

**"SURFACE MINING CONSERVATION AND RECLAMATION ACT"**

**Act of May 31, 1945, P.L. 1198, No. 418**

**Cl. 52**

AN ACT

Providing for the conservation and improvement of land affected in connection with surface mining; regulating such mining; providing for the establishment of an Emergency Bond Fund for anthracite deep mine operators; and providing penalties. (Title amended Dec. 12, 1986, P.L.1570, No.171)

**Compiler's Note:** Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in Act 418 of 1945.

**Compiler's Note:** Section 27 of Act 219 of 1984, provided that, except as provided in section 4 of 219 of 1984, Act 418 is repealed insofar as it applies to the surface mining of minerals other than bituminous and anthracite coal.

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

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 promote and provide incentives for the re-mining of previously affected areas, to allow for government-financed reclamation contracts authorizing incidental and necessary coal extraction, to authorize a re-mining and reclamation incentive program, 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.

(1 amended Dec. 18, 1992, P.L.1384, No. 173)

Section 2. Short Title.--This act shall be known and may be cited as the "Surface Mining Conservation and Reclamation Act."

(2 amended Nov. 30, 1971, P.L.554, No.147)

Section 3. Definitions.--The following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

"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.

"Abatement plan" shall mean, for the purposes of section 4.6, any individual technique or combination of techniques, the implementation of which will result in reduction of the baseline pollution load. (Def. added Oct. 4, 1984, P.L.727, No.158)

"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.

"Actual improvement" shall mean, for the purposes of section 4.6, the reduction of the baseline pollution load resulting from the implementation of the approved abatement plan; except that any reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement. (Def. added Oct. 4, 1984, P.L.727, No.158)

"Baseline pollution load" shall mean the characterization of the polluttional material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter deemed relevant by the department, including seasonal variations and variations in response to precipitation events. (Def. added Oct. 4, 1984, P.L.727, No.158)

"Best technology" means, for the purposes of section 4.6, measures and practices which will abate or ameliorate, to the maximum extent possible, discharges from or on the pollution abatement area. (Def. added Oct. 4, 1984, P.L.727, No.158)

"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 Protection of the Commonwealth of Pennsylvania. (Def. amended July 5, 2012, P.L.918, No.95)

"Government-financed reclamation contract" shall mean:

(1) For the purposes of section 4.8, a federally funded or State-funded and -approved abandoned mine reclamation contract entered into between the department and an eligible person or entity who has obtained special authorization to engage in incidental and necessary extraction of coal or in removal of coal refuse pursuant to government-financed reclamation which is either:

(i) a State-financed reclamation contract less than or equal to fifty thousand dollars (\$50,000) total project costs, where up to five hundred (500) tons of coal is extracted, including a reclamation contract where less than five hundred (500) tons is removed and the government's cost of financing reclamation will be assumed by the contractor under the terms of a no-cost contract;

(ii) a State-financed reclamation contract authorizing the removal of coal refuse, including where reclamation is performed by the contractor under the terms of a no-cost contract with the department, not involving any reprocessing of coal refuse on the project area or return of any coal refuse material to the project area;

(iii) a State-financed reclamation contract greater than fifty thousand dollars (\$50,000) total project costs or a federally financed abandoned mine reclamation project: Provided, That the department determines in writing that extraction of coal is essential to physically accomplish the reclamation of the project area and is incidental and necessary to reclamation; or

(iv) federally financed or State-financed extraction of coal which the department determines in writing to be essential to physically extinguish an abandoned mine fire that poses a threat to the public health, safety and welfare.

(2) For purposes of determining whether or not extraction of coal is incidental and necessary under section 4.8, the department shall consider standard engineering factors and shall not in any case consider the economic benefit deriving from extraction of coal. Necessary extraction of coal shall in no case include:

(i) the extraction of coal in an area adjacent to the previously affected area which will be reclaimed; or

(ii) the extraction of coal beneath the previously affected area which will be reclaimed.

(Def. amended May 22, 1996, P.L.232, No.43)

"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.

"Minimal-impact post-mining discharge" shall mean, for the purposes of section 4(g.2), a discharge of mine drainage emanating from a surface mine site where all other Stage II reclamation standards have been achieved and which:

(1) untreated does not alone or in combination with other discharges result in a violation of water quality standards; and

(i) has a pH which is always greater than 6.0 and an alkalinity which always exceeds the acidity; or

(ii) has acidity which is always less than one hundred (100) milligrams per liter, iron content which is always less than ten (10) milligrams per liter, manganese content which is always less than eighteen (18) milligrams per liter and flow rate which is always less than three (3) gallons per minute; or

(2) has in place a functioning passive treatment system approved by the department which meets the applicable effluent limitations in 25 Pa. Code (relating to environmental resources) or which meets the effluent limitations developed pursuant to section 4.2(j) and as discharged does not result in a violation of the water quality standards in the receiving stream.

(Def. added Dec. 18, 1992, P.L.1384, No.173)

"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.

"No-cost reclamation contract" shall mean a contract entered into between the department and an eligible person for the purpose of reclaiming unreclaimed abandoned mine lands and which does not involve the expenditure of Commonwealth funds. (Def. added May 22, 1996, P.L.232, No.43)

"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. parcels of land with common ownership.

"Passive treatment" shall mean treatment systems that do not require routine operational control or maintenance, including biological or chemical treatment systems, alone or in combination, as approved by the department, such as artificially constructed wetlands, cascade aerators, anoxic drains or sedimentation basins. (Def. added Dec. 18, 1992, P.L.1384, No.173)

"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.

"Pollution abatement area" shall mean, for the purposes of section 4.6, that part of the permit area which is causing or contributing to the baseline pollution load, which shall include adjacent and nearby areas that must be affected to bring about significant improvement of the baseline pollution load, and which may include the immediate location of the discharges. (Def. added Oct. 4, 1984, P.L.727, No.158)

"Secretary" shall mean the Secretary of the Department of Environmental Protection of the Commonwealth of Pennsylvania. (Def. amended July 5, 2012, P.L.918, No.95)

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

"Surface coal mining activities" shall mean, for the purposes of section 4.6, activities whereby coal is extracted from the earth, from waste or stockpiles or from pits or banks by removing the strata or material which overlies or is above or between the coal or by otherwise exposing and retrieving the coal from the surface. The term shall include, but not be limited to, strip and auger mining and all surface activity connected with surface mining including exploration, site preparation, construction and activities related thereto. The term shall also include all activities in which the land surface has been disturbed as a result of, or incidental to, surface mining operations of the operator, including those related to private ways and roads appurtenant to the area, land excavations, workings, refuse banks, spoil banks, culm banks, tailings, repair areas, storage areas, processing areas,

shipping areas, and areas where facilities, equipment, machines, tools or other materials or property which result from or are used in surface mining activities are situated. (Def. added Oct. 4, 1984, P.L.727, No.158)

"Surface mining activities" shall mean the extraction of coal 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 activities" shall not include any of the following:

(1) Extraction of coal or coal refuse removal pursuant to a government-financed reclamation contract for the purposes of section 4.8.

(2) Extraction of coal as an incidental part of Federal, State or local government-financed highway construction pursuant to regulations promulgated by the Environmental Quality Board.

(3) The reclamation of abandoned mine lands not involving extraction of coal or excess spoil disposal under a written agreement with the property owner and approved by the department.

(4) Activities not considered to be surface mining as determined by the United States Office of Surface Mining, Reclamation and Enforcement and set forth in department regulations.

(Def. amended May 22, 1996, P.L.232, No.43)

"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.

"Total project costs" shall mean for the purposes of section 4.8 the entire cost of performing the government-financed reclamation contract as determined by the department even if the cost is assumed by the contractor pursuant to a no-cost contract with the department. In establishing the final contract price, the department shall consider the economic benefit resulting from coal extracted pursuant to the government-financed reclamation contract and deduct this amount from the contract price. (Def. added Dec. 18, 1992, P.L.1384, No.173)

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

(3 amended Oct. 10, 1980, P.L.835, No.155)

**Compiler's Note:** The Department of Environmental Resources, referred to in subsec. (a), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

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to the Secretary of Conservation and Natural Resources and the Secretary of Environmental Protection.

Section 3.1. Operator's License; Withholding or Denying Permits or Licenses; Penalty.--(a) (1) After January 1, 1972, it shall be unlawful for any person to proceed to mine coal without first obtaining a license from the department. Applications for licensure shall be made annually in writing to the department upon forms prepared and furnished by the department and shall contain such information as applicable for the applicant and each person who owns or controls the applicant or is owned or controlled by the applicant as the department shall require. The application for licensure or renewal of licensure shall be accompanied by a fee of fifty dollars (\$50) in the case of persons mining two thousand (2,000) tons or less of marketable coal per year, a fee of five hundred dollars (\$500) in the case of persons mining three hundred thousand (300,000) tons or less of marketable coal per year and a fee of one thousand dollars (\$1,000) for all others. It shall be the duty of all persons licensed under this section to renew the license annually. The application for renewal of a license shall be made annually at least sixty (60) days before the current license expires.

(2) Any person who proceeds to mine coal 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. ((2) amended May 22, 1996, P.L.232, No.43)

(b) The department shall not issue, renew or amend the license of any person who mines coal by the surface mining method if it finds, after investigation, and an opportunity for an informal hearing that a person, partner, associate officer, parent corporation or subsidiary corporation has failed and continues to fail to comply or has shown a lack of ability or intention to comply 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 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. ((b) amended May 22, 1996 P.L.232, No.43)

(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 activities 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 activities, 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 mining permit application if the department determines in its best conservative estimate that the surface mining activities 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.

((c) amended May 22, 1996, P.L.232, No.43)

(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, which has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor which has engaged in such unlawful conduct or which controls or has controlled mining operations with a demonstrated pattern

of wilful violations of any provisions of this act or the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et seq.) 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.

((d) amended Dec. 18, 1992, P.L.1384, No.173)

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

(3.1 amended Oct. 12, 1984, P.L.916, No.181)

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.

(3.2 amended Oct. 10, 1980, P.L.835, No.155)

Section 4. Mining Permit; Reclamation Plan; Bond.--(a) Before any person shall hereafter proceed to mine coal 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: (Intro. par. amended Dec. 18, 1992, P.L.1384, No.173)

(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 post-mining land use as part of the permit application, the department may grant an exception to the requirements of this clause. For areas previously disturbed by surface mining activities that were not reclaimed to the standards of this act, and are proposed for re-mining, the department may approve a vegetative cover which, at a minimum, shall not be less than the ground cover existing before redisturbance and shall be adequate to control erosion and achieve an approved post-mining land use. To the extent consistent with this act, the department shall encourage and promote the use of switchgrass, camelina, canola and other bioenergy crops for the revegetation of lands affected by surface mining activities, and the land so used shall be considered to be cropland for post-mining land use purposes. (C amended July 5, 2012, P.L.918, No.95)

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 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, 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. In the case of leases in existence in 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, 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 forms 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: Provided, however, That, in the case of permit applications for coal refuse disposal areas, coal preparation facilities which are not situated on a surface mining permit area and the surface activities of underground mines, the applicant shall submit a description of the documents upon which the applicant bases the right to enter upon the surface land and conduct mining activities. During the mining activities and for a period of five (5) years after completion or abandonment of the mining and reclamation activities, the department shall have access to permitted surface facilities and lands for the purpose of reclamation, planting and inspection or for the construction of pollution-abatement facilities deemed necessary by the department for the purposes of this act. If a landowner fails or refuses to comply with an order issued under this section, the landowner shall be liable for reasonable legal expenses incurred by the department in enforcing the order. For purposes of this section, "landowner" includes a person holding title to or having a proprietary interest in either surface or subsurface rights. Compliance with this section shall satisfy the requirements of subsection (g) of section 315 of the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," and subsection (m) of section 5 of the act of September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act." (F amended Dec. 12, 1986, P.L.1570, No.171)

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.

(a) amended Oct. 12, 1984, P.L.916, No.181)

(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 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. 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. ((b) amended Oct. 12, 1984, P.L.916, No.181)

(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 department object to any part of the proposal, it shall promptly notify the applicant in writing of its objections, setting forth its reasons therefor, and shall afford the applicant a reasonable opportunity to make such amendments or take such other actions as may be required to remove the objections. Should any person having an interest which is or may be adversely affected by any action of the department under this subsection, or by the failure of the department to act upon an application for a permit, he may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law, and from the adjudication of said board he may further appeal as provided by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(d) Prior to commencing surface mining, the 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 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," 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": 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 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 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 permittee, in excess of the cost to the 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 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 after the last year of augmented seeding and fertilizing and any other work to complete reclamation to meet the requirements of law and protect the environment, unless released in part prior thereto as hereinafter provided. The bond or collateral required herein must be in an amount and on a form containing such terms and conditions as approved by the department and may be a surety bond executed by the operator and a corporate surety licensed to do business in this Commonwealth and approved by the secretary; it may be cash; it may be automatically renewable irrevocable letters of credit which may be terminated by the bank at the end of the term only upon the bank giving ninety (90) days' prior written notice to the permittee and the department; it may be 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 this Commonwealth; it may be a life insurance policy which is and states on its face that it is fully paid and noncancelable with a cash surrender value irrevocably assigned to the department at least equal to the amount of the required bonds and which shall not be borrowed against and shall not be utilized for any other purpose than financial assurance assuring reclamation; it may be an annuity or trust fund of which the department is the irrevocably named beneficiary; it may be a land reclamation financial guarantee consistent with section 19.2 of this act and the department's regulations implementing the land reclamation financial guarantee program; or it may be other instruments which the Environmental Quality Board may authorize through regulation. The stated amount of irrevocable letters of credit and the market value of negotiable securities shall be equal at least to the amount of the required bond. Combinations of bonding instruments may be allowed pursuant to regulations adopted by the Environmental Quality Board. The secretary shall, upon receipt of any such deposit of cash, letters of credit or 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 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 collateral so deposited, upon depositing with him, in lieu thereof, other 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 negotiable bonds as the same becomes due and payable: Provided, however, That where negotiable bonds, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the permittee, shall convert such negotiable bonds into such other negotiable bonds of the classes herein specified as may be designated by the permittee: And, provided further, That where notice of intent to terminate a letter of credit is given, the department shall give the permittee thirty (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) amended Oct. 24, 2012, P.L.1276, No.157)

(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. ((d.1) added Dec. 20, 1983, P.L.278, No.74)

(d.2) The department may establish alternative financial assurance mechanisms which shall achieve the objectives and purposes of the bonding program. These mechanisms may include, but are not limited to, the establishment of a site-specific

trust fund funded by the operator for the treatment of post-mining discharges of mine drainage. Within one hundred eighty (180) days after the effective date of this act, the department shall recommend to the Governor alternative financing mechanisms for the perpetual treatment of post-mining discharges of mine drainage. This provision shall in no way affect the department's review of permit applications under existing law which prohibits the department from issuing a mining permit unless the applicant demonstrates that there is no presumptive evidence of potential pollution of the waters of this Commonwealth. ((d.2) added Dec. 18, 1992, P.L.1384, No.173)

(e) Notwithstanding the provisions of subsection (c) of this section, in the case of applications for the mining of minerals 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 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 mining and reclamation operations and for five years thereafter. The operator, in the case of mining and reclamation operations hereinbefore mentioned by this subsection (e), may elect to 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 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.

(g) 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, upon request by the permittee or any other person having an interest in the bond, including the department, release in whole or in part the bond or deposit according to the following schedule:

(1) At Stage I, 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 up to sixty per cent of the bond for the applicable permit area, so long as provisions for treatment of polluttional discharges, if any, have been made by the operator.

(2) At Stage II, 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 level 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) At Stage III, when the operator has completed successfully all mining and reclamation activities and has made provisions with the department for the sound future treatment of polluttional discharges, if any, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in subsection (d). 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.

((g) amended Dec. 18, 1992, P.L.1384, No.173)

(g.1) (1) Where the operator demonstrates that all standards for Stage II bond release have been satisfied with the exception of consistently meeting the mine drainage effluent limitations specified in the permit or otherwise required by law, the department may release the amount of bond which exceeds the cost of ensuring treatment to the effluent limitations specified in the permit, this act, the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.) and the rules and regulations promulgated thereunder, of all the discharges emanating from or hydrologically connected to the mine site for a period of at least fifty (50) years, as calculated by the department.

(2) The release of any bond pursuant to clause (1) or pursuant to regulations promulgated by the Environmental Quality Board establishing a final program in no way alleviates the operator's responsibility to treat discharges of mine drainage emanating from or hydrologically connected to the site to the standards set forth in the permit, this act, "The Clean Streams Law," the Federal Water Pollution Control Act and the rules and regulations promulgated thereunder.

((g.1) amended May 22, 1996, P.L.232, No.43)

(g.2) (1) Until such time as the Environmental Quality Board promulgates regulations concerning release of reclamation bonds on mine sites with minimal-impact post-mining discharges, the department may release reclamation bonds held solely for minimal-impact post-mining discharges pursuant to this section, where an operator demonstrates that all of the following exist:

(i) All the criteria for reclamation bond release have been satisfied, except for the existence of a minimal-impact post-mining discharge, under the department's regulations for bond release on surface coal mines except as provided in clause (2) (i).

(ii) The discharge of mine drainage is a minimal-impact post-mining discharge, as demonstrated by a sampling protocol approved by the department.

(iii) The operator has designed, constructed and maintained a functioning passive treatment system approved by the department which substantially improved water quality of the discharge after it enters the passive treatment system to the satisfaction of the department. The department shall take into account the cumulative loading of other discharges in ascertaining whether water quality standards are being achieved.

(iv) The operator has established a site-specific trust fund for each minimal-impact post-mining discharge in an amount calculated by the department at least equal to annual operation and maintenance costs of a passive treatment system, capital costs for replacement of the passive treatment system in twenty-five (25) years from the date of its installation, an inflation factor and the cost of treatment of the discharge for at least fifty (50) years. The minimum amount of the fund shall be ten thousand dollars (\$10,000).

(2) Upon a demonstration by the mine operator, approved by the department, that the requirements set forth in clause (1) have been met, the department may release the reclamation bond according to the following schedule:

(i) Up to eighty-five per cent of the reclamation bond on a site with a minimal-impact post-mining discharge upon a

demonstration by the operator that all of the following have been met:

(A) The operator has demonstrated and the department has found that all reclamation standards for Stages I and II, except for the existence of a minimal-impact post-mining discharge, have been met by the operator.

(B) A trust fund in an amount and on a form containing such terms and conditions approved by the department has been established and fully funded as financial assurance for maintenance and replacement of the approved passive treatment system.

(C) The operator has demonstrated to the satisfaction of the department that the passive treatment system has been properly designed, constructed and maintained and is functioning properly.

(ii) Up to the entire amount of reclamation bond on a site with a minimal-impact post-mining discharge where:

(A) The operator has demonstrated and the department has found that all of the reclamation standards for Stages I, II and III bond release, except for the existence of the minimal-impact post-mining discharge, have been met.

(B) A trust fund in an amount and on a form containing such terms and conditions approved by the department has been established and fully funded as financial assurance for maintenance and replacement of the approved passive treatment system.

(C) The operator has demonstrated to the satisfaction of the department that the passive treatment system has been properly designed, constructed and maintained and is functioning properly.

(3) The department may, if the passive treatment system is not constructed, maintained or functioning properly, pursue any remedies at law or equity, order the operator to upgrade the treatment system or to provide conventional treatment and increase the amount of the site-specific trust fund required to reflect the cost of additional treatment.

(4) The Environmental Quality Board shall promulgate final regulations establishing a program for releasing reclamation bonds held solely for minimal-impact post-mining discharges. In promulgating such regulations, the board shall consider various factors, including, but not limited to, the factors set forth in clause (1).

((g.2) amended May 22, 1996, P.L.232, No.43)

(g.3) The Environmental Quality Board is authorized to establish by regulation specific criteria for release of reclamation bonds for sites with post-mining discharges of mine drainage, including minimal-impact post-mining discharges: Provided, That alternative financial assurances have been posted by the operator pursuant to subsection (d.2). ((g.3 added Dec. 18, 1992, P.L.1384, No.173)

(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 department shall declare such bond forfeited, and the amount of the forfeited bond shall be paid over to the department within thirty (30) days after notice by certified mail from the department, and that amount shall be held in escrow with any interest on the bond accruing to the department pending the resolution of any appeals, unless it is determined by a court of competent jurisdiction after exhaustion of appeals that the Commonwealth was not entitled to all or a portion of the amount forfeited in which case the interest shall accrue proportionately to the surety in the amount determined

to be improperly forfeited by the department, if any. Where the operator has deposited cash or securities as collateral in lieu of a surety bond, the 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. A corporate surety issuing surety bonds which are forfeited by the department shall have the option of reclaiming the forfeited site, in lieu of paying the bond amount to the department, upon the consent and approval of the department. A corporate surety issuing surety bonds which are forfeited may propose, upon the consent and approval of the department, the reclamation of the forfeited mine sites after payment of the amount of the forfeited bonds to the department. If the department approves the corporate surety's proposal to reclaim the forfeited site after the surety pays the bond amount to the department, the State Treasurer shall return to the corporate surety any moneys paid to the department in connection with the forfeited bond provided the proposal includes acceptable financial assurance. Acceptable financial assurance includes the department withholding return of the moneys until the reclamation is complete or the posting of a replacement bond. ((h) amended May 22, 1996, P.L.232, No.43)

(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 Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(j) Notwithstanding the provisions of 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.

(4 amended Oct. 10, 1980, P.L.835, No.155)

**Compiler's Note:** The Department of Environmental Resources, referred to in subsec. (e.1), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 4.1. (4.1 repealed Nov. 30, 1971, P.L.554, No.147)

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 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. The 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 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, unless released by the owner thereof, nor within three hundred feet of any public building, public park, school, church, community or institutional building or within one hundred feet of any cemetery. 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) (1) Any surface mining operator or any person engaged in government-financed reclamation 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.

(2) It shall be presumed, as a matter of law, that a surface mine operator or owner is responsible without proof of fault, negligence or causation for all pollution, except bacteriological contamination, or diminution of public or private water supplies within one thousand (1,000) linear feet of the boundaries of the areas bonded and affected by coal mining operations, areas of overburden removal and storage and support areas except for haul and access roads. If surface mining activities are conducted on areas which are not permitted and bonded, this presumption applies to all water supplies within one thousand (1,000) linear feet of the land affected by such operations. There shall be only five defenses to the presumption of liability provided in this clause. A mine owner or operator must affirmatively prove by a preponderance of evidence that one of the following conditions exists:

(i) The landowner or water supply company refused to allow the surface mining operator or owner access to conduct a survey prior to commencing mining activities.

(ii) The water supply is not within one thousand (1,000) linear feet of the boundaries of the areas bonded and affected by coal mining operations, areas of overburden removal and storage and support areas except for haul and access roads.

(iii) The pollution or diminution existed prior to the surface mining activities as determined by a survey conducted prior to commencing surface mining activities.

(iv) The pollution or diminution occurred as a result of some cause other than the surface mining activities.

(v) The landowner, water supply user or water supply company refused to allow the surface mining operator or owner access to determine the cause of pollution or diminution or to replace or restore the water supply.

(2) amended May 22, 1996, P.L.232, No.43)

(3) If the secretary finds that immediate replacement of an affected water supply used for potable or domestic needs is required to protect public health or safety and the owner or operator has appealed or failed to comply with an order issued pursuant to this subsection, the secretary may restore or replace the affected water supply with an alternative 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 owners or operators. Costs recovered shall be deposited in the Surface Mining Conservation and Reclamation Fund.

(4) An operator or owner aggrieved by the secretary's order issued pursuant to this subsection shall have the right within thirty (30) days of receipt of the order to appeal to the Environmental Hearing Board. The secretary's order, when appealed by the operator or owner, shall not be used to block the issuance of new permits or the release of bonds when a stage of reclamation work is completed. Hearings under this subsection shall be in accordance with the act of July 13, 1988 (P.L.530, No.94), known as the "Environmental Hearing Board Act," and 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

(5) A surface mining operator or owner who provides a successful defense to the presumptions of liability shall be entitled to recover the costs incurred, including, but not limited to, the costs of temporary water supply, design, construction, restoration or replacement costs, attorney fees and expert witness fees from the department.

(6) Nothing in this subsection shall prevent any landowner or water supply company who claims pollution or diminution of a water supply from seeking any other remedy that may be provided for at law or in equity.

(7) A surface mining operation conducted under a surface mining permit issued by the department before the effective date of this act shall not be subject to the provisions of clauses (2), (3), (4), (5) and (6), but shall be subject to clause (1).

((f) amended Dec. 18, 1992, P.L.1384, No.173)

(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.

(h) The Environmental Quality Board is authorized to promulgate rules and regulations, the general purpose of which shall be the establishment of a remining and reclamation incentive program. In promulgating such regulations, the board shall have the authority to establish an operator qualification system establishing standards and criteria for operators who desire to participate in the remining and reclamation incentives program. Specific purposes of the regulations shall include, but not be limited to, the purposes set forth in sections 4.8, 4.9, 4.10, 4.11, 4.12 and 4.13. ((h) added Dec. 18, 1992, P.L.1384, No.173)

(i) The department and its agents and employees shall be authorized to enter any property, premises or place where surface mining activities, including reclamation, are being conducted for the purposes of making such investigation or inspection as may be necessary to ascertain the compliance or noncompliance by any person or municipality with the provisions of the acts and the rules and regulations promulgated hereunder. In connection with such inspection or investigation, samples may be taken of any material for analysis. ((i) added Dec. 18, 1992, P.L.1384, No.173)

(j) (1) The Environmental Quality Board is authorized to revise the department's existing regulations to establish technology-based effluent limitations for classes or categories of post-mining discharges emanating from or hydrologically connected to a surface mining activity site that has achieved

Stage II reclamation standards and that the department determines can be adequately treated using passive treatment systems.

(2) Within twelve (12) months of the effective date of this act, the department shall propose regulations to the Environmental Quality Board for those post-mining discharges with:

(i) a pH which is always greater than 6.0 and an alkalinity which always exceeds the acidity; or

(ii) an acidity which is always less than one hundred (100) milligrams per liter, an iron content which is always less than ten (10) milligrams per liter, a manganese content which is always less than eighteen (18) milligrams per liter and a flow rate which is always less than three (3) gallons per minute.

(3) Regulations established under this subsection shall contain technology-based effluent limitations established using best professional judgment as authorized by this act, the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," or the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.) and the regulations promulgated under those acts.

(4) In addition to the requirements of this subsection, post-mining discharges shall comply with 25 Pa. Code Chs. 92 (relating to national pollutant discharge elimination system) and 93 (relating to water quality standards).

(5) A person may petition the Environmental Quality Board for rulemaking under this subsection.

((j) added Dec. 18, 1992, P.L.1384, No.173)

(4.2 amended Oct. 10, 1980, P.L.835, No.155)

Section 4.3. 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. 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.

(4.3 amended Oct. 10, 1980, P.L.835, No.155)

Section 4.4. (4.4 repealed Nov. 30, 1971, P.L.554, No.147)

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.

(4.5 added Oct. 10, 1980, P.L.835, No.155)

**Compiler's Note:** The name of the Pennsylvania Fish Commission, referred to in subsec. (i), was changed to the Pennsylvania Fish and Boat Commission by the Act 39 of 1991. See 30 Pa.C.S. § 308 (relating to designation of commission).

Section 4.6. Remining of Previously Affected Areas.--(a)

Any operator who proposes to remine an area on which there are preexisting polluttional discharges resulting from previous mining may request special authorization from the department to proceed to conduct surface coal mining activities under this section. Except as specifically modified by this section and the rules and regulations adopted hereunder, the provisions of this act shall apply to special authorizations to conduct surface coal mining activities on areas with preexisting polluttional discharges.

(b) The department may grant special authorization under this section if such special authorization is part of:

(1) a permit issued under section 4, except for permit transfers, after the effective date of this section if the request is made at the time of submittal of a permit application or prior to a department decision to issue or deny that permit; or

(2) a permit revision pursuant to department regulation, but only if the operator affirmatively demonstrates to the satisfaction of the department that:

(A) the operator has discovered polluttional discharges within the permit area that came into existence after its permit application was approved;

(B) the operator has not caused or contributed to the polluttional discharges;

(C) the proposed pollution abatement area is not hydrologically connected to any area where surface mining activities have been conducted pursuant to the permit;

(D) the operator has not affected the proposed pollution abatement area by surface mining activities; and

(E) the department has not granted a bonding authorization and mining approval for the area.

(c) The department shall not grant special authorization under this section unless the operator making such request affirmatively demonstrates that:

(1) neither the operator, nor any officer, principal shareholder, agent, partner, associate, parent corporation, contractor or subcontractor or any related party:

(A) has any legal responsibility or liability as an operator for treating the polluttional discharges from or on the proposed pollution abatement area; or

(B) has any statutory responsibility or liability for reclaiming the proposed pollution abatement area;

(2) the proposed pollution abatement plan will result in a significant reduction of the baseline pollution load and represents best technology;

(3) the land within the proposed pollution abatement area can be reclaimed;

(4) the surface mining operation on the proposed pollution abatement area will not cause any additional groundwater degradation;

(5) the surface mining operation on permitted areas other than the proposed pollution abatement area will not cause any surface water pollution or groundwater degradation;

(6) there are one or more preexisting polluttional discharges from or on the pollution abatement area;

(7) all requirements of this act and the regulations promulgated hereunder that are not inconsistent with this section have been met; and

(8) an authorization may be denied under this section if granting it will, or is likely to, affect any legal responsibility or liability for abating the pollution discharges from or near the pollution abatement area.

(d) Except as specifically modified by this section, an operator requesting special authorization under this section shall comply with the permit application requirements of section 4 and the regulations promulgated thereunder and shall also provide such additional information as required by the department relating to:

(1) a delineation of the proposed pollution abatement area, including the location of the preexisting discharges;

(2) a description of the hydrologic balance for the proposed pollution abatement area, including water quality and quantity monitoring data; and

(3) a description of the abatement plan that represents best technology.

(e) An operator granted special authorization under this section shall:

(1) implement the approved water quality and quantity monitoring program for the pollution abatement area as required by the department;

(2) implement the approved abatement plan;

(3) notify the department immediately prior to the completion of each step of the abatement plan; and

(4) provide progress reports to the department within thirty (30) days after the completion of each step of the abatement program in a manner prescribed by the department.

(f) An operator granted special authorization under this section shall be responsible for the treatment of discharges in the following manner:

(1) Except for preexisting discharges which are not encountered during mining or the implementation of the abatement plan, the operator shall comply with all applicable regulations of the department.

(2) The operator shall treat preexisting discharges which are not encountered during mining or implementation of the abatement plan to meet the baseline pollution load when the baseline pollution load is exceeded:

(A) Prior to final bond release, if the operator is in compliance with the pollution abatement plan, where the department demonstrates that the operator has caused the baseline pollution load to be exceeded. The department shall have the burden of proving that the operator caused the baseline pollution load to be exceeded.

(B) Prior to final bond release, if the operator is not in compliance with the pollution abatement plan, unless the operator affirmatively demonstrates that the reason for exceeding the baseline pollution load is a cause other than the operator's surface mining and abatement activities.

(C) Subsequent to final bond release, where the department demonstrates that the operator has caused the baseline pollution load to be exceeded. The department shall have the burden of proving that the operator caused the baseline pollution load to be exceeded.

(D) An allegation that the operator caused the baseline pollution to be exceeded under subclause (A), (B) or (C) shall not prohibit the department from issuing, renewing or amending the operator's surface mining license and permits or approving

a bond release until a final administrative determination has been made of any such alleged violation.

(3) For purposes of this subsection, the term "encountered" shall not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the abatement plan which would otherwise drain into the affected area, provided such diversions are designed, operated and maintained in accordance with all applicable regulations of the department.

(g) An operator required to treat preexisting discharges pursuant to subsection (f) will be allowed to discontinue treating such discharges when the operator demonstrates that:

(1) The baseline pollution load is no longer being exceeded as shown by all ground and surface water monitoring.

(2) All requirements of the permit and the special authorization have been or are being met.

(3) The operator has implemented each step of the abatement plan as approved in the authorization.

(4) The operator did not cause or allow any additional groundwater degradation by re-affecting the pollution abatement area.

(h) If any condition set forth in subsection (f) occurs after discontinuance of treatment pursuant to subsection (g), the operator shall reinstitute treatment in accordance with subsection (f). An operator who reinstates treatment under this subsection shall be allowed to discontinue treatment if the requirements of subsection (g) are met.

(i) For pollution abatement areas subject to a grant of special authorization under this section, the operator shall comply with all requirements relating to bonds set forth in section 4, except that the criteria and schedule for release of bonds shall be as follows:

(1) Up to sixty per cent of the amount of bond if the operator demonstrates that:

(A) all activities were conducted in accordance with all applicable requirements;

(B) the operator has satisfactorily completed backfilling, regrading and drainage control in accordance with the approved reclamation plan;

(C) the operator has properly implemented each step of the approved abatement plan;

(D) the operator has not caused the baseline pollution load to be exceeded at any time over a period of a minimum of six (6) months prior to the submittal of a request for bond release and until the bond release is approved as shown by all ground and surface water monitoring; and

(E) the operator has not caused or contributed to any ground or surface water pollution by re-affecting or mining the pollution abatement area.

(2) An additional amount of bond but retaining an amount sufficient to cover the cost to the Commonwealth of reestablishing vegetation if completed by a third party if the operator demonstrates that:

(A) the operator has replaced topsoil, completed final grading, planting and achieved successful revegetation in accordance with the approved reclamation plan;

(B) the operator has not caused or contributed to any ground or surface water pollution by re-affecting or mining the pollution abatement area; and

(C) the operator has achieved the actual improvement of the baseline pollution load described in the abatement plan and shown by all ground and surface water monitoring for the period

of time provided in the abatement plan, or has achieved all of the following: (i) at a minimum, has not caused the baseline pollution load to be exceeded as shown by all ground and surface water monitoring for a period of twelve (12) months prior to the date of application for bond release and until the bond release is approved pursuant to clause (2) or from the date of discontinuance of treatment pursuant to subsection (g); (ii) conducted all measures provided in the abatement plan and any additional measures specified by the department in writing at the time of initial bond release pursuant to clause (1); (iii) caused aesthetic or other environmental improvements or the elimination of public health and safety problems by removing and re-affecting the pollution abatement area; and (iv) stabilized the pollution abatement area.

(3) The remaining amount of bond if the operator demonstrates that:

(A) the operator has not caused the baseline pollution load to be exceeded from the time of bond release pursuant to clause (2) or, if treatment has been initiated any time after such release, for a period of five (5) years from the date of discontinuance of treatment pursuant to subsection (g); and

(B) the applicable liability period section 4(d) of this act has expired.

((i) amended May 22, 1996, P.L.232, No.43)

(j) For reclamation plans approved as part of a grant of special authorization under this section, the standard of success for revegetation shall be, as a minimum, the establishment of ground cover of living plants not less than can be supported by the best available topsoil or other suitable material in the reaffected area, shall not be less than the ground cover existing before disturbance, and shall be adequate to control erosion: Provided, however, That the department may require a higher standard of success where it determines such compliance is integral to the proposed pollution abatement plan. ((j) amended Dec. 18, 1992, P.L.1384, No.173)

(k) In establishing an appropriate bond amount for mining any area subject to a grant of special authorization under this section, the department shall apply as a credit to such bond amount any funds paid into the Surface Mining Conservation and Reclamation Fund as a result of a prior forfeiture on such area, which area shall also be exempted from permit reclamation fees prescribed by the regulations promulgated under this act.

(l) An operator granted special authorization under this section shall be permanently relieved from the requirements of subsection (f) and the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," for all preexisting discharges, identified in subsection (d), to the extent of the baseline pollution load if the operator complies with the terms and conditions of the pollution abatement plan and the baseline pollution load has not been exceeded at the time of final bond release. Relief of liability under this subsection shall not act or be construed to relieve any person other than the operator granted special authorization from liability for the preexisting discharge; nor shall it be construed to relieve the operator granted special authorization from liability pursuant to subsection (f)(2)(C) if the baseline pollution load is exceeded.

(m) In order to maintain primary jurisdiction over surface coal mining in Pennsylvania, the department shall suspend implementation of any provision of this section found to be inconsistent with Federal law by the Secretary of the United States Department of the Interior pursuant to section 505 of

the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et seq.) or the Administrator of the Environmental Protection Agency pursuant to section 402 of the Federal Water Pollution Control Act of 1972 (Public Law 92-500, 33 U.S.C. § 1251 et seq.). It shall be the duty of the Attorney General, the General Counsel and the department to defend the legality of this act so as to prevent its suspension or abrogation in the absence of a controlling decision by a court of competent jurisdiction.

(4.6 added Oct. 4, 1984, P.L.727, No.158)

Section 4.7. Anthracite Mine Operators Emergency Bond Fund.--(Hdg. amended Dec. 18, 1992, P.L.1384, No.173) (a) Within thirty (30) days of the effective date of this section, the department shall establish an Emergency Bond Fund for the purpose of reclaiming any anthracite deep mined or surface mined lands which may be abandoned after the effective date of this section and on which the bond required by law and established by regulation has not been posted due to circumstances set forth in subsection (d). ((a) amended Dec. 18, 1992, P.L.1384, No.173)

(b) The department shall collect from the following classes of licensed anthracite deep mine operators and anthracite surface mine operators a fee of twenty-five cents (25¢) for each ton of coal extracted from mining operations for which the required bond has not been posted due to the circumstances set forth in subsection (d):

(1) Licensed anthracite deep mine operators and anthracite surface mine operators who submit to the department three letters of rejection from three separate bonding companies licensed to do business in this Commonwealth, stating that the operator has been denied a bond and the grounds for rejection.

(2) Licensed anthracite deep mine operators and anthracite surface mine operators whose bonds are canceled due to the insolvency or bankruptcy of any insurance company or surety company licensed to do business in this Commonwealth.

((b) amended Dec. 18, 1992, P.L.1384, No.173)

(c) The department shall deposit appropriations and the moneys collected into the Emergency Bond Fund. The department may establish such recordkeeping and reporting requirements as may be necessary for the purpose of implementing this section. Each operator affected by this section shall remit the fees to the department within forty-five (45) days following the sale of the tonnage on which the fee has been levied. The collection and deposit of the fees shall continue until the fund has reached a level that equals the number of acres for which no bond has been posted multiplied by the per-acre bonding requirement as established by rules and regulations of the department.

(d) If the bonds of any anthracite deep mine operator or anthracite surface mine operator are canceled due to the insolvency or bankruptcy of any insurance company or surety company authorized to do business in this Commonwealth, and if replacement bonds from any other company are unavailable to the operator, even though the operator possesses sufficient financial resources to otherwise qualify for a bond, or if the operator has received the letters of rejection provided for in subsection (b), the operator shall so notify the department in writing. Notice to the department in the case of an operator who has received the letters of rejection provided for in subsection (b) shall contain the letters of rejection and such other information as the Environmental Quality Board may, by regulation, prescribe. In lieu of a bond, the operator's

reclamation obligation for each site for which a permit has been applied shall be secured by the Emergency Bond Fund provided for in subsection (a) until such time as the site has been reclaimed or until an original or replacement bond, as the case may be, has been obtained by the operator: Provided, however, That no permit shall be issued under this subsection unless the operator has filed with the department a minimum payment of one thousand dollars (\$1,000) toward the bond obligation and borrowed the remaining balances from the Emergency Bond Fund to cover the bond amounts for the entire permit area, as required by law. At such time as the operator has satisfied a reclamation obligation secured by the fund provided for in section 1, the department shall release to the operator the fees collected, in whole or in part, according to the bond release schedule provided for by regulation. Any operator whose bond obligation is met by this section and whose permit application has been approved shall, throughout the term of the permit, undertake all reasonable actions to obtain an original or replacement bond, as the case may be, for said site. ((d) amended Dec. 18, 1992, P.L.1384, No.173)

(e) The Environmental Quality Board may adopt regulations which require the operator to demonstrate, from time to time, that he has made such reasonable attempts to obtain an original or replacement bond.

(f) In collecting the fees provided for and in securing reclamation obligations, the department shall maintain a separate record for each operator. The fees paid by an operator may be used only to secure the reclamation obligations of the operator.

(g) The sum of fifty thousand dollars (\$50,000) is hereby appropriated to the department for immediate deposit into the Emergency Bond Fund to provide the necessary funds for loans to qualified anthracite deep mine operators and anthracite surface mine operators to provide the required bonds to obtain mining permits.

((g) amended Dec. 18, 1992, P.L.1384, No.173)

(4.7 added Dec. 12, 1986, P.L.1570, No.171)

Section 4.8. Government-Financed Reclamation Contracts Authorizing Incidental and Necessary Extraction of Coal or Authorizing Removal of Coal Refuse.--(a) No person may engage in extraction of coal or in removal of coal refuse pursuant to a government-financed reclamation contract without a valid surface mining permit issued pursuant to this act unless such person affirmatively demonstrates that he is eligible to secure special authorization pursuant to this section to engage in a government-financed reclamation contract authorizing incidental and necessary extraction of coal or authorizing removal of coal refuse. The department shall determine eligibility before entering into a government-financed reclamation contract authorizing incidental and necessary extraction of coal or authorizing removal of coal refuse. The department may provide the special authorization as part of the government-financed reclamation contract: Provided, That the contract contains and does not violate the requirements of this section. The department shall not be required to grant a special authorization to any eligible person. The department may, however, in its discretion, grant a special authorization allowing incidental and necessary extraction of coal or allowing removal of coal refuse pursuant to a government-financed reclamation contract in accordance with this section.

(b) Only eligible persons may secure special authorization to engage in incidental and necessary extraction of coal or to

engage in removal of coal refuse pursuant to a government-financed reclamation contract. A person is eligible to secure a special authorization if he can demonstrate, at a minimum, to the department's satisfaction that:

(1) The contractor or any related party or subcontractor which will act under its direction has no history of past or continuing violations which show the contractor's lack of ability or intention to comply with the acts or the rules and regulations promulgated thereunder, whether or not such violation relates to any adjudicated proceeding, agreement, consent order or decree, or which resulted in a cease order or civil penalty assessment. For the purposes of this section, the term "related party" shall mean any partner, associate, officer, parent corporation, affiliate or person by or under common control with the contractor.

(2) The person has submitted proof that any violation related to the mining of coal by the contractor or any related party or subcontractor which will act under its direction of any of the acts, rules, regulations, permits or licenses of the department has been corrected or is in the process of being corrected to the satisfaction of the department, whether or not the violation relates to any adjudicated proceeding, agreement, consent order or decree or which resulted in a cease order or civil penalty assessment. For purposes of this section, the term "related party" shall mean any partner, associate, officer, parent corporation, subsidiary corporation, affiliate or person by or under common control with the contractor.

(3) The person has submitted proof that any violation by the contractor or by any person owned or controlled by the contractor or by a subcontractor which acts under its direction of any law, rule or regulation of the United States or any state pertaining to air or water pollution has been corrected or is in the process of being satisfactorily corrected.

(4) The person or any related party or subcontractor which will act under the direction of the contractor has no outstanding unpaid civil penalties which have been assessed for violations of either this act or the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," in connection with either surface mining or reclamation activities.

(5) The person or any related party or subcontractor which will act under the direction of the contractor has not been convicted of a misdemeanor or felony under this act or the acts set forth in subsection (e) and has not had any bonds declared forfeited by the department.

(c) Any eligible person who proposes to engage in extraction of coal or in removal of coal refuse pursuant to a government-financed reclamation contract may request and secure special authorization from the department to conduct such activities under this section. The department may issue the special authorization as part of the government-financed reclamation contract: Provided, That the contract contains and does not violate the requirements of this section. A special authorization can only be obtained if a clause is inserted in a government-financed reclamation contract authorizing such extraction of coal or authorizing removal of coal refuse and the person requesting such authorization has affirmatively demonstrated to the department's satisfaction that he has satisfied the provisions of this section. A special authorization shall only be granted by the department prior to the commencement of extraction of coal or commencement of removal of coal refuse on a project area. In order to be

considered for a special authorization by the department, an eligible person must demonstrate at a minimum that:

(1) The primary purpose of the operation to be undertaken is the reclamation of abandoned mine lands.

(2) The extraction of coal will be incidental and necessary, or the removal of coal refuse will be required, to accomplish the reclamation of abandoned mine lands pursuant to a government-financed reclamation contract.

(3) Incidental and necessary extraction of coal or in removal of coal refuse will be confined to the project area being reclaimed.

(4) All extraction of coal or in removal of coal refuse and reclamation activity undertaken pursuant to a government-financed reclamation project will be accomplished pursuant to:

(i) the applicable environmental protection performance standards promulgated in the rules and regulations relating to surface coal mining listed in the government-financed reclamation contract; and

(ii) additional conditions included in the government-financed reclamation contract by the department.

(d) The contractor will pay any applicable per-ton reclamation fee established by the United States Office of Surface Mining Reclamation and Enforcement (OSMRE) for each ton of coal extracted pursuant to a government-financed reclamation project.

(e) Prior to commencing extraction of coal or commencement of removal of coal refuse pursuant to a government-financed reclamation project, the contractor shall file with the department a performance bond payable to the Commonwealth and conditioned upon the contractor's performance of all the requirements of the government-financed reclamation contract, this act, "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," where applicable, the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act," and, where applicable, the act of July 7, 1980 (P.L.380, No.97), known as the "Solid Waste Management Act." An operator posting a bond sufficient to comply with this section shall not be required to post a separate bond for the permitted area under each of the acts hereinabove enumerated. For government-financed reclamation contracts other than a no-cost reclamation contract, the criteria for establishing the amount of the performance bond shall be the engineering estimate, determined by the department, of meeting the environmental obligations enumerated above. The performance bond which is provided by the contractor under a contract other than a government-financed reclamation contract shall be deemed to satisfy the requirements of this section provided that the amount of the bond is equivalent to or greater than the amount determined by the criteria set forth in this subsection. For no-cost reclamation projects in which the reclamation schedule is shorter than two (2) years, the bond amount shall be a per acre fee which is equal to the department's average per acre cost to reclaim abandoned mine lands, provided, however, for coal refuse removal operations, the bond amount shall only apply to each acre affected by the coal refuse removal operations. For long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years, the department may establish a lesser bond amount. In these contracts, the department may in the alternative establish a

bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a period specified.

(f) The department shall insert in government-financed reclamation contracts conditions which prohibit coal extraction pursuant to government-financed reclamation in areas subject to the restrictions of section 4.2 except as surface coal mining is allowed pursuant to that section.

(g) Any person engaging in extraction of coal pursuant to a no-cost government-financed reclamation contract authorized under this section who affects a public or private water supply by contamination or diminution shall restore or replace the affected supply with an alternate supply adequate in quantity and quality for the purposes served.

(h) Extraction of coal or removal of coal refuse pursuant to a government-financed reclamation contract cannot be initiated without the consent of the surface owner for right of entry and consent of the mineral owner for extraction of coal. Nothing in this section shall prohibit the department's entry onto land where such entry is necessary in the exercise of police powers.

(4.8 amended May 22, 1996, P.L.232, No.43)

Section 4.9. Designating Areas Suitable for Reclamation by Remining.--(a) The department may, pursuant to the interim program established by this section, designate areas of this Commonwealth suitable for reclamation by remining surface mining activities, including bond forfeiture areas, where the department determines that reclamation pursuant to the requirements of this act is technologically and economically feasible. This section shall constitute an interim program allowing the department to declare areas suitable for remining pursuant to the criteria in subsection (b). The Environmental Quality Board may by regulation promulgate criteria and procedures, in addition to the interim criteria and procedures set forth in this section, for declaring an area suitable for remining.

(b) In designating areas suitable for reclamation by remining, the department shall consider the following:

(1) Those lands which were affected by surface or deep mining activities, including coal refuse piles, and which are causing or contributing to the pollution of the waters of this Commonwealth.

(2) Areas which if remined would result in enhancement of nearby recreation, natural or scenic areas.

(3) Areas where remining would result in significant environmental and economic or social enhancement of the surrounding region.

(4) Areas that do not meet water quality standards but which if remining occurs are likely to maintain or enhance existing downstream water uses and meet water quality standards and which will not cause further degradation of receiving stream water quality.

(5) The presence of economically viable coal reserves in an area which could be extracted by surface mining activities with reclamation being technologically and economically feasible.

(c) (1) The department may accept proposals for declaring areas suitable for reclamation by remining from any person or the department may propose areas itself. Prior to the department's accepting a proposal to declare an area suitable for remining pursuant to the criteria in subsection (b), the person proposing designation of an area as suitable for remining must:

(i) if the petitioner is a coal operator, agree to provide drilling services to obtain information necessary for the department to determine whether an area should be declared suitable for remining; or

(ii) describe in his proposal in technical detail how the proposed area meets the criteria set forth in this section for designation.

(2) The department shall determine within thirty (30) days whether to accept the proposal for further study.

(3) The department shall prepare a detailed report on the proposed area within two hundred forty (240) days of its acceptance of a proposal for study based on the criteria outlined in subsection (b). The report shall contain enough background information on the proposed area to allow a mine operator to directly use its contents in the preparation of a proposal or permit application to remine all or part of the area.

(4) Prior to making any designation, the department will publish a notice in the Pennsylvania Bulletin establishing a public comment period of at least thirty (30) days on the report. The comment period shall also be advertised at least once a week for two weeks in a newspaper of general circulation in the proposed designation area.

(5) No later than twelve (12) months after its acceptance of a proposed area for study, the department will make a decision on whether to designate an area as suitable for remining.

(d) The designation of an area as suitable for remining creates no presumption that a mining permit will be issued in a designated area. Applicants for mining permits in areas designated suitable for remining must demonstrate to the department's satisfaction that all requirements of the acts and regulations promulgated thereunder, relating to permit issuance, have been met prior to permit issuance.

(e) The special account established in the Remining Environmental Enhancement Fund for the areas suitable for remining program shall be the sole source of funds for the program, and the Commonwealth shall not be obligated to expend any funds beyond the amount of the special account.

(4.9 added Dec. 18, 1992, P.L.1384, No.173)

Section 4.10. Remining Operator's Assistance Program.--The department shall establish a program to assist and pay for the preparation of applications for licensed mine operators otherwise eligible to obtain a permit for remining abandoned mine land, including remining of land subject to bond forfeitures and coal refuse piles. The interim program shall consist of the reimbursement of expenses for the same purposes as set forth in the Small Operator Assistance Program. The Environmental Quality Board may by promulgating regulations expand the scope of the program to include purposes other than the purposes of the Small Operator Assistance Program, including, but not limited to, the reimbursement of expenses for additional information on geology and hydrology and other information necessary to support a remining permit application, but not including drilling and related activities, in order to support a proposal or application. The department may enter into agreements with operators pursuant to the remining operator assistance program only to the extent that funds are available.

(4.10 added Dec. 18, 1992, P.L.1384, No.173)

Section 4.11. Pennsylvania Reclamation and Remining Program.--(a) The Environmental Quality Board shall publish proposed regulations within one hundred eighty (180) days from

the effective date of this act which shall constitute an interim reclamation and remining program which provides incentives and assistance to reclaim abandoned mine lands and land that is subject to bond forfeitures. The department is authorized to expend moneys from the Remining Environmental Enhancement Fund for this program. The proposed regulations and any final regulations promulgated under this section shall include, but not be limited to, the following elements:

(1) The encouragement of the reclamation of abandoned mine lands by active surface coal mine operators.

(2) The encouragement of the recovery of remaining coal resources on abandoned mine lands and maximizing reclamation of such lands in the process.

(3) The development of an operator qualification system.

(4) The encouragement of local government participation in abandoned mine land agreements.

(b) The department shall prepare a report to the Environmental Resources and Energy Committee of the Senate and the Conservation Committee of the House of Representatives on July 1 of each year giving a status report on activities covering the department's reclamation and remining programs under this section and sections 4.8, 4.9, 4.10, 4.12, 4.13 and 18.

(c) The report shall include, but not be limited to:

(1) The number and names of operators participating in the programs under sections 4.8, 4.9, 4.10, 4.12, 4.13 and this section and the reclamation programs under section 18.

(2) The number of acres of abandoned mine land, land subject to bond forfeiture and coal refuse piles reclaimed.

(3) The dollar value of these reclamation activities.

(4) Recommendations for providing additional incentives for the reclamation of areas previously mined.

(5) The comments of the Mining and Reclamation Advisory Board on the annual report, if any.

(4.11 added Dec. 18, 1992, P.L.1384, No.173)

Section 4.12. Financial Guarantees to Insure Reclamation; Payments to the Remining Financial Assurance Fund.--(a) The department is authorized under this section to establish programs to provide financial guarantees to insure reclamation for qualified operators who reclaim abandoned mine lands through remining and to assess and collect payments from qualified operators who choose to purchase such financial guarantees. The financial guarantees are to be supported by a special account in the Remining Financial Assurance Fund. The department shall determine the total amount of financial guarantees that can be supported by the special account based on loss reserves established by the application of the historical rate of mine operator bond forfeitures plus a reasonable margin of safety. The department shall establish underwriting methods which are in keeping with the intent of this section. In promulgating proposed and final regulations, the Environmental Quality Board shall consider various factors, including, but not limited to, site eligibility, such as environmental hazards, safety hazards and the availability of coal reserves and operator eligibility, such as financial tests and criteria for participation in the program, including an operator's operating ratio, long-term financial stability, denial of coverage by surety bond companies, financial ratio, compliance history, length of time in business and any other factors indicative of an operator's ability to complete reclamation and payments into the fund under the program. Requirements for making payments into the fund shall be established in regulations promulgated by the

Environmental Quality Board in order to assure the financial stability of the financial guarantees program and to provide adequate funds in case of forfeiture but will require no collateralization.

(b) Premium payments will be deposited into the Remining Financial Assurance Fund and will be reserved in a special account to be used in case of operator forfeiture. When the special account becomes actuarially sound, excess payments may be used pursuant to section 18(a.1) and (a.2).

(c) Payments under this subsection shall excuse the operator from the requirement to post a bond under this act with respect to the remining permit for which payment is made.

(d) The financial guarantees program may be discontinued immediately and notice published in the Pennsylvania Bulletin if twenty-five per cent or greater of the outstanding bond obligation for the financial guarantees program is subject to forfeiture. The special account established in the Remining Financial Assurance Fund for the financial guarantees program shall be the sole source of funds underwriting the financial guarantees program, and the Commonwealth shall not be obligated to expend any funds beyond the amount of the special account.

(4.12 amended May 22, 1996, P.L.232, No.43)

Section 4.13. Reclamation Bond Credits.--(a) A bond credit, financially backed by a special account for that purpose established in section 18(a.2), in the form of a bond letter, may be issued by the department to a licensed mine operator for voluntary reclamation of abandoned mine lands as approved by the department. The department shall in determining whether or not to issue a bond credit:

(1) Where a coal mining activity permit is not required, require a licensed mine operator to submit a proposal to the department to reclaim a specific area, together with the estimated cost of the reclamation based on current bonding rates.

(2) Review the proposal and find in writing that the operator's estimated cost of reclamation is accurate and that the proposed location of the project is acceptable to the department.

(3) Not issue any bond credits to an operator if any one or more of the following apply:

(i) the operator has not fully completed reclamation of the site to the standards set forth in the approved reclamation plan for the site;

(ii) the operator, any related party or any person who is directed or controlled by the operator or directs or controls the operator bears any reclamation responsibility under Federal or State law for an area proposed to be reclaimed, including, but not limited to, obligations pursuant to a mining permit, reclamation pursuant to section 18 or reclamation pursuant to any contract with the department, including abandoned mine land reclamation contracts; or

(iii) any other requirement of this section has not been met.

(b) An operator may apply bond credits which have been issued to him by the department against any reclamation bond obligation selected by the operator on unmined or previously mined areas except as specified in this section.

(c) The department may approve utilization of a bond credit in combination with conventional collateral or surety agreements.

(d) The department may require as a condition of granting the bond credit that the operator post a contract performance

bond to insure that the operator completes the reclamation proposed to result in the bond credit. The performance bond is to be at least in an amount necessary to ensure reclamation of those areas proposed to be reclaimed and shall be released by the department upon completion of the work described in the approved reclamation plan.

(e) Bond credits are transferable to another qualified operator approved by the department.

(f) The special account established in the Remining Financial Assurance Fund for the bond credit program shall be the sole source of funds underwriting the bond credit program, and the Commonwealth shall not be obligated to expend any funds beyond the amount of the special account.

(g) Bond credits earned by a qualified operator may be used on a single permit or on multiple permits, whichever the operator chooses. A bond credit may be used two times; however, the bond credit cannot be used a second time until the department releases the bond credit from its first use. Any bond credit that is not used within five years from the date that it is earned or released will expire, including bond credits that have been transferred.

(4.13 amended May 22, 1996, P.L.232, No.43)

Section 4.14. Bioenergy Crop Bonding.--To the extent funds are available from the appropriation to the department under section 213 of the act of June 22, 2001 (P.L.979, No.6A), known as the "General Appropriation Act of 2001," for the conservation purpose of providing sum-certain financial guarantees needed to facilitate the implementation of full-cost bonding for a fee and, in the event of forfeiture, to finance reclamation of the forfeited surface mining site in an amount not to exceed the sum-certain guarantee, or to the extent funds are otherwise appropriated, the department shall make available at no cost to the surface mine permittee of a remining site that has revegetated the remining site with switchgrass, camelina, canola or other bioenergy crops sum-certain guarantees to cover Stage III reclamation liability for the remining site under the permittee's reclamation bond and, in the event of forfeiture, to finance reclamation of the forfeited surface mining site in an amount not to exceed the sum-certain guarantee.

(4.14 added July 5, 2012, P.L.918, No.95)

Section 5. (5 repealed Nov. 30, 1971, P.L.554, No.147)

Section 6. (6 repealed July 16, 1963, P.L.238, No.133)

Section 7. (7 repealed Nov. 30, 1971, P.L.554, No.147)

Section 8. (8 repealed Nov. 30, 1971, P.L.554, No.147)

Section 9. (9 repealed July 16, 1963, P.L.238, No.133)

Section 10. (10 repealed Nov. 30, 1971, P.L.554, No.147)

Section 11. (11 repealed Nov. 30, 1971, P.L.554, No.147)

Section 12. (12 repealed Nov. 30, 1971, P.L.554, No.147)

Section 13. (13 repealed July 16, 1963, P.L.238, No.133)

Section 14. (14 repealed Nov. 30, 1971, P.L.554, No.147)

Section 15. (15 repealed Nov. 30, 1971, P.L.554, No.147)

Section 15.1. (15.1 repealed Nov. 30, 1971, P.L.554, No.147)

Section 15.2. (15.2 repealed Nov. 30, 1971, P.L.554, No.147)

Section 15.3. Conservation Districts and Inspectors.--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 mine conservation inspectors. 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.

(15.3 amended Oct. 10, 1980, P.L.835, No.155)

Section 16. (16 repealed Nov. 30 1971, P.L.554, No.147)

Section 17. (17 repealed Sept. 2, 1961, P.L.1210, No.531)

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.

(17.1 added Oct. 10, 1980, P.L.835, No.155)

Section 18. Surface Mining Conservation and Reclamation Fund; Remining Environmental Enhancement Fund; Remining Financial Assurance Fund; Department Authority for Awarding of Grants.--(Hdg. amended May 22, 1996, P.L.232, No.43) (a) Except as provided in subsection (a.1), all funds received by the secretary from license fees, from permit fees, including all reclamation fees collected by the department under this act pursuant to the department's alternate bonding program, 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:

(1) the revegetation or reclaiming of land affected by surface mining of any coal;

(2) for restoration or replacement of water supplies affected by surface mining activities; or

(3) for any other conservation purposes provided by this act, and for such purposes are hereby specifically appropriated to the department. Except as provided in subsection (a.1), costs recovered under section 315(b) of "The Clean Streams Law" from a deep mine operator or operators shall be paid into the Clean Water Fund.

((a) amended Dec. 18, 1992, P.L.1384, No.173)

(a.1) (1) There is hereby created a special fund in the State Treasury to be known as the "Remining Environmental Enhancement Fund." The secretary is authorized to transfer at the commencement of each fiscal year a total of one million dollars (\$1,000,000) into the Remining Environmental Enhancement Fund aggregated from the following sources:

(i) License and permit fees except reclamation fees paid to the department under this act pursuant to the department's alternate bonding program.

(ii) Fines and penalties collected under this act.

(iii) Fees, fines and penalties collected pursuant to section 315 of "The Clean Streams Law," including fines and penalties from mining operations collected under section 605 or other provisions of that act.

(iv) Fees, fines and penalties collected pursuant to the act of September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act."

(v) Fees, fines and penalties collected pursuant to the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as "The Bituminous Mine Subsidence and Land Conservation Act," not including funds received pursuant to section 6(a) of that act.

(2) All moneys placed in the Remining Environmental Enhancement Fund and the interest it accrues are hereby appropriated upon authorization by the Governor to the department for the costs of operating a remining and reclamation

incentive program, including designating areas suitable for reclamation by remining and establishing and operating a remining operator's assistance program, but not including a bond credit or financial guarantees program.

((a.1) amended July 5, 2012, P.L.918, No.95)

(a.2) (1) There is hereby created a special fund in the State Treasury to be known as the "Remining Financial Assurance Fund." The Governor is authorized to transfer up to five million dollars (\$5,000,000) from the allotment set forth in section 16(a)(1) of the act of January 19, 1968 (1967 P.L.996, No.443), known as "The Land and Water Conservation and Reclamation Act," to the Remining Financial Assurance Fund for the purposes of the Remining Financial Assurance Fund. All moneys placed in the Remining Financial Assurance Fund are hereby appropriated upon authorization by the Governor to the department for the purpose of:

(i) Providing financial assurance for the reclamation bond credit program set forth in section 4.13.

(ii) Providing financial assurance for the financial guarantees program set forth in section 4.12.

Interest which accrues from the Remining Financial Assurance Fund shall be transferred into the Land and Water Development Sinking Fund established in section 10 of "The Land and Water Conservation and Reclamation Act" and shall be used for the purposes established therein.

(2) Mine operators whose applications for financial assurance have been approved by the department to participate in the Remining Financial Assurance Fund shall not be required to pay any per-acre reclamation fees established by the department for the abandoned mine area covered by the proposal or permit application.

((a.2) amended May 22, 1996, P.L.232, No.43)

(a.3) An operator must demonstrate, in order to utilize any funds from or participate in any programs funded by the Remining Environmental Enhancement Fund or the Remining Financial Assurance Fund, including any of the remining incentive programs specified in sections 4.8, 4.9, 4.10 and 4.11 or the remining financial assurance programs set forth in section 4.12 or 4.13 or remining incentives promulgated in regulations pursuant to those sections, that he meets all of the following requirements:

(1) The operator, any related party or any person who owns or controls the operator or is owned or controlled by the operator has no liability for reclamation or pollution at the proposed abandoned mine site.

(2) The proposed activity is technologically and economically feasible at the proposed abandoned mine site and will not violate effluent limitations or water quality standards.

(3) The operator is a licensed mine operator who is otherwise eligible to obtain a permit.

(4) Where applicable, the operator has submitted a mining application to the department clearly indicating which areas the operator intends to remine and which areas, if any, are to be mined for the first time.

(5) Where applicable, the operator has accurately calculated the amount of bond that would be needed to cover the total area to be remined and the amount needed to cover the initial area of remining.

(6) The operator has requested to be considered by the department for participation in the Remining Environmental Enhancement Fund, the Remining Financial Assurance Fund or both funds.

((a.3) added Dec. 18, 1992, P.L.1384, No.173)

(a.4) Priority for participation in the Remining Environmental Enhancement Fund and the Remining Financial Assurance Fund shall be given to licensed mine operators proposing remining within areas designated suitable for reclamation by remining. ((a.4) amended May 22, 1996, P.L.232, No.43)

(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).

(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. ((c) added Oct. 12, 1984, P.L.916, No.181)

(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. ((d) added Oct. 12, 1984, P.L.916, No.181)

(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. ((e) added Oct. 12, 1984, P.L.916, No.181)

(f) When a licensed mine operator desires to reclaim property on which the department has forfeited bonds for failure to complete the reclamation plan or 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 operator or 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 operator or 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. ((f) amended Dec. 18, 1992, P.L.1384, No.173)

(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, alternate 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 the following members:

(i) 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.

(ii) Four (4) public members from the Citizens Advisory Council, who shall be appointed by the council.

(iii) 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.

(iv) Four (4) members of the General Assembly, two (2) from the Senate, one (1) from the majority party and one (1) from the minority party, who shall be appointed by the President pro tempore of the Senate, 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.

(v) If a coal refuse energy and reclamation facility is operating within this Commonwealth, an additional one (1) member shall be an operator or employe of the coal refuse energy and reclamation facility.

(2) The secretary shall chair the board and appoint the members from the coal industry, the member from the coal refuse energy and reclamation 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) All actions of the board shall be by majority vote. The board shall meet upon the call of the secretary, but not less than quarterly, to carry out its duties under this act. The board shall select from among its members a chairperson and such other officers as it deems appropriate.

(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 Conservation Committee.

((g) amended Nov. 3, 2022, P.L.1689, No.105)

(g.1) There is hereby created an Aggregate Advisory Board to assist the secretary to expend the funds for the purposes provided by section 17 of the act of December 19, 1984 (P.L.1093, No.219), known as the "Noncoal Surface Mining Conservation and Reclamation Act," and to advise the secretary

on all matters pertaining to surface mining, as defined in section 3 of the "Noncoal Surface Mining Conservation and Reclamation Act," which shall include, but not be limited to, experimental practices, alternate methods of backfilling, obligations for preexisting pollution liability, alteration of reclamation plans, reclamation fees and bonding rates and methods. The board shall function as follows:

(1) The board shall be comprised of the secretary; three (3) aggregate surface mining operators; four (4) public members from the Citizens Advisory Council, who shall be appointed by the council; one (1) member from the County Conservation Districts, who shall be appointed by the State Conservation Commission; and 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 President pro tempore, and two (2) from the House of Representatives, one (1) member from the majority party and one (1) member from the minority party, who shall be appointed by the Speaker of the House of Representatives.

(2) The secretary shall chair the board and appoint the members from the aggregate industry.

(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) All actions of the board shall be by majority vote. The board shall meet upon the call of the secretary, but not less than quarterly, to carry out its duties under this act. The board shall select from among its members such officers as it deems appropriate.

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

((g.1) added Sept. 24, 2014, P.L.2480, No.137)

(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." ((h) added Oct. 12, 1984, P.L.916, No.181)

(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. ((i) added Oct. 12, 1984, P.L.916, No.181)

(j) The department may, upon written application, award grants to municipalities, municipal authorities and appropriate nonprofit organizations from the Surface Mining Conservation and Reclamation Fund and from funds the department receives from the United States for approved abandoned mine purposes

authorized by this subsection. The purposes of the grants shall be consistent with all applicable Federal and State requirements related to the source of the funds. A grant awarded under this subsection shall be subject to such terms and conditions as established by the department. ((j) added May 22, 1996, P.L.232, No.43)

(18 amended Oct. 10, 1980, P.L.835, No.155)

**Compiler's Note:** The Secretary of Environmental Resources, referred to in subsec. (a.1), was abolished by Act 18 of 1995. The functions of the secretary were transferred to the Secretary of Conservation and Natural Resources and the Secretary of Environmental Protection.

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.

(18.1 amended Oct. 10, 1980, P.L.835, No.155)

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.

(18.2 amended Oct. 10, 1980, P.L.835, No.155)

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.

(18.3 amended Oct. 10, 1980, P.L.835, No.155)

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 willful. The civil penalty so assessed shall not exceed five thousand dollars (\$5,000) per day for each violation. In determining the amount of the civil penalty the department shall consider the 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.

(18.4 added Oct. 10, 1980, P.L.835, No.155)

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.

(18.5 added Oct. 10, 1980, P.L.835, No.155)

**Compiler's Note:** Section 28 of Act 207 of 2004 provided that any and all references in any other law to a "district justice" or "justice of the peace" shall be deemed to be references to a magisterial district judge.

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.

(18.6 added Oct. 10, 1980, P.L.835, No.155)

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). The department may utilize such funds as authorized by the United States Department of Interior, Office of Surface Mining Reclamation and Enforcement pursuant to the Surface Mining Control and Reclamation Act of 1977.

(18.7 amended Dec. 18, 1992, P.L.1384, No.173)

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.

(18.8 added Oct. 12, 1984, P.L.916, No.181)

**Compiler's Note:** The Department of Environmental Resources, referred to in this section, was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 18.9. Search Warrants.--An agent or employe of the department may apply for a search warrant to any Commonwealth official authorized to issue a search warrant for the purposes of inspecting or examining any property, premises, place, building, book, record or other physical evidence, of conducting tests, of taking samples or of seizing books, records and other physical evidence. Such warrant shall be issued upon probable cause. It shall be sufficient probable cause to show any one or more of the following:

(1) That the agent or employe has reason to believe that a violation of this act has occurred or may occur.

(2) That the agent or employe has been refused access to the property, premises, place, building, book, record or physical evidence or has been prevented from conducting tests or taking samples.

(18.9 added Dec. 18, 1992, P.L.1384, No.173)

Section 18.10. Construction of Act.--Any provisions to the contrary notwithstanding, it shall be the intent of the General Assembly, and this act shall not be construed to violate any of the requirements of the Clean Water Act of 1977 (Public Law 95-217, 33 U.S.C. § 1251 et seq.) and the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et seq.).

(18.10 added Dec. 18, 1992, P.L.1384, No.173)

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 in this act shall be construed to abrogate or modify the power and jurisdiction of the department to make rules and regulations, and to administer the laws of the Commonwealth applicable to open pit mining.

(19 amended July 5, 2012, P.L.918, No.95)

**Compiler's Note:** The Department of Environmental Resources, referred to in this section, was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

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).

(19.1 added Dec. 20, 1983, P.L.278, No.74)

Section 19.2. Land Reclamation Financial Guarantees.--(a) The department shall establish a program to provide land reclamation financial guarantees to qualified operators to insure reclamation of suitable surface mining activities permitted under this act. A land reclamation financial guarantee may be used by an operator to satisfy the bonding obligation required by section 4(d).

(b) (1) The department shall assess and collect premiums for land reclamation financial guarantees from qualified operators who choose to obtain such guarantees. The amount of the premium, to be determined by the department and established by regulation, shall be sufficient to assure the financial stability of the land reclamation financial guarantee program and to cover the department's costs to administer the program.

(2) A special account is established in the Surface Mining Conservation and Reclamation Fund to be known as the Land Reclamation Financial Guarantee Account. The account shall be used to support land reclamation financial guarantees. Premium payments shall be deposited into the account and to pay the cost of reclamation in the event of operator forfeiture.

(3) (i) Except as noted in this section, the department shall use all the funds previously appropriated and collected for the sum-certain financial guarantees authorized pursuant to section 213 of the act of June 22, 2001 (P.L.979, No.6A), known as the "General Appropriation Act of 2001," as principal funds for the land reclamation financial guarantee program established by this section.

(ii) Any existing sum-certain financial guarantee previously issued by the department shall be converted into a land reclamation financial guarantee established by this section, and the funds in the Land Reclamation Financial Guarantee Account shall be used to cover obligations for all existing sum-certain financial guarantees previously issued by the department.

(4) The department may transfer up to five hundred thousand dollars (\$500,000) of the funds appropriated for the sum-certain financial guarantees authorized pursuant to section 213 of the "General Appropriation Act of 2001," into the Remining Financial Assurance Fund for use in supporting remining financial guarantees issued by the department pursuant to section 4.12 of this act.

(5) The department may transfer interest earned on the funds in the Land Reclamation Financial Guarantee Account into the Reclamation Fee O&M Trust Account established pursuant to 25 Pa. Code §§ 86.17 (relating to permit and reclamation fees) and 86.187 (relating to use of money) to be used to supplement the funding of the Reclamation Fee O&M Trust Account.

(6) Consistent with the requirement in this section to assure the financial stability of the land reclamation financial guarantee program, premiums collected and deposited in the Land Reclamation Financial Guarantee Account may be transferred by the department into the Reclamation Fee O&M Trust Account established pursuant to 25 Pa. Code §§ 86.17 and 86.187 to be used to supplement the funding of the Reclamation Fee O&M Trust Account.

(7) Beginning in fiscal year 2013-2014, up to two million dollars (\$2,000,000) collected from the gross receipts tax on sales of electric energy in Pennsylvania authorized by Article XI of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," may be appropriated annually by the General Assembly to the department for transfer to the Reclamation Fee O&M Trust Account established pursuant to 25 Pa. Code §§ 86.17 and 86.187 to be used to supplement the funding of the Reclamation Fee O&M Trust Account. The authority to transfer funds under this clause expires June 30, 2039.

(c) When determining eligibility for a land reclamation financial guarantee, the department shall consider both site and operator eligibility, including factors such as:

(1) The environmental and safety hazards of the site for which a guarantee is proposed.

(2) The availability of coal reserves at the site.

(3) The operator's long-term financial stability.

(4) The operator's prior denial of coverage, if any, by surety bond companies.

(5) The operator's length of time in business and compliance history.

(6) Any other factor the department considers indicative of an operator's ability to complete reclamation and pay required premiums under the program.

(d) (1) The department shall determine the total amount of financial guarantees that can be supported by the Land Reclamation Financial Guarantee Account based on loss reserves established by the application of the historical rate of mine operator bond forfeitures, plus a reasonable margin of safety to protect the account from the risk of forfeiture.

(2) The department shall establish, by regulation, underwriting methods adequate to insure the account against the risk of forfeiture of the guarantees.

(e) (1) The land reclamation financial guarantee program established by this section may be discontinued immediately upon publication of notice in the Pennsylvania Bulletin if twenty-five per cent or greater of the outstanding bond obligation for the land reclamation financial guarantees program is subject to forfeiture.

(2) The Land Reclamation Financial Guarantee Account shall be the sole source of funds underwriting the land reclamation financial guarantees program and the Commonwealth shall not be obligated to expend any funds beyond the amount in the Land Reclamation Financial Guarantee Account.

(f) The Environmental Quality Board shall promulgate regulations to implement the land reclamation financial guarantee program and the provisions and requirements of this section.

(19.2 added Oct. 24, 2012, P.L.1276, No.157)

Section 20. This act shall become effective immediately upon its final enactment: Provided, however, That any person who is in business when the act shall become effective shall have ninety (90) days to file his plans, specifications and bond.

**APPENDIX**

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Supplementary Provisions of Amendatory Statutes  
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**1980, OCTOBER 10, P.L.835, NO.155**

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.

**Compiler's Note:** Act 155 added or amended sections 1, 3, 3.3, 3.2, 4, 4.2, 4.3, 4.5, 15.3, 17.1, 18, 18.1, 18.2, 18.3, 18.4, 18.5, 18.6, 18.7 and 19 of Act 418.

Section 16. To the full extent provided by § 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 Secretary of the Department 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. (18 repealed in part Dec. 20, 1983, P.L.278, No.74)