

**PCA PROPOSED OMNIBUS AMENDMENTS TO
PENNSYLVANIA BITUMINOUS COAL MINE ACT**

(Updated January 30, 2006)

AN ACT

Amending the Act of July 17, 1961 (P.L. 659, No. 33), entitled

"An Act relating to bituminous coal mines; amending, revising, consolidating and changing the laws relating thereto; providing for the health and safety of persons employed in and about the bituminous coal mines of Pennsylvania and for the protection and preservation of property connected therewith; prescribing powers and duties in connection therewith; prescribing penalties; and repealing existing laws," further providing for adoption of federal safety standards, further providing for qualifications for certificates as mine foremen, mine electricians, assistant mine foremen, mine examiners and miners; and further providing for the use of diesel powered equipment in underground bituminous coal mines.

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

Section 1. Section 103 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, is amended as follows:

Section 103. Definitions

- [(1) "Abandoned workings" – ...]
- [(2) "Active workings"--....]
- [(3) "Inactive workings"--....]
- (4) "Bituminous coal mines" – shall include all underground coal mines in the State not now included in anthracite boundaries, and whenever the term "mine" appears in this act it shall be construed to mean an underground bituminous coal mine.
- (5) "Certified person" – No amendment proposed.
- (6) "Mine" – No amendment proposed.
- [(7) "Gassy mine" - ...]

- [(8) “Non-gassy mine” - ...]
- (9) "Operator" – No amendment proposed.
- (10) "Superintendent" – No amendment proposed.
- (9) "Mine foreman" – No amendment proposed.
- (12) "Mine examiner" – No amendment proposed.
- (13) "Department" – No amendment proposed.
- (14) “Secretary” - No amendment proposed.
- (15) “Deputy secretary” - No amendment proposed.
- [(16) “Investigating commission” – ...]
- (17) "Mine inspector" – the person commissioned by the Governor to have [supervision of] inspection authority at mines as hereinafter prescribed.
- (18) “Electrical Inspector - No amendment proposed.
- (19) "Examining board" – No amendment proposed.
- [(20) “Face” - ...]
- [(21) “Working place” - ...]
- [(22) “Coal-producing shift” - ...]
- [(23) “Return air” - ...]
- [(24) “Shaft” - ...]
- [(25) “Slope and drift” - ...]
- [(26) “Approved” – ...]
- [(27) “Permissible” - ...]
- (28) “MSHA” - No amendment proposed.
- (29) “DPEP” - No amendment proposed.
- (30) “Advisory committee” - No amendment proposed.
- (31) "Approval" or "Approved" – means approved by MSHA.

(32) "Director" – shall mean the Director of the Bureau of Deep Mine Safety of the Department of Environmental Protection. He may be referred to as the "Secretary" or the "Secretary of Mines and Mineral Industries." Wherever this act confers authority upon a mine inspector or electrical inspector such authority is also conferred upon the Director and the Department.

(33) "Imminent Danger" – means the existence of any condition which could reasonably be expected to cause death or serious physical harm before such condition can be abated.

Section 2. Sections 117 through 124 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, are amended as follows:

Section 117. Duties of mine inspectors

Each mine inspector shall devote the whole of his time to the duties of his office. It shall be his duty to thoroughly [examine] inspect each operating mine in his district [as often as necessary for safety. Non-gassy mines shall be inspected at least once every four months. Mines liberating explosive gas and where other dangers may be suspected to exist shall be inspected at least once every three months to see that all the provisions of this act are observed and strictly carried out, especially those that demand that the air current be carried to the working faces. He shall keep in his office a record of all examinations of mines, showing the condition in which he finds them, especially with reference to ventilation, roof control and drainage, the number of persons employed inside each mine, the extent to which the law is obeyed, and the progress record of all lost time accidents, showing the nature and causes thereof, and the number of deaths resulting therefrom] at least once every three months to see that all the provisions of this act are carried out. To enable the mine inspector to perform the duties imposed upon him by this act, he shall have the right at all times to enter any mine in his district or any mine in any other district when directed to do so by the Director, to make inspections. He shall also perform such other duties as the [secretary] Director may require.

Section 118. Duties of electrical inspectors

In order that the electrical inspector may properly perform the duties required of him, he shall devote his whole time and attention to the duties of his office, [, and he shall have the right to enter any coal mine for the purpose of inspecting electrical equipment, and if he finds during his inspection any defects in the electrical equipment which may be detrimental to the lives or health of the workmen, he shall have the authority to order the operator, in writing, to remedy such defects within a prescribed time, and to prohibit the continued operation of such electrical equipment after such time, unless such defects have been corrected.] It shall be his duty to thoroughly inspect each operating mine in his district at least twice per year to see that all provisions of this act relating to electrical equipment are carried out. To enable the electrical inspector to perform the duties imposed on him by this act, he shall have the right to enter any mine for the purpose of inspecting electrical equipment. He shall also perform such other duties as the Director may require.

[Section 119. Inspections; reports of inspections]

Delete the existing section and replace it with the following:

Section 119. Inspectors; issuance of citations

If, upon inspection of a mine, a mine or electrical inspector believes that an operator of a mine subject to this act has violated this act, or any mandatory safety standard, he shall, with reasonable promptness, issue a citation to the operator. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the act or standard alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation.

[Section 120. Mine inspector; cease work]

Delete the existing section and replace it with the following:

Section 120. Mine inspector; cease work

(a) If, upon any follow-up inspection of a coal mine, an inspector finds (1) that a violation described in a citation issued pursuant to section 119 has not been totally abated within the period of time as originally fixed therein or as subsequently extended, and (2) that the period of time for the abatement should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to immediately cause all persons, except those persons referred to in subsection (b), to be withdrawn from, and to be prohibited from entering, such area until an inspector determines that such violation has been abated.

(b) The following persons shall not be required to be withdrawn from, or prohibited from entering, any area of the coal mine subject to an order issued under this section:

(1) any person whose presence in such area is necessary, in the judgment of the operator or the inspector, to eliminate the condition described in the order;

(2) any public official whose official duties require him to enter such area;

(3) any representative of the miners in such mine who is, in the judgment of the operator or the inspector, qualified to make such mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order; and

(4) any consultant to any of the foregoing.

[Section 121. Mine inspectors' findings]

Delete the existing section and replace it with the following:

Section 121. Mine inspector; imminent dangers

(a) If, upon any inspection of a mine which is subject to this act, a mine inspector finds that an imminent danger exists, such inspector shall determine the extent of the area of such mine throughout which the danger exists, and issue an order requiring the operator of such mine to cause all persons, except those referred to in section 120(b), to be withdrawn from, and to be prohibited from entering, such area until a mine inspector determines that such imminent danger and the conditions which caused such imminent danger no longer exist.

(b) Orders issued pursuant to subsection (a) shall contain a detailed description of the conditions which cause and constitute an imminent danger and a description of the area of the coal mine from which persons must be withdrawn and prohibited from entering.

(c) Each order issued under this section shall be given promptly to the operator of the coal mine to which it pertains by the person issuing such order, and all of such orders shall be in writing, and shall be signed by the person making them.

[Section 122. Mine inspectors' reports to the secretary]

Delete the existing section and replace it with the following:

Section 122. Modification, termination or vacation of citations and orders

Any citation or order issued pursuant to the section may be modified or terminated by a mine inspector or the Director. Any citation or order issued under this act shall remain in effect until modified, terminated or vacated by a mine inspector or the Director, or modified, terminated or vacated by the Environmental Hearing Board or the courts as provided by law.

[Section 123. Discretionary power of mine inspectors]

Delete the existing section and replace it with the following:

Section 123. Adoption of federal safety standards and approvals

(a) All mandatory safety standards promulgated under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 et seq. and contained in Title 30 of the Code of Federal Regulations Part 75, and any amendments thereto shall be the regulations enforced by the Director and mine and electrical inspectors. Provided that, where such regulations require approval by the Secretary of Labor, MSHA or the MSHA District Manager of plans, equipment,

methods or means, approval by the Secretary of Labor, MSHA, or an MSHA District Manager shall constitute approval by the Director.

(b) Any roof, ventilation or other plans adopted and approved in accordance with the Federal Mine Safety and Health Act, 30 U.S.C. §§ 801 et seq., and the standards contained in Title 30 of the Code of Federal Regulations Part 75 shall be enforced by the Director and mine and electrical inspectors in the same manner as regulations.

(c) The Director, mine inspectors, electrical inspectors, the Environmental Hearing Board and the courts of this Commonwealth shall be guided in their enforcement of such standards and plans by the interpretation of such standards and plans by the Secretary of Labor, the decisions of the Federal Mine Safety and Health Review Commission, and the decisions of the courts of the United States.

[Section 124. Appointment of a commission by the secretary]

Delete the existing section and replace it with the following:

Section 124. Rulemaking

The Department, acting through the secretary, shall adopt as regulations:

(a) All mandatory safety standards promulgated under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 et seq., and contained in Title 30 of the Code of Federal Regulations Part 75 and in effect at the time of the adoption of this act. Such regulations shall be promulgated pursuant to the provisions of the Act of July 31, 1968 (P.L. 769), known as the “Commonwealth Documents Law” and the requirements of Section 1920-A(b) of the Act of April 9, 1929, P.L. 177 (known as the “Administrative Code of 1929), as amended, 71 P.S. § 510-20(b); the Act of June 25, 1982, P.L. 633, No. 181, as amended, 71 P.S. §§ 745.1, et seq. (known as the “Regulatory Review Act”); and the Sunshine Act, Act of October 15, 1998, P.L. 721, et seq., 65 Pa. C.S.A. § 701 et seq. The federal regulations shall be adopted by reference and references to the Secretary of Labor, MSHA, or an MSHA District Manager shall be deemed to be references to the Director, provided that, where such regulations require approval by the Secretary of Labor of plans, equipment, methods or means, approval by the Secretary of Labor shall constitute approval by the Director.

(b) All mandatory safety standards promulgated under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 et seq. after the effective date of this act and contained in Title 30 of the Code of Federal Regulations Part 75. Such regulations shall be promulgated pursuant to the provisions of the Act of July 31, 1968 (P.L. 769), known as the “Commonwealth Documents Law” and the requirements of Section 1920-A(b) of the Act of April 9, 1929, P.L. 177 (known as the “Administrative Code of 1929), as amended, 71 P.S. § 510-20(b); the Act of June 25, 1982, P.L. 633, No. 181, as amended, 71 P.S. §§ 745.1, et seq. (known as the “Regulatory Review Act”); and the Sunshine Act, Act of October 15, 1998, P.L. 721, et seq., 65 Pa. C.S.A. § 701 et seq. The federal regulations shall be adopted by reference and references to the Secretary of Labor, MSHA, or an MSHA District Manager shall be deemed to be references

to the Director, provided that, where such regulations require approval by the Secretary of Labor, MSHA or an MSHA District Manager of plans, equipment, methods or means, approval by the Secretary of Labor, MSHA or an MSHA District Manager shall constitute approval by the Director.

(c) All mandatory safety standards promulgated under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 et seq. and contained in Title 30 of the Code of Federal Regulations Section 77.1500 through 77.1505 related to auger mining and in effect at the time of the adoption of this Act. Such regulations shall be promulgated pursuant to the provisions of the Act of July 31, 1968 (P.L. 769), known as the “Commonwealth Documents Law” and the requirements of Section 1920-A(b) of the Act of April 9, 1929, P.L. 177 (known as the “Administrative Code of 1929), as amended, 71 P.S. § 510-20(b); the Act of June 25, 1982, P.L. 633, No. 181, as amended, 71 P.S. §§ 745.1, et seq. (known as the “Regulatory Review Act”); and the Sunshine Act, Act of October 15, 1998, P.L. 721, et seq., 65 Pa. C.S.A. § 701 et seq. The federal regulations shall be adopted by reference and references to the Secretary of Labor, MSHA, or an MSHA District Manager shall be deemed to be references to the Director, provided that, where such regulations require approval by the Secretary of Labor, MSHA or an MSHA District Manager of plans, equipment, methods or means, approval by the Secretary of Labor shall constitute approval by the Director.

(d) All mandatory safety standards promulgated under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §§ 801 et seq. after the effective date of this act and contained in Title 30 of the Code of Federal Regulations Sections 77.1500 through 77.1505 related to auger mining. Such regulations shall be promulgated pursuant to the provisions of the Act of July 31, 1968 (P.L. 769), known as the “Commonwealth Documents Law” and the requirements of Section 1920-A(b) of the Act of April 9, 1929, P.L. 177 (known as the “Administrative Code of 1929), as amended, 71 P.S. § 510-20(b); the Act of June 25, 1982, P.L. 633, No. 181, as amended, 71 P.S. §§ 745.1, et seq. (known as the “Regulatory Review Act”); and the Sunshine Act, Act of October 15, 1998, P.L. 721, et seq., 65 Pa. C.S.A. § 701 et seq. The federal regulations shall be adopted by reference and references to the Secretary of Labor MSHA, or an MSHA District Manager shall be deemed to be references to the Director, provided that, where such regulations require approval by the Secretary of Labor, MSHA or an MSHA District Manager of plans, equipment, methods or means, approval by the Secretary of Labor, MSHA or the District Manager shall constitute approval by the Director.

Section 3. The act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, is amended by adding sections 124.1 and 124.2 as follows:

Section 124.1. Posting of citations and orders

(a) At each coal mine there shall be maintained an office with a conspicuous sign designating it as the office of such mine. There shall be a bulletin board at such office or located at a conspicuous place near an entrance of such mine, in such manner that orders and citations may be posted thereon, and be easily visible to all persons desiring to read them, and be protected against damage by weather and against unauthorized removal. A copy of any order or citation required by this act to be given to an operator shall be delivered to the office of the

affected mine and a copy shall be immediately posted on the bulletin board of such mine by the operator or his agent.

(b) In order to insure prompt compliance with any order or citation issued under this act, the inspector may deliver such order or citation to an agent of the operator.

Section 124.2. Civil actions to compel compliance

(a) The Director may institute an action in equity for injunctive relief, including a permanent or temporary injunction, or any other appropriate order in the court of common pleas for the county in which a mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent:

(i) violates or fails or refuses to comply with any order issued under this act,

(ii) refuses to admit an inspector to a mine, or

(iii) refuses to permit the inspection of a mine.

(b) In any action brought under subsection (a), the court shall have jurisdiction to provide such relief as may be appropriate. Temporary injunctions shall be issued in accordance with the Pennsylvania Rules of Civil Procedure, as amended.

Section 4. Sections 126, 127 and 128 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, are amended as follows:

Section 126. Mine rescue station; equipment; instructors

(a) On and after the effective date of this act, the [secretary] Director, with the consent of the Governor, shall appoint [two first-aid instructors and] two mine rescue instructors to carry on the work of instructing mine employees how to care for persons injured in and about the bituminous coal mines of this Commonwealth, and to train such other employees of the various coal companies who may voluntarily seek training in the use of self-contained breathing apparatus, gas masks, first aid to the injured, and such other things or practices essential to the safe and efficient conduct of the work of mine rescue.

(b) The [secretary] Director, with the consent of the Governor, shall have the authority to purchase, through the Department of Property and Supplies, two trucks equipped with the necessary breathing apparatus, gas masks, first-aid supplies, analytical apparatus and such other chemical and scientific instruments commonly used and necessary in the work of first aid and mine rescue.

The [secretary] Director, with the consent of the Governor, shall also have the authority to purchase, through the Department of Property and Supplies, such emergency mine rescue trucks and equipment, including necessary drilling equipment, as in his opinion shall be deemed necessary, for use in mine catastrophes.

(c) The persons appointed to the position of [first-aid instructor and] mine rescue instructors [shall not be under twenty-five or over fifty-five years of age on the date of their appointment. They] shall be citizens of this Commonwealth and shall devote their whole time and attention to the duties of their office. They shall [have] possess a [first grade] valid mine foreman's certificate, issued by the department, and shall be in possession of a first-aid certificate issued by the department, the Red Cross, the Federal Bureau of Mines, its successor agency, the Federal Mine Safety and Health Administration or any other recognized authority on the subject of first aid. They shall also undergo an examination arranged and conducted by the [secretary] Director. The examination, so conducted by the [secretary] Director, shall pertain to the applicant's knowledge and experience in the use of such instruments and equipment as are commonly used in mine rescue work.

(d) The salaries of [first-aid instructors and] mine rescue instructors shall be established by the [executive board] Department.

(e) The persons so trained in the work of [first aid and] mine rescue, shall, upon completion of a course of training and instruction as may be prescribed by the [secretary] Director, be granted a certificate of competency. Such certificate shall be issued by the [secretary] Director upon written notice from the "Chief of Crew" that the applicant has completed, in a satisfactory manner, the course of training and instruction prescribed by the said [secretary] Director.

(f) The Director shall purchase necessary new and/or replacement mine emergency equipment for mine operators who maintain and train mine rescue teams for their mine or mines for use in mine emergencies.

Section 127. Mine rescue crews

The [secretary] Director is hereby authorized to have trained and employed at the rescue stations operated by the department, such rescue crews as he may deem necessary. Each member of a rescue crew shall devote adequate time for training purposes as determined by the [secretary] Director, and shall be available at all times to assist in rescue work at explosions, mine fires and recovery work. Members of the mine rescue crews shall be compensated at rates commensurate for the area as determined by the secretary and payable on requisition approved by the [secretary] Director, and such other sums to be paid by the operating company as may be agreed upon when engaged in rescue work at explosions, mine fires or recovery work. The [secretary] Director may remove any member of a rescue crew at any time. Members of mine rescue crews not employees of the Department, if injured when engaged in rescue work at explosions, mine fires or recovery work shall be entitled to worker's compensation pay and medical reimbursement at rates commensurate with their employment and payable on requisition approved by the Director.

Section 128. Supervision of mine rescue work

The [secretary] Director is hereby authorized to assign mine rescue crews and such mine rescue and recovery work to mine inspectors or other qualified employees of the department as he may deem necessary.

Section 5. The act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, is amended by adding Sections 129 through 132 as follows:

Section 129. Environmental Hearing Board

(a) The Environmental Hearing Board shall have the power and duty to hold hearings and issue adjudications on actions or decisions of inspectors, the Director and the department taken under this act. Without limiting the scope of jurisdiction of the Board, the Board has jurisdiction over the following matters: contests of the granting or denial of variances by the department and its inspectors, contests of citations, orders and actions issued by the department, modifications of such citations and orders, contests of civil penalties proposed by the department and contests of actions or orders of the department concerning certification of mine officials.

(b) Such proceedings may be initiated by filing with the Board a notice of contest within 30 days of the date of the receipt of the citation, order, modification, action (including the grant or denial of a variance or related to the certification of miners or mine officials), or proposed civil penalty. Except as provided in subsection (c) hereof, a notice of contest of any action or decision by the department must be filed with the Board within 30 days of the date the contestant receives notice of the action or decision.

(c) The failure to contest the issuance of a citation or order or modification thereof within 30 days of the receipt thereof does not preclude a contest of the existence of a violation of the act or regulation at the time of the contest of a proposed civil penalty for such citation or order or modification thereof.

(d) A miner at the mine or representative of such affected miner at the mine may contest the granting of a mine-specific variance by the department.

(e) In any proceeding before the Board, a miner at the mine or a miner's representative of such affected miners at the mine where such action was taken may participate as a party in any such proceeding when initiated by a mine operator. The mine operator may participate as a party in any such proceeding initiated by a miner or miner's representative. The mine operator, miner or miner's representative may participate by intervening as a matter of right within 30 days of the filing of the notice of contest. Such notice of contest will be served upon the mine operator, if filed by a miner or miner's representative, and posted on the mine bulletin board if filed by the mine operator.

(f) The filing of a notice of contest shall not automatically act as a stay or supersedeas of any order of the department, except those orders involving the revocation or suspension of certification of any mine official. In an action involving revocation or suspension of certification, the Board, upon petition of the department, may grant temporary suspension of such certification. In seeking temporary suspension the department shall demonstrate that the

continued certification represents a demonstrated existing hazard to mine safety and health and that there is a substantial likelihood that the department will prevail on the merits of the final determination.

(g) Upon the request of an operator, mine official, miner at the mine or representative of affected miners, the Board shall expedite any proceedings with respect to a contest and shall hold a hearing within 15 days of the request and shall issue a decision in such proceedings no more than 15 days after the end of any hearing.

(h) The Board's decisions shall be in writing and shall provide the factual and legal basis for the decision. The Board may modify, affirm or vacate, in whole or in part, any action or decision of the department that is subject of a proceeding before the Board.

(i) The Board shall be guided in its interpretation of the mine safety regulations and approved plans and in its adjudications of actions and decisions of the department by the decisions of the Federal Mine Safety and Health Review Commission, the decisions of the courts of the United States and by interpretation of such standards by MSHA.

(j) Hearing sites shall be selected by the Board with the due regard to having the hearing convenient to the mine site.

(k) Any party to such proceedings adversely affected or aggrieved by a decision of the Board may obtain review from Commonwealth Court of such decision by filing a petition for review within 30 days of the date of the decision of the Board. Upon such filing the Commonwealth Court shall have jurisdiction and shall have the power to make and enter upon pleadings, evidence, testimony at such proceedings set forth in such record orders affirming, modifying or setting aside, in whole or in part, the decision of the Board. No objection that has not been argued before the Board shall be considered by the Court, unless the failure or neglect to argue such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact, if supported by substantial evidence in the record, considered as a whole, shall be conclusive.

Section 130. Permitting of operations near abandoned underground mines

When evaluating applications for new coal mining activity permits and revisions to existing permits to add acreage for underground coal removal to be issued to and for mines under the Bituminous Mine Subsidence and Land Conservation Act, the department shall consider the location of abandoned mine voids, the accuracy of the mapping of such locations and their impact upon the safety of miners working underground, in a fashion consistent with Sections 224, 235 and 236 of this act.

Section 131. Civil penalties

(a) The operator of a coal in which a violation occurs of a regulation or who violates any other provision of this act, may be assessed a civil penalty by the department which penalty shall

not be more than \$60,000 for each such violation. Each occurrence of a violation of a mandatory safety standard may constitute a separate offense.

(b) Any operator who fails to correct a violation for which a citation has been issued within the period permitted for its correction or reasonably extended shall be assessed a civil penalty of not more than \$1,000 for each day during which such failure or violation continues after the time set for correction in the citation.

Section 132. Issuance of civil penalties

(a) If, after an inspection or investigation, a mine or electrical inspector issues a citation or order, the department may, within a reasonable time after the issuance of such citation, notify the operator by certified mail of the civil penalty proposed to be assessed for the violation cited. A copy of such notification shall be sent by mail to the representative of miners in such mine. If, within 30 days from the receipt of the notification issued by the department, the operator fails to contest such proposed civil penalty before the Environmental Hearing Board, the citation and the proposed assessment of penalty shall be deemed a final order and not subject to review by any court or the Board.

(b) If, after an inspection or investigation, a mine or electrical inspector issues an order for failure to correct a violation for which a citation has been issued, the department shall, within a reasonable time after the issuance of such order notify the operator by certified mail of the penalty proposed to be assessed by reason of such failure. A copy of such notification of the proposed assessment of penalty shall at the same time to be sent by mail to the representative of the mine's employees. If, within 30 days from the receipt of notification of proposed assessment of penalty issued by the department, the operator fails to appeal such proposed penalty to the Environmental Hearing Board, such notification shall be deemed a final order and not subject to review by any court or the Board.

(c) The department shall not issue a proposed civil penalty assessment based solely upon citations or orders issued by MSHA. In order for the department to be authorized to issue a proposed civil penalty, a department inspector or other department official must personally observe or determine the existence of a violation of the act or the regulations.

(d) In determining a penalty to be proposed, the department shall consider the amount of any civil penalties assessed by MSHA, the operator's history of previous violations, the appropriateness of such penalty to the size of the mines of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation. In proposing civil penalties under this act, the department is required to make findings of fact concerning the above factors.

(e) The Environmental Hearing Board shall have the authority to assess all civil penalties provided in this act. In assessing civil penalties, the Board shall consider the amount of any civil penalties assessed by MSHA, the operator's history of previous violations, the appropriateness of such penalty to the size of the mine of the operator charged, whether the operator was negligent,

the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

Section 6. Sections 201 through 206 and Section 212 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, are amended as follows:

Section 201. Boards of examiners

[On petition of the mine inspector of any mine inspection district, the court of common pleas in any county in said district] As necessary, the Director shall appoint an examining board of three persons, consisting of a mine inspector, a miner, and [an operator or superintendent] a mine supervisory official, all of whom shall be citizens of this Commonwealth. The miner shall have had at least ten years practical experience in the bituminous coal mines of this Commonwealth, and [be] shall have been in actual practice as a miner within the previous ten years. The mine supervisory official must hold a certificate under this act as an assistant mine foreman or mine foreman, have ten years supervisory experience with an underground bituminous coal mine and have been employed in such capacity within the previous ten years. The Director shall appoint a chairman for each board. The persons so appointed, and after the board has been duly organized, shall take and subscribe before an officer authorized to administer the same, the following oath, namely:

"We, the undersigned, do solemnly swear (or affirm) that we will perform the duties of examiners of applicants for certificates of qualification as mine foremen, assistant mine foremen, mine examiners, mine electricians and miners; that we will not divulge or make known to any person any question prepared for the examiners, or in any manner assist any applicant to pass the examination, but will be governed by the evidence of the qualifications of the applicants to fill said positions, and not by any consideration of personal favor; and that we will certify all whom we may find qualified in accordance with this act, and none other."

Section 202. [Districts] Locations for boards of examiners

The [secretary] Director shall each year determine the [districts] locations in which the boards of examiners shall meet for the purpose of holding examinations, and at least [two weeks'] thirty days' notice of the time and place where the examinations are to be held shall be given, except for examinations specified in Section 206(1). Such examinations should be held at least twice annually and as otherwise requested pursuant to Section 206(1) of this Act.

Section 203. Preparation of examinations

(a) The Director shall cause to have a database of questions and answers prepared through an appropriate institution of higher learning which provides education in mining engineering. The [secretary] Director shall select from the members of the examining boards a committee of six, comprising two mine inspectors, two [operators or superintendents] mine supervisory officials, and two miners, who shall meet at such time and place as the [secretary] Director may designate, to [prepare] select from the aforementioned database of questions the

questions and answers to be used by all the examining boards in the bituminous region of the Commonwealth. The preparation of such examination shall include selection of a subset of questions from such database of questions maintained by the department. The full database of questions shall be available to any applicant at no cost.

(b) The committee so selected shall distribute the questions and answers in sealed packages through the office of the [secretary] Director to the chairmen of the examining boards selected to hold the examinations, and, at the commencement of each session, the chairman of each board shall open the package containing the questions for that particular session in the presence of the board.

(c) The committee is hereby authorized to engage the services of a clerk, whose compensation and mileage shall be the same as that of the members of the board.

(d) The [secretary] Director may, at any time, convene the committee for the purpose of preparing questions and answers for any special examination that may be held, and for such examination the questions and answers shall be distributed to the boards in the usual way.

Section 204. Compensation of boards of examiners

Each board member, with the exception of the mine inspector members, shall receive [thirty dollars (\$30) a day] appropriate per diem based on the prevailing formula administered by the State for each day actually employed [, not exceeding fifteen days in all,] and traveling expenses at the prevailing State rate for each mile necessarily traveled in going from his home to the place of meeting and return, by the shortest practicable route. The committee of six, with the exception of the mine inspector members, shall receive compensation [at the rate of thirty dollars (\$30) a day] and traveling expenses at the prevailing State rate [while preparing the questions and answers]. Each member shall also be reimbursed for all other necessary expenses incurred in the discharge of his duties. Each board of examiners is hereby authorized to employ the services of a clerk, whose compensation and rate of mileage shall be the same as that of members of the board. The clerk of each board shall, on final adjournment, send to the [secretary] Director properly attested vouchers for compensation and expenses of each member of the board, and also a voucher covering his own compensation and expenses, which vouchers shall be approved by the chairman and the secretary of the board. The [secretary] Director shall then approve said vouchers and transmit them to the Auditor General who shall issue warrants on the State Treasurer for their payment.

Section 205. Designation of boards for examination

The [secretary] Director shall designate the boards of examiners before whom applicants, for certification as mine foremen, assistant mine foremen, mine examiners, mine electricians and miners, residing in the various mine inspection districts, shall appear. All persons who desire to appear for examination shall notify the chairman of the board of their intention to appear, if possible, not less than ten days prior to the date set for the examination. The boards shall inquire into the character and qualifications of the applicants who present themselves for examination.

Section 206. Qualifications for certification

(a) Applicants for certificates of qualification as mine foremen [and mine electricians], shall be citizens of the United States, [of good moral character and of known temperate habits,] at least twenty-three years of age, and shall have had at least five years practical experience after eighteen years of age, as miners or mining engineers or men of general work with at least three years' experience in working sections (a working section for the purposes of this act shall be deemed to be the area from the working face extending back one thousand feet) in underground bituminous coal mines[:], except as provided herein.

(a.1) [Provided, That graduates] Graduates with a bachelors degree in civil engineering, [electrical engineering,] or mining engineering, or an associate degree in the mining engineering course of a recognized institution of learning may, after examination, be granted certificates of qualification by an examining board as mine foremen [and mine electricians], if possessed of an aggregate of not less than three years practical experience as miners or men of general work or mining engineers, in underground bituminous coal mines in the working section. Alternatively, if such persons possess an aggregate of not less than three years' practical experience as miners or men of general work or mining engineers in or around underground bituminous coal mines, they may after examination be granted certification if they participate in and undergo a period of training of at least 40 hours duration, which shall include training in the requirements of mine safety law, gas detection, mine rescue and supervisory skills. Such training may take place in segments over a period of three months, and may include job observation. Such course may be conducted by an instructor(s) employed by the department or may be conducted pursuant to a plan of instruction submitted by the operator and approved by the department. A record of such training will be submitted with the miner's application. Such training will be in addition to the training specified in subsection (f).

(a.2) Other persons who have at least four years of practical experience as miners, mining engineers or men of general work in underground bituminous coal mines in the working sections may after examination be granted certificates as mine foremen if they participate in a training course of at least 80 hours duration, which shall include training in the requirements of mine safety law, gas detection, mine rescue and supervisory skills. Such course may be conducted by an instructor(s) employed by the department or may be conducted pursuant to a plan of instruction submitted by the operator and approved by the department. Such training may take place in segments over a period of three months, and may include job observation. A record of such training will be submitted with the miner's application. Such training will be in addition to the training specified in subsection (f).

(b) Applicants for certificates of qualification as mine electricians, shall be citizens of the United States, at least twenty-three years of age, and shall have had at least five years practical experience after eighteen years of age, as miners or men of general work with at least three years' experience in working sections in underground bituminous coal mines, except as provided herein:

(b.1) Graduates with a bachelors degree in electrical engineering or an associate degree in a electrical engineering course of a recognized institution of learning may, after examination, be

granted certificates of qualification by an examining board as mine electricians, if possessed of an aggregate of not less than three years practical experience as miners or men of general work in underground bituminous coal mines in the working section. Alternatively, if such persons possess an aggregate of not less than three years' practical experience as miners or men of general work in and around underground bituminous coal mines they may after examination be granted certification if they participate in and undergo a period of training of at least 40 hours duration, which shall include training in the requirements of mine safety law, gas detection, mine maintenance and supervisory skills. Such training may take place in segments over a period of three months, and may include job observation. Such course may be conducted by an instructor(s) employed by the department or may be conducted pursuant to a plan of instruction submitted by the operator and approved by the department. A record of such training will be submitted with the miner's application. Such training will be in addition to the training specified in subsection (f).

(b.2) Other persons who have at least four years of practical experience as miners or men of general work in underground bituminous coal mines in working sections may, after examination, be granted certificates as mine electricians if they have held qualifications from MSHA to perform electrical work for three years and if they participate in a training course of at least 80 hours duration, which shall include training in the requirements of mine safety law, gas detection, mine maintenance and supervisory skills. Such course may be conducted by an instructor(s) employed by the department or may be conducted pursuant to a plan of instruction submitted by the operator and approved by the department. Such training may take place in segments over a period of three months, and may include job observation. A record of such training will be submitted with the miner's application. Such training will be in addition to the training specified in subsection (f).

[(a.1)] (c) Applicants for certificates of qualification as assistant mine foremen shall be citizens of the United States, [of good moral character and known temperate habits,] and shall have had at least four years' practical experience, with at least three years' experience in working sections, after eighteen years of age, as miners or mining engineers or men of general work, in underground bituminous coal mines [:] , except as provided herein.

(c.1) [Provided, That graduates] Graduates with a bachelors degree in civil engineering [, electrical engineering] or mining engineering, or an associate degree in the mining engineering course of a recognized institution of learning may, after examination, be granted certificates of qualification by an examining board as assistant mine foremen, if possessed of an aggregate of not less than three years practical experience as miners or mining engineers, or men of general work, in underground bituminous coal mines in working sections. Alternatively, if such persons possess an aggregate of not less than three years' practical experience as miners, men of general work or mining engineers in or around underground bituminous coal mines they may after examination be granted a certification if they participate in and undergo a period of training of at least 40 hours duration, which shall include training in the requirements of mine safety law, and gas detection, mine rescue and supervisory skills. Such course may be conducted by an instructor(s) employed by the department or may be conducted pursuant to a plan of instruction submitted by the operator and approved by the department. Such training may take place in segments over a period of three months, and may include job observation. A record of such

training will be submitted with the miner's application. Such training will be in addition to the training specified in subsection (f).

(c.2) Other persons who have at least three years of practical experience in underground bituminous coal mines in the working sections as miners or mining engineers or men of general work may after examination be granted certificates as assistant mine foremen if they participate in a training course of at least 80 hours duration, which shall include training in the requirements of mine safety law, gas detection, mine rescue and supervisory skills. Such course may be conducted by an instructor(s) employed by the department or may be conducted pursuant to a plan of instruction submitted by the operator and approved by the department. Such training may take place in segments over a period of three months, and may include job observation. A record of such training will be submitted with the miner's application. Such training will be in addition to the training specified in subsection (f).

[(a.2)] (d) Applicants for certificates of qualification as mine examiners shall be citizens of the United States [, of good moral character and of known temperate habits,] and shall have had at least three years' practical experience after eighteen years of age, as miners or mining engineers or men of general work, in underground bituminous coal mines in working sections.

(d)(1) Graduates with a bachelors degree in civil engineering, or mining engineering, or an associate degree in the mining engineering course of a recognized institution of learning may, after examination, be granted certificates of qualification by an examining board as mine examiners, if possessed of an aggregate of not less than two years practical experience as miners or men of general work or mining engineers, in underground bituminous coal mines in working sections. Alternatively, if such persons possess an aggregate of not less than two years' practical experience as miners, men of general work or mining engineers in or around underground bituminous coal mines they may after examination be granted a certification if they participate in and undergo a period of training of at least 40 hours duration, which shall include training in the requirements of mine safety law, gas detection, mine rescue and supervisory skills. Such course may be conducted by an instructor(s) employed by the department or may be conducted pursuant to a plan of instruction submitted by the operator and approved by the department. Such training may take place in segments over a period of three months, and may include job observation. A record of such training will be submitted with the miner's application. Such training will be in addition to the training specified in subsection (f).

(d.2) Other persons who have at least two years of practical experience as miners or mining engineers or men of general work in underground bituminous coal mines in the working sections may after examination be granted certificates as mine examiners if they participate in a training course of at least 80 hours duration, which shall include training in the requirements of federal mine safety law, gas detection, mine rescue and supervisory skills. Such course may be conducted by an instructor(s) employed by the department or may be conducted pursuant to a plan of instruction submitted by the operator and approved by the department. Such training may take place in segments over a period of three months, and may include job observation. A record of such training will be submitted with the miner's application. Such training will be in addition to the training specified in subsection (f).

[(a.3)] (e) All applicants shall be able to read and write the English language intelligently, and shall furnish the board with [certificates as to their character and temperate habits, and] a notarized statement from previous employers setting forth the length of service and type of work performed in the different mines

[(b)] (f) Certificates of qualification as mine foremen shall be granted to persons who have given to the examining board satisfactory evidence of their ability to perform the duties of mine foremen and have received training by persons approved by the department in determining the presence of explosive and noxious gases, and in the use and mechanics of [all] MSHA approved gas detection devices, and who shall have received an average of at least eighty per cent in the examination.

[(c)] (g) Certificates of qualification as assistant mine foremen shall be granted to persons who have given to the examining board satisfactory evidence of their ability to perform the duties of assistant mine foremen and have received training by persons approved by the department in determining the presence of explosive and noxious gases, and in the use and mechanics of [all] MSHA approved gas detection devices, and who shall have received an average of at least seventy per cent in the examination.

[(d)] (h) Certificates of qualification as mine examiners shall be granted to persons who have given to the examining board satisfactory evidence of their ability to perform the duties of mine examiners and have received training by persons approved by the department in determining the presence of explosive and noxious gases, and in the use and mechanics of [all] MSHA approved gas detection devices, and who shall have received an average of at least seventy-five per cent in the mine examiners examination.

[(e)] (i) Certificates of qualification as mine electrician shall be granted to persons who have given to the examining board satisfactory evidence of their ability to perform the duties of mine electrician and have received training by persons approved by the department in determining the presence of explosive and noxious gases, and in the use and mechanics of [all] MSHA approved gas detection devices, and who shall have received an average of seventy-five per cent in the mine electrician's examination.

[(f)] (j) Certificates of qualification or service heretofore granted shall have equal value with certificates of qualification granted under this act; provided, however, those certificates heretofore granted for second grade mine foremen or second grade assistant mine foremen will not entitle the holders to act in gassy mines.

[(g)] (k) All applicants who have satisfactorily passed a written examination shall also satisfactorily pass an oral examination, and after being certified but before assuming their duties as mine foremen, mine electricians, assistant mine foremen or mine examiners, shall accompany a certified mine foreman or a certified assistant mine foreman [for not less than two weeks] while executing the duties of their position for the entire shift for a period of not less than ten (10) full working shifts for training purposes in accordance with a training program submitted by the operator and approved by the department: Provided, however, that any applicant who has been

granted a prior certificate need not undergo this training. The record of such training shall be maintained at the mine.

206 (l) A certificate of qualification as mine foreman, mine electrician, assistant mine foreman, or mine examiner shall be issued to any person possessing a similar certificate from another state; provided that:

(i) The individual presents proof of certification by another state to the department.

(ii) The individual has the experience as specified in Section 206, either before or after certification in such other state.

(iii) The individual presents a notarized statement to the department as to the individual's employment and employers and certifications since the date of said certification.

(iv) The individual is able to read and write the English language intelligently, and shall furnish the board with references.

(v) The individual undergoes a period of training of at least 80 hours duration, which shall include training in the requirements of gas detection, mine rescue, supervisory skills and mine safety law. Such course may be conducted by an instructor(s) employed by the department or may be conducted pursuant to a plan of instruction submitted by the operator and approved by the department. Such course may include classroom instruction and job observation. Such training may take place in time segments over a period of three months. Records of such training shall be submitted to the department with the application. In lieu of the training specified herein, the individual shall pass an examination consisting of no more than 50 questions prepared as specified in Section 203(a) pertaining specifically to mine safety law. Such examination shall be given upon two week's notice at the request of the individual and may be administered by an inspector or other official of the department. In order to obtain certification the individual is required to achieve a score on such examination equivalent to the percentage specified in this act for the level of certification sought. Additionally, the individual shall receive training by persons approved by the department in determining the presence of explosive and noxious gases and in the use and mechanics of a gas detection device approved by MSHA.

Section 212. Qualifications for certification as miners

Miners shall be examined and granted certificates by the district board of examiners or the mine inspector in the district under such rules and regulations as the [secretary] Director shall prescribe.

(a) No person shall be qualified to take the examination unless he produces evidence of having had not less than one year's practical experience in the bituminous coal mines of this Commonwealth as a miner or who has served as a noncertified miner for a period of not less than one year. A certificate shall not be granted unless the applicant appears in person before the board or mine inspector and answers orally, intelligently and correctly, at least eight practical questions propounded to him.

(b) All persons possessing certificates of qualification issued by the Commonwealth of Pennsylvania entitling them to act as mine foremen, assistant mine foremen, mine examiners or mine electricians, shall be eligible to engage at any time as miners in bituminous coal mines of this Commonwealth.

(c) Supervisory and technically trained employees of the operator whose work contributes only indirectly to mine operations, employees who are not performing the work of a miner as that term is defined in this act, and noncertified miners, shall not be required to possess a miner's certificate.

(d) A certificate of qualification as a miner shall be issued by the department to individuals possessing a similar certificate from another state, provided that:

(i) The individual presents proof of certification by another state to the department, and

(ii) The individual demonstrates that the individual meets the requirement of at least one year of practical experience in an underground coal mine.

Section 7. Sections 221, 222, and 223 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, are hereby repealed.

Section 8. Section 224 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, is amended as follows:

Section 224. Mine foreman; drainage; drilling to locate nearby mine workings

Delete the existing section and replace it with the following:

(a) The mine foreman shall see that the water is drained out of the working places before the men enter, and that the working places are kept as free from water as practicable during working hours.

(b) Whenever any working place in the mine approaches within fifty feet of abandoned workings, in such mine as shown by surveys certified by a registered engineer or surveyor, or within two hundred feet of any other abandoned workings of such mine, which cannot be inspected and which may contain dangerous accumulations of water or gas, or within five hundred feet of any workings of an adjacent mine, the operator of the mine shall utilize horizontal long hole drilling to determine the location of any abandoned mine workings which may be cut into and which cannot be otherwise positively located, in advance of the working face. The following procedures shall be utilized:

(i) A sufficient number of horizontal long borehole(s) shall be drilled in advance of the working places. One such hole may be sufficient. The location, number, and length of the borehole(s) shall be designed to ensure the following:

(A) Working places will not hole through into the adjacent workings.

(B) The probable deviation due to drift and/or placement accuracy of the measuring equipment is accounted for.

(ii) The horizontal long borehole(s) shall always be sufficiently far in advance of the mining activity to ensure that the advancing face will not accidentally hole through into other workings.

(iii) The operator shall construct the horizontal long borehole(s) with a quick and effective method for closing off the borehole(s) should the borehole(s) intersect abandoned workings filled with gas or water.

(iv) The horizontal long borehole(s) shall be continuous within the coal seam. There should be a sufficient number of exploratory sidetracks tagging the top and bottom rock to ensure that the borehole remains within the coal seam for its entire length. The borehole(s) is to be surveyed at ten (10) foot intervals during drilling to insure that the plotted location is accurate.

(v) The true extent of the drilled horizontal long borehole(s) is to be accurately plotted on the official mine map. In addition, a side view of the extent of the borehole is to be accurately plotted and submitted to department. This side view should depict where the borehole tagged the top and bottom of the coal seam. A copy of the official mine map and the side view plot shall be submitted to department upon completion of the borehole(s).

(c) Methods other than horizontal longhole drilling may be utilized if they are of equal effectiveness and approved by the Director.

(d) No water or gas from any portion of an abandoned mine, or from any idle portion of an active mine, and no borehole from the surface shall be tapped except under the immediate instruction and direction of the mine foreman with the use of an MSHA approved gas detection device. It shall be unlawful to work or employ men to work in any portion of a bituminous coal mine in which a body of water is dammed or held back at a higher elevation in the same mine by natural or artificial means, unless permission to do so is given in writing by the Director.

Section 9. Sections 225, 226, 228, 230, 231, 232, and 233 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, are repealed.

Section 10. Sections 235, 236 and 237 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, are amended as follows:

Section 235. Contents of maps and plans

The operator or the superintendent of any bituminous coal mine shall make, or cause to be made under the direction or supervision of a registered mining engineer or registered surveyor, an accurate map of the mine, including any worked out and abandoned areas, on a scale of not less than two hundred feet to the inch, which map shall show the following: [1] name and address of

the mine; [2] the property boundary lines of the active areas of the mine; [3] contour lines passing through whole number elevations of the coalbed being mined, provided that the spacing of such lines shall not exceed 25 foot elevation levels, except that a broader spacing of contour lines may be approved by the District Mine Inspector for steeply pitching coalbeds, and provided that contour lines may be placed on overlays or tracings attached to mine maps; [4] general elevation of the coalbed or coalbeds being mined, and [5] the general elevation of the surface. The map shall also show the following:

(1) All the openings, excavations, shafts, slopes, drifts, tunnels, planes, main entries, cross entries and rooms and the name or number of each; and the blueprint in the office of the mine shall show by arrows the direction of the air currents in said mine[, each split to be numbered and suitably designated].

(2) [An accurate] A delineation of the boundary lines based upon the best available data between said mines and all adjoining mines or coal lands, and the relation and proximity of the workings of said mine to all adjoining mines or coal lands.

(3) The elevation above or below mean tide at Sandy Hook of the top and bottom of each shaft and slope, of all drifts, tunnels, planes, and of the faces of entries, as found at each semiannual survey, and in rooms and entries adjacent to boundary lines between such mine and any adjoining mine or mines at points not more than three hundred feet apart; also the number of last survey station and the date of such survey on the entries, as they are represented on the map; the location of streams, rivers, lakes, dams, or any other bodies of water on the surface, with their elevations accurately and plainly marked; the location and elevation of any body of water dammed in the mine, or held back in any portion of the mine, giving the true area of said body of water; the location of all boreholes penetrating the coal strata; and the location of all oil and gas wells and oil and gas pipe lines: Provided, however, That for the purpose of this section the owner or owners of the oil and gas wells and the oil and gas pipe lines shall furnish, at his, their or its own expense, to the operator of the mine over which said wells are located or lines are constructed, a survey showing the location thereof, and within sixty days after the construction or location of wells and pipe lines hereafter made.

(4) All auger and strip mined areas of the coalbed or coalbeds being mined on the mine property together with the line of maximum depth of holes drilled during auger mining operations based on the best available data.

(5) The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown.

(6) Underground mine workings underlying and within 1,000 feet of the active areas of the mine based upon the best available data.

(7) The location and description of at least two permanent base line points, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys.

(8) The scale of the map.

Section 236. Information as to adjoining mine

When the workings of a mine are within one thousand feet of the boundary lines between such mine and any adjoining mine or mines, application shall be made by the operator or the superintendent to the mine inspector in the district for information as to the proximity of the workings of such adjoining mine or mines and if the workings of such adjoining mine or mines are, at their nearest point, within one thousand feet of such boundary line, the mine inspector shall so notify the said operator or the said superintendent, who shall have such portion of the workings of said adjoining mine or mines surveyed and shown on the map of the mine first mentioned. For the sole purpose of making the survey herein required, the engineer or surveyor of any mine shall have the right of entry into any adjoining mine, on the written authority of the mine inspector in the district. If such adjoining mine or mines that are within five hundred feet are abandoned, or the workings that adjoin the active operation cannot be accessed for any reason, the mine operator shall cause drilling to be conducted as specified in Section 224(b).

Section 237. Availability of map

A true copy of said map shall be kept in the mine office at the mine, for the use of the mine officials and the mine inspector in the district, and for the inspection, in the presence of the superintendent or the mine foreman, of any person working in said mine, or of authorized representatives of the employees of the mine, whenever said person or representative shall fear that any working place is becoming dangerous by reason of its proximity to other workings that may contain dangerous accumulations of water or noxious gases. A duplicate copy of said map shall be kept at a separate and distinct location to minimize the danger of destruction in the event of a fire or other hazard.

Section 11. Sections 239, 240 and 241 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, are amended as follows:

Section 239. Furnishing copies of

At least every six months the operator or superintendent of every mine shall produce or cause to be produced three copies of the revised map. Each copy shall be a true and accurate depiction of the operation and shall be certified by a registered mining engineer or registered surveyor. One copy of the map shall be filed with the recorder of deeds of the county where the mine is located. [A copy of this map shall be furnished every six months] The remaining copies shall be given to the mine inspector in the district in which the mine is located, along with a notice from the appropriate recorder of deeds that a map has been properly filed with the county. The district mine inspector shall keep one copy for his own use and submit the other copy, and the registrar's notice, to the department for placement in a central repository, established for that purpose. When more than one seam of coal is being worked in any mine, the mine inspector in the district shall be provided with a separate copy of the original map of the complete workings of each seam as provided for in this act. The copies of the maps of the several mines, as hereinbefore required to be furnished to the mine inspector in the district, shall remain in the care of the mine

inspector in the district in which said mines are situated, as official records pertaining strictly to the office of said mine inspector, to be transferred by him to his successor in office, and in no case shall any copy thereof be made or any information therefrom be given to any person without the consent of the operator, except as provided for in this act: Provided further, That when one mine is working a seam of coal under another mine that is working an overlying seam, and the two mines are operated by different operators, such operators shall exchange with each other copies of their respective mine maps, showing such portions of their respective mines as may be directly above or below the other mine.

Section 240. Duties upon abandonment of mine

Whenever a mine is to be abandoned for a period of one year or more, the operator or the superintendent shall notify the mine inspector in the district at once and shall, within sixty days thereafter, [extend the said mine inspector's map to show clearly all worked-out or abandoned territory with all property and boundary lines and elevations as required in this Act. The owner or the operator of such abandoned mine shall also, within sixty days after its abandonment, send to the department a tracing or print of said complete original map, which shall be kept in the department as a public document. The registered mining engineer or the registered surveyor shall certify that said tracing or print is a true and correct copy of the original map of said mine, and that the original map is a true, complete, and correct map and survey of all the excavations made in such abandoned mine] produce or cause to be produced three copies of the revised map. Each copy shall be a true and accurate depiction of the operation and shall be certified by a registered mining engineer or registered surveyor. One copy of the map shall be filed with the recorder of deeds of the county where the mine is located. The remaining copies shall be given to the mine inspector in the district in which the mine is located, along with a notice from the appropriate registrar that a map has been properly filed with the county. The district mine inspector shall keep one copy for his own use and submit the other copy, and the recorder of deeds notice, to the department for placement in a central repository, established for that purpose.

Section 12. Section 241 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, is repealed.

Section 13. Sections 201-A, 203-A, 204-A, 205-A, 207-A, 211-A, 212-A, 214-A through 218-A, and 224-A of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, are amended as follows:

Section 201-A. Underground use

(a) Underground use of inby and outby diesel-powered equipment, including mobile equipment, stationary equipment and equipment of all horsepower ratings, may only be approved, operated and maintained as provided in this article, except for emergency fire-fighting equipment to be used specifically for that purpose.

(b) All diesel-powered equipment shall be attended while in operation with the engine running in underground mines. For purposes of this subsection, "attended" shall mean an equipment operator is within sight or sound of the diesel-powered equipment.

(c) Inby and outby diesel-powered equipment may be used in underground mines if the inby or outby diesel-powered equipment uses an engine approved or certified by MSHA, as applicable, for inby or outby use that, when tested at the maximum fuel-air ratio, does not require an MSHA Part 7 approval plate ventilation rate exceeding [150] 75 c.f.m. per rated horsepower. Should MSHA promulgate new regulations that change the MSHA Part 7 approval plate ventilation rate, the c.f.m. requirement per rated horsepower will be revised either up or down on a direct ratio basis upon recommendation of the Technical Advisory Committee in accordance with Section 224-A.

Section 203-A. Exhaust emissions control

(a)(1) Underground diesel-powered equipment shall include an exhaust emissions control and conditioning system that has been laboratory tested with the diesel engine, except as provided in paragraph (3), using the ISO 8178-1 test and has resulted in diesel particulate matter emissions that do not exceed an average concentration of 0.12 [mg over m to the third power] mg/m^3 when diluted by [fifty] one hundred percent of the MSHA Part 7 approval plate ventilation rate for that diesel engine. Should MSHA promulgate new regulations that change the MSHA Part 7 approval plate ventilation rate, the dilution percentage relative to the approval plate ventilation rate will be adjusted either up or down on a direct ratio basis upon recommendation of the Technical Advisory Committee in accordance with Section 224-A.

(b) The exhaust emissions control and conditioning system shall include the following:

(1) A diesel particulate matter (DPM) filter that has proven capable of [an average of ninety-five percent or greater reduction in DPM emissions.] a reduction in total diesel particulate matter to a level that does not exceed the requirements of Section 203-A(a)(1). However, the Technical Advisory Committee may evaluate, in accordance with Section 224-A, alternative technologies that have the ability to meet the 0.12 mg/m^3 standard.

(4) A [heat exchanger] system capable of reducing the exhaust gas temperature below three hundred two degrees Fahrenheit.

(10) For [inby] permissible diesel equipment, any additional [requirements of] MSHA regulations must be met [at 30 CFR Pt. 36 (relating to mobile diesel-powered transportation equipment for gassy noncoal mines and tunnels)].

[(d) The DPEP shall include a quality control plan for assuring that the diesel fuel used shall be a low volatile hydrocarbon fuel classified as ASTM D975 fuel with a cetane index of at least 45, a maximum aromatic content of thirty-five per cent, a sulfur mass of less than five hundredths of one percent and a flash point of one hundred degrees Fahrenheit or greater at standard temperature and pressure.]

Section 204-A Ventilation

(d) Where multiple units are operated, the minimum quantity shall be at least the total of one hundred percent of MSHA's Part 7 [the highest] approval plate ventilation rate for each unit operating in that split [air quantity plus seventy-five percent of the next highest quantity plus fifty percent of the approval plate quantity of each additional unit operating in that split]. Air quantity measurements to determine compliance with this requirement shall be made at the most downwind unit of diesel-powered equipment that is being operated in that air split. Should MSHA promulgate new regulations that change the MSHA Part 7 approval plate ventilation rate, the minimum quantity where multiple units are operated shall be revised on a direct ratio basis upon recommendation of the Technical Advisory Committee in accordance with Section 224-A.

Section 205-A. Fuel storage facilities

(a) [A mobile] An underground diesel fuel storage facility shall be any facility designed and constructed to provide for the [temporary] storage of any mobile diesel fuel transportation units or the dispensing of diesel fuel.

(b) Diesel-powered equipment shall be used underground only with [low volatile hydrocarbon fuel classified as ASTM D975 fuel with a cetane index of at least 45, a maximum aromatic content of thirty-five per cent, a sulfur mass of less than five hundredths of one percent and a flash point of one hundred degrees Fahrenheit or greater at standard temperature and pressure] fuel that meets the standards of the most recently approved United States Environmental Protection Agency (EPA) guidelines for over-the-road-fuel. Additionally, the fuel shall also meet the ASTM D975 standards with a flash point of one hundred degrees Fahrenheit or greater at standard temperature and pressure. The operator shall maintain a copy of the most recent delivery receipt from the supplier to verify that the fuel used underground meets this standard.

(c) Underground diesel fuel storage facilities shall meet the following general requirements:

(1) Fixed underground diesel fuel storage [facilities] tanks are prohibited.

(2) No more than five hundred gallons of diesel fuel shall be stored in each [mobile] underground diesel fuel storage facility.

(d) [Mobile underground] Underground diesel fuel storage facilities shall be located as follows:

(e)(1) [Mobile underground] Underground diesel fuel storage facilities shall meet the construction requirements and safety precautions enumerated in this subsection.

(2) [Mobile underground] Underground diesel fuel storage facilities shall meet all of the following:

(i) Be constructed of noncombustible materials and provided with [a means for automatic enclosure] either self closing or automatic closing doors.

(ii) Be ventilated directly into the return air course using noncombustible materials.

(iii) Be equipped with an automatic fire suppression system complying with Section 209-A. The Technical Advisory Committee may recommend for approval an alternate method of complying with this section on a mine by mine basis in accordance with Section 224-A.

Section 207-A. Containers

(g) Containers, other than safety cans, used for the transport of diesel fuel shall be permanently fixed to the transportation unit; provided, however, that the Technical Advisory Committee may develop criteria on a mine by mine basis, in accordance with Section 224-A, that allow for approved diesel fuel transportation units to be transported on or by a secondary transportation unit to work areas.

(m). Unattended diesel fuel transportation units shall be parked only in [mobile] underground diesel fuel storage facilities.

Section 211-A. Fueling

(a) Fueling of diesel-powered equipment shall not be conducted in the intake escapeway unless the mine design and entry configuration make it necessary. In those cases where fueling in the intake escapeway is necessary, the mine operator shall submit a plan for approval to the department, which will be investigated by the Technical Advisory Committee in accordance with Section 224-A, outlining the special safety precautions that will be taken to insure the protection of miners. Such plan shall specify a [fixed]location, (such as the end of the tail piece track or adjacent to the load out point), where fueling will be conducted in the intake escapeway and all

other safety precautions that will be taken, which shall include an examination of the area for spillage or fire by a qualified person.

Section 212-A. Fire and safety training

(a) All underground employees at the mine shall receive special instruction related to fighting fires involving diesel fuel. This training may be included in annual refresher training under MSHA regulations at 30 CFR Part 48 (relating to training and retraining of miners) or included in the fire drills required under MSHA regulations [at 30 CFR § 75.1101-23 () relating to program of instruction; location and use of fire fighting equipment; location of escapeways, exits and routes of travel; evacuation procedures; fire drills. ()]

Section 214-A. Records

(f) Records of emissions tests, one hundred-hour maintenance tests and repairs shall be countersigned once each week by the certified mine electrician [and] or mine foreman.

Section 215-A. Duties of operator

(a) Prior to using a piece of diesel-powered equipment during a shift, the equipment operator shall conduct an examination as follows, except when a piece of equipment is to be used by a different equipment operator on that shift within a reasonable period of time after an examination conducted under subsection (a) of this Section, the equipment operator receiving the equipment will only have to conduct the examination required by subsection (b) of this Section:

Section 216-A. Schedule of maintenance

At intervals not exceeding one hundred hours of engine operation, a qualified mechanic shall perform the following maintenance and make all necessary adjustments or repairs or remove the equipment from service:

(5) Replace engine oil and oil filter. The Technical Advisory Committee in accordance with Section 224-A may recommend a replacement interval greater than 100 hours.

(20) If the equipment is approved with a non-disposable diesel particulate filter, a smoke dot test of the filtered exhaust must be performed at this time. The results of the smoke dot test shall be recorded on the 100 hour emissions form. If the interpreted smoke dot number is greater than 3, the Technical Advisory Committee shall be notified and shall investigate to determine if the filter is functioning properly.

[(20)] (21) Evaluate and interpret the results of all of the above tests and examinations and make all necessary repairs or remove the equipment from service.

[(21)] (22) Comply with the recordkeeping requirements pursuant to section 214-A.

Section 217-A. Emissions monitoring and control

(b) When any diesel-powered [machine] equipment first enters service at a mine, baseline emission values shall be determined by a qualified mechanic. Unless the Technical Advisory Committee in accordance with Section 224-A recommends an alternate procedure, [The] the qualified mechanic shall:

(6) [Flush the exhaust system, and install a new diesel particulate filter, measure] Measure and record the exhaust back pressure. If exhaust gas back pressure is above that recommended by the manufacturer, then steps must be taken to bring the exhaust gas back pressure within the manufacturer's recommended limit prior to beginning the test described in this section.

(10) Install [the portable carbon monoxide (CO) sampling device] an exhaust gas analyzer into the untreated exhaust gas [coupling provided in the operator's cab] port.

(12) [For mobile equipment, shift into second gear and put the engine at full throttle, or for stationary equipment, induce a load and put the engine at full throttle.] Put the engine into a loaded condition. For this section, the loaded condition for the baseline emissions testing shall be determined by the Technical Advisory Committee by determining CO₂ values that are representative of the MSHA lug curve readings for that engine model and horsepower.

(13) [Start the CO sampler and measure and record CO levels every minute for five minutes.] Start the exhaust gas analyzer. Allow the engine to operate (in the loaded condition) for a sufficient length of time (not less than 90 second duration) to insure proper CO readings. Record both CO and CO₂ readings. Note: Baseline CO values shall be determined by the Technical Advisory Committee based upon MSHA lug curve readings for that engine model and horsepower. If the baseline CO values are greater than the MSHA lug curve values, the Technical Advisory Committee shall investigate and either recommend approval or disapproval, or recommend alternate methods of meeting the requirements of this section.

(14) Comply with recordkeeping requirements pursuant to section 214-A.

(15) An alternative to the testing provided in subsections 1-14 may be developed by the Technical Advisory Committee in accordance with Section 224-A.

(16) Emissions test procedures for this section shall be submitted to the Technical Advisory Committee in accordance with Section 224-A prior to being implemented for each engine and equipment type.

Section 218-A. Diagnostic testing

At intervals not exceeding once every one hundred hours of engine operation, a qualified mechanic shall perform equipment maintenance diagnostic testing of each piece of diesel-powered equipment in the mine. The qualified mechanic shall:

(9) [If the exhaust back pressure is more than the manufacturer's maximum recommended exhaust back pressure, replace the diesel particulate filter with a clean one and/or clean out the heat exchanger;] If exhaust gas back pressure is above that recommended by the manufacturer, then steps must be taken to bring the exhaust gas back pressure within the manufacturer's recommended limit prior to beginning the test described in this section.

(10) [For mobile equipment, shift into second gear and put the engine at full throttle, or for stationary equipment, induce a load and put the engine at full throttle.] Put the engine into a loaded condition. For this section, loaded condition shall mean that the CO₂ values are representative of the MSHA lug curve values for that engine model and horsepower rating.

(11) [Start the CO sampler and record CO levels every minute for five minutes;] Start the exhaust gas analyzer. Allow the engine to operate for a sufficient time (not less than 90 second duration) to insure proper CO readings. Record both CO and CO₂ readings.

(12) Install the [portable CO sampling device] exhaust gas analyzer into the treated exhaust port [coupling provided in the operator's cab] and repeat steps (10) and (11);

(14) Comply with recordkeeping requirements pursuant to section 214-A.

(15) Emissions test procedures for this section shall be submitted to the Technical Advisory committee in accordance with Section 224-A prior to being implemented for each engine and equipment type.

(16) An alternative to the testing provided in subsections 1-14 may be developed by the Technical Advisory Committee in accordance with Section 224-A.

Section 224-A. Technical Advisory Committee on Diesel-Powered Equipment

(a) There is hereby created a Technical Advisory Committee on Diesel Powered Equipment for the [purpose] purposes of advising the secretary regarding implementation of this article, [and] evaluation of alternative technology or methods for meeting the requirements for diesel-powered equipment as set forth in this article, providing technical assistance to operators regarding diesel equipment technologies, conducting investigations relating to implementation of this article, and providing training regarding diesel equipment emission controls and emission testing. Any alternative technology or methods recommended by the advisory committee and/or approved by the secretary shall not reduce or compromise the level of health and safety protection afforded by this article.

(c) Members of the advisory committee shall be appointed for a term of three years. If renominated and reappointed, a member may serve [up to three] an unlimited number of successive three-year terms.

(d) Members of the advisory committee shall be compensated at the rate of \$357.00 per-day (7.5 hours), but will not receive less than \$25,000.00 per-annum, [on a per diem basis of one hundred fifty dollars (\$150) per day] plus all reasonable expenses incurred while performing their official duties. Such compensation shall be adjusted annually by the Department to account for inflation based on the rate of inflation identified by the Consumer Price Index published by the United States Department of Labor.

Section 14. Sections 242 through 299.7 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, are repealed.

Section 15. Sections 301 through 333.7 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, are repealed.

Section 16. Sections 601 through 603 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, are repealed.

Section 17. Section 702 of the act of July 17, 1961 (P.L. 659, No. 339), known as the Pennsylvania Bituminous Coal Mine Act, is amended as follows:

Section 702. Adoption of new items or methods

(a) Nothing in this act shall be construed to prevent the adoption or use by any operator of new machinery, equipment, tools, supplies, devices, methods and processes, if such new machinery, equipment, tools, supplies, devices, methods and processes afford protection to personnel and property substantially equal to or in excess of the requirements set forth in any portion of this act.

(b) Approval of a petition for modification by MSHA pursuant to Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 811(c) or other approval by MSHA, shall constitute approval by the Director of a request to use new machinery, tools, supplies, devices, methods or processes under this provision in Section 334.

(c) Decisions on Petitions for Modification under Section 101(c) of the federal act and any plans required by the mandatory standards, such as roof control and ventilation plans, approved by MSHA shall be provided to the Department for its use in enforcement.

Section 18. This act shall take effect in sixty days.