

No. 1983-74

## AN ACT

HB 1229

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," exempting municipalities from the bond requirement relating to the operation of gravel pits; providing for self-insurance; and changing the effective date of application of certain provisions to noncoal mining activities.

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

Section 1. Section 3.1 of the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, amended October 10, 1980 (P.L.835, No.155), 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.

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 surface mining operator's license or permit or renew or amend any license or permit if it finds, after investigation, and an opportunity for an informal hearing that (1) the applicant has failed and continues to fail to comply with any of the provisions of this act, or of any of the acts repealed or amended hereby or (2) the applicant has shown a lack of ability or intention to comply with 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 applica-

ble provisions of State law. The total amount shall be as prescribed by rules and regulations.

**(1) The department shall accept a certificate of self-insurance from the applicant, in lieu of a certificate for a public liability insurance policy, accompanied by satisfactory evidence from the applicant that it meets one of the following two financial requirements for such self-insurance:**

**(i) The applicant has:**

**(A) a net working capital and tangible net worth each at least six times the amount of the liability coverage to be demonstrated;**

**(B) tangible net worth of at least ten million dollars (\$10,000,000); and**

**(C) assets in the United States of at least ninety per cent of total assets or at least six times the amount of liability coverage.**

**(ii) The applicant maintains:**

**(A) a current bond rating equal to or better than BBB (Standard and Poor's) or Baa (Moody's);**

**(B) tangible net worth of at least ten million dollars (\$10,000,000);**

**(C) tangible net worth at least six times the amount of the liability coverage to be demonstrated; and**

**(D) prime assets in the United States of at least ninety per cent of total assets or six times the liability coverage to be demonstrated.**

**(2) For purposes of this subsection, satisfactory evidence from the applicant shall be satisfied by submission of a Form 10-K Annual Report, as submitted to the Securities and Exchange Commission or validation by an independent certified public accountant.**

**(3) Clauses (1) and (2) of this subsection shall be void one year after the effective date of this amendatory act.**

Section 2. Section 4 of the act is amended by adding a subsection to read:

Section 4. Mining Permit; Reclamation Plan; Bond.—\* \* \*

**(d.1) Notwithstanding any provision of this act, a municipality which owns, operates or leases as lessee a gravel pit solely for direct use by the municipality shall not be required to post a bond with the department.**

\* \* \*

Section 3. The act is amended by adding a section to read:

**Section 19.1. Delayed Effective Date for Surface Mining of Noncoal Minerals.—As to the surface mining of noncoal minerals, no provision of the act which was not in effect before October 10, 1980, shall take effect until two and one-half (2 1/2) years from the date of approval by the Secretary of the Department of the Interior of the program of the Commonwealth pursuant to section 503 of The Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 91 Stat. 470, 30 U.S.C. § 1253).**

Section 4. The proviso of section 18 of the act of October 10, 1980 (P.L.835, No.155), entitled "An act 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 Operator's Assistance Fund, making an editorial change, exempting the surface mining of anthracite," is repealed.

Section 5. This act shall take effect immediately.

APPROVED—The 20th day of December, A. D. 1983.

DICK THORNBURGH