

## No. 1992-173

## AN ACT

## HB 78

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; providing for the establishment of an Emergency Bond Fund for anthracite deep mine operators; and providing penalties," further providing for the purpose of the act; adding and amending certain definitions; further providing for operators' licenses, for mining permits, for surface mining reclamation and reclamation plans, for procedures relating to bonds, trust funds and other financial assurances, for certain remining and for further duties of the Environmental Hearing Board, the Environmental Quality Board and the Department of Environmental Resources; providing for government-financed reclamation contracts authorizing incidental and necessary extraction of coal and for related remining and reclamation matters; establishing the Remining Environmental Enforcement Fund and the Remining Financial Assurance Fund; further providing for the Mining and Reclamation Advisory Board; and making repeals.

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 4, 1984 (P.L.727, No.158), 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 remining of previously affected areas, *to allow for government-financed reclamation contracts authorizing incidental and necessary coal extraction, to authorize a remining and reclamation incentive program*, to prevent combustion of unmined coal, and generally to improve the use and enjoyment of said lands, to designate lands unsuitable for mining and to maintain primary jurisdiction over surface coal mining in Pennsylvania. It is also the policy of this act to assure that the coal supply essential to the Nation's and the Commonwealth's energy requirements, and to their economic and social well-being, is provided and to strike a balance between protection of the environment and agricultural productivity and the Nation's and the Commonwealth's need for coal as an essential source of energy.

Section 2. The definition of "surface mining" in section 3 of the act, amended October 10, 1980 (P.L.835, No.155), is amended and the section 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:

\* \* \*

*"Government-financed reclamation contract" shall mean:*

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

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

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

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

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

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

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

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

\* \* \*

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

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

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

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

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

\* \* \*

*“Passive treatment” shall mean treatment systems that do not require routine operational control or maintenance, including biological or chemical treatment systems, alone or in combination, as approved by the department, such as artificially constructed wetlands, cascade aerators, anoxic drains or sedimentation basins.*

\* \* \*

*“Surface mining activities” shall mean the extraction of [minerals] coal from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip, auger mining, dredging, quarrying and leaching, and all surface activity connected with surface or underground mining, including, but not limited to, exploration, site preparation, entry, tunnel, drift, slope, shaft and borehole drilling and construction and activities related thereto, but not including those portions of mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings.*

*“Surface mining activities” shall not include [(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; or (ii) 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 (iii) the handling, processing or storage of slag on the premises of a manufacturer as a part of the manufacturing process.] any of the following:*

*(1) Coal extraction pursuant to a government-financed reclamation contract for the purposes of section 4.8.*

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

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

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

\* \* \*

*“Total project costs” shall mean for the purposes of section 4.8 the entire cost of performing the government-financed reclamation contract as determined by the department even if the cost is assumed by the contractor pursuant to a no-cost contract with the department. In establishing the final contract price, the department shall consider the economic benefit resulting from coal extracted pursuant to the government-financed reclamation contract and deduct this amount from the contract price.*

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Section 3. Section 3.1(a) and (d) of the act, amended October 12, 1984 (P.L.916, No.181), are amended to read:

Section 3.1. Operator’s License; Withholding or Denying Permits or Licenses; Penalty.—(a) *[After January 1, 1972, it shall be unlawful for any person to proceed to mine coal or to conduct an active operation to mine other minerals, by the surface mining method as an operator within this Commonwealth without first obtaining a license as a surface mining operator from the department: Provided, however, That surface mining operations within the meaning of this subsection shall not be construed to include surface activity connected with underground mining, including but not limited to exploration, site preparation, entry, tunnel, slope, shaft and borehole drilling and construction and activities related thereto, including those portions of mining operations carried out beneath the surface by means of shafts, tunnels or other underground mine openings. Applications for licensure as 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 initial application for licensure shall be accompanied by a fee of fifty dollars (\$50) in the case of persons mining two thousand tons or less of marketable minerals, other than coal, per year and a fee of five hundred dollars (\$500) in the case of persons mining coal or more than two thousand tons of other marketable minerals per year. It shall be the duty of all persons licensed as surface mining operators to renew such license annually, and pay for each such license renewal the sum of fifty dollars (\$50) in the case of persons mining two thousand tons or less of marketable minerals other than coal and the sum of three hundred dollars (\$300) in the case of all other operators. The application for renewal of a license as a surface mining operator shall be made annually at least sixty (60) days before the current license expires.] (1) After January 1, 1972, it shall be unlawful for any person to proceed to mine coal without first obtaining a license from the department. Applications for licensure shall be made annually in writing to the department upon forms prepared and furnished by the department and shall contain such information as applicable for the applicant and each person who owns or controls the applicant or is owned or*

*controlled by the applicant as the department shall require. The application for licensure or renewal of licensure shall be accompanied by a fee of fifty dollars (\$50) in the case of persons mining two thousand (2,000) tons or less of marketable coal per year, a fee of five hundred dollars (\$500) in the case of persons mining three hundred thousand (300,000) tons or less of marketable coal per year and a fee of one thousand dollars (\$1,000) for all others. It shall be the duty of all persons licensed under this section to renew the license annually. The application for renewal of a license shall be made annually at least sixty (60) days before the current license expires.*

(2) Any person who proceeds to mine minerals by the 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) or in an amount not less than the total profits derived by him as a result of his unlawful activities, as determined by the court, together with the estimated cost to the Commonwealth of any reclamation work which may reasonably be required in order to restore the land to its condition prior to the commencement of said unlawful activities, or undergo imprisonment not exceeding one year, or both. The fine shall be payable to the Surface Mining Conservation and Reclamation Fund.

\* \* \*

(d) The department shall not issue any surface mining permit or renew or amend any permit if it finds, after investigation and an opportunity for an informal hearing, that (1) the applicant has failed and continues to fail to comply with any provisions of this act or of any of the acts repealed or amended hereby or (2) the applicant has shown a lack of ability or intention to comply with any provision of this act or of any of the acts repealed or amended hereby as indicated by past or continuing violations. Any person, partnership, association or corporation which has engaged in unlawful conduct as defined in section 18.6 [or], which has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor which has engaged in such unlawful conduct *or which controls or has controlled mining operations with a demonstrated pattern of wilful violations of any provisions of this act or the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et seq.)* shall be denied any permit required by this act unless the permit application demonstrates that the unlawful conduct is being corrected to the satisfaction of the department. Persons other than the applicant, including independent subcontractors, who are proposed to operate under the permit shall be listed in the application and those persons shall be subject to approval by the department prior to their engaging in surface mining operations, and such persons shall be jointly and severally liable with the permittee for such violations of this subsection as the permittee is charged and in which such persons participate. Following the department's decision whether to approve or deny a renewal, the burden shall be on the opponents of the department's decision. If the department intends not to renew a permit, it shall notify the permittee of that fact at least sixty (60) days prior to final action on the permit renewal

and the permittee shall be provided an opportunity for an informal hearing prior to final action on the permit renewal.

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Section 4. Section 4(a) introductory paragraph and (2)C, (d) introductory paragraph, (g) and (h) of the act, amended October 10, 1980 (P.L.835, No.155) and October 12, 1984 (P.L.916, No.181), are amended and the section is amended by adding subsections to read:

Section 4. Mining Permit; Reclamation Plan; Bond.—(a) Before any person shall hereafter proceed to mine [minerals] coal by the surface mining method, he shall apply to the department, on a form prepared and furnished by the department, for a permit for each separate operation. The department is authorized to charge and collect from persons a reasonable filing fee. Such fee shall not exceed the cost of reviewing, administering and enforcing such permit. As a part of each application for a permit, the operator shall, unless modified or waived by the department for cause, furnish the following:

\* \* \*

(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:

\* \* \*

C. A description of the manner in which the operation will segregate and conserve topsoil and if necessary suitable subsoil to establish on the areas proposed to be affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area: Provided, however, That introduced species may be used in the revegetation process where desirable and necessary to achieve the approved post-mining land use plan: And provided further, That when the department issues a written finding approving a long-term, intensive, agricultural post-mining land use as part of the permit application, the department may grant an exception to the requirements of this clause. *For areas previously disturbed by surface mining activities that were not reclaimed to the standards of this act, and are proposed for re-mining, the department may approve a vegetative cover which, at a minimum, shall not be less than the ground cover existing before redisturbance and shall be adequate to control erosion and achieve an approved post-mining land use.*

\* \* \*

(d) Prior to commencing surface mining, the permittee shall file with the department a bond for the land affected by each operation on a form to be prescribed and furnished by the department, payable to the Commonwealth and conditioned that the permittee shall faithfully perform all of the requirements of this act and of the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," the act of September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act," and, where applicable, of the act of July 31, 1968 (P.L.788, No.241),

known as the "Pennsylvania Solid Waste Management Act," [or] the act of July 7, 1980 (P.L.380, No.97), known as the "Solid Waste Management Act," or the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act": Provided, however, That an operator posting a bond sufficient to comply with this section of the act shall not be required to post a separate bond for the permitted area under each of the acts hereinabove enumerated: And provided further, That the foregoing proviso shall not prohibit the department from requiring additional bond amounts for the permitted area should such an increase be determined by the department to be necessary to meet the requirements of this act. The amount of the bond required shall be in an amount determined by the department based upon the total estimated cost to the Commonwealth of completing the approved reclamation plan, or in such other amount and form as may be established by the department pursuant to regulations for an alternate coal bonding program which shall achieve the objectives and purposes of the bonding program. Said estimate shall be based upon the permittee's statement of his estimated cost of fulfilling the plan during the course of his operation, inspection of the application and other documents submitted, inspection of the land area, and such other criteria as may be relevant, including, but not limited to, the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, the proposed land use and the additional cost to the Commonwealth which may be entailed by being required to bring personnel and equipment to the site after abandonment by the permittee, in excess of the cost to the permittee of performing the necessary work during the course of his surface mining operations. When the plan involves the reconstruction or relocation of any public road or highway, the amount of the bond shall include an amount sufficient to fully build or restore the road or highway to a condition approved by the Department of Transportation. No bond shall be filed for less than ten thousand dollars (\$10,000.00) for the entire permit area. Liability under such bond shall be for the duration of the surface mining at each operation, and for a period of five full years after the last year of augmented seeding and fertilizing and any other work to complete reclamation to meet the requirements of law and protect the environment, unless released in part prior thereto as hereinafter provided. **[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 permittee may elect to deposit cash, automatically renewable irrevocable bank letters of credit which may be terminated by the bank at the end of a term only upon the bank giving ninety (90) days prior written notice to the permittee and the department, or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth, with the department in lieu of a corporate surety. The cash deposit amount of such irrevocable letter of credit or market value of such securities shall be equal at least to the sum of the bond.]** *The bond or collateral required herein must be in an amount and on a*

*form containing such terms and conditions as approved by the department and may be a surety bond executed by the operator and a corporate surety licensed to do business in this Commonwealth and approved by the secretary; it may be cash; it may be automatically renewable irrevocable letters of credit which may be terminated by the bank at the end of the term only upon the bank giving ninety (90) days' prior written notice to the permittee and the department; it may be negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, The General State Authority, the State Public School Building Authority or any municipality within this Commonwealth; it may be a life insurance policy which is and states on its face that it is fully paid and noncancelable with a cash surrender value irrevocably assigned to the department at least equal to the amount of the required bonds and which shall not be borrowed against and shall not be utilized for any other purpose than financial assurance assuring reclamation; it may be an annuity or trust fund of which the department is the irrevocably named beneficiary; or it may be other instruments which the Environmental Quality Board may authorize through regulation. The stated amount of irrevocable letters of credit and the market value of negotiable securities shall be equal at least to the amount of the required bond. Combinations of bonding instruments may be allowed pursuant to regulations adopted by the Environmental Quality Board.* The secretary shall, upon receipt of any such deposit of cash, letters of credit or negotiable bonds immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The permittee making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the secretary, the whole or any portion of any collateral so deposited, upon depositing with him, in lieu thereof, other collateral of the classes herein specified having a market value at least equal to the sum of the bond, and also to demand, receive and recover the interest and income from said negotiable bonds as the same becomes due and payable: Provided, however, That where negotiable bonds, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the permittee, shall convert such negotiable bonds into such other negotiable bonds of the classes herein specified as may be designated by the permittee: And, provided further, That where notice of intent to terminate a letter of credit is given, the department shall give the permittee thirty (30) days' written notice to replace the letter of credit with other acceptable bond guarantees as provided herein, and if the permittee fails to replace the letter of credit within the thirty (30) day notification period, the department shall draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee; or the department, in its discretion, may accept a self-bond from the permittee, without separate surety, if the permittee demonstrates to the satisfaction of the department a history of financial solvency, continuous business operation and continuous efforts to achieve compliance with all United States of America and Pennsylvania environmental laws, and, meets all of the following requirements:



\* \* \*

*(d.2) The department may establish alternative financial assurance mechanisms which shall achieve the objectives and purposes of the bonding program. These mechanisms may include, but are not limited to, the establishment of a site-specific trust fund funded by the operator for the treatment of post-mining discharges of mine drainage. Within one hundred eighty (180) days after the effective date of this act, the department shall recommend to the Governor alternative financing mechanisms for the perpetual treatment of post-mining discharges of mine drainage. This provision shall in no way affect the department's review of permit applications under existing law which prohibits the department from issuing a mining permit unless the applicant demonstrates that there is no presumptive evidence of potential pollution of the waters of this Commonwealth.*

\* \* \*

(g) Subject to the public notice requirements of subsection (b), if the department is satisfied the reclamation covered by the bond or portion thereof has been accomplished as required by this act, it may, **[in the case of surface coal mining operations,]** upon request by the permittee *or any other person having an interest in the bond, including the department*, release in whole or in part the bond or deposit according to the following schedule:

(1) *At Stage I*, when the operator has completed the backfilling, regrading and drainage control of a bonded area in accordance with his approved reclamation plan, the release of *up to sixty per cent* of the bond for the applicable permit area[;], *so long as provisions for treatment of pollutional discharges, if any, have been made by the operator.*

(2) *At Stage II*, when revegetation has been successfully established on the affected area in accordance with the approved reclamation plan, the department shall retain that amount of bond for the revegetated area which would be sufficient for the cost to the Commonwealth of reestablishing revegetation. Such retention of bond shall be for the duration of liability under the bond as prescribed in subsection (d). No part of the bond shall be released under this subsection so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of law or until soil productivity for prime farmlands has returned to equivalent level of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to subsection (a)(2)I. Where a permanent impoundment is to be retained, that portion of bond under this subsection may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the department[;].

(3) *At Stage III*, when the operator has completed successfully all mining and reclamation activities *and has made provisions with the department for the sound future treatment of pollutional discharges, if any*, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in subsection (d). **[In the case of noncoal surface mining operations, in lieu of the schedule and criteria for**

**release of bonds provided for in this subsection, the schedule and criteria for release of bonds shall be as set forth in regulations promulgated hereunder.]** No bond shall be fully released until all requirements of this act are fully met. Upon release of all or part of the bond and collateral as herein provided, the State Treasurer shall immediately return to the operator the amount of cash or securities specified therein.

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

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

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

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

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

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

*(iv) The discharger has established a site-specific trust fund for each minimal-impact post-mining discharge in an amount calculated by the department at least equal to annual operation and maintenance costs of a passive treatment system, capital costs for replacement of the passive treat-*

*ment system in twenty-five (25) years from the date of its installation, an inflation factor and the cost of treatment of the discharge for at least fifty (50) years. The minimum amount of the fund shall be ten thousand dollars (\$10,000).*

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

*(i) Up to eighty-five per cent of the reclamation bond on a site with a minimal-impact post-mining discharge upon a demonstration by the operator that all of the following have been met:*

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

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

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

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

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

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

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

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

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

*(g.3) The Environmental Quality Board is authorized to establish by regulation specific criteria for release of reclamation bonds for sites with post-mining discharges of mine drainage, including minimal-impact post-mining discharges: Provided, That alternative financial assurances have been posted by the operator pursuant to subsection (d.2).*

(h) If the operator fails or refuses to comply with the requirements of the act in any respect for which liability has been charged on the bond, the department shall declare such **[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] bond forfeited, and the amount of the forfeited bond shall be paid over to the department within thirty (30) days after notice by certified mail from the department, and that amount shall be held in escrow with any interest on the bond accruing to the department pending the resolution of any appeals, unless it is determined by a court of competent jurisdiction after exhaustion of appeals that the Commonwealth was not entitled to all or a portion of the amount forfeited in which case the interest shall accrue proportionately to the surety in the amount determined to be improperly forfeited by the department, if any.** Where the operator has deposited cash or securities as collateral in lieu of a **[corporate] surety bond**, the department shall declare such portion of said collateral forfeited, and shall direct the State Treasurer to pay said funds into the Surface Mining Conservation and Reclamation Fund, or to proceed to sell said securities to the extent forfeited and pay the proceeds thereof into the Surface Mining Conservation and Reclamation Fund. Should any corporate surety fail to promptly pay, in full, a forfeited bond, it shall be disqualified from writing any further surety bonds under this act. Any operator aggrieved by reason of forfeiting the bond or converting collateral, as herein provided, shall have a right to contest such action and appeal therefrom as herein provided. *A corporate surety issuing surety bonds which are forfeited by the department shall have the option of reclaiming the forfeited site, in lieu of paying the bond amount to the department, upon the consent and approval of the department.*

\* \* \*

Section 5. Section 4.2(f) of the act, amended October 10, 1980 (P.L.835, No.155), is amended and the section is amended by adding subsections to read:

Section 4.2. General Rule Making; Health and Safety.—\* \* \*

(f) (1) Any surface mining operator *or any person engaged in government-financed reclamation* who affects a public or private water supply by contamination or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity and quality for the purposes served by the supply. If any operator shall fail to comply with this provision, the secretary may issue such orders to the operator as are necessary to assure compliance.

(2) *It shall be presumed, as a matter of law, that a surface mine operator or owner is responsible without proof of fault, negligence or causation for all pollution, except bacteriological contamination, or diminution of public or private water supplies within one thousand (1,000) linear feet of the boundaries of the land affected or acreage assigned to the surface mining operation under section 4 by a permit issued by the department. There shall be only five defenses to the presumption of liability provided in this clause. A mine owner or operator must affirmatively prove by a preponderance-of-evidence that one of the following conditions exists:*

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

(ii) *The water supply is not within one thousand (1,000) linear feet of the boundaries of the land affected or acreage assigned to the surface mining operation under section 4 by a permit issued by the department.*

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

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

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

(3) *If the secretary finds that immediate replacement of an affected water supply used for potable or domestic needs is required to protect public health or safety and the owner or operator has appealed or failed to comply with an order issued pursuant to this subsection, the secretary may restore or replace the affected water supply with an alternative source of water-utilizing moneys from the Surface Mining Conservation and Reclamation Fund. The secretary shall recover the costs of restoration or replacement, including costs incurred for design and construction of facilities, from the responsible owners or operators. Costs recovered shall be deposited in the Surface Mining Conservation and Reclamation Fund.*

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

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

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

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

\* \* \*

*(h) The Environmental Quality Board is authorized to promulgate rules and regulations, the general purpose of which shall be the establishment of a remining and reclamation incentive program. In promulgating such regulations, the board shall have the authority to establish an operator qualification system establishing standards and criteria for operators who desire to participate in the remining and reclamation incentives program. Specific purposes of the regulations shall include, but not be limited to, the purposes set forth in sections 4.8, 4.9, 4.10, 4.11, 4.12 and 4.13.*

*(i) The department and its agents and employes shall be authorized to enter any property, premises or place where surface mining activities, including reclamation, are being conducted for the purposes of making such investigation or inspection as may be necessary to ascertain the compliance or noncompliance by any person or municipality with the provisions of the acts and the rules and regulations promulgated hereunder. In connection with such inspection or investigation, samples may be taken of any material for analysis.*

*(j) (1) The Environmental Quality Board is authorized to revise the department's existing regulations to establish technology-based effluent limitations for classes or categories of post-mining discharges emanating from or hydrologically connected to a surface mining activity site that has achieved Stage II reclamation standards and that the department determines can be adequately treated using passive treatment systems.*

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

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

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

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

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

*(5) A person may petition the Environmental Quality Board for rule-making under this subsection.*

Section 6. Section 4.6(j) of the act, added October 4, 1984 (P.L.727, No.158), is amended to read:

Section 4.6. Remining of Previously Affected Areas.—\* \* \*

*(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] a higher** 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.

\* \* \*

Section 7. The heading and subsections (a), (b), (d) and (g) of section 4.7 of the act, added December 12, 1986 (P.L.1570, No.171), are amended to read:

Section 4.7. Anthracite **[Deep]** Mine Operators Emergency Bond Fund.—(a) Within thirty (30) days of the effective date of this section, the department shall establish an Emergency Bond Fund for the purpose of reclaiming any anthracite deep mined *or surface mined* lands which may be abandoned after the effective date of this section and on which the bond required by law and established by regulation has not been posted due to circumstances set forth in subsection (d).

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

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

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

\* \* \*

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

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

\*\* \* \*

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

Section 8. The act is amended by adding sections to read:

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

**(b) Only eligible persons may secure special authorization to engage in incidental and necessary coal extraction pursuant to a government-financed reclamation contract. A person is eligible to secure a special authorization if he can demonstrate, at a minimum, to the department's satisfaction that:**

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



ciate, officer, parent corporation, affiliate or person by or under common control with the contractor.

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

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

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

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

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

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

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

(3) *Incidental and necessary coal extraction will be confined to the project area being reclaimed.*

**(4) All coal extraction and reclamation activity undertaken pursuant to a government-financed reclamation project will be accomplished pursuant to:**

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

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

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

**(e) Prior to commencing coal extraction pursuant to a government-financed reclamation project, the contractor shall file with the department a performance bond payable to the Commonwealth and conditioned upon the contractor's performance of all the requirements of the government-financed reclamation contract, this act, "The Clean Streams Law," the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," the act of September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act," where applicable, the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act," and, where applicable, the act of July 7, 1980 (P.L.380, No.97), known as the "Solid Waste Management Act." An operator posting a bond sufficient to comply with this section shall not be required to post a separate bond for the permitted area under each of the acts hereinabove enumerated. For a no-cost reclamation contract, the criteria for establishing the amount of the performance bond shall be the engineering estimate, determined by the department, of meeting the environmental obligations enumerated above: Provided, however, That the department may establish a lesser bond amount for long-term, no-cost reclamation projects in which the reclamation schedule extends beyond two (2) years. In these contracts, the department may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a period specified. The performance bond which is provided by the contractor under a federally financed or State-financed reclamation contract shall be deemed to satisfy the requirements of this section: Provided, That the amount of such bond is equivalent to or greater than the amount determined by the criteria set forth in this subsection.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(3) The department shall prepare a detailed report on the proposed area within two hundred forty (240) days of its acceptance of a proposal for study*

*based on the criteria outlined in subsection (b). The report shall contain enough background information on the proposed area to allow a mine operator to directly use its contents in the preparation of a proposal or permit application to remine all or part of the area.*

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

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

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

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

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

*Section 4.11. Pennsylvania Reclamation and Remining Program.—*  
*(a) The Environmental Quality Board shall publish proposed regulations within one hundred eighty (180) days from the effective date of this act which shall constitute an interim reclamation and remining program which provides incentives and assistance to reclaim abandoned mine lands and land that is subject to bond forfeitures. The department is authorized to expend moneys from the Remining Environmental Enhancement Fund for this program. The proposed regulations and any final regulations promulgated under this section shall include, but not be limited to, the following elements:*

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

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

*(3) The development of an operator qualification system.*

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

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

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

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

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

*(3) The dollar value of these reclamation activities.*

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

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

*Section 4.12. Payment in Lieu of Bond.—(a) The Environmental Quality Board shall publish proposed regulations within one hundred eighty (180) days of the effective date of this act which shall constitute an interim program allowing certain mine operators proposing to remine abandoned mine lands to be eligible to make payments to the department in lieu of the bond required by this act. The department shall review operator requests to participate in the program on a case-by-case basis and shall allow operator participation in the payment-in-lieu-of-bond program only when the payment-in-lieu-of-bond special account in the Remining Environmental Enhancement Fund is equal to or exceeds the total reclamation obligation of the Commonwealth which would be incurred under the payment-in-lieu-of-bond program if all participants failed to complete their reclamation obligations. In promulgating proposed and final regulations, the Environmental Quality Board shall consider various factors, including, but not limited to, site eligibility, such as environmental hazards, safety hazards and the availability of coal reserves and operator eligibility, such as financial tests and criteria for participation in the program, including an operator's operating ratio, long-term financial stability, denial of coverage by surety bond companies, financial ratio, compliance history, length of time in business and any other factors indicative of an operator's ability to complete reclamation and payments into the fund under the program. Payments into the fund shall be equal to at least fifty dollars (\$50) per acre per year in the interim program and may be modified by final regulations promulgated by the Environmental*

*Quality Board in order to assure the financial stability of the payment-in-lieu-of-bond program and to provide adequate funds in case of forfeiture but will require no collateralization.*

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

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

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

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

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

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

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

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

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

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

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

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

(d) *The department may require as a condition of granting the bond credit that the operator post a contract performance bond to insure that the operator completes the reclamation proposed to result in the bond credit. The performance bond is to be at least in an amount necessary to ensure reclamation of those areas proposed to be reclaimed and shall be released by the department upon completion of the work described in the approved reclamation plan.*

(e) *Bond credits are not transferable.*

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

Section 9. The heading and subsections (a), (f) and (g)(4) and (5) of section 18 of the act, amended October 10, 1980 (P.L.835, No.155) and October 12, 1984 (P.L.916, No.181), are amended and the section is amended by adding subsections to read:

Section 18. Surface Mining Conservation and Reclamation Fund; **[Payments to Clean Water Fund]** *Remining Environmental Enhancement Fund; Remining Financial Assurance Fund.*—(a) **[All]** *Except as provided in subsection (a.1), all funds received by the secretary from license fees, from permit fees, including all reclamation fees collected by the department under this act pursuant to the department's alternate bonding program, from forfeiture of bonds, from all fines collected under section 18.5 and all civil penalties collected under section 18.4, and of cash deposits and securities, and from costs recovered under the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," shall be held by the State Treasurer in a special fund, separate and apart from all other moneys in the State Treasury, to be known as the "Surface Mining Conservation and Reclamation Fund," and shall be used by the secretary for **[the purpose of]:***

(1) *the revegetation or reclaiming of land affected by surface mining of any coal **[or metallic or nonmetallic minerals];***

(2) *for restoration or replacement of water supplies affected by surface mining **[operations,] activities;** or*

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

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

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

(ii) Fines and penalties collected under this act.

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

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

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

(2) All moneys placed in the Remining Reclamation Enhancement Fund and the interest it accrues are hereby appropriated upon authorization by the Governor to the department for the costs of operating a remining and reclamation incentive program, including designating areas suitable for reclamation by remining and establishing and operating a remining operator's assistance program, but not including a bond credit or payment-in-lieu-of-bond program.

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

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

(ii) Providing financial assurance for the payment-in-lieu-of-bond program set forth in section 4.12.

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

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

(a.3) An operator must demonstrate, in order to utilize any funds from or participate in any programs funded by the Remining Environmental Enhancement Fund or the Remining Financial Assurance Fund, including any of the remining incentive programs specified in sections 4.8, 4.9, 4.10 and 4.11 or the remining financial assurance programs set forth in



*section 4.12 or 4.13 or remining incentives promulgated in regulations pursuant to those sections, that he meets all of the following requirements:*

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

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

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

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

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

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

*(a.4) Priority for participation in the Remining Environmental Enhancement Fund and the Remining Financial Assurance Fund shall be given to licensed mine operators proposed remining within areas designated suitable for reclamation by remining.*

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*(f) When [an operator] a licensed mine operator desires to reclaim property on which the department has forfeited bonds for failure to complete the reclamation plan or is granted a permit on property contiguous to a property on which the department has forfeited bonds for failure to complete the reclamation plan, the operator or permittee shall be provided the opportunity to make a proposal to complete the reclamation plan of the forfeited bond area. The proposal shall contain estimated costs and the necessary information upon which the department can determine the cost effectiveness of the proposal. Upon receipt of the proposal, the secretary may negotiate and enter into a contract with the operator or permittee to complete the reclamation plan. A determination whether to negotiate shall be made by the department within thirty (30) days of receipt of the proposal; and contract negotiations shall begin within thirty (30) days of the determination to negotiate.*

*(g) There is hereby created a Mining and Reclamation Advisory Board to assist the secretary to expend the funds for the purposes provided by this act and to advise the secretary on all matters pertaining to mining and reclamation which shall include, but not be limited to, experimental practices, alternate methods of backfilling, selection of reclamation projects, alternate reclamation methods, obligations for preexisting pollution liability, alteration of reclamation plans, reclamation fees and bonding rates and methods.*

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*(4) [The board shall meet at times fixed by the secretary but not less than once per year. The Mining and Reclamation Advisory Board shall replace the*

Mining Advisory Committee and any other committee construed to be advisory for matters herein.] *All actions of the board shall be by majority vote. The board shall meet upon the call of the secretary, but not less than quarterly, to carry out its duties under this act. The board shall select from among its members a chairperson and such other officers as it deems appropriate.*

(5) The board shall prepare an annual report on its activities and submit the report to the Senate Environmental Resources and Energy Committee and the House [Mines and Energy Management] Conservation Committee.

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Section 10. Section 18.7 of the act, added October 10, 1980 (P.L.835, No.155), is amended to read:

Section 18.7. Creation of Small Operators' Assistance Fund.—All moneys received by the department under sections 507(c) and 401(b)(1) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1257(c) and 1232(b)(1), shall be held by the State Treasurer in a special fund, separate and apart from all other moneys in the State Treasury, to be known as the "Small Operators' Assistance Fund," and shall be used by the department for the purposes set forth and subject to the limitations in section 507(c) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1257(c). *The department may utilize such funds as authorized by the United States Department of Interior, Office of Surface Mining Reclamation and Enforcement pursuant to the Surface Mining Control and Reclamation Act of 1977.*

Section 11. The act is amended by adding sections to read:

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

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

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

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

Section 12. (a) The following acts and parts of acts are repealed insofar as they are inconsistent with this act:

Section 8 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

Section 17.2 of the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act.

Sections 10 and 16(a)(1) of the act of January 19, 1968 (1967 P.L.996, No.443), known as The Land and Water Conservation and Reclamation Act.

Section 14 of the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 13. This act shall take effect in 60 days.

APPROVED—The 18th day of December, A. D. 1992.

ROBERT P. CASEY