

heights deemed best to avoid or minimize danger of subsidence; and

(4) Pay for any operating and maintenance costs of such pumping as shall be deemed necessary to maintain water levels to avoid or minimize danger of subsidence.

Under no circumstances may any funds be used the object of which or as a result of which any mining operator or company will be relieved of his or its pumping obligations or any part thereof.

The aforesaid determination and action taken thereby may not in any way be construed as relieving any party of its obligations or responsibilities as to the disposition of mine waters.

Section 2. This act shall take effect immediately.

APPROVED—The 19th day of January, A. D. 1968.

RAYMOND P. SHAFER

No. 446

AN ACT

HB 1446

Amending the act of May 31, 1945 (P. L. 1198), entitled "An act providing for the conservation and improvement of land affected in connection with the mining of bituminous coal by the open pit mining method; regulating such mining; and providing penalties," providing for mine conservation inspectors in place of mine inspectors and defining their qualifications and enforcement powers and duties, providing for appeals from certain actions of such inspectors and making editorial changes.

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

Section 1. Section 3, act of May 31, 1945 (P. L. 1198), known as the "Bituminous Coal Open Pit Mining Conservation Act," amended May 23, 1949 (P. L. 1730) and September 2, 1961 (P. L. 1210), is amended to read:

Section 3. Definitions.—The following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

"Open pit mining" shall mean the mining or recovery of bituminous coal by removing the strata or material which overlies or is above the coal deposit or seam in its natural condition.

"Pit" shall mean the place where bituminous coal is being mined by the open pit mining method.

“Operation” shall mean the pit [or pits] located upon a single tract of land or a continuous pit embracing or extending upon two or more contiguous tracts of land.

“Land” shall mean the surface of the land upon which open pit mining is conducted.

“Tract” shall mean a single parcel of land or two or more contiguous parcels of land with common ownership.

“Operator” shall mean a person, firm, corporation or partnership engaged in open pit mining, as a principal as distinguished from an agent or independent contractor, and, who is or becomes the owner of such coal as a result of such mining.

“Landowner” shall mean the person, firm, corporation or partnership, or the persons, firms, corporations, or partnerships in whom the legal title to the land is vested.

“Overburden” shall mean the strata or material overlying a bituminous coal deposit in its natural state and shall mean such material before or after its removal by open pit mining.

“Spoil pile” shall mean the overburden and reject coal as it is piled or deposited in open pit mining.

“Land affected” shall mean the land from which the overburden is removed and that occupied by the spoil piles.

“Abandoned” shall mean an operation where no coal has been produced or overburden removed for a period of one year, verified by monthly reports submitted to the department by the operator and by inspections made by mine conservation inspectors, as hereinafter constituted, unless an operator within thirty (30) days after receipt of notification by the secretary terming an operation abandoned submits sufficient evidence to the secretary that the operation is in fact not abandoned.

“Degree” when used in this act, shall mean from the horizontal and in each case shall be subject to a tolerance of five (5) degrees.

“Secretary” shall mean the Secretary of Mines and Mineral Industries of the Commonwealth of Pennsylvania.

“Department” shall mean the Department of Mines and Mineral Industries of the Commonwealth of Pennsylvania.

“Board” shall mean the Land Reclamation Board.

Section 2. Section 4.1 of the act amended September 2, 1961 (P. L. 1210), is amended to read:

Section 4.1. On or before the third day of each month, every operator of a coal stripping operation shall furnish the mine conservation inspector in whose district the operation is located, on a form provided by the department [of Mines and Mineral Industries], an accurate monthly report of coal produced, number of employes and days

worked, and also a report of all fatal and nonfatal accidents for the previous month. An annual report shall be furnished to the mine conservation inspector in whose district the operation is located on a form provided for that purpose not later than the twenty-fifth day of January each year for the preceding year.

Section 3. Subsection (a) of section 4.2 and section 4.3 of the act, amended July 16, 1963 (P. L. 238), are amended to read:

Section 4.2. (a) Except as otherwise provided hereunder, all coal stripping operations coming within the provisions of this act shall be under the exclusive jurisdiction of the department [of Mines and Mineral Industries] and shall be conducted in compliance with such reasonable rules and regulations as may be deemed necessary by the secretary [of Mines and Mineral Industries] for the health and safety of those persons engaged in the work. The secretary [of Mines and Mineral Industries] through the mine conservation inspectors shall

have the authority and power to enforce the provisions of this act and the rules and regulations promulgated thereunder by him.

* * *

Section 4.3. Any mine conservation inspector directed by the department [of Mines and Mineral Industries] shall have the right to enter upon and inspect all stripping operations for the purpose of determining conditions of safety and for compliance with the provisions of this act, and all rules and regulations promulgated pursuant thereto. Should an operator fail to comply with the requirements of this act, or any rules or regulations promulgated pursuant thereto, the mine conservation inspector shall report the matter to

the secretary who shall immediately notify the operator by registered mail of such failure. Unless the operator complies with the act, and such rules and regulations, within thirty (30) days from the receipt of such notice, the secretary may, after hearing and final determination, suspend the open pit mining operator's license of the operator and issue a cease and desist order requiring the operator to immediately cease open pit mining within this Commonwealth until such time as it is determined by the secretary that the operator is in full compliance. A mine conservation inspector shall have the authority to

order the immediate stopping of any operation that is started by an unlicensed operator, or without the operator thereof having first obtained a permit as required by this act, or in any case where safety regulations are being violated or where the public welfare or safety

calls for the immediate halt of the operation until corrective steps have been started by the operator to the satisfaction of the mine conservation inspector. Any operator who believes he is aggrieved by the action of the mine conservation inspector may immediately appeal

to the secretary, setting forth reasons why his operation should not be halted. The secretary shall determine when the operation shall continue.

Section 4. Section 4.4 of the act added May 10, 1956 (P. L. 1562), is amended to read:

Section 4.4. If an operator continues to operate beyond one year, the mine conservation inspector shall be furnished with a new map, at the end of each year of operation, on which is outlined the area affected and restored during the preceding year.

Section 5. Section 10 of the act amended July 16, 1963 (P. L. 238), is amended to read:

Section 10. Within six months after the operation is completed or abandoned, the operator shall backfill all pits in accordance with the plan previously approved by the secretary or by the [Land Reclamation] board. Such backfilling shall be terraced as previously described or shall begin at or beyond the top of the highwall and be sloped to the toe of the spoil bank at a maximum angle not to exceed the approximate original contour of the land with no depressions to accumulate water. An operator may, with the written approval of the landowner, except where leases in existence on [the effective date of this amending act] January 1, 1964 do not so provide or permit, propose alternative plans for reclamation wherein the land can be used for suitable purposes consistent with the exercise of the police power as set forth in section 1 of this act. Such plans are to be submitted to the [Land Reclamation] board, and if such plans are approved by the [Land Reclamation] board and complied with within the times herein prescribed for backfilling and planting, or such other times limits as may be agreed upon as being reasonable for carrying out such plans, the backfilling and planting requirements will be waived by the department. Whenever reasonable and practicable, the department shall require backfilling and planting as the open pit mining progresses. All backfilling shall be completed before necessary backfilling equipment is moved from the operation. Within three months after the backfilling is completed, the operator shall file with the department [of Mines and Mineral Industries] a completion report on a form prescribed and furnished by the secretary. If the operator or other person desires to conduct drift mining upon the premises or use the openings for haulageways or other lawful purposes, the operator may designate locations to be used for such purposes at which places it will not be necessary to backfill as herein provided for until such drift mining or other use is completed, during which time the bond on file for that portion of such operation shall not be released. That portion of such locations shall be described in the completion report and designated on the map attached thereto. When the backfilling and leveling on that portion of the entire area of land

affected by the operation for the previous years have been completed and reports filed by the mine conservation inspector certifying that it

has been done in the manner prescribed by law, the secretary shall release the bond which was filed for that portion of such operation in its full amount less one hundred dollars (\$100.00) per acre, which shall be retained by the secretary until such time as the planting is completed and certified by the [Land Reclamation] board as being done in a workmanlike manner, at which time the secretary shall release the bond in the remaining amount of one hundred dollars (\$100.00) per acre.

Section 6. The act is amended by adding after section 15.2, a new section to read:

Section 15.3. (a) The Governor shall commission and appoint mine land and water conservation inspectors from among persons holding valid unexpired certificates of qualification issued by the board under this act and each mine conservation inspector shall hold office during good behavior or until removed from office as herein provided. It shall be the duty of the secretary to assign the inspectors to their respective districts and the secretary shall also designate the place of abode of each inspector at a point as convenient as possible to the surface mining of his district.

(b) The qualifications for certification of a candidate for the office of mine conservation inspector shall be as follows: The candidate shall be a citizen of the Commonwealth of Pennsylvania, of temperate habits, of good repute as a man of personal integrity, in good physical condition, shall be between the ages of thirty and fifty-five years, shall have successfully passed the examination for mine conservation inspector provided herein, shall have had sufficient practical experience in surface mining and conservation in this Commonwealth, shall be evaluated by the board.

(c) The board shall enter into a contract with the State Civil Service Commission as provided in section 212 of the "Civil Service Act" of 1941 for the purpose of authorizing the Civil Service Commission to conduct examinations as needed for the position of mine conservation inspector. The Civil Service Commission shall, with the

cooperation and approval of the board, prepare examinations for mine conservation inspector from time to time and shall administer such examinations in accordance with the commission's regular procedure.

After the examination is completed and graded and a list prepared, the Civil Service Commission shall certify the entire list of successful candidates to the Governor and to the department. Appointments to the position of mine conservation inspector shall be made by the appointing authority from among the names on the certified list.

(d) Candidates for the office of mine conservation inspector who have submitted such proof as the board shall require that they are otherwise qualified as set forth herein shall be examined on and must give evidence of having such theoretical as well as practical knowledge and general intelligence respecting mining and conservation as will satisfy the examining board of their capability and fitness to perform the duties imposed upon mine conservation inspectors under this act. The principal portion of such examination shall be in writing but each applicant shall also undergo an oral examination. The questions and answers thereto in the oral examination shall be reported verbatim by an expert stenographer, or shall be mechanically recorded, and typewritten fully, or reproduced by some other method, to assist the examining board in the work of rating the qualifications of the candidates.

(e) The manuscripts and other papers of applicants for the office of mine conservation inspector and together with tally sheets and the correct solution of each question as prepared by the board, and the stenographer's report or other record of the oral examination for inspectors, shall be filed with the department for a period of time of not less than eight years.

(f) The names of all successful candidates who are properly quali-

fied under the provisions of this section to fill the office of mine conservation inspector shall be certified by the examining board to the Governor and to the department. A certificate of qualification shall be issued to each successful candidate by the secretary. A certificate so granted shall be valid for a period of four years from the date of the examination unless the holder has received an appointment in the interim period in which case the certificate shall become permanent unless the appointee has voluntarily relinquished the position within a period of one year after appointment. A certificate of qualification of a person honorably discharged from the armed forces of the United States shall not expire until the first examination occurring more than six months following his release from military service.

(g) The board shall, after the examination, furnish to any candidate, on request, a copy of all oral and written questions given at the examination marked as answered by the candidate "solved right," "imperfect" or "wrong," as the case may be.

Mining inspectors presently serving shall continue to serve without re-examination.

(h) Each mine conservation inspector shall, before entering upon the discharge of his duties, give a surety bond in the sum of five thousand dollars (\$5,000), conditioned for the faithful discharge of his duties. No person who is acting as manager or agent of any surface mining practice, or as mining engineer, or who is directly or indirectly interested in operating any surface mine shall at the same time act as mine conservation inspector.

(i) In case a mine conservation inspector becomes incapacitated to perform the duties of his office, or is granted a leave of absence by the secretary, the secretary may appoint temporarily to the office a person he deems qualified to fulfill the duties of the inspector. The temporary inspector shall act until the regular inspector is able to resume the duties of his office.

(j) Each mine conservation inspector shall devote the whole of his time to the duties of his office. It shall be his duty to thoroughly examine each operating mine in his district as often as necessary for compliance with this act. He shall keep in his office a record of all examinations of mines, showing the condition in which he finds them, on a form supplied by the secretary. He shall also perform such other duties as the secretary may require.

(k) Within thirty days after a mine conservation inspector attains the age of sixty-five, he shall undergo a physical examination and a copy of the physician's findings shall be furnished to the secretary. The same procedure shall be followed each succeeding year after the age of sixty-five is reached. If, as a result of the physical examination, it is found that the inspector is physically unable to perform the duties of a mine conservation inspector, he shall submit his resignation to the Governor. Failure to submit resignation will constitute cause for removal from office by the secretary.

¹ (l) A mine conservation inspector may be dismissed for cause as defined in the "Civil Service Act" of 1941 as amended. If such mine inspector feels that his dismissal was improper or unjustified, he may appeal to the State Civil Service Commission for a hearing in accordance with the provisions of the "Civil Service Act" and the contract to be entered into between the board and the Civil Service Commission. The decision of the Civil Service Commission shall be final and may not be appealed.

APPROVED—The 19th day of January, A. D. 1968.

RAYMOND P. SHAFER

¹ "T" in original.