

purpose not inconsistent with the full use and enjoyment by the grantee, its successors and assigns of the rights and privileges herein granted.

(4) The grantee is responsible for operating and maintaining the above described structure or improvement.

(5) The grantor as part of the consideration of executing this easement and agreement with the grantee hereby grants unto Morris W. Reidenhour, singleman, Paul F. Reidenhour and Ruth E. Reidenhour, his wife, and Daniel L. Reidenhour and Maude M. Reidenhour, his wife, all of Hamburg R. D. No. 2, Pennsylvania, and their respective executors, administrators, heirs and assigns, the right of ingress, egress and regress to the permanent pools designated Pa. 476 and Pa. 477 over the land of the grantor herein described and also the right to the said named persons to obtain water from the said pools for irrigation purposes.

(6) The grantee will relocate at its sole expense the existing access road to the area used for storing various materials from its present location to a location above the emergency spillway to be constructed.

Approval and execution of deed.

Section 2. The deed of conveyance shall be approved by the Department of Justice and shall be executed by the Secretary of Property and Supplies in the name of the Commonwealth of Pennsylvania.

Act effective immediately.

Section 3. This act shall take effect immediately.

APPROVED—The 11th day of July, A. D. 1963.

WILLIAM W. SCRANTON

No. 133

AN ACT

Amending the act of May 31, 1945 (P. L. 1198), entitled "An act providing for the conservation and improvement of land affected in connection with the mining of bituminous coal by the open pit mining method; regulating such mining; and providing penalties," requiring all bituminous open pit mining operators to be licensed; requiring operators to obtain permits for each operation; requiring consent to certain acts by landowners; increasing the amount of bonds required; providing for the suspension of licenses; further regulating backfilling and planting; creating a Land Reclamation Board, and defining its powers and duties; creating a Bureau of Conservation and Reclamation within the Department of Mines and Mineral Industries; providing that citizens may institute proceedings to compel enforcement of the act; and imposing penalties and sanctions.

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

Section 1. The act of May 31, 1945 (P. L. 1198), known as the "Bituminous Coal Open Pit Mining Conservation Act," is amended by adding, after section 3, a new section to read:

Section 3.1. (a) After January 1, 1964, it shall be unlawful for any person to proceed to mine coal commonly known as bituminous by the open pit mining method as an operator within this Commonwealth without first obtaining a license as an open pit mining operator from the Department of Mines and Mineral Industries. Applications for licensure as open pit mining operators shall be made in writing to the department, upon forms prepared and furnished by the department, and shall contain such information as to the applicant, or when the application is made by a corporation, partnership or association as to its officers, directors and principal owners, as the department shall require. The application for licensure shall be accompanied by a fee of three hundred dollars (\$300). It shall be the duty of all persons licensed as open pit mining operators to renew such license annually, and pay for each such license renewal the sum of three hundred dollars (\$300). The application for renewal of a license as an open pit mining operator shall be made annually on or before January 1 of the next succeeding year.

Penalty.—Any person who proceeds to mine coal commonly known as bituminous by the open pit mining method as an operator without having applied for and received a license as herein provided 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) and not exceeding ten thousand dollars (\$10,000), or undergo imprisonment not exceeding six months, or both. The fine shall be payable to the Bituminous Coal Open Pit Mining Reclamation Fund.

(b) The department shall not issue any new open pit mining operator's license or renew any existing open pit mining operator's license to any person or operator if it finds, after investigation, that the applicant for licensure or renewal has previously failed and continues to fail to comply with any of the provisions of this act. Where the applicant is a corporation, partnership or association, the department shall not issue such license or renewal if, after investigation, it finds that any officer or director or principal owner of such corporation, partnership or association has previously failed and continues to fail to comply with any of the provisions of this act, or if any

Bituminous Coal Open Pit Mining Conservation Act.

Act of May 31, 1945, P. L. 1198, amended by adding a new section 3.1.

Unlawful to mine coal without a license; application, renewals and fees.

Refusal to license or renewal.

such officer or director or principal owner is or has been an officer or director or principal owner of any other corporation, partnership or association, which has previously failed and continues to fail to comply with any of the provisions of this act.

Sections 4, 4.2,
4.3 and 5 of act,
amended September 2, 1961,
P. L. 1210,
further amended.
Permit for each
operation and
requirements.

Section 2. Sections 4, 4.2, 4.3 and 5 of the act, amended September 2, 1961 (P. L. 1210), are amended to read:

Section 4. (a) Before any [operator shall hereafter engage in open pit mining of bituminous coal within the Commonwealth, he shall first apply for registration with the Department of Mines and Mineral Industries of this Commonwealth by filing, by registered mail or by delivery in person, on a form to be provided by the department, and giving information sufficient to identify the operator, and an estimate of the number of acres of land in each mine inspection district that the operator will affect by open pit mining during the registration year.] *person licensed as an open pit mining operator shall hereafter proceed to mine coal commonly known as bituminous by the open pit method, he shall apply to the Department of Mines and Mineral Industries, on a form prepared and furnished by the department, for a permit for each separate operation, which permit when issued shall be valid until such operation is completed or abandoned, unless sooner suspended by the Secretary of Mines and Mineral Industries.* As a part of [the] each application for [registration] *a permit*, the operator shall furnish, in duplicate, a map or plan on a scale of not less than four hundred feet to the inch in a manner satisfactory to the Secretary of Mines and Mineral Industries, showing the location of the tract or tracts of land to be affected by the operation [or operations] contemplated. [If after a registration certificate issues to an operator, the operator desires to affect a tract or tracts of land not included in the certificate, the operator shall, by registered mail or in person, so notify the Secretary of Mines at least two weeks prior to the commencement of operations. The Secretary of Mines shall promptly acknowledge, by registered mail, receipt of the application for registration.] *Such map or plan shall be prepared and certified by a registered professional engineer or registered surveyor and shall show the boundaries of the area of land which will be affected, 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, 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 at the site of the proposed operation and shall include the nature and depth of the overburden, the thickness of the coal seam, a complete analysis of the coal seam, the crop line of the coal seam and the location of test boring holes. The information pertaining to test borings, the depth of the overburden, the thickness of the coal seam, the analysis of the coal seam, the crop line of the coal seam and the location of the test boring holes shall be deemed confidential information and shall not be deemed a matter of public record. Aerial photographs of the tract or tracts of land to be affected by the operation shall be acceptable if such photographs show the details of contour to the satisfaction of the Secretary of Mines and Mineral Industries.

(b) In addition to the information and maps otherwise required by this act, each application for a permit shall be accompanied by a detailed proposal showing the manner, time and distance for backfilling. Such proposal shall also show 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, unless the operator plans that type of restoration commonly known as terracing or restoration to approximate contour. Copies of such data shall be furnished by the Secretary of Mines and Mineral Industries to the Land Reclamation Board as hereinafter constituted. No permit in such event shall issue unless the plan of backfilling is approved by the Land Reclamation Board. The Secretary may approve terracing: Provided, however, That approval for this type of contouring shall not be granted unless the steepest contour of the highwall shall be no greater than forty-five degrees and there be no depressions to hold water which may percolate through the spoil and produce acid drainage. The approval of such contouring shall in no way be construed as reducing the responsibility of the operator to prevent stream pollution. Terracing as hereafter referred to shall be as described above. The operator shall be responsible for the prevention of stream pollution by acid drainage or avoidable siltation. Failure to adequately maintain such ditches, dikes, pumps and drainage facilities as may be necessary to prevent water from draining into or accumulating in the pit, or to prevent stream pollution by acid drainage, or avoidable siltation during the open pit mining, or during any drift or auger mining following such open pit mining, shall render the operator liable to the sanctions and penalties provided in this act. Nothing herein contained shall be construed to abrogate any of the enforcement or regula-

**Backfilling
requirements.**

tory powers of the Sanitary Water Board. The Department of Mines and Mineral Industries shall be the exclusive investigating, examining, reporting and enforcement agent of the Sanitary Water Board in the Department of Health, or its duly constituted successor in its administration of the act of June 22, 1937 (P. L. 1987), as amended, where such law has application to bituminous coal stripping operations and shall do such work through its appropriate personnel subject to the direction of the Secretary of Mines and Mineral Industries.

Consent of landowner.

(c) Except where leases in existence on the effective date of this amending act do not so provide or permit, 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 or by the Commonwealth or any of its authorized agents within a period of five years after the operation is completed or abandoned for the purpose of backfilling, planting, reclamation and inspection.

Restriction on issue of permit for failure of compliance.

(d) The Department of Mines and Mineral Industries shall not issue any additional permits to any operator who has failed, or continues to fail to comply with the provisions of this act under any permit previously issued.

Clearance for issue of permit.

(e) When the requirements of this act are met and no claims are outstanding under this act against the operator, or in the case of any corporation against any officer or director, a [registration certificate] permit shall issue forthwith. [contemporaneously with and as a part of said registration application,]

Procedure for operator upon disapproved application for permit.

(f) If the Secretary of Mines and Mineral Industries does not approve the application for a permit, or an amended permit, he shall promptly notify the operator by registered mail setting forth his reasons therefor. The operator may then take such steps as are required to remove the objections. Any operator who shall be aggrieved by any action of the Secretary of Mines and Mineral Industries under this section, or the failure of the Secretary of Mines and Mineral Industries to act upon the application for a permit, may proceed under the provisions of section 14 of this act.

Bond requirements.

(g) After receiving notification from the Secretary of Mines and Mineral Industries that an application for a permit has been approved, but prior to commencing open pit mining, the operator shall file with the Department of Mines and Mineral Industries a bond for each operation, on a form to be prescribed and furnished by the department, payable to the Commonwealth and conditioned that the operator shall faithfully perform all of the require-

ments of this act. [The bond shall be in the amount of four hundred dollars (\$400.00)] *The amount of the bond required for each operation shall be dependent upon the overburden and the contour and shall be determined by the Secretary of Mines and Mineral Industries, but such bond shall not be less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1000.00) per acre based upon the number of acres of land in each [mine inspection district] operation, which [the operator estimates] will be affected by open pit mining during the [registration] following year: Provided, That no bond shall be filed for less than [four thousand dollars (\$4000.00)] five thousand dollars (\$5000.00). Liability under such bond shall be for the duration of open pit mining at each operation, and for a period of five years thereafter, unless released prior thereto as hereinafter provided. Such bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth: Provided, however, That the operator may elect to deposit cash 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 department in lieu of a corporate surety. The cash deposit or market value of such securities shall be equal at least to the sum of the bond. The Secretary of Mines and Mineral Industries shall, upon receipt of any such deposit of cash or securities, 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 operator 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, the whole or any portion of any securities so deposited, upon depositing with him, in lieu thereof, other negotiable securities 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 as the same becomes due and payable: Provided, however, That where securities, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the operator, shall convert such securities into such other negotiable securities of the classes herein specified as may be designated by the operator. [Contemporaneous with the filing of said registration certificate application and any renewal thereof, the operator*

Proviso.

Proviso.

Proviso.

shall pay to the department a filing fee of one hundred dollars (\$100.00). Should the area of land affected in any mine inspection district by open pit mining any time within the registration year exceed the estimate made in the registration certificate application, the]

Additional operations require bond and materials for amended permit.

(h) *The operator shall, [within thirty (30) days thereafter,] prior to commencing operations on any additional land exceeding the estimate made in the application for a permit, file an additional bond. Upon receipt of such bond and such additional material as would have been required for the additional land had it been included in the original application for a permit and should all the requirements of this act be met as were necessary to secure the permit, the Secretary of Mines and Mineral Industries shall promptly issue an amended [certificate] permit covering the additional acreage covered by such bond. [, but no filing fee shall be required in connection with the filing of such additional bond. If the Secretary of Mines and Mineral Industries does not approve the application for registration, he shall promptly notify the operator, by registered mail, setting forth his reasons therefor. The operator may then take such steps as are required to remove the objections. Any operator who shall be aggrieved by any action of the Secretary of Mines and Mineral Industries under this section may proceed under the provisions of section fourteen of this act. If any operator who has filed an application for registration has not received a registration certificate or a notice from the Secretary of Mines and Mineral Industries as to why such application has *not been approved within thirty days after the receipt of such application, he may engage in open pit mining of bituminous coal and be deemed in compliance with all provisions of this act. The registration provisions of this section shall not apply to an operator registered under the provisions of the act of May thirty-one, one thousand nine hundred forty-five (Pamphlet Laws 1198), as amended, until the anniversary date of the operator's registration.]*

Jurisdiction of coal stripping operations: rules and regulations: enforcement.

Section 4.2. (a) [All] *Except as otherwise provided hereunder, all coal stripping operations coming within the provisions of this act shall be under the exclusive jurisdiction of the Department of Mines and Mineral Industries and shall be conducted in compliance with such reasonable rules and regulations as may be deemed necessary by the Secretary of Mines and Mineral Industries for the health and safety of those persons engaged in the work. The Secretary of Mines and Mineral In-*

* "not" omitted in original.

dustries through the mine inspectors shall have the authority and power to enforce the provisions of this act and the rules and regulations promulgated thereunder by him.

(b) The use of explosives for the purpose of blasting in connection with open pit mining in the neighborhood of any public highway, stream of water, dwelling house, public building, school, church, commercial or institutional building or pipe line shall be done in accordance with regulations promulgated by and under the supervision of the Department of Mines and Mineral Industries.

Section 4.3. Any mine inspector directed by the Department of Mines and Mineral Industries shall have the right to enter upon and inspect all stripping operations for the purpose of determining conditions of safety and for compliance with the [terms of the registration certificate. A mine inspector shall have the authority to order the halting of mine operations in any case where safety regulations are being violated.] *provisions of this act, and all rules and regulations promulgated pursuant thereto.* Should an operator fail to comply with the requirements of [the act] *this act, or any rules or regulations promulgated pursuant thereto,* the mine inspector shall report the matter to the secretary who shall immediately notify the operator by registered mail of such failure. Unless the operator complies with the act, *and such rules and regulations,* within thirty (30) days from the receipt of such notice, the secretary may, after hearing and final determination, *suspend the open pit mining operator's license of the operator and issue a cease and desist order requiring the operator to immediately cease open pit mining* [at the operation in the mine inspection district where the violation was reported.] *within this Commonwealth until such time as it is determined by the secretary that the operator is in full compliance.* A mine inspector shall have the authority to order the *immediate* stopping of any operation that is started [without first having been registered] *by an unlicensed operator, or without the operator thereof having first obtained a permit as required by this act, or in any case where safety regulations are being violated.*

Right to inspect and authority of inspector.

Noncompliance report by mine inspector to Secretary.

Section 5. Operation Report and Backfilling.—Within thirty (30) days after starting the removal of overburden at each operation for the removal of coal by open pit mining, the operator shall file an operation report with the Department of Mines and Mineral Industries on a form to be prescribed and furnished by the secretary, giving the following information: (a) Name or number of the operation; (b) Location of the operation as to county and township and with reference to the nearest public

road; (c) A description of the tract or tracts; and (d) The name and address of the landowner or his duly authorized representative. [As part of the operations report, the operator shall file a map or plan on a scale of not less than four hundred (400) feet to the inch in a manner satisfactory to the Secretary of Mines and Mineral Industries, showing the location of the new tract or tracts of land to be affected by the operation or operations and not covered by the original registration application or reregistration application.]

The operator *in all cases* shall backfill the [operation] *pits* made by the open pit mining operation to a distance of one hundred feet beyond the boundary line of the right of way of any public highway and to a distance of two hundred twenty-five feet from any occupied dwelling house, unless released by owner thereof, public building, school, church and community or institutional building.

Nothing contained in this section shall be construed to prohibit the relocation of any public road in the manner provided by law.

Section 6 of act repealed.

Sections 7 and 8 of act, amended September 2, 1961, P. L. 1210, further amended.

Section 3. Section 6 of the act is repealed.

Section 4. Sections 7 and 8 of the act, amended September 2, 1961 (P. L. 1210), are amended to read:

Section 7. If an operation is not completed or abandoned within one year following the date of [filing the registration certificate] *issuance of the permit for the operation*, the operator shall, within thirty (30) days after the end of said year, file with the Department of Mines and Mineral Industries an annual report *for each such operation*, on a form to be prescribed and furnished by the secretary, [identifying each operation which has not been completed or abandoned and] stating the area of land affected by open pit mining at the [respective] operation during the said year.

Annual reports.

Annual charges against bond.

Section 8. Upon receipt of [said] *a* completion report or annual report, the Secretary of Mines and Mineral Industries shall charge the land affected in each [mine inspection district] *operation* by open pit mining against the bond filed by the operator at the time of [registration] *issuance of the permit* at the rate of [four hundred dollars (\$400.00)] *the amount of the bond required per acre for such land*. Should the land actually affected in any [mine inspection district] *operation* by open pit mining within the year exceed the estimate made at the time of [registration] *issuance of the permit*, or any amendment thereof, the operator shall thereafter file an additional bond with the annual report or

completion report. Upon receipt of such bond, the Secretary of Mines and Mineral Industries shall promptly issue an amended [certificate] *permit* covering the additional acreage covered by such bond. If the land actually affected in any [mine inspection district] *operation* by open pit mining during the [registration] year *following the issuance of the permit* is less than the estimate made by the operator in the [registration certificate] application *for the permit for the operation*, the secretary shall, at the end of the [registration] year, release the surplus of the bond and collateral upon which liability has not been charged as aforesaid: Provided, That except as provided in section 10, no bond or collateral shall be released below [four thousand dollars (\$4000.00)] *five thousand dollars (\$5000.00)* in the absence of complete compliance with the requirements of this act, and should there be a failure of complete compliance with the requirements of this act not less than the minimum bond in the amount of [four thousand dollars (\$4000.00)] *five thousand dollars (\$5000.00)* shall be forfeited.

Section 5. Section 9 of the act is repealed.

Section 6. Sections 10, 11 and 12 of the act, amended September 2, 1961 (P. L. 1210), are amended to read:

Section 10. Within [one year] *six months* after the operation is completed or abandoned, the operator shall [place sufficient overburden or earth not containing reject coal or combustible material in the open cut to cover the exposed face of the unmined coal, which shall begin at least five feet above the top of the coal and shall extend to the bottom of the pit at an angle not to exceed forty-five (45) degrees: Provided, That where the land upon which said operation is located was plowed, tilled and cultivated for the growing of farm field crops at the time the operation was started or within five (5) years next prior thereto, or where the operation is within seven hundred fifty (750) feet from any group of five (5) dwelling units, any public building, school, church, community or institutional building, cemetery or public recreational area, said backfill shall begin at the top of the high wall and be sloped to the bottom of the pit at an angle not to exceed forty-five (45) degrees: And provided further, That where open pit mining cuts into active worked out or abandoned deep mine workings, the angle shall not exceed forty-five (45) degrees from the top of the high wall to the bottom thereof, and the peaks and ridges of spoil-banks shall be leveled and rounded off to such an extent as will permit the planting of trees, grasses or shrubs; the exposed portion of the high wall of the last

Section 9 of act, repealed.

Sections 10, 11 and 12 of act, amended September 2, 1961, P. L. 1210, further amended.

Backfill requirements upon completion or abandonment.

cut in any operation which is more than seven hundred fifty (750) feet from any group of five (5) dwelling units, any public building, school, church, community or institutional building, cemetery or public recreational area; after backfilling in accordance with the terms of this act, shall not exceed an angle of seventy (70) degrees for the purpose of this section only and for no other provisions of this act, highwall mechanical mining shall be considered as open pit mining: Provided, however, That if] *backfill all pits in accordance with the plan previously approved by the secretary or by the Land Reclamation Board. Such backfilling shall be terraced as previously described or shall begin at or beyond the top of the highwall and be sloped to the toe of the spoil bank at a maximum angle not to exceed the approximate original contour of the land with no depressions to accumulate water. An operator may, with the written approval of the landowner, except where leases in existence on the effective date of this amending act do not so provide or permit, propose alternative plans for reclamation wherein the land can be used for suitable purposes consistent with the exercise of the police power as set forth in section 1 of this act. Such plans are to be submitted to the Land Reclamation Board, and if such plans are approved by the Land Reclamation Board and complied with within the times herein prescribed for backfilling and planting, or such other time limits as may be agreed upon as being reasonable for carrying out such plans, the backfilling and planting requirements will be waived by the department. Whenever reasonable and practicable, the department shall require backfilling and planting as the open pit mining progresses. All backfilling shall be completed before necessary backfilling equipment is moved from the operation. Within three months after the backfilling is completed, the operator shall file with the Department of Mines and Mineral Industries a completion report on a form prescribed and furnished by the secretary. If the operator or other person desires to conduct drift mining upon the premises or use the openings for haulageways or other lawful purposes, the operator may designate locations to be used for such purposes at which places it will not be necessary to [so place overburden] backfill as herein provided for until such drift mining or other use is completed, during which time [that portion of] the bond on file [at the rate of four hundred dollars (\$400.00) per acre, or fraction thereof, applicable to the area designated] for that portion of such operation shall not be released. [Such] That portion of such locations shall be described in the completion report and designated on the map attached thereto. When the backfilling and leveling on that por-*

Completion
report.

tion of the entire area of land affected by the operation for the previous years have been completed and reports filed by the inspector certifying that it has been done in the manner prescribed by law, the secretary shall release the bond [at the rate of three hundred forty dollars (\$340.00) per acre in proportion to the area backfilled and leveled. The remaining sixty dollars (\$60.00)] which was filed for that portion of such operation in its full amount less one hundred dollars (\$100.00) per acre, which shall be retained by the secretary until such time as the planting is completed and certified by the [forester] Land Reclamation Board as being done in a workmanlike manner, at which time the secretary shall release the bond in the remaining amount of [sixty dollars (\$60.00)] one hundred dollars (\$100.00) per acre.

Section 11. Within [three years] one year after the operation [is completed or abandoned] has been backfilled in compliance with the plan earlier submitted, the operator shall plant trees, shrubs or grasses upon the land affected by open pit mining: Provided, however, That the operator shall be relieved from the obligation to plant trees, shrubs or grasses required by this section if the [Secretary of Mines and Mineral Industries] Land Reclamation Board shall find as a fact that such planting is not reasonable, practicable or likely to succeed, or if the [Secretary of Mines and Mineral Industries] Land Reclamation Board, upon application by the land owner, approves the use of the land for a purpose other than the growing of trees, shrubs or grasses, or if the operator, in lieu of planting trees, shrubs or grasses, shall pay to the Secretary of Mines and Mineral Industries [sixty dollars (\$60.00)] one hundred dollars (\$100.00) per acre of land affected by open pit mining. Funds received by the secretary in lieu of such planting shall be paid by him into the Bituminous Coal Open Pit Mining Reclamation Fund and used by him as hereinafter prescribed for the use of funds derived from the forfeiture of bonds. When deemed necessary, the [Secretary of Mines and Mineral Industries] Land Reclamation Board may extend the period for planting trees, shrubs or grasses beyond the limitations of the period of time provided in this act. Such planting shall be done in accordance with a plan or procedure prescribed by the [Secretary of Mines and Mineral Industries] Land Reclamation Board. The trees, shrubs or grasses shall become the property of the landowner, unless the operator and the landowner agree otherwise. The operator shall plant only seeds, plants or seedlings secured from a source approved by the [Secretary of Mines and Mineral Industries] Land Reclamation Board.

Planting of trees,
shrubs and
grasses.

Section 12. When the planting is completed the operator shall file a planting report with the Secretary of Mines and Mineral Industries, on a form to be prescribed and furnished by the secretary, giving the following information: (a) Identification of the operation; (b) The type of planting; (c) The date of planting; and (d) The area of land planted; and (e) Such other relevant information as the secretary may require. The Secretary of Mines and Mineral Industries shall *submit such report to the Land Reclamation Board which shall* inspect the premises, either in person or by [his] its duly authorized representative, within one (1) year after the planting report is filed. If the [secretary] *Land Reclamation Board* finds that the planting has been done in a workmanlike manner and that the area reported has been planted in accordance with the prescribed plan or procedure, or if the operator has been relieved from the obligation to plant trees, shrubs or grasses as hereinabove provided, *it shall so notify* the Secretary of Mines and Mineral Industries *who* shall release the bond and collateral in proportion to the area planted or relieved from planting. Upon such release the State Treasurer shall immediately return to the operator the amount of cash or securities specified therein.

Section 13 of act, repealed.

Section 14 of act, amended September 2, 1961, P. L. 1210, further amended.

Section 7. Section 13 of the act is repealed.

Section 8. Section 14 of the act, amended September 2, 1961 (P. L. 1210), is amended to read:

Section 14. If upon inspection, the [Secretary of Mines and Mineral Industries] *Land Reclamation Board* does not approve the planting [he] *it* shall notify the operator in writing, setting forth [his] *the* reasons therefor. The operator may then take such steps as are required to remove the objections. Any operator or landowner who shall be aggrieved by any administrative regulation, directive or order of the Secretary of Mines and Mineral Industries, *the Land Reclamation Board* or any other administrative agency making application of the provisions of this act, may file a petition in the court of common pleas of the county where the land is located, alleging therein the action complained of and praying for remedy thereof, and the said court shall proceed therein by rule or rules upon the proper administrative officer, body or authority to show cause why the petitioner should not have the remedy prayed for by his, her, or its petition. The court in such proceedings shall make such procedural orders as may be necessary for facilitating and expediting hearings and disposition of the matters complained of. From the decision of the said court of common pleas an appeal may be taken by

either party to the Superior or Supreme Court of Pennsylvania as in other causes. Every such petition shall specify the petitioner's objection to the action of the administrative officer, body or authority, and such officer, body or authority, on or before the return day of the rule, shall make answer thereto and certify to the said court of common pleas, the record of the proceedings to which the petition refers. Such record shall include the testimony taken therein, the findings of fact, if any, of the officer, body or authority based upon such testimony, and a copy of all decisions and orders made by the said officer in the proceedings. The case shall be heard upon the record certified to the court as aforesaid. No additional testimony shall be taken before the court, but the court may, in proper cases, remit the record to the respondent for the taking of further testimony and from the record, the court may review, modify or affirm or make new findings of fact as well as decide the law applicable.

Section 9. The act is amended by adding, after section 15, two new sections to read :

Act amended by adding two new sections 15.1 and 15.2.

Section 15.1. (a) There is hereby created, in the Department of Mines and Mineral Industries, a Land Reclamation Board to be composed of the Secretary of Mines and Mineral Industries who shall be chairman of the board, the Secretary of Forests and Waters, the Executive Director of the Pennsylvania Game Commission, one representative of conservation interests and one representative of the mining industry, such representatives to be appointed by the Governor for terms of four years to coincide with the Governors own term of office, or until their successors have been appointed and have qualified. Three members of the board shall constitute a quorum. The appointed members of the board shall serve without compensation other than reimbursement for travel and other actual expenses incurred in the performance of their duties. The board shall meet at least once each month at such time and place as its chairman shall determine.

Land Reclamation Board : creation, composition, appointment, term, compensation and expenses.

(b) The Land Reclamation Board shall have the power, and its duty shall be, to determine within the limits prescribed by this act the nature and the extent of backfilling, planting and other reclamation on all lands affected by open pit mining, and the said board shall have the power to adopt such reasonable rules and regulations as may be deemed necessary to protect and restore all such lands within this Commonwealth.

Powers.

Bureau of Conservation and Reclamation: appointment and compensation.

Section 15.2. There is hereby created within the Department of Mines and Mineral Industries a Bureau of Conservation and Reclamation, and the Secretary of Mines and Mineral Industries shall appoint and fix the compensation of a director of said bureau to be known as the Director of Conservation and Reclamation.

Powers.

The Bureau of Conservation and Reclamation shall have the power, and its duty shall be, to administer all of the laws of this Commonwealth governing and relating to the mining of bituminous coal by the open pit or strip method except as herein provided, and subject to the approval of the Secretary of Mines and Mineral Industries, to exercise all the powers and perform all the duties by law vested in and imposed upon said secretary in relation to such open pit or strip mining.

Section 16 of act, amended September 23, 1959, P. L. 969, further amended.

Section 10. Section 16 of the act, amended September 23, 1959 (P. L. 969), is amended to read:

Unlawful acts a misdemeanor and penalty.

Section 16. [Except as provided in section four of this act, any] *Any operator who proceeds to mine bituminous coal by the open pit mining method without having received a [registration certificate] permit, as herein provided, or who proceeds to mine bituminous coal by the open pit mining method without securing an amended [registration certificate, or who fails to register and secure a new registration certificate, as herein provided,] permit, or who proceeds to mine bituminous coal by the open pit mining method without having furnished the proper bond, as herein provided, or who has intentionally filed false information in the application for a [registration certificate] permit, shall be guilty of a misdemeanor, and upon conviction, shall be sentenced to pay a fine of not less than five hundred dollars (\$500.00) or not exceeding five thousand dollars (\$5000.00), or imprisonment in the county jail for a period not exceeding three months, or both. The fines shall be paid into and held by the State Treasurer in the "Bituminous Coal Open Pit Mining Reclamation Fund," provided for in section eighteen of this act, and shall be used by the Secretary of Mines and Mineral Industries for the sole purpose of foresting or reclaiming land affected by open pit mining of bituminous coal upon lands situated in the county in which the violation occurred.*

Section 18 and 18.1 of act, amended September 2, 1961, P. L. 1210, further amended.

Section 11. Sections 18 and 18.1 of the act, amended September 2, 1961 (P. L. 1210), are amended to read:

Bituminous Coal Open Pit Mining Reclamation Fund.

Section 18. All funds received by the Secretary of Mines and Mineral Industries from [registration] *license* fees, and from forfeiture of bonds, and of cash deposits and securities, 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 Coal Open Pit Mining Reclamation Fund," and shall be used by the Secretary of Mines and Mineral Industries for the [sole] purpose of *the administration of this act and the foresting or reclaiming of land affected by open pit mining of bituminous coal, and for such purposes are hereby specifically appropriated to the Department of Mines and Mineral Industries. Funds received from the forfeiture of bonds and collateral shall, if physically possible, be expended by the Secretary of Mines and Mineral Industries [upon lands situated in the county in which the operation upon which liability was charged on the bond is located for backfilling or planting.] for backfilling, leveling and planting the area of land affected by the operation upon which liability was charged on the bond. Any funds received from such forfeiture in excess of the amount which is required for backfilling, leveling and planting the area of land affected by the operation upon which liability was charged, and funds received from forfeitures relating to land where backfilling, leveling and planting is determined by the Secretary of Mines and Mineral Industries to be physically impossible, may be used by him for the foresting or reclaiming of other lands affected by open pit mining of bituminous coal.*

Section 18.1. Where one operator succeeds another at any uncompleted operation, either by sale, assignment, lease, or otherwise, the Secretary of Mines and Mineral Industries 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 [covering the face of unmined coal] *reclamation* on the land affected by the former operator.

Release of one operator when succeeded by another.

Section 12. The act is amended by adding, after section 18.2, a new section to read:

Act amended by adding a new section 18.3.

Section 18.3. Any citizen of this Commonwealth having knowledge that any of the provisions of this act are wilfully and deliberately not being enforced by any public officer or employe, whose duty it is to enforce any of the provisions of this act, shall bring such failure to enforce the law to the attention of such public officer or employe. To provide against unreasonable and irresponsible demands being made, all such demands to enforce the law must be in writing, under oath, with facts set forth specifically stating the nature of the failure to enforce

Action to enforce public official to comply.

the law. The stating of false facts and charges in such affidavit shall constitute perjury and shall subject the affiant to penalties prescribed under the law for perjury. If such public officer or employe neglects or refuses for an unreasonable time after demand to enforce such provision have the right to bring an action of mandamus in the court of common pleas of the county in which the operation which relates to the alleged lack of enforcement is being conducted. The court, if satisfied that any provision of this act is not being enforced, may make an appropriate order compelling the public officer or employe, whose duty it is to enforce such provision, to perform his duties, and upon failure to do so such public officer or employe shall be held in contempt of court and shall be subject to the penalties provided by the laws of the Commonwealth in such cases.

Effective date
and application
and construction
of certain
provisions.

Section *13. This act shall take effect January 1, 1964. However, the Land Reclamation Board and the Bureau of Conservation and Reclamation shall be created immediately and the Director of Conservation and Reclamation may be appointed immediately to enable the said board, bureau and director to make such preparations as shall be necessary to carry out the provisions of the act as amended on the said effective date.

Where prior to the effective date of this amendment, an operator has permanently ceased the removal of coal by open pit mining at all mining operations within this Commonwealth and bonds have been posted for any such operations but the backfilling and planting of lands affected by such operations have not been completed and the bonds released, said lands shall be backfilled and planted and bonds released in accordance with the requirements of the act to which this is an amendment as they existed immediately prior to the effective date of this amendment.

APPROVED—The 16th day of July, A. D. 1963.

WILLIAM W. SCRANTON

No. 134

AN ACT

Amending the act of December 22, 1959 (P. L. 1978), entitled, as amended, "An act providing for and regulating harness racing with pari-mutuel wagering on the results thereof; creating the State Harness Racing Commission as a departmental administrative commission within the Department of Agriculture and

* "12" in original.