

No. 1980-156

AN ACT

SB 991

Amending the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), entitled "An act to protect the public health, welfare and safety by regulating the mining of bituminous coal; declaring the existence of a public interest in the support of surface structures; forbidding damage to specified classes of existing structures from the mining of bituminous coal; requiring permits, and in certain circumstances bonds, for the mining of bituminous coal; providing for the filing of maps or plans with recorders of deeds; providing for the giving of notice of mining operations to political subdivisions and surface landowners of record; requiring mine inspectors to accompany municipal officers and their agents on inspection trips; granting powers to public officers and affected property owners to enforce the act; requiring grantors to certify as to whether any structures on the lands conveyed are entitled to support from the underlying coal and grantees to sign an admission of a warning of the possible lack of any such right of support; providing for acquisition with compensation of coal support for existing structures not protected by this act, and future structures; and imposing liability for violation of the act," further providing for permits and collateral deposits, expanding the rulemaking powers of the Department of Environmental Resources, granting a private right to enforce the provisions of the act, increasing and adding penalties, defining certain forms, making noncompliance with a rule or regulation of the department unlawful, creating the Bituminous Mine Subsidence and Land Conservation Fund and making editorial changes.

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

Section 1. The act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as "The Bituminous Mine Subsidence and Land Conservation Act of 1966," is amended to read:

Section 1. *Short title.*—This act shall be known and may be cited as "The Bituminous Mine Subsidence and Land Conservation Act [of 1966]."

Section 2. *Purpose.*—This act shall be deemed to be an exercise of the police powers of the Commonwealth for the protection of the health, safety and general welfare of the people of the Commonwealth, by providing for the conservation of surface land areas which may be affected in the mining of bituminous coal by methods other than "open pit" or "strip" mining, to aid in the protection of the safety of the public, to enhance the value of such lands for taxation, to aid in the preservation of surface water drainage and public water supplies and generally to improve the use and enjoyment of such lands *and to maintain primary jurisdiction over surface coal mining in Pennsylvania.*

Section 3. *Legislative findings; declaration of policy.*—It is hereby determined by the General Assembly of Pennsylvania and declared as a matter of legislative findings that:

(1) Present mine subsidence legislation and coal mining laws have failed to protect the public interest in Pennsylvania in preserving our land.

(2) Damage from mine subsidence has seriously impeded land development of the Commonwealth.

(3) Damage from mine subsidence has caused a very clear and present danger to the health, safety and welfare of the people of Pennsylvania.

(4) Damage by subsidence erodes the tax base of the affected municipalities.

(5) Coal and related industries and their continued operation are important to the economic welfare and growth of the Commonwealth.

(6) In the past, owners of surface structures have not in many instances received adequate notice or knowledge regarding subsurface support, or lack thereof, for surface structures, and therefore the State must exercise its police powers for the protection of the structures covered herein.

(7) In order to prevent the occurrence of such state of affairs in the future, the deed notice provisions relating to such subsurface support, or lack thereof to a person desiring to erect a surface structure after the effective date of this act, must be emphasized and strengthened and it is necessary to make available to those persons desiring to erect a surface structure procedures whereby adequate support of such structure can be acquired.

The Pennsylvania General Assembly therefore declares it to be the policy of the Commonwealth of Pennsylvania that:

(1) The protection of surface structures and better land utilization are of utmost importance to Pennsylvania.

(2) Damage to surface structures and the land supporting them caused by mine subsidence is against the public interest and may adversely affect the health, safety and welfare of our citizens.

(3) The prevention of damage from mine subsidence is recognized as being related to the economic future and well-being of Pennsylvania.

(4) The preservation within the Commonwealth of surface structures and the land supporting them is necessary for the safety and welfare of the people.

(5) It is the intent of this act to harmonize the protection of surface structures and the land supporting them and the continued growth and development of the bituminous coal industry in the Commonwealth.

(6) It is necessary to provide for the protection of those presently existing structures which are or may be damaged due to mine subsidence.

(7) It is necessary to provide a method whereby surface structures erected after the effective date of this act may be protected from damage arising from mine subsidence.

Section 4. *Protection of surface structures against damage from cave-in, collapse or subsidence.*—In order to guard the health, safety and general welfare of the public, no owner, operator, lessor, lessee, or general manager, superintendent or other person in charge of or having supervision over any bituminous coal mine shall mine bituminous coal so as to cause damage as a result of the caving-in, collapse or subsidence of the following surface structures in place on [the effective date of this act] *April 27, 1966*, overlying or in the proximity of the mine:

(1) Any public building or any noncommercial structure customarily used by the public, including but not being limited to churches, schools, hospitals, and municipal utilities or municipal public service operations.

(2) Any dwelling used for human habitation; and

(3) Any cemetery or public burial ground; *unless the current owner of the structure consents and the resulting damage is fully repaired or compensated.*

Section 5. *Permit; application; map or plan; bond or other security; filing; general rulemaking authority; prevention of damage; mine stability; maintenance of use and value of lands.*—(a) Before any bituminous coal mine subject to the provisions of this act is opened, reopened, or continued in operation, the owner, operator, lessor, lessee, general manager, superintendent or other person in charge of or having supervision over such mine or mining operation shall apply to the Department of [Mines and Mineral Industries] *Environmental Resources*, on a form prepared and furnished by the department, for a permit for each separate bituminous coal mine or mining operation. [which permit, when issued or reissued shall be valid until such mine or mining operation is completed or abandoned, unless sooner suspended or revoked by an order of the Secretary of Mines and Mineral Industries, as hereinafter provided.] As a part of such application for a permit the applicant shall furnish, in duplicate, a map or plan of a scale and in a manner in accordance with rules and regulations of the Department of [Mines and Mineral Industries] *Environmental Resources* showing the location of the mine or mining operation, the extent to which mining operations presently have been completed, and the extent to which mining operations will be conducted under the permit being requested. Such map or plan shall show the boundaries of the area of surface land overlying the mine or mining operation, the location and/or designation of all structures in place on the effective date of this act which overlie the proposed mine or mining operation, the name of the record owner or owners of said surface structures, the location of all bodies of water, rivers and streams, roads and railroads, and the political subdivision and county in which said structures are located. Such map or plan shall include, in addition to the information specified above, such information on the character of the mining operation, overburden, rock strata, prox-

imity of and conditions in overlying or underlying coal seams and other geological conditions as the [Secretary of Mines and Mineral Industries] *department*, by rules and regulations, shall direct. *The department shall have the power to require the updating of such maps from time to time as it shall prescribe by rule and regulation.* The map or plan must set forth a detailed description of the manner, if any, by which the applicant proposes to support the surface structures overlying the bituminous mine or mining operation. Upon receipt of such application in proper form the [Secretary of Mines and Mineral Industries] *department* shall cause a permit to be issued or reissued if, in [his] *its* opinion, the application discloses that sufficient support will be provided for the protected structures *and that the operation will comply with the provisions of this act and the rules and regulations issued thereunder. All permits issued under this act shall contain such terms and shall be issued for such duration as the department may prescribe.*

(b) [If the Secretary of Mines and Mineral Industries determines that the permit applicant does not possess adequate financial responsibility, the secretary may] *The department shall* require the applicant to file a bond or other security as recited in section 6 (b), to insure the applicant's faithful performance of mining or mining operations, in accordance with the provisions of section 4.

(c) At the time an application under this act is filed with the [Secretary of Mines and Mineral Industries] *department*, the owner, operator, lessor, lessee, general manager, superintendent, or other person in charge of or having supervision over such mining operation shall immediately file a copy of said application with the recorder of deeds of each county where such mining operation is located. Notice of such filing shall be given within five days by the applicant to each political subdivision where such mining operation is or will be conducted.

(d) A bituminous coal mine in operation on [the effective date of this act] *April 27, 1966* may continue mining operations if an application for a permit covering such operations shall have been filed as heretofore required; provided that no person shall be required to suspend the operation of any coal mine or mining operation which is being conducted on the effective date of this act for a period during which the forms for applying for a permit are not available, and for a period of one hundred twenty days thereafter.

(e) *An operator of a coal mine subject to the provisions of this act shall adopt measures and shall describe to the department in his permit application measures that he will adopt to prevent subsidence causing material damage to the extent technologically and economically feasible, to maximize mine stability, and to maintain the value and reasonable foreseeable use of such surface land: Provided, however, That nothing in this subsection shall be construed to prohibit planned subsidence in a predictable and controlled manner or the standard method of room and pillar mining.*

(f) The department shall not issue any permit required by this act or renew or amend any permit if it finds, after investigation and opportunity for informal hearing, that:

(1) the applicant has failed and continues to fail to comply with 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 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 17.1 or which has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor which has engaged in such unlawful conduct shall be denied any permit required by this act unless the permit application demonstrates that the unlawful conduct is being corrected to the satisfaction of the department. Persons other than the applicant, including independent subcontractors who are proposed to operate under the permit shall be listed in the application and those persons shall be subject to approval by the department prior to their engaging in activities subject to this act, and such persons shall be jointly and severally liable with the permittee for such violations as described in this subsection as the permittee is charged and in which such persons participate.

(g) Public notice of every application for a permit or bond release under this act shall be given by notice published 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. For the purposes 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 have been reasonably incurred by such party proceedings pursuant to this section.

(h) The department is authorized to charge and collect from persons in accordance with rules and regulations reasonable filing fees for applications filed.

Section 6. *Repair of damage or satisfaction of claims; revocation or suspension of permit; bond or collateral.*—(a) If the removal of coal or other mining operations by a holder of a permit granted under section 5 causes damage to structures set forth in section 4 of this act *the permittee shall submit* evidence that such damage has been repaired or that all claims arising therefrom have been satisfied, [shall be furnished] to the [Secretary of Mines and Mineral Industries] *department* within six months from the date that the [holder of such permit] *permittee* knows, or has reason to know, such damage has occurred or, at the option of the [permit holder] *permittee*, within such period there shall be deposited with the Secretary of [Mines and Mineral Industries] *Environmental Resources* as security for such repair or such satisfaction a sum of money in an amount equal to said damage or the reasonable cost of repair thereof, as estimated by a reputable expert. In default of the filing of such evidence or such deposit, the [Secretary of Mines and Mineral Industries] *department* shall suspend or revoke said permit.

[(b)] No permit revoked or suspended pursuant to this section shall be reissued or reinstated until the applicant shall have furnished satisfactory evidence to the [Department of Mines and Mineral Industries] *department* that the damage for which the permit was revoked or suspended has been repaired or all claims arising therefrom satisfied, in accordance with [subsection (a) above. In addition, the Secretary of Mines and Mineral Industries may, in his discretion,] *this subsection.*

(b) *The department shall* require the applicant to file a bond in a form prescribed by the secretary payable to the Commonwealth and conditioned upon the applicant's faithful performance of mining or mining operations, in accordance with the provisions of [section 4] *sections 4 and 5.* Such bond shall be in a reasonable amount as determined by the [Secretary of Mines and Mineral Industries] *department.* Liability under such bond shall continue for the duration of the mining or mining operation, and for a period of ten years thereafter *or such longer period of time as may be prescribed by rules and regulations promulgated hereunder,* at which time the bond shall become of no force and effect, and it, or any cash or securities substituted for it as hereinafter provided, shall be returned to the applicant. Upon application of any proper party in interest, the [Secretary of Mines and Mineral Industries] *department,* after due notice to any person who may be affected thereby, and hearing, *in accordance with the provisions of section 5(g),* may order the amount of said bond to be increased or reduced or may excuse the permit holder from any further duty of keeping in effect any bond furnished pursuant to a prior order of the [secretary] *department* and return said bond, or the securities or cash posted in lieu thereof, to the permit holder, notwithstanding any different provision herein respecting the duration or term of said bond. Such bond shall be executed by the applicant and a corporate surety licensed to do business in the

Commonwealth: Provided, however, That the applicant may elect to deposit cash, *automatically renewable irrevocable bank letters of credit which may be terminated by the bank at the end of a term only upon the bank giving ninety days prior written notice to the permittee and the department* or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth, with the [Secretary of Mines and Mineral Industries] *department* in lieu of a corporate surety. The cash deposit or *irrevocable letter of credit or market value of such [securities] negotiable bonds* shall be at least equal to the sum of the bond. *Where the mining operation is reasonably anticipated to continue for a period of at least ten years from the date of application, the operator may, as an alternative, deposit collateral and file a collateral bond as provided for in this section according to the following phased deposit schedule. The operator shall, prior to commencing operations, deposit ten thousand dollars (\$10,000.00) or 25% of the amount determined under this subsection, whichever is greater. The operator shall thereafter annually deposit 10% of the remaining bond amount for ten 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 this subsection. The collateral shall be deposited, in trust, with the State Treasurer, 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. 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 for release provided for by rules and regulations promulgated hereunder. In lieu of the bond required by this section, the department may 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 surface property owners who may be affected by 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, the operator shall post a bond*

as required by this section. The [Secretary of Mines and Mineral Industries] *department* shall, upon receipt of any such deposit of cash or [securities] *irrevocable letter 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 applicant 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 of Mines and Mineral Industries] *department*, the whole or any portion of any [securities] *collateral* so deposited, upon depositing with him, in lieu thereof, other [negotiable securities] *collateral* of the classes herein specified having a market value at least equal to the sum of the bond, and also to demand, receive and recover the interest and income from said [securities] *negotiable bonds* as the same become due and payable: Provided, however, That where [securities] *negotiable bonds*, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the applicant, shall convert such [securities] *negotiable bonds* into such other negotiable [securities] *bonds* of the classes herein specified as may be designated by the applicant: *And provided further, That where notice of intent to terminate a letter of credit is given, the department shall give the permittee thirty 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-day notification period, the department shall draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee.*

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 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 calendar months, the applicant has not defaulted in the payment of any dividend or sinking fund install-

ment 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 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-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 Bituminous Mine Subsidence and Land Conservation 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 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.

(c) If it shall be determined by the [Secretary of Mines and Mineral Industries] *department* that the holder of a permit issued pursuant to the provisions of this act who has furnished a bond under this section, has failed or refused to comply with the provisions of this act, the [Secretary of Mines and Mineral Industries] *department* shall

certify such determination to the Attorney General. The Attorney General shall proceed immediately to enter suit upon said bond and to collect such amount as may be necessary to redress or repair the damage occasioned by such violation, together with the costs of said proceedings. Where the holder of the permit has deposited cash or [securities] *negotiable bonds* as collateral in lieu of a corporate surety, the [Secretary of Mines and Mineral Industries] *department* shall declare such collateral forfeited and shall direct the State Treasurer to pay said funds or proceed to sell said [securities] *collateral* and pay the proceeds thereof to the [Department of Mines and Mineral Industries] *department* to be used in accordance with the purposes of this section. Should the amount so collected be insufficient to redress or repair the damage, the owner, operator, lessor, lessee, general manager, and superintendent or other person having charge of said mine or mining operation, shall be jointly and severally liable for the deficiency. Should the amount so collected exceed the amount necessary to restore or repair the damage occasioned by such violation, such excess shall be [paid over to the party entitled thereto] *held by the department as collateral for future damage contemplated herein until all liability of the permittee is released.*

Section 7. [Except as otherwise provided herein, all] *Jurisdiction; enforcement; rulemaking.*—(a) All bituminous coal mines or mining operations coming within the provisions of this act shall be under the exclusive jurisdiction of the Department of [Mines and Mineral Industries] *Environmental Resources* and shall be conducted in accordance with *this act*, 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,” 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,”* and with such reasonable rules and regulations as may be deemed necessary by the [Secretary of Mines and Mineral Industries] *department* for the health and safety of those persons engaged in the work. The [Secretary of Mines and Mineral Industries, through the mine inspectors,] *department* shall have the power to enforce the provisions of this act and the rules and regulations promulgated hereunder by [him] *it.*

(b) *The department shall have the authority to adopt such rules, regulations, standards and procedures as shall be necessary to protect the air, water and land resources of the Commonwealth and the public health and safety from subsidence, prevent public nuisances, and to enable it to carry out the purposes and provisions of this act, including additional requirements for providing maps, plans and public hearings.*

Section 8. *Maps or plans.*—Every owner, operator, lessor or lessee engaged in the mining of bituminous coal subject to the provisions of

this act shall make or cause to be made a true and accurate map or plan of the workings or excavations of such coal mine or colliery which shall be in accordance with standards established by the **[Department of Mines and Mineral Industries] department**. Such maps or plans shall show in detail, and in markings of a distinctive color, all contemplated workings which are intended to be undertaken or developed within the succeeding six months and shall show, distinctively and in detail, all supports, artificial or otherwise, to be provided in accordance with the permit. Such maps or plans shall be deposited as often as once in six months with the recorder of deeds of any county in which such mining of bituminous coal is or will be conducted and in addition thereto, with such political subdivisions where mining is taking place or is contemplated, as shall request such maps. Such maps or plans shall be considered public records and shall be open to the inspection of the public and copies or tracings may be made therefrom. **[After one hundred twenty days following the effective date of this act, no]** No mining shall be done which is not shown on such map or plan filed at least ten days previously.

Section 9. **[Any mine inspector directed by the Department of Mines and Mineral Industries] Orders.**—*The department shall have the right to enter upon and inspect all bituminous coal mines and coal mining operations coming within the provisions of this act for the purpose of determining conditions of safety and for compliance with the provisions of this act and all rules and regulations promulgated pursuant hereto. [The mine inspector shall report all violations of this act, or any rules and regulations promulgated pursuant hereto, to the secretary, who shall immediately notify the person in charge of or having supervision over said mine or mining operation by registered or certified mail of such violation or violations. Unless the conditions of this act and said rules and regulations are complied with within thirty days from the receipt of such notice, the secretary may, after hearing and final determination, suspend the permit for the aforesaid mine or mining operation and issue a cease and desist order requiring immediate cessation of any mine or mining operation until such time as it is determined by the secretary that said mine or mining operation is in full compliance with the provisions of this act and any rules and regulations promulgated pursuant hereto. A mine inspector] 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 and orders requiring persons to cease operations. The right of the department to issue an order under this act is in addition to any penalty which may be imposed pursuant to this act. The department shall have the authority to order the immediate cessation of any operation that is being conducted without a permit, as required by this act, or in any case where safety regulations are being violated [The right of the secretary to suspend a permit is in addition to any penalty*

which may be imposed pursuant to this act.] or in any case where the public welfare or safety calls for the immediate cessation of the operation until corrective steps have been started by the operator to the satisfaction of the department.

Section 10. *Notice of operations.*—Every owner, operator, lessor or lessee engaged in the mining of bituminous coal or every general manager, superintendent or other person in charge of, or having supervision over, any bituminous coal mine or mining operation presently open, or hereafter opened or reopened, shall give, or cause to be given, by registered mail or certified mail, *a mining schedule* notice of the present existence of such a mine or mining operation, or of the intent to commence or to recommence mining or mining operations [within six months thereafter,] *at least six months prior to mining under the property* to the political subdivisions within which such mine or mining operation is, or is to be, located and to the owners of record of the surface lands overlying such existing or proposed mine or mining operation. All notices given, or caused to be given, to the owners of record of the surface lands pursuant to this section shall contain a statement that the maps or plans required under sections 5 and 8 of this act have been filed with the appropriate public officers, and shall contain the locations of the offices where such maps and plans may be inspected.

Section 11. *Access by local public officials.*—The mayors of cities, boroughs and incorporated towns, the boards of township commissioners or supervisors of townships of the second class, and the county commissioners of any county in which the mining of bituminous coal is conducted and such engineers and other agents as they may employ or appoint, shall, at all reasonable times, be given access to any portion of any bituminous coal mines or mining operations which it may be necessary to inspect for the purpose of determining whether the provisions of this act are being complied with, and all reasonable facilities shall be extended by the owner or operator of such mine or mining operation for ingress, egress or inspection. The mine inspector for the district in which the mine or mining operation is located shall be required to accompany the mayors of cities, boroughs and incorporated towns, the boards of township commissioners or supervisors of townships of the second class, the county commissioners of any county in which the mining of bituminous coal is conducted, and such engineers and other agents as they may employ for purposes of inspection to determine whether the provisions of this act are being complied with.

Section 12. *Powers of county commissioners.*—The county commissioners shall have the power to prevent the mining of bituminous coal beneath the surface in any mine or mining operation in violation of this act, and where mining operations are being conducted in violation of this act, they shall have the power to prevent any miner or laborer, other than those necessary for the protection of life and

property, from entering the mine or mining operation until such time as the provisions of this act have been complied with.

Section 13. **[The] Enforcement proceedings.**—(a) *Commonwealth Court and the courts of common pleas shall have the power to award injunctions to prevent violations of this act and otherwise to provide for its enforcement upon suit brought by the [Attorney General of Pennsylvania] department or the county commissioners of any county, the mayor of any city, borough or incorporated town, or the board of township commissioners or supervisors of any township in which the mining of bituminous coal is conducted, or upon the suit of any property owner affected by such bituminous coal mining, without the necessity of posting a bond on application for a permanent injunction, but a bond [shall] may be required on the granting of a temporary restraining order.*

(b) *Except as provided in subsection (d), 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.*

(c) *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 7 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 those parts of the inspection relating to the surface effects of the underground mining operation.*

(d) *No action pursuant to subsection (b) may be commenced prior to sixty 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.*

(e) *The provisions of subsection (d) to the contrary notwithstanding, any action pursuant to this section may be initiated immedi-*

ately 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.

(f) The court, in issuing any final order in any action brought pursuant to subsection (b), 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 under the Rules of Civil Procedure.

Section 14. *Conveyance of surface land.*—After the effective date of this act the grantor in every deed for the conveyance of surface land in a county in which bituminous coal has been found and is separately assessed for taxation shall certify in the deed whether any structure then or thereafter erected on the land so conveyed is entitled to support from the underlying coal. If the grantor shall not certify that there is such a right of support, the grantee shall sign a statement printed in the deed in a contrasting color with no less than twelve point type that he knows that he may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interests in the coal. Such statement shall be preceded by the word “Notice” printed in the same color as the statement with no less than twenty-four point type.

Section 15. *Proceedings for protection of surface structures.*—
(a) After [the effective date of this act] *April 27, 1966*, any owner of a structure erected prior to the effective date of this act on land overlying coal, which structure is not of a class enumerated in section 4 and any owner of the surface land who shall decide to erect or who shall erect any structure upon the land overlying the coal, [but who shall not have the right to have such structure protected against subsidence caused by bituminous coal mining operations, and who shall desire to acquire such protection] *who desires to prevent subsidence damage to that structure*, shall notify the owners of the economic interests in such coal or the operator of the mine, in writing, of his desire to acquire such protection. Within thirty days after the receipt of such notice, the owners of the economic interests in such coal or the operator of the mine shall notify such surface owner, in writing, of the amount of coal necessary to be left in place for surface support and the owners of the economic interests in such coal shall endeavor to agree with the surface owner on just compensation for the coal to be left in place. If the owners of the economic interests in the coal and the surface owner cannot agree upon the price for the coal to be left in place, any of the parties may, within thirty days after the date of such notice to the surface owner, [request the Secretary of Mines and Mineral Industries to appoint a mediator. The secretary

shall promptly appoint a mediator who shall, in accordance with procedures established by the secretary, within ninety days after his appointment determine just compensation for the coal to be left in place for surface support. If either the surface owner or any owner of an economic interest in said coal shall not be satisfied with the determination of the mediator, any such party may proceed within thirty days to have the amount of just compensation determined in accordance with articles V, VI, and VII of the act of June 22, 1964 (P.L.84) known as the "Eminent Domain Code." *convene a panel of three persons to determine just compensation for the coal to be left in place for surface support. One person shall be selected by the surface owner, one person by the operator or coal owner and the third by the two persons thus selected; each party shall pay the fee of the person it selects and one-half the fee of the third person selected. The panel shall reach its decision within thirty days of the initiating request and its decision shall be final. In place of a panel, the surface owner may request a mediator, selected upon the agreement of both parties, from a list approved by the Department of Environmental Resources and compensated equally by each party.*

(b) Upon payment by the surface owner to the owners of the economic interests in the coal of the just compensation as finally determined under subsection (a) of this section 15, which payment shall be made within ninety days after such final determination, the operator of the mine shall be responsible for any damage to the structure or structures specified in the award of the mediator, or to such structures covered by contractual agreement between or among the parties, caused by the subsequent mining and removal of coal. The [Secretary of Mines and Mineral Industries] *department* may, whenever he deems it necessary and appropriate, require the operator of the mine to post a bond to guarantee payment for any damage to such structures, such bond to be in accordance with the provisions of section 6 (b) hereof.

(c) Any owner of surface land without the right of surface support who [shall not] *fails to take advantage of the provisions of this section [shall have no recourse under law for any damage caused by subsidence resulting from coal mining operations.] within ninety days of receiving from the operator written notice of the provisions of this section and the method of support, if any, to be provided the surface owner pursuant to the permit required by section 5, shall have no recourse under law or equity to prevent coal mining operations which might result in subsidence.*

(d) Nothing herein shall prohibit the owners of the economic interests in the coal and the surface owner from voluntarily entering into an agreement providing for coal support, and the amount to be paid therefor, applicable to structures to which this section applies.

Section 16. [The "Administrative Agency Law," act of June 4, 1945 (P.L.1388), as amended,] *Right to hearing and appeal.—Title 2*

of the Pa.C.S. (relating to administrative law and procedure) shall apply to all administrative rules, regulations and orders issued pursuant to this act, except as otherwise provided for proceedings to determine compensation payable in section 15 hereof. Any owner, operator, lessor, lessee, general manager, superintendent, or other person in charge of or having supervision over any bituminous coal mine or mining operation subject to the provisions of this act, any landowner, or any political subdivision or county which shall be aggrieved or affected by any administrative rule, regulation or order of the **[Secretary of the Department of Mines and Mineral Industries] department** issued pursuant to the provisions of this act, shall have the right to appear at any hearing before the **[Secretary of Mines and Mineral Industries] Environmental Hearing Board** at which the secretary shall reconsider said action. After such hearing the **[secretary] Environmental Hearing Board** shall issue an adjudication from which the aggrieved or affected party may appeal in the manner provided by **[the act of June 4, 1945 (P.L.1388), known as the "Administrative Agency Law."]** *Title 2 of the Pa.C.S. (relating to administrative law and procedure).*

Section 17. *Penalties.*—(a) Any person who shall engage in bituminous coal mining without a permit as required by this act shall be deemed guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine of not less than one hundred dollars (\$100.00) and not more than **[five thousand dollars (\$5,000.00)] ten thousand dollars (\$10,000.00)** for each offense, or to undergo imprisonment in the county jail for a period of not more than one year, or both, and a further fine of *not less than* fifty dollars (\$50.00) for each day the offense is continued; and in addition thereto shall be liable for the payment of damages to the owner of any structure set forth in section 4 of this act for any injury to said structure as a result of subsidence caused by said bituminous coal mining in an amount as determined by law in a civil proceeding.

(b) *Any operator 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 with the exception of those cases covered by subsection (a) 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 (\$100.00) nor more than ten thousand dollars (\$10,000.00) for each separate offense, and, in default of the payment of such fine, a person shall be imprisoned for a period of ninety days.*

(c) *Any operator who willfully 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 (\$2,500.00) nor more than fifty thousand dollars*

(\$50,000.00) for each separate offense or to imprisonment for a period of not more than two years, or both.

(d) Each day of continued violation of any provision of this act or of any rule or regulation of the department, or of any 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 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 for any such conviction in the manner provided by law for appeals from summary conviction, it shall be the duty of the district attorney of the county to represent the interests of the Commonwealth.

(f) 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 an operator 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 (\$5,000.00) per day for each violation. In determining the amount of the civil penalty the department shall consider the willfulness of the violation, damage or injury, cost of repairing the injury and other relevant factors. If the violation leads to the issue 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 (\$750.00) 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. Upon the issuance of a notice or order charging that a violation of the act has occurred, the department shall inform the operator within a period of time to be prescribed by rules and regulations of the proposed amount of said penalty. The operator charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the operator wishes to contest either the amount of the penalty or the fact of the violation, the operator shall forward the proposed amount to the department 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 should be reduced, the department shall within thirty days remit the appropriate amount to the operator, with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond to the department within thirty 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 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 and fees 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 years upon actions brought by the Commonwealth pursuant to this section.

(g) For purposes of this act, the term "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 also include the members of an association and the directors, officers or agents of a corporation and the term "municipality" shall be construed to include any county, city, borough, town, township, school district, institution or any authority created by one or more of the foregoing.

Section 17.1. 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 of the department, to violate any of the provisions of this act or rules and regulations adopted hereunder or to violate any order or permit of the department, to cause land subsidence or injury or to hinder, obstruct, prevent or interfere with the department or its personnel in the performance of any duty hereunder, including violating 18 Pa.C.S. §§ 4903 (relating to false swearing) and 4904 (relating to unsworn falsification to authorities). Any person or municipality engaging in such conduct shall be subject to the provisions of sections 13 and 17.

Section 17.2. Creation of the Bituminous Mine Subsidence and Land Conservation Fund.—All funds received by the department from permit fees, from forfeitures of bonds and of cash deposits and securities, and from all fines and all civil penalties collected under this

act, 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 "Bituminous Mine Subsidence and Land Conservation Fund," and shall be used by the department for the protection of the health, safety and general welfare of the people of the Commonwealth of Pennsylvania, and for the conservation of surface land areas which may be affected by the deep mining of bituminous coal.

Section 18. Legislative oversight.—*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 thirty 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 ninety days after such grant of primary jurisdiction for the purpose of hearing public comment on any appropriate revisions.*

At least thirty days prior to consideration by the Environmental Quality Board of any revised regulations or any new regulations under this act other than those initial regulations promulgated on an emergency basis, the department shall submit such regulation to the Senate Environmental Resources and House Mines and Energy Management Committees of the General Assembly for their review and comment.

Section [18] 19. Construction of act.—*This act is intended as remedial legislation designed to cure existing evils and abuses and each and every provision hereof is intended to receive a liberal construction such as will best effectuate that purpose, and no provision is intended to receive a strict or limited construction.*

Section [19] 19.1. Severability.—*It is hereby declared that the provisions of this act are severable one from another and if for any reason this act shall be judicially declared and determined to be unconstitutional so far as relates to one or more words, phrases, clauses, sentences, paragraphs or sections hereof, such judicial determination shall not affect any other provision of this act. It is hereby declared that the remaining provisions would have been enacted notwithstanding such judicial determination of the validity in any respect of one or more of the provisions of this act.*

Section 20. Repealer.—*All acts and parts of acts are repealed insofar as they are inconsistent herewith.*

Section 20.1. Saving clause.—*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, 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 21. **Effective date.**—This act shall take effect immediately.

Section 2. This act shall take effect immediately.

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

DICK THORNBURGH