

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

No. 617

Session of  
1987

INTRODUCED BY GEORGE, STEIGHNER, SALOOM, MORRIS, KUKOVICH,  
CAWLEY, TIGUE, HALUSKA, TRELLO, ITKIN, YANDRISEVITS, DAVIES,  
G. SNYDER, McHALE, MICHLOVIC, LEVDANSKY, BUNT, JOSEPHS,  
HERMAN, LaGROTTA AND MELIO, MARCH 4, 1987

REFERRED TO COMMITTEE ON CONSERVATION, MARCH 4, 1987

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled  
2 "An act providing for and reorganizing the conduct of the  
3 executive and administrative work of the Commonwealth by the  
4 Executive Department thereof and the administrative  
5 departments, boards, commissions, and officers thereof,  
6 including the boards of trustees of State Normal Schools, or  
7 Teachers Colleges; abolishing, creating, reorganizing or  
8 authorizing the reorganization of certain administrative  
9 departments, boards, and commissions; defining the powers and  
10 duties of the Governor and other executive and administrative  
11 officers, and of the several administrative departments,  
12 boards, commissions, and officers; fixing the salaries of the  
13 Governor, Lieutenant Governor, and certain other executive  
14 and administrative officers; providing for the appointment of  
15 certain administrative officers, and of all deputies and  
16 other assistants and employes in certain departments, boards,  
17 and commissions; and prescribing the manner in which the  
18 number and compensation of the deputies and all other  
19 assistants and employes of certain departments, boards and  
20 commissions shall be determined," requiring the Department of  
21 Environmental Resources to give public notice to  
22 municipalities concerning orders for abatement of nuisances;  
23 establishing procedures governing the settlement and review  
24 of nuisance cases by the Department of Environmental  
25 Resources; and requiring final actions to be taken in  
26 conformity with the Administrative Agency Law.

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

29 Section 1. Section 1905-A of the act of April 9, 1929

1 (P.L.177, No.175), known as The Administrative Code of 1929,  
2 amended February 17, 1984 (P.L.75, No.14), is amended to read:

3 Section 1905-A. Cooperation with Municipalities.--(a) The  
4 Department of Environmental Resources shall cooperate with  
5 municipalities in the construction and completion of projects  
6 and improvements for the conservation of water and the control  
7 of floods. For this purpose, the department shall have the power  
8 to use and expend any funds advanced by municipalities, under  
9 authority of law, on the projects and improvements designated,  
10 when such funds are advanced, in the same manner as it expends  
11 any funds appropriated by the Commonwealth for similar purposes.

12 (b) (1) The Department of Environmental Resources shall  
13 require every applicant for the following permits and permit  
14 revisions to give written notice to each municipality in which  
15 the activities are located:

16 (i) Air quality permits applied for pursuant to the act of  
17 January 8, 1960 (1959 P.L.2119, No.787), known as the "Air  
18 Pollution Control Act."

19 (ii) Water allocation permits applied for pursuant to the  
20 act of June 24, 1939 (P.L.842, No.365), entitled "An act  
21 relating to the acquisition of rights to divert water from  
22 rivers, streams, natural lakes, and ponds, or other surface  
23 waters within the Commonwealth or partly within and partly  
24 without the Commonwealth; defining various words and phrases;  
25 vesting in the Water and Power Resources Board certain powers  
26 and authorities for the conservation, control and equitable use  
27 of the waters within the Commonwealth in the interests of the  
28 people of the Commonwealth; making available for public water  
29 supply purposes, water rights heretofore or hereafter acquired  
30 but not used; providing for hearings by the Water and Power

1 Resources Board and for appeals from its decisions; fixing fees;  
2 granting to all public water supply agencies heretofore or  
3 hereafter created the right of eminent domain as to waters and  
4 the land covered by said waters; repealing all acts or parts of  
5 acts inconsistent herewith, including Act No.109, Pamphlet Laws  
6 152, approved April 13, 1905, Act No.307, Pamphlet Laws 455,  
7 approved June 7, 1907, Act No.64, Pamphlet Laws 258, approved  
8 April 8, 1937."

9 (iii) Water obstruction permits applied for pursuant to the  
10 act of November 26, 1978 (P.L.1375, No.325), known as the "Dam  
11 Safety and Encroachments Act."

12 (iv) Water quality permits, except permits relating to coal  
13 mining activities, applied for pursuant to the act of June 22,  
14 1937 (P.L.1987, No.394), known as "The Clean Streams Law."

15 (v) Solid waste and hazardous waste permits applied for  
16 pursuant to the act of July 7, 1980 (P.L.380, No.97), known as  
17 the "Solid Waste Management Act."

18 (2) In the case of written notices sent pursuant to  
19 subclauses (i), (ii), (iii) and (iv), the written notices shall  
20 be received by the municipalities at least thirty (30) days  
21 before the Department of Environmental Resources may issue or  
22 deny the permit. In the case of written notices sent pursuant to  
23 subclause (v), the written notices shall be received by the  
24 municipalities at least sixty (60) days before the Department of  
25 Environmental Resources may issue or deny the permit.

26 (3) The provisions of this subsection shall not apply to  
27 permits relating to coal mining activities issued under the act  
28 of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams  
29 Law," the act of May 31, 1945 (P.L.1198, No.418), known as the  
30 "Surface Mining Conservation and Reclamation Act," the act of

1 April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as "The  
2 Bituminous Mine Subsidence and Land Conservation Act," and the  
3 act of September 24, 1968 (P.L.1040, No.318), known as the "Coal  
4 Refuse Disposal Control Act."

5 (4) The Department of Environmental Resources shall, in  
6 connection with the issuance of permits, conduct a review of  
7 local planning or permitting requirements for consistency with  
8 the proposed activity and may enter into cooperative agreements  
9 with local agencies under those planning and permitting  
10 provisions in connection with permit issuance, inspection and  
11 enforcement and remedial activities. Permit conditions shall, to  
12 the greatest extent possible, be incorporated into a single  
13 permit for the activity to be conducted.

14 (c) (1) The Department of Environmental Resources shall  
15 provide the governing body of the affected local municipality  
16 and county a copy of administrative orders for the abatement of  
17 nuisance or enjoining or penalizing the conduct of activities  
18 requiring a permit from the department within seven (7) days of  
19 issuance thereof.

20 (2) If the department initiates judicial action for the  
21 abatement of a nuisance or seeking to enjoin or penalize the  
22 conduct of activities requiring a permit from the department, it  
23 shall serve a copy of its initial pleading upon the local  
24 municipality and county in which the alleged nuisance is  
25 occurring within seven (7) days of filing.

26 (3) The department is authorized to reimburse persons or  
27 local municipalities or counties for necessary response costs  
28 involving the abatement of nuisances, including groundwater  
29 contamination, and public or private diminution or loss and to  
30 seek reimbursement from responsible parties for response cost

1 incurred on their behalf.

2 (4) Affected persons, municipalities and counties shall have  
3 the absolute right to intervene in administrative or judicial  
4 proceedings brought by the department for the abatement of  
5 nuisances or the recovery of necessary response costs. In  
6 furtherance of this right, the department shall bring an  
7 appropriate action in the court of common pleas of the judicial  
8 district where the alleged nuisance occurred and shall conduct  
9 an appropriate administrative hearing in the locale affected.

10 Section 2. Sections 1917-A and 1921-A(c) and (f) of the act,  
11 added December 3, 1970 (P.L.834, No.275), are amended to read:

12 Section 1917-A. Abatement of Nuisances.--(a) The Department  
13 of Environmental Resources shall have the power and its duty  
14 shall be:

15 (1) To protect the people of this Commonwealth from  
16 unsanitary conditions and other nuisances, including any  
17 condition which is declared to be a nuisance by any law  
18 administered by the department;

19 (2) To cause examination to be made of nuisances, or  
20 questions affecting the security of life and health, in any  
21 locality, and, for that purpose, without fee or hinderance, to  
22 enter, examine and survey all grounds, vehicles, apartments,  
23 buildings, and places, within the Commonwealth, and all persons,  
24 authorized by the department to enter, examine and survey such  
25 grounds, vehicles, apartments, buildings and places, shall have  
26 the powers and authority conferred by law upon constables;

27 (3) To order such nuisances including those detrimental to  
28 the public health to be abated and removed;

29 (4) If the owner or occupant of any premises, whereon any  
30 such nuisance fails to comply with any order of the department

1 for the abatement or removal thereof, to enter upon the  
2 premises, to which such order relates, and abate or remove such  
3 nuisance;

4 (5) For the purpose of collecting or recovering the expense  
5 of the abatement or removal of a nuisance, to file a claim, or  
6 maintain an action, in such manner as may now or hereafter be  
7 provided by law, against the owner or occupant of the premises  
8 upon or from which such nuisance shall have been abated or  
9 removed by the department;

10 (6) In making examinations as authorized by this section,  
11 the Department of Environmental Resources shall cooperate with  
12 the Department of Health, local municipalities, agencies and  
13 counties, for the purpose of avoiding any duplication of  
14 inspection or overlapping of functions.

15 (b) (1) The Department of Environmental Resources, in its  
16 discretion, may enter into an agreement with a person or  
17 municipal entity to perform a response action required by this  
18 section if the department determines that the action will be  
19 done properly by the person or municipality. Whenever  
20 practicable and in the public interest, the department shall act  
21 to facilitate agreements under this subsection to expedite  
22 prompt and effective remedial actions and minimize litigation.

23 (2) An agreement under this section may provide that the  
24 department will reimburse the parties to the agreement, with  
25 interest, from funds maintained by the department for certain  
26 costs of actions that the parties have agreed to perform. If the  
27 department provides reimbursement, the department shall make  
28 reasonable efforts to recover the amount of reimbursement from  
29 responsible parties.

30 (3) If the department has entered into an agreement under

this subsection, the liability to the Commonwealth of each party to the agreement shall be limited as provided in the agreement.

(4) Consent orders and agreements made in connection with administrative proceedings shall only be final after thirty (30) days' public notice, comment and opportunity for prompt hearing upon objection by affected persons. A summary of a proposed consent order and agreement under this clause which the department proposes to make with a person or municipality shall be published in the Pennsylvania Bulletin and a newspaper of general circulation in the area where the abatement or remedial action is to occur. Notice shall be given to the property owner and adjacent owners whose interests may be affected. The notice shall specify where the proposed agreement may be examined and a copy may be obtained, the location of permit files maintained by the department in connection with the agreement and the closing date and time for the filing of comment or objection and the final adoption of the proposed consent order and agreement. The department shall be equipped to make a formal record at a closing of comments or objections received, to formally respond at the hearing to questions concerning the proposed consent order and agreement and to direct the questioning of persons executing the proposed consent order and agreement. The department shall render a decision on the proposed consent order and agreement, with specific findings on comments or objections within ten (10) days unless decision is postponed by agreement of all parties or for specific cause shown justifying the delay and extending the decision to a date certain not to exceed thirty (30) days unless a longer period is specifically granted by the department for the gathering and analysis of technical data necessary to the decision. The consent order and agreement

1 shall be final as to any person who has not appeared in person  
2 or by representative at the closing or asserted the objection in  
3 writing to the department for administrative disposition.

4 Section 1921-A. Environmental Hearing Board.--\* \* \*

5 (c) [Anything in any law to the contrary notwithstanding,  
6 any action of the Department of Environmental Resources may be  
7 taken initially without regard to the Administrative Agency Law,  
8 but no such action of the department adversely affecting any  
9 person shall be final as to such person until such person has  
10 had the opportunity to appeal such action to the Environmental  
11 Hearing Board; provided, however, that any such action shall be  
12 final as to any person who has not perfected his appeal in the  
13 manner hereinafter specified.] Any action of the Department of  
14 Environmental Resources taken without regard to 2 Pa.C.S. Ch. 5  
15 Subch. A (relating to practice and procedure of Commonwealth  
16 agencies) and Ch. 7 Subch. A (relating to judicial review of  
17 Commonwealth agency action) shall be based upon an  
18 administrative record. Upon the filing of an appeal from an  
19 action adversely affecting a person, the Department of  
20 Environmental Resources shall certify the administrative record  
21 to the Environmental Hearing Board, which shall appoint a board  
22 member or hearing examiner to examine the record. Upon the  
23 request of a party to the appeal, where the action on appeal was  
24 not rendered by the department in substantial conformity with 2  
25 Pa.C.S. Ch. 5 Subch. A and Ch 7 Subch. B, the board shall either  
26 remand the matter to the department for public hearings and  
27 specific findings and recommendations or provide for an  
28 expedited hearing process before the board with respect to the  
29 matters asserted. The board shall, within thirty (30) days of  
30 the filing of the appeal, preliminarily determine from the



1 existing record and appropriate consultation with the parties  
2 and their counsel, all of the following:

3 (1) The burden of proof assignable to the parties on the  
4 basis of the existing administrative record.

5 (2) The identification of and proposed stipulation of facts  
6 required to be found in order to support the affirmance or  
7 reversal of the action under appeal.

8 (3) The necessity for, and reasonable scope of, discovery  
9 between the parties.

10 (4) The prompt scheduling of hearings before the department  
11 or board for a date certain, which (hearings) shall be held in  
12 the locale affected by the action appealed.

13 \* \* \*

14 (f) [The board may employ, with the concurrence of the  
15 Secretary of Environmental Resources, hearing examiners and such  
16 other personnel as are necessary in the exercise of its  
17 functions.] The Secretary of Environmental Resources shall  
18 provide the Environmental Hearing Board with sufficient funding  
19 for hearing examiners and other personnel in the affected locale  
20 as necessary in the exercise and performance of the board's  
21 functions and as reasonably necessary to provide prompt hearings  
22 where the action of the department on appeal was not made in  
23 substantial conformity with 2 Pa.C.S. Ch. 5 Subch. A and Ch. 7  
24 Subch. A.

25 \* \* \*

26 Section 3. This act shall take effect in 60 days.