

Appendix A

Act 54 of 1994

Amendments to the Bituminous Mine Subsidence and Land Conservation Act

Official Advance Copy

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No. 1994-54

AN ACT

SB 955

Amending the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), entitled "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; forbidding damage to specified classes of existing structures from the mining of bituminous coal; 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; providing for acquisition with compensation of coal support for existing structures not protected by this act, and future structures; and imposing liability for violation of the act," providing for the restoration or replacement of water supplies materially affected by mining; further providing for the replacement or repair of certain structures affected by mine subsidence; further providing for appeals and departmental action; and making repeals.

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

Section 1. The title 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, is amended to read:

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; **[forbidding damage to specified classes of existing structures from the mining of bituminous coal;] *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

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a warning of the possible lack of any such right of support; **[providing for acquisition with compensation of coal support for existing structures not protected by this act, and future structures;] 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.

Section 2. Sections 2 and 3 of the act, amended October 10, 1980 (P.L.874, No.156), are amended to read:

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 **[water supplies] 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.

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

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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 provide for the protection of those presently existing structures which are or may be damaged due to mine subsidence.] *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.*

[(7)] (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.

Section 3. Section 4 of the act is repealed.

Section 4. Section 5(b) of the act, amended October 10, 1980 (P.L.874, No.156), is amended to read:

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.—* * *

(b) The department shall require the applicant to file a bond or other security as recited in section [6(b)] *6(a)*, to insure the applicant's faithful performance of mining or mining operations[, in accordance with the provisions of section 4].

* * *

Section 5. The act is amended by adding sections to read:

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

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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.

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.

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(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:

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(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

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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.

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).

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(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.

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.

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(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.

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

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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.

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

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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.

Section 6. Section 6 of the act, amended October 10, 1980 (P.L.874, No.156), is amended to read:

Section 6. Repair of damage or satisfaction of claims; revocation or suspension of permit; bond or collateral.—(a) If the removal of coal or other mining operations by a holder of a permit granted under section 5 causes damage to structures set forth in section 4 of this act the permittee shall submit evidence that such damage has been repaired or that all claims arising therefrom have been satisfied, to the department within six months from the date that the permittee knows, or has reason to know, such damage has occurred or, at the option of the permittee, within such period there shall be deposited with the Secretary of Environmental Resources as security for such repair or such satisfaction a sum of money in an amount equal to said damage or the reasonable cost of repair thereof, as estimated by a reputable expert. In default of the filing of such evidence or such deposit, the department shall suspend or revoke said permit.

No permit revoked or suspended pursuant to this section shall be reissued or reinstated until the applicant shall have furnished satisfactory evidence to the department that the damage for which the permit was revoked or suspended has been repaired or all claims arising therefrom satisfied, in accordance with this subsection.]

(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 [4 and 5] 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

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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

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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.

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(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

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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.

Section 7. The act is amended by adding a section to read:

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),

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known as "The Clean Streams Law," or any regulation promulgated thereunder by the Environmental Quality Board.

Section 8. Section 15 of the act is repealed.

Section 9. Section 17.1 of the act, added October 10, 1980 (P.L.874, No.156), is amended to read:

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, [to cause land subsidence or injury] 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.

Section 10. The act is amended by adding a section to read:

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.

Section 11. This act shall take effect in 60 days.

APPROVED—The 22nd day of June, A.D. 1994.

ROBERT P. CASEY