

No. 147

AN ACT

SB 135

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," extending the provisions of the act to the surface mining of anthracite coal and all other minerals, further providing for mine conservation inspectors, imposing powers and duties on the Secretary of Environmental Resources, eliminating certain boards and bureaus, changing the Bituminous Coal Open Pit Mining Reclamation Fund to the Surface Mining Conservation and Reclamation Fund, declaring certain conditions to be nuisances, providing for payments in lieu of bond in certain cases, making editorial changes and providing penalties.

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

Section 1. The title and sections 1 and 2, act of May 31, 1945 (P.L.1198), known as the "Bituminous Coal Open Pit Mining Conservation Act," are amended to read:

AN ACT

Providing for the conservation and improvement of land affected in connection with **[the] surface mining [of bituminous coal by the open pit mining method]**; regulating such mining; and providing penalties.

Section 1. This act shall be deemed to be an exercise of the police powers of the Commonwealth for the general welfare of the people of the Commonwealth, by providing for the conservation and improvement of areas of land affected in the **surface** mining of bituminous **and anthracite** coal **[by the open pit or stripping method] and metallic and nonmetallic minerals**, to aid thereby in the protection of birds and wild life, to enhance the value of such land for taxation, to decrease soil erosion, to aid in the prevention of the pollution of rivers and streams, **to prevent and eliminate hazards to health and safety**, to prevent combustion of unmined coal, and generally to improve the use and enjoyment of said lands:

Section 2. Short Title.—This act shall be known and may be cited as the **["Bituminous Coal Open Pit Mining Conservation Act"] "Surface Mining Conservation and Reclamation Act."**

Section 2. Section 3 of the act, amended January 19, 1968 (P.L.1012) and December 10, 1968 (Act No. 370), is amended to read:

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

["Open pit mining" shall mean the mining or recovery of bituminous coal by removing the strata or material which overlies or is above the coal deposit or seam in its natural condition and shall include the mining or recovery of coal whether or not incidental to any other purpose.]

“Minerals” shall mean any aggregate or mass of mineral matter, whether or not coherent, which is extracted by surface mining, and shall include but not be limited to limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite, clay, and anthracite and bituminous coal.

“Surface mining” shall mean the extraction of minerals from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including but not limited to strip, drift, and auger mining, dredging, quarrying, and leaching, and activities related thereto, but not including those mining operations carried out beneath the surface by means of shafts, tunnels, or other underground mine openings. “Surface mining” shall not include (i) the extraction of minerals (other than anthracite and bituminous coal) by a landowner for his own non-commercial use from land owned or leased by him; nor (ii) the extraction of such non-coal minerals for commercial purposes in an amount less than five hundred (500) tons per acre of aggregate or mass of mineral matter in any given year; nor (iii) the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes, so long as such work is performed under a bond, contract and specifications which substantially provide for and require reclamation of the area affected in the manner provided by this act; nor (iv) to the handling, processing or storage of slag on the premises of a manufacturer as a part of the manufacturing process.

“Pit” shall mean the place where [bituminous coal is] any coal or metallic and nonmetallic minerals are being mined by the [open pit] surface mining method.

“Operation” shall mean the pit located upon a single tract of land or a continuous pit embracing or extending upon two or more contiguous tracts of land.

“Active operation” shall mean one in which the surface mine operator has removed a minimum of five hundred (500) tons per acre of aggregate or mass of non-coal mineral matter for commercial purposes in the preceding year.

“Land” shall mean the surface of the land upon which [open pit] surface mining is conducted.

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

“Operator” shall mean a person, firm, corporation or partnership engaged in [open pit] surface mining, as a principal as distinguished from an agent or independent contractor, and, who is or becomes the owner of [such coal] the minerals as a result of such mining.

“Landowner” shall mean the person, firm, corporation or partnership,

or the persons, firms, corporations, or partnerships in whom the legal title to the land is vested.

“Overburden” shall mean the strata or material overlying a **[bituminous coal]** *mineral* deposit *or in between mineral deposits* in its natural state and shall mean such material before or after its removal by **[open pit]** *surface* mining.

“Spoil pile” shall mean the overburden and reject **[coal]** *minerals* as **[it is]** piled or deposited in **[open pit]** *surface* mining.

“Land affected” shall mean the land from which the **[overburden]** *mineral* is **[removed and that occupied by the spoil piles]** *removed by surface mining, and all other land area in which the natural land surface has been disturbed as a result of or incidental to the surface mining activities of the operator, including but not limited to private ways and roads appurtenant to any such area, land excavations, workings, refuse banks, spoil banks, culm banks, tailings, repair areas, storage areas, processing areas, shipping areas, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are situated.*

“Abandoned” shall mean an operation where no **[coal]** *mineral* has been produced or overburden removed for a period of **[one year]** *six months*, verified by monthly reports submitted to the department by the operator and by inspections made by **[mine conservation inspectors, as hereinafter constituted]** *the department*, unless an operator within thirty (30) days after receipt of notification by the secretary terming an operation abandoned submits sufficient evidence to the secretary that the operation is in fact not abandoned *and submits a timetable satisfactory to the secretary regarding plans for the reactivation of the operation.*

“Degree” **[when used in this act,]** shall mean *the inclination* from the horizontal and in each case shall be subject to a tolerance of five (5) degrees.

“Terracing” shall mean *grading where the steepest contour of the highwall shall not be greater than thirty-five degrees from the horizontal, with the table portion of the restored area a flat terrace without depressions to hold water and with adequate provision for drainage, unless otherwise approved by the department.*

“Contouring” shall mean *reclamation achieved by beginning at or beyond the top of the highwall and 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 and with adequate provision for drainage.*

“Secretary” shall mean the Secretary of **[Mines and Mineral Industries]** *Environmental Resources* of the Commonwealth of Pennsylvania.

“Department” shall mean the Department of **[Mines and Mineral Industries]** *Environmental Resources* of the Commonwealth of Pennsylvania.

["Board" shall mean the Land Reclamation Board.]

Section 3. Section 3.1 of the act, reenacted December 10, 1968 (Act No. 370), is amended to read:

Section 3.1. (a) After [January 1, 1964] *January 1, 1972*, it shall be unlawful for any person to proceed to mine coal [commonly known as bituminous] *or to conduct an active operation to mine other minerals*, by the [open pit] *surface* mining method as an operator within this Commonwealth without first obtaining a license as [an open pit] *a surface* mining operator from the [Department of Mines and Mineral Industries] *department*. Applications for licensure as [open pit] *surface* mining operators shall be made in writing to the department, upon forms prepared and furnished by the department, and shall contain such information as to the applicant, or when the application is made by a corporation, partnership or association as to its officers, directors and principal owners, as the department shall require. The application for licensure shall be accompanied by a fee of [three] *five* hundred dollars [(~~\$300~~)] (*\$500*). It shall be the duty of all persons licensed as [open pit] *surface* 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] *a surface* 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] *minerals* by the [open pit] *surface* mining method as an operator without having applied for and received a license as herein provided *or in violation of the terms thereof* shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not less than five thousand dollars (\$5,000) [and not exceeding ten thousand dollars (\$10,000)] *or in an amount not less than the total profits derived by him as a result of his unlawful activities, as determined by the court, together with the estimated cost to the Commonwealth of any reclamation work which may reasonably be required in order to restore the land to its condition prior to the commencement of said unlawful activities*, or undergo imprisonment not exceeding [six months] *one year*, or both. The fine shall be payable to the [Bituminous Coal Open Pit Mining Reclamation Fund] *Surface Mining Conservation and Reclamation Fund*.

(b) The department shall not issue any new [open pit] *surface* mining operator's license or renew any existing [open pit] *surface* 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, *or of any of the acts repealed or amended hereby*. 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 of any of the acts repealed or amended hereby*, or if any 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, *or of any of the acts repealed or amended hereby*.

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

Section 3.2. It shall be the duty of architects, engineers, or other persons preparing specifications for construction projects and which specifications include the requirement that the construction contractor supply fill for such project, to include within such specifications a specific reference to this act and the regulations pertaining thereto adopted by the department. If such a reference is omitted from the specifications and reclamation and planting of the land from which the fill was removed by the construction contractor is required under this act, any contract based on such specifications may be amended, at the option of the construction contractor, to allow a reasonable price for the reclamation and planting of the land affected in accordance with a plan acceptable to the secretary.

Section 5. Section 4 of the act, reenacted December 10, 1968 (Act No. 370), is amended to read:

Section 4. (a) Before any person licensed as **[an open pit]** a surface mining operator shall hereafter proceed to mine **[coal commonly known as bituminous]** minerals by the **[open pit]** surface mining method, he shall apply to the **[Department of Mines and Mineral Industries]** department, 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]** secretary. As a part of each application for a permit, the operator shall, *unless modified or waived by the department for cause*, furnish **[in duplicate, a]** the following:

(1) *Map and Related Information. An accurately surveyed map or plan, in duplicate, on a scale of not less than [four] two hundred feet to the inch in a manner satisfactory to the [Secretary of Mines and Mineral Industries] secretary, showing the location of the tract or tracts of land to be affected by the operation contemplated, and cross-sections at intervals of not more than one hundred feet. Such surveyed map or plan and cross-sections shall be prepared and certified by a registered professional engineer or registered surveyor and shall show the boundaries of the [area of] proposed land [which will be] affected, together with the drainage area above and below such area, the location and names of all streams, roads, railroads and utility lines on or immediately adjacent to the area, the location of all buildings within one thousand feet of the outer perimeter of the area affected, the names and addresses of the*

owners and present occupants thereof, the purpose for which each such building is used, the name of the owner of the area and the names of adjacent landowners, the municipality or township and county, and if in a township, the nearest municipality. Such map or plan shall also show the results of test borings which the operator has conducted or shall conduct at the site of the proposed operation and shall include the nature and depth of the [overburden] various strata, the thickness of [the] any coal or mineral seam, a complete analysis of [the] any coal, [seam] the mineral seam, an analysis of the overburden, the crop line of [the] any coal [seam], or mineral or minerals to be mined and the location of test boring holes. The information [pertaining to] resulting from 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] operation shall also be provided if such photographs are required by the secretary.

(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 regulatory 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.]

(2) *Reclamation Plan.* A complete and detailed plan for the reclamation of the land affected. Except as otherwise herein provided, or unless a variance for cause is specially allowed by the department as herein provided, each such plan shall include the following:

A. A statement of the highest and best use to which the land was put prior to the commencement of surface mining;

B. The use which is proposed to be made of the land following reclamation;

C. Where conditions permit, the manner in which topsoil and subsoil will be conserved and restored. If conditions do not permit the conservation and restoration of all or part of the topsoil and subsoil, a full explanation of said conditions shall be given, and alternate procedures proposed;

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

E. A complete planting program providing for the planting of trees, grasses, legumes or shrubs, or a combination thereof approved by the department as best calculated to permanently restore vegetation to the land affected. If conditions do not permit the planting of vegetation on all or part of the land affected, and if such conditions pose an actual or potential threat of soil erosion or unavoidable siltation, then alternate procedures shall be proposed to prevent the threat of soil erosion or unavoidable siltation. If such procedures do not prevent these conditions, they shall not be approved by the department;

F. A detailed timetable for the accomplishment of each major step in the reclamation plan, and the operator's estimate of the cost of each such step and the total cost to him of the reclamation program;

G. Unless the reclamation plan provides for contouring, as herein defined, it shall contain a full explanation of the conditions which do not permit contouring and it shall, in the case of anthracite or bituminous coal, provide for terracing as herein defined. Other alternatives to contouring or terracing may be proposed, in conjunction with such proposed land uses as water impoundment, water-oriented real estate development, recreational area development, industrial site development or solid waste disposal area development, and unless such proposed alternatives or uses pose an actual or potential threat of water pollution, are deemed impractical or unreasonable, involve unreasonable delay in their implementation, or are violative of Federal, State or local law, such alternatives and uses shall be approved by the department;

H. Such other or further information as the department may require;

[c] *I.* 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] *reclamation*, planting, [reclamation] and inspection *or for the construction of any such mine drainage treatment facilities as may be deemed necessary by the secretary for the prevention of stream pollution from mine drainage;*

J. *The application for license or renewal shall be accompanied by a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in Pennsylvania covering all surface mining operations of the applicant in this State and affording personal injury and property damage protection, to be written for the term of the license or renewal. The total amount of insurance shall be not less than one hundred thousand dollars (\$100,000); the secretary may waive the provisions of this clause upon a finding that the applicant is possessed and will continue to be possessed of ability to pay personal injury or property damage claims within the requirements of this clause.*

K. *The application shall also set forth the manner in which the operator plans to divert surface water from draining into the pit and the manner in which he plans to prevent water from accumulating in the pit. No approval shall be granted unless the plan provides for a practicable method of avoiding acid mine drainage and preventing avoidable siltation or other stream pollution. Failure to prevent water from draining into or accumulating in the pit, or to prevent stream pollution, during surface mining or thereafter, shall render the operator liable to the sanctions and penalties provided in this act and in "The Clean Streams Law," and shall be cause for revocation of any approval, license or permit issued by the department to the operator.*

[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.

(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 permit shall issue forthwith.

(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.

(g) After receiving notification from the Secretary of Mines and Mineral Industries that an application for a permit has been approved, but prior]

(b) *Upon receipt of an application, the department shall review the same and shall make such further inquiries, inspections or examinations as may be necessary or desirable for a proper evaluation thereof. Should the secretary object to any part of the proposal, he shall promptly notify the operator by registered mail of his objections, setting forth his reasons therefor, and shall afford the operator a reasonable opportunity to make such amendments or take such other actions as may be required to remove the objections. No application shall be approved with respect to any operator who has failed, and continues to fail to comply with the provisions of this act or of any act repealed or amended hereby, as applicable, or with the terms or conditions of any permit issued under "The Clean Streams Law" of June 22, 1937 (P.L.1987), as amended, or where any claim is outstanding against any operator, or in the case of a corporate operator against any officer or director, under this act or any act repealed or amended hereby. Should any operator be aggrieved by any action of the secretary under this subsection, or by the failure of the secretary to act upon his application for a permit, he may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law, and from the adjudication of said board he may further appeal as provided by the Administrative Agency Law.*

(c) *Prior to commencing [open pit] surface mining, the operator shall file with the [Department of Mines and Mineral Industries] department a bond for the land affected by each operation on a form to be prescribed and furnished by the department, payable to the Commonwealth and conditioned that the operator shall faithfully perform all of the requirements of this act and of the act of June 22, 1937 (P.L.1987), known as "The Clean Streams Law." 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 operation, which will be affected by open pit mining during the following year: Provided, That no bond shall be filed for less than five] shall be in an amount determined by the secretary based upon the total estimated cost to the Commonwealth of completing the approved reclamation plan. Said estimate shall be based upon the operator's statement of his estimated cost of fulfilling the plan during the course of his operation, inspection of the application and other documents submitted, inspection of the land area, and such other criteria as may be relevant, including the proposed land use and the additional cost to the Commonwealth which*

may be entailed by being required to bring personnel and equipment to the site after abandonment by the operator, in excess of the cost to the operator of performing the necessary work during the course of his surface mining operations. When the plan involves the reconstruction or relocation of any public road or highway, the amount of the bond shall include an amount sufficient to fully build or restore the road or highway to a condition approved by the Department of Transportation. No bond shall be filed for less than five thousand dollars (\$5000.00). Liability under such bond shall be for the duration of [open pit] surface mining at each operation, and for a period of five years thereafter, unless released in whole or in part prior thereto as hereinafter provided. Such bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth and approved by the secretary: 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] secretary 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] secretary, 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.

[(h)] (d) The operator shall, prior to commencing operations on any additional land exceeding the estimate made in the application for a permit, file an additional *application and bond*. Upon receipt of such **[bond and such additional material]** *additional application and related documents and information* 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] secretary shall promptly issue an amended permit covering the additional acreage covered by such **[bond.] application, and shall determine the additional bond requirement** therefor.

(e) *Notwithstanding the provisions of subsections (c) and (d) of this section, in the case of applications for the surface mining of minerals other than anthracite and bituminous coal where the department determines that the mineral to be extracted exceeds the amount of overburden by a ratio of at least four to one, and the surface mining operations are reasonably anticipated to continue for a period of at least ten years from the date of application, the term of the bond shall be for the duration of the license issued under this act and for five years thereafter. In lieu of the bond required by subsections (c) and (d) of this section, the operator, in the case of applications hereinbefore mentioned by this subsection (e), may elect to annually pay to the department, for deposit in the Surface Mining Conservation and Reclamation Fund established by this act, an amount equal to ninety-five per cent of the average bond premium, as established by the Insurance Commissioner, which the operator would otherwise be required to pay in order to obtain the bond required by subsections (c) and (d) of this section. Said amount shall be retained by the Commonwealth and shall not be refundable to the operator. Payment thereof shall excuse the operator from compliance with the bond requirements of subsections (c) and (d) of this section with respect to such operation.*

(f) *Within ninety days after commencement of surface mining operations and each ninety days thereafter unless modified or waived by the department for cause, the operator shall file in triplicate an operations and progress report with the department on a form prescribed and furnished by the department, setting forth (i) the name or number of the operation; (ii) the location of the operation as to county and township and with reference to the nearest public road; (iii) a description of the tract or tracts; (iv) the name and address of the landowner or his duly authorized representative; (v) a monthly report of the mineral produced, number of employes and days worked; (vi) a report of all fatal and nonfatal accidents for the previous three months; (vii) the current status of the reclamation work performed in pursuance of the approved reclamation plan; and (viii) such other or further information as the department may reasonably require. In addition to the foregoing, the operator shall annually furnish to the department a new map, based upon a survey, showing the status of the operation at the conclusion of each year of operation, indicating the area affected and restored during the preceding year, particularly with relation to the property lines and boundaries shown upon the map and survey furnished with the original application.*

(g) *As the operator completes each separate step of the approved reclamation plan, he may report said completion to the department and*

request the release of that portion of the bond and collateral which relates to the completed portion of the reclamation plan. Upon the receipt of such notification and request, the secretary shall cause the premises to be inspected, and if he finds that the work has been performed in a proper and workmanlike manner and is in compliance with the approved reclamation plan and with the law applicable, he shall release that portion of the bond and collateral which relates to the completed portion of the reclamation plan: Provided, however, That the secretary may withhold an amount equivalent to five per cent of said amount for a period of five years from the completion date of said work, as a contingency allowance for the reimbursement of the Commonwealth of any cost encountered due to after-discovered faulty or negligent work on the part of the operator. Upon release of all or part of the bond and collateral as herein provided, the State Treasurer shall immediately return to the operator the amount of cash or securities specified therein.

(h) If the operator fails or refuses to comply with the requirements of the act in any respect for which liability has been charged on the bond, the secretary shall declare such portion of the bond forfeited, and shall certify the same to the Department of Justice, which shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operator has deposited cash or securities as collateral in lieu of a corporate surety, the secretary shall declare such portion of said collateral forfeited, and shall direct the State Treasurer to pay said funds into the Surface Mining Conservation and Reclamation Fund, or to proceed to sell said securities to the extent forfeited and pay the proceeds thereof into the Surface Mining Conservation and Reclamation Fund. Any operator aggrieved by reason of forfeiting the bond or converting collateral, as herein provided, shall have a right to contest such action and appeal therefrom as herein provided.

(i) Should any operator be aggrieved by any decision or action of the secretary with respect to the amount of any bond, the terms, conditions or release thereof, or any other matter related thereto, he may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law, and from the adjudication of said board he may further appeal as provided by the Administrative Agency Law.

Section 6. Section 4.1 of the act is repealed.

Section 7. Section 4.2 of the act, amended July 16, 1963 (P.L.238) and subsection (a) reenacted December 10, 1968 (Act No. 370), is amended to read:

Section 4.2. *Health and Safety.*—(a) Except as otherwise provided hereunder, all [coal stripping] *surface mining* operations coming within the provisions of this act shall be under the exclusive jurisdiction of the [Department] *department* and shall be conducted in compliance with such reasonable rules and regulations as may be deemed necessary by the

[Secretary] *secretary* for the health and safety of those persons engaged in the work *and for the protection of the general public. Separate rules and regulations shall be promulgated for each mineral.* The [Secretary] *secretary* through the mine conservation inspectors shall have the authority and power to enforce the provisions of this act and the rules and regulations promulgated thereunder by him. *In addition, should the secretary determine that a condition caused by or related to surface mining constitutes a hazard to public health or safety, he shall take such measures to abate and remove the same as are provided by section 1917-A of the act of April 9, 1929 (P.L.177), known as "The Administrative Code of 1929," and as otherwise provided by law for the abatement of nuisances. For the purposes of this section, any condition which creates a risk of fire, landslide, subsidence, cave-in or other unsafe, dangerous or hazardous condition, including but not limited to any unguarded and unfenced open pit area, highwall, water pool, spoil bank and culm bank, abandoned structure, equipment, machinery, tools or other property used in or resulting from surface mining operations, or other serious hazards to public health or safety, is hereby declared to be a nuisance within the meaning of section 1917-A of "The Administrative Code of 1929."*

(b) The use of explosives for the purpose of blasting in connection with [open pit] *surface 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] *secretary.*

(c) *From the effective date of this act, as amended hereby, no operator shall open any pit for surface mining operations (other than borrow pits for highway construction purposes) within one hundred feet of the outside line of the right-of-way of any public highway or within three hundred feet of any occupied dwelling house, unless released by the owner thereof, or any public building, school, park or community or institutional building or within one hundred feet of any cemetery, or of the bank of any stream. The secretary may, after notice and public hearing, grant operators exceptions to the distance requirements herein established where he is satisfied that special circumstances warrant such exceptions and that the interest of the public and landowners affected thereby will be adequately protected.*

(d) *Upon the completion of any surface mining operation, and prior to the release by the secretary of all or any portion of the bond or collateral pertinent thereto, the operator shall remove and clean up all temporary or unused structures, facilities, equipment, machines, tools, parts or other materials, property, debris or junk which were used in or resulted from his surface mining operations.*

(e) *Nothing contained in this act shall be construed to prohibit the*

relocation of any public road in the manner provided by law.

Section 8. Section 4.3 of the act, reenacted December 10, 1968 (Act No. 370), is amended to read:

Section 4.3. Any mine conservation inspector [**directed by the Department**] shall have the right to enter upon and inspect all [**stripping**] *surface mining* operations for the purpose of determining conditions of *health or safety* and for compliance with the provisions of this act, and all rules and regulations promulgated pursuant thereto. Should an operator fail to comply with the requirements of this act, or any rules or regulations promulgated pursuant thereto, the mine conservation 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**] *surface mining* operator's license of the operator and issue a cease and desist order requiring the operator to immediately cease [**open pit**] *surface mining* within this Commonwealth until such time as it is determined by the secretary that the operator is in full compliance. A mine conservation inspector shall have the authority to order the immediate stopping of any operation that is started 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 or where the public welfare or safety calls for the immediate halt of the operation until corrective steps have been started by the operator to the satisfaction of the mine conservation inspector. Any operator who believes he is aggrieved by the action of the mine conservation inspector may immediately appeal to the secretary, setting forth reasons why his operation should not be halted. The secretary shall determine when the operation shall continue.

Section 9. Sections 4.4, 5, 7, 8, 10, 11, 12, 14, 15, 15.1, and 15.2 of the act are repealed.

Section 10. Subsections (a) and (b) of section 15.3 of the act, added January 19, 1968 (P.L.1012), are amended to read:

Section 15.3. (a) *The Commonwealth shall be arranged by the secretary into mine land and water conservation districts, which the secretary may at any time redistrict. Each district shall have a mine conservation inspector.*

The Governor shall commission and appoint mine land and water conservation inspectors from among persons holding valid unexpired certificates of qualification issued by the [**board**] *department* under this act and each mine conservation inspector shall hold office during good behavior or until removed from office as herein provided. It shall be the duty of the secretary to assign the inspectors to their respective districts [**and the secretary shall also designate the place of abode of each inspector at a point as convenient as possible to the surface mining of his district**].

(b) The qualifications for certification of a candidate for the office of mine conservation inspector shall be as follows: The candidate shall be [a citizen of the Commonwealth of Pennsylvania,] of temperate habits, of good repute as a [man] *person* of [personal] integrity, in good physical condition, shall be between the ages of [thirty] *twenty-five* and fifty-five years, shall have successfully passed the examination for mine conservation inspector provided herein, shall have had sufficient practical experience in surface mining and conservation *or in lieu thereof specialized education or a combination of education and experience as specified by the secretary, and shall have served in a probational status for a period of at least six months* in this Commonwealth, *which* shall be evaluated by the [board] *secretary*.

* * *

Section 11. Section 15.3 of the act, added January 19, 1968 (P.L.1012), is amended by adding four subsections to read:

Section 15.3. * * *

(m) *The mine conservation inspectors shall be allowed all necessary expenses incurred by them in enforcing the several provisions of this act in the respective courts of this Commonwealth, if they have obtained the consent of the department before such expense is incurred, the same to be paid by the State Treasurer, on warrant of the Auditor General, issued upon presentation of itemized vouchers approved by the court before which the proceedings were instituted, and also by the secretary.*

(n) *Each mine conservation inspector may also incur traveling expenses, and such other expenses as may be necessary for the proper discharge of his duties under the provisions of this act. Each mine conservation inspector shall have an office in his district, which may be at his place of residence if a suitable room, approved by the secretary, is set apart for that purpose. The secretary shall have authority to procure for the mine conservation inspectors, on their request, furniture, instruments, chemicals, typewriters, stationery and all other necessary supplies, which shall be paid for by the State Treasurer, on warrant of the Auditor General issued upon presentation of vouchers approved by the secretary. All furniture, instruments, plans, books, memoranda, notes and other materials pertaining to the office of the mine conservation inspector, shall be the property of the Commonwealth, and shall be delivered by the mine conservation inspector to his successor in office.*

(o) *At the conclusion of the examination of a mine, the mine conservation inspector shall discuss with representatives of management his findings and recommendations.*

(p) *To enable the mine conservation inspector to perform the duties imposed upon him by this act, he shall have the right at all times to enter upon the land affected by any former or present surface mining operation in his district or any surface mining operation in any other district when directed to do so by the secretary, to make examinations*

or obtain information; and upon the discovery of any violation of this act, or upon being informed of any violation of the act, or upon the discovery of any nuisance, he shall institute proceedings against the person or persons at fault, under the provisions of this act.

Section 12. Section 16 of the act is repealed.

Section 13. Section 18 of the act, amended July 16, 1963 (P.L.238), is amended to read:

Section 18. All funds received by the [**Secretary of Mines and Mineral Industries**] *secretary* from 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,”**] *“Surface Mining Conservation and Reclamation Fund,”* and shall be used by the [**Secretary of Mines and Mineral Industries**] *secretary* for the purpose of [**the administration of this act and**] the foresting or reclaiming of land affected by [**open pit**] *surface* mining of [**bituminous**] *any coal or metallic and nonmetallic minerals, or for any other conservation purposes provided by this act*, and for such purposes are hereby specifically appropriated to the [**Department of Mines and Mineral Industries**] *department*. Funds received from the forfeiture of bonds and collateral shall, if physically possible, be expended by the [**Secretary of Mines and Mineral Industries for backfilling, leveling**] *secretary for reclaiming* 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**] *reclaiming* 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**] *reclaiming* and planting is determined by the [**Secretary of Mines and Mineral Industries**] *secretary* to be physically impossible, may be used by him for the foresting or reclaiming of other lands affected by [**open pit**] *surface* mining of [**bituminous**] *any coal or metallic and nonmetallic minerals or for any other conservation purposes provided by this act*.

Section 14. Section 18.1 of the act, amended July 16, 1963 (P.L.238), is amended to read:

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**] *secretary* may release the first operator from all liability under this act as to that particular operation: Provided, however, That both operators have registered and have otherwise complied with the requirements of this act and the successor operator assumes as part of his obligation under this act all liability for grading, planting and reclamation on the land affected by the former operator.

Section 15. Section 18.2 of the act, added May 23, 1949 (P.L.1730), is amended to read:

Section 18.2. In addition to any other remedy at law or in equity or under this act, the Attorney General may apply to the [**court of common pleas of Dauphin County**] *Commonwealth Court* for relief by injunction, or to the court of common pleas of the county wherein the operation is situated to enforce compliance with, or restrain violations of, any provisions of this act, or any rule, regulation or order made pursuant thereto. The [**said court of common pleas of Dauphin County**] *Commonwealth Court* is hereby vested with jurisdiction to hear and determine all such actions by the Attorney General regardless of where they may arise in the Commonwealth.

The remedy prescribed in this section shall be deemed concurrent or contemporaneous with any other remedy, and the existence or exercise of any one remedy shall not prevent the exercise of any other remedy.

Section 16. (a) The following acts and all amendments thereof are repealed in so far as they are inconsistent herewith:

(1) The act of May 18, 1937 (P.L.654), entitled, as amended, "An act to provide for the safety and to protect the health and morals of persons while employed; prescribing certain regulations and restrictions concerning places where persons are employed, and the equipment, apparatus, materials, devices and machinery used therein; prescribing certain powers and duties of the Department of Labor and Industry relative to the enforcement of this act; and fixing penalties."

(2) The act of June 18, 1941 (P.L.133), entitled "An act relating to coal stripping operations; providing for the health and safety of persons employed therein and for the inspection and regulation of such operations by the Department of Mines; requiring certain information and reports, and prescribing penalties."

(3) The act of June 27, 1947 (P.L.1095), known as the "Anthracite Strip Mining and Conservation Act."

(b) All other acts and parts of acts are repealed in so far as they are inconsistent herewith.

(c) All other acts and provisions thereof, which regulate the mining of any coal or metallic and nonmetallic minerals shall not be repealed or nullified by this act, but shall remain in full force and effect. Nothing in this act shall be construed to abrogate or modify the power and jurisdiction of the Department of Environmental Resources to make rules and regulations, and to administer the laws of the Commonwealth applicable to surface mining.

Section 17. Except with respect to zoning ordinances, all local ordinances and enactments purporting to regulate surface mining are hereby superseded. The Commonwealth by this enactment hereby preempts the regulation of surface mining operations as herein defined.

Section 18. This act shall take effect January 1, 1972. For the purpose of orderly administration of this act, the Department of Environmental

Resources may, by regulation, defer the date for compliance with any of the several provisions of this act regarding application, bonding, licensure or permits, provided that said dates shall not be deferred for a period in excess of six months from the effective date of this act.

Where prior to the effective date of this amendment, an operator has permanently ceased the removal of minerals by surface mining at all mining operations within this Commonwealth and bonds have been posted for those operations but the reclaiming and planting of lands affected by such operations have not been completed and the bonds released, the lands shall be reclaimed 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 30th day of November, A. D. 1971.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 147.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive style with a large initial "C" and a prominent "T" at the end.

Secretary of the Commonwealth.