
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1176 Session of
1983

INTRODUCED BY LETTERMAN, DORR, CESSAR, BELFANTI, SHOWERS, GEIST,
MISCEVICH, DOMBROWSKI, KOWALYSHYN, HAYES, SCHEETZ, SEMMEL,
PETRARCA, MORRIS, DININNI, STEIGHNER, PETERSON, JACKSON,
SALOOM, MOEHLMANN, MOWERY, D. R. WRIGHT, BOWSER, BURD, CLARK,
OLASZ AND COY, JUNE 8, 1983

REFERRED TO COMMITTEE ON MINES AND ENERGY MANAGEMENT,
JUNE 8, 1983

AN ACT

1 Relating to noncoal surface mining conservation and reclamation.

2 TABLE OF CONTENTS

3 Section 1. Short title.

4 Section 2. Purpose of act.

5 Section 3. Definitions.

6 Section 4. Operator's license.

7 Section 5. Specifications for construction projects.

8 Section 6. Mining permit; reclamation plan; bond.

9 Section 7. Public health and safety.

10 Section 8. Violation notices; suspension of license; cease and
11 desist orders.

12 Section 9. Mine conservation inspectors.

13 Section 10. Local ordinances.

14 Section 11. Noncoal Surface Mining Conservation and Reclamation
15 Fund.

- 1 Section 12. Release of operator on transfer of operation.
- 2 Section 13. Injunctive relief.
- 3 Section 14. Remedies of citizens.
- 4 Section 15. Existing licenses and permits.
- 5 Section 16. Repeals.
- 6 Section 17. Effective date.

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

9 Section 1. Short title.

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

12 Section 2. Purpose of act.

13 This act shall be deemed to be an exercise of the police
14 powers of the Commonwealth for the general welfare of the people
15 of this Commonwealth, to provide for the conservation and
16 improvement of areas of land affected in the surface mining of
17 noncoal minerals, to aid in the protection of birds and
18 wildlife, to enhance the value of the land for taxation, to
19 decrease soil erosion, to aid in the prevention of the pollution
20 of rivers and streams, to prevent and eliminate hazards to
21 health and safety and generally to improve the use and enjoyment
22 of the lands.

23 Section 3. Definitions.

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

27 "Abandoned." An operation where no mineral has been produced
28 or overburden removed for a period of six months, verified by
29 monthly reports submitted to the department by the operator and
30 by inspections made by the department, unless:

1 (1) an operator, within 30 days after receipt of
2 notification by the secretary terming an operation abandoned,
3 submits sufficient evidence to the secretary that there is a
4 reasonable likelihood that additional materials will be
5 extracted from the permit area in the future; and

6 (2) there is sufficient bond to provide for reclamation.

7 "Active operation." One in which the surface mine operator
8 removes a minimum of 500 tons per acre of minerals for
9 commercial purposes in a calendar year.

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

12 "Contouring." Reclamation achieved by beginning at or beyond
13 the top of the highwall and sloped to the toe of the spoil bank
14 at a maximum angle not to exceed the approximate original
15 contour of the land, with no depressions to accumulate water and
16 with adequate provisions for drainage.

17 "Degree." The inclination from the horizontal in each case
18 subject to a tolerance of five degrees.

19 "Department." The Department of Environmental Resources.

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

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

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

26 "Lease." All documents which transfer or convey title to or
27 rights in minerals in place, together with the right to remove
28 the minerals. The term includes leases, mining leases, deeds of
29 severance and deeds conveying title to or rights in minerals
30 previously severed from the surface interest.

1 "Minerals." Any aggregate or mass of mineral matter, whether
2 or not coherent, which is extracted by surface mining. The term
3 includes, but is not limited to, limestone and dolomite, sand
4 and gravel, rock and stone, earth, fill, slag, iron ore, zinc
5 ore, vermiculite and clay; but it does not include anthracite or
6 bituminous coal.

7 "Municipality." Includes any county, city, borough, town,
8 township, school district, institution or any authority created
9 by any of the foregoing.

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

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

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

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

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

27 "Secretary." The Secretary of Environmental Resources.

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

30 "Surface mining." The extraction of minerals from the earth,

1 from waste or stockpiles, from pits or from banks by removing
2 the strata or material which overlies or is above or between
3 them or otherwise exposing and retrieving them from the surface.
4 The term includes, but is not limited to, strip and auger
5 mining, dredging, quarrying and leaching and activities related
6 thereto; but it does not include those mining operations carried
7 out beneath the surface by means of shafts, tunnels or other
8 underground mine openings. In operations where the extraction of
9 coal is incidental to the extraction of minerals and where the
10 coal extracted does not exceed 16 2/3% of the tonnage of
11 materials removed for purposes of commercial use or sale, such
12 activities shall be "surface mining" subject to this act and
13 shall not be subject to the act of May 31, 1945 (P.L.1198,
14 No.418), known as the Surface Mining Conservation and
15 Reclamation Act. The term does not include:

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

18 (2) The extraction of sand, gravel, rock, stone, earth
19 or fill from borrow pits from highway construction purposes
20 if the work is performed under a bond, contract and
21 specifications which substantially provide for and require
22 reclamation of the area affected in the manner provided by
23 this act.

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

27 (4) Those mining operations carried out by dredging in
28 navigable waters.

29 "Terracing." Grading where the steepest contour of the
30 highwall is not greater than 35 degrees from the horizontal,

1 with the table portion of the restored area a flat terrace
2 without depressions to hold water and with adequate provision
3 for drainage, unless otherwise approved by the department.

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

6 Section 4. Operator's license.

7 (a) General rule.--No person shall conduct an active
8 operation within this Commonwealth as an operator without first
9 obtaining a surface mining operator's license from the
10 department. Applications for a surface mining operator's license
11 shall be made in writing to the department upon forms prepared
12 and furnished by the department and shall contain such
13 information as the department shall require about the applicant
14 and, when the applicant is a corporation, partnership or
15 association, about its officers, directors and principal owners.
16 The initial application for a license shall be accompanied by a
17 fee of \$50 in the case of persons mining 2,000 tons or less of
18 marketable minerals per year and a fee of \$500 in the case of
19 persons mining more than 2,000 tons of marketable minerals per
20 year. All persons having a surface mining operator's license
21 shall renew such license annually and shall pay for each license
22 renewal a fee of \$50 in the case of persons mining 2,000 tons or
23 less of marketable minerals per year and a fee of \$300 in the
24 case of all other persons. The application for renewal of a
25 surface mining operator's license shall be made annually on or
26 before January 1 of the next succeeding year. Any person who
27 conducts an active operation as an operator without having
28 applied for and received a license as provided in this section
29 or in violation of the terms of his license commits a
30 misdemeanor and shall, upon conviction, be sentenced to pay a

1 fine of not less than \$5,000 or an amount not less than the
2 total profits derived by him as a result of his unlawful
3 activities, as determined by the court, together with the
4 estimated cost to the Commonwealth of any reclamation work which
5 may reasonably be required to restore the land to its condition
6 prior to the commencement of the offense or to undergo
7 imprisonment not more than one year, or both. The fine shall be
8 payable to the Noncoal Surface Mining Conservation and
9 Reclamation Fund.

10 (b) Nonissuance, nonrenewal.--The department shall not issue
11 any new surface mining operator's license or renew any existing
12 surface mining operator's license if it finds, after
13 investigation and an opportunity for an informal hearing, that
14 the applicant has failed and continues to fail to comply with
15 this act or any of the acts repealed or amended by this act
16 insofar as the acts relate to noncoal surface mining. Where the
17 applicant is a corporation, partnership or association, the
18 department shall not issue such license or renewal if, after
19 investigation and an opportunity for an informal hearing, it
20 finds any of the following:

21 (1) Any officer, director or principal owner of the
22 applicant has failed and continues to fail to comply with
23 this act or any other acts insofar as they relate to noncoal
24 surface mining or that any officer, director or principal
25 owner of the applicant is or has been an officer, director or
26 principal owner of any other corporation, partnership or
27 association which has failed and continues to fail to comply
28 with this act or other acts insofar as they relate to noncoal
29 surface mining. However, the department shall issue such
30 license or renewal if the applicant demonstrates that the

1 noncompliance is being corrected to the satisfaction of the
2 department.

3 (c) Insurance.--The application for license or renewal shall
4 be accompanied by a certificate of insurance certifying that the
5 applicant has in force a public liability insurance policy
6 issued by an insurance company authorized to do business in this
7 Commonwealth covering all surface mining operations of the
8 applicant in this Commonwealth and affording personal injury and
9 property damage protection, to be written for the term of the
10 license or renewal. The total amount of insurance shall be not
11 less than \$100,000. The secretary may waive this subsection upon
12 a finding that the applicant is possessed and will continue to
13 be possessed of ability to pay personal injury or property
14 damage claims within the requirements of this subsection.

15 Section 5. Specifications for construction projects.

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

30 Section 6. Mining permit; reclamation plan; bond.

1 (a) Application.--Before any licensed surface mining
2 operator begins a surface mining operation, he shall apply to
3 the department on a form prepared and furnished by the
4 department for a permit for each separate operation, which
5 permit when issued shall be valid until such operation is
6 completed or abandoned unless sooner suspended by the secretary.
7 As a part of each application for a permit, the operator shall
8 furnish the following unless modified or waived by the
9 department for cause:

10 (1) An accurately surveyed map or plan, in duplicate, on
11 a scale of not less than 200 feet to the inch, in a manner
12 satisfactory to the department, showing the location of the
13 tract or tracts of land to be affected by the operation
14 contemplated and cross sections at such intervals as the
15 department may prescribe. Such surveyed map or plan and cross
16 sections shall be certified by a registered professional
17 engineer and a registered professional land surveyor and
18 shall show the boundaries of the proposed land affected,
19 together with the drainage area above and below such area;
20 the location and names of all streams, roads, railroads and
21 utility lines on or immediately adjacent to the area; the
22 location of all buildings within 1,000 feet of the outer
23 perimeter of the area affected; the names and addresses of
24 the owners and present occupants thereof; the purpose for
25 which each building is used; the name of the owner of the
26 affected area and the names of adjacent landowners; the
27 municipality or township and county and, if in a township,
28 the nearest municipality. Such map or plan shall also show
29 the results of test borings which the operator has conducted
30 at the site of the proposed operation and shall include the

1 nature and depth of the various strata, the thickness of any
2 mineral seam, such analyses of the mineral or overburden as
3 the department may require, the crop line of any minerals to
4 be mined and the location of test boring holes. The
5 information resulting from test borings shall be deemed
6 confidential information and shall not be deemed a matter of
7 public record. Aerial photographs of the tract or tracts of
8 land to be affected by the operation shall also be provided
9 if such photographs are required by the department.

10 (2) A complete and detailed plan for the reclamation of
11 the land affected. Except as otherwise provided in this act
12 or unless a variance for cause is specially allowed by the
13 department as provided in this act, each such plan shall
14 include the following:

15 (i) A statement of the uses of the land proposed to
16 be mined.

17 (ii) The use which is proposed to be made of the
18 land following reclamation.

19 (iii) Where conditions permit, the manner in which
20 topsoil and subsoil will be conserved and restored. If
21 conditions do not permit the conservation and restoration
22 of all or part of the topsoil and subsoil, a full
23 explanation of those conditions shall be given and
24 alternate procedures proposed.

25 (iv) Where the proposed land use so requires, the
26 manner in which compaction of the soil and fill will be
27 accomplished.

28 (v) A complete planting program providing for the
29 planting of trees, grasses, legumes or shrubs or a
30 combination thereof approved by the department as best

1 calculated to permanently restore vegetation to the land
2 affected. If conditions do not permit the planting of
3 vegetation on all or part of the land affected and if
4 such conditions pose an actual or potential threat of
5 soil erosion or unavoidable siltation, alternate
6 procedures shall be proposed to prevent the threat of
7 soil erosion or unavoidable siltation. If such procedures
8 do not prevent these conditions, they shall not be
9 approved by the department.

10 (vi) A detailed timetable for the accomplishment of
11 each major step in the reclamation plan and the
12 operator's estimate of the cost of each such step and the
13 total cost to the operator of the reclamation program.

14 (vii) A full explanation of the conditions which do
15 not permit contouring if the reclamation plan does not
16 provide for contouring. Other alternatives to contouring
17 or terracing may be proposed, in conjunction with such
18 proposed land uses as water impoundment, water-oriented
19 real estate development, recreational area development,
20 industrial site development or solid waste disposal area
21 development; and, unless such proposed alternatives or
22 uses pose an actual or potential threat of water
23 pollution, are deemed impractical or unreasonable,
24 involve unreasonable delay in their implementation, or
25 are violative of Federal, State or local law, such
26 alternatives and uses shall be approved by the
27 department.

28 (viii) The written consent of the landowner, upon a
29 form prepared and furnished by the department, to entry
30 upon any land to be affected by the operation by the

1 operator or by the Commonwealth or any of its authorized
2 agents within a period of five years after the operation
3 is completed or abandoned for the purpose of reclamation,
4 planting and inspection or for the construction of any
5 such mine drainage treatment facilities as may be deemed
6 necessary by the secretary for the prevention of stream
7 pollution from mine drainage. However, written consent of
8 the landowner shall not be required in the case of leases
9 in existence on November 30, 1971 or mineral interests
10 first severed from the surface interests by conveyance
11 prior to November 30, 1971 which do not provide for or
12 require such consents.

13 (ix) The manner in which the operator plans to
14 control surface water drainage. No approval shall be
15 granted unless the plan provides for a practicable method
16 of avoiding acid mine drainage and preventing avoidable
17 siltation or other stream pollution.

18 (b) Decision.--Within 30 days after receipt of an
19 application for a permit, the department shall examine the
20 application, notify the applicant of specific deficiencies,
21 request any additional information the department is authorized
22 by law to require and, if the department objects to any part of
23 the proposal, notify the applicant of its objections and the
24 reasons therefor. Failure to correct a deficiency, to supply
25 additional information or to remove the objections shall not be
26 grounds for denial of the permit unless the department timely
27 notified the applicant within this 30-day period. The department
28 shall grant or deny the permit within 60 days after receipt of
29 the application or receipt of the timely requested correction of
30 deficiencies, additional information or removal of objections

1 unless the applicant agrees to an extension of this 60-day
2 period. Any application that is not approved or denied within
3 this 60-day period shall be deemed approved and the permit shall
4 be issued. Should any applicant be aggrieved by any action of
5 the department under this subsection or by the failure of the
6 department to act upon his application for a permit, he may
7 proceed to lodge an appeal with the Environmental Hearing Board
8 in the manner provided by statute; and the applicant may appeal
9 from the adjudication of the board as provided by Title 2 of the
10 Pennsylvania Consolidated Statutes (relating to administrative
11 law and procedure).

12 (c) Additional land.--The operator shall, prior to
13 commencing operations on any additional land exceeding the
14 estimate made in the application for a permit, file an
15 additional application and bond. Upon receipt of such additional
16 application and related documents and information as would have
17 been required for the additional land had it been included in
18 the original application for a permit and, if all the
19 requirements of this act as were necessary to secure the permit
20 are met, the department shall promptly issue an amended permit
21 covering the additional acreage covered by such application and
22 shall determine the additional bond requirement therefor.

23 (d) Bond.--

24 (1) Prior to commencing surface mining, the permittee
25 shall file with the department a bond for the land affected
26 by each operation on a form to be prescribed and furnished by
27 the department, payable to the Commonwealth and conditioned
28 that the permittee shall faithfully perform all of the
29 requirements of this act and of the act of June 22, 1937

30 (P.L.1987, No.394), known as The Clean Streams Law, the act

1 of January 8, 1960 (1959 P.L.2119, No.787), known as the Air
2 Pollution Control Act, and, where applicable, the act of
3 November 26, 1978 (P.L.1375, No.325), known as the Dam Safety
4 and Encroachments Act, and the act of July 7, 1980 (P.L.380,
5 No.97), known as the Solid Waste Management Act.

6 (2) An operator posting a bond sufficient to comply with
7 this section shall not be required to post a separate bond
8 for the permitted area under each of the acts hereinabove
9 enumerated. This paragraph shall not 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.

13 (3) The amount of the bond required shall be in an
14 amount determined by the department based upon the total
15 estimated cost of the Commonwealth of completing the approved
16 reclamation plan or in such other amount and form as may be
17 established by the department under regulations for an
18 alternate bonding program which shall achieve the objectives
19 and purposes of the bonding program. The estimate shall be
20 based upon the permittee's statement of his estimated cost of
21 fulfilling the plan during the course of his operation,
22 inspection of the application and other documents submitted,
23 inspection of the land area and such other criteria as may be
24 relevant, including but not limited to the probable
25 difficulty of reclamation giving consideration to such
26 factors as topography, geology of the site, hydrology, the
27 proposed land use, and the additional cost to the
28 Commonwealth which may be entailed by being required to bring
29 personnel and equipment to the site after abandonment by the
30 permittee in excess of the cost to the permittee of

1 performing the necessary work during the course of his
2 surface mining operations. When the plan involves the
3 reconstruction or relocation of any public road or highway,
4 the amount of the bond shall include an amount sufficient to
5 fully build or restore the road or highway to a condition
6 approved by the Department of Transportation. No bond shall
7 be filed for less than \$10,000 for the entire permit area.
8 Liability under such bond shall be for the duration of the
9 surface mining at each operation and for a period of five
10 years after the last year of augmented seeding and
11 fertilizing and any other work to complete reclamation to
12 meet the requirements of law and protect the environment,
13 unless released in part prior thereto as provided in this
14 act.

15 (4) The bond shall be executed by the operator and a
16 corporate surety licensed to do business in this Commonwealth
17 and approved by the secretary. The permittee may elect to
18 deposit with the department, in lieu of a corporate surety,
19 cash, automatically renewable irrevocable bank letters of
20 credit, which may be terminated by the bank at the end of a
21 term only upon the bank giving 90 days prior written notice
22 to the permittee and the department, or negotiable bonds of
23 the United States Government or of the Commonwealth, the
24 Pennsylvania Turnpike Commission, The General State
25 Authority, the State Public School Building Authority or any
26 municipality within this Commonwealth. The cash deposit
27 amount of such irrevocable letter of credit or market value
28 of such securities shall be equal at least to the sum of the
29 bond. The secretary shall, upon receipt of any such deposit
30 of cash, letters of credit or negotiable bonds, immediately

1 place the same with the State Treasurer, whose duty it shall
2 be to receive and hold the deposit in the name of the
3 Commonwealth, in trust, for the purposes for which the
4 deposit is made. The State Treasurer shall at all times be
5 responsible for the custody and safekeeping of such deposits.
6 The permittee making the deposit shall be entitled from time
7 to time to demand and receive from the State Treasurer, on
8 the written order of the secretary, the whole or any portion
9 of any collateral so deposited upon depositing with the State
10 Treasurer, in lieu thereof, other collateral of the classes
11 specified in this paragraph having a market value at least
12 equal to the sum of the bond or to substitute a bond for such
13 cash, automatically renewable irrevocable bank letters of
14 credit or negotiable bonds and also to demand, receive and
15 recover the interest and income from the negotiable bonds as
16 it becomes due and payable. Where negotiable bonds,
17 deposited, mature or are called, the State Treasurer, at the
18 request of the permittee, shall convert the negotiable bonds
19 into such other negotiable bonds of the classes specified in
20 this paragraph as may be designated by the permittee. Where
21 notice of intent to terminate a letter of credit is given,
22 the department shall give the permittee 30 days' written
23 notice to replace the letter of credit with other acceptable
24 bond guarantees as provided in this paragraph and, if the
25 permittee fails to replace the letter of credit within the
26 30-day notification period, the department shall draw upon
27 and convert such letter of credit into cash and hold it as a
28 collateral bond guarantee or may accept a self-bond from the
29 permittee, without separate surety if the permittee
30 demonstrates to the satisfaction of the department a history

1 of financial solvency, continuous business operation and
2 continuous efforts to achieve compliance with all Federal and
3 Pennsylvania environmental statutes, pledges such real or
4 personal property as the department may require to secure the
5 self-bond and complies with such other requirements as the
6 department may reasonably require.

7 (e) Excessive mining.--Notwithstanding subsection (d), in
8 the case of applications for the mining of minerals where the
9 department determines that the mineral to be extracted exceeds
10 the amount of overburden by a ratio of at least four to one or
11 the minerals are to be removed by underground mining methods and
12 where the mining operations are reasonably anticipated to
13 continue for a period of at least ten years from the date of
14 application, the term of the bond shall be for the duration of
15 the mining and reclamation operations and for five years
16 thereafter. The operator, in the case of mining and reclamation
17 operations mentioned in this subsection, may elect to deposit
18 collateral and file a collateral bond as provided in subsection
19 (d) according to the following phased deposit schedule. The
20 operator shall, prior to commencing mining operations, deposit
21 \$10,000 or 25% of the amount of the bond determined under
22 subsection (d), whichever is greater. The operator shall,
23 thereafter, annually deposit 10% of the remaining bond amount
24 for a period of ten years. Interest accumulated by such
25 collateral shall become a part of the bond until such time as
26 the collateral, plus accumulated interest, equal the amount of
27 the required bond. The department may require additional bonding
28 at any time to meet the intent of subsection (d). The collateral
29 shall be deposited, in trust, with the State Treasurer as
30 provided in subsection (d) or with a bank selected by the

1 department which shall act as trustee for the benefit of the
2 Commonwealth, according to the regulations promulgated under
3 this act, to guarantee the operator's compliance with this act
4 and the statutes enumerated in subsection (d)(1). The operator
5 shall be required to pay all costs of the trust. The collateral
6 deposit or part thereof shall be released of liability and
7 returned to the operator, together with a proportional share of
8 accumulated interest, upon the conditions of and under the
9 schedule and criteria for release provided in subsection (g).

10 (f) Progress report.--Within 90 days after commencement of
11 surface mining operations and each 365 days thereafter unless
12 modified or waived by the department for cause, the operator
13 shall file in triplicate an operations and progress report with
14 the department on a form prescribed and furnished by the
15 department, setting forth:

16 (1) The name or number of the operation.

17 (2) The location of the operation as to county and
18 township and with reference to the nearest public road.

19 (3) A description of the tract or tracts.

20 (4) The name and address of the landowner or his duly
21 authorized representative.

22 (5) An annual report of the mineral produced, number of
23 employees and days worked.

24 (6) A report of all fatal and nonfatal accidents for the
25 previous year.

26 (7) The current status of the reclamation work performed
27 in pursuance of the approved reclamation plan.

28 (8) Such other or further information as the department
29 may reasonably require.

30 (g) Release of liability.--As the operator completes each

1 separate step of the approved reclamation plan, the operator may
2 report the completion to the department and request the release
3 of that portion of the bond and collateral which relates to the
4 completed portion of the reclamation plan. Upon the receipt of
5 such notification and request, the department shall inspect the
6 premises; and, if it finds that the work has been performed in a
7 proper and workmanlike manner and is in compliance with the
8 approved reclamation plan and with law, it shall release that
9 portion of the bond and collateral which relates to the
10 completed portion of the reclamation plan. The department may
11 withhold an amount equivalent to 5% of the amount for a period
12 of five years from the completion date of the work, as a
13 contingency allowance for the reimbursement of the Commonwealth
14 of any cost encountered due to after-discovered faulty or
15 negligent work on the part of the operator. Upon release of all
16 or part of the bond and collateral as provided in this
17 subsection, the State Treasurer shall immediately return to the
18 operator the amount of cash or securities specified therein.

19 (h) Forfeiture.--If the operator fails or refuses to comply
20 with the requirements of this act in any respect for which
21 liability has been charged on the bond, the department shall
22 declare such portion of the bond forfeited and shall certify
23 this to the Office of the Attorney General, which shall proceed
24 to enforce and collect the amount of liability forfeited
25 thereon; and where the operator has deposited cash or securities
26 as collateral in lieu of a corporate surety, the department
27 shall declare the portion of the collateral forfeited and shall
28 direct the State Treasurer to pay the funds into the Noncoal
29 Surface Mining Conservation and Reclamation Fund or to proceed
30 to sell said securities to the extent forfeited and pay the

1 proceeds thereof into the Noncoal Surface Mining Conservation
2 and Reclamation Fund. Should any corporate surety fail to
3 promptly pay in full a forfeited bond, it shall be disqualified
4 from writing any further surety bonds under this act. Any
5 operator aggrieved by reason of forfeiting the bond or
6 converting collateral, as provided in this subsection, shall
7 have a right to contest such action and appeal therefrom as
8 provided in subsection (i).

9 (i) Appeal.--Should any operator be aggrieved by any
10 decision or action of the secretary with respect to the amount
11 of any bond, the terms, conditions or release thereof or any
12 other matter related thereto, he may proceed to lodge an appeal
13 with the Environmental Hearing Board in the manner provided by
14 law; and from the adjudication of the board the operator may
15 further appeal as provided by Title 2 of the Pennsylvania
16 Consolidated Statutes (relating to administrative law and
17 procedure).

18 (j) Minimal impact.--Notwithstanding the provisions of
19 subsections (d) and (e) and section 4(c), in the case of
20 applications for the surface mining permits and licenses, where
21 the department determines that the amount of marketable minerals
22 to be extracted does not exceed 2,000 tons, no certificate of
23 insurance nor bond shall be required.

24 Section 7. Public health and safety.

25 (a) Jurisdiction.--Except as otherwise provided in this act,
26 all surface mining operations coming within the provisions of
27 this act shall be under the exclusive jurisdiction of the
28 department and shall be conducted in compliance with such
29 reasonable rules and regulations as may be deemed necessary by
30 the secretary for the protection of the general public. Separate

1 rules and regulations shall be promulgated for each mineral. The
2 secretary, through the mine conservation inspectors, shall have
3 the authority and power to enforce this act and the rules and
4 regulations promulgated hereunder. In addition, should the
5 secretary determine that a condition caused by or related to
6 surface mining constitutes a hazard to public health or safety,
7 the secretary shall take such measures to abate and remove the
8 same as are provided by section 1917-A of the act of April 9,
9 1929 (P.L.177, No.175), known as The Administrative Code of
10 1929, and as otherwise provided by law for the abatement of
11 nuisances. For the purposes of this section, any condition which
12 creates a risk of fire, landslide, subsidence, cave-in or other
13 unsafe, dangerous or hazardous condition including, but not
14 limited to, any unguarded and unfenced open pit area, highwall,
15 water pool, spoil bank, abandoned structure, equipment,
16 machinery, tools and other property used in or resulting from
17 surface mining operations or other serious hazards to public
18 health or safety, are hereby declared to be a nuisance within
19 the meaning of section 1917-A of The Administrative Code of
20 1929.

21 (b) Explosives.--The use of explosives for the purpose of
22 blasting in connection with surface mining shall be done in
23 accordance with regulations promulgated by and under the
24 supervision of the secretary. It shall be unlawful for any
25 blaster to leave a working place after a task completion without
26 first filing a blaster's report with the mine operator. Such
27 report shall indicate the nature of the blasting operation,
28 including, but not limited to, the type and amount of explosives
29 used.

30 (c) Distance limitations.--No operator shall open any pit

1 for surface mining operations, other than borrow pits for
2 highway construction purposes within 100 feet of the outside
3 line of the right-of-way of any public highway; within 300 feet
4 of any occupied dwelling house, unless released by the owner
5 thereof; within 300 feet of any public building, school, public
6 park or community or institutional building or within 100 feet
7 of any cemetery. The secretary may grant operators variances to
8 the distance requirements established in this subsection where
9 he is satisfied that special circumstances warrant such
10 exceptions and that the interest of the public and landowners
11 affected thereby will be adequately protected. Prior to granting
12 any such variances, the operator shall be required to give
13 public notice of his application therefor in two newspapers of
14 general circulation in the area once a week for two successive
15 weeks. Should any person file an exception to the proposed
16 variance within 20 days of the last publication thereof, the
17 department shall conduct a public hearing with respect thereto.

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

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

28 (f) Water restoration.--Any surface mining operator who
29 affects a public or private water supply by contamination or
30 diminution shall restore or replace the affected supply with an

1 alternate source of water adequate in quantity and quality for
2 the purposes served by the supply. If any operator fails to
3 comply with this subsection, the secretary may issue such orders
4 to the operator as are necessary to assure compliance.

5 (g) Appeal.--Any operator aggrieved by the secretary's order
6 issued under subsection (f) shall have the right within 30 days
7 of receipt of such order to appeal to the Environmental Hearing
8 Board. Hearings under this subsection and any subsequent appeal
9 shall be in accordance with section 1921-A of The Administrative
10 Code of 1929 and Title 2 of the Pennsylvania Consolidated
11 Statutes (relating to administrative law and procedure).

12 (h) Cost of water restoration.--If the secretary finds that
13 immediate replacement of an affected water supply used for
14 potable or domestic needs is required to protect health and
15 safety and that the operator has appealed or failed to comply
16 with an order issued under subsection (f), the secretary may, in
17 his discretion, restore or replace the affected water supply
18 with an alternate source of water utilizing moneys from the
19 Noncoal Surface Mining Conservation and Reclamation Fund. Should
20 the secretary's decision be upheld on appeal, the secretary
21 shall proceed to recover the costs of restoration or
22 replacement, including costs incurred for design and
23 construction of facilities, from the responsible operator or
24 operators. Any such costs recovered shall be deposited in the
25 fund.

26 Section 8. Violation notices; suspension of license; cease and
27 desist orders.

28 Any mine conservation inspector shall have the right to enter
29 upon and inspect all surface mining operations for the purpose
30 of determining conditions of public health and safety and

1 compliance with this act and all rules and regulations
2 promulgated under this act. Should an operator fail to comply
3 with this act or any rules or regulations promulgated under this
4 act, the mine conservation inspector shall report the matter to
5 the secretary who shall immediately notify the operator by
6 registered mail of such failure. Unless the operator complies
7 with that act and the rules and regulations within 30 days from
8 the receipt of such notice, the secretary may, after hearing and
9 final determination, suspend the surface mining operator's
10 license of the operator and issue a cease and desist order
11 requiring the operator to immediately cease surface mining
12 within this Commonwealth until such time as it is determined by
13 the secretary that the operator is in compliance. A mine
14 conservation inspector shall have the authority to order the
15 immediate stopping of any operation that is started by an
16 unlicensed operator, that is started without the operator hereof
17 having first obtained a permit as required by this act, or in
18 any case where the public health or safety calls for the
19 immediate halt of the operation, until corrective steps have
20 been started by the operator to the satisfaction of the mine
21 conservation inspector. Any operator who believes he is
22 aggrieved by the action of the mine conservation inspector may
23 immediately appeal to the secretary, setting forth reasons why
24 his operation should not be halted. The secretary shall
25 determine when the operation shall continue.

26 Section 9. Mine conservation inspectors.

27 Mine conservation inspectors shall be appointed in accordance
28 with 4 Pa. Code Part IV (relating to Civil Service Commission).
29 It shall be the duty of the secretary to assign the inspectors
30 to their respective areas of jurisdiction.

1 Section 10. Local ordinances.

2 The Commonwealth by this enactment hereby preempts the
3 regulation of surface mining as herein defined. Except with
4 respect to regulating uses of land, water courses and other
5 bodies of water pursuant to section 603(1) of the act of July
6 31, 1968 (P.L.805, No.247), known as the Pennsylvania
7 Municipalities Planning Code, all local ordinances and
8 enactments purporting to regulate surface mining are hereby
9 superseded.

10 Section 11. Noncoal Surface Mining Conservation and Reclamation
11 Fund.

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

26 (b) Earmarked funds.--Funds received from the forfeiture of
27 bonds, both surety and collateral, shall be expended by the
28 secretary for reclaiming and planting the area of land affected
29 by the operation upon which liability was charged on the bond if
30 the secretary determines such expenditure to be reasonable,

1 necessary and physically possible. Any funds received from such
2 forfeited bonds in excess of the amount which is required to
3 reclaim and plant the area of land affected by the operation
4 upon which liability was charged and funds received from bond
5 forfeitures where reclamation and planting is determined to be
6 unreasonable, unnecessary or physically impossible may be used
7 by the secretary for any of the purposes provided in subsection
8 (a).

9 Section 12. Release of operator on transfer of operation.

10 Where one operator succeeds another at any uncompleted
11 operation, by sale, assignment, lease or otherwise, the
12 secretary may release the first operator from all liability
13 under this act as to that particular operation if both operators
14 have registered and have otherwise complied with the
15 requirements of this act and the successor operator assumes as
16 part of his obligation under this act all liability for grading,
17 planting and reclamation on the land affected by the former
18 operator.

19 Section 13. Injunctive relief.

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

28 Section 14. Remedies of citizens.

29 Any citizen of this Commonwealth having knowledge that any of
30 the provisions of this act are willfully and deliberately not

1 being enforced by any public officer or employee whose duty it
2 is to enforce this act shall bring such failure to enforce the
3 law to the attention of the public officer or employee. To
4 provide against unreasonable and irresponsible demands being
5 made, all demands to enforce the law must be in writing, under
6 oath, with facts set forth specifically stating the nature of
7 the failure to enforce the law. The stating of false facts and
8 charges in such affidavit shall constitute perjury and shall
9 subject the affiant to penalties prescribed under the law for
10 perjury. If the public officer or employee neglects or refuses
11 for an unreasonable time after demand to enforce such provision,
12 the citizen shall have the right to bring an action of mandamus
13 in the court of common pleas of the county in which the
14 operation which relates to the alleged lack of enforcement is
15 being conducted. The court, if satisfied that any provision of
16 this act is not being enforced, may make an appropriate order
17 compelling the public officer or employee whose duty it is to
18 enforce such provision to perform his duties and, upon failure
19 to do so, the public officer or employee shall be held in
20 contempt of court and shall be subject to the penalties provided
21 by the laws of the Commonwealth in such cases.

22 Section 15. Existing licenses and permits.

23 Any surface mining operator's license or surface mining
24 permit existing on the effective date of this act shall remain
25 in effect until the license or permit expires under its terms or
26 is otherwise terminated under the provisions of this act.

27 Section 16. Repeals.

28 All acts and parts of acts are repealed insofar as they are
29 inconsistent with this act.

30 Section 17. Effective date.

1 This act shall take effect in 60 days.