

No. 1984-158

AN ACT

SB 1309

Amending the act of May 31, 1945 (P.L.1198, No.418), entitled, as amended, "An act providing for the conservation and improvement of land affected in connection with surface mining; regulating such mining; and providing penalties," providing for the re-mining of areas previously affected by mining.

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

Section 1. Section 1 of the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, amended October 10, 1980 (P.L.835, No.155), is amended to read:

Section 1. Purpose of Act.—This act shall be deemed to be an exercise of the police powers of the Commonwealth for the general welfare of the people of the Commonwealth, by providing for the conservation and improvement of areas of land affected in the surface mining of bituminous and anthracite coal and metallic and nonmetallic minerals, to aid thereby in the protection of birds and wild life, to enhance the value of such land for taxation, to decrease soil erosion, to aid in the prevention of the pollution of rivers and streams, to protect and maintain water supply, to protect land and to enhance land use management and planning, to prevent and eliminate hazards to health and safety, *to promote and provide incentives for the re-mining of previously affected areas*, to prevent combustion of unmined coal, and generally to improve the use and enjoyment of said lands, to designate lands unsuitable for mining and to maintain primary jurisdiction over surface coal mining in Pennsylvania. It is also the policy of this act to assure that the coal supply essential to the Nation's and the Commonwealth's energy requirements, and to their economic and social well-being, is provided and to strike a balance between protection of the environment and agricultural productivity and the Nation's and the Commonwealth's need for coal as an essential source of energy.

Section 2. Section 3 of the act is amended by adding definitions 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:

* * *

"Abatement plan" shall mean, for the purposes of section 4.6, any individual technique or combination of techniques, the implementation of which will result in reduction of the baseline pollution load.

* * *

"Actual improvement" shall mean, for the purposes of section 4.6, the reduction of the baseline pollution load resulting from the implementation of the approved abatement plan; except that any reduction of the baseline pol-

lution load achieved by water treatment may not be considered as actual improvement.

“Baseline pollution load” shall mean the characterization of the pollution material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter deemed relevant by the department, including seasonal variations and variations in response to precipitation events.

“Best technology” means, for the purposes of section 4.6, measures and practices which will abate or ameliorate, to the maximum extent possible, discharges from or on the pollution abatement area.

* * *

“Pollution abatement area” shall mean, for the purposes of section 4.6, that part of the permit area which is causing or contributing to the baseline pollution load, which shall include adjacent and nearby areas that must be affected to bring about significant improvement of the baseline pollution load, and which may include the immediate location of the discharges.

* * *

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

* * *

Section 3. The act is amended by adding a section to read:

Section 4.6. Remining of Previously Affected Areas.—(a) *Any operator who proposes to remine an area on which there are preexisting pollutional discharges resulting from previous mining may request special authorization from the department to proceed to conduct surface coal mining activities under this section. Except¹ as specifically modified by this section and the rules and regulations adopted hereunder, the provisions of this act shall apply to special authorizations to conduct surface coal mining activities on areas with preexisting pollutional discharges.*

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

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

¹ “section except” in enrolled bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) implement the approved abatement plan;

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

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

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

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

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

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

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

(C) Subsequent¹ to final bond release, where the department demonstrates that the operator has caused the baseline pollution load to be exceeded. The department shall have the burden of proving that the operator caused the baseline pollution load to be exceeded.²

(D) An³ allegation that the operator caused the baseline pollution to be exceeded under subclause (A), (B) or (C) shall not prohibit the department from issuing, renewing or amending the operator's surface mining license and permits or approving a bond release until a final administrative determination has been made of any such alleged violation.

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

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

¹ "subsequent" in enrolled bill.

² "; or" in enrolled bill.

³ "an" in enrolled bill.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Up to an additional thirty-five per cent of the amount of bond if the operator demonstrates that:

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

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

(C) the operator has achieved the actual improvement of the baseline pollution load described in the abatement plan and shown by all ground and surface water monitoring for the period of time provided in the abatement plan, or has achieved all of the following: (i) at a minimum, has not caused the baseline pollution load to be exceeded as shown by all ground and surface water monitoring for a period of twelve (12) months from the date of initial bond release pursuant to clause (1) or from the date of discontinuance of treatment pursuant to subsection (g); (ii) conducted all measures provided in the abatement plan and any additional measures specified by the department

in writing at the time of initial bond release pursuant to clause (1); (iii) caused aesthetic or other environmental improvements or the elimination of public health and safety problems by remining and re-affecting the pollution abatement area; and (iv) stabilized the pollution abatement area.

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

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

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

(j) For reclamation plans approved as part of a grant of special authorization under this section, the standard of success for revegetation shall be, as a minimum, the establishment of ground cover of living plants not less than can be supported by the best available topsoil or other suitable material in the reaffected area, shall not be less than the ground cover existing before disturbance, and shall be adequate to control erosion: Provided, however, That the department may require that the standard of success comply with section 4(a)(2)(C) of this act where it determines such compliance is integral to the proposed pollution abatement plan.

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

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

(m) In order to maintain primary jurisdiction over surface coal mining in Pennsylvania, the department shall suspend implementation of any provision of this section found to be inconsistent with Federal law by the Secretary of the United States Department of the Interior pursuant to section 505 of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et seq.) or the Administrator of the Environmental Protection Agency pursuant to section 402 of the Federal Water Pollution Control Act of 1972 (Public Law 92-500, 33 U.S.C. § 1251 et seq.). It shall be the duty of the Attorney General, the General Counsel and the department to defend the legality of this act so as to prevent its suspension or abrogation in the absence of a controlling decision by a court of competent jurisdiction.

Section 4. This act shall take effect in 60 days.

APPROVED—The 4th day of October, A. D. 1984.

DICK THORNBURGH