

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 482 Session of
1993

INTRODUCED BY GEORGE, WOZNIAK, SURRA, DeWEESE, S. H. SMITH,
THOMAS, MIHALICH, JADLOWIEC, MASLAND, STERN, LAUGHLIN, REBER,
ARGALL, CLARK, SCHEETZ AND LUCYK, MARCH 15, 1993

REFERRED TO COMMITTEE ON CONSERVATION, MARCH 15, 1993

AN ACT

1 Amending the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1),
2 entitled "An act to protect the public health, welfare and
3 safety by regulating the mining of bituminous coal; declaring
4 the existence of a public interest in the support of surface
5 structures; forbidding damage to specified classes of
6 existing structures from the mining of bituminous coal;
7 requiring permits, and in certain circumstances bonds, for
8 the mining of bituminous coal; providing for the filing of
9 maps or plans with recorders of deeds; providing for the
10 giving of notice of mining operations to political
11 subdivisions and surface landowners of record; requiring mine
12 inspectors to accompany municipal officers and their agents
13 on inspection trips; granting powers to public officers and
14 affected property owners to enforce the act; requiring
15 grantors to certify as to whether any structures on the lands
16 conveyed are entitled to support from the underlying coal and
17 grantees to sign an admission of a warning of the possible
18 lack of any such right of support; providing for acquisition
19 with compensation of coal support for existing structures not
20 protected by this act, and future structures; and imposing
21 liability for violation of the act," providing for the
22 restoration or replacement of water supplies materially
23 affected by mining; further providing for the replacement or
24 repair of certain structures affected by mine subsidence and
25 for appeals and departmental action; and making repeals.

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

28 Section 1. The title of the act of April 27, 1966 (1st
29 Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence

1 and Land Conservation Act, is amended to read:

2 AN ACT

3 To protect the public health, welfare and safety by regulating
4 the mining of bituminous coal; declaring the existence of a
5 public interest in the support of surface structures;
6 [forbidding damage to specified classes of existing
7 structures from the mining of bituminous coal;] providing a
8 remedy for the restoration or replacement of water supplies
9 affected by underground mining; providing a remedy for the
10 restoration or replacement or compensation for surface
11 structures damaged by underground mining; providing standards
12 for the prevention of hazards to human safety and material
13 damage to certain structures; requiring permits, and in
14 certain circumstances bonds, for the mining of bituminous
15 coal; providing for the filing of maps or plans with
16 recorders of deeds; providing for the giving of notice of
17 mining operations to political subdivisions and surface
18 landowners of record; requiring mine inspectors to accompany
19 municipal officers and their agents on inspection trips;
20 granting powers to public officers and affected property
21 owners to enforce the act; requiring grantors to certify as
22 to whether any structures on the lands conveyed are entitled
23 to support from the underlying coal and grantees to sign an
24 admission of a warning of the possible lack of any such right
25 of support; [providing for acquisition with compensation of
26 coal support for existing structures not protected by this
27 act, and future structures;] requiring grantors to provide
28 notice of the existence of voluntary agreements for the
29 restoration or replacement of water supplies or for the
30 repair or compensation for structural damage; imposing duties

1 on the Department of Environmental Resources for the
2 compilation and analysis of data; and imposing liability for
3 violation of the act.

4 Section 2. Sections 2 and 3 of the act, amended October 10,
5 1980 (P.L.874, No.156), are amended to read:

6 Section 2. Purpose.--This act shall be deemed to be an
7 exercise of the police powers of the Commonwealth for the
8 protection of the health, safety and general welfare of the
9 people of the Commonwealth, by providing for the conservation of
10 surface land areas which may be affected in the mining of
11 bituminous coal by methods other than "open pit" or "strip"
12 mining, to aid in the protection of the safety of the public, to
13 enhance the value of such lands for taxation, to aid in the
14 preservation of surface water drainage and public [water
15 supplies] and private water supplies, to provide for the
16 restoration or replacement of water supplies affected by
17 underground mining, to provide for the restoration or
18 replacement of, or compensation for, surface structures damaged
19 by underground mining and generally to improve the use and
20 enjoyment of such lands and to maintain primary jurisdiction
21 over surface coal mining in Pennsylvania.

22 Section 3. Legislative findings; declaration of policy.--It
23 is hereby determined by the General Assembly of Pennsylvania and
24 declared as a matter of legislative findings that:

25 (1) Present mine subsidence legislation and coal mining laws
26 have failed to protect the public interest in Pennsylvania in
27 preserving our land.

28 (2) Damage from mine subsidence has seriously impeded land
29 development of the Commonwealth.

30 (3) Damage from mine subsidence has caused a very clear and

1 present danger to the health, safety and welfare of the people
2 of Pennsylvania.

3 (4) Damage by subsidence erodes the tax base of the affected
4 municipalities.

5 (5) Coal and related industries and their continued
6 operation are important to the economic welfare and growth of
7 the Commonwealth.

8 (6) In the past, owners of surface structures have not in
9 many instances received adequate notice or knowledge regarding
10 subsurface support, or lack thereof, for surface structures, and
11 therefore the State must exercise its police powers for the
12 protection of the structures covered herein.

13 (7) In order to prevent the occurrence of such state of
14 affairs in the future, the deed notice provisions relating to
15 such subsurface support, or lack thereof to a person desiring to
16 erect a surface structure after the effective date of this act,
17 must be emphasized and strengthened and it is necessary to make
18 available to those persons desiring to erect a surface structure
19 procedures whereby adequate support of such structure can be
20 acquired.

21 The Pennsylvania General Assembly therefore declares it to be
22 the policy of the Commonwealth of Pennsylvania that:

23 (1) The protection of surface structures and better land
24 utilization are of utmost importance to Pennsylvania.

25 (2) Damage to surface structures and the land supporting
26 them caused by mine subsidence is against the public interest
27 and may adversely affect the health, safety and welfare of our
28 citizens.

29 (3) The prevention or restoration of damage from mine
30 subsidence is recognized as being related to the economic future

1 and well-being of Pennsylvania.

2 (4) The preservation within the Commonwealth of surface
3 structures and the land supporting them is necessary for the
4 safety and welfare of the people.

5 (5) It is the intent of this act to harmonize the protection
6 of surface structures and the land supporting them and the
7 continued growth and development of the bituminous coal industry
8 in the Commonwealth.

9 (6) [It is necessary to provide for the protection of those
10 presently existing structures which are or may be damaged due to
11 mine subsidence.] It is necessary to develop an adequate remedy
12 for the restoration and replacement of water supplies affected
13 by underground mining.

14 (7) It is necessary to develop a remedy for the restoration
15 or replacement of, or compensation for, surface structures
16 damaged by underground mining.

17 [(7)] (8) It is necessary to provide a method whereby
18 surface structures erected after the effective date of this act
19 may be protected from damage arising from mine subsidence.

20 Section 3. Section 4 of the act is repealed.

21 Section 4. Section 5(b) of the act, amended October 10, 1980
22 (P.L.874, No.156), is amended to read:

23 Section 5. Permit; application; map or plan; bond or other
24 security; filing; general rulemaking authority; prevention of
25 damage; mine stability; maintenance of use and value of lands.--

26 * * *

27 (b) The department shall require the applicant to file a
28 bond or other security as recited in section [6(b)] 6(a), to
29 insure the applicant's faithful performance of mining or mining
30 operations[, in accordance with the provisions of section 4].

1 * * *

2 Section 5. The act is amended by adding sections to read:

3 Section 5.1. Restoration or replacement of water supplies
4 affected by underground mining.--(a) (1) After the effective
5 date of this section, any mine operator who, as a result of
6 underground mining operations, affects a public or private water
7 supply by contamination, diminution, or interruption shall
8 restore or replace the affected supply with an alternate source
9 which adequately services in quantity and quality the premining
10 uses of the supply or any reasonably foreseeable uses of the
11 supply.

12 (2) A restored or replacement water supply shall be deemed
13 adequate where it differs in quality from the premining supply,
14 providing it meets standards set forth in the act of May 1, 1984
15 (P.L.206, No.43), known as the "Pennsylvania Safe Drinking Water
16 Act," or is comparable to the premining supply where that supply
17 did not meet such standards. If an operator fails to comply with
18 this provision, the Secretary of Environmental Resources shall
19 issue such orders to the operator as are necessary to assure
20 compliance.

21 (3) For the purposes of this section, the term "water
22 supply" shall include any existing source of water used for
23 domestic, commercial, industrial or recreational purposes or for
24 agricultural uses, including use or consumption of water to
25 maintain the health and productivity of animals used or to be
26 used in agricultural production and the watering of lands on a
27 periodic or permanent basis by a constructed or manufactured
28 system in place on the effective date of this act to provide
29 irrigation for agricultural production of plants and crops at
30 levels of productivity or yield historically experienced by such

1 plants or crops within a particular geographic area, or which
2 serves any public building or any noncommercial structure
3 customarily used by the public, including, but not limited to,
4 churches, schools and hospitals.

5 (b) A mine operator shall not be liable to restore or
6 replace a water supply under the provisions of this section if a
7 claim of contamination, diminution or interruption is made more
8 than two years after the supply has been adversely affected.

9 Section 5.2. Procedures for securing restoration or
10 replacement of affected water supplies; duties of Department of
11 Environmental Resources.--(a) (1) Whenever a landowner or
12 water user experiences contamination, diminution or interruption
13 of a water supply which is believed to have occurred as a result
14 of underground coal mining operations, that landowner or water
15 user shall notify the mine operator who shall with reasonable
16 diligence investigate the water loss.

17 (2) Where the presumption of subsection (c) applies and the
18 user is without a readily available alternate source, the
19 operator shall provide a temporary water supply within twenty-
20 four hours of being contacted by the landowner or water user.

21 (3) If a temporary water supply is not provided within
22 twenty-four hours, the Department of Environmental Resources,
23 after notice by the landowner or water user, shall order the
24 operator to provide temporary water within twenty-four hours.
25 The operator shall notify the department of any claim of
26 contamination, diminution or interruption made to it by a
27 landowner or water user and its disposition.

28 (b) (1) If the affected water supply has not been restored
29 or an alternate source has not been provided by the operator, or
30 if an operator ceases to provide an alternate source, the

1 landowner or water user may so notify the department and request
2 that an investigation be conducted.

3 (2) Within ten days of such notification, the department
4 shall investigate any such claim and shall, within forty-five
5 days following notification, make a determination of whether the
6 contamination, diminution or interruption was caused by the
7 underground mining operation and so notify all affected parties.
8 If it finds causation, it shall issue such orders to the mine
9 operator as are necessary to assure compliance with this
10 section. Such orders may include orders requiring the temporary
11 replacement of a water supply where it is determined that the
12 contamination, diminution or interruption may be of limited
13 duration, orders requiring the provision of immediate temporary
14 water to the landowner, or orders requiring the provision of a
15 permanent alternate source where the contamination, diminution
16 or interruption does not abate within three years of the date on
17 which the supply was adversely affected.

18 (c) In any determination or proceeding under this section,
19 it shall be presumed that an underground mine operator is
20 responsible for the contamination, diminution or interruption of
21 a water supply that is within an area above the mine determined
22 by projecting a thirty-five degree angle from the vertical from
23 the outside of any coal removal area. The mine operator may
24 successfully rebut the presumption by affirmatively proving that
25 access was denied to the property on which the supply is located
26 to conduct premining and postmining surveys of the quality and
27 quantity of the supply, that the mine operator thereafter served
28 notice upon the landowner by certified mail or personal service,
29 which notice identified the rights established by sections 5.1,
30 5.2 and 5.3, that access had been denied and the landowner

1 failed to provide or authorize access within ten days after
2 receipt thereof.

3 (d) Unless the presumption contained in subsection (c)
4 applies, a landowner, the department or any affected user
5 asserting contamination, diminution or interruption shall have
6 the burden to affirmatively prove that underground mining
7 activity caused the contamination, diminution or interruption.
8 Wherever a mine operator, upon request, has been denied access
9 to conduct a premining survey and the mine operator thereafter
10 served notice upon the landowner by certified mail or personal
11 service, which notice identified the rights established by
12 sections 5.1, 5.2 and 5.3, was denied access and the landowner
13 failed to provide or authorize access within ten days after
14 receipt thereof, then such affirmative proof shall include
15 premining baseline data, provided by the landowner or the
16 department, relative to the affected water supply.

17 (e) A mine operator shall be relieved of liability for
18 affecting a public or private water supply by contamination,
19 diminution or interruption by affirmatively proving one of the
20 following defenses:

21 (1) The contamination, diminution or interruption existed
22 prior to the mining activity as determined by a premining
23 survey.

24 (2) The contamination, diminution or interruption occurred
25 more than three years after mining activity occurred.

26 (3) The contamination, diminution or interruption occurred
27 as the result of some cause other than the mining activity.

28 (f) Any mine operator who obtains water samples in a
29 premining or postmining survey shall utilize a certified
30 laboratory to analyze such samples and shall submit copies of

1 the results of such analysis, as well as the results of any
2 quantitative analysis, to the department and to the landowner
3 within thirty days of their receipt. Nothing contained herein
4 shall be construed as prohibiting a landowner or water user from
5 utilizing an independent certified laboratory to sample and
6 analyze the water supply.

7 (g) If the operator finds and the department concurs that a
8 water supply cannot be restored or reestablished or a permanent
9 alternate source cannot be provided within three years, the mine
10 operator may be relieved of further responsibility by entering
11 into a written agreement providing compensation acceptable to
12 the landowner. If no agreement is reached, the mine operator, at
13 the option of the landowner, shall:

14 (1) purchase the property for a sum equal to its fair market
15 value immediately prior to the time the water supply was
16 affected; or

17 (2) make a one-time payment equal to the difference between
18 the property's fair market value immediately prior to the time
19 the water supply was affected and at the time payment is made.
20 The operator shall be required to adjust his mining plan to
21 assure that water supply replacement is feasible on adjacent
22 land to be mined. Any measures taken under sections 5.1, 5.2 and
23 5.3 to relieve a mine operator of further obligation regarding
24 contamination, diminution or interruption of an affected water
25 supply shall not be deemed to bar a subsequent purchaser of the
26 land on which the affected water supply was located or any water
27 user on such land from invoking rights under this section for
28 contamination, diminution or interruption of a water supply
29 resulting from subsequent mining activity other than that
30 contemplated by the mine plan in effect at the time the original

1 supply was affected.

2 (h) For purposes of this section, a permanent alternate
3 source shall include any well, spring, municipal water supply
4 system or other supply approved by the department, which is
5 adequate in quantity, quality and of reasonable cost to serve
6 the premining uses of the affected water supply.

7 (i) The department shall require an operator to describe how
8 water supplies will be replaced. Nothing contained herein shall
9 be construed as authorizing the department to require a mine
10 operator to provide a replacement water supply prior to mining
11 as a condition of securing a permit to conduct underground coal
12 mining.

13 (j) Any landowner, water user or mine operator aggrieved by
14 an order or determination of the department issued under this
15 section shall have the right to appeal such order to the
16 Environmental Hearing Board within thirty days of receipt of the
17 order.

18 Section 5.3. Voluntary agreement; restoration or replacement
19 of water; deed recital.--(a) Nothing contained in this act
20 shall prohibit the mine operator and landowner at any time after
21 the effective date of this section from voluntarily entering
22 into an agreement establishing the manner and means by which an
23 affected water supply is to be restored or an alternate supply
24 is to be provided.

25 (b) Nothing contained in this act shall prevent any
26 landowner or water user who claims contamination, diminution or
27 interruption of a water supply from seeking any other remedy
28 that may be provided at law or in equity. In any proceedings in
29 pursuit of a remedy other than as provided herein, the
30 provisions of this act shall not apply and the party or parties

1 against whom liability is sought to be imposed may assert in
2 defense any rights or waivers arising from provisions contained
3 in deeds, leases or agreements pertaining to mining rights or
4 coal ownership on the property in question.

5 Section 5.4. Restoration or compensation for structures
6 damaged by underground mining.--(a) Whenever underground mining
7 operations conducted under this act cause damage to any of the
8 following surface buildings overlying or in the proximity of the
9 mine:

10 (1) any building which is accessible to the public,
11 including, but not limited to, commercial, industrial and
12 recreational buildings and all permanently affixed structures
13 appurtenant thereto;

14 (2) any noncommercial buildings customarily used by the
15 public, including, but not limited to, schools, churches and
16 hospitals;

17 (3) dwellings used for human habitation and permanently
18 affixed appurtenant structures or improvements in place on the
19 effective date of this section or on the date of first
20 publication of the application for a Mine Activity Permit for
21 the operations in question and within the boundary of the entire
22 mine as depicted in said application; or

23 (4) the following agricultural structures: all barns and
24 silos, and all permanently affixed structures of five hundred or
25 more square feet in area that are used for raising livestock,
26 poultry or agricultural products, for storage of animal waste,
27 or for the processing or retail marketing of agricultural
28 products produced on the farm on which such structures are
29 located;

30 the operator of such coal mine shall repair such damage or

1 compensate the owner of such building for the reasonable cost of
2 its repair or the reasonable cost of its replacement where the
3 damage is irreparable.

4 (b) For any irreparably damaged agricultural structure
5 identified in subsection (a)(4) which, at the time of damage the
6 operator can affirmatively prove was being used for a different
7 purpose than the purpose for which such structure was originally
8 constructed, the operator may provide for the reasonable cost to
9 replace the damaged structure with a structure satisfying the
10 functions and purposes served by the damaged structure before
11 such damage occurred.

12 (c) A mine operator shall not be liable to repair or
13 compensate for subsidence damage if the mine operator, upon
14 request, is denied access to the property upon which the
15 building is located to conduct premining and postmining surveys
16 of the building and surrounding property, and thereafter serves
17 notice upon the landowner by certified mail or personal service,
18 which notice identifies the rights established by sections 5.4,
19 5.5 and 5.6, the mine operator was denied access and the
20 landowner failed to provide or authorize access within ten days
21 after receipt thereof.

22 Section 5.5. Procedure for securing repair and/or
23 compensation for damage to structures caused by underground
24 mining; duties of Department of Environmental Resources.--(a)
25 The owner of any building enumerated in section 5.4(a) who
26 believes that the removal of coal has caused mine subsidence
27 resulting in damage to such building and who wishes to secure
28 repair of or compensation for such damage shall notify the mine
29 operator. If the mine operator agrees that mine subsidence
30 damaged such building, he shall cause such damage to be fully

1 repaired or compensate the owner for such damage in accordance
2 with section 5.4(a) or with an agreement reached between the
3 parties either prior to mining or after the damage has occurred.

4 (b) If the parties are unable to agree within six months of
5 the date of notice as to the cause of the damage or the
6 reasonable cost of repair or compensation, the owner of the
7 building may file a claim in writing with the Department of
8 Environmental Resources, a copy of which shall be sent to the
9 operator. All claims under this subsection shall be filed within
10 two years of the date damage to the building occurred.

11 (c) The department shall make an investigation of a claim
12 within thirty days of receipt of the claim. The department
13 shall, within sixty days following the investigation, make a
14 determination in writing as to whether the damage was caused by
15 subsidence due to underground coal mining and, if so, the
16 reasonable cost of repairing or replacing the damaged structure.
17 If the department finds the damage to be caused by the mining,
18 it shall issue a written order directing the operator to
19 compensate or to cause repairs to be made within six months or a
20 longer period if the department finds that occurrence of
21 subsidence or subsequent damage may occur to the same building
22 as a result of mining.

23 (d) In no event shall the mine operator be liable for
24 repairs or compensation in an amount exceeding the cost of
25 replacement of the damaged structure. The occupants of a damaged
26 structure shall also be entitled to additional payment for
27 reasonable, actual expenses incurred for temporary relocation
28 and for other actual reasonable, incidental costs agreed to by
29 the parties or approved by the department.

30 (e) If either the landowner or the mine operator is

1 aggrieved by an order issued by the department under sections
2 5.4 or 5.5 such person shall have the right to appeal the order
3 to the Environmental Hearing Board within thirty days of receipt
4 of the order. The appeal of a mine operator shall not be
5 considered to be perfected unless within sixty days of the date
6 on which the mine operator received the department's order, the
7 operator has deposited an amount equal to the cost of repair or
8 the compensation amount ordered by the department in an
9 interest-bearing escrow account administered for such purposes
10 by the department.

11 (f) If the mine operator shall fail to repair or compensate
12 for subsidence damage within six months or such longer period as
13 the department has established, or shall fail to perfect an
14 appeal of the department's order directing such repair or
15 compensation, the department shall issue such orders and take
16 such actions as are necessary to compel compliance with the
17 requirements hereof, including, but not limited to, cessation
18 orders and permit revocation. If the mine operator fails to
19 repair or compensate for damage after exhausting its right of
20 appeal, the department shall pay the escrow deposit made with
21 respect to the particular claim involved and accrued interest to
22 the owner of the damaged building.

23 (g) Except as provided in subsection (f), the existence of
24 unresolved claims of subsidence damage shall not be used by the
25 department as a basis for withholding permits from or suspending
26 review of permit applications submitted by the mine operator
27 against whom such claims have been made.

28 Section 5.6. Voluntary agreements for repair or compensation
29 for damages to structures caused by underground mining; deed
30 recital.--(a) Nothing contained in this act shall prohibit the

1 mine operator and the landowner at any time after the effective
2 date of this section from voluntarily entering into an agreement
3 establishing the manner and means by which repair or
4 compensation for subsidence damage is to be provided. Any
5 release contained in such an agreement shall only be valid in
6 releasing the operator from liability under this act if it
7 clearly states what rights are established by this act and the
8 landowner expressly acknowledges the release as consideration
9 for the alternate remedies provided under the agreement. Any
10 such release shall be null and void if no mining occurs for a
11 period of thirty-five years within the coal field of which the
12 coal underlying the affected surface property forms a part.

13 (b) In every deed for the conveyance of property for which
14 an agreement executed pursuant to subsection (a) is effective,
15 the grantor, at the time of transfer, shall include in the deed
16 a recital of the agreement and any release contained therein.

17 (c) The duty created by section 5.5 to repair or compensate
18 for subsidence damage to the buildings enumerated in section
19 5.4(a) shall be the sole and exclusive remedy for such damage
20 and shall not be diminished by the existence of contrary
21 provisions in deeds, leases or agreements which relieved mine
22 operators from such duty. Nothing herein shall impair agreements
23 entered into after April 27, 1966, and prior to the effective
24 date of this section, which, for valid consideration, provide
25 for a waiver or release of any duty to repair or compensate for
26 subsidence damage. Any such waiver or release shall only be
27 valid with respect to damage resulting from the mining activity
28 contemplated by such agreement.

29 (d) In every deed for the conveyance of property for which
30 an agreement executed pursuant to subsection (c) is effective at

1 the time of transfer, the grantor shall include in the deed a
2 recital of the agreement and any release contained therein.

3 Section 6. Section 6 of the act, amended October 10, 1980
4 (P.L.874, No.156), is amended to read:

5 Section 6. Repair of damage or satisfaction of claims;
6 revocation or suspension of permit; bond or collateral.--[(a)
7 If the removal of coal or other mining operations by a holder of
8 a permit granted under section 5 causes damage to structures set
9 forth in section 4 of this act the permittee shall submit
10 evidence that such damage has been repaired or that all claims
11 arising therefrom have been satisfied, to the department within
12 six months from the date that the permittee knows, or has reason
13 to know, such damage has occurred or, at the option of the
14 permittee, within such period there shall be deposited with the
15 Secretary of Environmental Resources as security for such repair
16 or such satisfaction a sum of money in an amount equal to said
17 damage or the reasonable cost of repair thereof, as estimated by
18 a reputable expert. In default of the filing of such evidence or
19 such deposit, the department shall suspend or revoke said
20 permit.

21 No permit revoked or suspended pursuant to this section shall
22 be reissued or reinstated until the applicant shall have
23 furnished satisfactory evidence to the department that the
24 damage for which the permit was revoked or suspended has been
25 repaired or all claims arising therefrom satisfied, in
26 accordance with this subsection.]

27 (b) The department shall require the applicant to file a
28 bond in a form prescribed by the secretary payable to the
29 Commonwealth and conditioned upon the applicant's faithful
30 performance of mining or mining operations, in accordance with

1 the provisions of sections [4 and 5] 5, 5.4, 5.5 and 5.6. Such
2 bond shall be in a reasonable amount as determined by the
3 department. Liability under such bond shall continue for the
4 duration of the mining or mining operation, and for a period of
5 ten years thereafter or such longer period of time as may be
6 prescribed by rules and regulations promulgated hereunder, at
7 which time the bond shall become of no force and effect, and it,
8 or any cash or securities substituted for it as hereinafter
9 provided, shall be returned to the applicant. Upon application
10 of any proper party in interest, the department, after due
11 notice to any person who may be affected thereby, and hearing,
12 in accordance with the provisions of section 5(g), may order the
13 amount of said bond to be increased or reduced or may excuse the
14 permit holder from any further duty of keeping in effect any
15 bond furnished pursuant to a prior order of the department and
16 return said bond, or the securities or cash posted in lieu
17 thereof, to the permit holder, notwithstanding any different
18 provision herein respecting the duration or term of said bond.
19 Such bond shall be executed by the applicant and a corporate
20 surety licensed to do business in the Commonwealth: Provided,
21 however, That the applicant may elect to deposit cash,
22 automatically renewable irrevocable bank letters of credit which
23 may be terminated by the bank at the end of a term only upon the
24 bank giving ninety days prior written notice to the permittee
25 and the department or negotiable bonds of the United States
26 Government or the Commonwealth of Pennsylvania, the Pennsylvania
27 Turnpike Commission, the General State Authority, the State
28 Public School Building Authority, or any municipality within the
29 Commonwealth, with the department in lieu of a corporate surety.
30 The cash deposit or irrevocable letter of credit or market value

1 of such negotiable bonds shall be at least equal to the sum of
2 the bond. Where the mining operation is reasonably anticipated
3 to continue for a period of at least ten years from the date of
4 application, the operator may, as an alternative, deposit
5 collateral and file a collateral bond as provided for in this
6 section according to the following phased deposit schedule. The
7 operator shall, prior to commencing operations, deposit ten
8 thousand dollars (\$10,000.00) or 25% of the amount determined
9 under this subsection, whichever is greater. The operator shall
10 thereafter annually deposit 10% of the remaining bond amount for
11 ten years. Interest accumulated by such collateral shall become
12 a part of the bond. The department may require additional
13 bonding at any time to meet the intent of this subsection. The
14 collateral shall be deposited, in trust, with the State
15 Treasurer, or with a bank, selected by the department, which
16 shall act as trustee for the benefit of the Commonwealth,
17 according to rules and regulations promulgated hereunder, to
18 guarantee the operator's compliance with this act. The operator
19 shall be required to pay all costs of the trust. The collateral
20 deposit, or part thereof, shall be released of liability and
21 returned to the operator, together with a proportional share of
22 accumulated interest, upon the conditions of and pursuant to the
23 schedule for release provided for by rules and regulations
24 promulgated hereunder. In lieu of the bond required by this
25 section, the department may require the operator of an
26 underground mining operation to purchase subsidence insurance,
27 as provided by the act of August 23, 1961 (P.L.1068, No.484),
28 entitled, as amended, "An act to provide for the creation and
29 administration of a Coal and Clay Mine Subsidence Insurance Fund
30 within the Department of Environmental Resources for the

1 insurance of compensation for damages to subscribers thereto;
2 declaring false oaths by the subscribers to be misdemeanors;
3 providing penalties for the violation thereof; and making an
4 appropriation," for the benefit of all surface property owners
5 who may be affected by damage caused by subsidence. The
6 insurance coverage shall be in an amount determined by the
7 department to be sufficient to remedy any and all damage. The
8 term of this obligation shall be for the duration of the mining
9 and reclamation operation and for ten years thereafter. For all
10 other surface effects of underground mining, the operator shall
11 post a bond as required by this section. The department shall,
12 upon receipt of any such deposit of cash or irrevocable letter
13 of credit or negotiable bonds, immediately place the same with
14 the State Treasurer, whose duty it shall be to receive and hold
15 the same in the name of the Commonwealth, in trust, for the
16 purposes for which such deposit is made. The State Treasurer
17 shall at all times be responsible for the custody and
18 safekeeping of such deposits. The applicant making the deposit
19 shall be entitled from time to time to demand and receive from
20 the State Treasurer, on the written order of the department, the
21 whole or any portion of any collateral so deposited, upon
22 depositing with him, in lieu thereof, other collateral of the
23 classes herein specified having a market value at least equal to
24 the sum of the bond, and also to demand, receive and recover the
25 interest and income from said negotiable bonds as the same
26 become due and payable: Provided, however, That where negotiable
27 bonds, deposited as aforesaid, mature or are called, the State
28 Treasurer, at the request of the applicant, shall convert such
29 negotiable bonds into such other negotiable bonds of the classes
30 herein specified as may be designated by the applicant: And

1 provided further, That where notice of intent to terminate a
2 letter of credit is given, the department shall give the
3 permittee thirty days written notice to replace the letter of
4 credit with other acceptable bond guarantees as provided herein,
5 and if the permittee fails to replace the letter of credit
6 within the thirty-day notification period, the department shall
7 draw upon and convert such letter of credit into cash and hold
8 it as a collateral bond guarantee.

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

16 (1) The permittee shall be incorporated or authorized to do
17 business in Pennsylvania and shall designate an agent in
18 Pennsylvania to receive service of suits, claims, demands or
19 other legal process.

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

28 (3) During the last thirty-six calendar months, the
29 applicant has not defaulted in the payment of any dividend or
30 sinking fund installment or preferred stock or installment on

1 any indebtedness for borrowed money or payment of rentals under
2 long-term leases or any reclamation fee payment currently due
3 under the Federal Surface Mining Control and Reclamation Act of
4 1977, 30 U.S.C. § 1232, for each ton of coal produced in the
5 Commonwealth of Pennsylvania.

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

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

16 (6) The permittee shall give immediate notice to the
17 department of any significant change in managing control of the
18 company.

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

25 (8) The permittee may be required by the department to
26 pledge real and personal property to guarantee the permittee's
27 self-bond. The department is authorized to acquire and dispose
28 of such property in the event of a default to the bond
29 obligation and may use the moneys in the Bituminous Mine
30 Subsidence and Land Conservation Fund to administer this

1 provision.

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

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

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

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

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

18 (c) If it shall be determined by the department that the
19 holder of a permit issued pursuant to the provisions of this act
20 who has furnished a bond under this section, has failed or
21 refused to comply with the provisions of this act, the
22 department shall certify such determination to the Attorney
23 General. The Attorney General shall proceed immediately to enter
24 suit upon said bond and to collect such amount as may be
25 necessary to redress or repair the damage occasioned by such
26 violation, together with the costs of said proceedings. Where
27 the holder of the permit has deposited cash or negotiable bonds
28 as collateral in lieu of a corporate surety, the department
29 shall declare such collateral forfeited and shall direct the
30 State Treasurer to pay said funds or proceed to sell said

1 collateral and pay the proceeds thereof to the department to be
2 used in accordance with the purposes of this section. Should the
3 amount so collected be insufficient to redress or repair the
4 damage, the owner, operator, lessor, lessee, general manager,
5 and superintendent or other person having charge of said mine or
6 mining operation, shall be jointly and severally liable for the
7 deficiency. Should the amount so collected exceed the amount
8 necessary to restore or repair the damage occasioned by such
9 violation, such excess shall be held by the department as
10 collateral for future damage contemplated herein until all
11 liability of the permittee is released.

12 Section 7. The act is amended by adding a section to read:

13 Section 9.1. Prevention of hazards to human safety and
14 material damage to certain buildings.--(a) If the Department of
15 Environmental Resources determines, and so notifies the mine
16 operator, that a proposed mining technique or extraction ratio
17 will result in subsidence which creates an imminent hazard to
18 human safety, utilization of such technique or extraction ratio
19 shall not be permitted unless the mine operator, prior to
20 mining, takes measures approved by the department to eliminate
21 the imminent hazard to human safety.

22 (b) If the department determines, and so notifies the mine
23 operator, that a proposed mining technique or extraction ratio
24 will cause subsidence which will result in irreparable damage to
25 a building enumerated in section 5.4(a)(3) or (4), utilization
26 of such technique or extraction ratio shall not be permitted
27 unless the building owner, prior to mining, consents to such
28 mining, or the mine operator, prior to mining, agrees to take
29 measures approved by the department to minimize or reduce
30 impacts resulting from subsidence to such buildings.

1 (c) Underground mining activities shall not be conducted
2 beneath or adjacent to:

3 (1) public buildings and facilities;

4 (2) churches, schools or hospitals;

5 (3) impoundments with a storage capacity of twenty acre-feet
6 or more; or

7 (4) bodies of water with a volume of twenty acre-feet or
8 more;

9 unless the subsidence control plan demonstrates that subsidence
10 will not cause material damage to, or reduce the reasonably
11 foreseeable use of, such features or facilities. If the
12 department determines that it is necessary, in order to minimize
13 the potential for material damage to the features or facilities
14 described above or to any aquifer or body of water that serves
15 as a significant water source for any public water supply
16 system, it may limit the percentage of coal extracted under or
17 adjacent thereto.

18 (d) Nothing in this act shall be construed to amend, modify
19 or otherwise supersede standards related to prevailing
20 hydrologic balance contained in the Surface Mining Control and
21 Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et
22 seq.) and regulations promulgated by the Environmental Quality
23 Board for the purpose of obtaining or maintaining primary
24 jurisdiction over the enforcement and administration of that
25 act, nor any standard contained in the act of June 22, 1937
26 (P.L.1987, No.394), known as "The Clean Streams Law," or any
27 regulation promulgated thereunder by the Environmental Quality
28 Board.

29 Section 8. Section 15 of the act is repealed.

30 Section 9. Section 17.1 of the act, added October 10, 1980

1 (P.L.874, No.156), is amended to read:

2 Section 17.1. Unlawful conduct.--It shall be unlawful to
3 fail to comply with any rule or regulation of the department or
4 to fail to comply with any order or permit of the department, to
5 violate any of the provisions of this act or rules and
6 regulations adopted hereunder or to violate any order or permit
7 of the department, [to cause land subsidence or injury] or to
8 hinder, obstruct, prevent or interfere with the department or
9 its personnel in the performance of any duty hereunder,
10 including violating 18 Pa.C.S. §§ 4903 (relating to false
11 swearing) and 4904 (relating to unsworn falsification to
12 authorities). Any person or municipality engaging in such
13 conduct shall be subject to the provisions of sections 13 and
14 17.

15 Section 10. The act is amended by adding a section to read:

16 Section 18.1. Compilation and analysis of data.--(a) The
17 department shall compile, on an ongoing basis, the information
18 contained in deep mine permit applications, in monitoring
19 reports and other data submitted by operators, from enforcement
20 actions and from any other appropriate source for the purposes
21 set forth below.

22 (b) Such data shall be analyzed by the department, utilizing
23 the services of professionals or institutions recognized in the
24 field, for the purpose of determining, to the extent possible,
25 the effects of deep mining on subsidence of surface structures
26 and features and on water resources, including sources of public
27 and private water supplies.

28 (c) The analysis of such data and any relevant findings
29 shall be presented in report form to the Governor, the General
30 Assembly and to the Citizens Advisory Council of the department

1 at five-year intervals, commencing in 1991.

2 (d) Nothing contained herein shall be construed as
3 authorizing the department to require a mine operator to submit
4 additional information or data, except that it shall require
5 reporting of all water loss incidents or claims of water loss.

6 Section 11. This act shall take effect in 60 days.