

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2708 Session of
1988

INTRODUCED BY KASUNIC, S. H. SMITH, DALEY, STAIRS, PETRARCA,
J. L. WRIGHT, HALUSKA, ARGALL, LUCYK, BLACK, MARKOSEK AND
WOZNIAK, OCTOBER 4, 1988

REFERRED TO COMMITTEE ON MINES AND ENERGY MANAGEMENT,
OCTOBER 4, 1988

AN ACT

1 Amending the act of June 22, 1937 (P.L.1987, No.394), entitled,
2 as amended, "An act to preserve and improve the purity of the
3 waters of the Commonwealth for the protection of public
4 health, animal and aquatic life, and for industrial
5 consumption, and recreation; empowering and directing the
6 creation of indebtedness or the issuing of non-debt revenue
7 bonds by political subdivisions to provide works to abate
8 pollution; providing protection of water supply and water
9 quality; providing for the jurisdiction of courts in the
10 enforcement thereof; providing additional remedies for
11 abating pollution of waters; imposing certain penalties;
12 repealing certain acts; regulating discharges of sewage and
13 industrial wastes; regulating the operation of mines and
14 regulating the impact of mining upon water quality, supply
15 and quantity; placing responsibilities upon landowners and
16 land occupiers and to maintain primary jurisdiction over
17 surface coal mining in Pennsylvania," further providing for
18 the powers and duties of the department and for the operation
19 of mines.

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

22 Section 1. Section 5 of the act of June 22, 1937 (P.L.1987,
23 No.394), known as The Clean Streams Law, is amended by adding a
24 subsection to read:

25 Section 5. Powers and Duties.--* * *

1 (c) Whenever the department proposes to establish in any
2 permit discharge effluent limitations, based on stream quality
3 standards that are more stringent than technology-based effluent
4 standards required under the Federal Water Pollution Control Act
5 (62 Stat. 1155, 33 U.S.C. § 1251 et seq.), the department shall
6 consider and balance the economic, aquatic and social impacts of
7 the more stringent limitations before imposing them.

8 Section 2. Section 315(a) and (b) of the act, amended
9 October 10, 1980 (P.L.894, No.157), are amended to read:

10 Section 315. Operation of Mines.--(a) No person or
11 municipality shall operate a mine or allow a discharge from a
12 mine into the waters of the Commonwealth unless such operation
13 or discharge is authorized by the rules and regulations of the
14 department or such person or municipality has first obtained a
15 permit from the department. Operation of the mine shall include
16 preparatory work in connection with the opening or reopening of
17 a mine, refuse disposal, backfilling, sealing, and other closing
18 procedures, and any other work done on land or water in
19 connection with the mine. Underground mining operations and
20 surface entries and accesses to the mine, including drifts,
21 adits, slopes and shafts, shall be located, designed and
22 conducted to prevent gravity discharge of water from the mine
23 unless the mine operator demonstrates that hydraulic seals or
24 other technology is available to prevent such discharge or any
25 adverse impacts on the waters of this Commonwealth. A discharge
26 from a mine shall include a discharge which occurs after mining
27 operations have ceased, provided that the mining operations were
28 conducted subsequent to January 1, 1966, under circumstances
29 requiring a permit from the Sanitary Water Board under the
30 provisions of section 315 (b) of this act as it existed under

1 the amendatory act of August 23, 1965 (P.L.372, No.194). The
2 operation of any mine or the allowing of any discharge without a
3 permit or contrary to the terms or conditions of a permit or
4 contrary to the rules and regulations of the department, is
5 hereby declared to be a nuisance. Whenever a permit is requested
6 to be issued pursuant to this subsection, and such permit is
7 requested for permission to operate any mining operations, the
8 city, borough, incorporated town or township in which the
9 operation is to be conducted shall be notified by registered
10 mail of the request, at least ten days before the issuance of
11 the permit or before a hearing on the issuance, whichever is
12 first.

13 (b) The department may require an applicant for a permit to
14 operate a mine, or a permittee holding a permit to operate a
15 mine under the provisions of this section, to post a bond or
16 bonds on forms prescribed and furnished by the department in
17 favor of the Commonwealth of Pennsylvania and with good and
18 sufficient collateral, irrevocable bank letters of credit or
19 corporate surety guarantees acceptable to the department to
20 insure that there will be compliance with the law, the rules and
21 regulations of the department, and the provisions and conditions
22 of such permit including but not limited to conditions
23 pertaining to restoration measures or other provisions insuring
24 that there will be no polluting discharge after mining
25 operations have ceased: Provided, however, That the portion of
26 any such bond attributable to demolition and restoration of
27 long-term surface structures and facilities shall be calculated
28 on the basis of the surface area occupied by such structures or
29 facilities. The department shall establish the amount of the
30 bond required for each operation based on the cost to the

1 Commonwealth of taking corrective measures in cases of the
2 operator's failure to comply, or in such other amount and form
3 as may be established by the department pursuant to regulations
4 for an alternate coal bonding program which shall achieve the
5 objectives and purposes of the bonding program. The department
6 may, from time to time, increase or decrease such amount:
7 Provided, however, That no bond shall be filed for less than ten
8 thousand dollars (\$10,000) for the entire permit area. The
9 department shall also establish the duration of the bond
10 required for each operation and at the minimum liability under
11 each bond shall continue until such time as the department
12 determines that there is no further significant risk of a
13 pollutional discharge, unless the operator demonstrates to the
14 satisfaction of the department that he can comply with
15 regulations providing for abatement requirements and alternative
16 financial responsibility programs, including self-bonding and
17 other programs, to provide for the sound future treatment of
18 pollutional discharges. The bond shall be conditioned upon the
19 operator's faithful performance of the requirements of this act,
20 the act of November 26, 1978 (P.L.1375, No.325), known as the
21 "Dam Safety and Encroachments Act," the act of May 31, 1945
22 (P.L.1198, No.418), known as the "Surface Mining Conservation
23 and Reclamation Act," the act of January 8, 1960 (1959 P.L.2119,
24 No.787), known as the "Air Pollution Control Act," the act of
25 September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse
26 Disposal Control Act," and where applicable of the act of July
27 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid
28 Waste Management Act" or the act of July 7, 1980 (No.97), known
29 as the "Solid Waste Management Act": Provided, however, That an
30 operator posting a bond sufficient to comply with this section

1 of the act shall not be required to post a separate bond for the
2 permitted area under each of the acts hereinabove enumerated:
3 And provided further, That the foregoing proviso shall not
4 prohibit the department from requiring additional bond amounts
5 for the permitted area should such an increase be determined by
6 the department to be necessary to meet the requirements of this
7 act. Where the minerals are to be removed by the underground
8 mining method, and the mining operations are reasonably
9 anticipated to continue for a period of at least ten years from
10 the date of application, the operator may elect to deposit
11 collateral and file a collateral bond as provided in this
12 subsection according to the following phased deposit schedule.
13 The operator shall, prior to commencing mining operations,
14 deposit ten thousand dollars (\$10,000) or twenty-five per cent
15 of the amount of bond determined under this subsection,
16 whichever is greater. The operator shall, thereafter, annually
17 deposit ten per cent of the remaining bond amount for a period
18 of ten years. Interest accumulated by such collateral shall
19 become part of the bond. The department may require additional
20 bonding at any time to meet the intent of this subsection. The
21 collateral shall be deposited, in trust, with the State
22 Treasurer as provided in this subsection, or with a bank,
23 selected by the department, which shall act as trustee for the
24 benefit of the Commonwealth, according to rules and regulations
25 promulgated hereunder, to guarantee the operator's compliance
26 with this act and the acts hereinabove enumerated. The operator
27 shall be required to pay all costs of the trust. The collateral
28 deposit, or part thereof, shall be released of liability and
29 returned to the operator, together with a proportional share of
30 accumulated interest, upon the conditions of and pursuant to the

1 schedule and criteria for release provided for in rules and
2 regulations promulgated hereunder. Upon the completion of any
3 mining operation and prior to the release by the department of
4 any portion of the bond liability, the operator shall remove and
5 clean up all temporary materials, property, debris or junk which
6 were used in or resulted from his mining operations. The failure
7 to post a bond required by the department shall be sufficient
8 cause for withholding a permit or for the suspension or
9 revocation of an existing permit. If the operator fails or
10 refuses to comply with the requirements of the act in any
11 respect for which liability has been charged on the bond, the
12 Secretary of the Department of Environmental Resources shall
13 declare the bond forfeited, and shall certify the same to the
14 Attorney General, who shall proceed to enforce and collect the
15 amount of liability forfeited thereon, and where the operator
16 has deposited cash or securities as collateral in lieu of a
17 corporate surety, the secretary shall declare said collateral
18 forfeited. If the operator is or was engaged in surface mining
19 operations at the time of the violation, the secretary shall
20 direct the State Treasurer to pay said funds into the Surface
21 Mining Conservation and Reclamation Fund, or to proceed to sell
22 said securities to the extent forfeited and pay the proceeds
23 thereof into the Surface Mining Conservation and Reclamation
24 Fund. If the operator is or was engaged in the operation of a
25 deep mine at the time of the violation, the secretary shall
26 direct the State Treasurer to pay said funds into The Clean
27 Water Fund, or to proceed to sell said securities to the extent
28 forfeited and pay the proceeds thereof into The Clean Water
29 Fund. Should any corporate surety fail to promptly pay, in full,
30 a forfeited bond, it shall be disqualified from writing any

1 further bonds under this act. Any operator aggrieved by reason
2 of forfeiting the bond or converting collateral, as herein
3 provided, shall have a right to appeal such action to the
4 Environmental Hearing Board.

5 The department, in its discretion, may accept a self-bond
6 from the permittee, without separate surety, if the permittee
7 demonstrates to the satisfaction of the department a history of
8 financial solvency, continuous business operation and continuous
9 efforts to achieve compliance with all United States of America
10 and Pennsylvania environmental laws, and, meets all of the
11 following requirements:

12 (1) The permittee shall be incorporated or authorized to do
13 business in Pennsylvania and shall designate an agent in
14 Pennsylvania to receive service of suits, claims, demands or
15 other legal process.

16 (2) The permittee or if the permittee does not issue
17 separate audited financial statements, its parent, shall provide
18 audited financial statements for at least its most recent three
19 fiscal years prepared by a certified public accountant in
20 accordance with generally accepted accounting principles. Upon
21 request of the permittee, the department shall maintain the
22 confidentiality of such financial statements if the same are not
23 otherwise disclosed to other government agencies or the public.

24 (3) During the last thirty-six calendar months, the
25 applicant has not defaulted in the payment of any dividend or
26 sinking fund installment or preferred stock or installment on
27 any indebtedness for borrowed money or payment of rentals under
28 long-term leases or any reclamation fee payment currently due
29 under the Federal Surface Mining Control and Reclamation Act of
30 1977, 30 U.S.C. § 1232, for each ton of coal produced in the

1 Commonwealth of Pennsylvania.

2 (4) The permittee shall have been in business and operating
3 no less than ten years prior to filing of application unless the
4 permittee's existence results from a reorganization,
5 consolidation or merger involving a company with such longevity.
6 However, the permittee shall be deemed to have met this
7 requirement if it is a majority-owned subsidiary of a
8 corporation which has such a ten-year business history.

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

12 (6) The permittee shall give immediate notice to the
13 department of any significant change in managing control of the
14 company.

15 (7) A corporate officer of the permittee shall certify to
16 the department that forfeiture of the aggregate amounts of self-
17 bonds furnished for all operations hereunder would not
18 materially affect the permittee's ability to remain in business
19 or endanger its cash flow to the extent it could not meet its
20 current obligations.

21 (8) The permittee may be required by the department to
22 pledge real and personal property to guarantee the permittee's
23 self-bond. The department is authorized to acquire and dispose
24 of such property in the event of a default to the bond
25 obligation and may use the moneys in The Clean Water Fund to
26 administer this provision.

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

29 (10) The permittee shall provide such other information
30 regarding its financial solvency, continuous business operation

1 and compliance with environmental laws as the department shall
2 require.

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

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

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

13 * * *

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