

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1940 Session of
1995

INTRODUCED BY S. H. SMITH, GEORGE, LYNCH, COLAIZZO, STEELMAN,
FARGO, LUCYK, SEMMEL, HUTCHINSON, HERMAN, WOZNIAK, JADLOWIEC
AND DEWEESE, JUNE 29, 1995

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, MAY 6, 1996

AN ACT

1 Amending the act of May 31, 1945 (P.L.1198, No.418), entitled,
2 as amended, "An act providing for the conservation and
3 improvement of land affected in connection with surface
4 mining; regulating such mining; providing for the
5 establishment of an Emergency Bond Fund for anthracite deep
6 mine operators; and providing penalties," FURTHER PROVIDING <—
7 FOR DEFINITIONS, FOR OPERATOR'S LICENSE, FOR BONDS, FOR
8 HEALTH AND SAFETY AND FOR REMINING OF PREVIOUSLY AFFECTED
9 AREAS; AUTHORIZING REMOVAL OF COAL REFUSE; ~~AND~~ further <—
10 providing for ~~payment in lieu of bond and~~ FINANCIAL <—
11 GUARANTEES, for reclamation bond credits AND FOR REMINING <—
12 ENVIRONMENTAL ENHANCEMENT FUND; AND PROVIDING FOR THE <—
13 DEPARTMENT OF ENVIRONMENTAL PROTECTION'S AUTHORITY FOR THE
14 AWARDED OF GRANTS.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 ~~Section 1. Sections 4.12 and 4.13 of the act of May 31, 1945 <—~~
18 ~~(P.L.1198, No.418), known as the Surface Mining Conservation and~~
19 ~~Reclamation Act, added December 18, 1992 (P.L.1384, No.173), are~~
20 ~~amended to read:~~

21 SECTION 1. THE DEFINITIONS OF "GOVERNMENT-FINANCED <—
22 RECLAMATION CONTRACT" AND "SURFACE MINING ACTIVITIES" IN SECTION
23 3 OF THE ACT OF MAY 31, 1945 (P.L.1198, NO.418), KNOWN AS THE

1 SURFACE MINING CONSERVATION AND RECLAMATION ACT, AMENDED OR
2 ADDED DECEMBER 18, 1992 (P.L.1384, NO.173), ARE AMENDED AND THE
3 SECTION IS AMENDED BY ADDING A DEFINITION TO READ:

4 SECTION 3. DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES,
5 UNLESS A DIFFERENT MEANING IS PLAINLY REQUIRED BY THE CONTEXT,
6 SHALL HAVE THE FOLLOWING MEANINGS:

7 * * *

8 "GOVERNMENT-FINANCED RECLAMATION CONTRACT" SHALL MEAN:

9 (1) FOR THE PURPOSES OF SECTION 4.8, A FEDERALLY FUNDED OR
10 STATE-FUNDED AND -APPROVED ABANDONED MINE RECLAMATION CONTRACT
11 ENTERED INTO BETWEEN THE DEPARTMENT AND AN ELIGIBLE PERSON OR
12 ENTITY WHO HAS OBTAINED SPECIAL AUTHORIZATION TO ENGAGE IN
13 INCIDENTAL AND NECESSARY EXTRACTION OF COAL OR IN REMOVAL OF
14 COAL REFUSE PURSUANT TO GOVERNMENT-FINANCED RECLAMATION WHICH IS
15 EITHER:

16 (I) A STATE-FINANCED RECLAMATION CONTRACT LESS THAN OR EQUAL
17 TO FIFTY THOUSAND DOLLARS (\$50,000) TOTAL PROJECT COSTS, WHERE
18 UP TO FIVE HUNDRED (500) TONS OF COAL IS EXTRACTED, INCLUDING A
19 RECLAMATION CONTRACT WHERE LESS THAN FIVE HUNDRED (500) TONS IS
20 REMOVED AND THE GOVERNMENT'S COST OF FINANCING RECLAMATION WILL
21 BE ASSUMED BY THE CONTRACTOR UNDER THE TERMS OF A NO-COST
22 CONTRACT;

23 (II) A STATE-FINANCED RECLAMATION CONTRACT AUTHORIZING THE
24 REMOVAL OF COAL REFUSE, INCLUDING WHERE RECLAMATION IS PERFORMED
25 BY THE CONTRACTOR UNDER THE TERMS OF A NO-COST CONTRACT WITH THE
26 DEPARTMENT, NOT INVOLVING ANY REPROCESSING OF COAL REFUSE ON THE
27 PROJECT AREA OR RETURN OF ANY COAL REFUSE MATERIAL TO THE
28 PROJECT AREA;

29 (III) A STATE-FINANCED RECLAMATION CONTRACT GREATER THAN
30 FIFTY THOUSAND DOLLARS (\$50,000) TOTAL PROJECT COSTS OR A

FEDERALLY FINANCED ABANDONED MINE RECLAMATION PROJECT: PROVIDED,
THAT THE DEPARTMENT DETERMINES IN WRITING THAT EXTRACTION OF
COAL IS ESSENTIAL TO PHYSICALLY ACCOMPLISH THE RECLAMATION OF
THE PROJECT AREA AND IS INCIDENTAL AND NECESSARY TO RECLAMATION;
OR

(IV) FEDERALLY FINANCED OR STATE-FINANCED EXTRACTION OF COAL
WHICH THE DEPARTMENT DETERMINES IN WRITING TO BE ESSENTIAL TO
PHYSICALLY EXTINGUISH AN ABANDONED MINE FIRE THAT POSES A THREAT
TO THE PUBLIC HEALTH, SAFETY AND WELFARE.

(2) FOR PURPOSES OF DETERMINING WHETHER OR NOT EXTRACTION OF
COAL IS INCIDENTAL AND NECESSARY UNDER SECTION 4.8, THE
DEPARTMENT SHALL CONSIDER STANDARD ENGINEERING FACTORS AND SHALL
NOT IN ANY CASE CONSIDER THE ECONOMIC BENEFIT DERIVING FROM
[COAL] EXTRACTION OF COAL. NECESSARY EXTRACTION OF COAL SHALL IN
NO CASE INCLUDE:

(I) THE EXTRACTION OF COAL IN AN AREA ADJACENT TO THE
PREVIOUSLY AFFECTED AREA WHICH WILL BE RECLAIMED; OR

(II) THE EXTRACTION OF COAL BENEATH THE PREVIOUSLY AFFECTED
AREA WHICH WILL BE RECLAIMED.

* * *

"NO-COST RECLAMATION CONTRACT" SHALL MEAN A CONTRACT ENTERED
INTO BETWEEN THE DEPARTMENT AND AN ELIGIBLE PERSON FOR THE
PURPOSE OF RECLAIMING UNRECLAIMED ABANDONED MINE LANDS AND WHICH
DOES NOT INVOLVE THE EXPENDITURE OF COMMONWEALTH FUNDS.

* * *

"SURFACE MINING ACTIVITIES" SHALL MEAN THE EXTRACTION OF COAL
FROM THE EARTH OR FROM WASTE OR STOCK PILES OR FROM PITS OR
BANKS BY REMOVING THE STRATA OR MATERIAL WHICH OVERLIES OR IS
ABOVE OR BETWEEN THEM OR OTHERWISE EXPOSING AND RETRIEVING THEM
FROM THE SURFACE, INCLUDING, BUT NOT LIMITED TO, STRIP, AUGER

1 MINING, DREDGING, QUARRYING AND LEACHING, AND ALL SURFACE
2 ACTIVITY CONNECTED WITH SURFACE OR UNDERGROUND MINING,
3 INCLUDING, BUT NOT LIMITED TO, EXPLORATION, SITE PREPARATION,
4 ENTRY, TUNNEL, DRIFT, SLOPE, SHAFT AND BOREHOLE DRILLING AND
5 CONSTRUCTION AND ACTIVITIES RELATED THERETO, BUT NOT INCLUDING
6 THOSE PORTIONS OF MINING OPERATIONS CARRIED OUT BENEATH THE
7 SURFACE BY MEANS OF SHAFTS, TUNNELS OR OTHER UNDERGROUND MINE
8 OPENINGS. "SURFACE MINING ACTIVITIES" SHALL NOT INCLUDE ANY OF
9 THE FOLLOWING:

10 (1) [COAL EXTRACTION] EXTRACTION OF COAL OR COAL REFUSE
11 REMOVAL PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION CONTRACT
12 FOR THE PURPOSES OF SECTION 4.8.

13 (2) [COAL EXTRACTION] EXTRACTION OF COAL AS AN INCIDENTAL
14 PART OF FEDERAL, STATE OR LOCAL GOVERNMENT-FINANCED HIGHWAY
15 CONSTRUCTION PURSUANT TO REGULATIONS PROMULGATED BY THE
16 ENVIRONMENTAL QUALITY BOARD.

17 (3) THE RECLAMATION OF ABANDONED MINE LANDS NOT INVOLVING
18 [COAL EXTRACTION] EXTRACTION OF COAL OR EXCESS SPOIL DISPOSAL
19 UNDER A WRITTEN AGREEMENT WITH THE PROPERTY OWNER AND APPROVED
20 BY THE DEPARTMENT.

21 (4) ACTIVITIES NOT CONSIDERED TO BE SURFACE MINING AS
22 DETERMINED BY THE UNITED STATES OFFICE OF SURFACE MINING,
23 RECLAMATION AND ENFORCEMENT AND SET FORTH IN DEPARTMENT
24 REGULATIONS.

25 * * *

26 SECTION 2. SECTION 3.1(A)(2), (B) AND (C) OF THE ACT,
27 AMENDED OCTOBER 12, 1984 (P.L.916, NO.181) AND DECEMBER 18, 1992
28 (P.L.1384, NO.173), ARE AMENDED TO READ:

29 SECTION 3.1. OPERATOR'S LICENSE; WITHHOLDING OR DENYING
30 PERMITS OR LICENSES; PENALTY.--(A) * * *

1 (2) ANY PERSON WHO PROCEEDS TO MINE [MINERALS BY THE SURFACE
2 MINING METHOD] COAL AS AN OPERATOR WITHOUT HAVING APPLIED FOR
3 AND RECEIVED A LICENSE AS HEREIN PROVIDED OR IN VIOLATION OF THE
4 TERMS THEREOF SHALL BE GUILTY OF A MISDEMEANOR, AND, UPON
5 CONVICTION, SHALL BE SENTENCED TO PAY A FINE OF NOT LESS THAN
6 FIVE THOUSAND DOLLARS (\$5,000) OR IN AN AMOUNT NOT LESS THAN THE
7 TOTAL PROFITS DERIVED BY HIM AS A RESULT OF HIS UNLAWFUL
8 ACTIVITIES, AS DETERMINED BY THE COURT, TOGETHER WITH THE
9 ESTIMATED COST TO THE COMMONWEALTH OF ANY RECLAMATION WORK WHICH
10 MAY REASONABLY BE REQUIRED IN ORDER TO RESTORE THE LAND TO ITS
11 CONDITION PRIOR TO THE COMMENCEMENT OF SAID UNLAWFUL ACTIVITIES,
12 OR UNDERGO IMPRISONMENT NOT EXCEEDING ONE YEAR, OR BOTH. THE
13 FINE SHALL BE PAYABLE TO THE SURFACE MINING CONSERVATION AND
14 RECLAMATION FUND.

15 (B) THE DEPARTMENT SHALL NOT ISSUE [ANY SURFACE MINING
16 OPERATOR'S LICENSE OR], RENEW OR AMEND [ANY] THE LICENSE OF ANY
17 PERSON WHO MINES COAL BY THE SURFACE MINING METHOD IF IT FINDS,
18 AFTER INVESTIGATION, AND AN OPPORTUNITY FOR AN INFORMAL HEARING
19 THAT A PERSON, PARTNER, ASSOCIATE OFFICER, PARENT CORPORATION OR
20 SUBSIDIARY CORPORATION HAS FAILED AND CONTINUES TO FAIL TO
21 COMPLY OR HAS SHOWN A LACK OF ABILITY OR INTENTION TO COMPLY
22 WITH AN ADJUDICATED PROCEEDING, CESSATION ORDER, CONSENT ORDER
23 AND AGREEMENT OR DECREE, OR AS INDICATED BY A WRITTEN NOTICE
24 FROM THE DEPARTMENT OF A DECLARATION OF FORFEITURE OF A PERSON'S
25 BONDS. IF THE DEPARTMENT INTENDS NOT TO RENEW A LICENSE, IT
26 SHALL NOTIFY THE LICENSEE OF THAT FACT AT LEAST SIXTY (60) DAYS
27 PRIOR TO THE EXPIRATION OF THE LICENSE; PRIOR TO THE EXPIRATION,
28 THE LICENSEE SHALL BE PROVIDED AN OPPORTUNITY FOR AN INFORMAL
29 HEARING. THIS NOTICE REQUIREMENT SHALL NOT PRECLUDE THE
30 DEPARTMENT FROM DENYING AN APPLICATION TO RENEW A LICENSE WITHIN

1 THE SIXTY (60) DAY PERIOD SO LONG AS THE DEPARTMENT PROVIDES AN
2 OPPORTUNITY FOR AN INFORMAL HEARING PRIOR TO NOT RENEWING THE
3 LICENSE. ANY PERSON WHO OPPOSES THE DEPARTMENT'S DECISION ON
4 ISSUANCE OR RENEWAL OF A LICENSE SHALL HAVE THE BURDEN OF PROOF.

5 (C) THE APPLICATION FOR LICENSE, RENEWAL OR PERMIT SHALL BE
6 ACCOMPANIED BY A CERTIFICATE OF INSURANCE CERTIFYING THAT THE
7 APPLICANT HAS IN FORCE A PUBLIC LIABILITY INSURANCE POLICY
8 ISSUED BY AN INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN
9 PENNSYLVANIA COVERING ALL SURFACE MINING [OPERATIONS] ACTIVITIES
10 OF THE APPLICANT IN THIS STATE AND AFFORDING PERSONAL INJURY AND
11 PROPERTY DAMAGE PROTECTION, TO BE WRITTEN FOR THE TERM OF THE
12 LICENSE, RENEWAL OR PERMIT. THE TOTAL AMOUNT OF INSURANCE SHALL
13 BE IN AN AMOUNT ADEQUATE TO COMPENSATE ANY PERSONS DAMAGED AS A
14 RESULT OF SURFACE MINING [OPERATIONS] ACTIVITIES, INCLUDING BUT
15 NOT LIMITED TO USE OF EXPLOSIVES, AND ENTITLED TO COMPENSATION
16 UNDER THE APPLICABLE PROVISIONS OF STATE LAW. THE TOTAL AMOUNT
17 SHALL BE AS PRESCRIBED BY RULES AND REGULATIONS: PROVIDED, THAT
18 THE INSURANCE OR A BOND GUARANTEE SHALL BE REQUIRED AS PART OF A
19 [SURFACE] MINING PERMIT APPLICATION IF THE DEPARTMENT DETERMINES
20 IN ITS BEST CONSERVATIVE ESTIMATE THAT THE [MINING OPERATION]
21 SURFACE MINING ACTIVITIES MAY AFFECT A PUBLIC OR PRIVATE WATER
22 SUPPLY. HOWEVER, IT IS FURTHER PROVIDED THAT THE OPERATOR
23 RETAINS THE OPTION TO INCLUDE THE REQUIRED LIABILITY INSURANCE
24 RELATED TO SECTION 4.2(F) OF THIS ACT, PERTAINING TO REPLACEMENT
25 OR RESTORATION OF WATER SUPPLIES AS PART OF THE APPLICATION FOR
26 OR RENEWAL OF A LICENSE.

27 (1) THE DEPARTMENT SHALL ACCEPT A CERTIFICATE OF SELF-
28 INSURANCE FROM THE APPLICANT, IN LIEU OF A CERTIFICATE FOR A
29 PUBLIC LIABILITY INSURANCE POLICY, ACCOMPANIED BY SATISFACTORY
30 EVIDENCE FROM THE APPLICANT THAT IT MEETS ONE OF THE FOLLOWING

1 TWO FINANCIAL REQUIREMENTS FOR SUCH SELF-INSURANCE:

2 (I) THE APPLICANT HAS:

3 (A) A NET WORKING CAPITAL AND TANGIBLE NET WORTH EACH AT
4 LEAST SIX TIMES THE AMOUNT OF THE LIABILITY COVERAGE TO BE
5 DEMONSTRATED;

6 (B) TANGIBLE NET WORTH OF AT LEAST TEN MILLION DOLLARS
7 (\$10,000,000); AND

8 (C) ASSETS IN THE UNITED STATES OF AT LEAST NINETY PER CENT
9 OF TOTAL ASSETS OR AT LEAST SIX TIMES THE AMOUNT OF LIABILITY
10 COVERAGE.

11 (II) THE APPLICANT MAINTAINS:

12 (A) A CURRENT BOND RATING EQUAL TO OR BETTER THAN BBB
13 (STANDARD AND POOR'S) OR BAA (MOODY'S);

14 (B) TANGIBLE NET WORTH OF AT LEAST TEN MILLION DOLLARS
15 (\$10,000,000);

16 (C) TANGIBLE NET WORTH AT LEAST SIX TIMES THE AMOUNT OF THE
17 LIABILITY COVERAGE TO BE DEMONSTRATED; AND

18 (D) PRIME ASSETS IN THE UNITED STATES OF AT LEAST NINETY PER
19 CENT OF TOTAL ASSETS OR SIX TIMES THE LIABILITY COVERAGE TO BE
20 DEMONSTRATED.

21 (2) FOR PURPOSES OF THIS SUBSECTION, SATISFACTORY EVIDENCE
22 FROM THE APPLICANT SHALL BE SATISFIED BY SUBMISSION OF A FORM
23 10-K ANNUAL REPORT, AS SUBMITTED TO THE SECURITIES AND EXCHANGE
24 COMMISSION OR VALIDATION BY AN INDEPENDENT CERTIFIED PUBLIC
25 ACCOUNTANT.

26 (3) CLAUSES (1) AND (2) OF THIS SUBSECTION SHALL BE VOID ONE
27 YEAR AFTER THE EFFECTIVE DATE OF THIS AMENDATORY ACT.

28 * * *

29 SECTION 3. SECTIONS 4(G.1) ~~AND (G.2)~~, (G.2) AND (H) AND
30 4.2(F)(2) OF THE ACT, AMENDED OR ADDED DECEMBER 18, 1992

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1 (P.L.1384, NO.173), ARE AMENDED TO READ:

2 SECTION 4. MINING PERMIT; RECLAMATION PLAN; BOND.--* * *

3 (G.1) (1) WHERE THE OPERATOR DEMONSTRATES THAT ALL
4 STANDARDS FOR STAGE II BOND RELEASE HAVE BEEN SATISFIED WITH THE
5 EXCEPTION OF CONSISTENTLY MEETING THE MINE DRAINAGE EFFLUENT
6 LIMITATIONS SPECIFIED IN THE PERMIT OR OTHERWISE REQUIRED BY
7 LAW, THE DEPARTMENT MAY RELEASE THE AMOUNT OF BOND WHICH EXCEEDS
8 THE COST OF ENSURING TREATMENT TO THE EFFLUENT LIMITATIONS
9 SPECIFIED IN THE PERMIT, THIS ACT, THE ACT OF JUNE 22, 1937
10 (P.L.1987, NO.394), KNOWN AS "THE CLEAN STREAMS LAW," THE
11 FEDERAL WATER POLLUTION CONTROL ACT (62 STAT. 1155, 33 U.S.C. §
12 1251 ET SEQ.) AND THE RULES AND REGULATIONS PROMULGATED
13 THEREUNDER, OF ALL THE DISCHARGES EMANATING FROM OR
14 HYDROLOGICALLY CONNECTED TO THE MINE SITE FOR A PERIOD OF AT
15 LEAST FIFTY (50) YEARS, AS CALCULATED BY THE DEPARTMENT.

16 (2) THE RELEASE OF ANY BOND PURSUANT TO [SUBSECTION (A)]
17 CLAUSE (1) OR PURSUANT TO REGULATIONS PROMULGATED BY THE
18 ENVIRONMENTAL QUALITY BOARD ESTABLISHING A FINAL PROGRAM IN NO
19 WAY ALLEVIATES THE OPERATOR'S RESPONSIBILITY TO TREAT DISCHARGES
20 OF MINE DRAINAGE EMANATING FROM OR HYDROLOGICALLY CONNECTED TO
21 THE SITE TO THE STANDARDS SET FORTH IN THE PERMIT, THIS ACT,
22 "THE CLEAN STREAMS LAW," THE FEDERAL WATER POLLUTION CONTROL ACT
23 AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

24 (G.2) (1) UNTIL SUCH TIME AS THE ENVIRONMENTAL QUALITY
25 BOARD PROMULGATES REGULATIONS CONCERNING RELEASE OF RECLAMATION
26 BONDS ON MINE SITES WITH MINIMAL-IMPACT POST-MINING DISCHARGES,
27 THE DEPARTMENT MAY RELEASE RECLAMATION BONDS HELD SOLELY FOR
28 MINIMAL-IMPACT POST-MINING DISCHARGES PURSUANT TO THIS SECTION,
29 WHERE AN OPERATOR DEMONSTRATES THAT ALL OF THE FOLLOWING EXIST:

30 (I) ALL THE CRITERIA FOR RECLAMATION BOND RELEASE HAVE BEEN

1 SATISFIED, EXCEPT FOR THE EXISTENCE OF A MINIMAL-IMPACT POST-
2 MINING DISCHARGE, UNDER THE DEPARTMENT'S REGULATIONS FOR BOND
3 RELEASE ON SURFACE COAL MINES EXCEPT AS PROVIDED IN CLAUSE
4 (2)(I).

5 (II) THE DISCHARGE OF MINE DRAINAGE IS A MINIMAL-IMPACT
6 POST-MINING DISCHARGE, AS DEMONSTRATED BY A SAMPLING PROTOCOL
7 APPROVED BY THE DEPARTMENT.

8 (III) THE [DISCHARGER] OPERATOR HAS DESIGNED, CONSTRUCTED
9 AND MAINTAINED A FUNCTIONING PASSIVE TREATMENT SYSTEM APPROVED
10 BY THE DEPARTMENT WHICH SUBSTANTIALLY IMPROVED WATER QUALITY OF
11 THE DISCHARGE AFTER IT ENTERS THE PASSIVE TREATMENT SYSTEM TO
12 THE SATISFACTION OF THE DEPARTMENT. THE DEPARTMENT SHALL TAKE
13 INTO ACCOUNT THE CUMULATIVE LOADING OF OTHER DISCHARGES IN
14 ASCERTAINING WHETHER WATER QUALITY STANDARDS ARE BEING ACHIEVED.

15 (IV) THE [DISCHARGER] OPERATOR HAS ESTABLISHED A SITE-
16 SPECIFIC TRUST FUND FOR EACH MINIMAL-IMPACT POST-MINING
17 DISCHARGE IN AN AMOUNT CALCULATED BY THE DEPARTMENT AT LEAST
18 EQUAL TO ANNUAL OPERATION AND MAINTENANCE COSTS OF A PASSIVE
19 TREATMENT SYSTEM, CAPITAL COSTS FOR REPLACEMENT OF THE PASSIVE
20 TREATMENT SYSTEM IN TWENTY-FIVE (25) YEARS FROM THE DATE OF ITS
21 INSTALLATION, AN INFLATION FACTOR AND THE COST OF TREATMENT OF
22 THE DISCHARGE FOR AT LEAST FIFTY (50) YEARS. THE MINIMUM AMOUNT
23 OF THE FUND SHALL BE TEN THOUSAND DOLLARS (\$10,000).

24 (2) UPON A DEMONSTRATION BY THE MINE OPERATOR, APPROVED BY
25 THE DEPARTMENT, THAT THE REQUIREMENTS SET FORTH IN CLAUSE (1)
26 HAVE BEEN MET, THE DEPARTMENT MAY RELEASE THE RECLAMATION BOND
27 ACCORDING TO THE FOLLOWING SCHEDULE:

28 (I) UP TO EIGHTY-FIVE PER CENT OF THE RECLAMATION BOND ON A
29 SITE WITH A MINIMAL-IMPACT POST-MINING DISCHARGE UPON A
30 DEMONSTRATION BY THE OPERATOR THAT ALL OF THE FOLLOWING HAVE

1 BEEN MET:

2 (A) THE OPERATOR HAS DEMONSTRATED AND THE DEPARTMENT HAS
3 FOUND THAT ALL RECLAMATION STANDARDS FOR STAGES I AND II, EXCEPT
4 FOR THE EXISTENCE OF A MINIMAL-IMPACT POST-MINING DISCHARGE,
5 HAVE BEEN MET BY THE OPERATOR.

6 (B) A TRUST FUND IN AN AMOUNT AND ON A FORM CONTAINING SUCH
7 TERMS AND CONDITIONS APPROVED BY THE DEPARTMENT HAS BEEN
8 ESTABLISHED AND FULLY FUNDED AS FINANCIAL ASSURANCE FOR
9 MAINTENANCE AND REPLACEMENT OF THE APPROVED PASSIVE TREATMENT
10 SYSTEM.

11 (C) THE OPERATOR HAS DEMONSTRATED TO THE SATISFACTION OF THE
12 DEPARTMENT THAT THE PASSIVE TREATMENT SYSTEM HAS BEEN PROPERLY
13 DESIGNED, CONSTRUCTED AND MAINTAINED AND IS FUNCTIONING
14 PROPERLY.

15 (II) UP TO THE ENTIRE AMOUNT OF RECLAMATION BOND ON A SITE
16 WITH A MINIMAL-IMPACT POST-MINING DISCHARGE WHERE:

17 (A) THE OPERATOR HAS DEMONSTRATED AND THE DEPARTMENT HAS
18 FOUND THAT ALL OF THE RECLAMATION STANDARDS FOR STAGES I, II AND
19 III BOND RELEASE, EXCEPT FOR THE EXISTENCE OF THE MINIMAL-IMPACT
20 POST-MINING DISCHARGE, HAVE BEEN MET.

21 (B) A TRUST FUND IN AN AMOUNT AND ON A FORM CONTAINING SUCH
22 TERMS AND CONDITIONS APPROVED BY THE DEPARTMENT HAS BEEN
23 ESTABLISHED AND FULLY FUNDED AS FINANCIAL ASSURANCE FOR
24 MAINTENANCE AND REPLACEMENT OF THE APPROVED PASSIVE TREATMENT
25 SYSTEM.

26 (C) THE OPERATOR HAS DEMONSTRATED TO THE SATISFACTION OF THE
27 DEPARTMENT THAT THE PASSIVE TREATMENT SYSTEM HAS BEEN PROPERLY
28 DESIGNED, CONSTRUCTED AND MAINTAINED AND IS FUNCTIONING
29 PROPERLY.

30 (3) THE DEPARTMENT MAY, IF THE PASSIVE TREATMENT SYSTEM IS

1 NOT CONSTRUCTED, MAINTAINED OR FUNCTIONING PROPERLY, PURSUE ANY
2 REMEDIES AT LAW OR EQUITY, ORDER THE [DISCHARGER] OPERATOR TO
3 UPGRADE THE TREATMENT SYSTEM OR TO PROVIDE CONVENTIONAL
4 TREATMENT AND INCREASE THE AMOUNT OF THE SITE-SPECIFIC TRUST
5 FUND REQUIRED TO REFLECT THE COST OF ADDITIONAL TREATMENT.

6 (4) THE ENVIRONMENTAL QUALITY BOARD SHALL PROMULGATE FINAL
7 REGULATIONS ESTABLISHING A PROGRAM FOR RELEASING RECLAMATION
8 BONDS HELD SOLELY FOR MINIMAL-IMPACT POST-MINING DISCHARGES. IN
9 PROMULGATING SUCH REGULATIONS, THE BOARD SHALL CONSIDER VARIOUS
10 FACTORS, INCLUDING, BUT NOT LIMITED TO, THE FACTORS SET FORTH IN
11 CLAUSE (1).

12 * * *

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13 (H) IF THE OPERATOR FAILS OR REFUSES TO COMPLY WITH THE
14 REQUIREMENTS OF THE ACT IN ANY RESPECT FOR WHICH LIABILITY HAS
15 BEEN CHARGED ON THE BOND, THE DEPARTMENT SHALL DECLARE SUCH BOND
16 FORFEITED, AND THE AMOUNT OF THE FORFEITED BOND SHALL BE PAID
17 OVER TO THE DEPARTMENT WITHIN THIRTY (30) DAYS AFTER NOTICE BY
18 CERTIFIED MAIL FROM THE DEPARTMENT, AND THAT AMOUNT SHALL BE
19 HELD IN ESCROW WITH ANY INTEREST ON THE BOND ACCRUING TO THE
20 DEPARTMENT PENDING THE RESOLUTION OF ANY APPEALS, UNLESS IT IS
21 DETERMINED BY A COURT OF COMPETENT JURISDICTION AFTER EXHAUSTION
22 OF APPEALS THAT THE COMMONWEALTH WAS NOT ENTITLED TO ALL OR A
23 PORTION OF THE AMOUNT FORFEITED IN WHICH CASE THE INTEREST SHALL
24 ACCRUE PROPORTIONATELY TO THE SURETY IN THE AMOUNT DETERMINED TO
25 BE IMPROPERLY FORFEITED BY THE DEPARTMENT, IF ANY. WHERE THE
26 OPERATOR HAS DEPOSITED CASH OR SECURITIES AS COLLATERAL IN LIEU
27 OF A SURETY BOND, THE DEPARTMENT SHALL DECLARE SUCH PORTION OF
28 SAID COLLATERAL FORFEITED, AND SHALL DIRECT THE STATE TREASURER
29 TO PAY SAID FUNDS INTO THE SURFACE MINING CONSERVATION AND
30 RECLAMATION FUND, OR TO PROCEED TO SELL SAID SECURITIES TO THE

1 EXTENT FORFEITED AND PAY THE PROCEEDS THEREOF INTO THE SURFACE
2 MINING CONSERVATION AND RECLAMATION FUND. SHOULD ANY CORPORATE
3 SURETY FAIL TO PROMPTLY PAY, IN FULL, A FORFEITED BOND, IT SHALL
4 BE DISQUALIFIED FROM WRITING ANY FURTHER SURETY BONDS UNDER THIS
5 ACT. ANY OPERATOR AGGRIEVED BY REASON OF FORFEITING THE BOND OR
6 CONVERTING COLLATERAL, AS HEREIN PROVIDED, SHALL HAVE A RIGHT TO
7 CONTEST SUCH ACTION AND APPEAL THEREFROM AS HEREIN PROVIDED. A
8 CORPORATE SURETY ISSUING SURETY BONDS WHICH ARE FORFEITED BY THE
9 DEPARTMENT SHALL HAVE THE OPTION OF RECLAIMING THE FORFEITED
10 SITE, IN LIEU OF PAYING THE BOND AMOUNT TO THE DEPARTMENT, UPON
11 THE CONSENT AND APPROVAL OF THE DEPARTMENT. A CORPORATE SURETY
12 ISSUING SURETY BONDS WHICH ARE FORFEITED MAY PROPOSE, UPON THE
13 CONSENT AND APPROVAL OF THE DEPARTMENT, THE RECLAMATION OF THE
14 FORFEITED MINE SITES AFTER PAYMENT OF THE AMOUNT OF THE
15 FORFEITED BONDS TO THE DEPARTMENT. IF THE DEPARTMENT APPROVES
16 THE CORPORATE SURETY'S PROPOSAL TO RECLAIM THE FORFEITED SITE
17 AFTER THE SURETY PAYS THE BOND AMOUNT TO THE DEPARTMENT, THE
18 STATE TREASURER SHALL RETURN TO THE CORPORATE SURETY ANY MONEYS
19 PAID TO THE DEPARTMENT IN CONNECTION WITH THE FORFEITED BOND
20 PROVIDED THE PROPOSAL INCLUDES ACCEPTABLE FINANCIAL ASSURANCE.
21 ACCEPTABLE FINANCIAL ASSURANCE INCLUDES THE DEPARTMENT
22 WITHHOLDING RETURN OF THE MONEYS UNTIL THE RECLAMATION IS
23 COMPLETE OR THE POSTING OF A REPLACEMENT BOND.

24 * * *

25 SECTION 4.2. GENERAL RULE MAKING; HEALTH AND SAFETY.--* * *

26 (F) * * *

27 (2) IT SHALL BE PRESUMED, AS A MATTER OF LAW, THAT A SURFACE
28 MINE OPERATOR OR OWNER IS RESPONSIBLE WITHOUT PROOF OF FAULT,
29 NEGLIGENCE OR CAUSATION FOR ALL POLLUTION, EXCEPT
30 BACTERIOLOGICAL CONTAMINATION, OR DIMINUTION OF PUBLIC OR

1 PRIVATE WATER SUPPLIES WITHIN ONE THOUSAND (1,000) LINEAR FEET
2 OF THE BOUNDARIES OF THE [LAND AFFECTED OR ACREAGE ASSIGNED TO
3 THE SURFACE MINING OPERATION UNDER SECTION 4 BY A PERMIT ISSUED
4 BY THE DEPARTMENT.] AREAS BONDED AND AFFECTED BY COAL MINING
5 OPERATIONS, AREAS OF OVERBURDEN REMOVAL AND STORAGE AND SUPPORT
6 AREAS EXCEPT FOR HAUL AND ACCESS ROADS. IF SURFACE MINING
7 ACTIVITIES ARE CONDUCTED ON AREAS WHICH ARE NOT PERMITTED AND
8 BONDED, THIS PRESUMPTION APPLIES TO ALL WATER SUPPLIES WITHIN
9 ONE THOUSAND (1,000) LINEAR FEET OF THE LAND AFFECTED BY SUCH
10 OPERATIONS. THERE SHALL BE ONLY FIVE DEFENSES TO THE PRESUMPTION
11 OF LIABILITY PROVIDED IN THIS CLAUSE. A MINE OWNER OR OPERATOR
12 MUST AFFIRMATIVELY PROVE BY A PREPONDERANCE OF EVIDENCE THAT ONE
13 OF THE FOLLOWING CONDITIONS EXISTS:

14 (I) THE LANDOWNER OR WATER SUPPLY COMPANY REFUSED TO ALLOW
15 THE SURFACE MINING OPERATOR OR OWNER ACCESS TO CONDUCT A SURVEY
16 PRIOR TO COMMENCING MINING ACTIVITIES.

17 (II) THE WATER SUPPLY IS NOT WITHIN ONE THOUSAND (1,000)
18 LINEAR FEET OF THE BOUNDARIES OF THE [LAND AFFECTED OR ACREAGE
19 ASSIGNED TO THE SURFACE MINING OPERATION UNDER SECTION 4 BY A
20 PERMIT ISSUED BY THE DEPARTMENT] AREAS BONDED AND AFFECTED BY
21 COAL MINING OPERATIONS, AREAS OF OVERBURDEN REMOVAL AND STORAGE
22 AND SUPPORT AREAS EXCEPT FOR HAUL AND ACCESS ROADS.

23 (III) THE POLLUTION OR DIMINUTION EXISTED PRIOR TO THE
24 SURFACE MINING ACTIVITIES AS DETERMINED BY A SURVEY CONDUCTED
25 PRIOR TO COMMENCING SURFACE MINING ACTIVITIES.

26 (IV) THE POLLUTION OR DIMINUTION OCCURRED AS A RESULT OF
27 SOME CAUSE OTHER THAN THE SURFACE MINING ACTIVITIES.

28 (V) THE LANDOWNER, WATER SUPPLY USER OR WATER SUPPLY COMPANY
29 REFUSED TO ALLOW THE SURFACE MINING OPERATOR OR OWNER ACCESS TO
30 DETERMINE THE CAUSE OF POLLUTION OR DIMINUTION OR TO REPLACE OR

1 RESTORE THE WATER SUPPLY.

2 * * *

3 SECTION 4. SECTION 4.6(I) OF THE ACT, ADDED OCTOBER 4, 1984
4 (P.L.727, NO.158), IS AMENDED TO READ:

5 SECTION 4.6. REMINING OF PREVIOUSLY AFFECTED AREAS.--* * *

6 (I) FOR POLLUTION ABATEMENT AREAS SUBJECT TO A GRANT OF
7 SPECIAL AUTHORIZATION UNDER THIS SECTION, THE OPERATOR SHALL
8 COMPLY WITH ALL REQUIREMENTS RELATING TO BONDS SET FORTH IN
9 SECTION 4, EXCEPT THAT THE CRITERIA AND SCHEDULE FOR RELEASE OF
10 BONDS SHALL BE AS FOLLOWS:

11 (1) UP TO [FIFTY] SIXTY PER CENT OF THE AMOUNT OF BOND IF
12 THE OPERATOR DEMONSTRATES THAT:

13 (A) ALL ACTIVITIES WERE CONDUCTED IN ACCORDANCE WITH ALL
14 APPLICABLE REQUIREMENTS;

15 (B) THE OPERATOR HAS SATISFACTORILY COMPLETED BACKFILLING,
16 REGRADING AND DRAINAGE CONTROL IN ACCORDANCE WITH THE APPROVED
17 RECLAMATION PLAN;

18 (C) THE OPERATOR HAS PROPERLY IMPLEMENTED EACH STEP OF THE
19 APPROVED ABATEMENT PLAN;

20 (D) THE OPERATOR HAS NOT CAUSED THE BASELINE POLLUTION LOAD
21 TO BE EXCEEDED [FOR] AT ANY TIME OVER A PERIOD OF A MINIMUM OF
22 SIX (6) MONTHS PRIOR TO THE SUBMITTAL OF A REQUEST FOR BOND
23 RELEASE AND UNTIL THE BOND RELEASE IS APPROVED AS SHOWN BY ALL
24 GROUND AND SURFACE WATER MONITORING; AND

25 (E) THE OPERATOR HAS NOT CAUSED OR CONTRIBUTED TO ANY GROUND
26 OR SURFACE WATER POLLUTION BY REAFFECTING OR MINING THE
27 POLLUTION ABATEMENT AREA.

28 (2) [UP TO AN ADDITIONAL THIRTY-FIVE PER CENT OF THE AMOUNT
29 OF BOND] AN ADDITIONAL AMOUNT OF BOND BUT RETAINING AN AMOUNT
30 SUFFICIENT TO COVER THE COST TO THE COMMONWEALTH OF

1 REESTABLISHING VEGETATION IF COMPLETED BY A THIRD PARTY IF THE
2 OPERATOR DEMONSTRATES THAT:

3 (A) THE OPERATOR HAS REPLACED TOPSOIL, COMPLETED FINAL
4 GRADING, PLANTING AND ACHIEVED SUCCESSFUL REVEGETATION IN
5 ACCORDANCE WITH THE APPROVED RECLAMATION PLAN;

6 (B) THE OPERATOR HAS NOT CAUSED OR CONTRIBUTED TO ANY GROUND
7 OR SURFACE WATER POLLUTION BY REAFFECTING OR MINING THE
8 POLLUTION ABATEMENT AREA; AND

9 (C) THE OPERATOR HAS ACHIEVED THE ACTUAL IMPROVEMENT OF THE
10 BASELINE POLLUTION LOAD DESCRIBED IN THE ABATEMENT PLAN AND
11 SHOWN BY ALL GROUND AND SURFACE WATER MONITORING FOR THE PERIOD
12 OF TIME PROVIDED IN THE ABATEMENT PLAN, OR HAS ACHIEVED ALL OF
13 THE FOLLOWING: (I) AT A MINIMUM, HAS NOT CAUSED THE BASELINE
14 POLLUTION LOAD TO BE EXCEEDED AS SHOWN BY ALL GROUND AND SURFACE
15 WATER MONITORING FOR A PERIOD OF TWELVE (12) MONTHS [FROM THE
16 DATE OF INITIAL BOND RELEASE PURSUANT TO CLAUSE (1)] PRIOR TO
17 THE DATE OF APPLICATION FOR BOND RELEASE AND UNTIL THE BOND
18 RELEASE IS APPROVED PURSUANT TO CLAUSE (2) OR FROM THE DATE OF
19 DISCONTINUANCE OF TREATMENT PURSUANT TO SUBSECTION (G); (II)
20 CONDUCTED ALL MEASURES PROVIDED IN THE ABATEMENT PLAN AND ANY
21 ADDITIONAL MEASURES SPECIFIED BY THE DEPARTMENT IN WRITING AT
22 THE TIME OF INITIAL BOND RELEASE PURSUANT TO CLAUSE (1); (III)
23 CAUSED AESTHETIC OR OTHER ENVIRONMENTAL IMPROVEMENTS OR THE
24 ELIMINATION OF PUBLIC HEALTH AND SAFETY PROBLEMS BY REMINING AND
25 REAFFECTING THE POLLUTION ABATEMENT AREA; AND (IV) STABILIZED
26 THE POLLUTION ABATEMENT AREA.

27 (3) THE REMAINING AMOUNT OF BOND IF THE OPERATOR
28 DEMONSTRATES THAT:

29 (A) THE OPERATOR HAS NOT CAUSED THE BASELINE POLLUTION LOAD
30 TO BE EXCEEDED FROM THE TIME OF BOND RELEASE PURSUANT TO CLAUSE

1 (2) OR, IF TREATMENT HAS BEEN INITIATED ANY TIME AFTER SUCH
2 RELEASE, FOR A PERIOD OF FIVE (5) YEARS FROM THE DATE OF
3 DISCONTINUANCE OF TREATMENT PURSUANT TO SUBSECTION (G); AND
4 (B) THE APPLICABLE LIABILITY PERIOD SECTION 4(D) OF THIS ACT
5 HAS EXPIRED.

6 * * *

7 SECTION 5. SECTIONS 4.8, 4.12, ~~4.13 AND 18(A.1), (A.2)(1)~~ <—
8 ~~AND (A.4)~~ AND 4.13 OF THE ACT, ADDED DECEMBER 18, 1992 <—
9 (P.L.1384, NO.173), ARE AMENDED TO READ:

10 SECTION 4.8. GOVERNMENT-FINANCED RECLAMATION CONTRACTS
11 AUTHORIZING INCIDENTAL AND NECESSARY EXTRACTION OF COAL OR
12 AUTHORIZING REMOVAL OF COAL REFUSE.--(A) NO PERSON MAY ENGAGE
13 IN [COAL] EXTRACTION OF COAL OR IN REMOVAL OF COAL REFUSE
14 PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION CONTRACT WITHOUT A
15 VALID SURFACE MINING PERMIT ISSUED PURSUANT TO THIS ACT UNLESS
16 SUCH PERSON AFFIRMATIVELY DEMONSTRATES THAT HE IS ELIGIBLE TO
17 SECURE SPECIAL AUTHORIZATION PURSUANT TO THIS SECTION TO ENGAGE
18 IN A GOVERNMENT-FINANCED RECLAMATION CONTRACT AUTHORIZING
19 INCIDENTAL AND NECESSARY [COAL] EXTRACTION OF COAL OR
20 AUTHORIZING REMOVAL OF COAL REFUSE. THE DEPARTMENT SHALL
21 DETERMINE ELIGIBILITY BEFORE ENTERING INTO A GOVERNMENT-FINANCED
22 RECLAMATION CONTRACT AUTHORIZING INCIDENTAL AND NECESSARY [COAL]
23 EXTRACTION OF COAL OR AUTHORIZING REMOVAL OF COAL REFUSE. THE
24 DEPARTMENT MAY PROVIDE THE SPECIAL AUTHORIZATION AS PART OF THE
25 GOVERNMENT-FINANCED RECLAMATION CONTRACT: PROVIDED, THAT THE
26 CONTRACT CONTAINS AND DOES NOT VIOLATE THE REQUIREMENTS OF THIS
27 SECTION. THE DEPARTMENT SHALL NOT BE REQUIRED TO GRANT A SPECIAL
28 AUTHORIZATION TO ANY ELIGIBLE PERSON. THE DEPARTMENT MAY,
29 HOWEVER, IN ITS DISCRETION, GRANT A SPECIAL AUTHORIZATION
30 ALLOWING INCIDENTAL AND NECESSARY [COAL] EXTRACTION OF COAL OR

1 ALLOWING REMOVAL OF COAL REFUSE PURSUANT TO A GOVERNMENT-
2 FINANCED RECLAMATION CONTRACT IN ACCORDANCE WITH THIS SECTION.

3 (B) ONLY ELIGIBLE PERSONS MAY SECURE SPECIAL AUTHORIZATION
4 TO ENGAGE IN INCIDENTAL AND NECESSARY [COAL] EXTRACTION OF COAL
5 OR TO ENGAGE IN REMOVAL OF COAL REFUSE PURSUANT TO A GOVERNMENT-
6 FINANCED RECLAMATION CONTRACT. A PERSON IS ELIGIBLE TO SECURE A
7 SPECIAL AUTHORIZATION IF HE CAN DEMONSTRATE, AT A MINIMUM, TO
8 THE DEPARTMENT'S SATISFACTION THAT:

9 (1) THE CONTRACTOR OR ANY RELATED PARTY OR SUBCONTRACTOR
10 WHICH WILL ACT UNDER ITS DIRECTION HAS NO HISTORY OF PAST OR
11 CONTINUING VIOLATIONS WHICH SHOW THE CONTRACTOR'S LACK OF
12 ABILITY OR INTENTION TO COMPLY WITH THE ACTS OR THE RULES AND
13 REGULATIONS PROMULGATED THEREUNDER, WHETHER OR NOT SUCH
14 VIOLATION RELATES TO ANY ADJUDICATED PROCEEDING, AGREEMENT,
15 CONSENT ORDER OR DECREE, OR WHICH RESULTED IN A CEASE ORDER OR
16 CIVIL PENALTY ASSESSMENT. FOR THE PURPOSES OF THIS SECTION, THE
17 TERM "RELATED PARTY" SHALL MEAN ANY PARTNER, ASSOCIATE, OFFICER,
18 PARENT CORPORATION, AFFILIATE OR PERSON BY OR UNDER COMMON
19 CONTROL WITH THE CONTRACTOR.

20 (2) THE PERSON HAS SUBMITTED PROOF THAT ANY VIOLATION
21 RELATED TO THE MINING OF COAL BY THE CONTRACTOR OR ANY RELATED
22 PARTY OR SUBCONTRACTOR WHICH WILL ACT UNDER ITS DIRECTION OF ANY
23 OF THE ACTS, RULES, REGULATIONS, PERMITS OR LICENSES OF THE
24 DEPARTMENT HAS BEEN CORRECTED OR IS IN THE PROCESS OF BEING
25 CORRECTED TO THE SATISFACTION OF THE DEPARTMENT, WHETHER OR NOT
26 THE VIOLATION RELATES TO ANY ADJUDICATED PROCEEDING, AGREEMENT,
27 CONSENT ORDER OR DECREE OR WHICH RESULTED IN A CEASE ORDER OR
28 CIVIL PENALTY ASSESSMENT. FOR PURPOSES OF THIS SECTION, THE TERM
29 "RELATED PARTY" SHALL MEAN ANY PARTNER, ASSOCIATE, OFFICER,
30 PARENT CORPORATION, SUBSIDIARY CORPORATION, AFFILIATE OR PERSON

1 BY OR UNDER COMMON CONTROL WITH THE CONTRACTOR.

2 (3) THE PERSON HAS SUBMITTED PROOF THAT ANY VIOLATION BY THE
3 CONTRACTOR OR BY ANY PERSON OWNED OR CONTROLLED BY THE
4 CONTRACTOR OR BY A SUBCONTRACTOR WHICH ACTS UNDER ITS DIRECTION
5 OF ANY LAW, RULE OR REGULATION OF THE UNITED STATES OR ANY STATE
6 PERTAINING TO AIR OR WATER POLLUTION HAS BEEN CORRECTED OR IS IN
7 THE PROCESS OF BEING SATISFACTORILY CORRECTED.

8 (4) THE PERSON OR ANY RELATED PARTY OR SUBCONTRACTOR WHICH
9 WILL ACT UNDER THE DIRECTION OF THE CONTRACTOR HAS NO
10 OUTSTANDING UNPAID CIVIL PENALTIES WHICH HAVE BEEN ASSESSED FOR
11 VIOLATIONS OF EITHER THIS ACT OR THE ACT OF JUNE 22, 1937
12 (P.L.1987, NO.394), KNOWN AS "THE CLEAN STREAMS LAW," IN
13 CONNECTION WITH EITHER SURFACE MINING OR RECLAMATION ACTIVITIES.

14 (5) THE PERSON OR ANY RELATED PARTY OR SUBCONTRACTOR WHICH
15 WILL ACT UNDER THE DIRECTION OF THE CONTRACTOR HAS NOT BEEN
16 CONVICTED OF A MISDEMEANOR OR FELONY UNDER THIS ACT OR THE ACTS
17 SET FORTH IN SUBSECTION (E) AND HAS NOT HAD ANY BONDS DECLARED
18 FORFEITED BY THE DEPARTMENT.

19 (C) ANY ELIGIBLE PERSON WHO PROPOSES TO ENGAGE IN [COAL]
20 EXTRACTION OF COAL OR IN REMOVAL OF COAL REFUSE PURSUANT TO A
21 GOVERNMENT-FINANCED RECLAMATION CONTRACT MAY REQUEST AND SECURE
22 SPECIAL AUTHORIZATION FROM THE DEPARTMENT TO CONDUCT SUCH
23 ACTIVITIES UNDER THIS SECTION. THE DEPARTMENT MAY ISSUE THE
24 SPECIAL AUTHORIZATION AS PART OF THE GOVERNMENT-FINANCED
25 RECLAMATION CONTRACT: PROVIDED, THAT THE CONTRACT CONTAINS AND
26 DOES NOT VIOLATE THE REQUIREMENTS OF THIS SECTION. A SPECIAL
27 AUTHORIZATION CAN ONLY BE OBTAINED IF A CLAUSE IS INSERTED IN A
28 GOVERNMENT-FINANCED RECLAMATION CONTRACT AUTHORIZING SUCH
29 EXTRACTION OF COAL OR AUTHORIZING REMOVAL OF COAL REFUSE AND THE
30 PERSON REQUESTING SUCH AUTHORIZATION HAS AFFIRMATIVELY

1 DEMONSTRATED TO THE DEPARTMENT'S SATISFACTION THAT HE HAS
2 SATISFIED THE PROVISIONS OF THIS SECTION. A SPECIAL
3 AUTHORIZATION SHALL ONLY BE GRANTED BY THE DEPARTMENT PRIOR TO
4 THE COMMENCEMENT OF [COAL] EXTRACTION OF COAL OR COMMENCEMENT OF
5 REMOVAL OF COAL REFUSE ON A PROJECT AREA. IN ORDER TO BE
6 CONSIDERED FOR A SPECIAL AUTHORIZATION BY THE DEPARTMENT, AN
7 ELIGIBLE PERSON MUST DEMONSTRATE AT A MINIMUM THAT:

8 (1) THE PRIMARY PURPOSE OF THE OPERATION TO BE UNDERTAKEN IS
9 THE RECLAMATION OF ABANDONED MINE LANDS.

10 (2) THE EXTRACTION OF COAL WILL BE INCIDENTAL AND NECESSARY,
11 OR THE REMOVAL OF COAL REFUSE WILL BE REQUIRED, TO ACCOMPLISH
12 THE RECLAMATION OF ABANDONED MINE LANDS PURSUANT TO A
13 GOVERNMENT-FINANCED RECLAMATION CONTRACT.

14 (3) INCIDENTAL AND NECESSARY [COAL] EXTRACTION OF COAL OR IN
15 REMOVAL OF COAL REFUSE WILL BE CONFINED TO THE PROJECT AREA
16 BEING RECLAIMED.

17 (4) ALL [COAL] EXTRACTION OF COAL OR IN REMOVAL OF COAL
18 REFUSE AND RECLAMATION ACTIVITY UNDERTAKEN PURSUANT TO A
19 GOVERNMENT-FINANCED RECLAMATION PROJECT WILL BE ACCOMPLISHED
20 PURSUANT TO:

21 (I) THE APPLICABLE ENVIRONMENTAL PROTECTION PERFORMANCE
22 STANDARDS PROMULGATED IN THE RULES AND REGULATIONS RELATING TO
23 SURFACE COAL MINING LISTED IN THE GOVERNMENT-FINANCED
24 RECLAMATION CONTRACT; AND

25 (II) ADDITIONAL CONDITIONS INCLUDED IN THE GOVERNMENT-
26 FINANCED RECLAMATION CONTRACT BY THE DEPARTMENT.

27 (D) THE CONTRACTOR WILL PAY ANY APPLICABLE PER-TON
28 RECLAMATION FEE ESTABLISHED BY THE UNITED STATES OFFICE OF
29 SURFACE MINING RECLAMATION AND ENFORCEMENT (OSMRE) FOR EACH TON
30 OF COAL EXTRACTED PURSUANT TO A GOVERNMENT-FINANCED RECLAMATION

1 PROJECT.

2 (E) PRIOR TO COMMENCING [COAL] EXTRACTION OF COAL OR
3 COMMENCEMENT OF REMOVAL OF COAL REFUSE PURSUANT TO A GOVERNMENT-
4 FINANCED RECLAMATION PROJECT, THE CONTRACTOR SHALL FILE WITH THE
5 DEPARTMENT A PERFORMANCE BOND PAYABLE TO THE COMMONWEALTH AND
6 CONDITIONED UPON THE CONTRACTOR'S PERFORMANCE OF ALL THE
7 REQUIREMENTS OF THE GOVERNMENT-FINANCED RECLAMATION CONTRACT,
8 THIS ACT, "THE CLEAN STREAMS LAW," THE ACT OF JANUARY 8, 1960
9 (1959 P.L.2119, NO.787), KNOWN AS THE "AIR POLLUTION CONTROL
10 ACT," THE ACT OF SEPTEMBER 24, 1968 (P.L.1040, NO.318), KNOWN AS
11 THE "COAL REFUSE DISPOSAL CONTROL ACT," WHERE APPLICABLE, THE
12 ACT OF NOVEMBER 26, 1978 (P.L.1375, NO.325), KNOWN AS THE "DAM
13 SAFETY AND ENCROACHMENTS ACT," AND, WHERE APPLICABLE, THE ACT OF
14 JULY 7, 1980 (P.L.380, NO.97), KNOWN AS THE "SOLID WASTE
15 MANAGEMENT ACT." AN OPERATOR POSTING A BOND SUFFICIENT TO COMPLY
16 WITH THIS SECTION SHALL NOT BE REQUIRED TO POST A SEPARATE BOND
17 FOR THE PERMITTED AREA UNDER EACH OF THE ACTS HEREINABOVE
18 ENUMERATED. FOR GOVERNMENT-FINANCED RECLAMATION CONTRACTS OTHER
19 THAN A NO-COST RECLAMATION CONTRACT, THE CRITERIA FOR
20 ESTABLISHING THE AMOUNT OF THE PERFORMANCE BOND SHALL BE THE
21 ENGINEERING ESTIMATE, DETERMINED BY THE DEPARTMENT, OF MEETING
22 THE ENVIRONMENTAL OBLIGATIONS ENUMERATED ABOVE[: PROVIDED,
23 HOWEVER, THAT]. THE PERFORMANCE BOND WHICH IS PROVIDED BY THE
24 CONTRACTOR UNDER A CONTRACT OTHER THAN A GOVERNMENT-FINANCED
25 RECLAMATION CONTRACT SHALL BE DEEMED TO SATISFY THE REQUIREMENTS
26 OF THIS SECTION PROVIDED THAT THE AMOUNT OF THE BOND IS
27 EQUIVALENT TO OR GREATER THAN THE AMOUNT DETERMINED BY THE
28 CRITERIA SET FORTH IN THIS SUBSECTION. FOR NO-COST RECLAMATION
29 PROJECTS IN WHICH THE RECLAMATION SCHEDULE IS SHORTER THAN TWO
30 (2) YEARS THE BOND AMOUNT SHALL BE A PER ACRE FEE, WHICH IS

1 EQUAL TO THE DEPARTMENT'S AVERAGE PER ACRE COST TO RECLAIM
2 ABANDONED MINE LANDS; PROVIDED, HOWEVER, FOR COAL REFUSE REMOVAL
3 OPERATIONS, THE BOND AMOUNT SHALL ONLY APPLY TO EACH ACRE
4 AFFECTED BY THE COAL REFUSE REMOVAL OPERATIONS. FOR LONG-TERM,
5 NO-COST RECLAMATION PROJECTS IN WHICH THE RECLAMATION SCHEDULE
6 EXTENDS BEYOND TWO (2) YEARS, THE DEPARTMENT MAY ESTABLISH A
7 LESSER BOND AMOUNT [FOR LONG-TERM, NO-COST RECLAMATION PROJECTS
8 IN WHICH THE RECLAMATION SCHEDULE EXTENDS BEYOND TWO (2) YEARS].
9 IN THESE CONTRACTS, THE DEPARTMENT MAY IN THE ALTERNATIVE
10 ESTABLISH A BOND AMOUNT WHICH REFLECTS THE COST OF THE
11 PROPORTIONATE AMOUNT OF RECLAMATION WHICH WILL OCCUR DURING A
12 PERIOD SPECIFIED. [THE PERFORMANCE BOND WHICH IS PROVIDED BY THE
13 CONTRACTOR UNDER A FEDERALLY FINANCED OR STATE-FINANCED
14 RECLAMATION CONTRACT SHALL BE DEEMED TO SATISFY THE REQUIREMENTS
15 OF THIS SECTION: PROVIDED, THAT THE AMOUNT OF SUCH BOND IS
16 EQUIVALENT TO OR GREATER THAN THE AMOUNT DETERMINED BY THE
17 CRITERIA SET FORTH IN THIS SUBSECTION.]

18 (F) THE DEPARTMENT SHALL INSERT IN GOVERNMENT-FINANCED
19 RECLAMATION CONTRACTS CONDITIONS WHICH PROHIBIT COAL EXTRACTION
20 PURSUANT TO GOVERNMENT-FINANCED RECLAMATION IN AREAS SUBJECT TO
21 THE RESTRICTIONS OF SECTION 4.2 EXCEPT AS SURFACE COAL MINING IS
22 ALLOWED PURSUANT TO THAT SECTION.

23 (G) ANY PERSON ENGAGING IN [COAL] EXTRACTION OF COAL
24 PURSUANT TO A NO-COST GOVERNMENT-FINANCED RECLAMATION CONTRACT
25 AUTHORIZED UNDER THIS SECTION WHO AFFECTS A PUBLIC OR PRIVATE
26 WATER SUPPLY BY CONTAMINATION OR DIMINUTION SHALL RESTORE OR
27 REPLACE THE AFFECTED SUPPLY WITH AN ALTERNATE SUPPLY ADEQUATE IN
28 QUANTITY AND QUALITY FOR THE PURPOSES SERVED.

29 (H) EXTRACTION OF COAL OR REMOVAL OF COAL REFUSE PURSUANT TO
30 A GOVERNMENT-FINANCED RECLAMATION CONTRACT CANNOT BE INITIATED

1 WITHOUT THE CONSENT OF THE SURFACE OWNER FOR RIGHT OF ENTRY AND
2 CONSENT OF THE MINERAL OWNER FOR EXTRACTION OF COAL. NOTHING IN
3 THIS SECTION SHALL PROHIBIT THE DEPARTMENT'S ENTRY ONTO LAND
4 WHERE SUCH ENTRY IS NECESSARY IN THE EXERCISE OF POLICE POWERS.

5 Section 4.12. [Payment in Lieu of Bond.--(a) The
6 Environmental Quality Board shall publish proposed regulations
7 within one hundred eighty (180) days of the effective date of
8 this act which shall constitute an interim program allowing
9 certain mine operators proposing to remine abandoned mine lands
10 to be eligible to make payments to the department in lieu of the
11 bond required by this act. The department shall review operator
12 requests to participate in the program on a case-by-case basis
13 and shall allow operator participation in the payment-in-lieu-
14 of-bond program only when the payment-in-lieu-of-bond special
15 account in the Remining Environmental Enhancement Fund is equal
16 to or exceeds the total reclamation obligation of the
17 Commonwealth which would be incurred under the payment-in-lieu-
18 of-bond program if all participants failed to complete their
19 reclamation obligations.] Financial Guarantees to Insure
20 Reclamation; Payments to the Remining Financial Assurance
21 Fund.--(a) The department is authorized under this section to
22 establish programs to provide financial guarantees TO INSURE <—
23 RECLAMATION for qualified operators who reclaim abandoned mine
24 lands through remining and to assess and collect payments from
25 qualified operators who choose to purchase such financial
26 guarantees. The financial guarantees are to be supported by a
27 special account in the Remining Financial Assurance Fund. The
28 department shall determine the total amount of financial
29 guarantees that can be supported by the special account based on
30 loss reserves established by the application of the historical

1 rate of mine operator bond forfeitures plus a reasonable margin
2 of safety. The department shall establish underwriting methods
3 which are in keeping with the intent of this section. In
4 promulgating proposed and final regulations, the Environmental
5 Quality Board shall consider various factors, including, but not
6 limited to, site eligibility, such as environmental hazards,
7 safety hazards and the availability of coal reserves and
8 operator eligibility, such as financial tests and criteria for
9 participation in the program, including an operator's operating
10 ratio, long-term financial stability, denial of coverage by
11 surety bond companies, financial ratio, compliance history,
12 length of time in business and any other factors indicative of
13 an operator's ability to complete reclamation and payments into
14 the fund under the program. [Payments] REQUIREMENTS FOR MAKING <—
15 PAYMENTS into the fund shall be [equal to at least fifty dollars <—
16 (\$50) per acre per year in the interim program and may be
17 modified by final] ESTABLISHED IN regulations promulgated by the <—
18 Environmental Quality Board in order to assure the financial
19 stability of the [payment-in-lieu-of-bond] financial guarantees
20 program and to provide adequate funds in case of forfeiture but
21 will require no collateralization.

22 (b) Premium payments will be deposited into the Remining
23 [Environmental Enhancement] FINANCIAL ASSURANCE Fund and will be <—
24 reserved in a special account to be used in case of operator
25 forfeiture. When the special account becomes actuarially sound,
26 excess payments may be used pursuant to section 18(a.1) and
27 (a.2).

28 (c) Payments under this subsection shall excuse the operator
29 from the requirement to post a bond under this act with respect
30 to the remining permit for which payment is made.

1 (d) The [payment-in-lieu-of-bond] financial guarantees
2 program may be discontinued immediately and notice published in
3 the Pennsylvania Bulletin if twenty-five per cent or greater of
4 the outstanding bond obligation for the [payment-in-lieu-of-
5 bond] financial guarantees program is subject to forfeiture. The
6 special account established in the Remining [Environmental <—
7 Enhancement] FINANCIAL ASSURANCE Fund for the [payment-in-lieu- <—
8 of-bond] financial guarantees program shall be the sole source
9 of funds underwriting the [payment-in-lieu-of-bond] financial
10 guarantees program, and the Commonwealth shall not be obligated
11 to expend any funds beyond the amount of the special account.

12 Section 4.13. Reclamation Bond Credits.--(a) A bond credit,
13 financially backed by a special account for that purpose
14 established in section 18(a.2), in the form of a bond letter,
15 may be issued by the department to a licensed mine operator for
16 voluntary reclamation of abandoned mine lands as approved by the
17 department. The department shall in determining whether or not
18 to issue a bond credit:

19 (1) Where a coal mining activity permit is not required,
20 require a licensed mine operator to submit a proposal to the
21 department to reclaim a specific area, together with the
22 estimated cost of the reclamation based on current bonding
23 rates.

24 (2) Review the proposal and find in writing that the
25 operator's estimated cost of reclamation is accurate and that
26 the proposed location of the project is acceptable to the
27 department.

28 (3) Not issue any bond credits to an operator if any one or
29 more of the following apply:

30 (i) the operator has not fully completed reclamation of the

1 site to the standards set forth in the approved reclamation plan
2 for the site;

3 (ii) the operator, any related party or any person who is
4 directed or controlled by the operator or directs or controls
5 the operator bears any reclamation responsibility under Federal
6 or State law for an area proposed to be reclaimed, including,
7 but not limited to, obligations pursuant to a mining permit,
8 reclamation pursuant to section 18 or reclamation pursuant to
9 any contract with the department, including abandoned mine land
10 reclamation contracts; or

11 (iii) any other requirement of this section has not been
12 met.

13 (b) An operator may apply bond credits which have been
14 issued to him by the department against any reclamation bond
15 obligation selected by the operator on unmined or previously
16 mined areas except as specified in this section.

17 (c) The department may approve utilization of a bond credit
18 in combination with conventional collateral or surety
19 agreements.

20 (d) The department may require as a condition of granting
21 the bond credit that the operator post a contract performance
22 bond to insure that the operator completes the reclamation
23 proposed to result in the bond credit. The performance bond is
24 to be at least in an amount necessary to ensure reclamation of
25 those areas proposed to be reclaimed and shall be released by
26 the department upon completion of the work described in the
27 approved reclamation plan.

28 (e) Bond credits are [not] transferable[.] to another
29 qualified operator approved by the department.

30 (f) The special account established in the Remining

1 Financial Assurance Fund for the bond credit program shall be
2 the sole source of funds underwriting the bond credit program,
3 and the Commonwealth shall not be obligated to expend any funds
4 beyond the amount of the special account.

5 (g) Bond credits earned by a qualified operator may be used
6 on a single permit or on multiple permits, whichever the
7 operator chooses. A bond credit may be used two times; however,
8 the bond credit cannot be used a second time until the
9 department releases the bond credit from its first use. Any bond
10 credit that is not used within five years from the date that it
11 is earned or released will expire, including bond credits that
12 have been transferred.

13 SECTION 6. SECTION 18 HEADING, (A.1), (A.2)(1) AND (A.4) OF <—
14 THE ACT, AMENDED OR ADDED DECEMBER 18, 1992 (P.L.1384, NO.173)
15 ARE AMENDED AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO
16 READ:

17 SECTION 18. SURFACE MINING CONSERVATION AND RECLAMATION <—
18 FUND; REMINING ENVIRONMENTAL ENHANCEMENT FUND; REMINING
19 FINANCIAL ASSURANCE FUND; DEPARTMENT AUTHORITY FOR AWARDING OF <—
20 GRANTS.--* * *

21 (A.1) (1) THERE IS HEREBY CREATED A SPECIAL FUND IN THE
22 STATE TREASURY TO BE KNOWN AS THE "REMINING ENVIRONMENTAL
23 ENHANCEMENT FUND." THE SECRETARY OF ENVIRONMENTAL RESOURCES IS
24 AUTHORIZED TO TRANSFER AT THE COMMENCEMENT OF EACH FISCAL YEAR A
25 TOTAL OF ONE MILLION DOLLARS (\$1,000,000) INTO THE REMINING
26 ENVIRONMENTAL ENHANCEMENT FUND AGGREGATED FROM THE FOLLOWING
27 SOURCES:

28 (I) LICENSE AND PERMIT FEES EXCEPT RECLAMATION FEES PAID TO
29 THE DEPARTMENT UNDER THIS ACT PURSUANT TO THE DEPARTMENT'S
30 ALTERNATE BONDING PROGRAM.

(II) FINES AND PENALTIES COLLECTED UNDER THIS ACT.

(III) FEES, FINES AND PENALTIES COLLECTED PURSUANT TO SECTION 315 OF "THE CLEAN STREAMS LAW," INCLUDING FINES AND PENALTIES FROM MINING OPERATIONS COLLECTED UNDER SECTION 605 OR OTHER PROVISIONS OF THAT ACT.

(IV) FEES, FINES AND PENALTIES COLLECTED PURSUANT TO THE ACT OF SEPTEMBER 24, 1968 (P.L.1040, NO.318), KNOWN AS THE "COAL REFUSE DISPOSAL CONTROL ACT."

(V) FEES, FINES AND PENALTIES COLLECTED PURSUANT TO THE ACT OF APRIL 27, 1966 (1ST SP.SESS., P.L.31, NO.1), KNOWN AS "THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT," NOT INCLUDING FUNDS RECEIVED PURSUANT TO SECTION 6(A) OF THAT ACT.

(2) ALL MONEYS PLACED IN THE REMINING [RECLAMATION] ENVIRONMENTAL ENHANCEMENT FUND AND THE INTEREST IT ACCRUES ARE HEREBY APPROPRIATED UPON AUTHORIZATION BY THE GOVERNOR TO THE DEPARTMENT FOR THE COSTS OF OPERATING A REMINING AND RECLAMATION INCENTIVE PROGRAM, INCLUDING DESIGNATING AREAS SUITABLE FOR RECLAMATION BY REMINING AND ESTABLISHING AND OPERATING A REMINING OPERATOR'S ASSISTANCE PROGRAM, BUT NOT INCLUDING A BOND CREDIT OR [PAYMENT-IN-LIEU-OF-BOND] FINANCIAL GUARANTEES PROGRAM.

(A.2) (1) THERE IS HEREBY CREATED A SPECIAL FUND IN THE STATE TREASURY TO BE KNOWN AS THE "REMINING FINANCIAL ASSURANCE FUND." THE GOVERNOR IS AUTHORIZED TO TRANSFER UP TO FIVE MILLION DOLLARS (\$5,000,000) FROM THE ALLOTMENT SET FORTH IN SECTION 16(A)(1) OF THE ACT OF JANUARY 19, 1968 (1967 P.L.996, NO.443), KNOWN AS "THE LAND AND WATER CONSERVATION AND RECLAMATION ACT," TO THE REMINING FINANCIAL ASSURANCE FUND FOR THE PURPOSES OF THE REMINING FINANCIAL ASSURANCE FUND. ALL MONEYS PLACED IN THE REMINING FINANCIAL ASSURANCE FUND ARE HEREBY APPROPRIATED UPON

1 AUTHORIZATION BY THE GOVERNOR TO THE DEPARTMENT FOR THE PURPOSE
2 OF:

3 (I) PROVIDING FINANCIAL ASSURANCE FOR THE RECLAMATION BOND
4 CREDIT PROGRAM SET FORTH IN SECTION 4.13.

5 (II) PROVIDING FINANCIAL ASSURANCE FOR THE [PAYMENT-IN-LIEU-
6 OF-BOND] FINANCIAL GUARANTEES PROGRAM SET FORTH IN SECTION 4.12.
7 INTEREST WHICH ACCRUES FROM THE REMINING FINANCIAL ASSURANCE
8 FUND SHALL BE TRANSFERRED INTO THE LAND AND WATER DEVELOPMENT
9 SINKING FUND ESTABLISHED IN SECTION 10 OF "THE LAND AND WATER
10 CONSERVATION AND RECLAMATION ACT" AND SHALL BE USED FOR THE
11 PURPOSES ESTABLISHED THEREIN.

12 * * *

13 (A.4) PRIORITY FOR PARTICIPATION IN THE REMINING
14 ENVIRONMENTAL ENHANCEMENT FUND AND THE REMINING FINANCIAL
15 ASSURANCE FUND SHALL BE GIVEN TO LICENSED MINE OPERATORS
16 [PROPOSED] PROPOSING REMINING WITHIN AREAS DESIGNATED SUITABLE
17 FOR RECLAMATION BY REMINING.

18 * * *

19 ~~(J) THE DEPARTMENT MAY, UPON WRITTEN APPLICATION, AWARD~~ <—
20 ~~GRANTS FROM THE SURFACE MINING CONSERVATION AND RECLAMATION~~
21 ~~FUND, FROM FUNDS THE DEPARTMENT RECEIVES FROM THE UNITED STATES~~
22 ~~OR FROM ANY OTHER FUND AVAILABLE FOR APPROVED ABANDONED MINE~~
23 ~~PURPOSES AUTHORIZED BY THIS SUBSECTION. THE DEPARTMENT MAY~~
24 ~~COOPERATE WITH AND MAKE GRANTS TO MUNICIPALITIES, MUNICIPAL~~
25 ~~AUTHORITIES AND APPROPRIATE NONPROFIT ORGANIZATIONS. THE~~
26 ~~PURPOSES OF THE GRANTS SHALL BE CONSISTENT WITH ALL APPLICABLE~~
27 ~~FEDERAL AND STATE REQUIREMENTS RELATED TO THE SOURCE OF THE~~
28 ~~FUNDS. A GRANT AWARDED UNDER THIS SUBSECTION SHALL BE SUBJECT TO~~
29 ~~SUCH TERMS AND CONDITIONS ESTABLISHED BY THE DEPARTMENT.~~

30 (J) THE DEPARTMENT MAY, UPON WRITTEN APPLICATION, AWARD

1 GRANTS TO MUNICIPALITIES, MUNICIPAL AUTHORITIES AND APPROPRIATE
2 NONPROFIT ORGANIZATIONS FROM THE SURFACE MINING CONSERVATION AND
3 RECLAMATION FUND AND FROM FUNDS THE DEPARTMENT RECEIVES FROM THE
4 UNITED STATES FOR APPROVED ABANDONED MINE PURPOSES AUTHORIZED BY
5 THIS SUBSECTION. THE PURPOSES OF THE GRANTS SHALL BE CONSISTENT
6 WITH ALL APPLICABLE FEDERAL AND STATE REQUIREMENTS RELATED TO
7 THE SOURCE OF THE FUNDS. A GRANT AWARDED UNDER THIS SUBSECTION
8 SHALL BE SUBJECT TO SUCH TERMS AND CONDITIONS AS ESTABLISHED BY
9 THE DEPARTMENT.

10 Section ~~2-6~~ 7. This act shall take effect in 60 days.

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