

by the Constitution, become effective immediately upon final enactment.

APPROVED—The day of, A. D. 19

.....
Governor

Office of the Secretary of the Commonwealth

Harrisburg, August 16, 1968

I do certify that the above bill, entitled "An act amending the act of March 31, 1937 (P. L. 160), entitled 'An act creating a commission to be known as the Pennsylvania Public Utility Commission; defining in part the powers and duties of such commission; abolishing The Public Service Commission of the Commonwealth of Pennsylvania, terminating the terms of the members thereof, and transferring to the Pennsylvania Public Utility Commission the records, employes, property, and equipment of The Public Service Commission of the Commonwealth of Pennsylvania; authorizing the Pennsylvania Public Utility Commission to appear in and complete all pending proceedings, legal or otherwise, instituted before, by or against The Public Service Commission of the Commonwealth of Pennsylvania; providing that all certificates of public convenience, contracts, orders, and rules and regulations of the latter commission shall remain effective until repealed, changed or modified by the Pennsylvania Public Utility Commission, and transferring and appropriating to the Pennsylvania Public Utility Commission any unexpended balance of any existing appropriation to The Public Service Commission of the Commonwealth of Pennsylvania,' increasing the salaries of the chairman and other commissioners." was presented to the Governor on the fifth day of August, one thousand nine hundred and sixty-eight, and was not returned within ten days after it had been presented to him, wherefore it has, agreeably to the Constitution of this Commonwealth, become a law in like manner as if he had signed it.

No. 318
AN ACT

HB 2652

Providing for the protection of the safety, health and welfare of the people, property and public roads and highways of the Commonwealth from conditions on coal refuse disposal piles, or parts thereof, which fail to comply with the established rules, regulations or quality standards adopted to

avoid air or water pollution and from the danger of slipping, sliding or burning of coal refuse disposal piles, or parts thereof, sometimes caused by the storage of coal refuse; prescribing for and regulating the operation of coal refuse disposal piles, and parts thereof; prescribing the powers of the Department of Mines and Mineral Industries and the Secretary of Mines and Mineral Industries with respect thereto; prescribing the duties of mine inspectors with respect thereto; providing for the power to enjoin the operation of coal refuse disposal piles, or parts thereof, which contain certain conditions; providing for criminal penalties; and authorizing the acquisition by condemnation of certain land areas in certain cases.

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

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

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

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

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

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

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

Section 2. Short Title.—This act shall be known and may be cited as the "Coal Refuse Disposal Control Act."

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

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

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

(3) "Mine inspector" means the person commissioned by the Governor to be supervisor of mines as described in the act of July 17, 1961 (P. L. 659), known as the "Pennsylvania Bituminous Coal Mine Act," or the act of November 10, 1965 (P. L. 721), known as the "Pennsylvania Anthracite Coal Mine Act," as amended and supplemented.

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

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

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

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

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

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

(10) "Coal refuse disposal pile" means any deposit of coal refuse on or buried in the earth and intended as permanent disposal of or long-term storage of such material, but not including coal refuse deposited within a mine itself or coal refuse never removed from a

mine. Continuous deposits of coal refuse shall be considered as a single coal refuse disposal pile unless such deposits are so separated as to practically and substantially minimize the danger referred to in section 4 of this act.

(11) "Coal refuse disposal area" means any general area or plot of land used as a place for dumping, storage or disposal of coal refuse, containing one or more coal refuse disposal piles, but not including any part of a "waste disposal area" as defined in section 2 of the act of April 6, 1956 (P. L. 1436).

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

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

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

Section 4. Proper Operation of Coal Refuse Disposal Pile, or Part Thereof.—(a) From and after the passage of this act, no operator of a coal refuse disposal pile shall operate the same, or a part thereof, in such a way as to cause a condition which fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution, or in such a way as to constitute a danger to the safety, health or welfare of persons, property or public roads or highways because of the burning, slipping or sliding of coal refuse deposited on the coal refuse disposal pile, or part thereof.

(b) From and after the passage of this act, any operator may be ordered, with respect to any new coal refuse disposal pile created thereafter, or any part of an existing coal refuse disposal pile on which he operates thereafter, to build drainage ditches, trenches and/or gullies, to build impervious dams, to remove combustible materials, to alter locations, to engage in spreading, compacting and/or layering, to use clay, soil and/or other inert sealing materials, or to alter slopes, if some or all of the foregoing are, in the circumstances, necessary to prevent or correct a condition which fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution, or are, in the circumstances, necessary to prevent or correct a condition constituting a danger to the safety, health or welfare of persons, property or public roads or highways because of the burning, slipping or sliding of coal refuse deposited on a coal refuse disposal pile, or part thereof.

Section 5. Powers of the Department of Mines and Mineral Industries and the Secretary of Mines and Mineral Industries.—(a) All rights and powers heretofore possessed by the Sanitary Water Board and the Air Pollution Commission under existing laws shall remain as heretofore, except that the department, acting by and through its mine inspectors, shall be the exclusive investigating, examining, reporting and enforcement agency for the Sanitary Water Board, and

for the Air Pollution Commission with respect to their respective powers, duties, obligations and responsibilities as such are involved in or related to the operation of coal refuse disposal areas as defined in this act. In that regard, the department shall have power and its duty shall be to enter upon, examine and inspect each and every coal refuse disposal area in the Commonwealth, as often as may be necessary, to determine whether any coal refuse disposal pile, or part thereof, is being operated in such manner as to cause a condition which fails to comply with the established rules, regulations or quality standards adopted to avoid air or water pollution, and to determine whether there is present any danger to any person, property or public roads or highways because of the shifting, sliding or burning of coal refuse thereon, or on any part thereof.

(b) In the enforcement of this act, and in the adoption and enforcement of rules and regulations with respect to the operation of coal refuse disposal areas, the Sanitary Water Board, the Air Pollution Commission and the Department of Mines and Mineral Industries shall coordinate their activities to the fullest extent possible to achieve a uniform system of control and to avoid inconsistencies.

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

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

appropriate in the circumstances, for an injunction to enjoin any further operation of such coal refuse disposal pile, or part thereof, whichever is appropriate in the circumstances, until the dangerous condition giving rise to the order is corrected.

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

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

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

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

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

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

(f) In any case where a cease-work order is ultimately determined to be invalid, no operation in disregard thereof shall be deemed a misdemeanor or subject to any penalty or prejudice whatsoever. Continued operation pursuant to a supersedeas or similar order shall not be deemed a misdemeanor or be subject to any penalty or prejudice whatsoever.

Section 8. Injunctive Relief.—In any case where an injunction is sought pursuant to the provisions of sections 6 or 7 of this act, the court in which the application for an injunction is filed shall at once proceed to hear and determine the case; and if the cause appears to be sufficient, after hearing the parties and their evidence, as in like

cases, shall issue its writ to restrain the operation of such coal refuse disposal pile, or part thereof, whichever may be appropriate in the circumstances, until the dangerous condition giving rise to the order is corrected, as said court shall so direct; and the costs shall be borne by the operator of the coal refuse disposal pile: Provided, That if said court shall find the cause not sufficient, then the case shall be dismissed, and the costs shall be borne by the county wherein said coal refuse disposal pile, or part thereof involved, is located: Provided, further, That, except in cases of emergency where, in the opinion of the court, the exigencies of the case require immediate rectification or correction of a dangerous condition, the court may, in its decree, fix a reasonable time during which the operator responsible for the condition may make provision for the rectification or correction of the same.

Section 9. Criminal Penalties.—Any operator who refuses to comply with a cease-work order issued by a mine inspector pursuant to this act shall, except as otherwise herein provided, be guilty of a misdemeanor, and, upon conviction thereof in the court of quarter sessions of the county in which the coal refuse disposal pile, or part thereof, is located, shall be sentenced to pay a fine of not less than one thousand dollars (\$1,000), nor more than five thousand dollars (\$5,000), and the operator, or if such operator be an association or copartnership, then the members thereof, or if such operator be a corporation, then the officers, agents, servants and employes thereof, may be imprisoned in the county jail for a period of not more than one year. All prosecutions under the penal provisions herein set forth, shall be instituted and prosecuted by the Attorney General, or by and with his written consent. Each day of continued refusal by an operator to comply with a cease-work order shall constitute a separate offense.

Section 10. Health Nuisances.—Nothing in this act shall limit the powers conferred upon the Department of Health to control and abate nuisances detrimental to the public health as provided in any law now in effect.

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

or pile, or part thereof, in a lawful manner, then such operator, if not otherwise vested with the right of eminent domain, may make application to the secretary for a finding and an order that the use by the applicant of a specified interest in a specifically described piece of land is necessary in order to enable said operator to operate said area or pile, or part thereof, in a lawful manner. In either such event, the secretary may, after hearing, with reasonable notice to the proposed condemnee or condemnees, and full opportunity to be heard and present evidence, make the appropriate finding and issue the appropriate order authorizing the acquisition of the specified interest in a specifically described area of land by the operator by the power of eminent domain. Upon the making of said finding and the issuance of said order, then, for the purpose of this act, such operator receiving the order shall be vested with the right of eminent domain which shall be exercised only upon said authorization by the secretary, and in such event the operator shall proceed in the manner and form set forth in the act of June 22, 1964 (P. L. 84), known as the "Eminent Domain Code": Provided, That no property used as a place of public worship or for burial purposes shall be taken under the right of eminent domain: Provided further, That where any existing public street or road is vacated by any municipality in order to facilitate any undertaking in connection with land acquired under the right of eminent domain as provided for above, the operator acquiring such land shall reimburse all public utilities for the costs of relocating and reconstructing their facilities necessitated by the closing of any such street or road.

Section 12. Severability Clause.—The provisions of this act are severable and if any provision or part thereof shall be held invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of the act.

APPROVED—The 24th day of September, A. D. 1968.

RAYMOND P. SHAFER.

No. 319

AN ACT

HB 2687

Designating the Tacony Freeway in the City of Philadelphia as the General Casimir Pulaski Highway.

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