section 7 of this act.

4 (5) "Cease-work order" means an order issued pursuant to
5 section 7 of this act to cease operations on any coal refuse
6 disposal pile, or part thereof, whichever is appropriate in the
7 circumstances, because of the imminent danger to persons,
8 property or public roads or highways due to the threat of
9 sliding or shifting of said coal refuse disposal pile or part
10 thereof.

11 (6) "Correction order" means any order to correct a
12 condition on any coal refuse disposal pile, or part thereof,
13 whichever is appropriate in the circumstances, issued pursuant
14 to section 6 of this act, because of danger due to shifting,
15 sliding or burning of said coal refuse disposal pile, or part
16 thereof, or because the said coal refuse disposal pile, or part
17 thereof, is being operated so as to cause a condition which
18 fails to comply with the established rules, regulations or
19 quality standards adopted to avoid air or water pollution:
20 Provided, however, That the term "correction order" is not
21 synonymous with and is exclusive of the term "cease-work order."

22 (7) "Person" means any individual, partnership, association,
23 authority, joint stock company, public or private corporation,
24 government agency, interstate agency, political subdivision or
25 other entity.

26 (8) "Property" means both real and personal property.

27 (9) "Coal refuse" means any waste coal, rock, shale, slurry,
28 culm, gob, boney, slate, clay and related materials, associated
29 with or near a coal seam, which are either brought above ground
30 or otherwise removed from a coal mine in the process of mining

1 coal, or which are separated from coal during the cleaning or
2 preparation operations: Provided, however, That coal refuse
3 shall not mean overburden from strip mining operations, rock
4 from mine shafts or mine tunnels or garbage, refuse, ashes,
5 rubbish or other materials not removed from a mine in the
6 process of mining coal.

7 (10) "Coal refuse disposal pile" means any deposit of coal
8 refuse on or buried in the earth and intended as permanent
9 disposal of or long-term storage of such material, but not
10 including coal refuse deposited within a mine itself or coal
11 refuse never removed from a mine. Continuous deposits of coal
12 refuse shall be considered as a single coal refuse disposal pile
13 unless such deposits are so separated as to practically and
14 substantially minimize the danger referred to in section 4 of
15 this act.

16 (11) "Coal refuse disposal area" means any general area or
17 plot of land used as a place for dumping, storage or disposal of
18 coal refuse, containing one or more coal refuse disposal piles,
19 but not including any part of a "waste disposal area" as defined
20 in section 2 of the act of April 6, 1956 (P.L.1436).

21 (12) "Operate" means to enter upon a coal refuse disposal
22 pile, or part thereof, for the purpose of disposing, depositing
23 or dumping coal refuse thereon.

24 (13) "Operator" means any person operating any coal refuse
25 disposal pile, or part thereof.

26 (14) "Air pollution" and "water pollution" shall,
27 respectively, have the definitions ascribed to them under
28 applicable laws, as amended, from time to time.]

29 (1) "Air pollution" and "water pollution" shall,
30 respectively, have the definitions ascribed to them under

1 applicable laws, as amended, from time to time.

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

9 (3) "Coal refuse disposal area" means any general area or
10 plot of land used as a place for disposing, dumping or storage
11 of coal refuse and all land thereby affected, including but not
12 limited to any deposit of coal refuse on or buried in the earth
13 and intended as permanent disposal of or long-term storage of
14 such material, but not including coal refuse deposited within an
15 active mine itself or coal refuse never removed from a mine, and
16 all other land area in which the natural land surface has been
17 disturbed as a result of or incidental to the coal refuse
18 disposal activities of the operator, including but not limited
19 to, private ways and roads appurtenant to any such area, land
20 excavations, workings, tailings, repair areas, storage areas,
21 processing areas, shipping areas, and areas in which structures,
22 facilities, equipment, machines, tools or other materials or
23 property which result from, or are used in, coal refuse disposal
24 operations are situated.

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

27 (5) "Maintain" means the maintenance of the site for as long
28 as necessary after completion of the operation to prevent
29 health, safety or pollution hazards or nuisances from occurring.
30 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.

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

(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

1 disposal areas.

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

3 Section 3.1. Powers and Duties of the Department.--The
4 department shall have the power and its duty shall be to:

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

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

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

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

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

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

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

1 law.

2 (h) Review and take appropriate action on all permit
3 applications submitted pursuant to the provisions of this act
4 and to issue orders to cease operations, to issue, modify,
5 suspend or revoke permits pursuant to this act and to the rules
6 and regulations adopted hereto.

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

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

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

25 Section 3.3. Powers and Duties of the Environmental Hearing
26 Board.--The Environmental Hearing Board shall have the power and
27 its duties shall be to hear and determine all appeals from
28 actions of the department taken in accordance with the
29 provisions of this act. Any and all actions taken by the
30 Environmental Hearing Board with reference to any such appeal

1 shall be in the form of an adjudication, and all such actions
2 shall be subject to the provisions of Title 2 of the
3 Pennsylvania Consolidated Statutes (relating to administrative
4 law and procedure).

5 Section 3. Sections 4, 5 and 6 of the act are amended to
6 read:

7 Section 4. [Proper Operation of Coal Refuse Disposal Pile,
8 or Part Thereof.--(a) From and after the passage of this act,
9 no operator of a coal refuse disposal pile shall operate the
10 same, or a part thereof, in such a way as to cause a condition
11 which fails to comply with the established rules, regulations or
12 quality standards adopted to avoid air or water pollution, or in
13 such a way as to constitute a danger to the safety, health or
14 welfare of persons, property or public roads or highways because
15 of the burning, slipping or sliding of coal refuse deposited on
16 the coal refuse disposal pile, or part thereof.] Permits.--(a)
17 No person shall establish or operate a coal refuse disposal area
18 or enter upon an inactive coal refuse disposal area or
19 reactivate an inactive operation for the purposes of coal refuse
20 disposal without first having obtained a permit from the
21 department.

22 (b) [From and after the passage of this act, any operator
23 may be ordered, with respect to any new coal refuse disposal
24 pile created thereafter, or any part of an existing coal refuse
25 disposal pile on which he operates thereafter, to build drainage
26 ditches, trenches and/or gullies, to build impervious dams, to
27 remove combustible materials, to alter locations, to engage in
28 spreading, compacting and/or layering, to use clay, soil and/or
29 other inert sealing materials, or to alter slopes, if some or
30 all of the foregoing are, in the circumstances, necessary to

1 prevent or correct a condition which fails to comply with the
2 established rules, regulations or quality standards adopted to
3 avoid air or water pollution, or are, in the circumstances,
4 necessary to prevent or correct a condition constituting a
5 danger to the safety, health or welfare of persons, property or
6 public roads or highways because of the burning, slipping or
7 sliding of coal refuse deposited on a coal refuse disposal pile,
8 or part thereof.] The department shall not issue any coal refuse
9 disposal permit or renew or amend any permit if it finds, after
10 investigation and an opportunity for informal hearing, that:

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

14 (2) the applicant has shown a lack of ability or intention
15 to comply with such laws as indicated by past or continuing
16 violations. Any person, partnership, association or corporation
17 which has engaged in unlawful conduct as defined in section 7 of
18 this act or which has a partner, associate, officer, parent
19 corporation, subsidiary corporation, contractor or subcontractor
20 which has engaged in such unlawful conduct shall be denied any
21 permit required by this act unless the permit application
22 demonstrates that the unlawful conduct is being corrected to the
23 satisfaction of the department. Persons other than the
24 applicant, including independent subcontractors, who are
25 proposed to operate under the permit shall be listed in the
26 application and those persons shall be subject to approval by
27 the department prior to their engaging in coal refuse disposal
28 operations, and such persons shall be jointly and severally
29 liable with the permittee for violations of this act with which
30 the permittee is charged and in which such persons participate.

1 Section 5. [Powers of the Department of Mines and Mineral
2 Industries and the Secretary of Mines and Mineral Industries.--
3 (a) All rights and powers heretofore possessed by the Sanitary
4 Water Board and the Air Pollution Commission under existing laws
5 shall remain as heretofore, except that the department, acting
6 by and through its mine inspectors, shall be the exclusive
7 investigating, examining, reporting and enforcement agency for
8 the Sanitary Water Board, and for the Air Pollution Commission
9 with respect to their respective powers, duties, obligations and
10 responsibilities as such are involved in or related to the
11 operation of coal refuse disposal areas as defined in this act.
12 In that regard, the department shall have power and its duty
13 shall be to enter upon, examine and inspect each and every coal
14 refuse disposal area in the Commonwealth, as often as may be
15 necessary, to determine whether any coal refuse disposal pile,
16 or part thereof, is being operated in such manner as to cause a
17 condition which fails to comply with the established rules,
18 regulations or quality standards adopted to avoid air or water
19 pollution, and to determine whether there is present any danger
20 to any person, property or public roads or highways because of
21 the shifting, sliding or burning of coal refuse thereon, or on
22 any part thereof.] Applications.--(a) Applications for permits
23 shall be in writing and shall be made on a form prescribed,
24 prepared and furnished by the department and shall set forth
25 such information and be accompanied by such data as the
26 department may require including but not limited to maps,
27 geological reports, soil reports, design and operational plans,
28 and shall be prepared by or under the supervision of and bear
29 the seal and signature of a registered professional engineer or
30 professional geologist, with assistance from experts in related

1 fields.

2 (b) [In the enforcement of this act, and in the adoption and
3 enforcement of rules and regulations with respect to the
4 operation of coal refuse disposal areas, the Sanitary Water
5 Board, the Air Pollution Commission and the Department of Mines
6 and Mineral Industries shall coordinate their activities to the
7 fullest extent possible to achieve a uniform system of control
8 and to avoid inconsistencies.] The department is authorized to
9 charge and collect from persons and municipalities in accordance
10 with rules and regulations reasonable filing fees for <—
11 applications filed and for permits issued.

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

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

24 (e) The application shall also set forth the manner in which
25 the operation will establish on the areas proposed to be
26 affected a diverse, effective, and permanent vegetative cover of
27 the same seasonal variety native to the area of land to be
28 affected and capable of self-regeneration and plant succession
29 at least equal in extent of cover to the natural vegetation of
30 the area: Provided, however, That introduced species may be used

1 in the vegetation process where desirable and necessary to
2 achieve the approved postmining land use plan. The application
3 shall in addition set forth the manner in which the operation
4 will achieve a final contour of the coal refuse disposal area
5 which will be compatible with natural surroundings.

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

18 (g) The application shall also set forth the manner in which
19 the operator plans to comply with the requirements of the act of
20 January 8, 1960 (1959 P.L.2119, No.787), known as the "Air
21 Pollution Control Act," the act of June 22, 1937 (P.L.1987,
22 No.394), known as "The Clean Streams Law," the act of June 25, <—
23 1913 (P.L.555, No.355), entitled "An act providing for the
24 regulation of dams, or other structures or obstructions, as
25 defined herein, in, along, across, or projecting into all
26 streams and bodies of water wholly or partly within, or forming
27 part of the boundary of, this Commonwealth; vesting certain
28 powers and duties in the Water Supply Commission of
29 Pennsylvania, for this purpose; and providing penalties for the
30 violation of the provisions hereof," THE ACT OF NOVEMBER 26, <—

1 1978 (P.L.1375, NO.325), KNOWN AS THE "DAM SAFETY AND
2 ENCROACHMENTS ACT," the act of May 31, 1945 (P.L.1198, No.418),
3 known as the "Surface Mining Conservation and Reclamation Act,"
4 and where applicable the act of July 31, 1968 (P.L.788, No.241),
5 known as the "Pennsylvania Solid Waste Management Act." No
6 approval shall be granted unless the plan provides for
7 compliance with the statutes hereinabove enumerated, and failure
8 to comply with the statutes hereinabove enumerated during mining
9 or thereafter shall render the operator liable to the sanctions
10 and penalties provided in this act for violations of this act
11 and to the sanctions and penalties provided in the statutes
12 hereinabove enumerated for violations of such statutes. Such
13 failure to comply shall be cause for revocation of any approval
14 or permit issued by the department to the operator: Provided,
15 however, That a violation of the statutes hereinabove enumerated
16 shall not be deemed a violation of this act unless this
17 statute's provisions are violated but shall only be cause for
18 revocation of the operator's permit. Nothing in this subsection,
19 however, shall be construed to limit the department's authority
20 to regulate activities in a coordinated manner. Compliance with
21 the provisions of this subsection and with the provisions of
22 this act and the provisions of the statutes hereinabove
23 enumerated shall not relieve the operator of the responsibility
24 for complying with the provisions of all other applicable
25 statutes, including but not limited to the act of July 17, 1961
26 (P.L.659, No.339), known as the "Pennsylvania Bituminous Coal
27 Mine Act," the act of November 10, 1965 (P.L.721, No.346), known
28 as the "Pennsylvania Anthracite Coal Mine Act," and the act of
29 July 9, 1976 (P.L.931, No.178), entitled "An act providing for
30 emergency medical personnel; employment of emergency medical

1 personnel and emergency communications in coal mines."

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

17 (i) Public notice of every application for a permit or bond
18 release under this act shall be given by notice published in a
19 newspaper of general circulation, published in the locality
20 where the permit is applied for, once a week for four
21 consecutive weeks. The department shall prescribe such
22 requirements regarding public notice and public hearings on
23 permit applications and bond releases as it deems appropriate.
24 For the purpose of these public hearings, the department shall
25 have the authority and is hereby empowered to administer oaths,
26 subpoena witnesses or written or printed materials, compel the
27 attendance of witnesses, or production of witnesses, or
28 production of materials, and take evidence including but not
29 limited to inspections of the land proposed to be affected and
30 other operations carried on by the applicant in the general

1 vicinity. Each applicant for a permit under this act shall file
2 a copy of his application for public inspection with the
3 recorder of deeds at the courthouse of the county or an
4 appropriate public office approved by the department where the
5 coal refuse disposal is proposed to occur. Should any person
6 having an interest which is or may be adversely affected by any
7 action of the department under this subsection, or by the
8 failure of the department to act upon an application for a
9 permit, he may proceed to lodge an appeal with the Environmental
10 Hearing Board in the manner provided by law, and from the
11 adjudication of said board he may further appeal as provided by
12 Title 2 of the Pennsylvania Consolidated Statutes (relating to
13 administrative law and procedure). THE ENVIRONMENTAL HEARING <—
14 BOARD, UPON THE REQUEST OF ANY PARTY, MAY IN ITS DISCRETION
15 ORDER THE PAYMENT OF COSTS AND ATTORNEY'S FEES IT DETERMINES TO
16 HAVE BEEN REASONABLY INCURRED BY SUCH PARTY IN PROCEEDINGS
17 PURSUANT TO THIS SECTION.

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

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

22 (l) All papers, records, and documents of the department,
23 and applications for permits pending before the department,
24 shall be public records open to inspection during business
25 hours: Provided, however, That information which pertains only
26 to the analysis of the chemical and physical properties of the
27 coal (excepting information regarding such mineral or elemental
28 content which is potentially toxic in the environment) shall be
29 kept confidential and not made a matter of public record.

30 (m) The application for a permit shall include, upon a form

1 prepared and furnished by the department, the written consent of
2 the landowner to entry upon any land to be affected by the
3 operation of the operator, by the Commonwealth and by any of its
4 authorized agents prior to the initiation of coal refuse
5 disposal operations, during coal refuse disposal operations, and
6 for a period of five years after the operation is completed or
7 abandoned for the purpose of reclamation, planting and
8 inspection or for the construction of any such pollution
9 abatement facilities as may be deemed necessary by the
10 department for the prevention of pollution from coal refuse.
11 Such forms shall be deemed to be recordable documents, and prior
12 to the initiation of coal refuse disposal operations under the
13 permit, such forms shall be recorded at the office of the
14 recorder of deeds in the county or counties in which the area to
15 be affected under the permit is situate.

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

18 Section 6. [Powers and Duties of Mine Inspectors; Correction
19 Order.--(a) Any mine inspector directed by the Department of
20 Mines and Mineral Industries shall have the right to enter any
21 coal refuse disposal area in order to inspect and examine any
22 coal refuse disposal pile therein, and if he finds during his
23 inspection and examination any condition on any coal refuse
24 disposal pile, or part thereof, which, in his opinion, based on
25 observable conditions, constitutes a danger to any person,
26 property or public roads or highways either because of shifting,
27 sliding or burning of coal refuse or because the coal refuse
28 disposal pile, or part thereof, is being operated so as to cause
29 a condition which fails to comply with the established rules,
30 regulations or quality standards adopted to avoid air or water

1 pollution, he shall have the authority to issue a written
2 correction order requiring the operator to correct such
3 condition, in reasonable fashion, within a reasonable time.

4 (b) In the event that any operator fails to comply with any
5 written correction order issued by a mine inspector concerning
6 the slipping, sliding or burning of a coal refuse disposal pile,
7 or part thereof, (not including those conditions as they might
8 involve failure to comply with the established rules,
9 regulations or quality standards adopted to avoid air or water
10 pollution), the mine inspector shall at once notify the
11 secretary, and immediately send or deliver a copy of the notice
12 to the operator, and the secretary shall, if he agrees that the
13 slipping, sliding or burning condition is of the dangerous type
14 contemplated in this act, even though not imminently dangerous,
15 request the Attorney General to apply, in the name of the
16 Commonwealth, either to the court of common pleas in the county
17 in which such coal refuse disposal pile, or part thereof, is
18 located or to the Commonwealth Court, whichever the Attorney
19 General may deem appropriate in the circumstances, for an
20 injunction to enjoin any further operation of such coal refuse
21 disposal pile, or part thereof, whichever is appropriate in the
22 circumstances, until the dangerous condition giving rise to the
23 order is corrected.

24 (c) Whenever any such written correction order is issued
25 because a condition of noncompliance with the established rules,
26 regulations or quality standards adopted to avoid air or water
27 pollution is caused by the operation of a coal refuse disposal
28 pile, or part thereof, and the operator fails to correct the
29 condition, in reasonable fashion, within the time prescribed by
30 the mine inspector, a full report thereof shall be sent to the

1 Sanitary Water Board or the Air Pollution Commission, as the
2 case may be, with a copy being immediately sent or delivered to
3 the operator, and such board or commission, as the case may be,
4 shall determine whether the condition fails to comply with the
5 established rules, regulations or quality standards adopted to
6 avoid air or water pollution. If either the Sanitary Water Board
7 or the Air Pollution Commission should find a coal refuse
8 disposal pile, or part thereof, being operated in violation of
9 the provisions of this act or in a manner not in accordance with
10 the established rules, regulations or quality standards adopted
11 to avoid air or water pollution, as the case may be, it shall
12 take appropriate action, by and through the department as its
13 agent, under and in accordance with existing laws.] Bonding.--

14 (a) Prior to commencing coal refuse disposal operations, the
15 operator shall file with the department a bond for the land to
16 be affected by the coal refuse disposal area on a form to be
17 prescribed and furnished by the department, payable to the
18 Commonwealth and conditioned that the operator shall faithfully
19 perform all of the requirements of this act, the act of May 31,
20 1945 (P.L.1198, No.418), known as the "Surface Mining
21 Conservation and Reclamation Act," the act of June 22, 1937
22 (P.L.1987, No.394), known as "The Clean Streams Law," the act of
23 January 8, 1960 (1959 P.L.2119, No.787), known as the "Air
24 Pollution Control Act," the act of June 25, 1913 (P.L.555,
25 No.355), entitled "An act providing for the regulation of dams,
26 or other structures or obstructions, as defined herein, in,
27 along, across, or projecting into all streams and bodies of
28 water wholly or partly within, or forming part of the boundary
29 of, this Commonwealth; vesting certain powers and duties in the
30 Water Supply Commission of Pennsylvania, for this purpose; and

<—

1 ~~providing penalties for the violation of the provisions hereof,"~~
2 NOVEMBER 26, 1978 (P.L.1375, NO.325), KNOWN AS THE "DAM SAFETY <—
3 AND ENCROACHMENTS ACT," and where applicable, the act of July
4 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid
5 Waste Management Act": Provided, however, That an operator
6 posting a bond sufficient to comply with this section of the act
7 shall not be required to post a separate bond for the permitted
8 area under each of the acts hereinabove enumerated. The
9 foregoing proviso shall not, however, prohibit the department
10 from requiring additional bond amounts for the permitted area
11 should such an increase be determined by the department to be
12 necessary to meet the requirements of this act. The amount of
13 the bond required shall be in an amount determined by the
14 secretary based upon the total estimated cost to the
15 Commonwealth of completing the approved reclamation plan. Said
16 estimate shall be based upon the operator's statement of his
17 estimated cost of fulfilling the plan during the course of his
18 operation, inspection of the application and other documents
19 submitted, inspection of the land area, and such other criteria
20 as may be relevant, including but not limited to the probable
21 difficulty of reclamation giving consideration to such factors
22 as topography, geology of the site, hydrology, and vegetation
23 potential, the proposed land use and the additional cost to the
24 Commonwealth which may be entailed by being required to bring
25 personnel and equipment to the site after abandonment by the
26 operator, in excess of the cost to the operator of performing
27 the necessary work during the course of his surface mining
28 operations. When the plan involves reconstruction or relocation
29 of any public road or highway, the amount of the bond shall
30 include an amount sufficient to fully build or restore the road

1 or highway to a condition approved by the Department of
2 Transportation. No bond shall be filed for less than ten
3 thousand dollars (\$10,000). Liability under such bond shall be
4 for the duration of the operation, and for a period of five full
5 years after the last year of augmented seeding and fertilizing
6 and any other work to complete reclamation to meet the
7 requirements of law and protect the environment unless released
8 in part prior thereto as hereinafter provided. Such bond shall
9 be executed BY THE OPERATOR AND A SURETY LICENSED TO DO BUSINESS <—
10 IN THE COMMONWEALTH and approved by the secretary: And, provided
11 further, That the operator may elect to deposit cash,
12 ~~irrevocable letters of credit~~ AUTOMATICALLY RENEWABLE <—
13 IRREVOCABLE BANK LETTERS OF CREDIT WHICH MAY BE TERMINATED BY
14 THE BANK AT THE END OF A TERM ONLY UPON THE BANK GIVING NINETY
15 DAYS PRIOR WRITTEN NOTICE TO THE PERMITTEE AND THE DEPARTMENT,
16 or negotiable bonds of the United States Government or the
17 Commonwealth of Pennsylvania, the Pennsylvania Turnpike
18 Commission, The General State Authority, the State Public School
19 Building Authority, or any municipality within the Commonwealth,
20 with the department in lieu of a corporate surety. The cash
21 deposit, AMOUNT OF LETTER OF CREDIT, or market value of such <—
22 negotiable bonds shall be equal at least to the sum of the bond.
23 The secretary shall, upon receipt of any such deposit of cash, <—
24 LETTER OF CREDIT or negotiable securities, immediately place the
25 same with the State Treasurer, whose duty it shall be to receive
26 and hold the same in the name of the Commonwealth, in trust, for
27 the purposes for which such deposit is made. The State Treasurer
28 shall at all times be responsible for the custody and
29 safekeeping of such deposits. The operator making the deposit
30 shall be entitled from time to time to demand and receive from

1 the State Treasurer, on the written order of the secretary, the
2 whole or any portion of any collateral so deposited, upon
3 depositing with him, in lieu thereof, other collateral of the
4 classes specified having a market value at least equal to the
5 sum of the bond, and also to demand, receive and recover the
6 interest and income from said negotiable bonds as the same
7 becomes due and payable: And, provided further, That where
8 negotiable bonds as the same becomes due and mature or are
9 called, the State Treasurer, at the request of the permittee,
10 shall convert such negotiable bonds into such other negotiable
11 bonds of the classes herein specified as may be designated by
12 the permittee: AND PROVIDED FURTHER, THAT WHERE NOTICE OF INTENT <—
13 TO TERMINATE A LETTER OF CREDIT IS GIVEN, THE DEPARTMENT SHALL
14 GIVE THE PERMITTEE THIRTY DAYS WRITTEN NOTICE TO REPLACE THE
15 LETTER OF CREDIT WITH OTHER ACCEPTABLE BOND GUARANTEES AS
16 PROVIDED HEREIN, AND IF THE PERMITTEE FAILS TO REPLACE THE
17 LETTER OF CREDIT WITHIN THE THIRTY-DAY NOTIFICATION PERIOD, THE
18 DEPARTMENT SHALL DRAW UPON AND CONVERT SUCH LETTER OF CREDIT
19 INTO CASH AND HOLD IT AS A COLLATERAL BOND GUARANTEE. Where the
20 coal refuse disposal operation is reasonably anticipated to
21 continue for a period of at least ten years from the date of
22 application, the permittee may elect to deposit collateral and
23 file a collateral bond as provided in the following phased
24 deposit schedule. The permittee shall, prior to commencing coal
25 refuse disposal operations, deposit ten thousand dollars
26 (\$10,000) or twenty-five per cent of the amount determined under
27 this subsection, whichever is greater. The operator shall,
28 thereafter, annually deposit ten per cent of the remaining bond
29 amount for a period of ten years. Interest accumulated by such
30 collateral shall become a part of the bond. The department may

1 require additional bonding at any time to meet the intent of
2 this section. The collateral shall be deposited, in trust, with
3 the State Treasurer as provided in this subsection, or with a
4 bank, selected by the department, which shall act as trustee for
5 the benefit of the Commonwealth, according to rules and
6 regulations promulgated hereunder, to guarantee the operator's
7 compliance with this act and the statutes hereinabove
8 enumerated. The operator shall be required to pay all costs of
9 the trust. The collateral deposit, or part thereof, shall be
10 released of liability and returned to the operator, together
11 with a proportional share of accumulated interest, upon the
12 conditions of and pursuant to the schedule and criteria for
13 release provided in subsection (c) of this section.

14 (b) If the operator abandons the operation or fails or
15 refuses to comply with the requirements of the act in any
16 respect for which liability has been charged on the bond, the
17 secretary shall declare the bond forfeited, and shall certify
18 the same to the Department of Justice, which shall proceed to
19 enforce and collect the amount of liability forfeited thereon,
20 and where the operator has deposited cash or securities as
21 collateral in lieu of a corporate surety, the secretary shall
22 declare said collateral forfeited, and shall direct the State
23 Treasurer to pay said funds into the Coal Refuse Disposal
24 Control Fund, or to proceed to sell said securities to the
25 extent forfeited and pay the proceeds thereon into the Coal
26 Refuse Disposal Control Fund. Should any corporate surety fail
27 to promptly pay, in full, a forfeited bond, it shall be
28 disqualified from writing any further surety bonds under this
29 act. Any operator aggrieved by reason of forfeiting the bond or
30 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

1 the operator or the landowner have been made with the
2 department; and

3 (3) when the operator has completed successfully all coal
4 refuse disposal and reclamation activities, the release of the
5 remaining portion of the bond, but not before the expiration of
6 the period specified for operator responsibility in subsection
7 (a) of this section: Provided, however, That bond shall not be
8 fully released until all requirements of the act are met. Upon
9 release of all or part of the bond and collateral as herein
10 provided, the State Treasurer shall immediately return to the
11 operator the amount of cash or securities specified therein.

12 Section 4. The act is amended by adding a section to read:

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

20 (b) Upon petition pursuant to subsection (f) of this
21 section, a surface area may be designated unsuitable for ALL OR <—
22 certain types of coal refuse disposal operations if such
23 operations will:

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

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

30 (3) affect renewable resource lands in which such operations

1 could result in a substantial loss or reduction of long-range
2 productivity of water supply or of food or fiber products, and
3 such lands to include aquifers and aquifer recharge areas; or

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

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

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

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

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

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

21 (d) Determinations of the unsuitability of land for coal
22 refuse disposal as provided for in this section, shall be
23 integrated as closely as possible with present and future land
24 use planning and regulation processes at the Federal, State and
25 local levels.

26 (e) The requirements of this section shall not apply to
27 lands on which coal refuse disposal operations are being
28 conducted on the date of enactment of this act or under a permit
29 issued pursuant to this act, or where substantial legal and
30 financial commitments as they are defined by the Office of

<—

~~Surface Mining Reclamation and Enforcement, United States~~
~~Department of the Interior~~ under § 522 of the Surface Mining
Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq. ~~if~~ <—
~~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) After August 3, 1977 and subject to valid existing rights as they are defined by the Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior 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 the date of enactment of this act 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;

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

9 (5) within three hundred feet of any occupied dwelling,
10 unless waived by the owner thereof, nor within three hundred
11 feet of any public building, school, church, community or
12 institutional building, public park, nor within one hundred feet
13 of a cemetery, or within one hundred feet of the bank of any
14 stream.

15 Section 5. Sections 7, 8, 9, 10, 11 and 12 of the act are
16 amended to read:

17 Section 7. [Imminent Danger; Cease-Work Order.--(a) If the
18 mine inspector finds, at the time of his inspection of a coal
19 refuse disposal area, that any coal refuse disposal pile, or
20 part thereof, constitutes an imminent danger to persons,
21 property or public roads or highways because of the threat of
22 sliding or shifting, he shall immediately order all operations
23 in such coal refuse disposal pile, or part thereof, whichever is
24 appropriate in the circumstances to cease and shall immediately
25 notify the secretary in writing of his action and immediately
26 send or deliver a copy of such writing to the operator, and the
27 secretary shall immediately and within twenty-four hours,
28 appoint a commission to accompany promptly the said mine
29 inspector to the coal refuse disposal pile, or part thereof,
30 whereon said condition of imminent danger is alleged to exist.

1 (b) The commission shall immediately and before the end of
2 the day of its appointment make a full investigation and make
3 its determination whether to affirm or disaffirm the cease-work
4 order. It shall give the operator a reasonable opportunity to be
5 present, to be heard and to produce evidence at such
6 investigation. If the commission shall agree that there is a
7 condition of imminent danger they shall affirm the cease-work
8 order issued by the mine inspector. If the commission disagrees
9 with the finding of the mine inspector, the commission shall
10 disaffirm the cease-work order and, in such case, the said order
11 shall be rescinded and be completely null and void and any
12 operation in disregard thereof shall not be deemed a misdemeanor
13 or be subject to any penalty or prejudice whatsoever.

14 (c) If the commission affirms the cease-work order by the
15 mine inspector, it shall report the same immediately to the
16 secretary and, in such event, the secretary shall immediately
17 and fully investigate the alleged condition of imminent danger
18 and shall also give the operator a reasonable opportunity to be
19 present, to be heard and to produce evidence at such
20 investigation and the secretary shall thereupon determine what
21 condition, if any, must be rectified in reasonable fashion, in
22 order for operation in the coal refuse disposal pile or that
23 part thereof affected by the cease-work order, to resume and
24 shall immediately notify the operator of the coal refuse
25 disposal pile in question as to his determination.

26 (d) When, in any case, the secretary determines that the
27 condition of imminent danger calling for the cease-work order
28 has been rectified, in reasonable fashion, he shall, within
29 twenty-four hours after making such determination, notify the
30 operator accordingly, and the operator may immediately resume

1 operations on the coal refuse disposal pile, or part thereof.

2 (e) If the cease-work order has been affirmed by the
3 commission, then the secretary shall, within three days after
4 the commission has affirmed the cease-work order issued by the
5 mine inspector, decide whether to proceed for an injunction
6 against the operator of the coal refuse disposal pile, or part
7 thereof, whichever may be appropriate in the circumstances, as
8 hereinafter provided in section 8 of this act. If the secretary
9 decides to proceed for an injunction, he shall do so by
10 requesting the Attorney General to take appropriate action in
11 the name of the Commonwealth either in the court of common pleas
12 in the county in which such coal refuse disposal pile, or part
13 thereof, is located, or in the Commonwealth Court, whichever the
14 Attorney General may deem appropriate in the circumstances. If,
15 in any case, the secretary does not, acting by and through the
16 Attorney General, institute action to obtain an injunction
17 within said three-day period, the cease-work order of the mine
18 inspector shall be deemed rescinded and completely null and
19 void, and the operator may thereupon continue operating the coal
20 refuse disposal pile, or part thereof, as theretofore and any
21 operation thereon in disregard of the cease-work order shall not
22 be deemed a misdemeanor or subject to any penalty or prejudice
23 whatsoever.

24 (f) In any case where a cease-work order is ultimately
25 determined to be invalid, no operation in disregard thereof
26 shall be deemed a misdemeanor or subject to any penalty or
27 prejudice whatsoever. Continued operation pursuant to a
28 supersedeas or similar order shall not be deemed a misdemeanor
29 or be subject to any penalty or prejudice whatsoever.] Unlawful
30 Conduct.--It shall be unlawful to establish, operate or maintain

1 a coal refuse disposal area in a manner which fails to comply or
2 for any person to fail to comply with any rule or regulation of
3 the department or fail to comply with any order or permit of the
4 department, to violate any of the provisions of this act or
5 rules and regulations adopted hereunder, orders or permits of
6 the department, to cause air or water pollution in connection
7 with coal refuse disposal operations and not otherwise
8 ~~prescribed~~ PROSCRIBED by this act, or to hinder, obstruct, <—
9 prevent or interfere with the department or its personnel in the
10 performance of any duty hereunder, including violations of 18
11 Pa.C.S. § 4903 (relating to false swearing) and 18 Pa.C.S. §
12 4904 (relating to unsworn falsification to authorities). Any
13 person or municipality engaging in such conduct shall be subject
14 to the provisions of this section and sections 8, 9, 10, 11 and
15 12 of this act.

16 Section 8. [Injunctive Relief.--In any case where an
17 injunction is sought pursuant to the provisions of sections 6 or
18 7 of this act, the court in which the application for an
19 injunction is filed shall at once proceed to hear and determine
20 the case; and if the cause appears to be sufficient, after
21 hearing the parties and their evidence, as in like cases, shall
22 issue its writ to restrain the operation of such coal refuse
23 disposal pile, or part thereof, whichever may be appropriate in
24 the circumstances, until the dangerous condition giving rise to
25 the order is corrected, as said court shall so direct; and the
26 costs shall be borne by the operator of the coal refuse disposal
27 pile: Provided, That if said court shall find the cause not
28 sufficient, then the case shall be dismissed, and the costs
29 shall be borne by the county wherein said coal refuse disposal
30 pile, or part thereof involved, is located: Provided, further,

1 That, except in cases of emergency where, in the opinion of the
2 court, the exigencies of the case require immediate
3 rectification or correction of a dangerous condition, the court
4 may, in its decree, fix a reasonable time during which the
5 operator responsible for the condition may make provision for
6 the rectification or correction of the same.] Cessation
7 Orders.--The department shall have the authority to order the
8 immediate cessation of any operation that is started without the
9 operator thereof having first obtained a permit as required by
10 this act, or where the public welfare or safety calls for the
11 immediate halt of the operation until corrective steps have been
12 undertaken by the operator to the satisfaction of the
13 department.

14 Section 9. [Criminal Penalties.--Any operator who refuses to
15 comply with a cease-work order issued by a mine inspector
16 pursuant to this act shall, except as otherwise herein provided,
17 be guilty of a misdemeanor, and, upon conviction thereof in the
18 court of quarter sessions of the county in which the coal refuse
19 disposal pile, or part thereof, is located, shall be sentenced
20 to pay a fine of not less than one thousand dollars (\$1,000),
21 nor more than five thousand dollars (\$5,000), and the operator,
22 or if such operator be an association or copartnership, then the
23 members thereof, or if such operator be a corporation, then the
24 officers, agents, servants and employes thereof, may be
25 imprisoned in the county jail for a period of not more than one
26 year. All prosecutions under the penal provisions herein set
27 forth, shall be instituted and prosecuted by the Attorney
28 General, or by and with his written consent. Each day of
29 continued refusal by an operator to comply with a cease-work
30 order shall comply with a cease-work order shall constitute a

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

8 Section 10. [Health Nuisances.--Nothing in this act shall
9 limit the powers conferred upon the Department of Health to
10 control and abate nuisances detrimental to the public health as
11 provided in any law now in effect.] Injunctive Relief; Remedies
12 not Exclusive.--(a) In addition to any other remedies provided
13 for in this act, the department may petition the Commonwealth
14 Court or the court of common pleas in the county in which the
15 defendant resides or has his place of business for an injunction
16 to restrain all violations and to that end jurisdiction is
17 hereby conferred in law and equity upon such courts.

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

22 Section 11. [Authorizing Operator to Acquire Interests in
23 Land by Eminent Domain.--Whenever any operator is directed by a
24 mine inspector, or a court of common pleas, or the Commonwealth
25 Court, or otherwise, to cease operating a coal refuse disposal
26 pile, or part thereof, whichever is appropriate in the
27 circumstances, or to correct a dangerous condition thereon,
28 pursuant to the public policy set forth in this act, then such
29 operator, if not otherwise vested with the right of eminent
30 domain, may make application to the secretary for finding and an

1 order that the use by the applicant of a specified interest in a
2 specifically described area of land is necessary to enable the
3 applicant to operate in a lawful manner in connection with the
4 correction of a dangerous condition. Whenever an operator
5 foresees that it will be necessary to acquire a specified
6 interest in a specifically described area of land in order to
7 operate a coal refuse disposal area or pile, or part thereof, in
8 a lawful manner, then such operator, if not otherwise vested
9 with the right of eminent domain, may make application to the
10 secretary for a finding and an order that the use by the
11 applicant of a specified interest in a specifically described
12 piece of land is necessary in order to enable said operator to
13 operate said area or pile, or part thereof, in a lawful manner.
14 In either such event, the secretary may, after hearing, with
15 reasonable notice to the proposed condemnee or condemnees, and
16 full opportunity to be heard and present evidence, make the
17 appropriate finding and issue the appropriate order authorizing
18 the acquisition of the specified interest in a specifically
19 described area of land by the operator by the power of eminent
20 domain. Upon the making of said finding and the issuance of said
21 order, then, for the purpose of this act, such operator
22 receiving the order shall be vested with the right of eminent
23 domain which shall be exercised only upon said authorization by
24 the secretary, and in such event the operator shall proceed in
25 the manner and form set forth in the act of June 22, 1964
26 (P.L.84), known as the "Eminent Domain Code": Provided, That no
27 property used as a place of public worship or for burial
28 purposes shall be taken under the right of eminent domain:
29 Provided further, That where any existing public street or road
30 is vacated by any municipality in order to facilitate any

1 undertaking in connection with land acquired under the right of
2 eminent domain as provided for above, the operator acquiring
3 such land shall reimburse all public utilities for the costs of
4 relocating and reconstructing their facilities necessitated by
5 the closing of any such street or road.] Civil Penalties.--In
6 addition to proceeding under any other remedy available at law
7 or in equity for a violation of a provision of this act, rule,
8 regulation, order of the department, or a condition of any
9 permit issued pursuant to this act, the department may assess a
10 civil penalty upon a person or municipality for such violation.
11 Such a penalty may be assessed whether or not the violation was
12 willful. The civil penalty so assessed shall not exceed five
13 thousand dollars (\$5,000) per day for each violation. In
14 determining the amount of the civil penalty the department shall
15 consider the willfulness of the violation, damage or injury to
16 the waters of the Commonwealth or their uses, cost of
17 restoration and other relevant factors. If the violation leads
18 to the issuance of a cessation order, a civil penalty shall be
19 assessed. If the violation involves the failure to correct,
20 within the period prescribed for its correction, a violation for
21 which a cessation order, other abatement order or notice of
22 violation has been issued, a civil penalty of not less than
23 seven hundred fifty dollars (\$750) shall be assessed for each
24 day the violation continues beyond the period prescribed for its
25 correction: Provided, however, That correction of a violation
26 within the period prescribed for its correction shall not
27 extinguish liability for the violation. Upon the issuance of a
28 notice or order charging that a violation of the act has
29 occurred, the secretary shall inform the person within a period
30 of time to be prescribed by rule and regulation of the proposed

1 amount of said penalty. The person charged with the penalty
2 shall than have thirty days to pay the proposed penalty in full
3 or, if the person wishes to contest either the amount of the
4 penalty or the fact of the violation, forward the proposed
5 amount to the secretary for placement in an escrow account with
6 the State Treasurer or any Pennsylvania bank. If through
7 administrative hearing or judicial review of the proposed
8 penalty, it is determined that no violation occurred or that the
9 amount of the penalty shall be reduced, the secretary shall
10 within thirty days remit the appropriate amount to the person,
11 with any interest accumulated by the escrow deposit. Failure to
12 forward the money to the secretary within thirty days shall
13 result in a waiver of all legal rights to contest the FACT OF <—
14 THE violation or the amount of the penalty. The amount assessed
15 after administrative hearing or waiver of administrative hearing
16 shall be payable to the Commonwealth of Pennsylvania and shall
17 be collectible in any manner provided by law for the collection
18 of debts. If any person liable to pay such penalty neglects or
19 refuses to pay the same after demand, the amount, together with
20 interest and any costs that may accrue, shall constitute a
21 judgment in favor of the Commonwealth upon the property of such
22 person from the date it has been entered and docketed of record
23 by the prothonotary of the county where such is situated. The
24 department may, at any time, transmit to the prothonotaries of
25 the respective counties certified copies of all such judgments,
26 and it shall be the duty of each prothonotary to enter and
27 docket the same of record in his office, and to index it as
28 judgments are indexed, without requiring the payment of costs as
29 a condition precedent to the entry thereof. Any other provision
30 of law to the contrary notwithstanding, there shall be a statute

1 of limitations of five years upon actions brought by the
2 Commonwealth pursuant to this subsection.

3 Section 12. [Severability Clause.--The provisions of this
4 act are severable and if any provision or part thereof shall be
5 held invalid or unconstitutional or inapplicable to any person
6 or circumstances, such invalidity, unconstitutionality or
7 inapplicability shall not affect or impair the remaining
8 provisions of the act.] Penalties.--(a) Any person who violates
9 any provision of this act, any rule or regulation of the
10 department, any order of the department, or any condition of any
11 permit issued pursuant to this act is guilty of a summary
12 offense and, upon conviction, such person shall be subject to a
13 fine of not less than one hundred dollars (\$100) nor more than
14 ten thousand dollars (\$10,000) for each separate offense, and,
15 in default of the payment of such fine, a person shall be
16 imprisoned for a period of ninety days.

17 (b) Any person who willfully or negligently violates any
18 provision of this act, any rule or regulation of the department,
19 any order of the department, or any condition of any permit
20 issued pursuant to the act is guilty of a misdemeanor of the
21 third degree and, upon conviction, shall be subject to a fine of
22 not less than two thousand five hundred dollars (\$2,500) nor
23 more than twenty-five thousand dollars (\$25,000) for each
24 separate offense or to imprisonment in the county jail for a
25 period of not more than one year, or both.

26 (c) Any person who, after a conviction of a misdemeanor for
27 any violation within two years as above provided, willfully or
28 negligently violates any provision of this act, any rule or
29 regulation of the department, any order of the department, or
30 any condition of any permit issued pursuant to this act is

1 guilty of a misdemeanor of the second degree and, upon
2 conviction, shall be subject to a fine of not less than two
3 thousand five hundred dollars (\$2,500) nor more than fifty
4 thousand dollars (\$50,000) for each separate offense or to
5 imprisonment for a period of not more than two years, or both.

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

10 (e) All summary proceedings under the provisions of this act
11 may be brought before any district justice of the county where
12 the offense occurred or any unlawful discharge of industrial
13 waste or pollution was maintained, or in the county where the
14 public is affected, and to that end jurisdiction is hereby
15 conferred upon said district justices, subject to appeal by
16 either party in the manner provided by law for appeals from
17 summary convictions. It shall be the duty of the district
18 attorney of the county to represent the interests of the
19 Commonwealth IN SUCH ACTIONS.

20 Section 6. The act is amended by adding sections to read:

21 Section 13. Citizens' Suits.--(a) Except as provided in
22 subsection (c) of this section, any person having an interest
23 which is or may be adversely affected may commence a civil
24 action on his own behalf to compel compliance with this act or
25 any rule, regulation, order or permit issued pursuant to this
26 act against the department where there is alleged a failure of
27 the department to perform any act which is not discretionary
28 with the department OR AGAINST ANY PERSON WHO IS ALLEGED TO BE
29 IN VIOLATION OF ANY PROVISION OF THIS ACT OR ANY RULE,
30 REGULATION, ORDER OR PERMIT ISSUED PURSUANT TO THIS ACT. Any

1 other provision of law to the contrary notwithstanding, the
2 courts of common pleas shall have jurisdiction of such actions,
3 and venue in such actions shall be as set forth in the Rules of
4 Civil Procedure concerning actions in assumpsit.

5 (b) Whenever any person presents information to the
6 department which gives the department reason to believe that any
7 person is in violation of any requirement of this act or any
8 condition of any permit issued hereunder or of the acts
9 enumerated in section (5)(g) of this act or any condition or any
10 permit issued thereunder, the department shall immediately order
11 inspection of the operation at which the alleged violation is
12 occurring, and the department shall notify the person presenting
13 such information and such person shall be allowed to accompany
14 the inspector during the inspection.

15 (c) No action pursuant to this section may be commenced
16 prior to sixty days after the plaintiff has given notice in
17 writing of the violation to the department and to any alleged
18 violation, nor may such action be commenced if the department has
19 commenced and is diligently prosecuting a civil action in a
20 court of the United States or a state to require compliance with
21 this act or any rule, regulation, order or permit issued
22 pursuant to this act, but in any such action in a court of the
23 United States or of the Commonwealth any person may intervene as
24 a matter of right.

25 (d) The provisions of subsection (c) of this section to the
26 contrary notwithstanding, any action pursuant to this section
27 may be initiated immediately upon written notification to the
28 department in the case where the violation or order complained
29 of constitutes an imminent threat to the health or safety of the
30 plaintiff or would immediately affect a legal interest of the

1 plaintiff.

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

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

22 Section 15. Savings Clause.--Nothing in this act shall be
23 construed as estopping the Commonwealth, or any district
24 attorney from proceeding in the courts of law or equity to abate
25 pollutions forbidden under this act, or abate nuisances under
26 existing law. It is hereby declared to be the purpose of this
27 act to provide additional and cumulative remedies to control the
28 disposal of coal refuse in this Commonwealth and nothing
29 contained in this act shall in any way abridge or alter rights
30 of action or remedies now or hereafter existing in equity, or

1 under the common law or statutory law, criminal or civil, nor
2 shall any provision of this act be construed as estopping the
3 Commonwealth, persons or municipalities, in the exercise of
4 their rights under the common law or decisional law or in
5 equity, from proceeding in courts of law or equity to suppress
6 nuisances, or to abate any pollution now or hereafter existing,
7 or enforce common law or statutory rights. No courts of this
8 Commonwealth having jurisdiction to abate public or private
9 nuisances shall be deprived of such jurisdiction to abate any
10 private or public nuisance instituted by any person for the
11 reason that such nuisance constitutes air or water pollution.

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

18 SECTION 7. THE PROVISIONS OF THIS AMENDATORY ACT SHALL NOT <—
19 AFFECT THE PRESENT LAW GOVERNING THE SURFACE MINING OF
20 ANTHRACITE. THE SURFACE MINING OF ANTHRACITE SHALL CONTINUE TO
21 BE GOVERNED BY THE PENNSYLVANIA LAW IN EFFECT ON AUGUST 3, 1977
22 AND AS PROVIDED BY § 529 OF THE SURFACE MINING CONTROL AND
23 RECLAMATION ACT OF 1977, PUBLIC LAW 95-87.

24 SECTION 8. AT LEAST 30 DAYS PRIOR TO CONSIDERATION BY THE
25 ENVIRONMENTAL QUALITY BOARD OF DRAFT REGULATIONS FOR PROPOSED
26 RULEMAKING, THE DEPARTMENT SHALL SUBMIT SUCH DRAFT REGULATIONS
27 TO THE SENATE ENVIRONMENTAL RESOURCES AND HOUSE MINES AND ENERGY
28 MANAGEMENT COMMITTEES OF THE GENERAL ASSEMBLY FOR THEIR REVIEW
29 AND COMMENT.

30 ~~Section 7-~~ 9. The sum of , or as much thereof as <—

1 may be necessary, is hereby appropriated to the Department of
2 Environmental Resources for the fiscal years , for the
3 purpose of administering and enforcing the provisions of this
4 act.

5 Section ~~8~~. 10. This act shall take effect immediately.

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