

No. 1980-155

AN ACT

SB 990

Amending the act of May 31, 1945 (P.L.1198, No.418), entitled, as amended, "An act providing for the conservation and improvement of land affected in connection with surface mining; regulating such mining; and providing penalties," adding definitions, providing for permits to conduct certain mining operations, establishing procedures for making application for permits, providing for the deposit of collateral, further providing for the rule making powers of the Department of Environmental Resources, designating areas unsuitable for surface mining, further providing for mine conservation inspectors superseding certain ordinances, further providing for deposits into the Surface Mining Conservation and Reclamation Fund, changing remedies, imposing additional penalties, creating the Small Operators' Assistance Fund, making an editorial change, exempting the surface mining of anthracite.

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

Section 1. Section 1, act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," amended November 30, 1971 (P.L.554, No.147), is amended to read:

Section 1. *Purpose of Act.*—This act shall be deemed to be an exercise of the police powers of the Commonwealth for the general welfare of the people of the Commonwealth, by providing for the conservation and improvement of areas of land affected in the surface mining of bituminous and anthracite coal and metallic and nonmetallic minerals, to aid thereby in the protection of birds and wild life, to enhance the value of such land for taxation, to decrease soil erosion, to aid in the prevention of the pollution of rivers and streams, *to protect and maintain water supply, to protect land and to enhance land use management and planning*, to prevent and eliminate hazards to health and safety, to prevent combustion of unmined coal, and generally to improve the use and enjoyment of said lands, *to designate lands unsuitable for mining and to maintain primary jurisdiction over surface coal mining in Pennsylvania. It is also the policy of this act to assure that the coal supply essential to the Nation's and the Commonwealth's energy requirements, and to their economic and social well-being, is provided and to strike a balance between protection of the environment and agricultural productivity and the Nation's and the Commonwealth's need for coal as an essential source of energy.*

Section 2. Section 3 of the act, amended November 30, 1971 (P.L.554, No.147), December 28, 1972 (P.L.1662, No.355) and July 25, 1977 (P.L.99, No.36), 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:

["Minerals" shall mean any aggregate or mass of mineral matter, whether or not coherent, which is extracted by surface mining, and shall include but not be limited to limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite, clay, and anthracite and bituminous coal.

"Surface mining" shall mean the extraction of minerals from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including but not limited to strip, drift, and auger mining, dredging, quarrying, and leaching, and activities related thereto, but not including those mining operations carried out beneath the surface by means of shafts, tunnels, or other underground mine openings. "Surface mining" shall not include (i) the extraction of minerals (other than anthracite and bituminous coal) by a landowner for his own non-commercial use from land owned or leased by him; nor (ii) the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes, so long as such work is performed under a bond, contract and specifications which substantially provide for and require reclamation of the area affected in the manner provided by this act; nor (iii) to the handling, processing or storage of slag on the premises of a manufacturer as a part of the manufacturing process.

"Pit" shall mean the place where any coal or metallic and nonmetallic minerals are being mined by the surface mining method.

"Operation" shall mean the pit located upon a single tract of land or a continuous pit embracing or extending upon two or more contiguous tracts of land.

"Active operation" shall mean one in which the surface mine operator has removed a minimum of five hundred (500) tons per acre of aggregate or mass of non-coal mineral matter for commercial purposes in the preceding year.

"Land" shall mean the surface of the land upon which surface 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 surface mining, as a principal as distinguished from an agent or independent contractor, and, who is or becomes the owner of the minerals as a result of such mining. Where more than one person, firm, corporation or partnership is engaged in surface mining activities in a single operation, they shall be deemed jointly and severally responsible for compliance with the provisions of this act.

"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 mineral deposit or in between mineral deposits in its natural state and shall mean such material before or after its removal by surface mining.

“Spoil pile” shall mean the overburden and reject minerals as piled or deposited in surface mining.

“Land affected” shall mean the land from which the mineral is removed by surface mining, and all other land area in which the natural land surface has been disturbed as a result of or incidental to the surface mining activities of the operator, including but not limited to private ways and roads appurtenant to any such area, land excavations, workings, refuse banks, spoil banks, culm banks, 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, surface mining operations are situated.

“Abandoned” shall mean an operation where no mineral has been produced or overburden removed for a period of six months, verified by monthly reports submitted to the department by the operator and by inspections made by the department, 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 and submits a timetable satisfactory to the secretary regarding plans for the reactivation of the operation.

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

“Terracing” shall mean grading where the steepest contour of the highwall shall not be greater than thirty-five degrees from the horizontal, with the table portion of the restored area a flat terrace without depressions to hold water and with adequate provision for drainage, unless otherwise approved by the department.

“Contouring” shall mean reclamation achieved by beginning at or beyond the top of the highwall and slope 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 and with adequate provision for drainage.

“Secretary” shall mean the Secretary of Environmental Resources of the Commonwealth of Pennsylvania.

“Department” shall mean the Department of Environmental Resources of the Commonwealth of Pennsylvania.

“Cash” shall include, when used in regard to bond requirements, certificates of deposit.]

“Abandoned” shall mean any operation where no mineral has been produced or overburden removed for a period of six (6) months, verified by monthly reports submitted to the department by the operator and by inspections made by the department, 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 and submits a timetable satisfactory to the secretary regarding plans for the reactivation of the operation.

“Active operation” shall mean one in which the surface mine operator has removed a minimum of five hundred (500) tons per acre of aggregate or mass of noncoal mineral matter for commercial purposes in the preceding year.

“Cash” shall include, when used in regard to bond requirements, negotiable certificates of deposit.

“Contouring” shall mean reclamation of the land affected to approximate original contour so that it closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with no highwall, spoil piles or depressions to accumulate water and with adequate provision for drainage.

“Degree” shall mean the inclination from the horizontal.

“Department” shall mean the Department of Environmental Resources of the Commonwealth of Pennsylvania.

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

“Landowner” shall mean the person or municipality in whom the legal title to the land is vested.

“Minerals” shall mean any aggregate or mass of mineral matter, whether or not coherent, which is extracted by surface mining, and shall include but not be limited to limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite, clay, and anthracite and bituminous coal.

“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.

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

“Operator” shall mean a person or municipality engaged in surface mining, as a principal as distinguished from an agent or independent contractor. Where more than one person is engaged in surface mining activities in a single operation, they shall be deemed jointly and severally responsible for compliance with the provisions of this act.

“Overburden” shall mean the strata or material overlying a mineral deposit or in between mineral deposits in its natural state and shall mean such material before or after its removal by surface mining.

“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 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.

“Pit” shall mean the place where any coal or metallic and nonmetallic minerals are being mined by the surface mining method.

“Secretary” shall mean the Secretary of the Department of Environmental Resources of the Commonwealth of Pennsylvania.

“Spoil pile” shall mean the overburden and reject minerals as piled or deposited in surface mining.

“Surface mining” shall mean the extraction of minerals from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including but not limited to strip, auger mining, dredging, quarrying and leaching, and all surface activity connected with surface or underground mining including but not limited to exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction and activities related thereto, but not including those portions of mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings. “Surface mining” shall not include (i) the extraction of minerals (other than anthracite and bituminous coal) by a landowner for his own noncommercial use from land owned or leased by him; or (ii) the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes, so long as such work is performed under a bond, contract and specifications which substantially provide for and require reclamation of the area affected in the manner provided by this act; nor (iii) the handling, processing or storage of slag on the premises of a manufacturer as a part of the manufacturing process.

“Terracing” shall mean grading where the steepest contour of the highwall shall not be greater than thirty-five (35) degrees from the horizontal, with the table portion of the restored area a flat terrace without depressions to hold water and with adequate provision for drainage, unless otherwise approved by the department.

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

Section 3. Section 3.1 of the act, amended December 28, 1972 (P.L.1662, No.355), is amended to read:

Section 3.1. **Operator’s License; Withholding or Denying Permits or Licenses; Penalty.**—(a) After January 1, 1972, it shall be unlawful for any person to proceed to mine coal or to conduct an active operation to mine other minerals, by the surface mining method as an operator within this Commonwealth without first obtaining a license as a surface mining operator from the department: *Provided, however, That surface mining operations within the meaning of this subsection shall not be construed to include surface activity connected with underground mining, including but not limited to exploration, site preparation, entry, tunnel, slope, shaft and borehole drilling and construction and activities related thereto, including those portions of mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings.* Applications for licensure as surface mining operators shall be made in writing to the

department, upon forms prepared and furnished by the department, and shall contain such information as to the applicant, or when the application is made by a corporation, partnership or association as to its officers, directors and principal owners, as the department shall require. The initial application for licensure shall be accompanied by a fee of fifty dollars (\$50) in the case of persons mining two thousand tons or less of marketable minerals, other than coal, per year and a fee of five hundred dollars (\$500) in the case of persons mining coal or more than two thousand tons of other marketable minerals per year. It shall be the duty of all persons licensed as surface mining operators to renew such license annually, and pay for each such license renewal the sum of fifty dollars (\$50) in the case of persons mining two thousand tons or less of marketable minerals other than coal and the sum of three hundred dollars (\$300) in the case of all other operators. The application for renewal of a license as a surface mining operator shall be made annually on or before January 1 of the next succeeding year.

[Penalty.—] Any person who proceeds to mine minerals by the surface mining method as an operator without having applied for and received a license as herein provided or in violation of the terms thereof shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not less than five thousand dollars (\$5,000) or in an amount not less than the total profits derived by him as a result of his unlawful activities, as determined by the court, together with the estimated cost to the Commonwealth of any reclamation work which may reasonably be required in order to restore the land to its condition prior to the commencement of said unlawful activities, or undergo imprisonment not exceeding one year, or both. The fine shall be payable to the Surface Mining Conservation and Reclamation Fund.

(b) The department shall not issue any **[new]** surface mining operator's license *or permit* or renew *or amend* any **[existing surface mining operator's]** license *or permit* **[to any person or operator]** if it finds, after investigation, *and an opportunity for an informal hearing* that *(1)* the applicant **[for licensure or renewal]** 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 **[** Where the applicant is a corporation, partnership or association, the department shall not issue such license or renewal if, after investigation, it finds that any officer or director or principal owner of such corporation, partnership or association 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 if any such officer or director or principal owner is or has been an officer or director or principal owner of any other corporation, partnership or association, which 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 any provision of this act or of any of the acts repealed or amended hereby as indicated by past or continuing violations. Any person, partnership, association or corporation which has engaged in unlawful conduct as defined in section 18.6 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 license or permit required by this act unless the license or 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 surface mining operations, and such persons shall be jointly and severally liable with the licensee for such violations of this subsection as the licensee is charged and in which such persons participate. Following the department's decision whether to approve or deny a renewal, the burden shall be on the opponents of the department's decision. If the department intends not to renew a license, it shall notify the licensee of that fact at least sixty (60) days prior to the expiration of the license; prior to the expiration, the licensee shall be provided an opportunity for an informal hearing. This notice requirement shall not preclude the department from denying an application to renew a license for any violation occurring or continuing within the sixty (60) day period so long as the department provides an opportunity for an informal hearing prior to not renewing the license.

(c) The application for license, renewal or permit shall be accompanied by a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in Pennsylvania covering all surface mining operations of the applicant in this State and affording personal injury and property damage protection, to be written for the term of the license, renewal or permit. The total amount of insurance shall be in an amount adequate to compensate any persons damaged as a result of surface mining operations, including but not limited to use of explosives, and entitled to compensation under the applicable provisions of State law. The total amount shall be as prescribed by rules and regulations.

Section 4. Section 3.2 of the act, added November 30, 1971 (P.L.554, No.147), is amended to read:

Section 3.2. *Specifications for Construction Projects.*—It shall be the duty of architects, engineers, or other persons preparing specifications for construction projects and which specifications include the requirement that the construction contractor supply fill for such project, to include within such specifications a specific reference to this act and the regulations pertaining thereto adopted by the department. If such a reference is omitted from the specifications and

reclamation and planting of the land from which the fill was removed by the construction contractor is required under this act, any contract based on such specifications may be amended, at the option of the construction contractor, to allow a reasonable price for the reclamation and planting of the land affected in accordance with a plan acceptable to the secretary.

Section 5. Section 4 of the act, amended November 30, 1971 (P.L.554, No.147) and subsection (j) added October 18, 1973 (P.L.306, No.94), is amended to read:

Section 4. *Mining Permit; Reclamation Plan; Bond.*—(a) Before any person [licensed as a surface mining operator] shall hereafter proceed to mine minerals by the surface mining method, he shall apply to the department, on a form prepared and furnished by the department, for a permit for each separate operation[, which permit when issued shall be valid until such operation is completed or abandoned, unless sooner suspended by the secretary]. *The department is authorized to charge and collect from persons a reasonable filing fee. Such fee shall not exceed the cost of reviewing, administering and enforcing such permit.* As a part of each application for a permit, the operator shall, unless modified or waived by the department for cause, furnish the following:

(1) Map and Related Information. An accurately surveyed map or plan, in duplicate, on a scale [of not less than two hundred feet to the inch] *satisfactory to the department, but in no event less than 1:25,000*, in a manner satisfactory to the [secretary] department, showing the location of the tract or tracts of land to be affected by the operation contemplated, and *such* cross-sections at *such* intervals [of not more than one hundred feet.] *as the department may prescribe.* Such surveyed map or plan and cross-sections shall be prepared and certified by a registered professional engineer or [registered surveyor] *professional geologist with assistance from experts in related fields* and shall show the boundaries of the proposed land affected, together with the drainage area above and below such area, the location and names of all streams, roads, railroads and utility lines on or immediately adjacent to the area, the location of all buildings within one thousand feet of the outer perimeter of the area affected, the names and addresses of the owners and present occupants thereof, the purpose for which each such building is used, the name of the owner of the area and the names of adjacent landowners, the municipality or township and county, and if in a township, the nearest municipality. Such map or plan shall also show the results of test borings which the operator has conducted or [shall] *will* conduct at the site of the proposed operation and shall include the nature and depth of the various strata, the thickness of any coal or mineral seam, a complete analysis of any coal, the mineral seam, an analysis of the overburden, the crop line of any coal, or mineral or minerals to be mined and the location of test boring holes. [The information

resulting from test borings, shall be deemed confidential information and shall not be deemed a matter of public record.] *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.* Aerial photographs of the tract or tracts of land to be affected by the operation shall also be provided if such photographs are required by the [secretary] *department.*

(2) Reclamation Plan. A complete and detailed plan for the reclamation of the land affected. Except as otherwise herein provided, or unless a variance for cause is specially allowed by the department as herein provided, each such plan shall include the following:

A. A statement of the [highest and best use to which the land was put prior to the commencement of surface mining] *uses and productivity of the land proposed to be affected;*

B. [The use which is proposed to be made of the land following reclamation;

C. Where conditions permit, the manner in which topsoil and subsoil will be conserved and restored. If conditions do not permit the conservation and restoration of all or part of the topsoil and subsoil, a full explanation of said conditions shall be given, and alternate procedures proposed;

D.] Where the proposed land use so requires, the manner in which compaction of the soil and fill will be accomplished;

[E. A complete planting program providing for the planting of trees, grasses, legumes or shrubs, or a combination thereof approved by the department as best calculated to permanently restore vegetation to the land affected. If conditions do not permit the planting of vegetation on all or part of the land affected, and if such conditions pose an actual or potential threat of soil erosion or unavoidable siltation, then alternate procedures shall be proposed to prevent the threat of soil erosion or unavoidable siltation. If such procedures do not prevent these conditions, they shall not be approved by the department;]

C. *A description of the manner in which the operation will segregate and conserve topsoil and if necessary suitable subsoil to 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 revegetation process where desirable and necessary to achieve the approved post-mining land use plan: And provided further, That when*

the department issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the permit application, the department may grant an exception to the requirements of this clause.

[F.] *D.* A detailed timetable for the accomplishment of each major step in the reclamation plan, and the operator's estimate of the cost of each such step and the total cost to him of the reclamation program;

[G.] *E.* Unless the reclamation plan provides for contouring, as herein defined, it shall contain a full explanation of the conditions which do not permit contouring and: [it shall, in the case of anthracite or bituminous coal, provide for terracing as herein defined. Other alternatives to contouring or terracing may be proposed, in conjunction with such proposed land uses as water impoundment, water-oriented real estate development, recreational area development, industrial site development or solid waste disposal area development, and unless such proposed alternatives or uses pose an actual or potential threat of water pollution, are deemed impractical or unreasonable, involve unreasonable delay in their implementation, or are violative of Federal, State or local law, such alternatives and uses shall be approved by the department;]

(i) In the case of anthracite or bituminous coal mining, the reclamation plan shall provide for contouring except that terracing shall be permitted if the operator demonstrates and the department finds in writing, that the area proposed to be affected had previously been mined prior to current practices and standards, the area proposed to be affected cannot be reclaimed by contouring, and re-affecting the area is likely to produce an environmental benefit. Other alternatives to contouring or terracing may be proposed to attempt to obtain a variance in cases where the land is proposed to be made suitable after mining and reclamation for currently planned or designated industrial, commercial, agricultural, residential, recreational or public use. In the discretion of the department, diversion structures and impoundments may be constructed on the reclaimed area of the operation if they are part of an approved drainage control plan and meet all applicable requirements of law. Any such variance shall be granted by the department in writing only after such conditions as the department shall prescribe are met, including but not limited to conditions relating to backfilling, highwall elimination, watershed protection, surface owner's consent, consultation with appropriate land use planning agencies, equal or better economic or public use, and certification of the project by a registered professional engineer or professional geologist, with assistance from experts in related fields. Such alternatives shall not be approved if the proposed alternative or use is not likely to be achieved, poses an actual or potential threat to public health or safety or of water diminution, interruption, contamination or pollution, is inconsistent with applicable land use policies, plans and

programs and Federal, State and local law or involves unreasonable delay in implementation; or

(ii) In the case of surface mining for other than anthracite or bituminous coal, other alternatives to contouring or terracing may be proposed, in conjunction with such proposed land uses as water impoundment, water-oriented real estate development, recreational area development, industrial site development or solid waste disposal area development, and unless such proposed alternatives or uses are not likely to be achieved, pose an actual or potential threat to public health or safety or of water diminution, interruption, contamination or pollution, are inconsistent with applicable land use policies, plans and programs and Federal, State or local law or involve unreasonable delay in implementation: Provided, however, That the variance procedure set out in clause (1) shall not be applicable to the department's determination to grant or deny a permit application under this clause.

[H. Such other or further information as the department may require;

I.] F. Except where leases in existence on [the effective date of this amending act] *January 1, 1964* do not so provide or permit, 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 by the operator [or] and by the Commonwealth [or] and any of its authorized agents [within] *prior to the initiation of surface mining operations, during surface mining 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 mine drainage treatment] pollution abatement facilities as may be deemed necessary by the [secretary] department for the [prevention of stream pollution from mine drainage] purposes of this act. Such forms shall be deemed to be recordable documents, and prior to the initiation of surface mining operations under the permit, such forms shall be recorded by the applicant 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. In the case of leases in existence on January 1, 1964, not so providing or permitting, the application for permit shall include upon a form prescribed and furnished by the department, a notice of the existence of such lease. Such forms shall be deemed to be recordable documents, and prior to the initiation of surface mining operations under the permit, such forms shall be recorded by the applicant 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.*

[J. The application for license or renewal shall be accompanied by a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in Pennsylvania covering all surface mining operations of the applicant in this State and affording personal injury

and property damage protection, to be written for the term of the license or renewal. The total amount of insurance shall be not less than one hundred thousand dollars (\$100,000); the secretary may waive the provisions of this clause upon a finding that the application is possessed and will continue to be possessed of ability to pay personal injury or property damage claims within the requirements of this clause.

K.] G. The application shall also set forth the manner in which the operator plans to divert surface water from draining into the pit and the manner in which he plans to prevent water from accumulating in the pit. No approval shall be granted unless the plan provides for a practicable method of avoiding acid mine drainage and preventing avoidable siltation or other stream pollution. Failure to prevent water from draining into or accumulating in the pit, or to prevent stream pollution, during surface mining or thereafter, shall render the operator liable to the sanctions and penalties provided in this act and in "The Clean Streams Law," and shall be cause for revocation of any approval license or permit issued by the department to the operator.

H. *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 September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control 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," the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments 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: And provided further, That nothing in this clause shall be read to limit the department's authority to regulate activities in a coordinated manner. Compliance with the provisions of this clause 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.”

I. In the case of surface coal mining, the application shall also include a statement of the land use proposed for the affected area after mining and reclamation are completed. The department shall not approve any post-mining land use unless the application demonstrates that the operation will restore the land affected to a condition capable of supporting the uses it was capable of supporting prior to any mining, or to any higher or better uses. No post-mining land use or uses shall be approved unless the application demonstrates that the use or uses are reasonably likely to be achieved, do not present any actual or potential threat to public health or safety or to fish and wildlife or of water diminution, interruption, contamination or pollution, are consistent with applicable land use policies, plans and programs and Federal, State or local law, and involve no unreasonable delay in implementation. In the case of noncoal surface mining, the application shall include such information concerning post-mining land use as may be prescribed by regulations promulgated hereunder.

J. In the case of surface coal mining, for those lands identified 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. In no case shall the department grant a permit to affect prime farmland unless after consultation with the United States Department of Agriculture the department 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, meets all relevant regulations of the United States Department of the Interior, and can meet such soil reconstruction standards as the department may prescribe by rule and regulation promulgated hereunder. In the case of noncoal surface mining, the application shall include such information concerning prime farmlands as may be prescribed by regulations promulgated hereunder.

K. The application shall also demonstrate that the proposed operation will be conducted so as to maximize the utilization and conservation of the solid fuel resource being recovered so that re-affecting the land in the future can be minimized: Provided, however, That such resource utilization and conservation shall not excuse in any manner the operator from complying in full with all environmental protection and health and safety standards.

L. Such other or further information as the department may require.

(b) The applicant shall give public notice of every application for a permit or a bond release under this act 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: Provided, however, That increments within the original permit area upon which operations are initiated shall not be treated as original permit applications with regard to the requirements of this subsection so long as the original permit is in full force and effect at the time the operations are initiated. 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. Any person having an interest which is or may be adversely affected by any action of the department under this section may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law and from the adjudication of said board such person 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. In all cases involving surface coal mining operations, any person having an interest which is or may be adversely affected shall have the right to file written objections to the proposed permit application or bond release within thirty (30) days after the last publication of the above notice. Such objections shall immediately be transmitted to the applicant by the department. If written objections are filed and an informal conference requested, the department shall then hold an informal conference in the locality of the surface mining operation. If an informal conference has been held, the department shall issue and furnish the applicant for a permit or bond release and persons who are parties to the administrative proceedings with the written finding of the department granting or denying the permit or bond release in whole or in part and stating the reasons therefor, within sixty (60) days of said hearings. If there has been no informal conference, the department shall notify the applicant for a bond release of its decision within sixty (60) days of the date of filing the application. If there has been no informal conference, the department shall notify the applicant for a permit within a reasonable time as determined by the department and set forth in regulations, taking into

account the time needed for investigation of the site, the complexity of the permit application, and whether or not written objection to the application has been filed, whether the application has been approved or disapproved. The applicant, operator, or any person having an interest which is or may be adversely affected by an action of the department to grant or deny a permit or to release or deny release of a bond and who participated in the informal hearing held pursuant to this subsection or filed written objections, may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law and from the adjudication of said board such person may further appeal as provided by Title 2 of the Pennsylvania Consolidated Statutes. Subject to the confidentiality provisions of subsection (a)(1), 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 mining is proposed to occur.

[(b)] (c) Upon receipt of an application, the department shall review the same and shall make such further inquiries, inspections or examinations as may be necessary or desirable for a proper evaluation thereof. Should the [secretary] *department* object to any part of the proposal, [he] *it* shall promptly notify the [operator by registered mail] *applicant in writing* of [his] *its* objections, setting forth [his] *its* reasons therefor, and shall afford the [operator] *applicant* a reasonable opportunity to make such amendments or take such other actions as may be required to remove the objections. [No application shall be approved with respect to any operator who has failed, and continues to fail to comply with the provisions of this act or of any act repealed or amended hereby, as applicable, or with the terms or conditions of any permit issued under "The Clean Streams Law" of June 22, 1937 (P.L.1987, No.394), as amended, or where any claim is outstanding against any operator, or in the case for a corporate operator against any officer or director, under this act or any act repealed or amended hereby.] Should any [operator be aggrieved] *person having an interest which is or may be adversely affected* by any action of the [secretary] *department* under this subsection, or by the failure of the [secretary] *department* to act upon [his] *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 [the Administrative Agency Law] *Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).*

[(c)] (d) Prior to commencing surface mining, the [operator] *permittee* shall file with the department a bond for the land affected by each operation on a form to be prescribed and furnished by the department, payable to the Commonwealth and conditioned that the [operator] *permittee* shall faithfully perform all of the requirements of this act and of 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 September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act," and, where applicable, of 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," the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments 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: And provided further, That the foregoing proviso shall not 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] department 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] permittee'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*, 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] permittee, in excess of the cost to the [operator] permittee of performing the necessary work during the course of his surface mining operations. When the plan involves the 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 [five thousand dollars (\$5000.00).] *ten thousand dollars (\$10,000.00) for the entire permit area*. Liability under such bond shall be for the duration of the surface mining at each operation, and for a period of five *full years [thereafter,] 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 whole or] in part prior thereto as hereinafter provided. Such bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth and approved by the secretary: Provided, however, That the [operator] permittee 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 (90) 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 such irrevocable letter of credit or market value of such securities shall be equal at least to the sum of the bond. The secretary shall, upon receipt of any such deposit of cash, letters of credit or [securities] negotiable bonds 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] permittee 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 [securities] collateral so deposited, upon depositing with him, in lieu thereof, other [negotiable securities] collateral of the classes herein 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 [securities] negotiable bonds as the same becomes due and payable: Provided, however, That where [securities] negotiable bonds, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the [operator] permittee, shall convert such [securities] negotiable bonds into such other negotiable [securities] bonds of the classes herein specified as may be designated by the [operator] permittee: And, provided further, That where notice of intent to terminate a letter of credit is given, the department shall give the permittee thirty (30) 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 (30) 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 (3) 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 (36) 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 (10) 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 (10) 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 Surface Mining Conservation and Reclamation 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 (5) 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.

[(d) The operator shall, prior to commencing operations on any additional land exceeding the estimate made in the application for a permit, file an additional application and bond. Upon receipt of such additional application and related documents and information as would have been required for the additional land had it been included in the original application for a permit and should all the requirements of this act be met as were necessary to secure the permit, the secretary shall promptly issue an amended permit covering the additional acreage covered by such application, and shall determine the additional bond requirement therefor.]

(e) Notwithstanding the provisions of [subsections (c) and (d)] *subsection (c)* of this section, in the case of applications for the [surface] mining of minerals [other than anthracite and bituminous coal] where the department determines that the mineral to be extracted exceeds the amount of overburden by a ratio of at least four to one *or the minerals are to be removed by underground mining methods*, and the [surface] mining operations are reasonably anticipated to continue for a period of at least ten years from the date of application, the term of the bond shall be for the duration of the [license issued under this act] *mining and reclamation operations* and for five years thereafter. [In lieu of the bond required by subsections (c) and (d) of this section, the] *The operator, in the case of [applications] mining and reclamation operations* hereinbefore mentioned by this subsection (e), may elect to [annually pay to the department, for deposit in the Surface Mining Conservation and Reclamation Fund established by this act, an amount equal to ninety-five per cent of the average bond premium, as established by the Insurance Commissioner, which the operator would otherwise be required to pay in order to obtain the bond required by subsections (c) and (d) of this section. Said amount shall be retained by the Commonwealth and shall not be refundable to the operator. Payment thereof shall excuse the operator from compliance with the bond requirements of subsections (c) and (d) of this section with respect to such operation.] *deposit collateral and file a collateral bond as provided in subsection (d) according to the following phased deposit schedule. The operator shall, prior to commencing mining operations, deposit ten thousand dollars (\$10,000.00) or twenty-five per cent of the amount of the bond determined under subsection (d), whichever is greater. The operator shall, thereafter, annually deposit ten per cent of the remaining bond amount for a period of ten (10) 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 subsection (d). The collateral shall be deposited, in trust, with the State Treasurer*

as provided in subsection (d) 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 enumerated in subsection (d). 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 (g).

(e.1) The department may, in lieu of a bond required by subsection (d) or (e), require the operator of an underground mining operation to purchase subsidence insurance, as provided by the act of August 23, 1961 (P.L.1068, No.484), entitled, as amended, "An act to provide for the creation and administration of a Coal and Clay Mine Subsidence Insurance Fund within the Department of Environmental Resources for the insurance of compensation for damages to subscribers thereto; declaring false oaths by the subscribers to be misdemeanors; providing penalties for the violation thereof; and making an appropriation," for the benefit of all affected surface property owners on account of damage caused by subsidence. The insurance coverage shall be in an amount determined by the department to be sufficient to remedy any and all damage. The term of this obligation shall be for the duration of the mining and reclamation operation and for ten years thereafter. For all other surface effects of underground mining, other than subsidence, the operator shall post a bond as required by subsection (d) or (e).

(f) Within ninety days after commencement of surface mining operations and in the case of surface coal mining each [ninety] thirty and, in the case of noncoal surface mining each three hundred and sixty-five days thereafter unless modified or waived by the department for cause, the operator shall file in triplicate an operations and progress report with the department on a form prescribed and furnished by the department, setting forth (i) the name or number of the operation; (ii) the location of the operation as to county and township and with reference to the nearest public road; (iii) a description of the tract or tracts; (iv) the name and address of the landowner or his duly authorized representative; (v) a monthly report of the mineral produced, number of employes and days worked; (vi) a report of all fatal and nonfatal accidents for the previous three months; (vii) the current status of the reclamation work performed in pursuance of the approved reclamation plan; and (viii) such other or further information as the department may reasonably require. [In addition to the foregoing, the operator shall annually furnish to the department a new map, based upon a survey, showing the status of the operation at the conclusion of each year of operation, indicating the area affected and restored during the preceding year, particularly with relation to the property lines and boundaries shown upon the map and survey furnished with the original application.]

(g) [As the operator completes each separate step of the approved reclamation plan, he may report said completion to the department and request the release of that portion of the bond and collateral which relates to the completed portion of the reclamation plan. Upon the receipt of such notification and request, the secretary shall cause the premises to be inspected, and if he finds that the work has been performed in a proper and workmanlike manner and is in compliance with the approved reclamation plan and with the law applicable, he shall release that portion of the bond and collateral which relates to the completed portion of the reclamation plan: Provided, however, That the secretary may withhold an amount equivalent to five per cent of said amount for a period of five years from the completion date of said work, as a contingency allowance for the reimbursement of the Commonwealth of any cost encountered due to after-discovered faulty or negligent work on the part of the operator.] *Subject to the public notice requirements of subsection (b), if the department is satisfied the reclamation covered by the bond or portion thereof has been accomplished as required by this act, it may, in the case of surface coal mining operations, upon request by the permittee release in whole or in part the bond or deposit according to the following schedule: (1) when the operator has completed the backfilling, regrading 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 revegetation has been successfully established on the affected area in accordance with the approved reclamation plan, the department shall retain that amount of bond for the revegetated area which would be sufficient for the cost to the Commonwealth of reestablishing revegetation. Such retention of bond shall be for the duration of liability under the bond as prescribed in subsection (d). 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 requirements of law or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to subsection (a)(2)I. Where a permanent impoundment is to be retained, that portion of bond under this subsection may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the department; (3) when the operator has completed successfully all mining 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 (d). In the case of noncoal surface mining operations, in lieu of the schedule and criteria for release of bonds provided for in this subsection, the schedule and criteria for release of bonds shall be as set forth in*

regulations promulgated hereunder. No bond shall be fully released until all requirements of this act are fully 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.

(h) If the operator 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] *department* shall declare such portion of 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] *department* shall declare such portion of said collateral forfeited, and shall direct the State Treasurer to pay said funds into the Surface Mining Conservation and Reclamation Fund, or to proceed to sell said securities to the extent forfeited and pay the proceeds thereof into the Surface Mining Conservation and Reclamation 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, shall have a right to contest such action and appeal therefrom as herein provided.

(i) Should any operator be aggrieved by any decision or action of the secretary with respect to the amount of any bond, the terms, conditions or release thereof, or any other matter related thereto, 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 [the Administrative Agency Law] *Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).*

(j) Notwithstanding the provisions of [subsection J. of clause (2) of subsection (a) and subsections (c) and (d)] *subsections (d) and (e) of this section and of section 3.1(c)*, in the case of applications for the surface mining of minerals other than anthracite and bituminous coal where the department determines that the amount of marketable minerals to be extracted does not exceed two thousand (2,000) tons, no certificate of insurance nor bond shall be required.

Section 6. Section 4.2 of the act, amended November 30, 1971 (P.L.554, No.147), December 28, 1972 (P.L.1662, No.355), July 25, 1977 (P.L.99, No.36) and March 3, 1978 (P.L.10, No.5), is amended to read:

Section 4.2. *General Rule Making; Health and Safety.*—
(a) Except as otherwise provided hereunder, *and subject to the provisions of section 4(a)(2)L* all surface mining operations coming within the provisions of this act shall be under the exclusive jurisdiction of the department and shall be conducted in compliance with such reasonable rules and regulations as may be deemed necessary by the

[secretary] *department* for the fulfillment of the purposes, and provisions of this act, and other acts where applicable, including, but not limited to the act of July 17, 1961 (P.L.659, No.339), known as the "Pennsylvania Bituminous Coal Mine Act," and the act of November 10, 1965 (P.L.721, No.346), known as the "Pennsylvania Anthracite Coal Mine Act," for the health and safety of those persons engaged in the work and for the protection of the general public. [Separate rules and regulations shall be promulgated for each mineral.] The [secretary] *department* 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. In addition, should the secretary determine that a condition caused by or related to surface mining constitutes a hazard to public health or safety, he shall take such measures to abate and remove the same as are provided by section 1917-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," and as otherwise provided by law for the abatement of nuisances. For the purposes of this section, any condition which creates a risk of fire, landslide, subsidence, cave-in or other unsafe, dangerous or hazardous condition, including but not limited to any unguarded and unfenced open pit area, highwall, water pool, spoil bank and culm bank, abandoned structure, equipment, machinery, tools or other property used in or resulting from surface mining operations, or other serious hazards to public health or safety, is hereby declared to be a nuisance within the meaning of section 1917-A of "The Administrative Code of 1929."

(b) The use of explosives for the purpose of blasting in connection with surface mining shall be done in accordance with regulations promulgated by and under the supervision of the secretary. *These regulations shall include but not be limited to provisions relating to public notice, blasting schedules, monitoring and record-keeping, prevention of injury, prevention of damage to property outside the permit area, prevention of adverse impacts upon any underground mine, prevention of any change in the course, channel, or availability of ground or surface water outside the permit area, pre-blast surveys and certification of blasting personnel. Precautions shall be taken when blasting in close proximity to any underground mine. Blasting shall be conducted in such a manner as to protect the health and safety of persons working underground or to prevent any adverse impact upon an active, inactive or abandoned underground mine.* It shall be unlawful for any blaster to leave a working place after a task completion without first filing a report with the mine operator known as a blaster's report. Such report shall indicate the nature of the blasting operation, including, but not limited to, the type and amount of explosives used.

(c) From the effective date of this act, as amended hereby, no operator shall [open any pit for surface mining operations] *conduct surface mining operations* (other than borrow pits for highway

construction purposes) within one hundred feet of the outside line of the right-of-way of any public highway or within three hundred feet of any occupied dwelling [house], unless released by the owner thereof, [or] *nor within three hundred feet of any public building, public park, school, [park or] church, community or institutional building or within one hundred feet of any cemetery. [or of the bank of any stream]* The secretary may grant operators variances to the distance requirements herein established where he is satisfied that special circumstances warrant such exceptions and that the interest of the public and landowners affected thereby will be adequately protected. Prior to granting any such variances, the operator shall be required to give public notice of his application therefor in two newspapers of general circulation in the area once a week for two successive weeks. Should any person file an exception to the proposed variance within twenty days of the last publication thereof, the department shall conduct a public hearing with respect thereto.

(d) Upon the completion of any surface mining operation, and prior to the release by the secretary of all or any portion of the bond or collateral pertinent thereto, the operator shall remove and clean up all temporary or unused structures, facilities, equipment, machines, tools, parts or other materials, property, debris or junk which were used in or resulted from his surface mining operations.

(e) Nothing contained in this act shall be construed to prohibit the relocation of any public road in the manner provided by law.

(f) Any surface mining operator who affects a public or private water supply by contamination or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply. If any operator shall fail to comply with this provision, the secretary may issue such orders to the operator as are necessary to assure compliance.

(g) In implementing and enforcing this act and in promulgating rules and regulations issued pursuant to this act, the department shall consider the differences among mining of bituminous coal, anthracite coal and noncoal minerals and issue separate regulations for each.

[(g) Any operator aggrieved by the secretary's order issued pursuant to subsection (f) shall have the right within thirty (30) days of receipt of such order to appeal to the Environmental Hearing Board. Hearings under this subsection and any subsequent appeal shall be in accordance with section 1921(a), act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," and the act of June 4, 1945 (P.L.1388, No.442), known as the "Administrative Agency Law."]

(h) If the secretary finds (i) that immediate replacement of an affected water supply used for potable or domestic needs is required to protect health and safety, and (ii) that the operator has appealed or failed to comply with an order issued pursuant to subsection (f), the

secretary may, in his discretion, restore or replace the affected water supply with an alternate source of water utilizing moneys from the surface mining conservation and reclamation fund. The secretary shall recover the costs of restoration or replacement, including costs incurred for design and construction of facilities, from the responsible operator or operators. Any such costs recovered shall be deposited in the fund.]

Section 7. Section 4.3 of the act, amended November 30, 1971 (P.L.554, No.147), is amended to read:

Section 4.3. [Any mine conservation inspector] *Violation Notices; Suspension of License; Cease and Desist Order.*—*The department shall have the right to enter upon and inspect all surface mining operations for the purpose of determining conditions of health or 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 surface mining operator's license of the operator and issue a cease and desist order requiring the operator to immediately cease surface 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.] 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 shall not be limited to, orders modifying, suspending or revoking permits, licenses and orders requiring persons to cease operations immediately. The right of the department to issue an order under this act is in addition to any penalty or requirement which may be imposed pursuant to this act. If the department intends to revoke or suspend a license, it shall provide an opportunity for an informal hearing before suspending or revoking the license. Fifteen (15) days notice of the informal hearing shall be given unless the department determines that a shorter period is in the public interest.*

Section 8. The act is amended by adding a section to read:

Section 4.5. Designating Areas Unsuitable for Surface Mining.—

(a) Pursuant to the procedures set forth in subsection (b), the department shall designate an area as unsuitable for all or certain types of surface mining operations as such operations are defined in section 3, if the department determines that reclamation pursuant to the requirements of this act is not technologically and economically feasible.

(b) Pursuant to the procedures set forth in this subsection, the department may designate an area as unsuitable for all or certain types of surface mining 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 resources 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. This process shall include:

(1) a department review of surface mining 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 surface mining operations;

(3) a method or methods for implementing land use planning decisions concerning surface mining 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 surface mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation at the Federal, State and local levels.

(e) The requirements of this section shall not apply to lands on which surface mining operations were being conducted on August 3, 1977 or are being conducted 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. if such operations 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 surface mining 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 surface mining 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 (10) 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 (60) 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 surface mining operations, the department shall prepare a detailed statement on (i) the potential mineral resources of the area, (ii) the demand for mineral resources, and (iii) the impact of such designation on the environment, the economy and the supply of the mineral.

(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 surface mining operations except those which existed 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 System, 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 and National Recreation Areas designated by Act of Congress;

(2) on any Federal lands within the boundaries of any national forest: Provided, however, That surface mining operations may be permitted on such lands if the Department of Interior and the department finds that there are no significant recreational, timber, economic, or other values which may be incompatible with such surface mining operations and such surface mining operations and impacts are incident to an underground coal mine;

(3) which will adversely affect any public 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 department 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 from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, nor institutional building, public park or within one hundred feet of a cemetery.

(i) No operator shall conduct surface mining operations within one hundred feet of the bank of any stream. The department may, however, grant a variance from this distance requirement if the operator demonstrates beyond a reasonable doubt that there will be no adverse hydrologic or water quality impacts as a result of the variance. Such variance shall be issued as a written order specifying the methods and techniques that must be employed to prevent adverse impacts. Prior to granting any such variance, the operator shall be required to give public notice of his application thereof in two (2) newspapers of general circulation in the area once a week for two (2) successive weeks. Should any person file any exception to the proposed variance within twenty (20) days of the last publication thereof, the department shall conduct a public hearing with respect thereto. The department shall also consider any information or comments submitted by the Pennsylvania Fish Commission prior to taking action on any variance request.

Section 9. Section 15.3 of the act, added January 19, 1968 (1967 P.L.1012, No.446), subsections (a), (m), (n), (o) and (p) amended or added November 30, 1971 (P.L.554, No.147) and subsection (b) amended July 30, 1975 (P.L.148, No.74), is amended to read:

Section 15.3. *Conservation Districts and Inspectors.*— **[(a)]** The Commonwealth shall be arranged by the secretary into mine land and water conservation districts, which the secretary may at any time redistrict. Each district shall have **[a]** mine conservation **[inspector]** *inspectors.*

[The Governor shall commission and appoint mine land and water conservation inspectors from among persons holding valid unexpired certificates of qualification issued by the department under this act and each mine conservation inspector shall hold office during good behavior or until removed from office as herein provided.] *Mine conservation inspectors shall be appointed in accordance with the rules and regulations of the Civil Service Commission.* It shall be the duty of the secretary to assign the inspectors to their respective districts.

[(b)] The qualifications for certification of a candidate for the office of mine conservation inspector shall be as follows: The candidate shall be of temperate habits of good repute as a person of integrity, in good physical condition, shall be twenty-five years of age, or over, shall have successfully passed the examination for mine conservation inspector provided herein, shall have had sufficient prac-

tical experience in surface mining and conservation or in lieu thereof specialized education or a combination of education and experience as specified by the secretary, and shall have served in a probational status for a period of at least six months in this Commonwealth, which shall be evaluated by the secretary.

(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 type-written 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 qualified 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.

(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.

(m) The mine conservation inspectors shall be allowed all necessary expenses incurred by them in enforcing the several provisions of this act in the respective courts of this Commonwealth, if they have obtained the consent of the department before such expense is incurred, the same to be paid by the State Treasurer, on warrant of the Auditor General, issued upon presentation of itemized vouchers approved by the court before which the proceedings were instituted, and also by the secretary.

(n) Each mine conservation inspector may also incur traveling expenses, and such other expenses as may be necessary for the proper discharge of his duties under the provisions of this act. Each mine conservation inspector shall have an office in his district, which may be at his place of residence if a suitable room, approved by the secretary, is set apart for that purpose. The secretary shall have authority to procure for the mine conservation inspectors, on their request, furniture, instruments, chemicals, typewriters, stationery and all other necessary supplies, which shall be paid for by the State Treasurer, on warrant of the Auditor General issued upon presentation of vouchers approved by the secretary. All furniture, instruments, plans, books, memoranda, notes and other materials pertaining to the office of the mine conservation inspector, shall be the property of the Commonwealth, and shall be delivered by the mine conservation inspector to his successor in office.

(o) At the conclusion of the examination of a mine, the mine conservation inspector shall discuss with representatives of management his findings and recommendations.

(p) To enable the mine conservation inspector to perform the duties imposed upon him by this act, he shall have the right at all times to enter upon the land affected by any former or present surface mining operation in his district or any surface mining operation in any other district when directed to do so by the secretary, to make examinations or obtain information; and upon the discovery of any violation of this act, or upon being informed of any violation of the act, or upon the discovery of any nuisance, he shall institute proceedings against the person or persons at fault, under the provisions of this act.]

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

Section 17.1. Local Ordinances.—Except with respect to ordinances adopted pursuant to the act of July 31, 1968 (P.L.805, No.247), known as the “Pennsylvania Municipalities Planning Code,” all local ordinances and enactments purporting to regulate surface mining are hereby superseded. The Commonwealth by this enactment hereby preempts the regulation of surface mining as herein defined.

Section 11. Sections 18, 18.1 and 18.2 of the act, amended November 30, 1971 (P.L.554, No.147), are amended to read:

Section 18. *Surface Mining Conservation and Reclamation Fund; Payments to Clean Water Fund.—(a)* All funds received by the secre-

tary from license fees, [and] *from permit fees*, from forfeiture of bonds, *from all fines collected under section 18.5 and all civil penalties collected under section 18.4*, and of cash deposits and securities, *and from costs recovered under the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law,"* shall be held by the State Treasurer in a special fund, separate and apart from all other moneys in the State Treasury, to be known as the "Surface Mining Conservation and Reclamation Fund," and shall be used by the secretary for the purpose of the [foresting] *revegetation* or reclaiming of land affected by surface mining of any coal or metallic [and] *or nonmetallic minerals for restoration or replacement of water supplies affected by surface mining operations*, or for any other conservation purposes provided by this act, and for such purposes are hereby specifically appropriated to the department. *Costs recovered under section 315(e) of "The Clean Streams Law" from a deep mine operator or operators shall be paid into the Clean Water Fund.* [Funds received from the forfeiture of bonds and collateral shall, if physically possible, be expended by the secretary for reclaiming and planting the area of land affected by the operation upon which liability was charged on the bond. Any funds received from such forfeiture in excess of the amount which is required for reclaiming and planting the area of land affected by the operation upon which liability was charged and funds received from forfeitures relating to land where reclaiming and planting is determined by the secretary to be physically impossible, may be used by him for the foresting or reclaiming of other lands affected by surface mining of any coal or metallic and nonmetallic minerals or for any other conservation purposes provided by this act.]

(b) *Funds received from the forfeiture of bonds, both surety and collateral, shall be expended by the secretary for reclaiming and planting the area of land affected by the operation upon which liability was charged on the bond, if the secretary determines such expenditure to be reasonable, necessary and physically possible. Any funds received from such forfeited bonds in excess of the amount which is required to reclaim and plant the area of land affected by the operation upon which liability was charged and funds received from bond forfeitures where reclamation and planting is determined to be unreasonable, unnecessary or physically impossible, may be used by the secretary for any of the purposes provided in subsection (a).*

Section 18.1. *Release of Operator on Transfer of Operation.*— Where one operator succeeds another at any uncompleted operation, either by sale, assignment, lease, or otherwise, the secretary may release the first operator from all liability under this act as to that particular operation: Provided, however, That both operators have registered and have otherwise complied with the requirements of this act and the successor operator assumes as part of his obligation under this act all liability for grading, planting and reclamation on the land affected by the former operator.

Section 18.2. *Injunctive Relief.*—In addition to any other remedy at law or in equity or under this act, the Attorney General may apply for relief by injunction, or to enforce compliance with, or restrain violations of, any provisions of this act, or any rule, regulation, *permit condition* or order made pursuant thereto.

The remedy prescribed in this section shall be deemed concurrent or contemporaneous with any other remedy, and the existence or exercise of any one remedy shall not prevent the exercise of any other remedy.

Section 12. Section 18.3 of the act, reenacted and amended August 8, 1963 (P.L.623, No.331), is amended to read:

[Section 18.3. Any citizen of this Commonwealth having knowledge that any of the provisions of this act are wilfully and deliberately not being enforced by any public officer or employe whose duty it is to enforce any of the provisions of this act, shall bring such failure to enforce the law to the attention of such public officer or employe. To provide against unreasonable and irresponsible demands being made, all such demands to enforce the law must be in writing, under oath, with facts set forth specifically stating the nature of the failure to enforce the law. The stating of false facts and charges in such affidavit shall constitute perjury and shall subject the affiant to penalties prescribed under the law for perjury. If such public officer or employe neglects or refuses for an unreasonable time after demand to enforce such provision, any such citizen shall have the right to bring an action of mandamus. The court, if satisfied that any provision of this act is not being enforced, may make an appropriate order compelling the public officer or employe, whose duty it is to enforce such provision, to perform his duties, and upon failure to do so such public officer or employe shall be held in contempt of court and shall be subject to the penalties provided by the laws of the Commonwealth in such cases.]

Section 18.3. Remedies of Citizens.—(a) *Except as provided in subsection (c), 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 other 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 4(a)(2)H 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 (60) 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) 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 13. The act is amended by adding sections to read:

Section 18.4. 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 wilfull. 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 wilfulness of the violation, damage or injury to the lands or 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 preclude assessment of a penalty

for the violation. When the department proposes to assess a civil penalty, the secretary shall inform the person or municipality within a period of time to be prescribed by rule and regulation of the proposed amount of said penalty. The person or municipality charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full or, if the person or municipality 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 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 (30) days remit the appropriate amount to the person or municipality, with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond to the secretary within thirty (30) days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided at law for the collection of debts. If any person liable to pay any 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 (5) years upon actions brought by the Commonwealth pursuant to this section.

Section 18.5. Penalties.—(a) Any person or municipality 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 or municipality 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 the default of the payment of such fine, a person shall be imprisoned for a period of ninety (90) days.

(b) Any person or municipality who wilfully 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 (1) year, or both.

(c) Any person or municipality who, after a conviction of a misdemeanor for any violation within two (2) years as above provided, wilfully 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 (2) years, or both.

(d) Each day of continued violation of any provision of this act, any rule or regulation of the department, any permit condition or order of the department 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. In the case of any appeal from any such conviction 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.

Section 18.6. Unlawful Conduct.—It shall be unlawful to fail to comply with any rule or regulation of the department or to fail to comply with any order or permit or license of the department, to violate any of the provisions of this act or rules and regulations adopted hereunder, or any order or permit or license of the department, to cause air or water pollution in connection with mining 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 or to violate the provisions of 18 Pa.C.S. sections 4903 (relating to false swearing), 4904 (relating to unsworn falsification to authorities). Any person or municipality engaging in such conduct shall be subject to the provisions of sections 18.2, 18.4, 18.5 and this section.

Section 18.7. Creation of Small Operators' Assistance Fund.—All moneys received by the department under sections 507(c) and 401(b)(1) of the Surface Mining Control and Reclamation Act of 1977, 30

U.S.C. §§ 1257(c) and 1232(b)(1), shall be held by the State Treasurer in a special fund, separate and apart from all other moneys in the State Treasury, to be known as the "Small Operators' Assistance Fund," and shall be used by the department for the purposes set forth and subject to the limitations in section 507(c) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1257(c).

Section 14. Section 19 of the act is amended to read:

Section 19. *Repealer.*—All acts or provisions thereof inconsistent herewith are hereby repealed: Provided, however, That the act of Assembly, approved the eighteenth day of June, Anno Domini one thousand nine hundred forty-one (Pamphlet Laws, one hundred thirty-three), entitled "An act relating to coal stripping operations; providing for the health and safety of persons employed therein and for the inspection and regulation of such operations by the Department of Mines; requiring certain information and reports, and prescribing penalties," and the act of Assembly, approved on the twenty-fifth day of June, Anno Domini one thousand nine hundred thirty-seven (Pamphlet Laws, two thousand two hundred seventy-five), entitled "An act to promote safety for the traveling public on State highways; to extend the responsibility for subsidence of such highways by the failure of vertical and lateral support, and declaring said subsidence a public nuisance; to provide for inspection of mine maps by the Department of Highways, and the furnishing to said department of copies of such mine maps in certain cases; to authorize entry by the Department of Highways into mines in certain cases; and to provide for notices to the Department of Highways of certain mining operations under or adjacent to highways; and providing penalties," and all other acts and provisions thereof, which regulate the mining of bituminous coal shall not be repealed or nullified by this act, but shall remain in full force and effect. Nothing is this act shall be construed to abrogate or modify the power and jurisdiction of the Department of ~~[Mines]~~ *Environmental Resources* to make rules and regulations, and to administer the laws of the Commonwealth applicable to open pit mining.

Section 15. 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 16. 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 17. 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 18. This act shall take effect immediately: Provided, however, That as to the surface mining of noncoal minerals, the provisions of this amendatory act shall not become effective until one year from the date of approval by the of the Secretary of the Depart-

ment of the Interior of the program of the Commonwealth of Pennsylvania pursuant to section 503 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1253.

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

DICK THORNBURGH