(Middle District of Pa.). This lawsuit was filed by DEP on behalf of the Commonwealth following the publication by OSM of a final rule at 66 Fed.Reg. 67011 (December 27, 2001) ("OSM Disapproval Rulemaking"), which purported to suspend the above sections of the BMSCLA, various other provisions of the BMSCLA and which obligated Pennsylvania to take a plethora of very specific actions with respect to its subsidence control regulations set forth at 25 Pa.Code Chapter 89. PCA has pending a motion to Intervene in this litigation, which is currently stayed.

PCA also filed a similar lawsuit against OSM, at C.A. No. 02-CV-300 (Middle District of Pa.), which remains pending and which has been consolidated with DEP's lawsuit.

In its pending lawsuit against OSM PCA has alleged that the OSM Disapproval of Proposed Amendments to the Pa. Program was, *inter alia*, an abuse of discretion.

Background

The specific provisions of the BMSCLA which are proposed for supercession were added to the BMSCLA by Act 54 of 1994 ("Act 54"). A copy of Act 54 is attached hereto as Attachment 2.

History of Mine Subsidence Regulation in Pennsylvania

Pennsylvania is where underground coal mining began in this country and the General Assembly of the Commonwealth has had more experience regulating the surface impacts of underground mining than any other lawmaking body in the United States.

Pennsylvania was the first State to regulate the subsidence impacts of underground mining. It first did so in the 1920's when the General Assembly passed what was known as the Kohler Act, which required anthracite coal operators to mine so as not to cause damage to various surface structures and features. In the 1930's the General Assembly then passed a similar law regulating underground coal mining in Allegheny County, Pennsylvania, which was then the one county in the bituminous coal fields where underground mining was taking place beneath relatively densely populated areas. See 52 P.S. §§ 1407-1410d. Thirty years later, in 1966, the General Assembly passed the 1966 version of the BMSLCA ("1966 Act") which, for the first time, comprehensively regulated the subsidence impacts of underground mining throughout the bituminous coal fields of Western Pennsylvania. A copy of the 1966 Act is attached as Attachment 3.

Thus, unlike any other coal producing State, Pennsylvania has had a long and time-tested tradition of providing surface owners protection against the impacts of bituminous underground coal mining, having developed numerous programs over the years which were tailored to meet the needs of all Pennsylvanians, many of whom depend upon a strong and viable underground coal mining industry.

The 1966 Act was first amended in 1980 to enable Pennsylvania to seek primacy from OSM following the passage of SMCRA and the development of OSM's initial surface owner

protection regulations.[2] A copy of the 1980 amendments to the 1966 Act is attached as Attachment 4. As is clear, from a review of the 1980 amendments, although desirous of retaining primacy, the Pennsylvania General Assembly was equally desirous of preserving the unique nature of Pennsylvania State law to the maximum extent allowable under SMCRA.

Therefore, even after OSM granted Pennsylvania primacy in 1982, the BMSLCA still required underground mine operators to leave support coal in place beneath all of the structures protected by Section 4 of the 1966 Act, including dwellings used for human habitation which were in place on the date the law was enacted (April 27, 1966). See Attachment 3. The 1966 Act also still provided, in Section 15, that any surface owner who did not own the right of surface support (which is a separate and distinct estate in land in Pennsylvania) could re-acquire this right from the coal operator. *Ibid.* These provisions were far more stringent than OSM's final surface owner protection provisions that were in place prior to the 1992 Amendments to SMCRA, which are discussed below. See, e.g., 30 CFR § 817.121 (1984) a copy of which is attached as Attachment 5.

The stringent character of the BMSCLA prior to the passage of Act 54, and, in particular, the combined impact of Sections 4 and 15, made it extremely difficult (and in some instances impossible) for Pennsylvania longwall mining companies to efficiently and economically plan and conduct full-extraction longwall mining beneath and adjacent to structures protected by these provisions. This problem was compounded by the fact that in Pennsylvania, unlike many coal producing states, full extraction underground mining is (and has been for many years) limited to the Pittsburgh Seam of Coal, which underlies areas of Western Pennsylvania that are, in comparison to coal mining areas in other states, densely populated and experiencing growth. See Attachment 6, which compares the population of Washington and Greene Counties in Pennsylvania, the only two counties in Pennsylvania were full extraction longwall mining is now conducted with the populations of several counties in neighboring States where full extraction longwall mining is conducted.

In 1992 SMCRA was amended to impose, for the first time, regardless of the requirements of state law, a federal requirement that subsidence damage caused to dwellings used for human habitation had to be repaired or compensated for and a requirement that domestic water supplies adversely affected by underground mining had to be replaced or restored. In this same time frame, PCA and various of its members companies were participating in a Western Pennsylvania Conservancy sponsored "mediation" effort with other stakeholders for the purpose of developing a consensus on how best to amend the 1966 Act to eliminate the impediments to longwall mining imposed by Sections 4 and 15 of the 1966 Act and to accommodate the needs and rights of both surface owners and underground mine operators while meeting the requirements of Federal law. This process, known as the Deep Mine Mediation Process ("DMMP"), involved representatives of the coal mining industry, the agricultural community (Pennsylvania's largest industry), citizen's groups and other interested organizations. The participants engaged in months of discussion and debate over how best to develop amendments to the 1966 Act which would best meet the needs of Pennsylvania.

[2] As OSM knows full well, its initial "surface owner" protection regulations relating to structures were largely modeled after the requirements of Pennsylvania law, as the various references to Pennsylvania studies in the preamble to OSM's "initial" regulations confirm. *See* 44 Fed.Reg. 15272 (March 13, 1979). Of course, in 1983 OSM amended these regulations to remove many of the protections contained in its initial regulations which, ultimately, led to the passage of Section 720 of SMCRA some 9 years later.

As a result of the DMMP, a consensus was eventually reached concerning amendments to the 1966 Act. While no stakeholder got every amendment it believed was appropriate, virtually every stakeholder believed a reasonable compromise had been achieved. A copy of the DMMP final report ("DMMP Report"), which was communicated to the Pennsylvania General Assembly, is attached as Attachment 7. As is apparent from a comparison of Attachment 7 (the DMMP Report) and Attachment 2 (Act 54), the Pennsylvania General Assembly essentially adopted the DMMP Report as its model for amending the 1966 Act and declined to accept additional amendments that would have "gutted" many of compromises worked out by the DMMP. See Comments of General Assembly regarding the passage of Act 54, which are attached as Attachment 8.

In doing so, the General Assembly not only adopted the views of the DMMP participants, it also took into account various factors which are unique to Pennsylvania and developed a subsidence control program for Pennsylvania which, although far more comprehensive than OSM's, is nevertheless consistent with the goals and objectives of SMCRA and OSM's regulations. This is confirmed by the following brief summary of only three of the provisions of Act 54, which OSM proposes to supersede.

1. Pennsylvania law, like it has for years, continues to assure every owner of a dwelling used for human habitation a right to assert a subsidence damage claim for "repair" (not just a claim for diminution in property value) if they cooperate with the Commonwealth and the mine operator and allow access to their property in advance of mining to conduct pre-mining inspections of structures that will be undermined and to evaluate what pre-mining measures, if any, might prevent or minimize subsidence damage. Unlike, Federal law, of course, Pennsylvania law also assures many more owners a similar right, similarly conditioned. Nevertheless, as discussed below, OSM contends that while Pennsylvania is free to reasonably condition the right of some structure owners to pursue a post-mining subsidence claim on the grant of pre-mining access to inspect their structures, it cannot do so for persons who own a dwelling.

2. Pennsylvania law, like it has for years, continues to treat subsidence claims for structural damage like any other "tort claim," and requires that such claims be pursued in a timely manner to foster prompt resolution of disputes while avoiding problems relating to stale evidence and fading memories. Consequently, it provides that all statutory claims for subsidence damage must be brought within two years of date such damage was discovered. [3] Although Congress did not expressly provide for a time frame within which a subsidence damage claims had to filed and OSM's regulations on this issue are completely silent, OSM nevertheless now contends that while Pennsylvania can impose a statute of limitations on the right of some structure owners to file a subsidence claim, it cannot do so for persons who own a dwelling.

3. Pennsylvania law, like it has for years, continues to provide protection to all dwellings in place when its laws have changed to impose greater obligations on mine operators and, since 1994, has provided protection for structures built after 1994 if they are in place at a

[3] This is actually a more liberal requirement that exists at common law, which provides that common law claims for subsidence damage in Pennsylvania must be brought within two years of the date mining ceased, even if the surface owner had no reason to know that such mining had occurred or might have caused damage. *See, Penman v. Jones*, 256 Pa. 416 (1917).

time when the operator is (or should be aware) that the structure exists. However, the Pennsylvania General Assembly decided not to provide such protection to the persons who, with knowledge that mining will occur beneath their property within the next five years, voluntarily assume the risk of future subsidence damage by building a new structure, the location and value of which could seriously impede the operators ability to implement its already developed and approved mining plan. Even though underground mining in Pennsylvania, unlike, underground mining in other states, is a regular occurrence in areas where new structures are being built, and Pennsylvania affords protection to far more structures than Federal law does, OSM has concluded that Pennsylvania's program is not "consistent" with SMRCA and OSM's regulations. OSM has apparently done so because Pennsylvania law provides that persons who "elect" to build a new dwelling with knowledge that it might be damaged should be not be permitted to profit from their folly and should, like all other property owners, have an obligation to take reasonable steps to mitigate their own potential for damage.

Pennsylvania law does nothing more than impose a limited five (5) year "moratorium" on the ability of property owners to build new homes over areas where it is known mining will occur. This is a reasonable and carefully crafted requirement which furthers the State's interest in maintaining its tax base by "encouraging" new construction in areas where mining is not immediately planned and "discouraging" new construction in areas to be mined until such time as mining has ceased.[4]

That Pennsylvania has done so to accommodate local conditions of growth, to encourage growth in a manner which minimizes the potential for subsidence damage, together with a desire to foster sensible planning of future mining while fostering the growth of a viable underground coal mining industry, does not render this aspect of the Pennsylvania program "inconsistent" with SMCRA or OSM's regulations.

Act 54 was "package" of amendments, all of which were inextricably intertwined, and all of which represented compromises on the part of everyone concerned. It is both unreasonable and unnecessary, and an abuse of discretion for OSM to contend 9 years after Act 54 was passed that it can "supersede" some provisions of Act 54 without completely disregarding the intent of the Pennsylvania General Assembly which passed that law.

OSM's Current Position Is Inconsistent With Earlier Positions It Has Taken And The Manner In Which OSM Has Enforced Federal Law In Pennsylvania For The Past Nine Years

Pennsylvania has, for over 9 years, been regulating the subsidence impacts of bituminous underground mining in accordance with the very provisions of Act 54 which OSM now proposes to "supersede."

Throughout this 9 year period OSM has been fully willing to "share" enforcement authority with DEP, reserving the right to "directly enforce" its interpretation of Federal law in circumstances where it found that citizens of Pennsylvania were being denied their "rights" under SMCRA or OSM's regulations. See 60 Fed.Reg. 44352 (July 28, 1995).

[4] As OSM is knows full well, once an area has been undermined by full extraction longwall mining methods the overlying surface areas can be fully developed for virtually any use without fear of further subsidence.

Significantly, and despite 9 years of "dual enforcement," there have been, to PCA's knowledge, only a few instances when OSM saw any need to "directly enforce" some aspect of its subsidence control program. See Attachment 9, Statement of George Ellis, President of PCA. PCA specifically requests that OSM respond, in detail, to PCA's comment that OSM has had no cause, for over 9 years, to conclude that the Pennsylvania subsidence control program has deprived anyone of their "rights" under Federal law.

Furthermore, PCA is aware on no instances where the provisions of Act 54 relating to pre-mining inspections imposed by Section 5.4(c)of the BMSLCA, or the two year statute of limitations imposed by Section 5.5(b) of the BMSLCA, or the provisions of Section 5.4(a)(3) of the BMSLCA, relating to the time when a structure must have been built in order to be "protected," or any of the other provisions of the BMSLCA which OSM proposes to supersede, were found by OSM to have created any need for "federal enforcement." *Ibid.* On the other hand, PCA is aware of instances where OSM knew that property owners were reluctant to allow mine operators pre-mining access to their property to take pre-mining mitigation measures, yet did nothing to "enforce" their alleged Federal "right" to deny such access. Perhaps the best example of this involved so-called "historic structures" which, but for the requirements of state law that require owners to allow pre-mining access, would have likely been severely damaged by mining. In these cases Section 5.4(c) of the BMSLCA worked precisely as it was designed to work---it "encouraged" otherwise reluctant landowners (whose real objective was to preclude any mining beneath their property, an objective which is, of course, inconsistent with SMCRA) to allow the mine operator to inspect their "historic structures" prior to mining to determine what damage already was present and, more importantly, to design a pre-mining mitigation program to minimize the potential for subsidence damage. As a result, mining was able to proceed, and allegedly "historic structures" were undermined with far less (in some instances virtually no) subsidence damage, all of which the mine operator was then required to repair. See Attachment 10, copies of correspondence between representatives of a PCA member company and the owner of an "allegedly" historic structure who had initially refused to allow a pre-mining inspection for sole purpose of precluding any mining beneath their "historic" structure.

Pennsylvania's record speaks for itself. Nothing is "wrong" with the Pennsylvania subsidence control program by OSM's own tacit (and in some instances direct) admission. This is well documented in a recent report to the General Assembly concerning the effectiveness of Act 54. See Attachment 11.

There exits no **factual** basis for OSM to conclude that any provision of Act 54 should be "superseded," and PCA requests that OSM respond to these comments by citing specific factual instances where the implementation of the Sections of the BMSLCA proposed for supercession, as applied, have resulted in actual inconsistencies with SMCRA or OSM's regulations.

In addition, after Act 54 was passed and during the development of regulations to implement that Act, PCA did not overlook the need to obtain the OSM's approval of both Act 54 and its implementing regulations. Indeed, it immediately opened discussions with OSM concerning the Act 54 amendments even before DEP formally submitted them to OSM for approval. See Attachment 12, copies of correspondence between PCA and OSM concerning amendments to Pennsylvania law which became Act 54.

Throughout these discussions, which occurred in the mid-1990's, PCA argued strenuously that Act 54 was a law which had strong and broad based support among all interested

OSM's proposed decision with respect to Sections 5.5(b) and 5.1(b) of the BMSLCA should not be finalized and these Sections should be found to be fully consistent with SMCRA and OSM's own regulations.

Sections 5.2(g) and 5.2(h) of the BMSLCA Are Not Inconsistent With SMCRA Or OSM's Own Interpretation of Its Regulations Relating to the Replacement and Restoration Of Domestic Water Supplies.

OSM clearly recognizes that there exist situations where despite the best efforts of an operator an adversely affected domestic water supply cannot be replaced or restored and, further, that in such situations the appropriate remedy is provide the affected domestic water supply users with compensation. See discussion at 68 Fed.Reg. 55111 (September 22, 2003) ["OSM acknowledge[s] that rare cases may exist where the operator cannot develop an adequate replacement water supply...[u]nder these circumstances OSM would require the operator to compensate the landowner for the reduction in fair market value of the structure].[8] Nevertheless, it proposes to supercede Sections 5.2(g) and 5.2(h) of the BMSLCA which address situations where a water supply source cannot be replaced or restored.

Section 5.2(g) provides that if after 3 years of effort to provide a replacement water supply an adequate replacement water supply has not been provided compensation can be paid to the property owner. Section 5.2(h) provides that DEP can, at the request of the property owner, provide its views as to whether or not it is possible to provide an adequate replacement supply. In PCA's view, these provisions are completely consistent with OSM's interpretation of its own regulations namely, that if it (or a state agency) determines a domestic water supply cannot be replaced or restored to its pre-mining quantity and quality then it is appropriate to provide the property owner with fair compensation.

Nevertheless OSM has proposed to supercede these two provisions of the BMSLCA, which have never been interpreted or construed by the either the Environmental Hearing Board or any Pennsylvania Court of competent jurisdiction.

PCA submits that OSM's "interpretation" of these two sections of the BMSLCA is flawed, in part, because DEP itself appears to have improperly interpreted the language of these sections. Section 5.2(g) does not have to be read to mean that if three years pass and a the property owner has not had its **domestic water** supply restored or replaced that the operator is relieved of its obligation to try and provide such a supply and the only remedy available to the property owner is "fair compensation." Instead, because the BMSLCA is generally to be construed in a manner which would enable Pennsylvania to retain primary jurisdiction over the regulation of underground coal mining, an alternative and supportable interpretation of Section 5.2(g) is that, with respect to water supplies protected by Federal law, operators are required to promptly and diligently attempt to restore the affected domestic water supply or to replace it with an adequate alternative supply for at least 3 years, unless it can be sooner shown that it will be impossible to do so. If the operator advises the property owner that it believes it is not possible to restore the affected supply or provide an adequate alternative supply, after diligently

[8] OSM's view that such instances will be "rare," may well be the case in other jurisdictions. However, in Pennsylvania replacement or restored supplies often must meet "drinking water" criteria, a far more stringent requirement than imposed by Federal law. Consequently, it is more likely, in Pennsylvania, that it will prove impossible to provide an "adequate" replacement supply than would be the case in other jurisdictions.

The Pennsylvania General Assembly clearly understood what OSM appears not to understand. The provisions of both State law and Federal law, which grant the owners of dwellings and the users of domestic water supplies a statutory right to pursue a claim for damages or water supply replacement/restoration are, quite simply, statutory tort remedies.

In addition, Pennsylvania's program, unlike OSM's regulations, provides that if mining occurred within so many feet of an allegedly affected water supply there exists a presumption that mining was the cause of the loss. This presumption may will have some basis in fact when the claim is pursued within two years of the date the damage is discovered but can it have any validity if the claim is filed 5, or 10 or 25 years later, when it may not even be possible to prove when the loss occurred in relationship to mining?

Although the General Assembly concluded that granting the owners of dwellings a right to assert a statutory claim for damages and granting the users of domestic water supplies adversely affected by mining a right to compel the restoration or replacement of such supplies in circumstances where they had no right to assert such a claim at common law was justified by a variety of legitimate state interests, the elements of these "causes of action," are indistinguishable from the elements of a common law tort or trespass claim. The plaintiff homeowner, must be able to demonstrate causation and prove both the level of damage allegedly suffered as well as the "value" of that damage. The nature of the claim is dependent upon factual issues which, in turn, are dependent upon human recollection of events, and statute of limitations are designed to prevent the prosecution of tort claims based on faulty memories, stale evidence, or evidence that no longer exists or is unobtainable. Pennsylvania has ample local interests which justify its decision to enact Sections 5.5(b) and 5.1(b).

In the absence of any express prohibition in SMCRA on placing limits on the time within which subsidence damage claims must be filed, there is no basis for OSM to conclude that Pennsylvania's decision to do so is not authorized by 30 U.S.C. § 1201(f). Indeed, in the absence of any express limitation action period on a federal statutory claim the Courts will traditionally provide for one. When a statute creating a right of action does not specify a limitations of action period, it is not assumed that Congress intended that there be no time limit at all on the action. *DelCostello v. Int'l Brotherhood of Teamsters*, 462 U.S. 151, 158 (1983). Indeed, this has been the law since the infancy of our Nation. *See Adams v. Woods*, 6 U.S. (2 Cranch) 336, 341 (1805) (Marshall, C.J.) ("[i]n a country where not even treason can be prosecuted after a lapse of three years, it could scarcely be supposed that an individual would remain for ever liable to a pecuniary forfeiture"). Rather, it is the judiciary's "task to 'borrow' the most suitable statute or other rule of timeliness from some other source." *DelCostello*, 462 U.S. at 158.

The statute of limitations in federal practice depends first on what the basis of subject matter jurisdiction is in the action. When Congress fails (as it did in Section 720 of SMCRA) to create a federal statute of limitations, courts generally apply the statute of limitations of the most analogous cause of action under the law of the state in which the federal cause of action arises. *Board of Regents v. Tomanio*, 446 U.S. 478, 483 (1980); which, in the case of Pennsylvania, is a two year period of limitations otherwise applicable to claims for property damage. 42 Pa.C.S.A. § 5524 .

interprets SMCRA as allowing for the filing of such claims at any time or as not allowing for states to impose reasonable limitation of action periods on such claims.

By superceding Sections 5.5(b) and 5.1(b) of the BMSLCA OSM is necessarily interpreting SMCRA as precluding any time limitation on the filing of subsidence damage claims. This interpretation effectively establishes a new regulatory requirement that all states must accept for processing any claim for subsidence damage to dwellings and any claim for the replacement or restoration of domestic water supplies no matter how long the property owner waits to file such a claim. PCA submits that OSM is required to engage in formal rulemaking before promulgating a new standard of general applicability. It is not free to issue "regulations" with a national scope in the context of ruling on a state program.

Moreover, in the absence of any express prohibition in SMCRA on placing time limits on the time within which subsidence damage claims must be filed, there is no basis for OSM to conclude that Pennsylvania's decision to do so is not authorized by 30 U.S.C. § 1201(f).

Quite simply, there are a myriad of legitimate reasons why Pennsylvania is free to impose a reasonable limitation of action period on statutory claims which are statutory tort claims.

For example, Pennsylvania law currently protects far more structures and far more water supplies than does Federal law. Moreover, in Pennsylvania full extraction longwall mines tend to be located in more densely populated areas that similar mines in neighboring states. Therefore, the potential volume of claims facing DEP will be far greater than its counterparts in other jurisdictions. Establishing a reasonable basis for limiting the total number of claims that DEP might have to process is a legitimate matter of local interest, which Pennsylvania is entitled to consider.

Moreover, Pennsylvania requires that mine operators repair all subsidence damage they cause or pay the costs of repairing the damaged structure, not simply opt to pay the difference between the property's pre-mining value and its post-mining value, which is the case in other states. Therefore, if Pennsylvania homeowners are free to wait years after discovering subsidence damage before filing a claim, the mine operator would, if found liable, be required to repair the structure 5, 10 or 25 years after the damage was first discovered, at greatly inflated costs. In addition, DEP and operators will be forced to sort out, years after the fact, the amount of non-subsidence damage that naturally occurred to a structure that has aged, from that which was actually caused by mining that took place 5, 10 or 25 years earlier.

There are reasons why statutes of limitation are imposed on "damage" claims in every jurisdiction in the United States, and they relate to a legitimate interest of the State in barring claims that are premised on stale evidence and which are not pursued until memories have faded and evidence is lost or destroyed.

In addition, the justification for Pennsylvania creating these new statutory claims for homeowners was a desire to preserve its local *ad valorem* tax base. This goal is not fostered if homeowner can wait 5 or 10 or 25 years to file their claims. On the other hand, it is fostered if claimants are encouraged to file their claims promptly, and a reasonable statute of limitations certainly encourages the timely filing of subsidence damage claims.

There is nothing unreasonable, nor is there anything in SMCRA or OSM's regulations, which would preclude local municipalities from enacting a zoning ordinance which provides that new home construction is not to be permitted in areas that are unstable or prone to subsidence or slips. Such a local zoning ordinance would be completely justified on several legitimate state interest grounds including, without limitation, an interest in assuring that the local tax base is not unreasonably reduced by avoidable damage to new structures.

Why then does OSM contend that the General Assembly of Pennsylvania, for similar reasons of legitimate state concern, cannot enact a similar law?

Furthermore, this provision is implemented in such a manner than no property owner will be "caught" unaware. Mine operators are required to publish notice of their intend to apply for a permit in local newspapers and every person who purchases property in Pennsylvania is given a bold warning as to whether or not they own the coal beneath their property. Property owners know well in advance when mining is projected and planned and DEP's Surface Subsidence Agent Program now assures that property owners are fully informed, in person, of their rights under Act 54. See materials included in Attachment 13.

All Section 5.4(a)(3) says to a property owner who has not yet decided to build a new home is that you will have to wait no more than 5 years to build this structure if you want to be compensated in the event mining damages it.

Section 5.4(a)(3) does nothing more than foster several legitimate land use planning goals on a statewide rather than on a municipality by municipality basis, by inserting a disincentive to development for a limited period of time.

Pennsylvania is authorized by 30 U.S.C. § 1201(f) to development laws and regulations governing mine subsidence with foster legitimate local and state interests.

OSM's proposed decision with respect to Section 5.4(a)(3) of the BMSLCA should not be finalized and Section 5.4(a)(3) should be found to be fully consistent with SMCRA and OSM's own regulations.

Imposing Reasonable Time Periods Within Which Claims for Subsidence Damage to Structures and Claims That Domestic Water Supplies Be Restored or Replaced Furthers Legitimate State Interests, And To The Extent OSM's Proposed Supercession of Sections 5.5 (b) and 5.1(b) of the BMSLCA Is Intended To Announce A Nationwide Regulatory Requirement of General Applicability It Constitutes Improper Rulemaking.

Section 5.5(b) of the BMSCLA provides that homeowner must file a statutory subsidence damage claim within 2 years of the date they discover the damage. Section 5.1(b) of the BMSLCA provides that a property owner whose domestic water supply has been damaged must file a claim within 2 years of the date they discovery the damage.

SMCRA is completely silent on the issue of whether claims for subsidence damage to dwellings and claims for the replacement of domestic water supplies must be filed within any defined time frame. Of equal importance, OSM has never promulgated any regulation which

recognition by the General Assembly that if a person who wants to use the Commonwealth's adjudicatory tribunals is unwilling to allow the "defendant" a right to engage in reasonable discovery concerning the nature of the claimant's claim (the current rules of discovery applicable to subsidence damage claims clearly allow for inspections of the claimant's property by the "defendant"), such claim can, and should, be dismissed. See Pa.R.C.P. 4009.31 and 4009.32.

If OSM's proposed action is made final Pennsylvania will find itself in the absurd situation where it must allow a farmer, who has denied an operator access to conduct a pre-mining or post-mining inspection of his property, to proceed with a claim for damage to his house but bar him from proceeding with respect to a claim for damage to his barn, silo or other agricultural structures.

OSM's proposed decision with respect to Section 5.4(c) of the BMSLCA should not be finalized and Section 5.4(c) should be found to be fully consistent with SMCRA and OSM's own regulations.

Section 5.4(a)(3), 52 P.S. § 1406.5d(a)(3) Is Not Inconsistent With SMCRA Or OSM's Regulations Because It Does Not Operate To Deny Any Owner Who Has No Ability To Avoid Having His Structure Undermined A Right To Assert A Claim For Subsidence Damage And Furthers Legitimate State Interests

Section 5.4(a)(3) of the BMSLCA does not deny any owner of a dwelling who has no control over whether not his structure will be undermined the right to file a subsidence damage claim. Instead, this section of the BMLSCA is designed to discourage property owners, who have knowledge that mining is imminent, from building a new dwelling in a location where it could be damaged and to encourage such persons to build in areas which will not be undermined.

This section provides only that the mine operator is not responsible for any resulting subsidence damage to a dwelling that was not in place when Act 54 was passed or at the time the mine operator submitted its most recent application for a permit or permit renewal. In other words, it imposes no more than a 5 year moratorium on new home construction in areas that could be undermined within this time frame.[7]

This section of the BMSLCA takes into account several factors unique to Pennsylvania and attempts to balance them in a way which is fair to both property owners and mine operators. First, it recognizes that Pennsylvania mine operators are required to plan and operate their mines in areas where development is more common than may be the case in other states. As Attachment 6 confirms, Washington County, in particular, is a relatively "urban" area where new construction is not uncommon. Therefore, Pennsylvania concluded that it was unreasonable to require operators to plan their mines without knowledge as to what structures they should avoid undermining or for which they might have to develop plans to mitigate or repair. Second, it recognizes that it is bad land use planning to permit new construction in areas where it is highly likely that the new structure will be undermined. Third, it recognizes that it is unreasonable, and otherwise inconsistent with general principles of Pennsylvania law, to allow someone to assert a claim for damage in circumstances where they could have, through their own conduct, mitigated or avoided the damage they now claim to have suffered.

[7] Permits must be renewed every five (5) years, therefore the maximum amount of time a person would be required to wait to build a new structure is 5 years.

each time they propose to undermine a dwelling to determine if pre-mining measures should be implemented in advance of mining. How, PCA asks, can an operator comply with this Federal requirement (a requirement that its member companies are more than prepared to comply with) if they are denied access to a property prior to mining? Commonly used pre-mining mitigation techniques involve trenching around the foundation of structures, installing cabling around the structure and installing "buttress" supports in locations that might be prone to suffer subsidence damage. See Attachment 15.[6] The only way to determine what techniques are appropriate is to inspect the structure prior to mining. The only way to implement appropriate measures is to have access to the property to do so. Of course, if structure owners refuse to allow a pre-mining inspection, not only does this interfere with an operator's ability to comply with his legal obligations it results in the property owners refusing to discharge a legal obligation they have namely, the obligation to mitigate their own potential damage. As noted in DEP's "Surface Owners' Rights" materials, a pre-mining inspection in Pennsylvania is actually a "right" of the surface owner which is designed to assist not penalize surface owners:

> "You have the right to a pre-mining survey to record the existing condition of your home and water supply to help identify damage or loss of water. The pre-mining survey can also help in the design of measure that will help prevent damage to your property like bracing, trenching around the building, installing flexible connections to utilities and providing replacement water supplies ahead of any need."

Surely, a state is free to develop a program of "pre-mining inspections" under Section 1201(f) of SMCRA which actually affords surface owners more protection than does OSM's regulatory program.

Moreover, as noted above, if OSM's position concerning Section 5.4(c) prevails, in the future persons whose sole objective is to stop mining beneath their property will be able to do so simply by denying operators the right to conduct a pre-mining inspection and access to implement mitigation. PCA submits OSM cannot disapprove as consistent with SMCRA and its own regulations a reasonable requirement of State law which clearly furthers the implementation of OSM's own regulations and one of the very purposes of SMCRA, namely fostering the development of a strong coal industry.

PCA submits that only those surface owners with "something to hide," or whose intent is to "stop mining altogether" will seek to deny pre-mining access. Simply put, the law should only help those who are willing to help themselves and should not encourage individuals to frustrate the ability of others to comply with their obligations or unreasonably increase another's liability.

With the respect to the post-mining condition of Section 5.4(c), OSM's concern is equally difficult to understand. Does OSM contend that SMCRA and its regulations on surface owner protection supersede local rules relating to the adjudication of claims before administrative agencies? The provision of Section 5.4(c) which provides that a person who denies a post-mining inspection cannot pursue a subsidence claim is nothing more than a

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[6] Attachment 14 contains some examples of proposed "mitigation" plans that PCA member companies have had prepared in advance of full extraction mining beneath various structures. These plans were prepared after pre-mining access was granted. As is apparent from a review of the plans, it would not be feasible to prepare plans like these (which are intended to assure compliance with OSM's own regulations) unless pre-mining access was afforded.

With respect to the pre-mining inspection condition set forth in Section 5.4(c), the reasons for this limited condition are obvious. Few dwellings or institutional structures (the only class of structures to which OSM's supercession applies) do not have normal damage caused by weathering and wear and tear. See, e.g., the two pre-mining inspections attached as Attachment 13. The nature of this damage is often indistinguishable from certain types of damage that can be caused by mine subsidence. *Ibid.* To assure that operators are not required to pay compensation equal to the cost of repair (the Pennsylvania compensation standard which is different from, and more stringent than, OSM's) for "damages" they did not cause, the Pennsylvania General Assembly concluded homeowners should not be allowed to file subsidence damage claims unless they allow the mine operator access to their dwelling to establish a pre-mining baseline of its condition. Copies of the pre-mining inspections must be submitted to the homeowner, who is, of course, free to do his own such inspection. See Attachment 13.[5] This aspect of Act 54 was specifically recommended and endorsed by the DMMP.

Pennsylvania, unlike OSM and virtually every other state where mining occurs, has had years of experience processing and resolving subsidence damage claims and was fully justified in concluding that such claims are more likely to be resolved amicably if the structure owner and the mine operator have a "baseline" against which to determine what is and what is not subsidence related damage. In addition, Pennsylvania was also fully justified in concluding that its own enforcement of the subsidence damage claim provisions would be simplified if DEP had some pre-mining "baseline" to consider when adjudicating liability. This is precisely the type of legitimate State interests (an interest in efficient and fair resolution and adjudication of disputes) which 30 U.S.C. § 1201(f) intended for the States to be free to further through special state requirements.

Moreover, this provision of the BMSLCA is not implemented by DEP in a manner which would allow homeowners to unwittingly lose their rights to assert a subsidence damage claim. If a homeowner denies access to a mine operator to conduct a pre-mining inspection the operator is required to inform DEP that this has occurred. The operator is then required to sent the property owner a written notice setting forth the consequences of continuing to refuse to allow a pre-mining inspection. This written notice states that a claim for damage will be denied if access is not granted within a reasonable time prior to mining. This notice must be sent by certified mail return receipt requested and proof of receipt must be supplied to DEP. Only then, can an operator rely upon this section of the BMSLCA as a "defense" to subsidence damage claim. See Attachment 14, which are various materials obtained from DEP's web page which explain "Surface Owner Rights," and provide various other information to Pennsylvania citizens concerning the Commonwealth's subsidence control program. In particular, your attention is directed to a "Fact Sheet," which explains on page 2, under the heading "Pre-Mining and Post-Mining Inspections" how the pre-mining inspection process is regulated by DEP.

OSM's objection to this requirement is particularly difficult to understand because OSM itself insists that mine operators who engage in full extraction longwall mining are **required**

[5] Attachment 13 contains examples of "per-mining" and "post-mining" surveys conducted by various PCA member companies. The practice in the industry is for an operator to provide the homeowner with advance notice of when an inspection will take place and to have the homeowner accompany the "inspector." Video tapes of the inspection are often made and a report showing the pre-existing condition of the structure(s) is prepared. A copy of the report is then provided to the property owner. This is done at no cost to the homeowner and is available for use by the homeowner in documenting his claim.

However, SMCRA does not impose the standard of review applied by OSM in this case and does not require that a State program "mirror" that of OSM's. Instead, SMCRA specifically recognizes that each state should be free to develop its own program of laws and regulations governing subsidence control which is tailored to its specific needs and interests, and that, "because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States" 30 U.S.C. § 1201(f).

Furthermore, as recently recognized by the United States Court of Appeals for the Third Circuit:

> "As we have observed, 'there would be no reason to allow the states to impose their own regulations if the regulations had to be the same as the federal Act and regulations." (cite omitted). Indeed, Congress was well aware that...there could not be a uniform federal standard because of the wide differences in such things as geology and topography in areas subject to mining operations in the various states and the states' familiarity with local conditions. Thus, Congress determined that 'the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface mining and reclamation operations....should rest with the States." 30 U.S.C. § 1201(f).

Pennsylvania Federation of Sportsmen's Clubs, Inc. v. Hess, 297 F.3d 310, 316 (2002).

The inquiry is not whether Act 54 "mirrors" the requirements of SMCRA and OSM's regulations. The inquiry is whether differences between the two regulatory programs are justified by legitimate state interests and/or local conditions and do not, as applied, frustrate the goals of federal law to provide surface owners in Pennsylvania with an appropriate level of protection from the surface impacts of underground mining.

Judged against this standard and not OSM's "mirror image" standard, none of the provisions OSM proposes to supersede are "inconsistent" with federal law.

Section 5.4(c), 52 P.S. § 1406.5d(c) Is Not Inconsistent With SMCRA Or OSM's Regulations Because It Does Not Operate To Deny Anyone A Right To Assert A Claim For Subsidence Damage To A Dwelling And Furthers Legitimate State And Federal Interests

Section 5.4(c) of the BMSLCA does not deny any owner of a dwelling the right to file a subsidence damage claim. Instead, this section of the BMLSCA merely conditions this right by providing that in return for being given a right to file a statutory subsidence damage claim the structure owner must grant the mine operator an opportunity to conduct a pre-mining and a post-mining inspection.

There is absolutely nothing in SMCRA or in OSM's regulations which suggests a state cannot impose this type of limited condition on the statutory right to file a subsidence claim if it has valid reasons for doing so.

stakeholders and represented a reasonable and carefully crafted approach to regulating the subsidence impacts of mine subsidence in Pennsylvania, which has its own unique interests to be addressed. And, for the most part, PCA was completely justified in concluding that it had successfully demonstrated to OSM that virtually all of the provisions of Act 54 were fully consistent with Federal Law. This is best evidenced by a letter from George Ellis, President of PCA to OSM, dated May 5, 1995, in which Mr. Ellis confirmed the substance of his discussions with the agency concerning its then "views" on Act 54. See Attachment 12. As is clear from Mr. Ellis's letter, as of 1995, OSM **did not** believe that Act 54's requirement that a subsidence claim for structural damage had to be filed within 2 years was "inconsistent" with SMCRA or OSM's regulations, or that the requirements of Sections 5.4(a)(3) of the BMSLCA, now proposed for suspension, were a "problem." Indeed, OSM's concerns, as communicated to PCA were limited to 4 specific areas: (a) a concern over conditioning the right to file a statutory subsidence claim for structural damage on allowing operators pre-mining access (a concern which, as discussed below is not justified); (b) a concern over the two year statute of limitation on **water loss** (not structural damage) claims for domestic water supplies (which is also without foundation); (c) a concern that Pennsylvania allowed water supply users to accept compensation in circumstances where their water supply could not be replaced; and (d) a concern over the manner in which Pennsylvania operated its subsidence "bonding" program. No other concerns were expressed by OSM after this time until it issued the OSM Disapproval Rulemaking in December of 2001.

Moreover, OSM has again changed its views on 2 of its initial 4 concerns. For example, it no longer believes Pennsylvania's mine subsidence bonding program is a "concern," (see discussion at 68 Fed.Reg. 55120 (September 22, 2003) and it now recognizes the obvious, that in circumstances where DEP concludes that a domestic water supply cannot be restored or replaced it is the equivalent of "permanent property damage," which can, and is best, handled by the payment of fair compensation (see discussion at 68 Fed.Reg. 52112 (September 22, 2003).

Without question OSM, itself, has not taken a consistent interpretation of Act 54's "consistency" with State law and therefore, its most recent views are not entitled to deference.

OSM's Proposed Suspension of Certain Provisions of the BMSLCA Is Not Justified Because These Provisions are Not Inconsistent With SMCRA or OSM's Regulations And Are Reasonable Requirements Imposed By Pennsylvania To Deal With Specific and Legitimate State Interests And Local Conditions Within The State

After informing PCA in 1995 that it had only 4 areas of concern with the provisions of Act 54, OSM issued, without warning of any kind, its Disapproval Rulemaking. OSM's Disapproval Rulemaking invalidated virtually all of the Act 54 amendments and virtually all of the regulations adopted by the Pennsylvania Environmental Quality Board ("EQB") to implement the Act.

Even a cursory review of the Disapproval Rulemaking demonstrates that OSM, as of December 2001, believed that a state subsidence control program had to be a "mirror image" of OSM's regulatory program. Even the most insignificant differences in wording between the Pennsylvania regulations and OSM's regulations was deemed an "inconsistency." Clearly, OSM applied the wrong "standard of review" in December of 2001 and continues to do so now, by insisting that Pennsylvania's program slavishly adhere to OSM's "interpretation" of SMCRA and its own regulations.

attempting to do so, then DEP will advise the homeowner, pursuant Section 5.2(h), whether it has concluded that the supply cannot be adequately replaced (applying the standard which OSM itself appears to accept as appropriate). If DEP concludes that the water supply can actually be restored or replaced then the operator will continue to have an obligation to do so.

PCA submits that rather that taking the extraordinary approach of "superceding" a duly enacted State law, particularly in the absence of any basis to conclude that Section 5.2(g) and 5.2(h) have given rise to any situations where water supplies that could be restored or replaced were not, the appropriate course of action is for OSM is to wait and see if, in fact, there really a factual problem with these provisions.

Alternatively, PCA submits because there exists a question as to whether or not Sections 5.2(g) and 5.2(h) can be construed in a manner which does not result in an operator being able to "walk away" from its obligation under SMCRA to diligently try to restore an affected supply or to provide a replacement supply, that the appropriate action for OSM to take in this case is not to "supersede" these sections but to condition the Pennsylvania Program with a requirement that the State provide OSM with an opinion from an appropriate state official concerning whether these sections of the BMSLCA can be interpreted in a manner which avoids a potential conflict with SMCRA.

PCA appreciates this opportunity to provide its comments on OSM's proposed rulemaking and urges the agency to reconsider its proposed actions with respect to each of the provisions of the BMSLCA which it proposes to supersede.

Respectfully submitted,

George Ellis

George Ellis
President of PCA

October 22, 2003

Mr. George Rieger
Acting Field Office Director
Harrisburg Field Office
Office of Surface Mining,
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Harrisburg Transportation Center
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Attn: SATS NO. PA-141-FOR (via Email)

Dear Mr. Rieger:

The National Mining Association (NMA) appreciates the opportunity to comment on the Office of Surface Mining's proposed rules amending the Pennsylvania Regulatory Program at 68 Fed. Reg. 55105-55137 (September 22, 2003). NMA is a national trade association representing the producers of most of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment, and supplies; and engineering, transportation, financial, and other businesses that serve the mining industry. NMA's members include many companies that are subject to the Pennsylvania Regulatory Program, and will therefore be directly impacted by these regulatory changes. In addition, one of NMA's State Association members, the Pennsylvania Coal Association (PCA), has submitted comprehensive comments on both of these proposals, and NMA adopts PCA's comments and incorporates them by reference as our own.

NMA is commenting on these State program amendments because they are unusual in their scope and importance to the mining industry as a whole. NMA objects to OSM superseding various provisions of Pennsylvania law for several reasons. First, NMA disagrees with OSM that the statutory and regulatory criteria to supersede Pennsylvania's duly enacted statute have been satisfied. Second, the substance of several of the provisions that OSM has proposed to supersede do not warrant this treatment from the agency, because the provisions, properly viewed, are not contrary to the Surface Mining Control and Reclamation Act (SMCRA) or OSM regulations. Third, this proposal is poor public policy, and is contrary to Administration principles of respecting State law and principles of Federalism. Finally, the manner in which these issues arose raises serious concerns about how the provisions would be enforced in the future. For all of these reasons, OSM should not supersede the provisions of Pennsylvania's statute.

I. OSM's Proposed Rule is Inconsistent with SMCRA and OSM Regulations

OSM cites SMCRA § 505(b) and 30 C.F.R. § 730.11(a) for the authority to supersede several of State's regulatory program provisions that were approved pursuant

to Pennsylvania's Bituminous Mine Subsidence and Land Conservation Act (BMSLCA). SMCRA Section 505(b) establishes the standard for dealing with State law, and says that:

> ...The Secretary shall set forth any State law or regulation which is constructed to be inconsistent with [SMCRA]. Any provision of any State law or regulation in effect on the date of enactment of [SMCRA], or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with [SMCRA].

Based on the plain language of this section, there is no basis for OSM to supersede the provisions of Pennsylvania's BMSLCA. OSM has not identified any evidence that the Pennsylvania program is inconsistent with SMCRA, or is resulting in a deprivation of Federal rights under the Energy Policy Act Amendments of 1992. The only evidence in this rulemaking record, which was submitted by PCA, disproves OSM's proposed rule. The evidence demonstrates that in nine years of Federal enforcement, there have been no instances where OSM has used its oversight authority to reverse decisions by the State with regard to pre-mining inspections, the two year statute of limitations period, the five year building moratorium, or any other provision that OSM proposes to supersede. Accordingly, based on the record, it would be arbitrary and capricious for OSM to supersede those sections when there has been no documented conflict with SMCRA in almost a decade.

In addition to a complete lack of evidence of conflict between the Pennsylvania statute and SMCRA, these State law provisions should not be superseded because they are provisions that are not contained in SMCRA, and therefore cannot be construed to be inconsistent with SMCRA. As § 505 clearly states, provisions which provide for the control and regulation of surface mining and reclamation which are not contained in SMCRA shall not be construed to be inconsistent with SMCRA. None of the provisions in question are found in SMCRA § 720 or any other part of the Act. Since there is no evidence that the Pennsylvania provisions conflict with any other part of the statute, and because they are "not contained in the Act", they are *per se* valid and may NOT be superseded under § 505. Likewise, OSM will violate its own regulations if it attempts to supersede these provisions. 30 C.F.R. § 730.11(a) & (b) provide similar criteria for superseding a State law. Subsection (b) makes clear that in order to be deemed consistent with SMCRA, the State law need not necessarily be more stringent than Federal law, but merely different or supplemental to it. This is clearly delineated in the regulation by the fact that the regulation uses the disjunctive "or" to clarify that State laws that are more stringent OR not contained in SMCRA *shall not be construed to be inconsistent.* This view is shared by courts, which have held that there would be no reason to allow the States to impose their own regulations if the regulations had to be the same as the Federal Act and regulations. *See, e.g., Pennsylvania Federation of Sportsmen's Clubs, Inc. v. Hess*, 297 F.3d 310, 316 (2002).

II. Pennsylvania's Rules are Substantively Consistent with SMCRA and Case Law and Therefore Must be Approved by OSM

A. Statute of Limitations

Pennsylvania's statutory scheme to regulate subsidence is entirely consistent with both SMCRA and applicable case law interpreting similar provisions. For example, Pennsylvania's provision establishing a two year statute of limitations after the discovery of damage from subsidence does not violate any provision in SMCRA, including § 720. This view is shared by the D.C. District Court, which held in *National Mining Association v. Babbitt*, that:

> "Since subsidence is unpredictable and may occur long after mining has taken place, the federal register states that this obligation extends indefinitely into the future, but **once the damage has occurred it is reasonable to assume that normal statute of limitations principles will govern**...Long established principles of repose allow for statutes of limitations to run from the date of the injury in cases where the starting point is the most appropriate policy choice. This choice has been made by the appropriate federal agency taking legislative intent into account." *National Mining Association v. Babbitt,* No. 95-0938 (D.D.C. May 29, 1998)(emphasis added).

In this instance, the regulatory authority, the State of Pennsylvania, has made a permissible policy choice to establish a statute of limitations for a reasonable period of two years from the date the injury is discovered. In fact it is most suitable to use Pennsylvania statute of limitations law because there is no statute of limitations in either SMCRA or OSM regulations. Pennsylvania's policy choice may not be overturned by OSM, unless it is supported by substantial evidence in a notice and comment rulemaking, and is applicable to all of the States. Unless and until OSM conducts such a rulemaking, the agency may not supersede this provision of Pennsylvania law.

Not only is this statute of limitations provision not inconsistent with § 720, but it is actually more consistent with Congressional intent than OSM's rules. That is because § 720 requires that repairs and compensation be done "promptly." This reasonable statute of limitations period, which does not run until after damage is discovered by the property owner, effectuates this Congressional goal of promptly resolving disputes over subsidence claims. Moreover, OSM endorsed the general concept of prompt resolution of claims in the preamble to its final rule in 1995:

> "...since Federal enforcement can occur without delay for State program amendments, OSM believes the direct Federal enforcement process will work to the advantage of all interested persons. In cases where direct Federal enforcement is instituted, any evidentiary issues in enforcement should be more readily resolved, because facts will be fresher and more readily recalled than they would be after the delay required for amendment to a State program." 62 Fed. Reg. 16745 (March 31, 1995).

The concept of a statute of limitations furthers Congressional intent because SMCRA § 720 specifically requires that repairs and replacements be conducted "promptly." It is difficult to argue that waiting more than two years could be considered "prompt."

B. Pre-Mining and Post-Mining Surveys

Pre-mining surveys are another example of State statutory provisions that are consistent with SMCRA and therefore should be approved by OSM. OSM objects to Pennsylvania's requirement that property owners must allow a pre-mining survey of their dwellings prior to mining in order to file for recovery for subsidence damage after mining. This requirement is reasonable and logical. A requirement to conduct a pre-mining survey protects everyone: operators and landowners, in the event that there is a claim for damage from subsidence in the future. This is a perfectly rational and common sense approach to ensure that legitimate claims for subsidence damage are promptly compensated, and at the same time protects operators from claims for damage for which they are not legally responsible. Coupled with reasonable notice provisions to ensure protection of property owners and their rights, these provisions are not only consistent with the letter and spirit of § 720, but should be added to the Federal regulations. OSM has offered no rational basis to second guess the determination by Pennsylvania that these provisions will enhance the process and provide fair protection for all parties for subsidence claims. The agency has not even recognized the benefits of pre-subsidence surveys to property owners, in that it will facilitate *legitimate* claims for subsidence damage.

III. Superseding these Provisions is Bad Public Policy

Pennsylvania's Statutory Provisions Must be Evaluated in a Holistic, Not a Piecemeal Fashion

OSM is applying the incorrect standard to determine whether or not the State law should be superseded. OSM should not compare the State and Federal rules line by line and disapprove the State law if there is any difference between them. Instead, OSM must evaluate whether the State law is more or equally protective as a whole, not piece by piece. As PCA explains in their comments, Pennsylvania provides superior rights to property owners when compared to the Federal rules in many respects. Therefore, OSM must take the whole package into account before deciding whether a State's statute and program is equal to or better than what SMCRA provides. In addition, the failure to use a holistic approach will improperly require every State program to be a mirror of the Federal rules. Such a result may be easier for OSM, but it would also be contrary to SMCRA and judicial precedent, and it would be bad public policy. A piecemeal approach will discourage States from experimenting or creating innovative solutions to solve problems.

IV. OSM Should Defer to State Law

The Federal Government, and this Administration in particular, espouses principles of States Rights, comity, and Federalism. None of these principles is respected

by OSM's action in this rule. As PCA points out, Pennsylvania is among the most experienced regulators of mining activity in the United States. To suggest, without evidence to support it, that the Pennsylvania legislature is not adequately protecting the rights of its citizens is inappropriate. Contrary to OSM's statement at 68 Fed. Reg. 55137, this rule does have Federalism implications. As previously explained, these State provisions do not conflict with any of SMCRA's provisions. Moreover, the agency has provided no evidence of problems "on the ground" with these provisions in almost a decade. Therefore, OSM has no basis to supersede these duly enacted provisions of State law.

V. Enforcement Issues

Apparently this proposal results from a settlement between OSM and the Pennsylvania State Department of Environmental Protection (PA DEP). However, it is unclear how these provisions are to be enforced if the Pennsylvania statute is superseded. OSM, as a representative of the Secretary of Interior, has the authority to "set forth any State law or regulation which is constructed to be inconsistent with [SMCRA]." However, due to Constitutional limits on Federal power, OSM may not "authorize" a State regulatory authority to perform functions that are contrary to duly enacted laws of that State's legislature. If OSM wants to assume the responsibility for enforcing a portion of Pennsylvania's State program with regard to § 720 subsidence damage claims, it may do so, provided it follows the express procedures outlined in SMCRA. But unelected administrative agency officials from OSM and PA DEP, even if they agree, may not collude to require State officials to enforce Federal rules that are contrary to the express direction of a State legislature. To do so would undermine our Constitutional system, and allow bureaucrats to trump the will of democratically-elected legislatures.

Thank you for considering our comments. We hope that you will consider our views, and determine that these actions by Pennsylvania should not be superseded. Should you have any questions, you may contact me at (202) 463-2643 or bfrisby@nma.org.

Sincerely,

Bradford V. Frisby
Associate General Counsel
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No. 1994-53

AN ACT

HB 2638

Amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, permitting Sunday hunting for coyotes and Sunday hunting on noncommercial regulated hunting grounds.

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

Section 1. Section 2303 of Title 34 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2303. Hunting on Sunday prohibited.

(a) General rule.—Except as otherwise provided in this title, it is unlawful for any person to hunt for any furbearer or game on Sunday.

(b) Construction of section.—This section shall not be construed to prohibit:

(1) The training of dogs.

(2) The participation in dog trials as provided for in this title.

(3) The removal of lawfully taken game or wildlife from traps or the resetting of the traps on Sunday.

(b.1) **[Exception.—Subsection (a) shall not apply to the hunting of foxes]** ***Exceptions.—Subsection (a) shall not apply to:***

(1) The hunting of foxes.

(2) The hunting of coyotes.

(3) Any hunting which occurs on noncommercial regulated hunting grounds holding a valid permit under section 2928(b)(2) (relating to regulated hunting grounds permits).

(c) Penalty.—A violation of this section is a summary offense of the fifth degree.

Section 2. This act shall take effect immediately.

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

ROBERT P. CASEY

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

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 L.874, No.156), are amended to read:

Section 2. Purpose.—This act shall be deemed to be an exercise of the lice powers of the Commonwealth for the protection of the health, safety l general welfare of the people of the Commonwealth, by providing for the ıservation of surface land areas which may be affected in the mining of ıminous coal by methods other than "open pit" or "strip" mining, to aid the protection of the safety of the public, to enhance the value of such ds for taxation, to aid in the preservation of surface water drainage and)lic **[water supplies]** ***and private water supplies, to provide for the toration or replacement of water supplies affected by underground ıing, to provide for the restoration or replacement of or compensation surface structures damaged by underground mining*** and generally to rove the use and enjoyment of such lands and to maintain primary sdiction over surface coal mining in Pennsylvania.

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

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

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

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

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

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

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

7) In order to prevent the occurrence of such state of affairs in the e, the deed notice provisions relating to such subsurface support, or lack of to a person desiring to erect a surface structure after the effective date is 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 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

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.

(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.

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.

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.

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.

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.

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

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.

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)

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

No. 1994-55

AN ACT

HB 194

Amending the act of June 23, 1931 (P.L.932, No.317), entitled "An act relating to cities of the third class; and amending, revising, and consolidating the law relating thereto," further providing for sales of real and personal property to certain entities; and providing for demotion of fire chiefs and deputy fire chiefs.

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

Section 1. Section 1919 of the act of June 23, 1931 (P.L.932, No.317), known as The Third Class City Code, reenacted and amended June 28, 1951 (P.L.662, No.164) and added June 16, 1993 (P.L.97, No.21), is amended to read:

Section 1919. Sales of Real and Personal Property to Certain Entities.—Any provision of this act requiring advertising for bids and sale to the highest bidder shall not apply where city real or personal property is to be sold to a county, city, borough, town, township, ***home rule municipality,*** institution district, school district, volunteer fire company, volunteer ambulance service or volunteer rescue squad located within the city, or municipal authority pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the "Municipality Authorities Act of 1945," ***a housing authority pursuant to the act of May 28, 1937 (P.L.955, No.265), known as the "Housing Authorities Law," an urban redevelopment authority pursuant to the act of May 24, 1945 (P.L.991, No.385), known as the "Urban Redevelopment Law," a parking authority pursuant to the act of Ju ; 1947 (P.L.458, No.208), known as the "Parking Authority Law," a port authority pursuant to the act of December 6, 1972 (P.L.1392, No.298), known as the "Third Class City Port Authority Act,"*** or a corporation not for profit engaged in community industrial development. Any provision of this act requiring advertising for bids and sale to the highest bidder shall not apply where real property is to be sold to a corporation not for profit organized as a public library for its exclusive use as a library, to a medical service corporation not for profit, to a housing corporation not for profit, to the Commonwealth or to the Federal Government. When real property is to be sold to a corporation not for profit organized as a public library for its exclusive use as a library or to a medical service corporation not for profit or to a housing corporation not for profit, council may elect to accept a nominal consideration for the sale as it shall deem appropriate. Real property sold pursuant to this section shall be subject to the condition that when the property is not used for the purposes of the conveyance, the property shall revert to the city.

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 five thousand dollars ($5,000.00) 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 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.

Section 18. 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.

Section 19. 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.

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

Section 21. This act shall take effect immediately.

APPROVED—The 27th day of April, A. D. 1966.

WILLIAM W. SCRANTON

1966 SPECIAL SESSION NO. 1

No. 2

AN ACT

SB 5

Providing that the Commonwealth of Pennsylvania enter into the interstate mining compact to assure sound mining practices with other States of the United States of America which are signatories thereto, granting to the Governor authority to execute such compact, and to serve as the official representative of the Commonwealth, creating a Mining Practices Advisory Council.

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

Section 1. The Governor of this Commonwealth is hereby authorized and directed to execute, on behalf of the Commonwealth, the interstate mining compact to assure sound mining practices.

Section 2. The form and contents of such compact are as fol and the effect of its provisions shall be interpreted and administ in conformity with the provisions of this act:

INTERSTATE MINING COMPACT

Article I. Findings and Purposes

(a) The party States find that:

1. Mining and the contributions thereof to the economy and being of every State are of basic significance.

2. The effects of mining on the availability of land, water and o resources for other uses present special problems which properly be approached only with due consideration for the rights and inte of those engaged in mining, those using or proposing to use thes sources for other purposes, and the public.

3. Measures for the reduction of the adverse effects of minin land, water and other resources may be costly and the devisin means to deal with them are of both public and private concer

4. Such variables as soil structure and composition, physiogra climatic conditions, and the needs of the public make impractic the application to all mining areas of a single standard for the servation, adaptation, or restoration of mined land, or the deve ment of mineral and other natural resources; but justifiable req ments of law and practice relating to the effects of mining on l water, and other resources may be reduced in equity or effective unless they pertain similarly from State to State for all mining o ations similarly situated.

5. The States are in a position and have the responsibility to as that mining shall be conducted in accordance with sound conserva principles, and with due regard for local conditions.

(b) The purposes of this compact are to:

1. Advance the protection and restoration of land, water and ot resources affected by mining.

2. Assist in the reduction or elimination or counteracting of po tion or deterioration of land, water and air attributable to minin

3. Encourage, with due recognition of relevant regional, physi and other differences, programs in each of the party States which achieve comparable results in protecting, conserving, and improv the usefulness of natural resources, to the end that the most desir conduct of mining and related operations may be universally fa tated.

4. Assist the party States in their efforts to facilitate the use of l and other resources affected by mining, so that such use may be c sistent with sound land use, public health, and public safety, anc this end to study and recommend, wherever desirable, techniq for the improvement, restoration or protection of such land and ot resources.

5. Assist in achieving and maintaining an efficient and product

mining operation until such time as the provisions of this act have been complied with.

Section 13. 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 Attorney General of Pennsylvania 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 shall be required on the granting of a temporary restraining order.

Section 14. 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.

Section 15. (a) After the effective date of this act, any owner of a structure erected prior to the effective date of this act on land overlying coal, which structure is not of a class enumerated in section 4 and any owner of the surface land who shall decide to erect or who shall erect any structure upon the land overlying the coal, but who shall not have the right to have such structure protected against subsidence caused by bituminous coal mining operations, and who shall desire to acquire such protection, shall notify the owners of the economic interests in such coal or the operator of the mine, in writing, of his desire to acquire such protection. Within thirty days after the receipt of such notice, the owners of the economic interests in such coal or the operator of the mine shall notify such surface owner, in writing, of the amount of coal necessary to be left in place for surface support and the owners of the economic interests in such coal shall endeavor to agree with the surface owner on just compensation for the coal to be left in place. If the owners of the economic interests in the coal and the surface owner cannot agree upon the price for the coal to be left in place, any of the parties may, within thirty days after the date of such notice to the surface owner, request the Secretary of Mines and Mineral Industries to appoint a mediator. The

secretary shall promptly appoint a mediator who shall, in accor ance with procedures established by the secretary, within ninet days after his appointment determine just compensation for the co to be left in place for surface support. If either the surface owner any owner of an economic interest in said coal shall not be satisfie with the determination of the mediator, any such party may pr ceed within thirty days to have the amount of just compensatio determined in accordance with articles V, VI, and VII of the act o June 22, 1964 (P. L. 84)) known as the "Eminent Domain Code."

(b) Upon payment by the surface owner to the owners of the eco nomic interests in the coal of the just compensation as finally deter mined under subsection (a) of this section 15, which payment shall b made within ninety days after such final determination, the operato of the mine shall be responsible for any damage to the structure o structures specified in the award of the mediator, or to such structure covered by contractual agreement between or among the parties caused by the subsequent mining and removal of coal. The Secretary of Mines and Mineral Industries may, whenever he deems it necessary and appropriate, require the operator of the mine to post a bond to guarantee payment for any damage to such structures, such bond to be in accordance with the provisions of section 6 (b) hereof.

(c) Any owner of surface land without the right of surface support who shall not take advantage of the provisions of this section shall have no recourse under law for any damage caused by subsidence resulting from coal mining operations.

(d) Nothing herein shall prohibit the owners of the economic interests in the coal and the surface owner from voluntarily entering into an agreement providing for coal support, and the amount to be paid therefor, applicable to structures to which this section applies.

Section 16. The "Administrative Agency Law," act of June 4, 1945 (P. L. 1388), as amended, 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 Secretary of the Department of Mines and Mineral Industries issued pursuant to the provisions of this act, shall have the right to appear at any hearing before the Secretary of Mines and Mineral Industries at which the secretary shall reconsider said action. After such hearing the secretary shall issue an adjudication from which the aggrieved or affected party may appeal in the manner provided by the act of June 4, 1945 (P. L. 1388), known as the "Administrative Agency Law."

Section 17. Any person who shall engage in bituminous coal mining without a permit as required by this act shall be deemed guilty

mines or mining operations coming within the provisions of this act shall be under the exclusive jurisdiction of the Department of Mines and Mineral Industries and shall be conducted in accordance with the act of July 17, 1961 (P. L. 659), known as the "Pennsylvania Bituminous Coal Mine Act," and with such reasonable rules and regulations as may be deemed necessary by the Secretary of Mines and Mineral Industries for the health and safety of those persons engaged in the work. The Secretary of Mines and Mineral Industries, through the mine inspectors, shall have the power to enforce the provisions of this act and the rules and regulations promulgated hereunder by him.

Section 8. 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 of Mines and Mineral Industries. 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. After one hundred twenty days following the effective date of this act, no mining shall be done which is not shown on such map or plan filed at least ten days previously.

Section 9. Any mine inspector directed by the Department of Mines and Mineral Industries 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 mine inspector shall report all violations of this act, or any rules and regulations promulgated pursuant hereto, to the secretary, who shall immediately notify the person in charge of or having supervision over said mine or mining operation by registered or certified mail of such violation or violations. Unless the conditions of this act and said rules and regulations are complied with within thirty days from the receipt of such notice, the secretary may, after hearing and final determination, suspend the permit for the aforesaid mine or mining operation and issue a cease and desist order requiring immediate cessation of any mine or mining operation until such time as it is determined by the secretary that said mine or mining operation is in full compliance with the provisions of this act and any rules and regulations promulgated pursuant hereto. A mine inspector shall have the authority t order the immediate cessation of any operation that is being conducte without a permit, as required by this act, or in any case where safet regulations are being violated. The right of the secretary to suspend permit is in addition to any penalty which may be imposed pursuant t this act.

Section 10. Every owner, operator, lessor or lessee engaged in th mining of bituminous coal or every general manager, superintenden or other person in charge of, or having supervision over, any bitumi nous coal mine or mining operation presently open, or hereafter opene or reopened, shall give, or cause to be given, by registered mail or cer tified mail, notice of the present existence of such a mine or mining op eration, or of the intent to commence or to recommence mining o mining operations within six months thereafter, 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.

Section 11. 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.

Section 12. 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

(d) A bituminous coal mine in operation on the effective date of his act 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 n the effective date of this act for a period during which the forms or applying for a permit are not available, and for a period of one undred twenty days thereafter.

Section 6. (a) If the removal of coal or other mining operations by holder of a permit granted under section 5 causes damage to structures set forth in section 4 of this act evidence that such damage has een repaired or that all claims arising therefrom have been satisfied, hall be furnished to the Secretary of Mines and Mineral Industries ithin six months from the date that the holder of such permit knows, h eason to know, such damage has occurred or, at the option of e p nit holder, within such period there shall be deposited with the ecretary of Mines and Mineral Industries as security for such repair such satisfaction a sum of money in an amount equal to said damge or the reasonable cost of repair thereof, as estimated by a reputae expert. In default of the filing of such evidence or such deposit, e Secretary of Mines and Mineral Industries shall suspend or reoke said permit.

(b) No permit revoked or suspended pursuant to this section shall reissued or reinstated until the applicant shall have furnished satisctory evidence to the Department of Mines and Mineral Industries at the damage for which the permit was revoked or suspended has en repaired or all claims arising therefrom satisfied, in accordance ith subsection (a) above. In addition, the Secretary of Mines and ineral Industries may, in his discretion, require the applicant to e a bond in a form prescribed by the secretary payable to the Comonwealth and conditioned upon the applicant's faithful performance mining or mining operations, in accordance with the provisions of cti . Such bond shall be in a reasonable amount as determined the Secretary of Mines and Mineral Industries. Liability under ch bond shall continue for the duration of the mining or mining eration, and for a period of ten years thereafter, at which time the nd shall become of no force and effect, and it, or any cash or secures subsituted for it as hereinafter provided, shall be returned to the plicant. Upon application of any proper party in interest, the Secrery of Mines and Mineral Industries, after due notice to any person o may be affected thereby, and hearing, may order the amount of id bond to be increased or reduced or may excuse the permit holder m any further duty of keeping in effect any bond furnished purant to a prior order of the secretary and return said bond, or the urities or cash posted in lieu thereof, to the permit holder, notwithnding any different provision herein respecting the duration or term said bond. Such bond shall be executed by the applicant and a corrate surety licensed to do business in the Commonwealth: Provided, wever, That the applicant may elect to deposit cash or negotiable

bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth, with the Secretary of Mines and Mineral Industries in lieu of a corporate surety. The cash deposit or market value of such securities shall be at least equal to the sum of the bond. The Secretary of Mines and Mineral Industries shall, upon receipt of any such deposit of cash or securities, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The 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 Secretary of Mines and Mineral Industries, the whole or any portion of any securities so deposited, upon depositing with him, in lieu thereof, other negotiable securities of the classes herein specified having a market value at least equal to the sum of the bond, and also to demand, receive and recover the interest and income from said securities as the same become due and payable: Provided, however, That where securities, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the applicant, shall convert such securities into such other negotiable securities of the classes herein specified as may be designated by the applicant.

(c) If it shall be determined by the Secretary of Mines and Mineral Industries 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 Secretary of Mines and Mineral Industries 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 securities as collateral in lieu of a corporate surety, the Secretary of Mines and Mineral Industries shall declare such collateral forfeited and shall direct the State Treasurer to pay said funds or proceed to sell said securities and pay the proceeds thereof to the Department of Mines and Mineral Industries 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 paid over to the party entitled thereto.

Section 7. Except as otherwise provided herein, all bituminous coal

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 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.

(7) 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 4. In order to guard the health, safety and general welfare of the public, no owner, operator, lessor, lessee, or general manager, superintendent or other person in charge of or having supervision over any bituminous coal mine shall mine bituminous coal so as to cause damage as a result of the caving-in, collapse or subsidence of the following surface structures in place on the effective date of this act, overlying or in the proximity of the mine:

(1) Any public building or any noncommercial structure customarily used by the public, including but not being limited to churches, schools, hospitals, and municipal utilities or municipal public service operations.

(2) Any dwelling used for human habitation; and

(3) Any cemetery or public burial ground.

Section 5. (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 Mines and Mineral Industries, on a form prepared and furnished by the department, for a permit for each separate bituminous coal mine or mining operation, which permit, when issued or reissued shall be valid until such mine or mining operation is completed or abandoned, unless sooner suspended or revoked by an order of the Secretary of Mines and Mineral Industries, as hereinafter provided. 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 Mines and Mineral Industries 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 Secretary of Mines and Mineral Industries, by rules and regulations, shall direct. 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 Secretary of Mines and Mineral Industries shall cause a permit to be issued or reissued if, in his opinion, the application discloses that sufficient support will be provided for the protected structures.

(b) If the Secretary of Mines and Mineral Industries determines that the permit applicant does not possess adequate financial responsibility, the secretary may require the applicant to file a bond or other security as recited in section 6 (b), to insure the the applicant's faithful performance of mining or mining operations, in accordance with the provisions of section 4.

(c) At the time an application under this act is filed with the Secretary of Mines and Mineral Industries, 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.

of establishment of those reorganized
ently have judicial appeals pending until

chase of social security offsets by retired
loyes' Retirement System and the Public
nt System who retired prior to July 1,

N under my hand and the Great Seal of
State, at the City of Harrisburg, this
enty-fourth day of February, in the year
our Lord one thousand nine hundred and
ty-six, and of the Commonwealth the one
ndred and ninetieth.

WILLIAM W. SCRANTON
Governor

mmonwealth

1966 SPECIAL SESSION NO. 1

No. 1

AN ACT

HB 13

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.

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

Section 1. This act shall be known and may be cited as "The Bituminous Mine Subsidence and Land Conservation Act of 1966."

Section 2. 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 generally to improve the use and enjoyment of such lands.

Section 3. 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

No. 1980-156

AN ACT

SB 991

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," further providing for permits and collateral deposits, expanding the rulemaking powers of the Department of Environmental Resources, granting a private right to enforce the provisions of the act, increasing and adding penalties, defining certain forms, making noncompliance with a rule or regulation of the department unlawful; creating the Bituminous Mine Subsidence and Land Conservation Fund and making editorial changes.

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

Section 1. The act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as "The Bituminous Mine Subsidence and Land Conservation Act of 1966," is amended to read:

Section 1. *Short title.*—This act shall be known and may be cited as "The Bituminous Mine Subsidence and Land Conservation Act **[**of 1966**]**."

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 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 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 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.

(7) 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 4. ***Protection of surface structures against damage from cave-in, collapse or subsidence.***—In order to guard the health, safety and general welfare of the public, no owner, operator, lessor, lessee, or general manager, superintendent or other person in charge of or having supervision over any bituminous coal mine shall mine bituminous coal so as to cause damage as a result of the caving-in, collapse or subsidence of the following surface structures in place on **[the effective date of this act]** ***April 27, 1966,*** overlying or in the proximity of the mine:

(1) Any public building or any noncommercial structure customarily used by the public, including but not being limited to churches, schools, hospitals, and municipal utilities or municipal public service operations.

(2) Any dwelling used for human habitation; and

(3) Any cemetery or public burial ground***; unless the current owner of the structure consents and the resulting damage is fully repaired or compensated.***

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 **[Mines and Mineral Industries]** ***Environmental Resources,*** on a form prepared and furnished by the department, for a permit for each separate bituminous coal mine or mining operation. **[which permit, when issued or reissued shall be valid until such mine or mining operation is completed or abandoned, unless sooner suspended or revoked by an order of the Secretary of Mines and Mineral Industries, as hereinafter provided.]** 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 **[Mines and Mineral Industries]** ***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, prox-

imity of and conditions in overlying or underlying coal seams and other geological conditions as the **[Secretary of Mines and Mineral Industries]** ***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 **[Secretary of Mines and Mineral Industries]** ***department*** shall cause a permit to be issued or reissued if, in **[his]** ***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) **[If the Secretary of Mines and Mineral Industries determines that the permit applicant does not possess adequate financial responsibility, the secretary may]** ***The department shall*** require the applicant to file a bond or other security as recited in section 6 (b), to insure the applicant's faithful performance of mining or mining operations, in accordance with the provisions of section 4.

(c) At the time an application under this act is filed with the **[Secretary of Mines and Mineral Industries]** ***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 **[the effective date of this act]** ***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.

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, **[shall be furnished]** to the **[Secretary of Mines and Mineral Industries]** *department* within six months from the date that the **[holder of such permit]** *permittee* knows, or has reason to know, such damage has occurred or, at the option of the **[permit holder]** *permittee,* within such period there shall be deposited with the Secretary of **[Mines and Mineral Industries]** *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 **[Secretary of Mines and Mineral Industries]** *department* shall suspend or revoke said permit.

[(b)] 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 of Mines and Mineral Industries]** *department* that the damage for which the permit was revoked or suspended has been repaired or all claims arising therefrom satisfied, in accordance with **[subsection (a) above. In addition, the Secretary of Mines and Mineral Industries may, in his discretion,]** *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 **[section 4]** *sections 4 and 5.* Such bond shall be in a reasonable amount as determined by the **[Secretary of Mines and Mineral Industries]** *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 **[Secretary of Mines and Mineral Industries]** *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 **[secretary]** *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 **[Secretary of Mines and Mineral Industries]** *department* in lieu of a corporate surety. The cash deposit or *irrevocable letter of credit or* market value of such **[securities]** *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 **[Secretary of Mines and Mineral Industries]** *department* shall, upon receipt of any such deposit of cash or **[securities]** *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 **[Secretary of Mines and Mineral Industries]** *department,* the whole or any portion of any **[securities]** *collateral* so deposited, upon depositing with him, in lieu thereof, other **[negotiable securities]** *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 **[securities]** *negotiable bonds* as the same become due and payable: Provided, however, That where **[securities]** *negotiable bonds,* deposited as aforesaid, mature or are called, the State Treasurer, at the request of the applicant, shall convert such **[securities]** *negotiable bonds* into such other negotiable **[securities]** *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 install-

ment 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 **[Secretary of Mines and Mineral Industries]** *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 **[Secretary of Mines and Mineral Industries]** *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 **[securities]** *negotiable bonds* as collateral in lieu of a corporate surety, the **[Secretary of Mines and Mineral Industries]** *department* shall declare such collateral forfeited and shall direct the State Treasurer to pay said funds or proceed to sell said **[securities]** *collateral* and pay the proceeds thereof to the **[Department of Mines and Mineral Industries]** *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 **[paid over to the party entitled thereto]** *held by the department as collateral for future damage contemplated herein until all liability of the permittee is released.*

Section 7. **[Except as otherwise provided herein, all]** *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 **[Mines and Mineral Industries]** *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 **[Secretary of Mines and Mineral Industries]** *department* for the health and safety of those persons engaged in the work. The **[Secretary of Mines and Mineral Industries, through the mine inspectors,]** *department* shall have the power to enforce the provisions of this act and the rules and regulations promulgated hereunder by **[him]** *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.

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 of Mines and Mineral Industries]** ***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. **[After one hundred twenty days following the effective date of this act, no]** *No* mining shall be done which is not shown on such map or plan filed at least ten days previously.

Section 9. **[Any mine inspector directed by the Department of Mines and Mineral Industries]** ***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 mine inspector shall report all violations of this act, or any rules and regulations promulgated pursuant hereto, to the secretary, who shall immediately notify the person in charge of or having supervision over said mine or mining operation by registered or certified mail of such violation or violations. Unless the conditions of this act and said rules and regulations are complied with within thirty days from the receipt of such notice, the secretary may, after hearing and final determination, suspend the permit for the aforesaid mine or mining operation and issue a cease and desist order requiring immediate cessation of any mine or mining operation until such time as it is determined by the secretary that said mine or mining operation is in full compliance with the provisions of this act and any rules and regulations promulgated pursuant hereto. A mine inspector]** ***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*** all 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 **[The right of the secretary to suspend a permit is in addition to any penalty which may be imposed pursuant to this act.]** ***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.***

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 **[within six months thereafter,]** ***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.

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.

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.

Section 13. **[The]** ***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 **[Attorney General of Pennsylvania]** ***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 **[shall]** ***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.

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.

Section 15. ***Proceedings for protection of surface structures.***—(a) After **[the effective date of this act]** ***April 27, 1966,*** any owner of a structure erected prior to the effective date of this act on land overlying coal, which structure is not of a class enumerated in section 4 and any owner of the surface land who shall decide to erect or who shall erect any structure upon the land overlying the coal, **[but who shall not have the right to have such structure protected against subsidence caused by bituminous coal mining operations, and who shall desire to acquire such protection]** ***who desires to prevent subsidence damage to that structure,*** shall notify the owners of the economic interests in such coal or the operator of the mine, in writing, of his desire to acquire such protection. Within thirty days after the receipt of such notice, the owners of the economic interests in such coal or the operator of the mine shall notify such surface owner, in writing, of the amount of coal necessary to be left in place for surface support and the owners of the economic interests in such coal shall endeavor to agree with the surface owner on just compensation for the coal to be left in place. If the owners of the economic interests in the coal and the surface owner cannot agree upon the price for the coal to be left in place, any of the parties may, within thirty days after the date of such notice to the surface owner, **[request the Secretary of Mines and Mineral Industries to appoint a mediator. The secretary**

($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.

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 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.

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.

Section [18] *19. Construction of act.*—This act is intended as emedial legislation designed to cure existing evils and abuses and each nd every provision hereof is intended to receive a liberal construction uch as will best effectuate that purpose, and no provision is intended o receive a strict or limited construction.

Section [19] *19.1. Severability.*—It is hereby declared that the rovisions of this act are severable one from another and if for any eason this act shall be judicially declared and determined to be nconstitutional so far as relates to one or more words, phrases, auses, sentences, paragraphs or sections hereof, such judicial deterination shall not affect any other provision of this act. It is hereby eclared that the remaining provisions would have been enacted otwithstanding such judicial determination of the validity in any spect of one or more of the provisions of this act.

Section 20. *Repealer.*—All acts and parts of acts are repealed sofar as they are inconsistent herewith.

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.

Section 21. *Effective date.*—This act shall take effect immediately.

Section 2. This act shall take effect immediately.

APPROVED—The 10th day of October, A. D. 1980.

DICK THORNBURGH

Attached is a copy of 30 CFR 817.121, which was in effect from 1983 until SMCRA was amended in 1992 to include Section 720. Prior to 1983, OSM's regulations imposed a general requirement of compensation and repair similar to that which is now contained in Section 720. In 1983, however, OSM amended its rules to delete this general requirement and provided that the issue of compensation and repair would depend upon State law.

As a result of 30 CFR 817.121(c)(2) from 1983 until Section 720 was added to SMCRA, operators in most states were no longer required to repair or compensate for subsidence damage if they had obtained a waiver or release of liability for any resulting subsidence damage from the overlying surface owners or their predecessors in title. Such waivers of liability were common throughout the coal producing States of this County.

However, because Pennsylvania law (specifically Section 4 of the BMSLCA) "protected" dwellings and various other structures from subsidence damage, Pennsylvania operators were still required, after 1983, to "avoid" any subsidence damage by leaving in place beneath the structures protected by Section 4 coal support pillars and, pursuant to Section 6 of the BMSLCA, further required to repair any damage that might result despite leaving support coal in place. These provisions of the BMSLCA, coupled with Section 15 (which allowed surface owners which did not own a right of surface support to "repurchase" that right from the coal operator) made it difficult and, in some instances impossible, for longwall companies to operate their mines as planned and projected.

It was because the 1966 BMSLCA effectively impeded the use of longwall mining techniques that the DMMP was created and, ultimately, Act 54 enacted.

Title 30--Mineral Resources
Chapter VII--Office of Surface Mining Reclamation and Enforcement, Department of the Interior
Subchapter K--Permanent Program Performance Standards
Part 817--Permanent Program Performance Standards--Underground Mining Activities

s 817.121 Subsidence control.

(a) The operator shall either adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this part shall be construed to prohibit the standard method of room-and-pillar mining.

(b) The operator shall comply with all provisions of the approved subsidence control plan prepared pursuant to § 784.20 of this chapter.

(c) The operator shall--

(c)(1) Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence; and

(c)(2) To the extent required under State law, either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancellable premium prepaid insurance policy.

(d) Underground mining activities shall not be conducted beneath or adjacent to (1) public buildings and facilities; (2) churches, schools, and hospitals; or (3) impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 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 regulatory authority 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.

(e) If subsidence causes material damage to any of the features or facilities covered by paragraph (d) of this section, the regulatory authority may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The regulatory authority shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(g) Within a schedule approved by the regulatory authority, the operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measure taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the regulatory authority. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of § 773.13(d) of this chapter.

[48 FR 24652, June 1, 1983]

AUTHORITY: Pub. L. 95-87 (30 U.S.C. 1201 et seq).

SOURCE: 44 FR 15422, Mar. 13, 1979, unless otherwise noted.
30 CFR s 817.121
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