

No. 1984-181

AN ACT

SB 1078

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," providing for a separation of requirements for license issuance and permit issuance; affecting the license application requirement of liability insurance for water supply restoration or replacement; establishing content requirements of landowner consent forms; providing for public hearings and publication of notice; providing for conservation of reclaimed land; requiring advertisement for bids for reclamation of bond forfeiture areas; creating a Reclamation Advisory Board and establishing its duties; prohibiting certain contracts; requiring contractors to pay workers at a particular rate; requiring publication of contracts awarded; and providing for publication of regulations.

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 December 20, 1983 (P.L.278, No.74), 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 bore-hole 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] at least sixty (60) days before the current license expires.**

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] a person, partner, associate officer, parent corporation or subsidiary corporation** 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] or** 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] with an adjudicated proceeding, cessation order, consent order and agreement or decree, or as indicated by a written notice from the department of a declaration of forfeiture of a person's bonds. 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. *Any person who opposes the department's decision on issuance or renewal of a license shall have the burden of proof.*

(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: *Provided, That the insurance or a bond guarantee shall be required as part of a surface mining permit application if the department determines in its best conservative estimate that the mining operation may affect a public or private water supply. However, it is further provided that the operator retains the option to include the required liability insurance related to section 4.2(f) of this act, pertaining to replacement or restoration of water supplies as part of the application for or renewal of a license.*

(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.

(d) The department shall not issue any surface mining permit or renew or amend any 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 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 permit required by this act unless the permit application demonstrates that the unlawful conduct is being corrected to the satisfaction of the department. Persons other than the applicant, including independent subcontractors, who are proposed to operate under the permit shall be listed in the application and those persons shall be subject to approval by the department prior to their engaging in surface mining operations, and such persons shall be jointly and severally liable with the permittee for such violations of this subsection as the permittee 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 permit, it shall notify the permittee of that fact at least sixty (60) days prior to final action on the permit renewal and the permittee shall be provided an opportunity for an informal hearing prior to final action on the permit renewal.

(e) The department shall not issue a permit to initiate or conduct underground burning of anthracite coal under this act.

Section 2. Section 4(a) and (b) of the act, amended October 10, 1980 (P.L.835, No.155), are amended to read:

Section 4. Mining Permit; Reclamation Plan; Bond.—(a) Before any person 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. 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 satisfactory to the department, but in no event less than 1:25,000, in a manner satisfactory to the 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 as the department may prescribe. Such surveyed map or plan and cross-sections shall be prepared and certified by a registered professional engineer, **registered professional land surveyor** or 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 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. 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 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 uses and productivity of the land proposed to be affected;

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

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.

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;

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:

(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.

F. Except [where leases in existence on January 1, 1964 do not so provide or permit,] *for permit applications based upon leases in existence on January 1, 1964 for bituminous coal surface mines, or leases in existence on January 1, 1972 for anthracite coal surface mining operations and all noncoal surface mining operations, or leases in existence on October 20, 1980 for coal refuse disposal areas and surface effects of underground mines*, 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 and by the Commonwealth and any of its authorized agents 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 pollution abatement

facilities as may be deemed necessary by the department for the 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 in January 1, 1964, **[not so providing or permitting,] for bituminous coal surface mines, or leases in existence on January 1, 1972 for anthracite coal surface mining operations and all noncoal surface mining operations, or leases in existence on October 20, 1980 for coal refuse disposal areas and surface effects of underground mines,** the application for permit shall include upon a form prescribed and furnished by the department, a notice of the existence of such lease~~[.]~~ **and a description of the chain of title:**

(i) 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.

(ii) *The form prepared and furnished by the department for the written consent of the landowner to entry upon land to be affected by the operation or as a notice of the existence of leases on January 1, 1964 for bituminous coal surface mines, leases existing on January 1, 1972 for anthracite coal surface mining operations and all noncoal surface mining leases in existence on October 20, 1980 for coal refuse disposal areas and surface effects of underground mines, shall require the information and execution necessary to provide entry upon land to be affected by the operation without constraints pertaining to the assignability, transferability or duration of the consent except as provided for in this act. Furthermore, this form shall not be construed to alter or constrain the contractual agreements and rights of the parties thereto.*

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 depart-

ment 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 *which shall conclude the public comment period*. Such objections shall immediately be transmitted to the applicant by the department. If written objections are filed and an informal conference [requested] or a public hearing requested within the

public comment period, the department shall then hold an informal conference or a *public hearing* 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]. *In the case of bond release applications, such hearings or conferences shall be held within thirty (30) days from the date of request for such hearings or conferences: Provided, however, That all requests for such hearings or conferences that are filed prior to the tenth day following the final date of publication shall have a constructive date of filing as of the tenth day following the final date of publication of such notice. The department shall notify the applicant of its decision within thirty (30) days of such hearing or conference. If there has been no conference or hearing, the department shall notify the applicant for a bond release of its decision within sixty (60) days of the date of the filing of the application. In the case of permit applications, such hearings or conferences shall be conducted within sixty (60) days of the close of the public comment period. The department, within sixty (60) days of such hearing or conference, shall notify the applicant of its decision to approve or disapprove or of its intent to disapprove subject to the submission of additional information to resolve deficiencies. If there has been no informal conference or hearing, the department shall notify the applicant for a permit, within a reasonable time not to exceed sixty (60) days of the close of the public comment period, of the deficiencies in the application or 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 *before the close of the public comment period*, 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.

* * *

Section 3. Section 18 of the act is amended by adding subsections to read:

Section 18. Surface Mining Conservation and Reclamation Fund; Payments to Clean Water Fund.—* * *

(c) *The secretary shall expend the funds for reclaiming and planting the area of land affected by the operation in such a manner as to complete the operator's approved reclamation plan. After considering the engineering cost estimate for completion of the approved reclamation plan, the secretary may amend the approved reclamation plan to minimize the cost of reclaiming the bond forfeiture area. If the secretary determines that completion of the approved reclamation plan is impossible or unreasonable, the bond forfeiture area shall be reclaimed in a manner that makes the land suitable for agriculture, forests, recreation, wildlife or water conservation. In all cases where an alternative plan is to be implemented, consideration may be given to the soil characteristics, topography, surrounding lands, proximity to urban centers, cost effectiveness and other land uses approved by the landowner and local land use agencies.*

(d) *Notwithstanding other provisions of law, the department shall advertise for bids for reclamation of forfeited bond areas in a newspaper of general circulation in the locality in which the work is to take place. This advertisement shall appear for a minimum of two consecutive weeks. In addition, the department shall send written notice to all landowners within the project area of the proposed reclamation project: Provided, however, That based on an engineering cost estimate for completing the operator's approved reclamation plan, the secretary may negotiate and enter into a contract with the landowner or a licensed mine operator to complete the reclamation plan of a bond forfeiture area after public notice in a local newspaper of general circulation.*

(e) *When the department advertises for bids, the department may request alternate bids, including the rental of equipment with equipment operators to be supervised by the department during completion of the reclamation plan.*

(f) *When an operator is granted a permit on property contiguous to a property on which the department has forfeited bonds for failure to complete the reclamation plan, the permittee shall be provided the opportunity to make a proposal to complete the reclamation plan of the forfeited bond area. The proposal shall contain estimated costs and the necessary information upon which the department can determine the cost effectiveness of the proposal. Upon receipt of the proposal, the secretary may negotiate and enter into a contract with the permittee to complete the reclamation plan. A determination whether to negotiate shall be made by the department within thirty (30) days of receipt of the proposal; and contract negotiations shall begin within thirty (30) days of the determination to negotiate.*

(g) *There is hereby created a Mining and Reclamation Advisory Board to assist the secretary to expend the funds for the purposes provided by this act and to advise the secretary on all matters pertaining to mining and reclamation which shall include, but not be limited to, experimental practices, alter-*

nate methods of backfilling, selection of reclamation projects, alternate reclamation methods, obligations for preexisting pollution liability, alteration of reclamation plans, reclamation fees and bonding rates and methods.

(1) The board shall be comprised of three (3) coal operators, two (2) of whom shall be licensed bituminous surface mine operators and one (1) of whom shall be a licensed anthracite surface mine operator; four (4) public members from the Citizens Advisory Council, who shall be appointed by the council; two (2) members, one (1) from the Anthracite and Bituminous Licensed Professional Engineers and one (1) from the County Conservation Districts, who shall be appointed by the State Conservation District Commission; four (4) members of the General Assembly, two (2) from the Senate, one (1) member from the majority party and one (1) member from the minority party, who shall be appointed by the President¹ pro tempore, and two (2) from the House of Representatives, one (1) from the majority party and one (1) from the minority party, who shall be appointed by the Speaker of the House of Representatives.

(2) The secretary shall chair the Mining and Reclamation Advisory Board and appoint the members from the coal industry and the member from the Anthracite and Bituminous Licensed Professional Engineers.

(3) All members shall be appointed for a term of two (2) years, except that one-half of the initial members shall serve for three (3) years.

(4) The board shall meet at times fixed by the secretary but not less than once per year. The Mining and Reclamation Advisory Board shall replace the Mining Advisory Committee and any other committee construed to be advisory for matters herein.

(5) The board shall prepare an annual report on its activities and submit the report to the Senate Environmental Resources and Energy Committee and the House Mines and Energy Management Committee.

(h) The secretary shall not enter into a reclamation contract with any person or related party who has forfeited any bond or has been convicted of a misdemeanor within three (3) years for violating any provision of these acts: 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"; the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as "The Bituminous Mine Subsidence and Land Conservation Act"; the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act"; the act of July 7, 1980 (P.L.380, No.97), known as the "Solid Waste Management Act"; or the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act."

(i) The department shall publish in the Pennsylvania Bulletin each bond forfeiture project to be advertised for bids or contracts to be negotiated or proposals received. The publication shall include, at minimum, the location of the project and a brief summary of work to be done. Upon awarding a contract, the department shall publish in the Pennsylvania Bulletin, the name of the recipient contractor, the location of the project, the summary of work to be done and the cost of such work.

¹ "Senate" in enrolled bill.

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

Section 18.8. Publication of Regulations.—*All regulations proposed or promulgated by the Environmental Quality Board pursuant to this act or section 15 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 Operators’ Assistance Fund, making an editorial change, exempting the surface mining of anthracite,” shall, within ninety (90) days of adoption or proposal, be submitted to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.*

Section 5. This act shall take effect in 60 days.

APPROVED—The 12th day of October, A. D. 1984.

DICK THORNBURGH