

EXHIBIT 1 - GOVERNOR'S DESIGNATION of the DEPARTMENT of ENVIRONMENTAL PROTECTION

November 1, 1978

Walter N. Heine, Director
Office of Surface Mining
U. S. Department of the Interior
Washington, D.C. 20240

Dear Mr. Heine:

I hereby designate the Pennsylvania Department of Environmental Resources as the State agency authorized to implement and administer the Commonwealth of Pennsylvania's Abandoned Mine Reclamation Program, and to receive, administer, and disburse Federal grants, pursuant to Title IV of the "Surface Mining Control and Reclamation Act of 1977." P.L. 95-87.

Sincerely,

MILTON J. SHAPP
Governor

MJS:MKG:JPE/tg

bcc: Hon. Maurice K. Goddard
Joel P. Epstein



EXHIBIT 2 - LEGAL OPINION OF AUTHORITY FOR THE EMERGENCY PROGRAM
pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION
Office of Chief Counsel

MEMO

TO: Eric Cavazza
Director
Bureau of Abandoned Mine Reclamation

FROM: Joseph Iole
Assistant Counsel
Bureau of Regulatory Counsel

THROUGH: Kimberly H. Childe
Director
Bureau of Regulatory Counsel

Alexandra C. Chiaruttini
Chief Counsel

DATE August 17, 2016

RE Abandoned Mine Reclamation Plan – Amendment No. 3: Emergency Response Reclamation Program

Background

The Bureau of Abandoned Mine Reclamation requested that the Office of Chief Counsel provide a legal opinion concerning the Department's statutory authority to implement and administer an Emergency Response Reclamation Program ("Emergency Program" or "Program") under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), P.L. 95-87, as amended, 30 U.S.C. §§ 1231-1244. Amendment No. 3 to the Abandoned Mine Reclamation Plan will add a PART G to the original Plan, which will outline the form and function of the Emergency Program.

Statutory Authority

Federal and Pennsylvania law authorize the Department to establish, administer and conduct a State Reclamation Plan, which may, at Pennsylvania's option, include an Emergency Reclamation Program. In 1978, the Pennsylvania Attorney General offered an opinion that the Department "is authorized to establish, administer and conduct a State Reclamation Plan in accordance with the requirements of Title V of [SMCRA] and the regulations promulgated thereunder," under the authority of the following laws: "The Land and Water Conservation and

Reclamation Act”, Act of January 19, 1968, P.L. 996 (1967), No. 443, as amended, 32 P.S. § 5101 et seq.; The Act of May 7, 1935, P.L. 141, 52 P.S. § 809 et seq.; “The Coal Mine Sealing Act of 1947”, Act of June 30, 1947, P.L. 1177, as amended, 52 P.S. § 28.1 et seq. [repealed]¹; The Act of April 3, 1968, P.L. 92, No. 42, 52 P.S. § 30.201 et seq.; The Act of July 19, 1965, P.L. 216, No. 117, as amended, 52 P.S. § 30.101 et seq.; “The Clean Streams Law”, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. § 691.1 et seq.; and “The Administrative Code of 1929”, Act of April 9, 1929, P.L. 177, as amended, Section 1915- A, 71 P.S. § 510-15.” A copy of this opinion is attached.

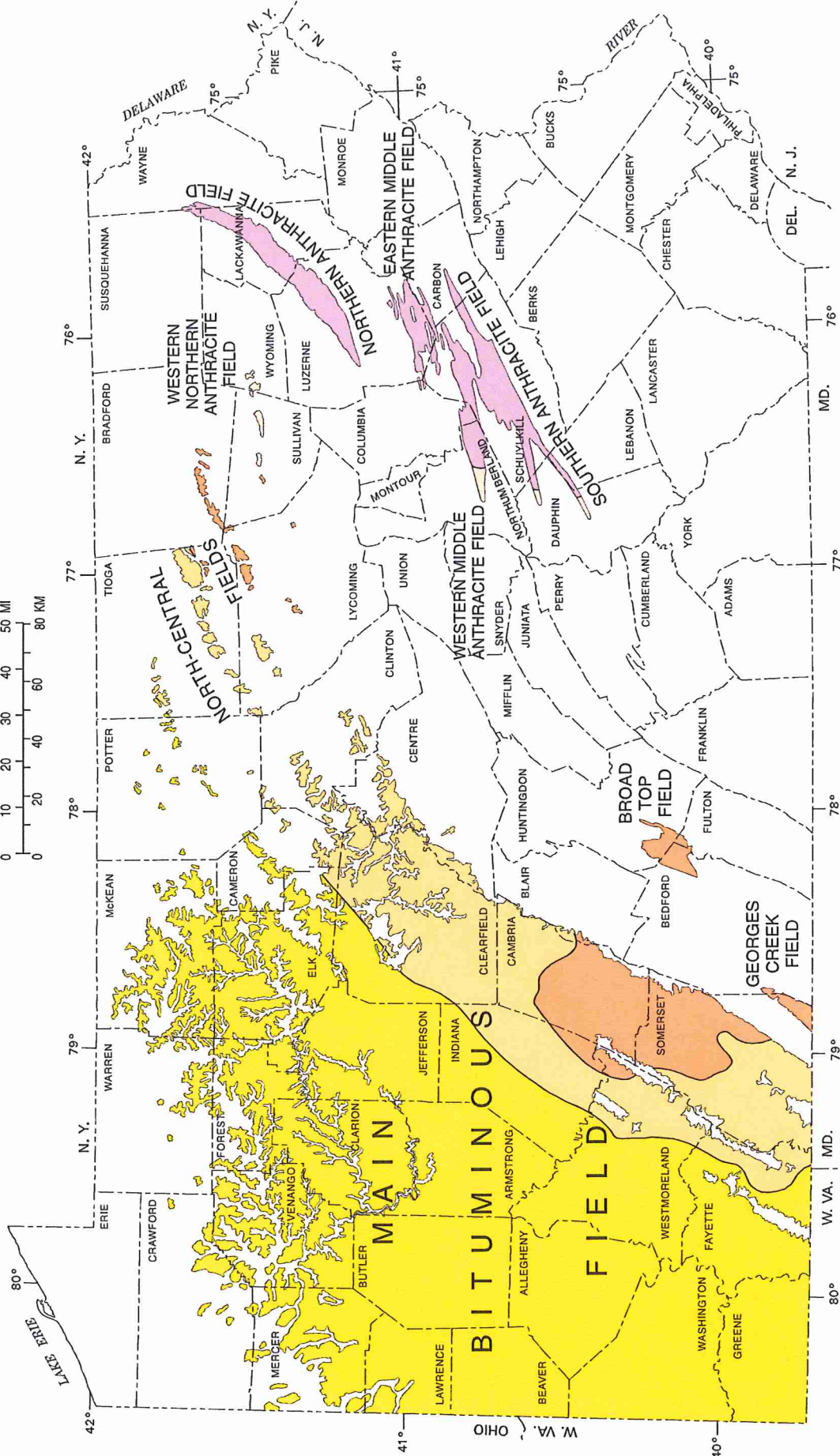
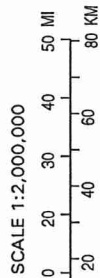
Together, these statutes authorize the Department to structure itself and undertake activities necessary to effectively manage a State Reclamation Plan. Some of the statutes, such as the Clean Streams Law and the Administrative Code of 1929, grant DEP a broad police power to undertake reclamation work, while certain other provisions specifically mention emergency powers. Specifically, Section 16 of the Land and Water Conservation and Reclamation Act (32 P.S. § 5116 (Allotment of moneys)) and the Mine Fire and Subsidence Remedial Project Indemnification Law (52 P.S. 30.201 – 30.206) provide DEP the authority to conduct activities consistent with an Emergency Reclamation Program.

The Department also has authority to conduct emergency reclamation activities under Sections 410 and 413 of SMCRA, 30 U.S. C. §§ 1240 (Emergency Powers) and 1242(a) (Powers of Secretary or State). Section 413(a) grants the power and authority to a State with an approved State program, if not granted to it otherwise, to engage in any work and so all things necessary or expedient to implement and administer the provisions of Subchapter IV (Abandoned Mine Reclamation) of the act, which include the emergency powers in Section 410. Pennsylvania has an approved State program under Section 503 of SMCRA, 30 U.S.C. § 1253, and an approved State Reclamation Plan under Section 405 of SMCRA, 30 U.S.C. § 1235. The Department is now amending the latter to include authorized emergency reclamation activities, subject to federal approval.

¹ In 2008, the General Assembly repealed the Coal Mine Sealing Act of 1947. *See* Act 55 of July 7, 2008, P.L. 654, § 3101(a)(1). However, the repeal does not diminish the Department’s authority. The portions of the Coal Mine Sealing Act of 1947 that authorize the Department to seal abandoned mine openings are unnecessary in light of the other statutes the Attorney General cited in his opinion. The other laws grant the Department authority to abate dangerous conditions caused by abandoned mine features, which would necessarily include the sealing of abandoned mine openings, given the danger to public health and safety that they pose. The remaining portions of the Coal Mine Sealing Act of 1947, which required operators to seal certain abandoned underground workings, survive in similar form in the remainder of Act 55 of 2008 known as the Bituminous Coal Mine Safety Act (52 P. S. §§ 690-101 – 690-708), and are not relevant here.

EXHIBIT 3 - DISTRIBUTION OF PENNSYLVANIA COALS

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF
CONSERVATION AND NATURAL RESOURCES
BUREAU OF TOPOGRAPHIC AND GEOLOGIC SURVEY
www.dcnr.state.pa.us/topogeo



EXPLANATION

- High-volatile bituminous coal
- Medium-volatile bituminous coal
- Low-volatile bituminous coal
- Semi-anthracite
- Anthracite