

No. 1980-154

AN ACT

SB 989

Amending the act of September 24, 1968 (P.L.1040, No.318), entitled "An act providing for the protection of the safety, health and welfare of the people, property and public roads and highways of the Commonwealth from conditions on coal refuse disposal piles, or parts thereof, which fail to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution and from the danger of slipping, sliding or burning of coal refuse disposal piles, or parts thereof, sometimes caused by the storage of coal refuse; prescribing for and regulating the operation of coal refuse disposal piles, and parts thereof; prescribing the powers of the Department of Mines and Mineral Industries and the Secretary of Mines and Mineral Industries with respect thereto; prescribing the duties of mine inspectors with respect thereto; providing for the power to enjoin the operation of coal refuse disposal piles, or parts thereof, which contain certain conditions; providing for criminal penalties; and authorizing the acquisition by condemnation of certain land areas in certain cases," adding definitions, granting additional powers to the Department of Environmental Resources, providing for the powers and duties of the Environmental Quality Board and the Environmental Hearing Board, requiring permits for the operation of coal refuse disposal areas, prescribing procedures for permit applications, prohibiting coal refuse disposal areas in certain locations, increasing penalties, providing for cessation and enforcement orders, authorizing citizens' suits, establishing the Coal Refuse Disposal Control Fund, exempting the surface mining of anthracite.

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

Section 1. The title, section 1 and section 3, act of September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act," are amended to read:

AN ACT

Providing for the protection of the safety, health and welfare of the people, property and public roads and highways of the Commonwealth from conditions on coal refuse disposal **[piles] areas**, or parts thereof, which fail to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution *or to protect water supplies*, and from the danger of slipping, sliding or burning of coal refuse disposal **[piles] areas**, or parts thereof, sometimes caused by the storage of coal refuse; prescribing for and regulating the operation of coal refuse disposal **[piles] areas**, and parts thereof; prescribing the powers of the Department of **[Mines and Mineral Industries and the Secretary of Mines and Mineral Industries]** *Environmental Resources* with respect thereto; **[prescribing the duties of mine inspectors with respect thereto];** providing for the power to enjoin the operation of coal refuse disposal **[piles] areas**, or parts thereof, which contain certain condi-

tions; providing for *civil and* criminal penalties; [and] authorizing the acquisition by condemnation of certain land areas in certain cases; *establishing a permit system, authorizing the adoption of rules and regulations, establishing minimum standards and requiring bonds and for the maintenance of primary jurisdiction over surface coal mining in Pennsylvania.*

Section 1. Findings and Declaration of Policy.—It is hereby determined by the General Assembly of Pennsylvania and declared as a matter of legislative finding that:

[(1)] As a normal consequence of coal mining in some areas, it is and has been necessary to deposit, on the surface, refuse material which is removed from the subsurface along with the coal.

(2)] (1) The accumulation and storage of coal refuse material can cause a condition which fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution and can create a danger to persons, property or public roads or highways, either by reason of shifting or sliding, or by exposing persons walking onto the refuse to the danger of being burned.

[(3)] (2) No coal refuse disposal [pile] area, or part thereof, should be operated in such manner as to cause a condition which fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution or to cause a danger to persons, property or public roads or highways, and such condition and danger must be prevented and eliminated by the control and regulation of coal refuse disposal so as to effectuate the policy declared in this section.

[(4)] (3) The mining of coal is and has been an important and necessary industry, which has provided and will continue to provide for the effective use and development of a valuable natural resource underlying a large part of the Commonwealth of Pennsylvania.

(4) *Research and development of methods for reuse, backstowing in underground mines, disposal in inactive surface mines, and surface disposal of coal refuse is essential to continue to develop the technology necessary to assure adequate environmental protection and the utilization of active and inactive surface and underground coal mines for coal refuse disposal should be encouraged as an alternative to surface coal refuse disposal because it may conserve the land resources and it can improve the Commonwealth's air and water quality.*

The General Assembly of Pennsylvania therefore declares it to be the policy of the Commonwealth of Pennsylvania that the prevention and elimination of certain conditions resulting from the operation of coal refuse disposal [piles] areas is directly related to the safety, health and welfare of the people of the Commonwealth, making it necessary to control and regulate coal refuse disposal.

Section 3. Definitions.—The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

(1) "Department" means the Department of Mines and Mineral Industries organized and operating in the Commonwealth of Pennsylvania.

(2) "Secretary of Mines and Mineral Industries" means the head of the Department of Mines and Mineral Industries appointed and commissioned by the Governor and hereinafter referred to as the secretary.

(3) "Mine inspector" means the person commissioned by the Governor to be supervisor of mines as described in the act of July 17, 1961 (P.L.659, No.339), known as the "Pennsylvania Bituminous Coal Mine Act," or the act of November 10, 1965 (P.L.721, No.346), known as the "Pennsylvania Anthracite Coal Mine Act," as amended and supplemented.

(4) "Commission" means an investigating commission consisting of at least three mine inspectors appointed by the secretary for the purpose of investigating and making a determination with respect to the propriety of any cease-work order issued by any mine inspector under section 7 of this act.

(5) "Cease-work order" means an order issued pursuant to section 7 of this act to cease operations on any coal refuse disposal pile, or part thereof, whichever is appropriate in the circumstances, because of the imminent danger to persons, property or public roads or highways due to the threat of sliding or shifting of said coal refuse disposal pile or part thereof.

(6) "Correction order" means any order to correct a condition on any coal refuse disposal pile, or part thereof, whichever is appropriate in the circumstances, issued pursuant to section 6 of this act, because of danger due to shifting, sliding or burning of said coal refuse disposal pile, or part thereof, or because the said coal refuse disposal pile, or part thereof, is being operated so as to cause a condition which fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution: Provided, however, That the term "correction order" is not synonymous with and is exclusive of the term "cease-work order."

(7) "Person" means any individual, partnership, association, authority, joint stock company, public or private corporation, government agency, interstate agency, political subdivision or other entity.

(8) "Property" means both real and personal property.

(9) "Coal refuse" means any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay and related materials, associated with or near a coal seam, which are either brought above ground or otherwise removed from a coal mine in the process of mining coal, or which are separated from coal during the cleaning or preparation operations: Provided, however, That coal refuse shall not mean overburden from strip mining operations, rock from mine shafts or mine tunnels or garbage, refuse, ashes, rubbish or other materials not removed from a mine in the process of mining coal.

(10) "Coal refuse disposal pile" means any deposit of coal refuse on or buried in the earth and intended as permanent disposal of or long-term storage of such material, but not including coal refuse deposited within a mine itself or coal refuse never removed from a mine. Continuous deposits of coal refuse shall be considered as a single coal refuse disposal pile unless such deposits are so separated as to practically and substantially minimize the danger referred to in section 4 of this act.

(11) "Coal refuse disposal area" means any general area or plot of land used as a place for dumping, storage or disposal of coal refuse, containing one or more coal refuse disposal piles, but not including any part of a "waste disposal area" as defined in section 2 of the act of April 6, 1956 (P.L.1436, No.471).

(12) "Operate" means to enter upon a coal refuse disposal pile, or part thereof, for the purpose of disposing, depositing or dumping coal refuse thereon.

(13) "Operator" means any person operating any coal refuse disposal pile, or part thereof.

(14) "Air pollution" and "water pollution" shall, respectively, have the definitions ascribed to them under applicable laws, as amended, from time to time.]

(1) "Air pollution" and "water pollution" shall, respectively, have the definitions ascribed to them under applicable laws, as amended, from time to time.

(2) "Coal refuse" means any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay and related materials, associated with or near a coal seam, which are either brought above ground or otherwise removed from a coal mine in the process of mining coal or which are separated from coal during the cleaning or preparation operations. Coal refuse shall not mean overburden from surface mining operations.

(3) "Coal refuse disposal area" means any general area or plot of land used as a place for disposing, dumping or storage of coal refuse and all land thereby affected, including but not limited to any deposit of coal refuse on or buried in the earth and intended as permanent disposal of or long-term storage of such material, but not including coal refuse deposited within an active mine itself or coal refuse never removed from a mine, and all other land area in which the natural land surface has been disturbed as a result of or incidental to the coal refuse disposal activities of the operator, including but not limited to, private ways and roads appurtenant to any such area, land excavations, workings, tailings, repair areas, storage areas, processing areas, shipping areas, and areas in which structures, facilities, equipment, machines, tools or other materials or property which result from, or are used in, coal refuse disposal operations are situated.

(4) "Department" means the Department of Environmental Resources.

(5) **“Maintain”** means the maintenance of the site for as long as necessary after completion of the operation to prevent health, safety or pollution hazards or nuisances from occurring. Maintenance shall include but not be limited to repair of cracks or fissures, repair of areas where settling occurs, repair of erosion areas, treatment of acid drainage or runoff, extinguishment of fires or hot spots, reseeding and soil treatment until adequate vegetative cover is established.

(6) **“Municipality”** shall be construed to include any county, city, borough, town, township, school district, institution, or any authority created by any one or more of the foregoing.

(7) **“Operate”** means to enter upon a coal refuse disposal area for the purpose of disposing, storage or dumping coal refuse except for the purpose of reclaiming or removing coal refuse, ashes, or red dog or other material from a coal refuse disposal area pursuant to the requirements of the act of May 31, 1945 (P.L.1198, No.418), known as the **“Surface Mining Conservation and Reclamation Act.”**

(8) **“Operator”** means any person operating any coal refuse disposal area, or part thereof.

(9) **“Person”** shall be construed to include any natural person, partnership, association or corporation or any agency, instrumentality or entity of Federal or State Government. Whenever used in any section or clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term **“person”** shall not exclude the members of an association and the directors, officers or agents of a corporation.

(10) **“Property”** means real or personal property.

(11) **“Secretary”** means the head of the Department of Environmental Resources.

(12) **“Stability”** means the maintenance of a condition which prevents danger to the safety, health or welfare of persons, property or public roads or highways because of slipping, shifting or sliding of coal refuse deposited on coal refuse disposal areas.

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

Section 3.1. Powers and Duties of the Department.—The department shall have the power and its duty shall be to:

(a) Administer the coal refuse disposal control program pursuant to the provisions of this act.

(b) Cooperate with appropriate Federal, State, interstate and local units of government and with appropriate private organizations in carrying out its duties under this act.

(c) Adopt such policies, standards and procedures, consistent with the rules and regulations of the Environmental Quality Board, as shall be necessary for effective coal refuse disposal, to conserve the air, water and land resources of the Commonwealth, protect the public health and safety, prevent and eliminate public nuisances, and enable it to carry out the purposes and provisions of this act.

(d) Report to the Legislature from time to time on further assistance that may be needed to administer this act.

(e) Initiate, conduct and support research, demonstration projects, and investigations and coordinate all State agency research programs pertaining to coal refuse disposal systems.

(f) Issue such permits and orders and conduct such inspections as may be necessary to implement the provisions of this act and the policies, rules and regulations, and standards adopted pursuant to the act.

(g) Review all Commonwealth research programs pertaining to coal refuse disposal, including but not limited to water quality and air pollution control: Provided, however, That this section shall not be construed to limit the authority of each department to conduct research programs and operations as authorized by law.

(h) Review and take appropriate action on all permit applications submitted pursuant to the provisions of this act and to issue orders to cease operations, to issue, modify, suspend or revoke permits pursuant to this act and to the rules and regulations adopted hereto.

(i) Enter upon, examine and inspect each and every coal refuse disposal area in the Commonwealth, as often as necessary, to determine whether coal refuse disposal areas are being operated in accordance with the provisions of this act.

(j) Establish limitations on the duration of permits in accord with rules and regulations and establish conditions for permit issuance and renewals.

Section 3.2. Powers and Duties of the Environmental Quality Board.—The Environmental Quality Board shall have the power and its duties shall be to adopt rules and regulations to accomplish the purposes of this act, including but not limited to the protection of the safety, health, welfare, and property of the public, and the air and waters of the Commonwealth. Such rules and regulations shall be adopted pursuant to the provisions of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, upon such notice and after such public hearings as the Environmental Quality Board deems appropriate.

Section 3.3. Powers and Duties of the Environmental Hearing Board.—The Environmental Hearing Board shall have the power and its duties shall be to hear and determine all appeals from actions of the department taken in accordance with the provisions of this act. Any and all actions taken by the Environmental Hearing Board with reference to any such appeal shall be in the form of an adjudication, and all such actions shall be subject to the provisions of Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 3. Sections 4, 5 and 6 of the act are amended to read:

Section 4. [Proper Operation of Coal Refuse Disposal Pile, or Part Thereof.—(a) From and after the passage of this act, no oper-

ator of a coal refuse disposal pile shall operate the same, or a part thereof, in such a way as to cause a condition which fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution, or in such a way as to constitute a danger to the safety, health or welfare of persons, property or public roads or highways because of the burning, slipping or sliding of coal refuse deposited on the coal refuse disposal pile, or part thereof.] *Permits.—(a) No person shall establish or operate a coal refuse disposal area or enter upon an inactive coal refuse disposal area or reactivate an inactive operation for the purposes of coal refuse disposal without first having obtained a permit from the department.*

(b) [From and after the passage of this act, any operator may be ordered, with respect to any new coal refuse disposal pile created thereafter, or any part of an existing coal refuse disposal pile on which he operates thereafter, to build drainage ditches, trenches and/or gullies, to build impervious dams, to remove combustible materials, to alter locations, to engage in spreading, compacting and/or layering, to use clay, soil and/or other inert sealing materials, or to alter slopes, if some or all of the foregoing are, in the circumstances, necessary to prevent or correct a condition which fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution, or are, in the circumstances, necessary to prevent or correct a condition constituting a danger to the safety, health or welfare of persons, property or public roads or highways because of the burning, slipping or sliding of coal refuse deposited on a coal refuse disposal pile, or part thereof.] *The department shall not issue any coal refuse disposal permit or renew or amend any permit if it finds, after investigation and an opportunity for informal hearing, that:*

(1) *the applicant has failed and continues to fail to comply with any of the provisions of this act or of any of the acts repealed or amended hereby; or*

(2) *the applicant has shown a lack of ability or intention to comply with such laws as indicated by past or continuing violations. Any person, partnership, association or corporation which has engaged in unlawful conduct as defined in section 7 of this act or which has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor which has engaged in such unlawful conduct shall be denied any permit required by this act unless the permit application demonstrates that the unlawful conduct is being corrected to the satisfaction of the department. Persons other than the applicant, including independent subcontractors, who are proposed to operate under the permit shall be listed in the application and those persons shall be subject to approval by the department prior to their engaging in coal refuse disposal operations, and such persons shall be jointly and severally liable with the permittee for violations of this act with which the permittee is charged and in which such persons participate.*

Section 5. [Powers of the Department of Mines and Mineral Industries and the Secretary of Mines and Mineral Industries.—

(a) All rights and powers heretofore possessed by the Sanitary Water Board and the Air Pollution Commission under existing laws shall remain as heretofore, except that the department, acting by and through its mine inspectors, shall be the exclusive investigating, examining, reporting and enforcement agency for the Sanitary Water Board, and for the Air Pollution Commission with respect to their respective powers, duties, obligations and responsibilities as such are involved in or related to the operation of coal refuse disposal areas as defined in this act. In that regard, the department shall have power and its duty shall be to enter upon, examine and inspect each and every coal refuse disposal area in the Commonwealth, as often as may be necessary, to determine whether any coal refuse disposal pile, or part thereof, is being operated in such manner as to cause a condition which fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution, and to determine whether there is present any danger to any person, property or public roads or highways because of the shifting, sliding or burning of coal refuse thereon, or on any part thereof.] *Applications.—*

(a) *Applications for permits shall be in writing and shall be made on a form prescribed, prepared and furnished by the department and shall set forth such information and be accompanied by such data as the department may require including but not limited to maps, geological reports, soil reports, design and operational plans, and shall be prepared by or under the supervision of and bear the seal and signature of a registered professional engineer or professional geologist, with assistance from experts in related fields.*

(b) [In the enforcement of this act, and in the adoption and enforcement of rules and regulations with respect to the operation of coal refuse disposal areas, the Sanitary Water Board, the Air Pollution Commission and the Department of Mines and Mineral Industries shall coordinate their activities to the fullest extent possible to achieve a uniform system of control and to avoid inconsistencies.] *The department is authorized to charge and collect from persons and municipalities in accordance with rules and regulations reasonable fees for applications filed and for permits issued.*

(c) *The application shall specify the manner in which topsoil and subsoil will be conserved and restored.*

(d) *The application shall include a statement specifying whether or not disposal of coal refuse in deep mines and inactive, abandoned or unreclaimed surface mines is proposed for the operation, and if not, detailing the reasons why underground disposal was not proposed. Subject to the provisions of subsection (g) of this section, unless the applicant demonstrates to the satisfaction of the department that such disposal will be economically or technically infeasible, the operator shall maximize disposal of coal refuse by underground disposal.*

(e) *The application shall also set forth the manner in which the operation will establish on the areas proposed to be affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area: Provided, however, That introduced species may be used in the vegetation process where desirable and necessary to achieve the approved postmining land use plan. The application shall in addition set forth the manner in which the operation will achieve a final contour of the coal refuse disposal area which will be compatible with natural surroundings.*

(f) *The application shall include a statement of the uses and productivity of the land proposed to be affected, and a statement of the land use proposed for the affected area after reclamation is completed. No post-operational land use or uses shall be approved unless the application demonstrates that the use or uses are likely to be achieved, are proposed in the operator's permit application as the post-operational land use for the affected area, do not present any actual or potential threat to public health or safety, or any actual or potential threat of water contamination, diminution, interruption or pollution, are consistent with applicable land use policies and plans and involve no unreasonable delay in implementation.*

(g) *The application shall also set forth the manner in which the operator plans to comply with the requirements of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act," the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," and where applicable the act of July 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid Waste Management Act" or the act of July 7, 1980 (No.97), known as the "Solid Waste Management Act." No approval shall be granted unless the plan provides for compliance with the statutes hereinabove enumerated, and failure to comply with the statutes hereinabove enumerated during mining or thereafter shall render the operator liable to the sanctions and penalties provided in this act for violations of this act and to the sanctions and penalties provided in the statutes hereinabove enumerated for violations of such statutes. Such failure to comply shall be cause for revocation of any approval or permit issued by the department to the operator: Provided, however, That a violation of the statutes hereinabove enumerated shall not be deemed a violation of this act unless this statute's provisions are violated but shall only be cause for revocation of the operator's permit. Nothing in this subsection, however, shall be construed to limit the department's authority to regulate activities in a coordinated manner. Compliance with the provisions of this subsection and with*

the provisions of this act and the provisions of the statutes hereinabove enumerated shall not relieve the operator of the responsibility for complying with the provisions of all other applicable statutes, including but not limited to the act of July 17, 1961 (P.L.659, No.339), known as the "Pennsylvania Bituminous Coal Mine Act," the act of November 10, 1965 (P.L.721, No.346), known as the "Pennsylvania Anthracite Coal Mine Act," and the act of July 9, 1976 (P.L.931, No.178), entitled "An act providing for emergency medical personnel; employment of emergency medical personnel and emergency communications in coal mines."

(h) For those lands in the permit application which a reconnaissance inspection suggests may be prime farmlands, a soil survey shall be made or obtained by the permit applicant according to standards established by the United States Secretary of Agriculture in order to confirm the exact location of any such farmlands. The department shall grant a permit to affect prime farmland only after consultation with the United States Department of Agriculture and only if the Department of Environmental Resources finds in writing that the operator has the technological capability to restore such affected area, within a reasonable time, to equivalent or higher levels of yield as nonaffected prime farmland in the surrounding area under equivalent levels of management and can meet such soil reconstruction standards as the department may by rule and regulation prescribe.

(i) Public notice of every application for a permit or bond release under this act shall be given by notice published in a newspaper of general circulation, published in the locality where the permit is applied for, once a week for four consecutive weeks. The department shall prescribe such requirements regarding public notice and public hearings on permit applications and bond releases as it deems appropriate. For the purpose of these public hearings, the department shall have the authority and is hereby empowered to administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses, or production of witnesses, or production of materials, and take evidence including but not limited to inspections of the land proposed to be affected and other operations carried on by the applicant in the general vicinity. Each applicant for a permit under this act shall file a copy of his application for public inspection with the recorder of deeds at the courthouse of the county or an appropriate public office approved by the department where the coal refuse disposal is proposed to occur. Should any person having an interest which is or may be adversely affected by any action of the department under this subsection, or by the failure of the department to act upon an application for a permit, he may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law, and from the adjudication of said board he may further appeal as provided by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). The Environmental Hearing

Board, upon the request of any party, may in its discretion order the payment of costs and attorney's fees it determines to have been reasonably incurred by such party in proceedings pursuant to this section.

(j) Permit applications shall specify how the coal refuse disposal area will be maintained.

(k) Permits shall specify how the operation shall provide for stability within the meaning of this act.

(l) All papers, records, and documents of the department, and applications for permits pending before the department, shall be public records open to inspection during business hours: Provided, however, That information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

(m) The application for a permit shall include, upon a form prepared and furnished by the department, the written consent of the landowner to entry upon any land to be affected by the operation of the operator, by the Commonwealth and by any of its authorized agents prior to the initiation of coal refuse disposal operations, during coal refuse disposal operations, and for a period of five years after the operation is completed or abandoned for the purpose of reclamation, planting and inspection or for the construction of any such pollution abatement facilities as may be deemed necessary by the department for the prevention of pollution from coal refuse. Such forms shall be deemed to be recordable documents, and prior to the initiation of coal refuse disposal operations under the permit, such forms shall be recorded at the office of the recorder of deeds in the county or counties in which the area to be affected under the permit is situate.

(n) Permit applications shall contain such other information as the department may require.

Section 6. [Powers and Duties of Mine Inspectors; Correction Order.—(a) Any mine inspector directed by the Department of Mines and Mineral Industries shall have the right to enter any coal refuse disposal area in order to inspect and examine any coal refuse disposal pile therein, and if he finds during his inspection and examination any condition on any coal refuse disposal pile, or part thereof, which, in his opinion, based on observable conditions, constitutes a danger to any person, property or public roads or highways either because of shifting, sliding or burning of coal refuse or because the coal refuse disposal pile, or part thereof, is being operated so as to cause a condition which fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution, he shall have the authority to issue a written correction order requiring the operator to correct such condition, in reasonable fashion, within a reasonable time.

(b) In the event that any operator fails to comply with any written correction order issued by a mine inspector concerning the slipping, sliding or burning of a coal refuse disposal pile, or part thereof, (not including those conditions as they might involve failure to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution), the mine inspector shall at once notify the secretary, and immediately send or deliver a copy of the notice to the operator, and the secretary shall, if he agrees that the slipping, sliding or burning condition is of the dangerous type contemplated in this act, even though not imminently dangerous, request the Attorney General to apply, in the name of the Commonwealth, either to the court of common pleas in the county in which such coal refuse disposal pile, or part thereof, is located or to the Commonwealth Court, whichever the Attorney General may deem appropriate in the circumstances, for an injunction to enjoin any further operation of such coal refuse disposal pile, or part thereof, whichever is appropriate in the circumstances, until the dangerous condition giving rise to the order is corrected.

(c) Whenever any such written correction order is issued because a condition of noncompliance with the established rules, regulations or quality standards adopted to avoid air or water pollution is caused by the operation of a coal refuse disposal pile, or part thereof, and the operator fails to correct the condition, in reasonable fashion, within the time prescribed by the mine inspector, a full report thereof shall be sent to the Sanitary Water Board or the Air Pollution Commission, as the case may be, with a copy being immediately sent or delivered to the operator, and such board or commission, as the case may be, shall determine whether the condition fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution. If either the Sanitary Water Board or the Air Pollution Commission should find a coal refuse disposal pile, or part thereof, being operated in violation of the provisions of this act or in a manner not in accordance with the established rules, regulations or quality standards adopted to avoid air or water pollution, as the case may be, it shall take appropriate action, by and through the department as its agent, under and in accordance with existing laws.] *Bonding.*—

(a) *Prior to commencing coal refuse disposal operations, the operator shall file with the department a bond for the land to be affected by the coal refuse disposal area on a form to be prescribed and furnished by the department, payable to the Commonwealth and conditioned that the operator shall faithfully perform all of the requirements of this act, the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroach-*

ments Act," and where applicable, the act of July 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid Waste Management Act" or the act of July 7, 1980 (No.97), known as the "Solid Waste Management Act": Provided, however, That an operator posting a bond sufficient to comply with this section of the act shall not be required to post a separate bond for the permitted area under each of the acts hereinabove enumerated. The foregoing proviso shall not, however, prohibit the department from requiring additional bond amounts for the permitted area should such an increase be determined by the department to be necessary to meet the requirements of this act. The amount of the bond required shall be in an amount determined by the secretary based upon the total estimated cost to the Commonwealth of completing the approved reclamation plan, or in such other amount and form as may be established by the department pursuant to regulations for an alternate coal bonding program which shall achieve the objectives and purposes of the bonding program. Said estimate shall be based upon the operator's statement of his estimated cost of fulfilling the plan during the course of his operation, inspection of the application and other documents submitted, inspection of the land area, and such other criteria as may be relevant, including but not limited to the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and vegetation potential, the proposed land use and the additional cost to the Commonwealth which may be entailed by being required to bring personnel and equipment to the site after abandonment by the operator, in excess of the cost to the operator of performing the necessary work during the course of his surface mining operations. When the plan involves reconstruction or relocation of any public road or highway, the amount of the bond shall include an amount sufficient to fully build or restore the road or highway to a condition approved by the Department of Transportation. No bond shall be filed for less than ten thousand dollars (\$10,000). Liability under such bond shall be for the duration of the operation, and for a period of five full years after the last year of augmented seeding and fertilizing and any other work to complete reclamation to meet the requirements of law and protect the environment unless released in part prior thereto as hereinafter provided. Such bond shall be executed by the operator and a surety licensed to do business in the Commonwealth and approved by the secretary: And, provided further, That the operator may elect to deposit cash, automatically renewable irrevocable bank letters of credit which may be terminated by the bank at the end of a term only upon the bank giving ninety days prior written notice to the permittee and the department, or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, The General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth, with the department in lieu of a corporate surety.

The cash deposit, amount of letter of credit, or market value of such negotiable bonds shall be equal at least to the sum of the bond. The secretary shall, upon receipt of any such deposit of cash, letter of credit or negotiable securities, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The operator making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the secretary, the whole or any portion of any collateral so deposited, upon depositing with him, in lieu thereof, other collateral of the classes specified having a market value at least equal to the sum of the bond, and also to demand, receive and recover the interest and income from said negotiable bonds as the same becomes due and payable: And, provided further, That where negotiable bonds as the same becomes due and mature or are called, the State Treasurer, at the request of the permittee, shall convert such negotiable bonds into such other negotiable bonds of the classes herein specified as may be designated by the permittee: And provided further, That where notice of intent to terminate a letter of credit is given, the department shall give the permittee thirty days written notice to replace the letter of credit with other acceptable bond guarantees as provided herein, and if the permittee fails to replace the letter of credit within the thirty-day notification period, the department shall draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee; or the department, in its discretion, may accept a self-bond from the permittee, without separate surety, if the permittee demonstrates to the satisfaction of the department a history of financial solvency, continuous business operation and continuous efforts to achieve compliance with all United States of America and Pennsylvania environmental laws, and, meets all of the following requirements:

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

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

(3) During the last thirty-six calendar months, the applicant has not defaulted in the payment of any dividend or sinking fund installment or preferred stock or installment on any indebtedness for borrowed money or payment of rentals under long-term leases or any

reclamation fee payment currently due under the Federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1232, for each ton of coal produced in the Commonwealth of Pennsylvania.

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

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

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

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

(8) The permittee may be required by the department to pledge real and personal property to guarantee the permittee's self-bond. The department is authorized to acquire and dispose of such property in the event of a default to the bond obligation and may use the moneys in the Coal Refuse Disposal Control Fund to administer this provision.

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

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

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

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

(13) The permittee shall pay an annual fee in the amount determined by the department of the cost to review and verify the permittee's application for self-bonding and annual submissions thereafter. Where the coal refuse disposal operation is reasonably anticipated to continue for a period of at least ten years from the date of application, the permittee may elect to deposit collateral and file a collateral bond as provided in the following phased deposit schedule. The permittee shall, prior to commencing coal refuse disposal operations, deposit ten thousand dollars (\$10,000) or twenty-five per cent of the amount determined under this subsection, whichever is greater. The operator shall, thereafter, annually deposit ten per cent of the

remaining bond amount for a period of ten years. Interest accumulated by such collateral shall become a part of the bond. The department may require additional bonding at any time to meet the intent of this section. The collateral shall be deposited, in trust, with the State Treasurer as provided in this subsection, or with a bank, selected by the department, which shall act as trustee for the benefit of the Commonwealth, according to rules and regulations promulgated hereunder, to guarantee the operator's compliance with this act and the statutes hereinabove enumerated. The operator shall be required to pay all costs of the trust. The collateral deposit, or part thereof, shall be released of liability and returned to the operator, together with a proportional share of accumulated interest, upon the conditions of and pursuant to the schedule and criteria for release provided in subsection (c) of this section.

(b) If the operator abandons the operation or fails or refuses to comply with the requirements of the act in any respect for which liability has been charged on the bond, the secretary shall declare the bond forfeited, and shall certify the same to the Department of Justice, which shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operator has deposited cash or securities as collateral in lieu of a corporate surety, the secretary shall declare said collateral forfeited, and shall direct the State Treasurer to pay said funds into the Coal Refuse Disposal Control Fund, or to proceed to sell said securities to the extent forfeited and pay the proceeds thereon into the Coal Refuse Disposal Control Fund. Should any corporate surety fail to promptly pay, in full, a forfeited bond, it shall be disqualified from writing any further surety bonds under this act. Any operator aggrieved by reason of forfeiting the bond or converting collateral, as herein provided, may appeal to the Environmental Hearing Board in the manner provided by law, and from the adjudication of said board he may further appeal as provided by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). For the purposes of this subsection the standards for determining whether a coal refuse disposal operation has been abandoned shall be as prescribed by rules and regulations promulgated hereunder.

(c) Subject to the public notice requirements of section 5(i) of this act, if the department is satisfied that the reclamation covered by the bond or portion thereof has been accomplished as required by this act, the department may release in whole or in part the bond or deposit according to the following schedule:

(1) when the operator has completed the grading, planting and drainage control of a bonded area in accordance with his approved reclamation plan, the release of sixty per cent of the bond for the applicable permit area;

(2) when the vegetation has been established on the affected area in accordance with the approved reclamation plan, the department

shall retain the amount of bond for the vegetated area which would be sufficient for the cost to the Commonwealth of reestablishing vegetation. Such retention of bond shall be for the duration of liability under the bond as prescribed in subsection (a) of this section. No part of the bond shall be released under this subsection so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirement of law. Where a permanent impoundment is to be retained, the portion of bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the department; and

(3) when the operator has completed successfully all coal refuse disposal and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in subsection (a) of this section: Provided, however, That bond shall not be fully released until all requirements of the act are met. Upon release of all or part of the bond and collateral as herein provided, the State Treasurer shall immediately return to the operator the amount of cash or securities specified therein.

Section 4. The act is amended by adding a section to read:

Section 6.1. Designating Areas Unsuitable for Coal Refuse Disposal.—(a) Pursuant to the procedures set forth in subsection (f) of this section, the department shall designate an area as unsuitable for all or certain types of coal refuse disposal if the department determines that reclamation pursuant to the requirements of this act is not technologically and economically feasible.

(b) Upon petition pursuant to subsection (f) of this section, a surface area may be designated unsuitable for all or certain types of coal refuse disposal operations if such operations will:

(1) be incompatible with existing State or local land use plans or programs;

(2) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems;

(3) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(4) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(c) The department shall forthwith develop a process to meet the requirements of this act. The process shall include:

(1) review by the department of surface coal refuse disposal lands;

(2) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to support and permit reclamation of coal refuse disposal operations;

(3) a method or methods for implementing land use planning decisions concerning coal refuse disposal operations; and

(4) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(d) Determinations of the unsuitability of land for coal refuse disposal as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State and local levels.

(e) The requirements of this section shall not apply to lands on which coal refuse disposal operations are being conducted on the date of enactment of this act or under a permit issued pursuant to this act, or where substantial legal and financial commitments as they are defined under § 522 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq. in such operation were in existence prior to January 4, 1977.

(f) Any person having an interest which is or may be adversely affected shall have the right to petition the department to have an area designated as unsuitable for coal refuse disposal operations, or to have such a designation terminated. Pursuant to the procedure set forth in this subsection, the department may initiate proceedings seeking to have an area designated as unsuitable for coal refuse disposal operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the department shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the department shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefore. In the event that all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, such hearing need not be held.

(g) Prior to designating any land areas as unsuitable for coal refuse disposal operations, the department shall prepare a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal.

(h) Subject to valid existing rights as they are defined under § 522 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq., no coal refuse disposal operations except those which exist on August 3, 1977, shall be permitted:

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act 16, U.S.C. § 1274 et seq. and National Recreation Areas designated by act of Congress;

(2) on any Federal lands within the boundaries of any National forest: Provided, however, That coal refuse disposal operations may be permitted on such lands if the Department of the Interior and the department find that there are no significant recreational, timber, economic, or other values which may be incompatible with such coal refuse disposal operations;

(3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the department and the Federal, State or local agency with jurisdiction over the park or the historic site;

(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the regulatory authority may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(5) within three hundred feet of any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community or institutional building, public park, nor within one hundred feet of a cemetery, or within one hundred feet of the bank of any stream.

Section 5. Sections 7, 8, 9, 10, 11 and 12 of the act are amended to read:

Section 7. [Imminent Danger; Cease-Work Order.—(a) If the mine inspector finds, at the time of his inspection of a coal refuse disposal area, that any coal refuse disposal pile, or part thereof, constitutes an imminent danger to persons, property or public roads or highways because of the threat of sliding or shifting, he shall immediately order all operations in such coal refuse disposal pile, or part thereof, whichever is appropriate in the circumstances to cease and shall immediately notify the secretary in writing of his action and immediately send or deliver a copy of such writing to the operator, and the secretary shall immediately and within twenty-four hours, appoint a commission to accompany promptly the said mine inspector to the coal refuse disposal pile, or part thereof, whereon said condition of imminent danger is alleged to exist.

(b) The commission shall immediately and before the end of the day of its appointment make a full investigation and make its determi-

nation whether to affirm or disaffirm the cease-work order. It shall give the operator a reasonable opportunity to be present, to be heard and to produce evidence at such investigation. If the commission shall agree that there is a condition of imminent danger they shall affirm the cease-work order issued by the mine inspector. If the commission disagrees with the finding of the mine inspector, the commission shall disaffirm the cease-work order and, in such case, the said order shall be rescinded and be completely null and void and any operation in disregard thereof shall not be deemed a misdemeanor or be subject to any penalty or prejudice whatsoever.

(c) If the commission affirms the cease-work order by the mine inspector, it shall report the same immediately to the secretary and, in such event, the secretary shall immediately and fully investigate the alleged condition of imminent danger and shall also give the operator a reasonable opportunity to be present, to be heard and to produce evidence at such investigation and the secretary shall thereupon determine what condition, if any, must be rectified in reasonable fashion, in order for operation in the coal refuse disposal pile or that part thereof affected by the cease-work order, to resume and shall immediately notify the operator of the coal refuse disposal pile in question as to his determination.

(d) When, in any case, the secretary determines that the condition of imminent danger calling for the cease-work order has been rectified, in reasonable fashion, he shall, within twenty-four hours after making such determination, notify the operator accordingly, and the operator may immediately resume operations on the coal refuse disposal pile, or part thereof.

(e) If the cease-work order has been affirmed by the commission, then the secretary shall, within three days after the commission has affirmed the cease-work order issued by the mine inspector, decide whether to proceed for an injunction against the operator of the coal refuse disposal pile, or part thereof, whichever may be appropriate in the circumstances, as hereinafter provided in section 8 of this act. If the secretary decides to proceed for an injunction, he shall do so by requesting the Attorney General to take appropriate action in the name of the Commonwealth either in the court of common pleas in the county in which such coal refuse disposal pile, or part thereof, is located, or in the Commonwealth Court, whichever the Attorney General may deem appropriate in the circumstances. If, in any case, the secretary does not, acting by and through the Attorney General, institute action to obtain an injunction within said three-day period, the cease-work order of the mine inspector shall be deemed rescinded and completely null and void, and the operator may thereupon continue operating the coal refuse disposal pile, or part thereof, as theretofore and any operation thereon in disregard of the cease-work order shall not be deemed a misdemeanor or subject to any penalty or prejudice whatsoever.

(f) In any case where a cease-work order is ultimately determined to be invalid, no operation in disregard thereof shall be deemed a misdemeanor or subject to any penalty or prejudice whatsoever. Continued operation pursuant to a supersedeas or similar order shall not be deemed a misdemeanor or be subject to any penalty or prejudice whatsoever.] *Unlawful Conduct.*—*It shall be unlawful to establish, operate or maintain a coal refuse disposal area in a manner which fails to comply or for any person to fail to comply with any rule or regulation of the department or fail to comply with any order or permit of the department, to violate any of the provisions of this act or rules and regulations adopted hereunder, orders or permits of the department, to cause air or water pollution in connection with coal refuse disposal operations and not otherwise proscribed by this act, or to hinder, obstruct, prevent or interfere with the department or its personnel in the performance of any duty hereunder, including violations of 18 Pa.C.S. § 4903 (relating to false swearing) and 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). Any person or municipality engaging in such conduct shall be subject to the provisions of this section and sections 8, 9, 10, 11 and 12 of this act.*

Section 8. [Injunctive Relief.—In any case where an injunction is sought pursuant to the provisions of sections 6 or 7 of this act, the court in which the application for an injunction is filed shall at once proceed to hear and determine the case; and if the cause appears to be sufficient, after hearing the parties and their evidence, as in like cases, shall issue its writ to restrain the operation of such coal refuse disposal pile, or part thereof, whichever may be appropriate in the circumstances, until the dangerous condition giving rise to the order is corrected, as said court shall so direct; and the costs shall be borne by the operator of the coal refuse disposal pile: Provided, That if said court shall find the cause not sufficient, then the case shall be dismissed, and the costs shall be borne by the county wherein said coal refuse disposal pile, or part thereof involved, is located: Provided, further, That, except in cases of emergency where, in the opinion of the court, the exigencies of the case require immediate rectification or correction of a dangerous condition, the court may, in its decree, fix a reasonable time during which the operator responsible for the condition may make provision for the rectification or correction of the same.] *Cessation Orders.*—*The department shall have the authority to order the immediate cessation of any operation that is started without the operator thereof having first obtained a permit as required by this act, or where the public welfare or safety calls for the immediate halt of the operation until corrective steps have been undertaken by the operator to the satisfaction of the department.*

Section 9. [Criminal Penalties.—Any operator who refuses to comply with a cease-work order issued by a mine inspector pursuant to this act shall, except as otherwise herein provided, be guilty of a misdemeanor, and, upon conviction thereof in the court of quarter

sessions of the county in which the coal refuse disposal pile, or part thereof, is located, shall be sentenced to pay a fine of not less than one thousand dollars (\$1,000), nor more than five thousand dollars (\$5,000), and the operator, or if such operator be an association or copartnership, then the members thereof, or if such operator be a corporation, then the officers, agents, servants and employes thereof, may be imprisoned in the county jail for a period of not more than one year. All prosecutions under the penal provisions herein set forth, shall be instituted and prosecuted by the Attorney General, or by and with his written consent. Each day of continued refusal by an operator to comply with a cease-work order shall constitute a separate offense.] *Enforcement Orders.*—*The department may issue such orders as are necessary to aid in the enforcement of the provisions of this act. Such orders shall include, but not be limited to, orders requiring persons to cease operations and orders modifying, suspending or revoking permits. The right of the department to issue an order under this act is in addition to any penalty which may be imposed pursuant to this act.*

Section 10. [Health Nuisances.—Nothing in this act shall limit the powers conferred upon the Department of Health to control and abate nuisances detrimental to the public health as provided in any law now in effect.] *Injunctive Relief; Remedies not Exclusive.*—(a) *In addition to any other remedies provided for in this act, the department may petition the Commonwealth Court or the court of common pleas in the county in which the defendant resides or has his place of business for an injunction to restrain all violations and to that end jurisdiction is hereby conferred in law and equity upon such courts.*

(b) *The penalties and remedies prescribed by this act shall be deemed concurrent and the existence of or exercise of any remedy shall not prevent the department from exercising any other remedy hereunder, at law or in equity.*

Section 11. [Authorizing Operator to Acquire Interests in Land by Eminent Domain.—Whenever any operator is directed by a mine inspector, or a court of common pleas, or the Commonwealth Court, or otherwise, to cease operating a coal refuse disposal pile, or part thereof, whichever is appropriate in the circumstances, or to correct a dangerous condition thereon, pursuant to the public policy set forth in this act, then such operator, if not otherwise vested with the right of eminent domain, may make application to the secretary for a finding and an order that the use by the applicant of a specified interest in a specifically described area of land is necessary to enable the applicant to operate in a lawful manner in connection with the correction of a dangerous condition. Whenever an operator foresees that it will be necessary to acquire a specified interest in a specifically described area of land in order to operate a coal refuse disposal area or pile, or part thereof, in a lawful manner, then such operator, if not otherwise vested with the right of eminent domain, may make application to the secretary for a finding and an order that the use by the applicant of a

specified interest in a specifically described piece of land is necessary in order to enable said operator to operate said area or pile, or part thereof, in a lawful manner. In either such event, the secretary may, after hearing, with reasonable notice to the proposed condemnee or condemnees, and full opportunity to be heard and present evidence, make the appropriate finding and issue the appropriate order authorizing the acquisition of the specified interest in a specifically described area of land by the operator by the power of eminent domain. Upon the making of said finding and the issuance of said order, then, for the purpose of this act, such operator receiving the order shall be vested with the right of eminent domain which shall be exercised only upon said authorization by the secretary, and in such event the operator shall proceed in the manner and form set forth in the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the "Eminent Domain Code": Provided, That no property used as a place of public worship or for burial purposes shall be taken under the right of eminent domain: Provided further, That where any existing public street or road is vacated by any municipality in order to facilitate any undertaking in connection with land acquired under the right of eminent domain as provided for above, the operator acquiring such land shall reimburse all public utilities for the costs of relocating and reconstructing their facilities necessitated by the closing of any such street or road.] *Civil Penalties.*—*In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act, rule, regulation, order of the department, or a condition of any permit issued pursuant to this act, the department may assess a civil penalty upon a person or municipality for such violation. Such a penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed five thousand dollars (\$5,000) per day for each violation. In determining the amount of the civil penalty the department shall consider the willfulness of the violation, damage or injury to the waters of the Commonwealth or their uses, cost of restoration and other relevant factors. If the violation leads to the issuance of a cessation order, a civil penalty shall be assessed. If the violation involves the failure to correct, within the period prescribed for its correction, a violation for which a cessation order, other abatement order or notice of violation has been issued, a civil penalty of not less than seven hundred fifty dollars (\$750) shall be assessed for each day the violation continues beyond the period prescribed for its correction: Provided, however, That correction of a violation within the period prescribed for its correction shall not extinguish liability for the violation. Upon the issuance of a notice or order charging that a violation of the act has occurred, the secretary shall inform the person within a period of time to be prescribed by rule and regulation of the proposed amount of said penalty. The person charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the person wishes*

to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the secretary for placement in an escrow account with the State Treasurer or any Pennsylvania bank, or post an appeal bond in the amount of the proposed penalty, such bond shall be executed by a surety licensed to do business in the Commonwealth and be satisfactory to the department. If through administrative hearing or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the secretary shall within thirty days remit the appropriate amount to the person, with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond to the secretary within thirty days shall result in a waiver of all legal rights to contest the fact of the violation or the amount of the penalty. The amount assessed after administrative hearing or waiver of administrative hearing shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided by law for the collection of debts. If any person liable to pay such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a judgment in favor of the Commonwealth upon the property of such person from the date it has been entered and docketed of record by the prothonotary of the county where such is situated. The department may, at any time, transmit to the prothonotaries of the respective counties certified copies of all such judgments, and it shall be the duty of each prothonotary to enter and docket the same of record in his office, and to index it as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof. Any other provision of law to the contrary notwithstanding, there shall be a statute of limitations of five years upon actions brought by the Commonwealth pursuant to this subsection.

Section 12. [Severability Clause.—The provisions of this act are severable and if any provision or part thereof shall be held invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of the act.] *Penalties.—(a) Any person who violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to this act is guilty of a summary offense and, upon conviction, such person shall be subject to a fine of not less than one hundred dollars (\$100) nor more than ten thousand dollars (\$10,000) for each separate offense, and, in default of the payment of such fine, a person shall be imprisoned for a period of ninety days.*

(b) Any person who willfully or negligently violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to the act is guilty of a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than two thousand five hundred

dollars (\$2,500) nor more than twenty-five thousand dollars (\$25,000) for each separate offense or to imprisonment in the county jail for a period of not more than one year, or both.

(c) Any person who, after a conviction of a misdemeanor for any violation within two years as above provided, willfully or negligently violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to this act is guilty of a misdemeanor of the second degree and, upon conviction, shall be subject to a fine of not less than two thousand five hundred dollars (\$2,500) nor more than fifty thousand dollars (\$50,000) for each separate offense or to imprisonment for a period of not more than two years, or both.

(d) Each day of continued violation of any provision of this act, any rule or regulation of the department, any order of the department or any condition of any permit issued pursuant to this act shall constitute a separate offense.

(e) All summary proceedings under the provisions of this act may be brought before any district justice of the county where the offense occurred or any unlawful discharge of industrial waste or pollution was maintained, or in the county where the public is affected, and to that end jurisdiction is hereby conferred upon said district justices, subject to appeal by either party in the manner provided by law for appeals from summary convictions. It shall be the duty of the district attorney of the county to represent the interests of the Commonwealth in such actions.

Section 6. The act is amended by adding sections to read:

Section 13. Citizens' Suits.—(a) Except as provided in subsection (c) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this act or any rule, regulation, order or permit issued pursuant to this act against the department where there is alleged a failure of the department to perform any act which is not discretionary with the department or against any person who is alleged to be in violation of any provision of this act or any rule, regulation, order or permit issued pursuant to this act. Any other provision of law to the contrary notwithstanding, the courts of common pleas shall have jurisdiction of such actions, and venue in such actions shall be as set forth in the Rules of Civil Procedure concerning actions in assumpsit.

(b) Whenever any person presents information to the department which gives the department reason to believe that any person is in violation of any requirement of this act or any condition of any permit issued hereunder or of the acts enumerated in section (5)(g) of this act or any condition or any permit issued thereunder, the department shall immediately order inspection of the operation at which the alleged violation is occurring, and the department shall notify the person presenting such information and such person shall be allowed to accompany the inspector during the inspection.

(c) *No action pursuant to this section may be commenced prior to sixty days after the plaintiff has given notice in writing of the violation to the department and to any alleged violator, nor may such action be commenced if the department has commenced and is diligently prosecuting a civil action in a court of the United States or a state to require compliance with this act or any rule, regulation, order or permit issued pursuant to this act, but in any such action in a court of the United States or of the Commonwealth any person may intervene as a matter of right.*

(d) *The provisions of subsection (c) of this section to the contrary notwithstanding, any action pursuant to this section may be initiated immediately upon written notification to the department in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.*

(e) *The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accord with the Rules of Civil Procedure.*

Section 14. Coal Refuse Disposal Control Fund.—*All fines, civil penalties, bond forfeitures and fees collected under this act shall be paid into the Treasury of the Commonwealth in a special fund known as the "Coal Refuse Disposal Control Fund," hereby established, which shall be administered by the department for use in the elimination of pollution, the abatement of health and safety hazards and nuisances and such other purposes as are necessary to implement the provisions of this act pursuant to the rules and regulations adopted by the Environmental Quality Board. Moneys deposited into the Coal Refuse Disposal Control Fund are hereby appropriated to the Department of Environmental Resources to carry out the purposes provided in this act.*

Section 15. Savings Clause.—(a) *Nothing in this act shall be construed as estopping the Commonwealth, or any district attorney from proceeding in the courts of law or equity to abate pollutions forbidden under this act, or abate nuisances under existing law. It is hereby declared to be the purpose of this act to provide additional and cumulative remedies to control the disposal of coal refuse in this Commonwealth and nothing contained in this act shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or statutory law, criminal or civil, nor shall any provision of this act be construed as estopping the Commonwealth, persons or municipalities, in the exercise of their rights under the common law or decisional law or in equity, from proceeding in courts of law or equity to suppress nuisances, or to*

abate any pollution now or hereafter existing, or enforce common law or statutory rights. No courts of this Commonwealth having jurisdiction to abate public or private nuisances shall be deprived of such jurisdiction to abate any private or public nuisance instituted by any person for the reason that such nuisance constitutes air or water pollution.

(b) In order to maintain primary jurisdiction over coal mining in Pennsylvania, it is hereby declared that for a period of two years from the effective date of this act the department shall not enforce any provision of this act which was enacted by these amendments solely to secure for Pennsylvania primary jurisdiction to enforce Public Law 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, if the corresponding provision of that act is declared unconstitutional or otherwise invalid due to a final judgment by a Federal court of competent jurisdiction and not under appeal or is otherwise repealed or invalidated by final action of the Congress of the United States. If any such provision of Public Law 95-87 is declared unconstitutional or invalid, the corresponding provision of this act enacted by these amendments solely to secure for Pennsylvania primary jurisdiction to enforce the Federal Surface Mining Control and Reclamation Act of 1977, Public Law 95-87 shall be invalid and the secretary shall enforce this act as though the law in effect prior to these amendments remained in full force and effect.

It is hereby determined that it is in the public interest for Pennsylvania to secure primary jurisdiction over the enforcement and administration of Public Law 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, and that the General Assembly should amend this act in order to obtain approval of the Pennsylvania program by the United States Department of the Interior. It is the intent of this act to preserve existing Pennsylvania law to the maximum extent possible.

Section 16. Severability Clause.—The provisions of this act are severable and if any provision or part thereof shall be held invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of the act.

Section 7. To the full extent provided by section 529 of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), the surface mining of anthracite shall continue to be governed by the Pennsylvania law in effect on August 3, 1977.

Section 8. In order to maintain primary jurisdiction over surface coal mining in Pennsylvania pursuant to the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, the Environmental Quality Board shall have the authority to adopt initial regulations on an emergency basis in accordance with section 204(3) (relating to omission of notice of proposed rule making) of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents

Law. Provided, however, within 30 days after the Secretary of the United States Department of Interior grants such primary jurisdiction to Pennsylvania, the Environmental Quality Board shall repropose the regulations adopted on an emergency basis, shall submit the regulations to the Senate Environmental Resources and House Mines and Energy Management Committees of the General Assembly for their review and comments, and shall schedule public hearings within 90 days after such grant of primary jurisdiction for the purpose of hearing public comment on any appropriate revisions.

At least 30 days prior to consideration by the Environmental Quality Board of any revised regulations or any new regulations under this act other than those initial regulations promulgated on an emergency basis, the department shall submit such regulation to the Senate Environmental Resources and House Mines and Energy Management Committees of the General Assembly for their review and comment.

Section 9. This act shall take effect immediately.

APPROVED—The 10th day of October, A. D. 1980.

DICK THORNBURGH