
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1176 Session of
1983

INTRODUCED BY LETTERMAN, DORR, CESSAR, BELFANTI, SHOWERS, GEIST,
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OLASZ AND COY, JUNE 7, 1983

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
OCTOBER 3, 1984

AN ACT

1 Relating to noncoal surface mining conservation and reclamation.

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

21 Section 1. Short title.

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

24 Section 2. Purpose of act.

25 This act shall be deemed to be an exercise of the police
26 powers of the Commonwealth for the general welfare of the people
27 of this Commonwealth, to provide for the conservation and
28 improvement of areas of land affected in the surface mining of
29 noncoal minerals, to aid in the protection of birds and
30 wildlife, to enhance the value of the land for taxation, to

1 decrease soil erosion, to aid in the prevention of the pollution
2 of rivers and streams, to protect and maintain water supply, to
3 protect land, to enhance land use management and planning, to
4 prevent and eliminate hazards to health and safety and generally
5 to improve the use and enjoyment of the lands.

6 Section 3. Definitions.

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

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

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

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

17 "Conservation district." Any county in the Commonwealth
18 whose county governing body has, by resolution, declared the
19 county to be a conservation district under the act of May 15,
20 1945 (P.L.547, No.217), known as the Soil Conservation Law.

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

27 "Degree." The inclination from the horizontal.

28 "Department." The Department of Environmental Resources.

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

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

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

5 ~~"Lease." A document that transfers or conveys title to or~~ <—
6 ~~rights in minerals in place, together with the right to remove~~
7 ~~the minerals. The term includes leases, mining leases, deeds of~~
8 ~~severance and deeds conveying title to or rights in minerals~~
9 ~~previously severed from the surface interest.~~

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

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

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

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

29 "Overburden." The strata or material overlying a mineral
30 deposit or in between mineral deposits in its natural state

1 before or after its removal by surface mining.

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

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

7 "Secretary." The Secretary of Environmental Resources.

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

10 "Surface mining." The extraction of minerals from the earth,
11 from waste or stockpiles or from pits or from banks by removing
12 the strata or material that overlies or is above or between them
13 or otherwise exposing and retrieving them from the surface,
14 including, but not limited to, strip, auger mining, dredging,
15 quarrying and leaching and all surface activity connected with
16 surface or underground mining, including, but not limited to,
17 exploration, site preparation, entry, tunnel, drift, slope,
18 shaft and borehole drilling and construction and activities
19 related thereto; but it does not include those mining operations
20 carried out beneath the surface by means of shafts, tunnels or
21 other underground mine openings. The term does not include any
22 of the following:

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

25 (2) The extraction of sand, gravel, rock, stone, earth
26 or fill from borrow pits for highway construction purposes OF <—
27 THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION or the
28 extraction of minerals pursuant to construction contracts
29 with the ~~Commonwealth or any agency thereof~~ DEPARTMENT if the <—
30 work is performed under a bond, contract and specifications

1 that substantially provide for and require reclamation of the
2 area affected in the manner provided by this act.

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

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

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

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

15 Section 4. Relationship to coal mining.

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

27 (b) Certain provisions of Surface Mining Conservation and
28 Reclamation Act applicable.--All surface mining operations where
29 the extraction of coal is incidental to the extraction of
30 minerals and where the coal extracted does not exceed 16 2/3% of

1 the tonnage of materials removed for purposes of commercial use
2 or sale shall be subject to section 4.5(a) to (g), inclusive, of
3 the Surface Mining Conservation and Reclamation Act.

4 Section 5. Operator's license.

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

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

22 (c) Nonissuance, nonrenewal or amendment.--The department
23 shall not issue any surface mining operator's license or renew
24 or amend any license if it finds, after investigation and an
25 opportunity for informal hearing, that a person, partner,
26 associate, officer, parent corporation or subsidiary corporation
27 has been subject to a bond forfeiture under this act or any of
28 the statutes enumerated in section 7(c)(9) or has failed to
29 comply with an adjudicated proceeding, order, consent order and
30 agreement or decree under this act or any of the statutes

1 enumerated in section 7(c)(9). In addition, the department shall
2 not renew any license for any operator who uses the provisions
3 of section 9(g), unless the operator submits his annual payment
4 under section 9(g) with his license renewal application.

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

12 (e) Insurance.--The application for license or renewal for
13 operators who extracted more than 2,000 tons of marketable
14 minerals in the previous year or who plan to extract more than
15 2,000 tons of marketable minerals in the current year shall be
16 accompanied by a certificate of insurance. The certificate shall
17 certify that the applicant has in force a public liability
18 insurance policy, issued by an insurance company authorized to
19 do business in this Commonwealth, covering all surface mining
20 operations of the applicant in this Commonwealth and affording
21 personal injury and property damage protection, to be written
22 for the term of the license or renewal. The total amount of
23 insurance shall be in an amount adequate to compensate any
24 persons damaged as a result of surface mining operations,
25 including, but not limited to, use of explosives, and entitled
26 to compensation under the applicable provisions of State law.
27 The total amount shall be prescribed by regulation. The operator
28 shall provide liability insurance or bond guarantees for
29 replacement or restoration of water supplies as required under
30 section 11(g) with the license application under this section or

1 as part of each surface mining permit application under section
2 7 where the department determines that the operation may
3 contaminate, diminish or interrupt one or more water supplies.

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

10 Section 6. Specifications for construction projects.

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

25 Section 7. Mining permit; reclamation plan.

26 (a) Permit required.--Except as provided in section 24, no
27 person shall operate a surface mine or allow a discharge from a
28 surface mine unless the person has first obtained a permit from
29 the department in accordance with this act and unless the person
30 is operating in accordance with the conditions provided in the

1 permit as well as the applicable statutes and regulations. The
2 department may impose ~~the~~ SUCH permit conditions as are ←
3 necessary to carry out the purposes of this act. The department
4 is authorized to charge and collect from persons a reasonable
5 filing fee, which shall not exceed the cost of reviewing,
6 administering and enforcing the permit.

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

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

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

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

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

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

30 The map or plan shall also show the results of test borings

1 which the operator has conducted or will conduct at the site of
2 the proposed operation and shall include the nature and depth of
3 the various strata, the thickness of any mineral seam, the crop
4 line of any minerals to be mined, the location of test boring
5 holes and, if required by the department, a complete analysis of
6 the mineral seam or mineral to be mined and an overburden
7 analysis. Aerial photographs of the tract or tracts of land to
8 be affected by the operation shall also be provided if
9 photographs are required by the department.

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

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

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

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

28 (ii) A demonstration that the proposed operation
29 will be carried out over a substantial period of time,
30 that the thickness of the mineral deposit proposed to be

1 mined, relative to the volume of overburden, is very
2 large, and that the overburden and other spoil materials
3 at the permit area are insufficient to restore the area
4 to approximate original contour. Where the applicant
5 makes that demonstration, he shall also include a
6 description of his alternative to contouring, in
7 conjunction with such proposed land uses as water
8 impoundment, water-oriented real estate development,
9 recreational development, industrial site development or
10 solid waste disposal area development. The applicant must
11 show that the alternative to contouring is likely to be
12 achieved, poses no actual or potential threat to public
13 health or safety, or of water diminution, contamination,
14 interruption or pollution and is consistent with
15 applicable land use policies, plans and programs as well
16 as Federal, State or local law. In addition, the
17 applicant must demonstrate that the land affected will,
18 after mining and reclamation has been completed, be
19 capable of supporting the highest or best use it can
20 reasonably support.

21 (iii) Where the applicant does not meet the
22 requirements of subparagraph (ii), but seeks an
23 alternative to contouring, a description of the
24 operator's alternative to contouring, including a
25 demonstration that the operation will restore the land
26 affected to a condition capable of supporting the uses it
27 was capable of supporting prior to any mining or to any
28 higher or better use. The application must also
29 demonstrate that the alternative is acceptable to the
30 landowner, that no highwalls will remain after mining,

1 that the watershed of the area will be improved, and that
2 the proposed use has been designed and certified by a
3 registered professional engineer to assure the stability,
4 drainage and configuration necessary for the intended use
5 of the site. The description of the alternative to
6 contouring shall include such proposed land uses as water
7 impoundment, water-oriented real estate development,
8 recreational development, industrial site development or
9 solid waste disposal area development. The applicant must
10 also demonstrate that the alternative to contouring is
11 likely to be achieved; poses no actual or potential
12 threat to public health or safety; or of water
13 diminution, interruption, contamination or pollution.

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

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

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

29 (6) A plan for establishing a diverse, effective and
30 permanent vegetative cover of the same seasonal variety

1 native to the area to be affected and capable of self-
2 regeneration and plant succession at least equal in extent of
3 cover to the natural vegetation of the area. However,
4 introduced species may be used in the revegetation process
5 where desirable and necessary to achieve the approved
6 postmining land use plan. Where the proposed postmining land
7 use is a long-term, intensive, agricultural use, the
8 department may waive the requirements of this paragraph, if
9 the applicant demonstrates that the area will be restored to
10 a condition capable of supporting that use. Where the
11 proposed postmining land use does not involve any vegetation,
12 the applicant shall demonstrate that the area will be
13 stabilized to prevent and control erosion and siltation.

14 (7) If the permit application is based upon leases not
15 in existence on January 1, 1972, the application shall
16 include, upon a form prepared by the department, the written
17 consent of the landowner to entry upon any land to be
18 affected by the operation and by the Commonwealth and any of
19 its authorized agents prior to the initiation of surface
20 mining operations, during surface mining operations and for a
21 period of five years after the operation is completed or
22 abandoned for the purpose of reclamation, planting and
23 inspection or for the construction of any pollution abatement
24 facilities as may be deemed necessary by the department for
25 the purpose of this act. If the permit application is based
26 upon leases in existence on or before January 1, 1972, the
27 application for permit shall include, upon a form prescribed
28 and furnished by the department, a notice of the existence of
29 the lease and a description of the chain of title.

30 (8) The manner in which the operator plans to control

1 surface water drainage, including a practicable method of
2 preventing or avoiding surface and groundwater pollution.

3 (9) The manner in which the operator plans to comply
4 with the requirements of the act of January 8, 1960 (1959
5 P.L.2119, No.787), known as the Air Pollution Control Act;
6 the act of June 22, 1937 (P.L.1987, No.394), known as The
7 Clean Streams Law; and, where applicable, the act of
8 September 24, 1968 (P.L.1040, No.318), known as the Coal
9 Refuse Disposal Control Act; the act of July 31, 1968
10 (P.L.788, No.241), known as the Pennsylvania Solid Waste
11 Management Act, or the act of July 7, 1980 (P.L.380, No.97),
12 known as the Solid Waste Management Act; the act of November
13 26, 1978 (P.L.1375, No.325), known as the Dam Safety and
14 Encroachments Act; and the act of May 31, 1945 (P.L.1198,
15 No.418), known as the Surface Mining Conservation and
16 Reclamation Act.

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

19 Section 8. Permit approval or denial.

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

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

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

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

30 (b) ~~Grounds~~ OTHER GROUNDS for refusal to issue, renew or

<—

1 amend permit.--

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

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

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

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

22 (2) Persons other than the applicant, including
23 independent subcontractors, who are proposed to operate under
24 the permit shall be listed in the application and those
25 persons shall be subject to approval by the department prior
26 to their engaging in surface mining operations. The persons
27 shall be jointly and severally liable with the permittee for
28 the violations of this act as the permittee is charged and in
29 which the persons participate.

30 Section 9. Bonding.

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

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

27 (c) Amount of bond.--The amount of the bond required shall
28 be in an amount determined by the department based upon the
29 total estimated cost to the Commonwealth of completing the
30 approved reclamation plan or in such other amount and form as

1 may be established by the department under regulations for an
2 alternate bonding program that shall achieve the objectives and
3 purposes of the bonding program. The estimate shall be based
4 upon the permittee's statement of his estimated cost of
5 fulfilling the plan during the course of his operation,
6 inspection of the application and other documents submitted,
7 inspection of the land area and such other criteria as may be
8 relevant, including, but not limited to, the probable difficulty
9 of reclamation, giving consideration to such factors as
10 topography, geology of the site, hydrology, the proposed land
11 use and the additional cost to the Commonwealth which may be
12 entailed by being required to bring personnel and equipment to
13 the site after abandonment by the permittee in excess of the
14 cost to the permittee of performing the necessary work during
15 the course of his surface mining operations. No bond shall be
16 filed for less than ~~\$10,000~~ \$5,000 for the entire permit area. ←
17 When the plan involves the reconstruction or relocation of any
18 public road or highway and when the Department of Transportation
19 has required a bond sufficient to fully build or restore the
20 road or highway to a condition approved by that department, no
21 additional bond for building or restoring the road or highway
22 shall be required under this act.

23 (d) Duration of liability under bond.--Liability under the
24 bond shall be for the duration of the surface mining at each
25 operation and for a period of five years after the last year of
26 augmented seeding and fertilizing and any other work to complete
27 reclamation to meet the requirements of law and protect the
28 environment, unless released in whole or in part prior thereto
29 as provided in this act.

30 (e) Bond requirements; alternatives.--The bond shall be

1 executed by the operator and a corporate surety licensed to do
2 business in this Commonwealth and approved by the secretary. The
3 permittee may elect to deposit with the department, in lieu of a
4 corporate surety, cash, automatically renewable irrevocable bank
5 letters of credit, which may be terminated by the bank at the
6 end of a term only upon the bank giving 90 days prior written
7 notice to the permittee and the department or negotiable bonds
8 of the Federal Government or of the Commonwealth, the
9 Pennsylvania Turnpike Commission, the General State Authority,
10 the State Public School Building Authority or any municipality
11 within this Commonwealth. The cash deposit amount of the
12 irrevocable letter of credit or market value of the securities
13 shall be equal at least to the sum of the bond. Upon receipt of
14 any such deposit of cash, letters of credit or negotiable bonds,
15 the secretary shall immediately place the same with the State
16 Treasurer, whose duty shall be to receive and hold the deposit
17 in the name of the Commonwealth, in trust, for the purposes for
18 which the deposit is made. The State Treasurer shall at all
19 times be responsible for the custody and safekeeping of the
20 deposits.

21 (f) Substitution for bond or other collateral.--The
22 permittee making the deposit shall be entitled, from time to
23 time, to demand and receive from the State Treasurer, on the
24 written order of the secretary, the whole or any portion of any
25 collateral so deposited, upon depositing with the State
26 Treasurer, in lieu thereof, other collateral of the classes
27 specified in this section having a market value at least equal
28 to the sum of the bond or, to substitute a bond for the cash,
29 automatically renewable irrevocable bank letters of credit or
30 negotiable bonds and also to demand, receive and recover the

1 interest and income from the negotiable bonds as it becomes due
2 and payable. Where negotiable bonds, deposited as provided in
3 this section, mature or are called, the State Treasurer, at the
4 request of the permittee, shall convert the negotiable bonds
5 into other negotiable bonds of the classes specified in this
6 section as may be designated by the permittee. Where notice of
7 intent to terminate a letter of credit is given, the department
8 shall give the permittee 30 days' written notice to replace the
9 letter of credit with other acceptable bond guarantees as
10 provided in this section and, if the permittee fails to replace
11 the letter of credit within the 30-day notification period, the
12 department shall draw upon and convert the letter of credit into
13 cash and hold it as a collateral bond guarantee.

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

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

27 (2) The permittee or, if the permittee does not issue
28 separate audited financial statements, its parent shall
29 provide audited financial statements, for at least its most
30 recent three fiscal years, prepared by a certified public

1 accountant in accordance with generally accepted accounting
2 principles. Upon request of the permittee, the department
3 shall maintain the confidentiality of the financial
4 statements if the same are not otherwise disclosed to other
5 government agencies or the public.

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

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

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

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

28 (7) A corporate officer of the permittee shall certify
29 to the department that forfeiture of the aggregate amounts of
30 self-bonds furnished for all operations hereunder would not

1 materially affect the permittee's ability to remain in
2 business or endanger its cash flow to the extent it could not
3 meet its current obligations.

4 (8) The permittee may be required by the department to
5 pledge real and personal property to guarantee the
6 permittee's self-bond. The department is authorized to
7 acquire and dispose of such property in the event of a
8 default to the bond obligation and may use the moneys in the
9 fund to administer this provision.

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

12 (10) The permittee shall provide other information
13 regarding its financial solvency, continuous business
14 operation and compliance with environmental laws as the
15 department or the Insurance Department shall require.

16 (11) The permittee shall certify its present intention
17 to maintain its present corporate status for a period in
18 excess of five years.

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

23 (13) The permittee shall pay an annual fee, in the
24 amount determined by the Insurance Department, of the cost to
25 review and verify the permittee's application for self-
26 bonding and annual submissions thereafter.

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

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

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

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

30 (3) The collateral deposit or part thereof shall be

1 released of liability and returned to the operator, together
2 with a proportional share of accumulated interest, upon the
3 conditions of and under the schedule and criteria for release
4 provided in subsection (j).

5 (i) Payment in lieu of bond.--

6 (1) In lieu of the bond otherwise required by this
7 section, the operator may elect to pay to the department, for
8 deposit in the fund established by section 17, an amount
9 equal to the average surety bond premium charged by bonding
10 companies, as determined by the Insurance Commissioner, which
11 the operator would otherwise be required to pay in order to
12 obtain a surety bond under this act; except that the annual
13 payment shall be a pro rata amount of the premiums if the
14 average premium, as determined by the Insurance Commissioner,
15 is for a period longer than one year. SUCH ANNUAL PAYMENT, ←
16 HOWEVER, SHALL IN NO EVENT BE LOWER THAN THE RATE BEING
17 APPLIED BY THE DEPARTMENT TO OPERATORS ON THE EFFECTIVE DATE
18 OF THIS ACT. The department may annually adjust the amount to
19 insure that there are sufficient funds in this account to
20 reclaim sites for which bonds posted under this subsection
21 were forfeited.

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

29 (3) Payments under this subsection shall excuse the
30 operator from the requirement to post a bond under this act

1 with respect to the operation for which payment is made. No
2 person may make payments under this subsection, unless that
3 person demonstrates to the department that he is unable to
4 post the bond otherwise required by this section.

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

16 (k) Forfeiture.--

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

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

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

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

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

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

1 conference or hearing for bond release or within 60 days of the
2 last publication of the notice for a permit application.

3 (c) Date of hearing or conference on final bond release
4 application.--In the case of final bond release applications,
5 the hearing or conference shall be held within 30 days from the
6 date of request for the hearing or conference. However, all
7 requests for the hearings or conferences that are filed prior to
8 the tenth day following the final date of publication shall have
9 a constructive date of filing as of the tenth day following the
10 final date of publication of the notice. The department shall
11 notify the applicant of its decision ~~with~~ WITHIN 30 days of the ←
12 hearing or conference. If there has been no conference or
13 hearing, the department shall notify the applicant for a final
14 bond release of its decision within 60 days of the date of the
15 filing of the application. In the case of permit applications,
16 the hearings or conferences shall be conducted within 60 days of
17 the close of the public comment period. The department, within
18 60 days of the hearing or conference, shall notify the applicant
19 of its decision to approve or disapprove or of its intent to
20 disapprove unless the applicant submits additional information,
21 within a stated time, to resolve deficiencies. If there has been
22 no informal conference or hearing, the department shall notify
23 the applicant for a permit, within a reasonable time not to
24 exceed 60 days of the close of the public comment period, of the
25 deficiencies in the application or whether the application has
26 been approved or disapproved.

27 (d) Copy of application to be filed.--Subject to the
28 confidentiality provisions of subsection (e), each applicant for
29 a permit under this act shall file a copy of his application for
30 public inspection with the recorder of deeds at the courthouse

1 of the county or an appropriate public office approved by the
2 department where the mining is proposed to occur.

3 (e) Public records.--All papers, records and documents of
4 the department and applications for permits pending before the
5 department shall be public records open to inspection during
6 business hours. However, information which pertains only to the
7 analysis of the chemical and physical properties of the mineral
8 (excepting information regarding the mineral or elemental
9 content that is potentially toxic to the environment) shall be
10 kept confidential and shall not be made a matter of public
11 ~~records~~ RECORD. <—

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

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

18 (b) Orders.--The department may issue SUCH orders as are <—
19 necessary to aid in the enforcement of the provisions of this
20 act. The orders shall include, but shall not be limited to,
21 orders modifying, suspending or revoking permits or licenses and
22 orders requiring persons to cease operations immediately. The
23 right of the department to issue an order under this act is in
24 addition to any penalty or requirement that may be imposed under
25 this act. The authority to issue orders includes, but is not
26 limited to, orders requiring the abatement and removal of
27 nuisances. For purposes of this section, any condition that
28 creates a risk of fire, landslide, subsidence, cave-in or other
29 unsafe, dangerous or hazardous condition including, but not
30 limited to, any unguarded and unfenced open pit area, highwall,

1 water pool, spoil bank, abandoned structure, equipment,
2 machinery, tools and other property used in or resulting from
3 surface mining or other hazard to public health or safety is
4 hereby declared to be a nuisance.

5 (c) Distance limitations.--

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

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

18 (i) For opening or expansion of pits, that special
19 circumstances warrant a lesser distance, that the
20 environment and the interests of the public and
21 landowners affected thereby will be adequately protected
22 and that there are no feasible or prudent alternatives to
23 opening the pit within a greater distance. Prior to
24 allowing a lesser distance, the operator shall give
25 public notice of his application therefor in two
26 newspapers of general circulation in the area once a week
27 for two successive weeks and shall give notice by mail to
28 the municipality in which the operation is located.

29 Should any person file an objection with the department
30 within 20 days of the last publication thereof, the

1 department shall conduct a public hearing.

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

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

18 (e) Explosives.--

19 (1) The use of explosives for the purpose of blasting in
20 connection with surface mining shall be done in accordance
21 with regulations promulgated by ~~and under the supervision of~~ <—
22 ~~the secretary.~~ THE ENVIRONMENTAL QUALITY BOARD. These <—
23 regulations shall include, but not be limited to, provisions
24 relating to public notice, blasting schedules, monitoring and
25 recordkeeping, prevention of injury, prevention of damage to
26 property outside the permit area, prevention of adverse
27 impacts upon any underground mine, prevention of any change
28 in the course, channel or availability of ground or surface
29 water outside the permit area, preblast surveys and
30 certification of blasting personnel.

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

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

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

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

23 Section 12. Progress report.

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

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

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

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

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

6 (5) An annual report of the type and quantity of mineral
7 produced, number of employees and days worked.

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

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

12 (8) Such other or further information as the department
13 may reasonably require.

14 Section 13. Temporary cessation.

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

21 (b) Application for temporary cessation.--Before temporary
22 cessation of operations, the operator shall submit a written
23 application to the department, including a statement of the
24 number of acres that have been affected, the reason for
25 cessation, the date on which temporary cessation is anticipated
26 and the date on which the operator anticipates that operations
27 will resume. Except as provided in subsection (c), the
28 department may not approve the temporary cessation of an
29 operation for a period exceeding 90 days unless the cessation is
30 due to seasonal shutdown or labor strikes.

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

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

12 Section 14. Right to enter and inspect.

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

18 Section 15. Department inspectors.

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

23 Section 16. Local ordinances.

24 ~~The Commonwealth by this enactment hereby preempts the~~ <—
25 ~~regulation of surface mining as herein defined. Except with~~
26 ~~respect to regulating uses of land, water courses and other~~
27 ~~bodies of water pursuant to section 603(a)(1) of the act of July~~
28 ~~31, 1968 (P.L.805, No.247), known as the Pennsylvania~~
29 ~~Municipalities Planning Code, all local ordinances and~~
30 ~~enactments purporting to regulate surface mining are hereby~~

1 ~~superseded.~~

2 EXCEPT WITH RESPECT TO ORDINANCES ADOPTED PURSUANT TO THE ACT ←
3 OF JULY 31, 1968 (P.L.805, NO.247), KNOWN AS THE PENNSYLVANIA
4 MUNICIPALITIES PLANNING CODE, ALL LOCAL ORDINANCES AND
5 ENACTMENTS PURPORTING TO REGULATE SURFACE MINING ARE HEREBY
6 SUPERSEDED. THE COMMONWEALTH, BY THIS ENACTMENT, HEREBY PREEMPTS
7 THE REGULATION OF SURFACE MINING AS HEREIN DEFINED.

8 Section 17. Noncoal Surface Mining Conservation and Reclamation
9 Fund.

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

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

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

8 (c) Transfer of existing moneys.--Moneys collected from bond
9 forfeitures for minerals as defined in this act and moneys
10 collected pursuant to section ~~18~~ 4(F) of the act of May 31, 1945 ←
11 (P.L.1198, No.418), known as the Surface Mining Conservation and
12 Reclamation Act, for minerals defined in this act, which moneys
13 are presently in the Surface Mining Conservation and Reclamation
14 Fund, shall be transferred to this fund.

15 Section 18. Release of operator on transfer of operation.

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

25 Section 19. Injunctive relief.

26 In addition to any other remedy at law or in equity or under
27 this act, the department or the Attorney General may apply for
28 relief by injunction to enforce compliance with or to restrain
29 violations of this act or any rule, regulation, permit condition
30 or order made under this act. The remedy prescribed in this

1 section shall be deemed concurrent or contemporaneous with any
2 other remedy and the existence or exercise of any one remedy
3 shall not prevent the exercise of any other remedy.

4 Section 20. Remedies of citizens.

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

19 (b) Inspection upon information of violation.--Whenever any
20 person presents information to the department that gives the
21 department reason to believe that any person is in violation of
22 any requirement of this act or any condition of any permit
23 issued hereunder or of the statutes enumerated in section
24 7(c)(9) or any condition ~~of~~ OF any permit issued thereunder, the <—
25 department shall immediately order inspection of the operation
26 at which the alleged violation is occurring.

27 (c) Limitations on commencement of action.--No action
28 pursuant to this section may be commenced prior to 60 days after
29 the plaintiff has given notice in writing of the violation to
30 the department and to any alleged violator. In addition, no such

1 action may be commenced if the department has commenced and is
2 diligently prosecuting a civil action in a court of the United
3 States or of the Commonwealth, has issued an order or has
4 entered a consent order and agreement or decree to require
5 compliance with this act or any rule, regulation, order or
6 permit issued under this act, but, in any such action in a court
7 of the United States or of the Commonwealth, any person may
8 intervene as a matter of right.

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

16 Section 21. Civil penalties.

17 (a) Authorization.--

18 (1) In addition to proceeding under any other remedy
19 available at law or in equity for a violation of a provision
20 of this act or any rule, regulation, order of the department
21 or a condition of any permit issued under this act, the
22 department may assess a civil penalty upon a person for the
23 violation. The penalty may be assessed whether or not the
24 violation was willful. The civil penalty so assessed shall
25 not exceed \$5,000 per day for each violation that leads to
26 the issuance of a cessation order. For all other violations,
27 the civil penalty so assessed shall not exceed \$1,000 per day
28 for each violation. A penalty may not be assessed for
29 violations that do not lead to the issuance of a cessation
30 order where the operator demonstrates that the violations

1 result in no environmental damage, no injury to person or
2 property and are corrected within the required time.

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

8 (3) If the violation leads to the issuance of a
9 cessation order, a civil penalty shall be assessed. If the
10 violation involves the failure to correct, within the period
11 prescribed for its correction, a violation for which a
12 cessation order or other abatement order has been issued, a
13 civil penalty of not less than \$750 shall be assessed for
14 each day the violation continues beyond the period prescribed
15 for its correction. If the violation involves the failure to
16 correct, within the period prescribed for its correction, a
17 violation for which a cessation order or other abatement
18 order was not issued, a civil penalty of not less than \$250
19 shall be assessed for each day the violation continues beyond
20 the period prescribed for its correction.

21 (b) Escrow of penalty; judgments.--

22 (1) When the department proposes to assess a civil
23 penalty, the secretary shall inform the person, within a
24 period of time to be prescribed by rule and regulation, of
25 the proposed amount of the penalty. The person charged with
26 the penalty shall then have 30 days to pay the proposed
27 penalty in full or, if the person wishes to contest either
28 the amount of the penalty or the fact of the violation,
29 forward the proposed amount to the secretary for placement in
30 an escrow account with the State Treasurer or any

1 Pennsylvania bank, or post an appeal bond in the amount of
2 the proposed penalty. The bond shall be executed by a surety
3 licensed to do business in this Commonwealth and be
4 satisfactory to the department. If, through administrative or
5 judicial review of the proposed penalty, it is determined
6 that no violation occurred or that the amount of the penalty
7 shall be reduced, the secretary shall, within 30 days, remit
8 the appropriate amount to the person, with any interest
9 accumulated by the escrow deposit. Failure to forward the
10 money or the appeal bond to the secretary within 30 days
11 shall result in a waiver of all legal rights to contest the
12 violation or the amount of the penalty.

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

30 (3) Any other provision of law to the contrary

1 notwithstanding, there shall be a statute of limitations of
2 five years upon actions brought by the Commonwealth under
3 this section.

4 Section 22. Criminal penalties.

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

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

27 (c) Willful and knowing violations.--Any person who
28 willfully and knowingly violates any provision of this act, any
29 rule or regulation of the department, any order of the
30 department or any condition of any permit issued under this act

1 commits a misdemeanor of the third degree and, upon conviction,
2 shall be subject to a fine of not less than \$2,500 nor more than
3 \$25,000 for each separate offense or to imprisonment for a
4 period of not more than one year, or both.

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

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

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

1 Section 23. Unlawful conduct.

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

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

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

8 (3) Cause air or water pollution in connection with
9 mining and not otherwise ~~prescribed~~ PROSCRIBED by this act. ←

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

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

16 (b) Failure to comply with other statutes.--Failure to
17 comply with the statutes enumerated in section 7(c)(9) during
18 mining or thereafter shall render the operator liable to the
19 sanctions and penalties provided in this act for violations of
20 this act and to the sanctions and penalties provided in the
21 statutes enumerated in section 7(c)(9) for violations of the
22 statutes. Failure to comply shall be cause for suspension or
23 revocation of any approval or permit issued by the department to
24 the operator for the site on which the surface mining operation
25 is located. However, a violation of the statutes in section
26 7(c)(9) shall not be deemed a violation of this act unless this
27 act's provisions are violated but shall only be cause for
28 suspension or revocation of the operator's permit for the site
29 on which the surface mining operation is located. Compliance
30 with the provisions of this act and the statutes enumerated in

1 section 7(c)(9) shall not relieve the operator of the
2 responsibility for complying with the provisions of all other
3 applicable statutes. Nothing in this subsection shall be
4 construed to limit the department's authority to regulate
5 activities in a coordinated manner.

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

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

15 Section 24. Existing licenses and permits.

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

22 Section 25. Soil conservation districts.

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

1 act to the extent delegated by agreement.

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

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

11 Section 26. Waiver of permit requirements; general permits.

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

17 (b) Issuance of general permits.--The department may, in
18 accordance with rules adopted by the Environmental Quality
19 Board, issue general permits on a regional or Statewide basis
20 for any category of surface mining operation under this act if
21 the department determines that the operations in the category
22 are similar in nature and can be adequately regulated utilizing
23 standardized specifications and conditions. General permits
24 shall specify the design, operating and monitoring conditions as
25 are necessary to adequately protect life, health, property and
26 the environment, under which the operations may be conducted
27 without applying for and obtaining individual permits. The
28 department may require the registration of any operation
29 constructed pursuant to a general permit. All general permits
30 shall be published in the Pennsylvania Bulletin at least 30 days

1 prior to the effective date of the permit.

2 Section 27. Repeals.

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

8 Section 28. Effective date.

9 This act shall take effect in 60 days.