

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 777 Session of 2009

INTRODUCED BY McILHINNEY, KITCHEN, LEACH, RAFFERTY, BOSCOLA,
 GREENLEAF, ERICKSON, ALLOWAY, TOMLINSON, COSTA, FERLO,
 WASHINGTON, DINNIMAN, VANCE, WONDERLING, HUGHES, BAKER AND
 FARNESE, APRIL 23, 2009

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, APRIL 23, 2009

AN ACT

1 Amending the act of May 1, 1984 (P.L.206, No.43), entitled "An
 2 act providing for safe drinking water; imposing powers and
 3 duties on the Department of Environmental Resources in
 4 relation thereto; and appropriating certain funds," further
 5 providing for safe drinking water, for definitions, for
 6 powers and duties of the Department of Environmental
 7 Protection and for civil and criminal penalties; and making
 8 editorial changes.

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

11 Section 1. The definition of "department" in section 3 of
 12 the act of May 1, 1984 (P.L.206, No.43), known as the
 13 Pennsylvania Safe Drinking Water Act, is amended and the section
 14 is amended by adding definitions to read:

15 Section 3. Definitions.

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

19 * * *

20 "Critical zone." For surface water intakes, the critical

1 zone is the area that extends from one-quarter mile downstream
2 of a drinking water intake for a community water system to 25
3 miles upstream from the intake, including an area one-quarter
4 mile upland from the bank of the surface water body. For
5 groundwater wells which provide water for a community water
6 system, the term includes the capture zone of the source, which
7 shall be deemed to be the circular area within a radius of one-
8 half mile from the well, unless a more detailed wellhead
9 protection area has been established by the Department of
10 Environmental Protection.

11 "Department." The Department of Environmental [Resources]
12 Protection.

13 * * *

14 "Groundwater." Water beneath the surface of the ground that
15 exists in a zone of saturation.

16 * * *

17 "Surface waters." Water on the surface of the earth,
18 including water in a perennial or intermittent stream, river,
19 lake, reservoir, pond, spring, wetland, swamp, marsh, natural
20 seep, estuary or other surface water, whether such body of water
21 is natural or artificial.

22 * * *

23 "Wellhead." A groundwater well source that is used for
24 community water systems.

25 "Wellhead protection area." The surface and subsurface area
26 surrounding water well or wellfield, supplying a public water
27 system, through which contaminants are reasonably likely to move
28 toward and reach such water well or wellfield.

29 "Zone I." The circular area within a radius of 100 to 400
30 feet from the well, based on site specific source and aquifer

1 characteristics.

2 "Zone II." The capture zone of the source which shall be
3 deemed to be the circular area within a radius of one-half mile
4 from the source, unless a more detailed wellhead protection area
5 has been established by the Department of Environmental
6 Protection or a delineation is conducted by a registered
7 professional geologist and approved by the department.

8 Section 2. The act is amended by adding sections to read:

9 Section 7.1. Applications and requests for approval for
10 facilities and activities in the critical zone.

11 (a) Applicants.--An applicant for a facility, a discharge or
12 other activity in a critical zone that requires a department
13 permit or approval must demonstrate in its application or
14 request for approval that the facility, discharge or other
15 activity will not degrade the existing water quality of the
16 critical zone.

17 (b) Issuance of permits and approvals in critical zones.--
18 The department shall not issue a permit or approval for any
19 facility, discharge or other activity within a critical zone
20 unless the applicant or other person proposing the facility,
21 discharge or other activity demonstrates that the facility,
22 discharge or other activity will not degrade the existing water
23 quality of the critical zone.

24 (c) Powers and duties of Environmental Quality Board and
25 department.--

26 (1) The Environmental Quality Board is authorized to
27 promulgate rules and regulations to carry out the purposes of
28 this act.

29 (2) The department may issue orders and take such other
30 actions as are necessary to carry out the purposes of this

1 act.

2 (d) Declaration of public nuisance.--

3 (1) A violation of this act, the rules and regulations
4 promulgated thereto, or any orders issued thereunder, is
5 hereby declared to be a nuisance, abatable in law or equity,
6 by the department, the district attorney of any county or the
7 solicitor of any municipality affected or by a citizen.

8 (2) Any facility, discharge or other activity that
9 requires a permit or approval from the department that
10 degrades the water quality of a critical zone is hereby
11 declared to be unlawful and a nuisance, abatable in law or
12 equity, by the department, the district attorney of any
13 county or the solicitor of any municipality affected, or by a
14 citizen.

15 Section 7.2. Wellhead protection.

16 (a) Municipal ordinance.--Each municipality which has
17 adopted or which in the future adopts a zoning ordinance,
18 including any joint municipal zoning ordinance, shall also
19 adopt, implement and enforce a wellhead protection ordinance if:

20 (1) One or more wellheads exist within the municipality.

21 (2) Zone I or Zone II of a wellhead exists within the
22 municipality.

23 (3) A wellhead or Zone I or Zone II of a wellhead is
24 created in that municipality at any time in the future.

25 (b) Restrictions.--The wellhead protection ordinance
26 required by this subsection shall regulate land use in Zone I
27 and Zone II, restricting establishment or operation of land uses
28 that could cause contamination of groundwater that supplies
29 wellheads for community water systems.

30 (c) Departmental regulations.--The department shall develop

1 regulations governing the adoption of such an ordinance and
2 shall establish the form and content of a model wellhead
3 protection ordinance. Such a model ordinance shall include
4 acceptable methodologies for the delineation of Zone I and Zone
5 II, shall enumerate the land uses to be regulated under the
6 ordinance and the restrictions applicable to such land uses in
7 Zone I and Zone II, and shall set forth any appropriate
8 exceptions, enforcement procedures and reporting requirements.
9 These regulations and the model wellhead protection ordinance
10 shall be deemed to establish Statewide minimum requirements for
11 wellhead protection. Nothing in this act shall be deemed to
12 limit, restrict or prohibit the power of any municipality to
13 establish requirements for wellhead protection that are more
14 stringent than those set forth in this act, or in the
15 department's regulations or the model wellhead protection
16 ordinance established under this section.

17 Section 7.3. Surface water intake protection.

18 (a) Municipal ordinance.--Each municipality which has
19 adopted or in the future adopts a zoning ordinance, including
20 any joint municipal zoning ordinance, shall also adopt,
21 implement and enforce a surface water intake protection
22 ordinance if:

23 (1) One or more surface water intakes exist within the
24 municipality.

25 (2) The critical zone of an intake exists within the
26 municipality.

27 (3) An intake or critical zone of an intake is created
28 in that municipality at any time in the future.

29 (b) Restrictions.--The surface water intake ordinance
30 required by this section shall regulate land use near any

1 surface water intake and the critical zone for such intakes,
2 restricting establishment or operation of land uses that could
3 cause contamination of water that supplies the intake for
4 community water systems.

5 (c) Departmental regulations.--The department shall develop
6 regulations governing the adoption of such an ordinance and
7 shall establish the form and content of a surface water intake
8 protection ordinance. Such a model ordinance shall enumerate the
9 land uses to be regulated under the ordinance and the
10 restrictions applicable to such land uses in the critical zone
11 and shall set forth any appropriate exceptions, enforcement
12 procedures and reporting requirements. These regulations and the
13 model ordinance shall be deemed to establish Statewide minimum
14 requirements for surface water intake protection. Nothing in
15 this act shall be deemed to limit, restrict or prohibit the
16 power of any municipality to establish requirements for surface
17 water intake protection that are more stringent than those set
18 forth in this act, or in the department's regulations or the
19 model wellhead protection ordinance established under this
20 section.

21 Section 7.4. Civil and criminal penalties.

22 (a) Civil penalties.--

23 (1) In addition to proceeding under any other remedy
24 available at law or in equity for a violation of a provision
25 of this act or any rule or regulation promulgated under this
26 act or any order issued pursuant to this act, the department
27 may assess a civil penalty for the violation. The penalty may
28 be assessed whether or not the violation was willful. The
29 civil penalty so assessed shall not exceed \$25,000 per day
30 for each violation. In determining the amount of the penalty,

1 the department shall consider the willfullness of the
2 violation; damage to water or other natural resources of the
3 Commonwealth or their uses; financial benefit to the person
4 in consequence of the violation; deterrence of future
5 violations; cost to the department; the nature and size of
6 the affected resource and the facility, activity or land use
7 causing the violation; the compliance history of the
8 violator; the severity and duration of the violation; degree
9 of cooperation in resolving the violation; the speed with
10 which compliance is ultimately achieved; whether the
11 violation was voluntarily reported; and other relevant
12 factors.

13 (2) The civil penalty shall be payable to the Safe
14 Drinking Water Account and shall be collectible in any manner
15 provided by law for the collection of debts, including the
16 collection of interest at the rate established by law, which
17 shall run from the date of assessment of the penalty. Upon
18 failure by the liable person to pay such penalty after
19 demand, the amount, together with interest and any costs that
20 may accrue, shall constitute a debt of such person, to the
21 Safe Drinking Water Account. The debt shall constitute a lien
22 on all property owned by said person when a notice of lien
23 incorporating a description of the property of the person
24 subject to the action is duly filed with the prothonotary of
25 the court of common pleas where the property is located. Upon
26 entry by the prothonotary, the lien shall attach to the
27 revenues and all real and personal property of the person,
28 whether or not the person is solvent. The notice of lien
29 shall create a lien with priority over all subsequent claims
30 or liens which are filed against the person.

1 (b) Criminal penalties.--

2 (1) Any person who violates any provision of this act,
3 any rule or regulation adopted under this act, or any order
4 of the department issued pursuant to this act commits a
5 summary offense and shall, upon conviction, be sentenced to
6 pay a fine of not less than \$100 nor more than \$2,500 for
7 each separate offense and, in default of the payment of such
8 fine, may be sentenced to imprisonment for 90 days for each
9 separate offense. Employees of the department authorized to
10 conduct inspections or investigations are hereby declared to
11 be law enforcement officers authorized to issue or file
12 citations for summary violations under this act, and the
13 General Counsel is hereby authorized to prosecute these
14 offenses. For purposes of this subsection, a summary offense
15 may be prosecuted before any district justice in the county
16 where the offense occurred.

17 (2) Any person who willfully or negligently violates any
18 provision of this act any rule or regulation adopted under
19 this act or any order of the department issued pursuant to
20 this act commits a misdemeanor of the third degree and shall,
21 upon conviction, be sentenced to pay a fine of not less than
22 \$2,500 nor more than \$50,000 for each separate offense or to
23 imprisonment for a period of not more than two years for each
24 separate offense, or both.

25 Section 7.5. Other enforcement.

26 Any person may commence a civil action to compel compliance
27 with this act or any rule, regulation or order issued pursuant
28 to this act. In addition to seeking to compel compliance, any
29 person may request the court to award civil penalties. The court
30 shall use the factors and amounts contained in section 6(a) in

1 awarding civil penalties under this section. Such penalties
2 shall be paid into the Safe Drinking Water Account.

3 Section 3. This act shall take effect in 180 days.