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THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 177 Session of  
1999

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JANUARY 27, 1999

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
JANUARY 27, 1999

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AN ACT

1 Providing for water resources conservation, planning and  
2 management; providing for drought response authority;  
3 imposing powers and duties on the Department of Environmental  
4 Protection in relation thereto; providing for penalties and  
5 enforcement; establishing the Water Conservation Fund; and  
6 making repeals.

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

17 Section 1. Short title.

18 This act shall be known and may be cited as the Water  
19 Resources Conservation and Management Act.

20 Section 2. Legislative findings and declaration.

21 (a) Findings.--The General Assembly finds as follows:

22 (1) As trustee of this Commonwealth's water resources,  
23 the Commonwealth has a duty to preserve the natural, scenic,  
24 historic and esthetic values of the environment and to  
25 conserve, protect, manage and maintain those resources for  
26 the benefit of all the people, including generations yet to  
27 come.

28 (2) The preservation of instream flows to protect stream  
29 ecology, aquatic organisms and water-related environmental  
30 values is essential to carry out the Commonwealth's trustee

1 responsibilities and must be assured when providing for the  
2 reasonable instream and offstream uses of water, including,  
3 but not limited to, municipal, public, commercial, industrial  
4 and agricultural water supply, recreation, navigation, energy  
5 production and waste assimilation.

6 (3) Planning for and development and management of  
7 adequate supplies of water are necessary to minimize the  
8 effects of overuse of water and recurring periods of drought.  
9 Severe shortages and overuse may render water resources  
10 incapable of meeting essential needs, cause conflicts between  
11 diverse users of the common resource, disrupt or damage  
12 economic activities and contribute to pollution and  
13 unsanitary conditions, all of which are detrimental to the  
14 health, safety and welfare of the people of the Commonwealth.

15 (4) Water resources on or beneath the surface of the  
16 ground or in the atmosphere are interconnected and part of a  
17 single hydrologic resource which can be used conjunctively.  
18 Their development, management and use must therefore be  
19 coordinated and comprehensive in order to further the  
20 purposes of this act.

21 (5) Comprehensive water resources planning and  
22 management must rely on accurate information on water  
23 availability and present and anticipated water use and demand  
24 in order to identify resource shortfalls, potential conflicts  
25 and areas requiring special protection and to recommend and  
26 implement programs needed to address identified concerns. A  
27 continually updated State water plan will aid both the  
28 governmental and the private sectors in making informed  
29 decisions regarding wise development, management and use of  
30 this Commonwealth's water resources.

1           (6) The conservation of water resources reduces the  
2     impact of withdrawals and diversions upon water resources.  
3     Conservation provides a degree of drought protection, may  
4     delay or obviate the need for construction or expansion of  
5     capital projects and is a water management tool available to  
6     all water resources users.

7           (7) Because of the severe water supply shortages that  
8     could occur due to overuse and recurring periods of drought,  
9     the Commonwealth agencies responsible for water resources  
10    planning and management must have adequate drought response  
11    authority in order to protect the public health, safety and  
12    welfare.

13          (8) In recognition of the public's dependence on water  
14    supplied by public water supply agencies, such agencies'  
15    statutory authorization to acquire water rights, to divert,  
16    withdraw and use water resources and to exercise eminent  
17    domain power must be continued.

18          (9) Close coordination and cooperation among Federal,  
19    State, interstate and local agencies and public and private  
20    organizations in matters relating to the water resources of  
21    this Commonwealth are in the public interest.

22    (b) Declaration.--It is the purpose of this act to protect  
23    the public health, safety and welfare and to further the intent  
24    of section 27 of Article I of the Constitution of Pennsylvania  
25    by establishing a comprehensive and systematic planning and  
26    regulatory program for the conservation, utilization,  
27    evaluation, equitable distribution, management and development  
28    of this Commonwealth's water resources to protect water  
29    resources and to ensure an adequate supply of water for the  
30    benefit of all the people.

1 Section 3. Definitions.

2 The following words and phrases when used in this act shall  
3 have the meanings given to them in this section unless the  
4 context clearly indicates otherwise:

5 "Acquire" or "acquisition." To obtain, secure or become  
6 vested with water rights by purchase, agreement, lease,  
7 transfer, gift, devise, adverse possession, prescription,  
8 eminent domain, waiver of damages, settlement of damages,  
9 appropriation or other lawful method or the rights acquired.

10 "Conservation area." A specific watershed or hydrologic unit  
11 of this Commonwealth considered and designated by the Department  
12 of Environmental Protection and the Environmental Quality Board  
13 as being in need of special protection pursuant to section 8  
14 because of unique or restricted water resources.

15 "Conservation practices." Those practices and measures which  
16 are designed to:

17 (1) reduce the demand for water;

18 (2) improve efficiency in use and reduce leakage, losses  
19 and waste of water;

20 (3) improve reuse and recycling of water; and

21 (4) increase the supply of water.

22 "Conjunctive use." The use of two or more water resources as  
23 components of a single unit employing management techniques and  
24 methods which serve to optimize the conservation of the water  
25 resources.

26 "Consumptive use." A use of water diverted or withdrawn from  
27 a water resource in such a manner that it is not returned to the  
28 water resource at or near the point from which it was taken and  
29 that results in diminution in quantity or impairment of quality  
30 of the water resource.

1 "Department." The Department of Environmental Protection of  
2 the Commonwealth.

3 "Divert" or "diversion." The direct or indirect taking or  
4 impoundment of water from any water resource, whether or not the  
5 water is returned to its source, consumed, made to flow into  
6 another water resource or discharged elsewhere. The term  
7 includes the transfer of water through interconnections between  
8 water users.

9 "Environmental Hearing Board." The board established  
10 pursuant to the act of July 13, 1988 (P.L.530, No.94), known as  
11 the Environmental Hearing Board Act.

12 "Environmental Quality Board." The board established  
13 pursuant to section 1920-A of the act of April 9, 1929 (P.L.177,  
14 No.175), known as The Administrative Code of 1929, for the  
15 purposes set forth in that section.

16 "Hydrologic unit." A geographic area having water resources  
17 which are hydrologically connected, including any surface  
18 watershed or basin, groundwater basin, aquifer or aquifer  
19 system.

20 "Instream use." Any reasonable use of water that utilizes  
21 the resource in place on or above the surface of the ground. The  
22 term includes, but is not limited to, recreation, navigation,  
23 energy production, waste assimilation, fish and wildlife  
24 habitat, the maintenance of natural, scenic, historic or  
25 esthetic values of the resource and any of the uses protected  
26 under the authority of the act of June 22, 1937 (P.L.1987,  
27 No.394), known as The Clean Streams Law, and section 303 of the  
28 Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. §  
29 1251 et seq.).

30 "Interconnection." The physical connection between water

1 users providing for the delivery of raw or treated water between  
2 them, including the connections between water sources, water  
3 mains and water distribution systems.

4 "Major basin." The area drained by the Great Lakes and their  
5 tributaries or by one of the following major rivers and their  
6 respective tributaries: Delaware River, Ohio River, Potomac  
7 River and Susquehanna River.

8 "Management." Activity undertaken to develop, conserve,  
9 protect and regulate the water resources of this Commonwealth to  
10 ensure an adequate supply of water is available to users.

11 "Offstream use." A reasonable use of water that utilizes the  
12 resource off the surface of the ground from which it is diverted  
13 or withdrawn. The term includes, but is not limited to,  
14 municipal, public, commercial, industrial and agricultural water  
15 supply.

16 "Person." An individual, partnership, association, company,  
17 corporation, municipality, municipal authority, political  
18 subdivision, receiver, or trustee, or any agency, department,  
19 board, commission, or authority of the Commonwealth or of the  
20 Federal Government, or any other legal entity whatsoever which  
21 is recognized by law as the subject of rights and duties. The  
22 term shall include the officers, employees and agents of any  
23 individual, partnership, association, company, corporation,  
24 municipality, municipal authority, political subdivision,  
25 receiver or trustee, or any agency, department, board,  
26 commission or authority of the Commonwealth or of the Federal  
27 Government, or any other legal entity.

28 "Public water supply agency." A community water system as  
29 defined by the act of May 1, 1984 (P.L.206, No.43), known as the  
30 Pennsylvania Safe Drinking Water Act, or any person providing

1 water or authorized to supply water to the public.

2 "Safe yield." The amount of water that can be withdrawn from  
3 a water resource without causing an undesired result, such as  
4 long term dewatering of an aquifer, induced potential health  
5 threats or impacts upon instream uses.

6 "Secretary." The Secretary of the Department of  
7 Environmental Protection of the Commonwealth.

8 "State water plan." An assessment of the water resources of  
9 the Commonwealth prepared by the Department of Environmental  
10 Protection or its predecessor agencies pursuant to this act,  
11 section 1904-A of the act of April 9, 1929 (P.L.177, No.175),  
12 known as The Administrative Code of 1929, sections 5 and 304 of  
13 the act of June 22, 1937 (P.L.1987, No.394), known as The Clean  
14 Streams Law, or other applicable law.

15 "Water resource." Water above, on or beneath the surface of  
16 the ground or in the atmosphere, whether natural or artificial,  
17 wholly or partly within or on the boundaries of this  
18 Commonwealth.

19 "Water rights." The right to withdraw, use, take or divert  
20 water resources of this Commonwealth, including rights created  
21 between sellers and buyers of water through interconnections.

22 "Withdraw" or "withdrawal." The removal or taking of water  
23 from a water resource.

24 Section 4. Statewide and regional water resources advisory  
25 committees.

26 (a) Statewide Water Resources Advisory Committee.--

27 (1) There is hereby established in the department a  
28 Statewide Water Resources Advisory Committee. The committee  
29 shall consist of: the secretary or his designee, who shall  
30 be chairperson; one member appointed by the secretary from



1 each regional advisory committee established pursuant to  
2 subsection (b); and 11 additional members appointed by the  
3 secretary representing the interests of business and  
4 industry, energy and power, navigation, agriculture,  
5 environment and conservation, public water suppliers, labor,  
6 municipal governments and authorities, residential water  
7 users, recreation and fish and wildlife. In appointing these  
8 11 members, the secretary shall seek a diverse geographic  
9 representation.

10 (2) Of the members first appointed, six members  
11 appointed by the secretary shall serve for a period of three  
12 years, five members shall serve for a period of two years and  
13 five members shall serve for a period of one year.  
14 Thereafter, each appointment shall be for a period of three  
15 years. All vacancies shall be filled for the remainder of the  
16 unexpired term in the same manner as the original  
17 appointments to provide equitable representation of groups  
18 and geographic areas. A member, upon expiration of the term,  
19 shall continue to hold office until a successor is appointed.

20 (3) The advisory committee shall have an opportunity:

21 (i) To advise the department in the preparation and  
22 development of the State water plan.

23 (ii) To review proposed regulations under this act  
24 and advise the department.

25 (iii) To advise the department regarding issues,  
26 policies and programs related to the implementation of  
27 this act as may be submitted by the department to the  
28 committee for review.

29 (b) Regional water resources advisory committees.--The  
30 department shall establish a regional water resources advisory

1 committee for each major basin that shall advise the department  
2 in the preparation and development of the State water plan with  
3 regard to their respective local and regional water resources  
4 needs, priorities and objectives. The regional advisory  
5 committees also shall have the duty of advising the department  
6 on matters pertinent to the establishment, modification or  
7 termination of conservation areas pursuant to section 8 and the  
8 management of water resources in their respective regions.

9 (c) Expenses and support services.--The committees' members  
10 shall serve without salary or compensation except for  
11 reimbursement by the department for reasonable and necessary  
12 expenses incurred in connection with their duties as approved by  
13 the secretary. The department shall also provide necessary  
14 administrative support services, budget and staff to the  
15 committees for the carrying out of their responsibilities under  
16 this section.

17 Section 5. Powers and duties of Environmental Quality Board.

18 (a) Review and approval of State water plan.--The  
19 Environmental Quality Board shall review and approve the State  
20 water plan and adopt such rules and regulations of the  
21 department, governing the conservation, utilization,  
22 development, management, equitable distribution and evaluation  
23 of water resources and the administration of water management  
24 programs, as it deems necessary for the implementation of this  
25 act.

26 (b) Factors to be considered.--In adopting regulations under  
27 this act, the board shall consider factors, including, but not  
28 limited to, the following:

29 (1) The Commonwealth's duty to preserve the natural,  
30 scenic, historic and esthetic values of the environment and

1 to conserve and maintain the water resources of this  
2 Commonwealth for the benefit of all the people, consistent  
3 with the people's right to pure water.

4 (2) The protection of the public health, safety and  
5 welfare.

6 (3) The conjunctive use and development of water  
7 resources.

8 (4) The application of conservation practices as well as  
9 generally accepted water resource management and hydrologic  
10 principles.

11 (5) The state of scientific, hydrologic, geologic and  
12 technological knowledge.

13 (6) The economic, social and environmental impact on  
14 this Commonwealth, its citizens and its water resources.

15 (7) The diverse resources and needs of this  
16 Commonwealth's regions and major basins.

17 Section 6. Powers and duties of department.

18 The department shall:

19 (1) Administer and enforce this act or any rules and  
20 regulations adopted pursuant to it and to implement section  
21 27 of Article I of the Pennsylvania Constitution.

22 (2) Maintain a comprehensive information system,  
23 including, but not limited to:

24 (i) An inventory of water resources of this  
25 Commonwealth.

26 (ii) A record of all registered and permitted  
27 withdrawals, diversions and acquisitions made under this  
28 act.

29 (iii) An assessment of present and anticipated water  
30 use and demand by major basin and by significant

1 hydrologic unit, including identification of consumptive  
2 use.

3 (iv) Identification of low flow characteristics,  
4 safe yield, the capability of water resources to support  
5 instream and offstream uses and the minimum instream  
6 flows and groundwater levels necessary to ensure adequate  
7 water quantity and quality for the protection of stream  
8 ecology, aquatic organisms and other environmental  
9 values.

10 (v) Assessment of water resources required to  
11 support areas with important or unique natural, scenic,  
12 historic, esthetic, environmental or recreational values.

13 (3) Require recordkeeping, metering, measuring,  
14 monitoring and reporting of such information as necessary to  
15 administer and obtain compliance with this act.

16 (4) Make inspections, investigations and examinations,  
17 exercise the right of entry, perform such tests or sampling  
18 and require the production of such things as necessary to  
19 determine compliance with or enforce this act.

20 (5) Provide water conservation education, technical  
21 assistance and advice to persons subject to this act.

22 (6) Collect fees and civil penalties and accept and  
23 administer funds from any source to aid in carrying out this  
24 act.

25 (7) Issue, deny, modify, suspend and revoke permits.

26 (8) Issue such orders, assess civil penalties and  
27 initiate such proceedings as may be necessary and appropriate  
28 for the enforcement of this act and any rules, regulations,  
29 orders or permits issued under this act.

30 (9) Recommend to the Environmental Quality Board the

1 designation, modification and termination of conservation  
2 areas pursuant to section 8.

3 (10) Cooperate and coordinate with appropriate river  
4 basin commissions and Federal, State, interstate, local,  
5 public water supply and other agencies for efficient planning  
6 for the conservation, utilization, evaluation, equitable  
7 distribution, management and development of water resources  
8 and to avoid duplicative requirements to which water users  
9 may be subject.

10 (11) Enter into administrative agreements, at its  
11 discretion, with appropriate river basin commissions and  
12 Federal, interstate and other agencies for any of the  
13 following purposes:

14 (i) To facilitate the submission and coordinated  
15 review of project approvals and permit applications  
16 related to water resources.

17 (ii) To avoid unnecessary duplications of staff  
18 functions, hearings and project approvals or permit  
19 requirements.

20 (iii) To provide for coordinated inspection,  
21 monitoring and enforcement of applicable laws and  
22 regulations.

23 (iv) To accept delegations of authority for the  
24 regulation or management of water resources.

25 (v) To coordinate the development of water resources  
26 contingency plans and to ensure coordinated and effective  
27 response to water resources shortages and drought  
28 emergencies.

29 (12) Enter into administrative agreements, at its  
30 discretion, with appropriate river basin commissions or

1 Federal, State, interstate or local agencies for the purpose  
2 of delegating any of its authority under this act. Any  
3 commission or agency acting under a delegation agreement  
4 shall have the same powers and duties otherwise vested in the  
5 department to implement this act, to the extent delegated by  
6 the agreement.

7 Section 7. State water plan.

8 (a) Preparation and submission.--Within three years of the  
9 effective date of this act, the department shall prepare and  
10 submit an updated State water plan to the Environmental Quality  
11 Board for consideration and approval. The updated plan shall be  
12 prepared with the advice of and in consultation with the  
13 Statewide and Regional Water Resources Advisory Committees  
14 established pursuant to section 4, the Pennsylvania Emergency  
15 Management Agency, the Pennsylvania Public Utility Commission  
16 and with other local, regional and State agencies and  
17 organizations, as deemed appropriate by the department.

18 (b) Contents.--The State water plan shall be a comprehensive  
19 plan for the immediate and long-range protection, conservation,  
20 utilization, evaluation, development, equitable distribution and  
21 management of the water resources of this Commonwealth,  
22 consistent with the public interest and the preservation of the  
23 natural, scenic, historic and esthetic values of the  
24 environment. The State water plan shall include:

25 (1) Identification of major water resources issues.

26 (2) Analysis of identified issues.

27 (3) That combination of policies, programs,  
28 institutional arrangements and recommendations that address  
29 the total water quantity needs and objectives of the  
30 Commonwealth and will guide the department's actions in

1 managing the water resources of this Commonwealth in the  
2 public interest.

3 (c) Factors to consider.--In developing the State water  
4 plan, the department shall consider the following factors:

5 (1) Local and regional water resources needs, priorities  
6 and objectives.

7 (2) National, State and interstate water resources  
8 policies and objectives, including those identified in  
9 legislation, regulations, compacts, interstate agreements or  
10 comprehensive plans adopted by Federal, State or basin  
11 commission agencies.

12 (3) Identification of areas needing special protection.

13 (4) The conjunctive use, development and management of  
14 water resources.

15 (5) The application of conservation practices and  
16 generally accepted water resource management and hydrologic  
17 principles, including the protection of instream flows and  
18 provision for consumptive use makeup.

19 (6) The benefits, costs and economic, social and  
20 environmental impacts of alternative policies, programs,  
21 institutional arrangements and recommendations.

22 (d) Periodic review and resubmission.--Following initial  
23 approval of the State water plan by the Environmental Quality  
24 Board, the department shall review and resubmit the State water  
25 plan to the board at least every six years thereafter in  
26 consultation with the Statewide and regional water resources  
27 advisory committees and others as deemed appropriate by the  
28 department and shall propose revisions as necessary or  
29 appropriate.

30 (e) Publication.--The department shall publish in the

1 Pennsylvania Bulletin public notice of the availability of the  
2 State water plan for review at the department's regional offices  
3 and shall accept public comment for a period of at least 30 days  
4 prior to submission or resubmission of the State water plan to  
5 the Environmental Quality Board.

6 Section 8. Conservation areas.

7 (a) Establishment.--The department may propose and the  
8 Environmental Quality Board may by regulation establish and  
9 delineate conservation areas that need special protection upon a  
10 finding that current or projected demands on and uses of water  
11 resources in those areas:

12 (1) exceed or threaten to exceed the safe yield of the  
13 water resources;

14 (2) create or will cause a shortage of water having  
15 sufficient quality to meet needs;

16 (3) impair or will have substantial adverse impact on  
17 instream uses, water quality or the environment;

18 (4) conflict with the requirements or effectuation of  
19 the State water plan.

20 (b) Modification or termination.--Upon recommendation of  
21 department, the Environmental Quality Board may approve the  
22 modification or termination of the conservation area status of  
23 an area upon a finding that the conditions prompting the  
24 delineation have significantly changed or no longer exist. Such  
25 change in status shall be effective upon publication by the  
26 department of public notice in the Pennsylvania Bulletin.

27 Section 9. Water use registration and reporting.

28 (a) Registration required.--

29 (1) Any person whose existing, new or increased  
30 withdrawal or diversion from one or more water resources of



1 the Commonwealth causes that person's total withdrawal or  
2 diversion to equal or exceed an average rate of 10,000  
3 gallons per day in any 30-day period, and all public water  
4 supply agencies shall register with the department the source  
5 and amount of their withdrawal or diversion.

6 (2) Registrations shall be submitted to the department  
7 on such forms and with such accompanying data as shall be  
8 prescribed by the department or required by regulation and  
9 with such fees as established by this act or regulation.

10 (b) Term or registration.--

11 (1) The registration requirement shall take effect one  
12 year from the effective date of this act. Except as provided  
13 in paragraph (2), registrations shall be renewed according to  
14 staggered three-year cycles to be established by the  
15 department by notice published in the Pennsylvania Bulletin  
16 or such other reporting period as may be established by  
17 regulation.

18 (2) Any person who after registering a source proposes  
19 to increase by 20% or more the amount of a registered  
20 withdrawal or diversion before the renewal date of such  
21 registration shall submit to the department supplemental  
22 information at least 30 days prior to commencing the  
23 increased withdrawal or diversion.

24 (c) Reporting.--The department may require any person  
25 withdrawing or diverting water resources of this Commonwealth:

26 (1) To install, use and maintain such metering equipment  
27 or methods.

28 (2) To perform such measuring.

29 (3) To maintain and retain such records of information  
30 from metering and measuring activities.

1           (4) To submit such reports of metering and measuring  
2 results.

3           (5) To provide such other information as may be required  
4 to determine compliance or noncompliance with this act, with  
5 regulations promulgated under this act or with the terms or  
6 conditions of any permit or order issued pursuant to this  
7 act.

8           (6) To establish and maintain such other records and to  
9 make such other reports and to furnish such information to  
10 the department as the department may prescribe as being  
11 necessary to assist the department in fulfilling the purposes  
12 of this act or to demonstrate compliance with the  
13 requirements of this act, the regulations promulgated under  
14 this act, or the terms and conditions of any permit or order  
15 issued to that person.

16       (d) Regulations.--The Environmental Quality Board may adopt  
17 regulations, providing for the waiver or modification of  
18 registration, recordkeeping or reporting requirements for any  
19 classification or volume of withdrawal or diversion, where the  
20 board finds that such withdrawal or diversion:

21           (1) is temporary in nature;

22           (2) is unlikely to have any significant effect on the  
23 water resource or other water use in the area; or

24           (3) that such requirements are unnecessary to obtain  
25 information required to adequately assess water uses, monitor  
26 demands or prepare an accurate and complete State water plan.

27       (e) Registration not determinative.--No registration of a  
28 withdrawal or diversion under this section shall be construed as  
29 a determination of water rights, a prior appropriation of water  
30 resources, conferring of superiority of right in respect to the

1 use of those water resources or approval of the withdrawal or  
2 diversion by any agency of this Commonwealth or by any river  
3 basin commission.

4 Section 10. Withdrawals or diversions requiring permits.

5 (a) Significant user.--No person may withdraw or divert  
6 water resources of this Commonwealth whose total withdrawal or  
7 diversion from one or more water resources equals or exceeds an  
8 average rate of 100,000 gallons per day in any 30-day period or  
9 such other amount as may be established by regulation without  
10 first obtaining a written individual or general permit from the  
11 department in accordance with section 11 or 12.

12 (b) Public water supply agency.--No public water supply  
13 agency may withdraw or divert water resources of this  
14 Commonwealth or acquire any water rights without first obtaining  
15 a written individual or general permit from the department in  
16 accordance with section 11 or 12 unless:

17 (1) The public water supply agency withdraws, diverts  
18 and uses water resources only on its riparian land.

19 (2) The public water supply agency's total withdrawal or  
20 diversion from one or more water resources does not equal or  
21 exceed an average rate of 10,000 gallons per day in any 30-  
22 day period or such other amount as may be established by  
23 regulation.

24 (c) Permit requirement effective date.--Except as provided  
25 in subsection (d), the permit requirement contained in  
26 subsection (a) or (b) shall take effect on the following dates  
27 or such other dates, including interim dates for the submission  
28 of a complete permit application under section 11 or 12, as may  
29 be established by regulation:

30 (1) For acquisitions, withdrawals or diversions equal to

1 or exceeding 2,500,000 gallons per day, four years from the  
2 effective date of this act.

3 (2) For acquisitions, withdrawals or diversions equal to  
4 or exceeding 750,000 gallons per day but less than 2,500,000  
5 gallons per day, five years from the effective date of this  
6 act.

7 (3) For acquisitions, withdrawals or diversions equal to  
8 or exceeding 250,000 gallons per day but less than 750,000  
9 gallons per day, six years from the effective date of this  
10 act.

11 (4) For acquisitions, withdrawals or diversions equal to  
12 or exceeding 100,000 gallons per day but less than 250,000  
13 gallons per day, eight years from the effective date of this  
14 act.

15 (5) For acquisitions, withdrawals or diversions by  
16 public water supply agencies of less than 100,000 gallons per  
17 day, ten years from the effective date of this act.

18 (d) Existing approvals.--

19 (1) Except as provided in paragraph (2) a person or  
20 public water supply agency which on the effective date of  
21 this act holds a valid permit, order of confirmation or  
22 approval to withdraw, use or divert water resources or to  
23 acquire water rights issued under one of the following acts  
24 or compacts may continue to exercise their rights under such  
25 approvals until the applicable date specified in subsection  
26 (c) for obtaining a permit under this act:

27 (i) The act of June 14, 1923 (P.L.704, No.294),  
28 entitled "An act relating to limited power permits and  
29 limited water supply permits from the Water Supply

30 Commission of Pennsylvania and the conditions thereof, to

1 the flooding and use by holders of limited power permits  
2 of islands owned by the Commonwealth, to the unlawful use  
3 for water or steam power development of dams and changes  
4 in streams hereafter constructed or made otherwise than  
5 under limited power permits, and to proceedings for the  
6 enforcement of this act."

7 (ii) The act of June 24, 1939 (P.L.842, No.365),  
8 referred to as the Water Rights Law.

9 (iii) The Delaware River Basin Compact, authorized  
10 under the act of July 7, 1961 (P.L.518, No.268), known as  
11 the Delaware River Basin Compact.

12 (iv) The Susquehanna River Basin Compact, authorized  
13 under the act of July 17, 1968 (P.L.368, No.181),  
14 referred to as the Susquehanna River Basin Compact Law.

15 (2) Any person or public water supply agency subject to  
16 the acts listed in paragraph (1) shall obtain a permit under  
17 this act prior to the occurrence of any of the following, or  
18 the applicable date specified in subsection (c), whichever is  
19 sooner:

20 (i) expiration of its existing approval;

21 (ii) commencement of a new or increased withdrawal  
22 or diversion after the effective date of this act; or

23 (iii) acquisition by a public water supply agency of  
24 new water rights beyond that contained in its existing  
25 approval.

26 (3) The issuance, modification, suspension or denial of  
27 a permit under this act shall substitute for and act as a  
28 revocation of any previous authority granted under the acts  
29 listed in paragraph (1).

30 (e) Permits within conservation areas.--

(1) Within any conservation area established by the Environmental Quality Board, no person may withdraw or divert water resources of this Commonwealth whose total withdrawal or diversion from one or more water resources equals or exceeds an average rate of 10,000 gallons per day in any 30-day period or such other amount as may be established by regulation without obtaining a written individual or general permit from the department in accordance with section 11 or 12. The permit requirement of this subsection shall take effect:

(i) Upon the effective date of the conservation area determination, as to any withdrawal or diversion commenced or increased after the effective date of the conservation area determination.

(ii) One year following the effective date of the conservation area determination, as to any acquisition, withdrawal or diversion developed and commenced prior to the effective date of the conservation area determination.

(2) A person or public water supply agency withdrawing water resources within a delineated conservation area under a valid permit issued under section 11 or 12 shall be deemed to comply with the permit requirements of this subsection. That permit shall be subject to modification as necessary to comply with the requirements of this act and the regulations adopted under this act.

(f) Compliance with other requirements.--A person otherwise subject to the requirements of this section shall comply immediately with all operating, monitoring, conservation, registration, recordkeeping, reporting and other provisions of

1 this act and the regulations adopted under this act, regardless  
2 of the date by which such person must comply with the permit  
3 requirement.

4 Section 11. Permit requirements.

5 (a) Applications.--

6 (1) (i) Applications for permits shall be submitted in  
7 writing to the department on such forms and with such  
8 accompanying data as shall be prescribed by the  
9 department and shall include maps, plans, drawing  
10 specifications, yield data, water quality data,  
11 delineation of service territory and such other  
12 information as the department may require to determine  
13 compliance with this act and the regulations adopted  
14 under this act. Each application shall also be  
15 accompanied by a permit application fee established by  
16 this act or regulation.

17 (ii) The submission of a new application shall be  
18 required if a permittee's withdrawal(s) or diversion(s)  
19 exceed the quantity specified in an existing permit or a  
20 permitted public water supply agency proposes the  
21 expansion of its service territory beyond that identified  
22 in its existing permit.

23 (2) Applicants must demonstrate that:

24 (i) They have a legal right to withdraw, divert, use  
25 or acquire water resources of this Commonwealth.

26 (ii) Their proposed withdrawal, diversion, usage or  
27 acquisition will not interfere with or result in any  
28 adverse impact on any existing registered or permitted  
29 withdrawal, diversion, usage or acquisition and that it  
30 is protective of stream ecology, aquatic organisms,

1 related environmental values and existing and planned  
2 future land uses.

3 (iii) Conservation practices have been or will be  
4 pursued.

5 (3) Prior to taking action on a permit application, the  
6 department shall require every applicant to give at least 30-  
7 days written notice to each municipality in which the  
8 proposed withdrawal, diversion or acquisition is located. The  
9 department shall provide public notice in the Pennsylvania  
10 Bulletin upon the receipt of a completed permit application  
11 and shall provide a 30-day public comment period before  
12 taking action on a permit application. The department shall  
13 also provide public notice in the Pennsylvania Bulletin of  
14 the permits granted under this act.

15 (b) Permit issuance.--

16 (1) The department may grant a permit for the  
17 continuation of an existing withdrawal or diversion or a  
18 public water supply agency's acquisition of water rights or  
19 for a new or increased withdrawal, diversion or public water  
20 supply agency's acquisition if the department determines that  
21 the withdrawal, diversion or acquisition is:

22 (i) Consistent with the State water plan.

23 (ii) Complies with the provisions of this act, the  
24 regulations adopted under this act and all other  
25 applicable laws administered by the department or a river  
26 basin commission created by interstate compact.

27 (iii) In the case of a public water supply agency,  
28 is reasonably necessary for the present and future needs  
29 of the area served by that agency.

30 (iv) Satisfies the criteria contained in subsection



1 (a)(2).

2 (2) The department may not issue or amend any permit  
3 under this act and may suspend or revoke any permit  
4 previously issued if it finds that the applicant, or a  
5 partner, owner, associate, officer, parent or subsidiary  
6 corporation or contract operator, has shown a lack of ability  
7 or intention to comply with any provisions of Federal law or  
8 the laws of this Commonwealth or other states or a  
9 regulation, order or permit of the department regarding water  
10 resources withdrawals, diversions or acquisitions, as  
11 indicated by past or continuing violations unless the lack of  
12 intention or ability to comply is being or has been corrected  
13 to the satisfaction of the department.

14 (3) Where the department finds that:

15 (i) the quantity of existing or proposed  
16 withdrawals, diversions or acquisitions exceeds the safe  
17 yield of the affected water resource;

18 (ii) the proposed withdrawal, diversion or  
19 acquisition is inconsistent with the State water plan or  
20 otherwise creates a conflict among water users;

21 the department may deny the request, require adjustments in  
22 the quantities withdrawn or modify or condition withdrawals,  
23 diversions or acquisitions as necessary to assure that the  
24 water resources are conserved, equitably shared and  
25 efficiently used in the public interest and in accordance  
26 with any regulations adopted hereunder.

27 (4) Any permitted acquisition, diversion or withdrawal  
28 granted under this act shall lapse if the permittee fails to  
29 effectuate the withdrawal, diversion or acquisition by an  
30 actual taking and use of water resources within the time

1 specified in the permit, which may not exceed four years,  
2 unless the permittee applies for and is granted an extension  
3 as the department deems necessary to enable the permittee to  
4 complete the project required for the taking of the water  
5 resources.

6 (c) No prior appropriations.--

7 (1) No allocation of water resources made pursuant to  
8 this section shall:

9 (i) constitute a prior appropriation of the water  
10 resources of this Commonwealth; or

11 (ii) confer any superiority of right in respect to  
12 the use of those water resources.

13 (2) A public water supply agency granted a permit for  
14 the acquisition of water rights shall be in the same position  
15 as a holder of water rights under common law.

16 (d) Permit duration.--

17 (1) A permit issued or renewed under this section shall  
18 be for a fixed term not to exceed ten years. A permit may be  
19 renewed by the department upon the filing of a new  
20 application.

21 (2) The terms and conditions of an expired permit shall  
22 be automatically continued pending the issuance of a new  
23 permit where:

24 (i) the permittee has submitted a timely and  
25 complete application for a new permit; and

26 (ii) the permittee has paid the fees required by  
27 this act or the regulations promulgated under this act;  
28 and

29 (iii) the department is unable, through no fault of  
30 the permittee, to issue or deny a new permit before the

1           expiration date of the previous permit.

2       (e) Permit conditions.--

3           (1) (i) The department shall impose such permit terms  
4           and conditions, including standard conditions, regarding  
5           conservation, development, operation, monitoring of  
6           withdrawals and diversions and acquisition of water  
7           rights as are reasonably necessary to protect the public  
8           interest in water resources and to assure consistency  
9           with the State water plan and compliance with this act,  
10          the regulations adopted under this act and other laws  
11          administered by the department and any river basin  
12          commission created by interstate compact.

13          (ii) The conditions shall include, but are not  
14          limited to, requirements related to implementing  
15          conservation practices, metering, consumptive use makeup,  
16          minimum instream flow to protect aquatic life and  
17          downstream users, and equitable distribution of water  
18          resources.

19          (2) The withdrawal, diversion, development, operation  
20          and use of water or exercise of water rights authorized by  
21          permit may be suspended or made subject to special limits or  
22          conditions in the event of an emergency declared by the  
23          Governor under the Emergency Management Services Code, 35  
24          Pa.C.S. Part V (relating to Emergency Management Services),  
25          or any successor statute or by a river basin commission  
26          pursuant to an interstate compact.

27       (f) Permit modification, suspension and revocation.--In  
28       addition to its powers under section 16(d), the department may  
29       at any time modify, suspend or revoke a permit to:

30           (1) Respond to new information or changed hydrologic

1 conditions.

2 (2) Resolve previously unforeseen conflicts or impacts.

3 (3) Protect the public interest, considering  
4 conservation, development, equitable distribution of  
5 available water resources and the maintenance of water  
6 quantity and quality to preserve instream, offstream and  
7 downstream uses.

8 (4) Assure compliance with this act, regulations adopted  
9 under this act and other laws administered by the department  
10 or any river basin commission created by interstate compact.

11 (5) Correct any violation of this act or regulations  
12 adopted under this act, or of a condition of the permit,  
13 including taking appropriate action pursuant to subsection  
14 (b)(2).

15 (g) Permit nontransferable.--No permit may be transferred  
16 without written approval by the department.

17 (h) Emergency permits.--In the event of an emergency  
18 requiring immediate action to protect health, safety or welfare,  
19 and where the circumstances do not allow a complete review of an  
20 application as required by this act, the department may issue an  
21 emergency permit authorizing such withdrawals, diversions and  
22 acquisitions as necessary. In issuing emergency permits under  
23 this section, the department shall not be required to comply  
24 with the requirements of subsection (a)(3).

25 (i) Eminent domain.--All public water supply agencies  
26 holding a permit issued under this act shall have the power and  
27 may exercise the right of eminent domain with respect to any  
28 withdrawal, diversion or acquisition authorized by the permit.

29 Section 12. General permits.

30 General rule.--The department may, in accordance with

1 regulations adopted by the Environmental Quality Board, issue  
2 general permits on a watershed, basin, management area, regional  
3 or Statewide basis for any category of withdrawal, diversion or  
4 public water supply acquisition if the department determines  
5 that the withdrawals, diversions or acquisitions in such  
6 category:

7 (1) Can be adequately regulated and managed utilizing  
8 standardized specifications and conditions.

9 (2) Will have an insignificant effect upon water  
10 resources.

11 (b) Content.--General permits shall specify such siting,  
12 operating and other conditions as are necessary to conserve,  
13 preserve, maintain and manage water resources and to protect  
14 health, safety, welfare and the environment and under which  
15 withdrawals, diversions and acquisitions can be developed and  
16 operated without applying for and obtaining individual permits.

17 (c) Registration.--The department shall require and  
18 applicant for a general permit to register any withdrawal,  
19 diversion or acquisition to be developed or operated under such  
20 general permit, on such forms and with such accompanying data as  
21 the department may prescribe.

22 (d) Publication.--General permits shall be published in the  
23 Pennsylvania Bulletin at least 30 days prior to the effective  
24 date of the permit.

25 Section 13. Conservation.

26 (a) Water conservation technical assistance program.--The  
27 department shall establish, implement and administer a water  
28 conservation technical assistance program which shall:

29 (1) Provide for technical staff assistance in the  
30 formulation and implementation of effective water

1 conservation practices by persons subject to the provisions  
2 of this act.

3 (2) Develop incentives to encourage water users to  
4 implement new or innovative conservation practices.

5 (b) Water conservation information and education program.--

6 The department shall establish, implement and administer a water  
7 conservation education program and materials for school-age  
8 children and shall make water conservation information available  
9 for dissemination to the public.

10 (c) Conservation credits.--

11 (1) The department shall propose and the Environmental  
12 Quality Board shall adopt regulations to establish  
13 requirements for implementing conservation credits for  
14 persons who have adopted within the ten years prior to the  
15 effective date of this act or who adopt in the future  
16 conservation practices which can be demonstrated to have  
17 resulted in a significant and quantifiable reduction in the  
18 use of water resources.

19 (2) Conservation credits shall be available to reduce or  
20 eliminate the requirements for restrictions on or reductions  
21 of water use during times of water shortage or drought.

22 Section 14. Drought response planning and authority.

23 (a) Local drought advance planning.--

24 (1) Each person whose total withdrawal or diversion from  
25 one or more water resources equals or exceeds 100,000 gallons  
26 per day in any 30-day period and all public water supply  
27 agencies shall develop and submit to the department for  
28 approval a drought contingency plan within one year of the  
29 effective date of this act for withdrawals or diversions  
30 commenced prior to or within one year of the effective date

1 of this act.

2 (2) A drought contingency plan shall be submitted to the  
3 department for approval within one year of the commencement  
4 of any future new diversion or withdrawal by:

5 (i) A public water supply agency.

6 (ii) Any person whose total withdrawal or diversion  
7 from one or more water resources equals or exceeds  
8 100,000 gallons per day in any 30-day period, or such  
9 other amount as may hereafter be established by  
10 regulation.

11 (iii) Any person subject to the permit requirement  
12 in a delineated conservation area.

13 (3) Each drought contingency plan shall be submitted to  
14 the department in such form and with such accompanying data  
15 as shall be prescribed by the department.

16 (4) Each drought contingency plan shall contain the  
17 following, as a minimum:

18 (i) The name, address and telephone number of the  
19 person responsible for directing operations during a  
20 drought emergency.

21 (ii) A description of the water resources used,  
22 including all interconnections, the location and safe  
23 yield of each resource and data indicating the monthly  
24 average and peak day rates of withdrawal and usage from  
25 each source and in total for each calendar month during  
26 the previous calendar year, or most recent 12-month  
27 period for which data is available.

28 (iii) A description of the method, location and  
29 rates of waste water disposal from the system or estimate  
30 of consumptive use, if applicable.

1 (iv) A description of the conservation measures  
2 previously undertaken to reduce water use and potential  
3 measures which could be implemented to reduce water use  
4 during a drought, including the impact of the measures on  
5 production, employment and economics, if applicable.

6 (v) A description of the criteria to be used to  
7 identify the onset of water shortage problems.

8 (vi) A plan of action which will be taken to respond  
9 to a drought or water supply shortage, including  
10 conservation practices, development of emergency or  
11 alternative supplies, and rationing, to achieve a phased  
12 reduction of total withdrawal and use by percentage, such  
13 as 5%, 15%, 25% and 50% of predrought withdrawal and  
14 usage.

15 (b) Drought Response Authority.--

16 (1) Whenever a drought or water resources emergency is  
17 declared by the Governor under the Emergency Management  
18 Services Code, 35 Pa.C.S. Part V (relating to Emergency  
19 Management Services) or by a river basin commission pursuant  
20 to an interstate compact, the department, in consultation  
21 with the Pennsylvania Emergency Management Agency, may  
22 undertake emergency management actions necessary to assure  
23 equitable sharing of available water supplies and  
24 conservation of water resources in a manner consistent with  
25 the State water plan.

26 (2) The department's emergency management actions may  
27 include, but are not limited to, the following measures:

28 (i) Ordering the temporary reduction or suspension  
29 of nonessential water uses.

30 (ii) Ordering temporary suspension of withdrawals,



diversions or acquisitions or temporary modification of conditions in existing permits, including restrictions on the timing or quantity of water use.

(iii) Directing the storage and release of water in public and private reservoir facilities subject to State regulation.

(iv) Cooperating with Federal agencies responsible for operation of Federal reservoir facilities to develop and implement emergency schedules for storage and release of water.

(v) Requiring the emergency interconnection of water supplies and prescribe the delivery of water through those interconnections.

(vi) Mandating implementation of drought contingency plans and specific water conservation measures.

(vii) Regulating the withdrawal or diversion of water resources in designated drought emergency areas in excess of such quantities as may be prescribed by order of the department or regulation adopted by the Environmental Quality Board, and establishing requirements for emergency withdrawal permits.

(c) Cooperation with other agencies.--The department shall cooperate with appropriate Federal, interstate and other agencies to plan effective responses to any water resources emergency. The department may accept the delegation of authority from any river basin commission or Federal or interstate agency relating to emergency management of water resources in this Commonwealth.

Section 15. Public nuisances.

(a) General rule.--A violation of any provision of this act,

1 or any regulation of the department, or any order of the  
2 department, or any term or conditions of any permit, shall  
3 constitute a public nuisance.

4 (b) Liability.--Any person committing such a violation shall  
5 be liable for the costs of the abatement of the public nuisance  
6 caused by such violation.

7 (c) Jurisdiction.--The Environmental Hearing Board and any  
8 court of competent jurisdiction are hereby given jurisdiction  
9 over actions to recover the costs of such abatement.

10 (d) Abatement.--Any activity or condition declared by this  
11 act to be a nuisance or which is otherwise in violation of this  
12 act shall be abatable in the manner provided by law or equity  
13 for the abatement of public nuisances.

14 Section 16. Enforcement, penalties and remedies.

15 (a) Duty to comply with orders of the department.--It shall  
16 be the duty of any person to comply with any order issued by the  
17 department under this act. If such person fails to comply with  
18 the order within such time, if any, as may be specified, the  
19 person shall be guilty of contempt and shall be punished by the  
20 court in an appropriate manner and for this purpose, application  
21 may be made by the department to the Commonwealth Court, which  
22 court is hereby granted jurisdiction.

23 (b) Unlawful conduct.--It shall be unlawful for any person:

24 (1) to fail to comply with or to cause or assist in the  
25 violation of any provision of this act or any regulation,  
26 permit or order adopted under this act;

27 (2) to fail to comply with an order or permit condition  
28 within such time, if any, as may be specified;

29 (3) to hinder, obstruct, prevent or interfere with the  
30 department or its personnel in their performance of any duty

1 hereunder;

2 (4) to violate the provisions of 18 Pa.C.S. § 4903  
3 (relating to false swearing) or 4904 (relating to unsworn  
4 falsification to authorities) in regard to submissions  
5 required under this act.

6 (c) Duty to provide access.--

7 (1) The department may conduct such inspections, tests  
8 or sampling, or examine or require production of books,  
9 papers and records, including, but not limited to,  
10 computerized records and physical evidence pertinent to any  
11 matter under investigation pursuant to this act as it deems  
12 necessary to determine compliance with this act, the  
13 regulations adopted under this act or any order or permit  
14 issued pursuant to this act.

15 (2) For this purpose, the duly authorized agents and  
16 employees of the department may enter and examine any  
17 property, facility, operation or activity governed by this  
18 act, upon presentation of appropriate credentials, without  
19 prior notice at all reasonable times, during regular business  
20 hours of the operation and times when activity is being  
21 conducted.

22 (3) The owner, operator or other person in charge of the  
23 property, facility, operation or activity, upon presentation  
24 of proper identification and purpose for inspection by the  
25 agents or employees of the department, shall give the agents  
26 and employees free and unrestricted entry and access.

27 (4) Upon being refused entry or access sought under this  
28 subsection, the department's agent or employee may obtain a  
29 search warrant or other suitable order for the purposes of  
30 inspecting, examining or seizing any property, facility,

1 book, record or other physical evidence, or of conducting  
2 tests or taking samples.

3 (5) It shall be sufficient probable cause to show any of  
4 the following:

5 (i) That the inspection, examination, test or  
6 sampling is pursuant to a general administrative plan to  
7 determine compliance with this act.

8 (ii) That the agent or employee has reason to  
9 believe that a violation of this act has occurred or is  
10 likely to occur.

11 (iii) That the agent or employee has been refused  
12 access to the property, facility, book, record or  
13 physical evidence or has been prevented from conducting  
14 tests or taking samples which activities are necessary to  
15 determine compliance or to respond to a violation of this  
16 act.

17 (iv) That the object of the investigation is subject  
18 to regulation under this act and access, examination,  
19 inspection or testing is necessary to enforce this act.

20 (d) Enforcement orders.--

21 (1) The department may issue such orders to persons as  
22 it deems necessary to aid in the enforcement of this act. The  
23 orders shall include, but are not limited to:

24 (i) Orders modifying, suspending or revoking  
25 permits.

26 (ii) Orders requiring persons to comply with or  
27 cease violations of this act, the regulations, orders or  
28 permits issued under this act.

29 (iii) Orders to take corrective action or abate a  
30 public nuisance.

1           (iv) Orders requiring the testing, sampling or  
2           monitoring of a water resource or requiring production of  
3           information.

4           (2) An order issued under this act shall take effect  
5           upon notice unless the order specifies otherwise.

6           (3) An appeal to the Environmental Hearing Board shall  
7           not act as a supersedeas, provided, however, that, upon  
8           application and for cause shown, the board may issue such a  
9           supersedeas under rules established by the board.

10          (4) The department may petition the Commonwealth Court  
11          for enforcement of any order or portion thereof and the  
12          Commonwealth Court shall grant the petition if it finds,  
13          after a hearing, that the order has been issued and has  
14          either become final or, if appealed, has not been superseded  
15          by the Environmental Hearing Board.

16          (5) The power of the department to issue an order under  
17          this act shall be in addition to any other remedy which may  
18          be available to the department under this or any other act.

19          (6) Failure to comply with any such order is hereby  
20          declared to be a nuisance.

21          (e) Equitable relief.--

22          (1) In addition to any other remedies provided in this  
23          act, the department may proceed in equity in the Commonwealth  
24          Court or in a court of common pleas having jurisdiction to  
25          restrain or prevent violations of this act or to compel  
26          compliance with this act or any rule, regulation, permit or  
27          order issued pursuant to this act.

28          (2) In any proceeding under this subsection, the court  
29          shall, upon motion of the department, issue a prohibitory or  
30          mandatory preliminary injunction if it finds that the

1 defendant is engaging in unlawful conduct as defined by this  
2 act or is engaged in conduct which is causing or likely to  
3 cause immediate and irreparable harm to the public.

4 (3) The department shall not be required to furnish bond  
5 or other security in connection with such proceedings.

6 (4) In addition to any injunction, the court, in an  
7 equity proceeding under this subsection may levy civil  
8 penalties as specified in this section.

9 (f) Summary offense.--

10 (1) Any person who violates any provision of this act,  
11 any rule or regulation of the department, any order of the  
12 department or any condition of any permit of the department  
13 issued pursuant to this act commits a summary offense and,  
14 upon conviction, shall be sentenced to pay a fine of not less  
15 than \$500 nor more than \$5,000, and costs, for each separate  
16 offense, or in default of payment thereof shall be sentenced  
17 to imprisonment for a period of not more than 90 days for  
18 each separate offense.

19 (2) Employees of the department authorized to conduct  
20 inspections or investigations are hereby declared to be law  
21 enforcement officers authorized to issue or file citations  
22 for summary violations under this act, and the General  
23 Counsel is hereby authorized to prosecute these offenses.

24 (3) For purposes of this subsection, a summary offense  
25 may be prosecuted before any district justice in the county  
26 where the offense occurred.

27 (g) Misdemeanor.--Any person who willfully or negligently  
28 violates any provision of this act, any rule or regulation of  
29 the department, any order of the department or any condition of  
30 any permit of the department issued pursuant to this act, or who

1 hinders, obstructs, prevents or interferes with an officer,  
2 agent or employee of the department in the performance of his  
3 duties, commits a misdemeanor of the third degree and, upon  
4 conviction, shall be sentenced to pay a fine of not less than  
5 \$1,000 nor more than \$10,000 for each separate offense, or to  
6 imprisonment for a period of not more than one year for each  
7 separate offense, or both.

8 (h) Civil penalties.--

9 (1) In addition to proceeding under any other remedy  
10 available at law or in equity for a violation of any  
11 provision of this act, any rule or regulation of the  
12 department, any order of the department or any term or  
13 condition of any permit issued by the department, the  
14 department may assess a civil penalty upon a person for such  
15 violation. The penalty may be assessed whether or not the  
16 violation was willful or negligent.

17 (2) (i) When the department proposes to assess a civil  
18 penalty, it shall inform the person of the amount of the  
19 penalty. The person charged with the penalty shall then  
20 have 30 days to pay the proposed penalty in full or, if  
21 the person wishes to contest either the amount of the  
22 penalty or the fact of the violation, the person shall  
23 within 30 days forward the proposed amount of the penalty  
24 to the Environmental Hearing Board for placement in an  
25 escrow account with the State Treasurer or any  
26 Commonwealth bank or post an appeal bond to the board in  
27 the amount of the proposed penalty, provided that the  
28 bond is executed by a surety licensed to do business in  
29 this Commonwealth and is satisfactory to the department,  
30 and shall file an appeal to the board within the same 30

1 days.

2 (ii) If, through administrative or final judicial  
3 review of the proposed penalty, it is determined that no  
4 violation occurred or that the amount of the penalty  
5 shall be reduced, the board shall, within 30 days, remit  
6 the appropriate amount to the person with any interest  
7 accumulated by the escrow deposit.

8 (iii) Failure to forward the money or the appeal  
9 bond at the time of the appeal shall result in a waiver  
10 of all legal rights to contest the violation or the  
11 amount of the civil penalty.

12 (iv) The amount assessed after administrative  
13 hearing or after waiver of administrative hearing shall  
14 be payable to the Commonwealth of Pennsylvania and shall  
15 be collectible in any manner provided by law for the  
16 collection of debts.

17 (3) (i) The maximum civil penalty which may be assessed  
18 pursuant to this section may not exceed \$10,000 per day  
19 for each violation. Each violation for each separate day  
20 and each violation of any provision of this act, any rule  
21 or regulation under this act, any order of the department  
22 or any term or condition of the permit shall constitute a  
23 separate and distinct offense under this section.

24 (ii) In determining the amount of the penalty, the  
25 department shall consider:

26 (A) The willfulness of the violation.

27 (B) The effect on the water resources planning  
28 process, the damage to water resources or other  
29 natural resources of the Commonwealth or their uses.

30 (C) Cost of restoration or abatement.



1 (D) Savings resulting to the person in  
2 consequence of the violation.

3 (E) Deterrence of future violations.

4 (F) Cost to the department.

5 (G) Other relevant factors.

6 (i) Civil action to compel compliance.--

7 (1) A person having an interest which is or may be  
8 adversely affected may commence a civil action on that  
9 person's own behalf to compel compliance with this act or any  
10 rule, regulation, order or permit issued pursuant to this act  
11 against any other person withdrawing, diverting or using  
12 water resources alleged to be in violation of any provision  
13 of this act or any rule, regulation, order or permit issued  
14 pursuant to this act.

15 (2) Notwithstanding any other provision of law, the  
16 courts of common pleas shall have jurisdiction of such  
17 actions and venue in such actions shall be as set forth in  
18 the Rules of Civil Procedure concerning civil actions.

19 (3) No action under this subsection may be commenced if:

20 (i) the department has executed a consent order and  
21 agreement, consent adjudication, consent decree or  
22 similar document which binds an alleged violator to  
23 corrective action and future compliance; or

24 (ii) the department has commenced and is diligently  
25 prosecuting a civil action in a court of competent  
26 jurisdiction or is in litigation before the Environmental  
27 Hearing Board to require the alleged violator to comply  
28 with this act or any rule, regulation, order or permit  
29 issued pursuant to this act. In any such action any  
30 person having or representing an interest which is or may

1 be adversely affected may intervene as a matter of right  
2 without posting bond.

3 (2) No action pursuant to this subsection may be  
4 commenced prior to 60 days after the plaintiff has given  
5 notice, in writing, of the violation to the department and to  
6 any alleged violator. Notwithstanding the 60-day notice  
7 requirement, any action may be initiated immediately upon  
8 written notification to the department in the case where the  
9 violation or order complained of constitutes an imminent  
10 threat to the health or safety of the plaintiff or would  
11 immediately affect a legal interest of the plaintiff.

12 (3) The court, in issuing any final order in any action  
13 brought pursuant to this subsection, may award costs of  
14 litigation, including attorney and expert witness fees, to  
15 any party, whenever the court determines such award is  
16 appropriate. Except as provided in subsection (d), the court  
17 may, if a temporary restraining order or preliminary  
18 injunction is sought, require the filing of a bond or  
19 equivalent security in accordance with the Rules of Civil  
20 Procedure.

21 (j) Penalties to be concurrent.--The penalties and remedies  
22 prescribed by this act shall be deemed concurrent and the  
23 existence or exercise of any remedy shall not prevent the  
24 department from exercising any other remedy hereunder, at law or  
25 in equity.

26 (k) Separate offenses.--Each violation on each separate day  
27 shall constitute a separate offense for purposes of this act.

28 (l) Appealable actions.--Any person aggrieved by an order or  
29 other administrative action of the department issued pursuant to  
30 this act shall have the right, within 30 days of actual or

1 constructive notice of the action, whichever is sooner, to  
2 appeal the action to the Environmental Hearing Board in  
3 accordance with the act of July 13, 1988 (P.L.530, No.94), known  
4 as the Environmental Hearing Board Act, and 2 Pa.C.S. Ch. 5  
5 Subch. A (relating to practice and procedure of Commonwealth  
6 agencies).

7 Section 17. Water Conservation Fund.

8 (a) Funding.--All civil penalties or recovered costs and all  
9 fees collected under this act shall be paid into the State  
10 Treasury into a special fund known as the Pennsylvania Water  
11 Conservation Fund which is hereby established. All moneys placed  
12 in the fund and the interest accrued are hereby appropriated to  
13 and shall be administered by the department for the following  
14 purposes:

15 (1) To defray the department's direct and indirect costs  
16 of administering this act and the programs authorized under  
17 this act.

18 (2) To assist in financing water resources planning and  
19 conservation programs and providing technical assistance.

20 (3) For such other purposes as are authorized in this  
21 act.

22 (b) Other sources.--The Water Conservation Fund may be  
23 supplemented by appropriations from the General Assembly, the  
24 Federal, State or a local government or from any private source.

25 Section 18. Fees.

26 (a) General rule.--The department is authorized to establish  
27 such fees as may be necessary to further the purposes of this  
28 act. At a minimum, such fees shall be established to cover the  
29 direct and indirect cost of developing and administering the  
30 State water plan, registration, permitting, monitoring,

1 reporting, conservation and enforcement program required by this  
2 act. In establishing fees, the department may consider the  
3 amount of the withdrawal or diversion, the resources necessary  
4 to process a registration or permit, the effect of a withdrawal  
5 or diversion on water resources, including consumptive use, and  
6 other relevant factors.

7 (b) Interim fees.--Until alternative fees are established by  
8 the department, the following interim fees shall apply:

9 (1) \$25 per year or \$75 every three years or pro rata  
10 share for a portion thereof, for the processing of a  
11 registration of any source.

12 (2) \$10,000 for the processing of any application for  
13 any individual permit or permit renewal for acquisitions,  
14 withdrawals or diversions equal to or exceeding 10,000,000  
15 gallons per day.

16 (3) \$7,000 for the processing of any application for any  
17 individual permit or permit renewal for acquisitions,  
18 withdrawals or diversions equal to or exceeding 2,500,000  
19 gallons per day but less than 10,000,000 gallons per day.

20 (4) \$3,500 for the processing of any application for any  
21 individual permit or permit renewal for acquisitions,  
22 withdrawals or diversions equal to or exceeding 750,000  
23 gallons per day but less than 2,500,000 gallons per day.

24 (5) \$1,500 for the processing of any application for any  
25 individual permit or permit renewal for acquisitions,  
26 withdrawals or diversions equal to or exceeding 250,000  
27 gallons per day but less than 750,000 gallons per day.

28 (6) \$750 for the processing of any application for any  
29 individual permit or permit renewal for acquisitions,  
30 withdrawals or diversions equal to or exceeding 100,000

1 gallons per day but less than 250,000 gallons per day.

2 (7) \$250 for the processing of any application for any  
3 individual permit or permit renewal for acquisitions,  
4 withdrawals or diversions of less than 100,000 gallons per  
5 day for any general permit.

6 Section 19. Savings provision.

7 The provisions of this act shall not affect any suit,  
8 prosecution, or other action instituted to enforce any right or  
9 abate any violation of any act or part thereof repealed by this  
10 act.

11 Section 20. Existing rights and remedies preserved.

12 (a) General rule.--Nothing in this act shall be construed in  
13 a manner to repeal or supersede existing rights and obligations  
14 of persons under existing law or statutes, except insofar as  
15 this act is directly inconsistent with such law or statutes.

16 (b) Collection of penalties.--The collection of any penalty  
17 imposed under the provisions of this act shall not be construed  
18 as estopping the Commonwealth, any district attorney or  
19 solicitor of a municipality or aggrieved person from proceeding  
20 in courts of law or equity to abate nuisances under this act or  
21 under existing law or to restrain, at law or in equity,  
22 violation of this act.

23 (c) Abatement of nuisances.--It is hereby declared to be the  
24 purpose of this act to provide additional and cumulative  
25 remedies to abate nuisances. Nothing contained in this act shall  
26 in any way abridge or alter rights of action or remedies now or  
27 hereafter existing in equity, or under the common law or  
28 statutory law, criminal or civil, nor shall any provision in  
29 this act, or the granting of any permit under this act or any  
30 act done by virtue of this act, be construed as estopping the

1 Commonwealth, persons or municipalities, in the exercise of  
2 their rights under the common law or decisional law or in  
3 equity, from proceeding in courts of law or equity to suppress  
4 nuisances or enforce common law or statutory rights.

5 Section 21. Severability.

6 The provisions of this act are severable. If any provision of  
7 this act or its application to any person or circumstance is  
8 held invalid, the invalidity shall not affect other provisions  
9 or applications of this act which can be given effect without  
10 the invalid provision or application.

11 Section 22. Repeals.

12 (a) Inconsistent.--The following acts, parts of acts and  
13 amendments thereto are repealed insofar as they are inconsistent  
14 with this act:

15 Act of June 14, 1923 (P.L.700, No.293), entitled "An act  
16 authorizing the condemnation and appropriation of lands,  
17 waters, and other property by public service companies  
18 holding limited power permits and limited water supply  
19 permits granted by the Water Supply Commission of  
20 Pennsylvania, and providing a method for the assessment of  
21 damages arising from such appropriation," insofar as it  
22 relates to public water supply agencies, water supply  
23 projects and limited water supply permits.

24 Act of June 14, 1923 (P.L.704, No.294), entitled "An act  
25 relating to limited power permits and limited water supply  
26 permits from the Water Supply Commission of Pennsylvania and  
27 the conditions thereof, to the flooding and use by holders of  
28 limited power permits of islands owned by the Commonwealth,  
29 to the unlawful use for water or steam power development of  
30 dams and changes in streams hereafter constructed or made

1 otherwise than under limited power permits, and to  
2 proceedings for the enforcement of this act," insofar as it  
3 relates to water supply agencies, water supply projects and  
4 limited water supply permits.

5 Act of June 24, 1939 (P.L.842, No.365), referred to as  
6 the Water Rights Law.

7 (b) General--All other acts and parts of acts are repealed  
8 insofar as they are inconsistent with this act.

9 Section 23. Effective date.

10 This act shall take effect immediately.