"THE BITUMINOUS MINE SUBSIDENCE & LAND CONSERVATION ACT"
Act of 1966, Special Session 1, P.L. 31, No. 1

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"THE BITUMINOUS MINE SUBSIDENCE & LAND CONSERVATION ACT"
Act of 1966, Special Session 1, P.L. 31, No. 1

Special Session No. 1 of 1966
No. 1966-1

AN ACT

To protect the public health, welfare and safety by regulating the mining of bituminous coal; declaring the existence of a public interest in the support of surface structures; providing a remedy for the restoration or replacement of water supplies affected by underground mining; providing a remedy for the restoration or replacement or compensation for surface structures damaged by underground mining; providing standards for the prevention of hazards to human safety and material damage to certain structures; requiring permits, and in certain circumstances bonds, for the mining of bituminous coal; providing for the filing of maps or plans with recorders of deeds; providing for the giving of notice of mining operations to political subdivisions and surface landowners of record; requiring mine inspectors to accompany municipal officers and their agents on inspection trips; granting powers to public officers and affected property owners to enforce the act; requiring grantors to certify as to whether any structures on the lands conveyed are entitled to support from the underlying coal and grantees to sign an admission of a warning of the possible lack of any such right of support; requiring grantors to provide notice of the existence of voluntary agreements for the restoration or replacement of water supplies or for the repair or compensation for structural damage; imposing duties on the Department of Environmental Resources for the compilation and analysis of data; and imposing liability for violation of the act. (Title amended June 22, 1994, P.L.357, No.54)

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in Act 1, 1st Sp.Sess., of 1966.

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

Section 1. Short title.--This act shall be known and may be cited as "The Bituminous Mine Subsidence and Land Conservation Act."
(1 amended Oct. 10, 1980, P.L.874, No.156)
Section 2. Purpose.--This act shall be deemed to be an exercise of the police powers of the Commonwealth for the protection of the health, safety and general welfare of the people of the Commonwealth, by providing for the conservation of surface land areas which may be affected in the mining of bituminous coal by methods other than "open pit" or "strip"

mining, to aid in the protection of the safety of the public, to enhance the value of such lands for taxation, to aid in the preservation of surface water drainage and public and private water supplies, to provide for the restoration or replacement of water supplies affected by underground mining, to provide for the restoration or replacement of or compensation for surface structures damaged by underground mining and generally to improve the use and enjoyment of such lands and to maintain primary jurisdiction over surface coal mining in Pennsylvania.

(2 amended June 22, 1994, P.L.357, No.54)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) It is necessary to develop an adequate remedy for the restoration and replacement of water supplies affected by

underground mining.

(7) It is necessary to develop a remedy for the restoration or replacement of or compensation for surface structures damaged by underground mining.

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

(3 amended June 22, 1994, P.L.357, No.54)

Section 4. Protection of surface structures against damage from cave-in, collapse or subsidence.--(4 repealed June 22, 1994, P.L.357, No.54)

Section 5. Permit; application; map or plan; bond or other security; filing; general rulemaking authority; prevention of damage; mine stability; maintenance of use and value of lands.--

(a) Before any bituminous coal mine subject to the provisions of this act is opened, reopened, or continued in operation, the owner, operator, lessor, lessee, general manager, superintendent or other person in charge of or having supervision over such mine or mining operation shall apply to the Department of Environmental Resources, on a form prepared and furnished by the department, for a permit for each separate bituminous coal mine or mining operation. As a part of such application for a permit the applicant shall furnish, in duplicate, a map or plan of a scale and in a manner in accordance with rules and regulations of the Department of Environmental Resources showing the location of the mine or mining operation, the extent to which mining operations presently have been completed, and the extent to which mining operations will be conducted under the permit being requested. Such map or plan shall show the boundaries of the area of surface land overlying the mine or mining operation, the location and/or designation of all structures in place on the effective date of this act which overlie the proposed mine or mining operation, the name of the record owner or owners of said surface structures, the location of all bodies of water, rivers and streams, roads and railroads, and the political subdivision and county in which said structures are located. Such map or plan shall include, in addition to the information specified above, such information on the character of the mining operation, overburden, rock strata, proximity of and conditions in overlying or underlying coal seams and other geological conditions as the department, by rules and regulations, shall direct. The department shall have the power to require the updating of such maps from time to time as it shall prescribe by rule and regulation. The map or plan must set forth a detailed description of the manner, if any, by which the applicant proposes to support the surface structures overlying the bituminous mine or mining operation. Upon receipt of such application in proper form the department shall cause a permit to be issued or reissued if, in its opinion, the application discloses that sufficient support will be provided for the protected structures and that the operation will comply with the provisions of this act and the rules and regulations issued thereunder. All permits issued under this act shall contain such terms and shall be issued for such duration as the department may prescribe.

(b) The department shall require the applicant to file a bond or other security as recited in section 6(a), to insure the applicant's faithful performance of mining or mining operations.

((b) amended June 22, 1994, P.L.357, No.54)

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

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

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

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

(1) the applicant has failed and continues to fail to comply with this act or of any of the acts repealed or amended hereby, or

(2) the applicant has shown a lack of ability or intention to comply with any provision of this act or any of the acts repealed or amended hereby as indicated by past or continuing violations. Any person, partnership, association or corporation which has engaged in unlawful conduct as defined in section 17.1 or which has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor which has engaged in such unlawful conduct shall be denied any permit required by this act unless the permit application demonstrates that the unlawful conduct is being corrected to the satisfaction of the department. Persons other than the applicant, including independent subcontractors who are proposed to operate under the permit shall be listed in the application and those persons shall be subject to approval by the department prior to their engaging in activities subject to this act, and such persons shall be jointly and severally liable with the permittee for such violations as described in this subsection as the permittee is charged and in which such persons participate.

(g) Public notice of every application for a permit or bond release under this act shall be given by notice published in a newspaper of general circulation, published in the locality where the permit is applied for, once a week for four consecutive weeks. The department shall prescribe such requirements regarding public notice and public hearings on permit applications and bond releases as it deems appropriate.

For the purposes of these public hearings, the department shall have the authority and is hereby empowered to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of witnesses, or production of materials, and take evidence including but not limited to inspections of the land proposed to be affected and other operations carried on by the applicant in the general vicinity. Any person having an interest which is or may be adversely affected by any action of the department under this section may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law, and from the adjudication of said board such person may further appeal as provided by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). The Environmental Hearing Board, upon the request of any party, may in its discretion order the payment of costs and attorney's fees it determines have been reasonably incurred by such party proceedings pursuant to this section.

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

(5 amended Oct. 10, 1980, P.L.874, No.156)

Compiler's Note: The Department of Environmental Resources, referred to in subsec. (a), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 5.1. Restoration or replacement of water supplies affected by underground mining.--(a) (1) After the effective date of this section, any mine operator who, as a result of underground mining operations, affects a public or private water supply by contamination, diminution or interruption shall restore or replace the affected supply with an alternate source which adequately services in quantity and quality the premining uses of the supply or any reasonably foreseeable uses of the supply.

(2) A restored or replacement water supply shall be deemed adequate where it differs in quality from the premining supply, providing it meets standards set forth in the act of May 1, 1984 (P.L.206, No.43), known as the "Pennsylvania Safe Drinking Water Act," or is comparable to the premining supply where that supply did not meet such standards. If an operator fails to comply with this provision, the Secretary of Environmental Resources shall issue such orders to the operator as are necessary to assure compliance.

(3) For the purposes of this section, the term "water supply" shall include any existing source of water used for domestic, commercial, industrial or recreational purposes or for agricultural uses, including use or consumption of water to maintain the health and productivity of animals used or to be used in agricultural production and the watering of lands on a periodic or permanent basis by a constructed or manufactured system in place on the effective date of this act to provide irrigation for agricultural production of plants and crops at levels of productivity or yield historically experienced by such plants or crops within a particular geographic area, or which serves any public building or any noncommercial structure customarily used by the public, including, but not limited to,

churches, schools and hospitals.

(b) A mine operator shall not be liable to restore or replace a water supply under the provisions of this section if a claim of contamination, diminution or interruption is made more than two years after the supply has been adversely affected.

(5.1 added June 22, 1994, P.L.357, No.54)

Compiler's Note: The Department of Environmental Resources, referred to in this section, was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 5.2. Procedures for securing restoration or replacement of affected water supplies; duties of Department of Environmental Resources.--(a) (1) Whenever a landowner or water user experiences contamination, diminution or interruption of a water supply which is believed to have occurred as a result of underground coal mining operations, that landowner or water user shall notify the mine operator who shall with reasonable diligence investigate the water loss.

(2) Where the presumption of subsection (c) applies and the user is without a readily available alternate source, the operator shall provide a temporary water supply within twenty-four hours of being contacted by the landowner or water user.

(3) If a temporary water supply is not provided within twenty-four hours, the Department of Environmental Resources, after notice by the landowner or water user, shall order the operator to provide temporary water within twenty-four hours. The operator shall notify the department of any claim of contamination, diminution or interruption made to it by a landowner or water user and its disposition.

(b) (1) If the affected water supply has not been restored or an alternate source has not been provided by the operator or if an operator ceases to provide an alternate source, the landowner or water user may so notify the department and request that an investigation be conducted.

(2) Within ten days of such notification, the department shall investigate any such claim and shall, within forty-five days following notification, make a determination of whether the contamination, diminution or interruption was caused by the underground mining operation and so notify all affected parties. If it finds causation, it shall issue such orders to the mine operator as are necessary to assure compliance with this section. Such orders may include orders requiring the temporary replacement of a water supply where it is determined that the contamination, diminution or interruption may be of limited duration, orders requiring the provision of immediate temporary water to the landowner or orders requiring the provision of a permanent alternate source where the contamination, diminution or interruption does not abate within three years of the date on which the supply was adversely affected.

(c) In any determination or proceeding under this section, it shall be presumed that an underground mine operator is responsible for the contamination, diminution or interruption of a water supply that is within an area above the mine determined by projecting a thirty-five degree angle from the vertical from the outside of any coal removal area. The mine operator may successfully rebut the presumption by affirmatively proving that access was denied to the property on which the supply is located

to conduct premining and postmining surveys of the quality and quantity of the supply, that the mine operator thereafter served notice upon the landowner by certified mail or personal service, which notice identified the rights established by sections 5.1 and 5.3 and this section, that access had been denied and the landowner failed to provide or authorize access within ten days after receipt thereof.

(d) Unless the presumption contained in subsection (c) applies, a landowner, the department or any affected user asserting contamination, diminution or interruption shall have the burden to affirmatively prove that underground mining activity caused the contamination, diminution or interruption. Wherever a mine operator, upon request, has been denied access to conduct a premining survey and the mine operator thereafter served notice upon the landowner by certified mail or personal service, which notice identified the rights established by sections 5.1 and 5.3 and this section, was denied access and the landowner failed to provide or authorize access within ten days after receipt thereof, then such affirmative proof shall include premining baseline data, provided by the landowner or the department, relative to the affected water supply.

(e) A mine operator shall be relieved of liability for affecting a public or private water supply by contamination, diminution or interruption by affirmatively proving one of the following defenses:

(1) The contamination, diminution or interruption existed prior to the mining activity as determined by a premining survey.

(2) The contamination, diminution or interruption occurred more than three years after mining activity occurred.

(3) The contamination, diminution or interruption occurred as the result of some cause other than the mining activity.

(f) Any mine operator who obtains water samples in a premining or postmining survey shall utilize a certified laboratory to analyze such samples and shall submit copies of the results of such analysis, as well as the results of any quantitative analysis, to the department and to the landowner within thirty days of their receipt. Nothing contained herein shall be construed as prohibiting a landowner or water user from utilizing an independent certified laboratory to sample and analyze the water supply.

(g) If an affected water supply is not restored or reestablished or a permanent alternate source is not provided within three years, the mine operator may be relieved of further responsibility by entering into a written agreement providing compensation acceptable to the landowner. If no agreement is reached, the mine operator, at the option of the landowner, shall:

(1) purchase the property for a sum equal to its fair market value immediately prior to the time the water supply was affected; or

(2) make a one-time payment equal to the difference between the property's fair market value immediately prior to the time the water supply was affected and at the time payment is made; whereupon the mine operator shall be relieved of further obligation regarding contamination, diminution or interruption of the affected water supply under this act. Any measures taken under sections 5.1 and 5.3 and this section to relieve a mine operator of further obligation regarding contamination,

diminution or interruption of an affected water supply shall not be deemed to bar a subsequent purchaser of the land on which the affected water supply was located or any water user on such land from invoking rights under this section for contamination, diminution or interruption of a water supply resulting from subsequent mining activity other than that contemplated by the mine plan in effect at the time the original supply was affected.

(h) Prior to entering into an agreement with the mine operator pursuant to subsection (g), the landowner may submit a written request to the department asking that the department review the operator's finding that an affected water supply cannot reasonably be restored or that a permanent alternate source, as described in subsection (i), cannot reasonably be provided. The department shall provide its opinion to the landowner within sixty days of receiving the landowner's request. The department's opinion shall be advisory only, including for purposes of assisting the landowner in selecting the optional compensation authorized under subsection (g). The department's opinion shall not prevent the landowner from entering into an agreement with the mine operator pursuant to subsection (g), and such opinion shall not serve as the basis for any action by the department against the mine operator or create any cause of action in a third party, provided the operator otherwise complies with subsection (g).

(i) For purposes of this section, a permanent alternate source shall include any well, spring, municipal water supply system or other supply approved by the department which is adequate in quantity, quality and of reasonable cost to serve the premining uses of the affected water supply.

(j) The department shall require an operator to describe how water supplies will be replaced. Nothing contained herein shall be construed as authorizing the department to require a mine operator to provide a replacement water supply prior to mining as a condition of securing a permit to conduct underground coal mining.

(k) Any landowner, water user or mine operator aggrieved by an order or determination of the department issued under this section shall have the right to appeal such order to the Environmental Hearing Board within thirty days of receipt of the order.

(5.2 added June 22, 1994, P.L.357, No.54)

Compiler's Note: The Department of Environmental Resources, referred to in this section, was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 5.3. Voluntary agreement; restoration or replacement of water; deed recital.--(a) Nothing contained in this act shall prohibit the mine operator and landowner at any time after the effective date of this section from voluntarily entering into an agreement establishing the manner and means by which an affected water supply is to be restored or an alternate supply is to be provided or providing fair compensation for such contamination, diminution or interruption. Any release contained in such an agreement shall only be valid in releasing the operator from liability for affecting a public or private water supply by contamination, diminution or interruption if all of

the following apply:

(1) It clearly states what rights are established by this act.

(2) The landowner expressly acknowledges their release for the consideration rendered.

(3) The contamination, diminution or interruption of the water supply occurs as a result of the mining contemplated by the agreement.

(4) The term of the release does not exceed thirty-five years.

(5) Notwithstanding the provisions of an agreement entered into under this section, in the event that an affected water supply cannot reasonably be restored or that a permanent alternate source, as described in section 5.2(i), cannot reasonably be provided within three years of the date on which the supply was adversely affected, the landowner shall have the option of proceeding pursuant to section 5.2(g) and (h). Any amounts previously paid to the landowner by the mine operator pursuant to an agreement entered into under this section that were not used by the landowner to restore or replace the affected water supply or to secure a permanent alternate source, as described in section 5.2(i), shall be deducted from the compensation determined to be due pursuant to section 5.2(g).

(b) In every deed for the conveyance of property for which an agreement executed pursuant to subsection (a) is effective at the time of transfer, the grantor shall include in the deed a recital of the agreement and any release contained therein.

(c) Nothing contained in this act shall prevent any landowner or water user who claims contamination, diminution or interruption of a water supply from seeking any other remedy that may be provided at law or in equity. In any proceedings in pursuit of a remedy other than as provided herein, the provisions of this act shall not apply and the party or parties against whom liability is sought to be imposed may assert in defense any rights or waivers arising from provisions contained in deeds, leases or agreements pertaining to mining rights or coal ownership on the property in question.

(5.3 added June 22, 1994, P.L.357, No.54)

Section 5.4. Restoration or compensation for structures damaged by underground mining.--(a) Whenever underground mining operations conducted under this act cause damage to any of the following surface buildings overlying or in the proximity of the mine:

(1) any building which is accessible to the public, including, but not limited to, commercial, industrial and recreational buildings and all permanently affixed structures appurtenant thereto;

(2) any noncommercial buildings customarily used by the public, including, but not limited to, schools, churches and hospitals;

(3) dwellings used for human habitation and permanently affixed appurtenant structures or improvements in place on the effective date of this section or on the date of first publication of the application for a Mine Activity Permit or a five-year renewal thereof for the operations in question and within the boundary of the entire mine as depicted in said application; or

(4) the following agricultural structures: all barns and silos and all permanently affixed structures of five hundred or

more square feet in area that are used for raising livestock, poultry or agricultural products, for storage of animal waste or for the processing or retail marketing of agricultural products produced on the farm on which such structures are located; the operator of such coal mine shall repair such damage or compensate the owner of such building for the reasonable cost of its repair or the reasonable cost of its replacement where the damage is irreparable.

(b) For any irreparably damaged agricultural structure identified in subsection (a)(4) which, at the time of damage, the operator can affirmatively prove was being used for a different purpose than the purpose for which such structure was originally constructed, the operator may provide for the reasonable cost to replace the damaged structure with a structure satisfying the functions and purposes served by the damaged structure before such damage occurred.

(c) A mine operator shall not be liable to repair or compensate for subsidence damage if the mine operator, upon request, is denied access to the property upon which the building is located to conduct premining and postmining surveys of the building and surrounding property and thereafter serves notice upon the landowner by certified mail or personal service, which notice identifies the rights established by sections 5.5 and 5.6 and this section, the mine operator was denied access and the landowner failed to provide or authorize access within ten days after receipt thereof.

(5.4 added June 22, 1994, P.L.357, No.54)

Section 5.5. Procedure for securing repair and/or compensation for damage to structures caused by underground mining; duties of Department of Environmental Resources.--(a) The owner of any building enumerated in section 5.4(a) who believes that the removal of coal has caused mine subsidence resulting in damage to such building and who wishes to secure repair of or compensation for such damage shall notify the mine operator. If the mine operator agrees that mine subsidence damaged such building, he shall cause such damage to be fully repaired or compensate the owner for such damage in accordance with section 5.4(a) or with an agreement reached between the parties either prior to mining or after the damage has occurred.

(b) If the parties are unable to agree within six months of the date of notice as to the cause of the damage or the reasonable cost of repair or compensation, the owner of the building may file a claim in writing with the Department of Environmental Resources, a copy of which shall be sent to the operator. All claims under this subsection shall be filed within two years of the date damage to the building occurred.

(c) The department shall make an investigation of a claim within thirty days of receipt of the claim. The department shall, within sixty days following the investigation, make a determination in writing as to whether the damage was caused by subsidence due to underground coal mining and, if so, the reasonable cost of repairing or replacing the damaged structure. If the department finds the damage to be caused by the mining, it shall issue a written order directing the operator to compensate or to cause repairs to be made within six months or a longer period if the department finds that occurrence of subsidence or subsequent damage may occur to the same building as a result of mining.

(d) In no event shall the mine operator be liable for

repairs or compensation in an amount exceeding the cost of replacement of the damaged structure. The occupants of a damaged structure shall also be entitled to additional payment for reasonable, actual expenses incurred for temporary relocation and for other actual reasonable, incidental costs agreed to by the parties or approved by the department.

(e) If either the landowner or the mine operator is aggrieved by an order issued by the department under section 5.4 or this section, such person shall have the right to appeal the order to the Environmental Hearing Board within thirty days of receipt of the order. The appeal of a mine operator shall not be considered to be perfected unless, within sixty days of the date on which the mine operator received the department's order, the operator has deposited an amount equal to the cost of repair or the compensation amount ordered by the department in an interest-bearing escrow account administered for such purposes by the department.

(f) If the mine operator shall fail to repair or compensate for subsidence damage within six months or such longer period as the department has established or shall fail to perfect an appeal of the department's order directing such repair or compensation, the department shall issue such orders and take such actions as are necessary to compel compliance with the requirements hereof, including, but not limited to, cessation orders and permit revocation. If the mine operator fails to repair or compensate for damage after exhausting its right of appeal, the department shall pay the escrow deposit made with respect to the particular claim involved and accrued interest to the owner of the damaged building.

(g) Except as provided in subsection (f), the existence of unresolved claims of subsidence damage shall not be used by the department as a basis for withholding permits from or suspending review of permit applications submitted by the mine operator against whom such claims have been made.

(5.5 added June 22, 1994, P.L.357, No.54)

Compiler's Note: The Department of Environmental Resources, referred to in this section, was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 5.6. Voluntary agreements for repair or compensation for damages to structures caused by underground mining; deed recital.--(a) Nothing contained in this act shall prohibit the mine operator and the landowner at any time after the effective date of this section from voluntarily entering into an agreement establishing the manner and means by which repair or compensation for subsidence damage is to be provided. Any release contained in such an agreement shall only be valid in releasing the operator from liability under this act if it clearly states what rights are established by this act and the landowner expressly acknowledges the release as consideration for the alternate remedies provided under the agreement, except that such remedies shall be no less than those necessary to compensate the owner of a building for the reasonable cost of its repair or the reasonable cost of its replacement where the damage is irreparable. Any such release shall be null and void if no mining occurs for a period of thirty-five years within the coal field of which the coal underlying the affected surface

property forms a part.

(b) In every deed for the conveyance of property for which an agreement executed pursuant to subsection (a) is effective, the grantor, at the time of transfer, shall include in the deed a recital of the agreement and any release contained therein.

(c) The duty created by section 5.5 to repair or compensate for subsidence damage to the buildings enumerated in section 5.4(a) shall be the sole and exclusive remedy for such damage and shall not be diminished by the existence of contrary provisions in deeds, leases or agreements which relieved mine operators from such duty. Nothing herein shall impair agreements entered into after April 27, 1966, and prior to the effective date of this section, which, for valid consideration, provide for a waiver or release of any duty to repair or compensate for subsidence damage. Any such waiver or release shall only be valid with respect to damage resulting from the mining activity contemplated by such agreement.

(d) In every deed for the conveyance of property for which an agreement executed pursuant to subsection (c) is effective at the time of transfer, the grantor shall include in the deed a recital of the agreement and any release contained therein.

(5.6 added June 22, 1994, P.L.357, No.54)

Section 6. Repair of damage or satisfaction of claims; revocation or suspension of permit; bond or collateral.--

(b) The department shall require the applicant to file a bond in a form prescribed by the secretary payable to the Commonwealth and conditioned upon the applicant's faithful performance of mining or mining operations, in accordance with the provisions of sections 5, 5.4, 5.5 and 5.6. Such bond shall be in a reasonable amount as determined by the department. Liability under such bond shall continue for the duration of the mining or mining operation, and for a period of ten years thereafter or such longer period of time as may be prescribed by rules and regulations promulgated hereunder, at which time the bond shall become of no force and effect, and it, or any cash or securities substituted for it as hereinafter provided, shall be returned to the applicant. Upon application of any proper party in interest, the department, after due notice to any person who may be affected thereby, and hearing, in accordance with the provisions of section 5(g), may order the amount of said bond to be increased or reduced or may excuse the permit holder from any further duty of keeping in effect any bond furnished pursuant to a prior order of the department and return said bond, or the securities or cash posted in lieu thereof, to the permit holder, notwithstanding any different provision herein respecting the duration or term of said bond. Such bond shall be executed by the applicant and a corporate surety licensed to do business in the Commonwealth: Provided, however, That the applicant may elect to deposit cash, automatically renewable irrevocable bank letters of credit which may be terminated by the bank at the end of a term only upon the bank giving ninety days prior written notice to the permittee and the department or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth, with the department in lieu of a corporate surety. The cash deposit or irrevocable letter of credit or market value of such negotiable bonds shall be at least equal to the sum of the bond. Where the mining

operation is reasonably anticipated to continue for a period of at least ten years from the date of application, the operator may, as an alternative, deposit collateral and file a collateral bond as provided for in this section according to the following phased deposit schedule. The operator shall, prior to commencing operations, deposit ten thousand dollars ($10,000.00) or 25% of the amount determined under this subsection, whichever is greater. The operator shall thereafter annually deposit 10% of the remaining bond amount for ten years. Interest accumulated by such collateral shall become a part of the bond. The department may require additional bonding at any time to meet the intent of this subsection. The collateral shall be deposited, in trust, with the State Treasurer, or with a bank, selected by the department, which shall act as trustee for the benefit of the Commonwealth, according to rules and regulations promulgated hereunder, to guarantee the operator's compliance with this act. The operator shall be required to pay all costs of the trust. The collateral deposit, or part thereof, shall be released of liability and returned to the operator, together with a proportional share of accumulated interest, upon the conditions of and pursuant to the schedule for release provided for by rules and regulations promulgated hereunder. In lieu of the bond required by this section, the department may require the operator of an underground mining operation to purchase subsidence insurance, as provided by the act of August 23, 1961 (P.L.1068, No.484), entitled, as amended, "An act to provide for the creation and administration of a Coal and Clay Mine Subsidence Insurance Fund within the Department of Environmental Resources for the insurance of compensation for damages to subscribers thereto; declaring false oaths by the subscribers to be misdemeanors; providing penalties for the violation thereof; and making an appropriation," for the benefit of all surface property owners who may be affected by damage caused by subsidence. The insurance coverage shall be in an amount determined by the department to be sufficient to remedy any and all damage. The term of this obligation shall be for the duration of the mining and reclamation operation and for ten years thereafter. For all other surface effects of underground mining, the operator shall post a bond as required by this section. The department shall, upon receipt of any such deposit of cash or irrevocable letter of credit or negotiable bonds, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The applicant making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the department, 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 become due and payable: Provided, however, That where negotiable bonds, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the applicant, shall convert such negotiable bonds into such other negotiable bonds of the classes herein specified as may be designated by the applicant: And provided further, That where

notice of intent to terminate a letter of credit is given, the department shall give the permittee thirty days written notice to replace the letter of credit with other acceptable bond guarantees as provided herein, and if the permittee fails to replace the letter of credit within the thirty-day notification period, the department shall draw upon and convert such letter of credit into cash and hold it as a collateral bond guarantee.

The department, in its discretion, may accept a self-bond from the permittee, without separate surety, if the permittee demonstrates to the satisfaction of the department a history of financial solvency, continuous business operation and continuous efforts to achieve compliance with all United States of America and Pennsylvania environmental laws, and, meets all of the following requirements:

(1) The permittee shall be incorporated or authorized to do business in Pennsylvania and shall designate an agent in Pennsylvania to receive service of suits, claims, demands or other legal process.

(2) The permittee or if the permittee does not issue separate audited financial statements, its parent, shall provide audited financial statements for at least its most recent three fiscal years prepared by a certified public accountant in accordance with generally accepted accounting principles. Upon request of the permittee, the department shall maintain the confidentiality of such financial statements if the same are not otherwise disclosed to other government agencies or the public.

(3) During the last thirty-six calendar months, the applicant has not defaulted in the payment of any dividend or sinking fund installment or preferred stock or installment on any indebtedness for borrowed money or payment of rentals under long-term leases or any reclamation fee payment currently due under the Federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1232, for each ton of coal produced in the Commonwealth of Pennsylvania.

(4) The permittee shall have been in business and operating no less than ten years prior to filing of application unless the permittee's existence results from a reorganization, consolidation or merger involving a company with such longevity. However, the permittee shall be deemed to have met this requirement if it is a majority-owned subsidiary of a corporation which has such a ten-year business history.

(5) The permittee shall have a net worth of at least six times the aggregate amount of all bonds applied for by the operator under this section.

(6) The permittee shall give immediate notice to the department of any significant change in managing control of the company.

(7) A corporate officer of the permittee shall certify to the department that forfeiture of the aggregate amounts of self-bonds furnished for all operations hereunder would not materially affect the permittee's ability to remain in business or endanger its cash flow to the extent it could not meet its current obligations.

(8) The permittee may be required by the department to pledge real and personal property to guarantee the permittee's self-bond. The department is authorized to acquire and dispose of such property in the event of a default to the bond obligation and may use the moneys in the Bituminous Mine Subsidence and Land Conservation Fund to administer this

provision.

(9) The permittee may be required to provide third party guarantees or indemnifications of its self-bond obligations.

(10) The permittee shall provide such other information regarding its financial solvency, continuous business operation and compliance with environmental laws as the department shall require.

(11) An applicant shall certify to the department its present intention to maintain its present corporate status for a period in excess of five years.

(12) A permittee shall annually update the certifications required hereunder and provide audited financial statements for each fiscal year during which it furnishes self-bonds.

(13) The permittee shall pay an annual fee in the amount determined by the department of the cost to review and verify the permittee's application for self-bonding and annual submissions thereafter.

(c) If it shall be determined by the department that the holder of a permit issued pursuant to the provisions of this act who has furnished a bond under this section, has failed or refused to comply with the provisions of this act, the department shall certify such determination to the Attorney General. The Attorney General shall proceed immediately to enter suit upon said bond and to collect such amount as may be necessary to redress or repair the damage occasioned by such violation, together with the costs of said proceedings. Where the holder of the permit has deposited cash or negotiable bonds as collateral in lieu of a corporate surety, the department shall declare such collateral forfeited and shall direct the State Treasurer to pay said funds or proceed to sell said collateral and pay the proceeds thereof to the department to be used in accordance with the purposes of this section. Should the amount so collected be insufficient to redress or repair the damage, the owner, operator, lessor, lessee, general manager, and superintendent or other person having charge of said mine or mining operation, shall be jointly and severally liable for the deficiency. Should the amount so collected exceed the amount necessary to restore or repair the damage occasioned by such violation, such excess shall be held by the department as collateral for future damage contemplated herein until all liability of the permittee is released.

(6 amended June 22, 1994, P.L.357, No.54)

Compiler's Note: The Department of Environmental Resources, referred to in this section, was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 7. Jurisdiction; enforcement; rulemaking.--(a) All bituminous coal mines or mining operations coming within the provisions of this act shall be under the exclusive jurisdiction of the Department of Environmental Resources and shall be conducted in accordance with this act, the act of July 17, 1961 (P.L.659, No.339), known as the "Pennsylvania Bituminous Coal Mine Act," the act of November 10, 1965 (P.L.721, No.346), known as the "Pennsylvania Anthracite Coal Mine Act," the act of July 9, 1976 (P.L.931, No.178), entitled "An act providing for emergency medical personnel; employment of emergency medical personnel and emergency communications in coal mines," and with

such reasonable rules and regulations as may be deemed necessary by the department for the health and safety of those persons engaged in the work. The department shall have the power to enforce the provisions of this act and the rules and regulations promulgated hereunder by it.

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

(7 amended Oct. 10, 1980, P.L.874, No.156)

Compiler's Note: The Department of Environmental Resources, referred to in this section, was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 8. Maps or plans.--Every owner, operator, lessor or lessee engaged in the mining of bituminous coal subject to the provisions of this act shall make or cause to be made a true and accurate map or plan of the workings or excavations of such coal mine or colliery which shall be in accordance with standards established by the department. Such maps or plans shall show in detail, and in markings of a distinctive color, all contemplated workings which are intended to be undertaken or developed within the succeeding six months and shall show, distinctively and in detail, all supports, artificial or otherwise, to be provided in accordance with the permit. Such maps or plans shall be deposited as often as once in six months with the recorder of deeds of any county in which such mining of bituminous coal is or will be conducted and in addition thereto, with such political subdivisions where mining is taking place or is contemplated, as shall request such maps. Such maps or plans shall be considered public records and shall be open to the inspection of the public and copies or tracings may be made therefrom. No mining shall be done which is not shown on such map or plan filed at least ten days previously.

(8 amended Oct. 10, 1980, P.L.874, No.156)

Section 9. Orders.--The department shall have the right to enter upon and inspect all bituminous coal mines and coal mining operations coming within the provisions of this act for the purpose of determining conditions of safety and for compliance with the provisions of this act and all rules and regulations promulgated pursuant hereto. The department may issue such orders as are necessary to aid in the enforcement of the provisions of this act. Such orders shall include, but shall not be limited to, orders modifying, suspending or revoking permits and orders requiring persons to cease operations. The right of the department to issue an order under this act is in addition to any penalty which may be imposed pursuant to this act. The department shall have the authority to order the immediate cessation of any operation that is being conducted without a permit, as required by this act, or in any case where safety regulations are being violated or in any case where the public welfare or safety calls for the immediate cessation of the operation until corrective steps have been started by the operator to the satisfaction of the department.

(9 amended Oct. 10, 1980, P.L.874, No.156)

Section 9.1. Prevention of hazards to human safety and material damage to certain buildings.--(a) If the Department of Environmental Resources determines and so notifies the mine operator that a proposed mining technique or extraction ratio will result in subsidence which creates an imminent hazard to human safety, utilization of such technique or extraction ratio shall not be permitted unless the mine operator, prior to mining, takes measures approved by the department to eliminate the imminent hazard to human safety.

(b) If the department determines and so notifies the mine operator that a proposed mining technique or extraction ratio will cause subsidence which will result in irreparable damage to a building enumerated in section 5.4(a)(3) or (4), utilization of such technique or extraction ratio shall not be permitted unless the building owner, prior to mining, consents to such mining or the mine operator, prior to mining, agrees to take measures approved by the department to minimize or reduce impacts resulting from subsidence to such buildings.

(c) Underground mining activities shall not be conducted beneath or adjacent to:

(1) public buildings and facilities;

(2) churches, schools or hospitals;

(3) impoundments with a storage capacity of twenty acre-feet or more; or

(4) bodies of water with a volume of twenty acre-feet or more;

unless the subsidence control plan demonstrates that subsidence will not cause material damage to or reduce the reasonably foreseeable use of such features or facilities. If the department determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(d) Nothing in this act shall be construed to amend, modify or otherwise supersede standards related to prevailing hydrologic balance contained in the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et seq.) and regulations promulgated by the Environmental Quality Board for the purpose of obtaining or maintaining primary jurisdiction over the enforcement and administration of that act nor any standard contained in the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law," or any regulation promulgated thereunder by the Environmental Quality Board.

(9.1 added June 22, 1994, P.L.357, No.54)

Compiler's Note: The Department of Environmental Resources, referred to in subsec. (a), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 10. Notice of operations.--Every owner, operator, lessor or lessee engaged in the mining of bituminous coal or every general manager, superintendent or other person in charge of, or having supervision over, any bituminous coal mine or mining operation presently open, or hereafter opened or

reopened, shall give, or cause to be given, by registered mail or certified mail, a mining schedule notice of the present existence of such a mine or mining operation, or of the intent to commence or to recommence mining or mining operations at least six months prior to mining under the property to the political subdivisions within which such mine or mining operation is, or is to be, located and to the owners of record of the surface lands overlying such existing or proposed mine or mining operation. All notices given, or caused to be given, to the owners of record of the surface lands pursuant to this section shall contain a statement that the maps or plans required under sections 5 and 8 of this act have been filed with the appropriate public officers, and shall contain the locations of the offices where such maps and plans may be inspected.

(10 amended Oct. 10, 1980, P.L.874, No.156)

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

(11 amended Oct. 10, 1980, P.L.874, No.156)

Section 12. Powers of county commissioners.--The county commissioners shall have the power to prevent the mining of bituminous coal beneath the surface in any mine or mining operation in violation of this act, and where mining operations are being conducted in violation of this act, they shall have the power to prevent any miner or laborer, other than those necessary for the protection of life and property, from entering the mine or mining operation until such time as the provisions of this act have been complied with.

(12 amended Oct. 10, 1980, P.L.874, No.156)

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

(b) Except as provided in subsection (d), any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this act or any rule, regulation, order or permit issued pursuant to this act against the department where there is alleged a failure of the department to perform any act which is not discretionary with the department or against any other person who is alleged to be in violation of any provision of this act or any rule, regulation, order or permit issued pursuant to this act. Any other provision of law to the contrary notwithstanding, the courts of common pleas shall have jurisdiction of such actions, and venue in such actions shall be as set forth in the Rules of Civil Procedure concerning actions in assumpsit.

(c) Whenever any person presents information to the department which gives the department reason to believe that any person is in violation of any requirement of this act or any condition of any permit issued hereunder or of the acts enumerated in section 7 or any condition or any permit issued thereunder, the department shall immediately order inspection of the operation at which the alleged violation is occurring, and the department shall notify the person presenting such information and such person shall be allowed to accompany the inspector during those parts of the inspection relating to the surface effects of the underground mining operation.

(d) No action pursuant to subsection (b) may be commenced prior to sixty days after the plaintiff has given notice in writing of the violation to the department and to any alleged violator, nor may such action be commenced if the department has commenced and is diligently prosecuting a civil action in a court of the United States or a state to require compliance with this act or any rule, regulation, order or permit issued pursuant to this act, but in any such action in a court of the United States or of the Commonwealth any person may intervene as a matter of right.

(e) The provisions of subsection (d) to the contrary notwithstanding, any action pursuant to this section may be initiated immediately upon written notification to the department in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(f) The court, in issuing any final order in any action brought pursuant to subsection (b), may award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security under the Rules of Civil Procedure.

(13 amended Oct. 10, 1980, P.L.874, No.156)

Section 14. Conveyance of surface land.--After the effective date of this act the grantor in every deed for the conveyance of surface land in a county in which bituminous coal has been found and is separately assessed for taxation shall certify in the deed whether any structure then or thereafter erected on the land so conveyed is entitled to support from the underlying coal. If the grantor shall not certify that there is such a right of support, the grantee shall sign a statement printed in the deed in a contrasting color with no less than twelve point type that he knows that he may not be obtaining the right of

protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interests in the coal. Such statement shall be preceded by the word "Notice" printed in the same color as the statement with no less than twenty-four point type.

(14 amended Oct. 10, 1980, P.L.874, No.156)

Section 15. Proceedings for protection of surface structures.--(15 repealed June 22, 1994, P.L.357, No.54)

Section 16. Right to hearing and appeal.--Title 2 of the Pa.C.S. (relating to administrative law and procedure) shall apply to all administrative rules, regulations and orders issued pursuant to this act, except as otherwise provided for proceedings to determine compensation payable in section 15 hereof. Any owner, operator, lessor, lessee, general manager, superintendent, or other person in charge of or having supervision over any bituminous coal mine or mining operation subject to the provisions of this act, any landowner, or any political subdivision or county which shall be aggrieved or affected by any administrative rule, regulation or order of the department issued pursuant to the provisions of this act, shall have the right to appear at any hearing before the Environmental Hearing Board at which the secretary shall reconsider said action. After such hearing the Environmental Hearing Board shall issue an adjudication from which the aggrieved or affected party may appeal in the manner provided by Title 2 of the Pa.C.S. (relating to administrative law and procedure).

(16 amended Oct. 10, 1980, P.L.874, No.156)

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

(b) Any operator who violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to this act with the exception of those cases covered by subsection (a) is guilty of a summary offense and, upon conviction, such person or municipality shall be subject to a fine of not less than one hundred dollars ($100.00) nor more than ten thousand dollars ($10,000.00) for each separate offense, and, in default of the payment of such fine, a person shall be imprisoned for a period of ninety days.

(c) Any operator who willfully or negligently violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to the act is guilty of a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than two thousand five hundred dollars ($2,500.00) nor more than fifty thousand dollars ($50,000.00) for each separate

offense or to imprisonment for a period of not more than two years, or both.

(d) Each day of continued violation of any provision of this act or of any rule or regulation of the department, or of any order of the department issued pursuant to this act shall constitute a separate offense.

(e) All summary proceedings under the provisions of this act may be brought before any district justice of the county where the offense occurred, or in the county where the public is affected, and to that end jurisdiction is hereby conferred upon said district justices, subject to appeal by either party in the manner provided by law. In the case of any appeal for any such conviction in the manner provided by law for appeals from summary conviction, it shall be the duty of the district attorney of the county to represent the interests of the Commonwealth.

(f) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act, rule, regulation, order of the department, or a condition of any permit issued pursuant to this act, the department may assess a civil penalty upon an operator for such violation. Such a penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed five thousand dollars ($5,000.00) per day for each violation. In determining the amount of the civil penalty the department shall consider the willfulness of the violation, damage or injury, cost of repairing the injury and other relevant factors. If the violation leads to the issue of a cessation order, a civil penalty shall be assessed. If the violation involves the failure to correct, within the period prescribed for its correction, a violation for which a cessation order, other abatement order or notice of violation has been issued, a civil penalty of not less than seven hundred fifty dollars ($750.00) shall be assessed for each day the violation continues beyond the period prescribed for its correction: Provided, however, That correction of a violation within the period prescribed for its correction shall not preclude assessment of a penalty for the violation. Upon the issuance of a notice or order charging that a violation of the act has occurred, the department shall inform the operator within a period of time to be prescribed by rules and regulations of the proposed amount of said penalty. The operator charged with the penalty shall then have thirty days to pay the proposed penalty in full or, if the operator wishes to contest either the amount of the penalty or the fact of the violation, the operator shall forward the proposed amount to the department for placement in an escrow account with the State Treasurer or any Pennsylvania bank, or post an appeal bond in the amount of the proposed penalty, such bond shall be executed by a surety licensed to do business in the Commonwealth and be satisfactory to the department. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the department shall within thirty days remit the appropriate amount to the operator, with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond to the department within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. The amount assessed after administrative hearing or

waiver of administrative hearing shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided at law for the collection of debts. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a judgment in favor of the Commonwealth upon the property of such person from the date it has been entered and docketed of record by the prothonotary of the county where such is situated. The department may, at any time, transmit to the prothonotaries of the respective counties certified copies of all such judgments, and it shall be the duty of each prothonotary to enter and docket the same of record in his office, and to index it as judgments are indexed, without requiring the payment of costs and fees as a condition precedent to the entry thereof. Any other provision of law to the contrary notwithstanding, there shall be a statute of limitations of five years upon actions brought by the Commonwealth pursuant to this section.

(g) For purposes of this act, the term "person" shall be construed to include any natural person, partnership, association or corporation or any agency, instrumentality or entity of Federal or State Government. Whenever used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term "person" shall also include the members of an association and the directors, officers or agents of a corporation and the term "municipality" shall be construed to include any county, city, borough, town, township, school district, institution or any authority created by one or more of the foregoing.

(17 amended Oct. 10, 1980, P.L.874, No.156)

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

(17.1 amended June 22, 1994, P.L.357, No.54)

Section 17.2. Creation of the Bituminous Mine Subsidence and Land Conservation Fund.--All funds received by the department from permit fees, from forfeitures of bonds and of cash deposits and securities, and from all fines and all civil penalties collected under this act, shall be held by the State Treasurer in a special fund, separate and apart from all other moneys in the State Treasury, to be known as the "Bituminous Mine Subsidence and Land Conservation Fund," and shall be used by the department for the protection of the health, safety and general welfare of the people of the Commonwealth of Pennsylvania, and for the conservation of surface land areas which may be affected by the deep mining of bituminous coal.

(17.2 added Oct. 10, 1980, P.L.874, No.156)

Compiler's Note: Section 12 of Act 173 of 1992 provided that section 17.2 is repealed insofar as it is inconsistent

with that act.

Section 18. Legislative oversight.--In order to maintain primary jurisdiction over surface coal mining in Pennsylvania pursuant to the Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, the Environmental Quality Board shall have the authority to adopt initial regulations on an emergency basis in accordance with section 204(3) (relating to omission of notice of proposed rule making) of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law. Provided, however, within thirty days after the Secretary of the United States Department of Interior grants such primary jurisdiction to Pennsylvania, the Environmental Quality Board shall repropose the regulations adopted on an emergency basis, shall submit the regulations to the Senate Environmental Resources and House Mines and Energy Management Committees of the General Assembly for their review and comments, and shall schedule public hearings within ninety days after such grant of primary jurisdiction for the purpose of hearing public comment on any appropriate revisions.

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

(18 amended Oct. 10, 1980, P.L.874, No.156)

Section 18.1. Compilation and analysis of data.--(a) The department shall compile, on an ongoing basis, the information contained in deep mine permit applications, in monitoring reports and other data submitted by operators, from enforcement actions and from any other appropriate source for the purposes set forth below.

(b) Such data shall be analyzed by the department, utilizing the services of professionals or institutions recognized in the field, for the purpose of determining, to the extent possible, the effects of deep mining on subsidence of surface structures and features and on water resources, including sources of public and private water supplies.

(c) The analysis of such data and any relevant findings shall be presented in report form to the Governor, the General Assembly and to the Citizens Advisory Council of the department at five-year intervals commencing in 1993.

(d) Nothing contained herein shall be construed as authorizing the department to require a mine operator to submit additional information or data, except that it shall require reporting of all water loss incidents or claims of water loss.

(18.1 added June 22, 1994, P.L.357, No.54)

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

(19 amended Oct. 10, 1980, P.L.874, No.156)

Section 19.1. Severability.--It is hereby declared that the provisions of this act are severable one from another and if for any reason this act shall be judicially declared and determined to be unconstitutional so far as relates to one or more words,

phrases, clauses, sentences, paragraphs or sections hereof, such judicial determination shall not affect any other provision of this act. It is hereby declared that the remaining provisions would have been enacted notwithstanding such judicial determination of the validity in any respect of one or more of the provisions of this act.

(19.1 amended Oct. 10, 1980, P.L.874, No.156)

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

(20 amended Oct. 10, 1980, P.L.874, No.156)

Section 20.1. Saving clause.--In order to maintain primary jurisdiction over coal mining in Pennsylvania, it is hereby declared that for a period of two years from the effective date of this act the department shall not enforce any provision of this act which was enacted by these amendments solely to secure for Pennsylvania primary jurisdiction to enforce Public Law 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, if the corresponding provision of that act is declared unconstitutional or otherwise invalid due to a final judgment by a Federal court of competent jurisdiction and not under appeal or is otherwise repealed or invalidated by final action of the Congress of the United States. If any such provision of Public Law 95-87 is declared unconstitutional or invalid, the corresponding provision of this act enacted by these amendments solely to secure for Pennsylvania primary jurisdiction to enforce the Federal Surface Mining Control and Reclamation Act of 1977, Public Law 95-87 shall be invalid and the secretary shall enforce this act as though the law in effect prior to these amendments remained in full force and effect.

It is hereby determined that it is in the public interest for Pennsylvania to secure primary jurisdiction over the enforcement and administration of Public Law 95-87, the Federal Surface Mining Control and Reclamation Act, and that the General Assembly should amend this act in order to obtain approval of the Pennsylvania program by the United States Department of the Interior. It is the intent of this act to preserve existing Pennsylvania law to the maximum extent possible.

(20.1 added Oct. 10, 1980, P.L.874, No.156)

Section 21. Effective date.--This act shall take effect immediately.

(21 amended Oct. 10, 1980, P.L.874, No.156)

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