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TITLE 27 ENVIRONMENTAL RESOURCES

Part

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Enactment. Unless otherwise noted, the provisions of Title 27 were added December 15, 1999, P.L.949, No.68, effective December 31, 1999.

PART I
PRELIMINARY PROVISIONS

Chapter

7. Agricultural Advisory Board

Enactment. Unless otherwise noted, Part I was added December 15, 1999, P.L.949, No.68, effective December 31, 1999.

CHAPTER 7
AGRICULTURAL ADVISORY BOARD

Sec.

- 701. Definitions.
- 702. Establishment of board.
- 703. Powers of board.
- 704. Review of regulations.

Enactment. Chapter 7 was added December 16, 2002, P.L.1776, No.220, effective in 60 days.

Special Provisions in Appendix. See section 4 of Act 220 of 2002 in the appendix to this title for special provisions relating to continuation of prior law.

§ 701. Definitions.

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

"Agriculture." Normal farming practices or innovative techniques used in the production and preparation for market of any crop or commodity included within the definition of "crops, livestock and livestock products" in section 3 of the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law.

"Board." The Agricultural Advisory Board established in section 702 (relating to establishment of board).

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

"Normal farming practices." The customary and generally accepted activities, practices and procedures that farmers adopt, use or engage in year after year in the production and preparation for market of any crop or commodity included within the definition of "crops, livestock and livestock products" in section 3 of the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law.

"Secretary." The Secretary of Environmental Protection of the Commonwealth.

"Sustainable agriculture." An integrated system of plant and animal production practices as defined by the Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624, 104 Stat. 3616).

Special Provisions in Appendix. See section 4(3) of Act 220 of 2002 in the appendix to this title for special provisions relating to continuation of prior law.

§ 702. Establishment of board.

(a) **Creation.**--There is hereby established in the department the Agricultural Advisory Board.

(b) **Members.**--The following persons shall comprise the board:

(1) Representatives of the Pennsylvania Farm Bureau, the Pennsylvania State Grange, PennAg Industries Association and the Pennsylvania Farmers Union. Each of these organizations shall annually name one person to represent it under this paragraph.

(2) A dairy producer, a livestock producer, a poultry producer, a grain producer, a fruit producer, a vegetable producer, a representative of the ornamental horticultural industry, a producer engaged in sustainable agriculture, a representative from the agricultural chemical manufacturers industry and a representative from the agribusiness industry. The Governor shall appoint these representatives to sit for a three-year term. Representatives appointed under this paragraph must receive a majority of their gross income from the activity which they represent.

(3) Representatives of the Pennsylvania Association of Conservation District Directors and The Pennsylvania State University. Each of these organizations shall annually name one person to represent it under this paragraph.

(4) Representatives of the Federal Farm Service Agency and the Federal Natural Resources Conservation Service. Each of these organizations shall annually name one person to represent it under this paragraph ex officio.

(5) Representatives of the Department of Agriculture and the department. Each department shall name a deputy secretary to represent it under this paragraph ex officio. If a named deputy secretary is unable to serve on the board, the deputy secretary must be replaced by another deputy secretary or by the secretary of that same department.

(6) The chairman and the minority chairman of the Agriculture and Rural Affairs Committee of the Senate or their designees and the chairman and the minority chairman of the Agriculture and Rural Affairs Committee of the House of Representatives or their designees to represent the General Assembly.

(c) **Chairman.**--The board shall annually elect a board chairman from among those members designated or appointed under subsection (b) (1) and (2). No member shall serve as chairman for more than two consecutive years.

(d) **Staff.**--The department shall furnish the board with administrative support.

Special Provisions in Appendix. See section 4(3) of Act 220 of 2002 in the appendix to this title for special provisions relating to continuation of prior law.

Cross References. Section 702 is referred to in section 701 of this title.

§ 703. Powers of board.

(a) **General rule.**--The board shall have the following powers:

(1) Provide advice and expertise to the secretary regarding the nature of agriculture in this Commonwealth.

(2) Assist the secretary and provide written comments on new departmental policy that will impact upon agriculture in this Commonwealth.

(3) Assist the secretary and provide comment on regulatory proposals pursuant to section 704 (relating to review of regulations).

(4) Provide comment to the secretary regarding existing departmental policy and regulations affecting agriculture in this Commonwealth.

(b) Exempt regulations.--Regulations subject to review by the seasonal farm labor committee under the act of June 23, 1978 (P.L.537, No.93), known as the Seasonal Farm Labor Act, are exempt from review under subsection (a).

§ 704. Review of regulations.

(a) Notice to board.--The department shall notify the board of the development of any regulatory proposal which would regulate agriculture as early as possible but not less than 120 days prior to the date the Environmental Quality Board meets to initially consider any proposed rulemaking resulting from the regulatory proposal.

(b) Meeting and consultation with board.--At the request of the board, if the request is made within 30 days from the date of receipt of the notice required by subsection (a), the department shall meet and consult with the board in the formulation of any such regulatory proposal, and thereafter the board may provide the department with written comments thereon.

(c) Inclusion of comments with proposed rulemaking.--The department shall include any written comments of the board, received prior to the department's submission of a proposed rulemaking package to the Environmental Quality Board, as part of its submission to the Environmental Quality Board.

(d) Exceptions.--The requirements of this section shall not apply to regulations with mandatory statutory deadlines, to regulations required to be adopted by court order, to emergency regulations, to final regulations adopted pursuant to section 204 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, or where interim regulations are otherwise authorized by statute. The department shall advise the board as soon as possible of the development of regulations identified in this subsection which would regulate agriculture.

Cross References. Section 704 is referred to in section 703 of this title.

PART II

ADMINISTRATIVE PROVISIONS

(Reserved)

Enactment. Part II (Reserved) was added December 15, 1999, P.L.949, No.68, effective December 31, 1999.

PART III

CONSERVATION AND NATURAL RESOURCES

Chapter

31. Water Resources Planning

Enactment. Unless otherwise noted, Part III was added December 15, 1999, P.L.949, No.68, effective December 31, 1999.

CHAPTER 31
WATER RESOURCES PLANNING

Subchapter

- A. General Provisions
- B. Water Resources Planning
- C. Administration and Enforcement

Enactment. Chapter 31 was added December 16, 2002, P.L.1776, No.220, effective in 90 days.

Cross References. Chapter 31 is referred to in section 6103 of this title.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

- 3101. Scope.
- 3102. Definitions.
- 3103. Intergovernmental cooperation and coordination.
- 3104. Administrative agreements with other agencies.

§ 3101. Scope.

This chapter deals with water resources planning.

§ 3102. Definitions.

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

"Basin." The watershed of one of the following major rivers or hydrologic systems: the Delaware River, the Great Lakes, the Ohio River, the Potomac River and the Susquehanna River.

"Clean Streams Law." The act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

"Compact Basin Commission." An interstate commission having jurisdiction with respect to the planning, development or regulation of water resources within a basin in Pennsylvania, created by interstate compact or Federal-interstate compact.

"Confidential information."

(1) Records, reports or information or a particular portion thereof that, if made public, would:

- (i) divulge production or sales figures or methods, processes or production unique to a person;
- (ii) otherwise tend to affect adversely the competitive position of a person by revealing trade secrets, including intellectual property rights; or
- (iii) present threats to the safety and security of water supplies, including information concerning public water supply agency vulnerability assessments.

(2) The term does not include any of the following:

- (i) Information identifying the general source of water used by a facility.
- (ii) Information reporting the total amount of water withdrawn by a facility or the total amount of water used for consumptive uses or nonconsumptive uses by a facility.

"Conservation district." A county declared to be a conservation district by a resolution of its board of county commissioners.

"Consumptive use." The loss of water from a groundwater or surface water source through a manmade conveyance system, including such water that is purveyed through a public water

supply system, due to transpiration by vegetation, incorporation into products during their manufacture, evaporation, diversion out of a basin or any other process to the extent that the water withdrawn is not returned to the waters of a basin. Deep well injection shall not be considered a return of waters to a basin.

"Critical area resource plan." A plan developed under section 3112(d) (relating to plan contents) for any watershed or watersheds within a critical water planning area.

"Critical water planning area." An area identified under section 3112(a)(6) or (d)(1) (relating to plan contents).

"Deep well injection." Injection of waste or wastewater substantially below aquifers containing fresh water.

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

"Domestic use." The use of water for personal needs and ordinary household purposes.

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

"Environmental Quality Board." The board established under section 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

"Groundwater." Water beneath the surface of the ground within a zone of saturation, whether or not flowing through known and definite channels or percolating through underground geologic formations and regardless of whether the result of natural or artificial recharge. The term includes water contained in aquifers, artesian and nonartesian basins, underground watercourses and other bodies of water below the surface of the earth.

"Hydrologic unit." A unit of surface water or groundwaters, or both, which are interconnected and hydrologically related. The term includes a surface watershed or basin, groundwater basin, aquifer or aquifer system.

"Municipalities Planning Code." The act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code.

"Municipality." Any county, city, borough, town, township or home rule municipality or any agency or authority created by any one or more of the foregoing.

"Nonconsumptive use." A use of water withdrawn from water resources of this Commonwealth in such manner that it is returned to its basin of origin. Where only a portion of the water withdrawn is returned to the basin of origin, that portion which is returned is a nonconsumptive use, and the portion of water withdrawn which is not returned to the basin of origin is a consumptive use.

"Nonwithdrawal use." The functions of or activities in water that is not withdrawn from a water resource, including, but not limited to, navigation, in-stream hydropower production, recreation, fish and wildlife habitat and the aquatic environment.

"Person." An individual, partnership, association, company, corporation, municipality, municipal authority, Federal or Commonwealth administrative agency or an entity which is recognized by law as the subject of rights and obligations. The term shall include the officers, employees and agents of any legal entity.

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

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

"Reasonable and beneficial use." The use of water for a useful and productive purpose, which is reasonable considering the rights of other users and consistent with the public interest, in a quantity and manner as is necessary for efficient utilization. The term includes withdrawal and nonwithdrawal uses.

"Region." One of the six regions established in section 3113 (relating to regional committees).

"Regional committee." A regional water resources committee.

"Safe Drinking Water Act." The act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act.

"Safe yield." For purposes of the State water plan, the amount of water that can be withdrawn from a water resource over a period of time without impairing the long-term utility of a water resource such as dewatering of an aquifer, impairing the long-term water quality of a water resource, inducing a health threat or causing irreparable or unmitigated impact upon reasonable and beneficial uses of the water resource. Safe yield of a particular water source is primarily to be determined based upon the predictable rate of natural and artificial replenishment of the water source over a reasonable period of time.

"Secretary." The Secretary of Environmental Protection of the Commonwealth.

"State water plan." The plan adopted under section 3115 (relating to development, adoption, amendment and periodic review of State water plan). Prior to adoption of the State water plan in accordance with section 3115, the term shall mean the State water plan previously adopted and published in accordance with section 1904-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

"Statewide committee." The Statewide Water Resources Committee.

"Surface water." Water on the surface of the earth, including water in a perennial or intermittent watercourse, lake, reservoir, pond, spring, wetland, estuary, swamp or marsh, or diffused surface water, whether such body of water is natural or artificial. The term does not include recirculated process water or wastewater stored in an off-stream impoundment, pond, tank or other device unless such water or wastewater is withdrawn and used by a person other than the person who initially withdrew the water from a water resource or obtained such water from a public water supply agency.

"Water availability evaluation." An assessment of available safe yield of water in an area, both groundwater and surface water, including natural recharge capability, and an estimate of the present reasonable and beneficial uses and of the reasonable and beneficial uses for 20 years ahead by various categories such as in-stream, agricultural, domestic, energy development and production, industrial and recreational uses.

"Water conservation practices and measures." Those practices and measures which are technically feasible and economically practicable and which are designed to accomplish any of the following:

- (1) Reduce the demand for water.
- (2) Improve efficiency in water use and reduce leakage, losses and waste of water.
- (3) Improve reuse and recycling of water.
- (4) Improve land management practices to conserve water or to preserve or increase groundwater recharge.

"Watercourse." A distinct natural or artificial body of water flowing perennially or intermittently in a defined channel with bed and banks. The term includes a river, creek, stream, slough or canal.

"Water resource." Surface water or groundwater, within or on the boundaries of this Commonwealth.

"Water resources emergency." A drought or other water resource shortage declared by proclamation of the Governor that would result in a substantial and immediate shortage of available water supply in a region and that would be of sufficient severity and magnitude to warrant coordinated action to prevent or alleviate damage to property, human suffering, hardship or threats to health, safety, welfare and fish and wildlife habitat.

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

"Watershed." The drainage area of a watercourse of a minimum drainage area determined in accordance with guidelines developed pursuant to section 3115(a)(2) (relating to development, adoption, amendment and periodic review of State water plan).

"Withdrawal." The removal or taking of water from any water resource, whether or not returned to the water resource.

"Withdrawal use." Any use of water which is withdrawn, including, but not limited to, domestic, municipal, public, commercial, industrial, energy development and production and agricultural water supply. The term includes the use of water transferred through interconnections but shall not include transfer of water within a system operated by the same public water supply agency.

§ 3103. Intergovernmental cooperation and coordination.

The Statewide committee, the regional committees and the department shall cooperate and coordinate with appropriate Compact Basin Commissions and Federal, interstate, State and political subdivisions, municipalities, public water supply agencies and other agencies for efficient planning for the maintenance and enhancement of the water resources of this Commonwealth.

§ 3104. Administrative agreements with other agencies.

In consultation with the Statewide committee, the department shall, to the extent practicable, enter into administrative agreements with appropriate Compact Basin Commissions and Federal, State, interstate, municipal and other agencies for the following purposes:

(1) To avoid unnecessary duplication of staff functions and facilitate coordinated review of projects and actions within the jurisdiction of such agencies.

(2) To provide a coordinated system for registration of significant water uses and the coordinated collection and maintenance of data regarding water resources.

(3) To provide for coordinated inspection, monitoring and enforcement of applicable statutes and regulations, provided that nothing in this section shall be deemed to confer enforcement authority on the Statewide committee.

(4) To accept delegations of authority from or obtain the services and assistance of a Compact Basin Commission or Federal or interstate agency concerning planning for the maintenance and enhancement of water resources. Nothing in this paragraph shall be construed to authorize a delegation to the Statewide committee or the department of any power to regulate, control or require permits for the withdrawal or use of water.

(5) To ensure coordinated and effective responses to water resources emergencies in conjunction with the Pennsylvania Emergency Management Agency and the Compact Basin Commissions.

SUBCHAPTER B
WATER RESOURCES PLANNING

Sec.

- 3111. State water plan.
- 3112. Plan contents.
- 3113. Regional committees.
- 3114. Statewide Water Resources Committee.
- 3115. Development, adoption, amendment and periodic review of State water plan.
- 3116. Use of plan.
- 3117. Statewide data system.
- 3118. Water use registration and reporting.
- 3119. Confidential information.
- 3120. Water conservation.
- 3121. Grants.

§ 3111. State water plan.

(a) Preparation and adoption.--In accordance with this chapter and with ongoing consultation with the Statewide committee and the department, each regional committee shall guide the development of and recommend to the Statewide committee a regional plan component for review, approval and incorporation into the State water plan. The Statewide committee shall guide the development of, approve and recommend to the secretary approval and adoption of the State water plan. The department shall draft and develop the State water plan, including regional plan components. The State water plan shall be completed and adopted within five years of the effective date of this chapter.

(b) Matters considered.--The State water plan shall reflect the matters set forth in section 3112 (relating to plan contents). The level of detail within the State water plan and each regional plan may vary among watersheds and other hydrologic units. In consultation with the regional committee and the Statewide committee, the department shall establish with the approval of the Statewide committee priorities and guidelines for the level of detail appropriate for different areas, considering among other factors the current or projected future water demands in comparison to the safe yield of available water resources in the area.

(c) Limitation of authority.--Nothing contained in this chapter shall be construed to authorize, expand or diminish the existing authority of the department, including the Environmental Quality Board, to regulate, control or require permits for the withdrawal or use of water.

§ 3112. Plan contents.

(a) General rule.--The State water plan and regional plan shall include:

(1) An inventory of the surface water resources of each region of this Commonwealth, including an identification of the boundaries of significant watersheds and an estimate of the safe yield of such sources for withdrawal and nonwithdrawal uses during periods of normal conditions and drought.

(2) An inventory of the groundwater resources of each region of this Commonwealth, including an identification of

aquifers and groundwater basins and an assessment of their safe yield, prime recharge areas, recharge capacity, withdrawal limits and relationship to stream base flows.

(3) An assessment and projection of existing and future nonwithdrawal use needs and the values of watercourses included within this Commonwealth or Federal wild and scenic river systems.

(4) An assessment and projection of existing and future withdrawal use demands.

(5) An identification of potential problems with water availability or conflicts among water uses and users.

(6) An identification of critical water planning areas comprising any significant hydrologic unit where existing or future demands exceed or threaten to exceed the safe yield of available water resources.

(7) An assessment of the current and future capabilities of public water supply agencies to provide an adequate quantity and quality of water to their service areas.

(8) An assessment of floodplain and storm water management problems.

(9) An assessment of navigation needs and the means for restoration, development and improvement of transportation by water.

(10) An assessment of the water resources required to serve areas with important or unique natural, scenic, environmental or recreational values of national, regional, local or Statewide significance, including national and State parks; designated wild, scenic and recreational rivers; national and State wildlife refuges; and the habitats of Federal and State endangered or threatened species.

(11) A process for identifying projects and practices that are being or have been implemented by water users that reduce the amount of water withdrawal or consumptive use, improve efficiency in water use, provide for reuse and recycling of water, increase the supply or storage of water or preserve or increase groundwater recharge and a recommended process for providing appropriate positive recognition of such projects or practices in actions, programs, policies, projects or management activities recommended under paragraph (16).

(12) An identification of practical alternatives for an adequate supply of water to satisfy existing and future reasonable and beneficial uses, including improved storage, groundwater recharge and surface water/groundwater conjunctive management programs.

(13) An assessment of both structural and nonstructural alternatives to address identified water availability problems, adverse impacts on water uses or conflicts between water users, including potential actions to develop additional or alternative supplies, conservation measures and management techniques.

(14) A review and evaluation of statutes, regulations, policies and institutional arrangements for the development, conservation, distribution and emergency management of water resources.

(15) A review and evaluation of water resources management alternatives and recommended programs, policies, institutional arrangements, projects and other provisions to meet the water resources needs of each region and of this Commonwealth.

(16) Proposed methods of implementing various recommended actions, programs, policies, projects or management activities.

(b) Considerations.--The State water plan and regional plans shall consider:

(1) The interconnections and relationships between groundwater and surface water as components of a single hydrologic resource.

(2) Regional water resources needs, objectives and priorities as identified and evaluated by the regional committee.

(3) Federal, State and interstate water resources policies, plans, objectives and priorities, including those identified in statutes, regulations, compacts, interstate agreements or comprehensive plans adopted by Federal and State agencies and Compact Basin Commissions.

(4) The needs and priorities reflected in comprehensive plans and zoning ordinances where one of the following conditions is satisfied:

(i) A county adopts a comprehensive plan in accordance with section 301 or 302 of the Municipalities Planning Code and municipalities in the county have adopted comprehensive plans and zoning ordinances in accordance with sections 301, 303(d) and 603(j) of the Municipalities Planning Code.

(ii) Municipalities have adopted a county plan or a multimunicipal plan under Article XI of the Municipalities Planning Code and the participating municipalities have conformed their local plans and ordinances to the county or multimunicipal plan by implementing cooperative agreements and adopting appropriate resolutions and ordinances.

(iii) A county adopts a comprehensive plan in accordance with section 301 or 302 of the Municipalities Planning Code and either:

(A) the county has adopted and is administering, in lieu of municipalities in the county, a county comprehensive plan and county zoning ordinance in accordance with sections 301, 303(d) and 603(j) of the Municipalities Planning Code; or

(B) the county has adopted a county comprehensive plan in accordance with section 301 or 302 of the Municipalities Planning Code which is in effect, in lieu of comprehensive plans adopted by municipalities in the county, and municipalities in the county have adopted zoning ordinances generally consistent with such county comprehensive plan in accordance with sections 303(d) and 603(j) of the Municipalities Planning Code.

(5) The water quantity and quality necessary to support reasonable and beneficial uses.

(6) A balancing and encouragement of multiple uses of water resources, recognizing that all water resources of this Commonwealth are capable of serving multiple uses and human needs, including multiple uses of water resources for reasonable and beneficial uses.

(7) The distinctions between short-term and long-term conditions, impacts, needs and solutions to ensure appropriate and cost-effective responses to water resources issues.

(8) The benefits and costs and social and environmental impacts of alternative policies, programs, projects and actions.

(9) Application of the principle of equal and uniform treatment of all water users that are similarly situated and all users of related facilities without regard to established political boundaries.

(c) Balancing of considerations.--In approving, recommending and adopting the State water plan, the Statewide committee and secretary shall provide serious and deliberative consideration to regional priorities, objectives and recommendations expressed by the regional committees, reconcile differences or conflicts among regional plans and assure that the regional plans and State water plan adequately consider and reflect Federal, State and Compact Basin Commission policies, plans, objectives and priorities of national, Statewide or interstate importance.

(d) Designation of critical water planning areas and preparation and approval of critical area resource plans.--

(1) Critical water planning areas shall be identified as provided under subsection (a)(6). A regional committee may, in advance of the formal adoption of a regional plan or the State water plan and if justified by evidence developed in the planning process, recommend the designation of a critical water planning area. Upon such recommendation, the Statewide committee and secretary may designate the area for the development of a critical area resource plan for any watershed or watersheds within a critical water planning area pursuant to this subsection.

(2) In preparing a critical area resource plan for a critical water planning area, the regional committee shall establish a critical area advisory committee. This committee shall be composed of persons representative of appropriate governmental agencies, agricultural, public water supply, industrial and other water users in the area, conservation and environmental organizations and other persons who have knowledge of, background in or an understanding of water resources planning and management. The critical area advisory committee shall evaluate policy, program and management alternatives and advise the regional committee and department throughout the critical water area planning process.

(3) For each critical water planning area identified and designated under this subsection or subsection (a)(6), the regional committee shall, in consultation with a critical area advisory committee, guide the development of and recommend to the Statewide committee and secretary, and the department shall draft, a critical area resource plan. The regional committee may recommend to the department the engagement of county or regional agencies or expert consulting firms to assist in the process of preparing such a plan.

(4) A critical area resource plan shall be subject to review and adoption through the same process as a regional plan as provided in this section and section 3115 (relating to development, adoption, amendment and periodic review of State water plan). Prior to final recommendation by the regional committee to the Statewide committee, a copy of the proposed critical area resource plan shall be submitted to the official planning agency and governing body of each municipality in the designated critical water planning area, the appropriate county planning agency and regional planning agencies for review and comment as to consistency with other plans and programs affecting the critical water planning

area, and each such agency and governing body shall be provided 45 days to provide comments.

(5) The critical area resource plans shall include:

(i) An identification of existing and future reasonable and beneficial uses.

(ii) A water availability evaluation, including a quantitative assessment of the available water resources and their relationship to the existing and future reasonable and beneficial uses.

(iii) An identification of the quantity of water available for new or increased uses of water in the foreseeable future and an identification of quantities required for future water uses associated with planned projects or developments.

(iv) An assessment of water quality issues that have a direct and substantial effect on water resource availability.

(v) A consideration of storm water and floodplain management within the critical water planning area and their impacts on water quality and quantity.

(vi) Identification of existing and potential adverse impacts on uses or conflicts among users or areas of the critical water planning area and identification of alternatives for avoiding or resolving such conflicts.

(vii) An identification of practicable supply-side and demand-side alternatives for assuring an adequate supply of water to satisfy existing and future reasonable and beneficial uses.

(6) Critical area resource plans shall be construed as a component of the State water plan and may be implemented voluntarily.

Cross References. Section 3112 is referred to in sections 3102, 3111, 3114, 3115 of this title.

§ 3113. Regional committees.

(a) Creation.--There is created within the department a regional committee for each of the following regions in this Commonwealth:

(1) The watershed drainage area of the Delaware River and its tributaries.

(2) The watershed drainage area of the West Branch Susquehanna River subbasin and the upper Susquehanna, middle Susquehanna and Chemung subbasins and their tributaries.

(3) The watershed drainage area of the Juniata River and lower Susquehanna River and its tributaries below Sunbury, and Gunpowder, Northeast and Elk Creek Watersheds draining to the Chesapeake Bay.

(4) The watershed drainage area of the Ohio River and its tributaries.

(5) The watershed drainage area of Lake Erie and the Genesee River.

(6) The watershed drainage area of the Potomac River and its tributaries.

Each regional committee shall be subject to the provisions applicable generally to boards and commissions identified in section 203 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(b) Membership.--

(1) Each regional committee shall be composed of:

(i) Four members with a knowledge, background or understanding of water resources planning and management who are county conservation district or planning

commission directors or, where a county conservation district does not cover a portion of a region, who are representatives of the governing body of the county or city of the first class, as appropriate, and shall represent a geographic cross section of the region. At least two county conservation district directors shall be appointed to each regional committee. Such members shall be appointed by the Governor from recommendations made separately by the governing bodies of each county or city of the first class which is in whole or in part within the region.

(ii) Seventeen members appointed by the Governor from recommendations made separately by Statewide and regional organizations representing such interests whose residence or place of business is within the region and who meet the following criteria:

(A) Two members shall be representative of agriculture, one from production agriculture and one from horticulture.

(B) One member shall be an officer or employee of a public water supply agency providing residential service within the region.

(C) One member shall be an officer or employee of a public wastewater agency providing service within the region.

(D) Three members shall represent significant industrial and commercial enterprises, energy development and production interests.

(E) Three members shall represent environmental and conservation interests.

(F) Four members with education and experience in professions relating to water resources management, including engineering, hydrology, geology, planning, law and economics, one of whom shall be a registered professional geologist.

(G) Three members representing local governments other than counties.

The members appointed under this subparagraph shall represent a cross section of the region, considering the distribution of population within each region.

(iii) One member, appointed by the secretary, who is a department employee. This member shall advise the regional committee without voting on any matter before the regional committee.

(iv) Where a Compact Basin Commission exists with jurisdiction over all or a portion of the region, a representative of such Compact Basin Commission shall be invited to serve as an ex officio voting member of the regional committee.

(2) Members shall be appointed no later than 180 days after the effective date of this chapter.

(3) A member shall be appointed for a term of three years. Of the members first appointed by the Governor under paragraph (1)(i) and (ii), five members shall serve for terms of one year, five members shall serve for terms of two years and five members shall serve for terms of three years.

(4) Vacancies shall be filled for the remainder of an unexpired term in the same manner as original appointments. A member, upon expiration of the term, shall continue to hold office until a successor is appointed.

(5) A majority of the membership of a regional committee shall constitute a quorum for the transaction of regional

committee business. Action may be taken on a matter before the regional committee by a majority vote of the full membership of the regional committee.

(6) Members of a regional committee shall serve without compensation but may be reimbursed from funds appropriated for such purposes for necessary and reasonable travel and other expenses incurred during the performance of their duties.

(7) A chairperson shall be elected annually by a majority vote of the full membership of the regional committee.

(c) Powers and duties.--A regional committee has the following powers and duties:

(1) Guide the development of and recommend to the Statewide committee the regional plan component for review and incorporation into the State water plan.

(2) Consult with, advise and make recommendations to the department and the Statewide committee prior to and throughout the process of preparing the regional plan component of the State water plan and amendments to the regional plan component of the State water plan.

(3) Advise the Statewide committee and the department regarding the engagement and selection of consultants or experts to assist in the preparation of the regional component of the State water plan.

(4) Recommend to the Statewide committee and the department the identification of critical water planning areas.

(5) Utilize an open process, including public notice and at least one combined public meeting and hearing, to solicit comments from interested persons on water resources planning issues related to the preparation of the regional component of the State water plan.

(6) Meet as necessary to accomplish the purposes of this chapter.

(7) Adopt bylaws and procedures for conducting business.

Cross References. Section 3113 is referred to in section 3102 of this title.

§ 3114. Statewide Water Resources Committee.

(a) Establishment.--There is established within the department the Statewide Water Resources Committee. The purpose of the committee is to coordinate the development of the State water plan, recommend policies and guidelines for and oversee the development of the State water plan and, in continuing consultation and collaboration with the regional committees and the department and with the full opportunity for public review and comment, approve and recommend to the secretary approval and adoption of the State water plan. The Statewide committee shall be subject to the provisions applicable generally to boards and commissions identified in section 203 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(b) Membership.--

(1) The Statewide committee shall be composed of members selected as set forth in this subsection.

(2) Eighteen members shall be appointed as follows:

(i) Six members shall be representatives of the regional committees, appointed as provided in this paragraph. The Majority Leader of the Senate and Majority Leader of the House of Representatives shall each appoint two members from among the members of the regional

committees. The Minority Leader of the Senate and the Minority Leader of the House of Representatives shall each appoint one member from among the members of the regional committees. Each regional committee shall nominate from among their members individuals to be considered for appointment under this paragraph, and no more than one member from each regional committee shall be appointed under this paragraph.

(ii) The Governor shall appoint six members representing a cross section of water user interests, including agriculture, conservation districts, industrial and commercial enterprises, mining, energy development and production and public water supply. The Governor shall seek suggestions and recommendations for Statewide committee membership from representative organizations.

(iii) The Governor shall appoint six members representing local government, environmental and conservation interests and professions relating to water resources management. The Governor shall seek suggestions and recommendations for Statewide committee membership from representative organizations.

(3) The Secretary of Environmental Protection, Secretary of Agriculture, Secretary of Conservation and Natural Resources, Executive Director of the Pennsylvania Fish and Boat Commission, Chairman of the Pennsylvania Public Utility Commission and Executive Director of the Pennsylvania Emergency Management Agency or their designees shall be ex officio voting members of the Statewide committee. The Secretary of Community and Economic Development and the Executive Director of the Governor's Center for Local Government Services or their designees and a representative of each Compact Basin Commission shall be invited to serve as ex officio nonvoting members of the Statewide committee.

(4) Members shall be appointed no later than 180 days after the effective date of this chapter.

(5) A member shall be appointed for a term of four years. Of the initial members appointed by the Governor:

(i) Six members shall serve initial terms of two years.

(ii) Six members shall serve initial terms of four years.

(iii) After such initial terms, individuals appointed by the Governor shall serve for a term of four years.

(6) Members must, as a result of educational background, training or experience, have an understanding of water resources planning and management issues.

(7) The chairperson of the Statewide committee shall be elected by a majority vote of the full membership of the committee.

(8) Vacancies shall be filled for the remainder of an unexpired term in the same manner as original appointments. A member, upon expiration of the term, shall continue to hold office until a successor is appointed.

(9) A majority of the membership of the Statewide committee shall constitute a quorum for the transaction of business. Action may be taken on a matter before the committee by a majority vote of the full membership of the committee.

(10) Members of the Statewide committee shall serve without compensation but may be reimbursed from funds appropriated for such purposes for necessary and reasonable

travel and other expenses incurred during the performance of their duties.

(c) Powers and duties.--The Statewide committee shall:

(1) Recommend to the secretary the approval and adoption of the State water plan, including regional plan components, following consultation with the regional committees, the department, Compact Basin Commission and other appropriate agencies and after the public comment and hearing process specified in section 3115(b) (relating to development, adoption, amendment and periodic review of State water plan).

(2) Assist the department, in cooperation with regional committees, with the development of a public participation process to encourage the input from persons interested in water resources issues throughout the process of developing and formulating regional plan components and the State water plan.

(3) Recommend approval by the secretary of policies and guidelines for the preparation and development of regional plans and the State water plan in order to assure consistency in the methods used to carry out the assessments and inventories required under section 3112 (relating to plan contents).

(4) Review and comment upon regulations and policies proposed by the department under this chapter. In furtherance of this responsibility, the Statewide committee shall be given a reasonable opportunity to review and comment on regulations promulgated under this chapter affecting water resources prior to the submission to the Environmental Quality Board for both initial and final consideration. The written report of the Statewide committee shall be presented to the Environmental Quality Board with any regulatory proposal under this chapter. The chairperson of the Statewide committee shall be invited to participate in the presentation of all regulations promulgated under this chapter affecting water resources before the Environmental Quality Board.

(5) Carry out the duties and responsibilities assigned to the Statewide committee under this chapter or other applicable statutes.

§ 3115. Development, adoption, amendment and periodic review of State water plan.

(a) Preparation of State water plan.--

(1) A State water plan shall be developed and adopted in accordance with this section within five years of the effective date of this chapter. After the initial adoption of a State water plan, the plan shall be amended and updated every five years.

(2) The department, in consultation with the Statewide committee, shall develop policies and guidelines for:

- (i) Preparing or amending the regional plan components and the State water plan.
- (ii) Ensuring public participation in the development or amendment of the State water plan.
- (iii) Identifying critical water planning areas.
- (iv) Developing critical area resources plans.

Policies and guidelines shall be adopted only upon approval by both the Statewide committee and the secretary.

(3) All meetings, hearings and public review under this chapter shall be in accordance with the provisions of 65 Pa.C.S. Ch. 7 (relating to open meetings) and any regulations promulgated thereunder.

(b) Development of the State water plan.--

(1) Each regional committee shall:

(i) Hold at least one combined public meeting and hearing within its region to solicit input on water resources management and water resources planning within the region.

(ii) Make recommendations to the department and the Statewide committee on the development or amendment of the State water plan.

(iii) Make recommendations on the identification of critical water planning areas within the region.

(2) Based upon the recommendations and guidance of the regional committees and consistent with the policies and guidelines established under subsection (a) (2), the department, in consultation with the Statewide committee, shall prepare drafts of the initial regional plan components to be used in the development or amendment of the State water plan. The department may also utilize other available resources to assist with the preparation of the drafts.

(3) The department, in conjunction with the Statewide committee and the regional committee, shall hold at least one combined public meeting and hearing in each region to solicit input on the drafts of the initial regional plan components to be used in the development or amendment of the State water plan.

(4) Following public participation and the combined public meeting and hearing required under paragraph (3), each regional committee shall select, by a majority vote, the planning alternatives and provisions to be recommended as part of the regional plan component of the State water plan. Each regional committee shall recommend, by a majority vote, the regional plan component to the Statewide committee. Each regional committee shall provide to another regional committee any proposed regional plan component recommendation that may affect any other region for review and comment prior to recommendation of the regional plan component to the Statewide committee.

(5) With consideration of the regional plan components developed under paragraphs (1) through (4), and consistent with the policies and guidelines established under subsection (a) (2), the department, in ongoing consultation with the Statewide committee, shall prepare a draft of the State water plan or amendments to the State water plan. The department, in conjunction with the Statewide committee, shall make the draft of the State water plan available for public review to solicit input on the draft of the State water plan or amendments to the State water plan.

(c) Adoption of regional plan components and State water plan.--Regional plans and the State water plan shall be recommended and adopted in accordance with the following procedures:

(1) Each regional committee shall, by a majority vote, recommend the regional plan components to the Statewide committee as provided in subsection (b).

(2) If a regional committee fails to comply with the obligations set forth in this chapter, the Statewide committee shall, after providing 90 days' written notice to the regional committee, propose, approve and recommend the regional plan components for that region.

(3) The Statewide committee or the secretary may direct modification of a new or previously approved regional plan, in whole or in part, upon finding one of the following:

(i) Recommended planning or management alternatives or provisions of two or more regional plans are

inconsistent, or two or more regional planning committees are unable to agree on an alternative or provision affecting their respective regions.

(ii) A recommended planning or management alternative or provision is inconsistent with:

(A) this chapter;

(B) Federal or State statutes, regulations or officially adopted policies or plans; or

(C) compacts or other interstate agreements and plans.

(iii) A regional plan component is inconsistent with or conflicts with the provisions or objectives of the overall State water plan.

(iv) The recommended regional plan component fails to conform to section 3112 (relating to plan contents) or the requirements established by policies adopted pursuant to subsection (a)(2).

(4) Following consultation with the regional committees, the Statewide committee shall approve and recommend to the secretary approval and adoption of regional plan components and the State water plan, subject to the following procedures:

(i) Within 90 days of submission of a regional plan, the secretary shall in writing either approve the regional plan or disapprove the regional plan if the secretary finds that the regional plan fails to meet any of the criteria set forth in paragraph (3)(i) through (iv).

(ii) Within 90 days of submission of the State water plan, the secretary shall in writing either approve the State water plan or disapprove the plan if the secretary finds that the State water plan fails to conform to the requirements of section 3112 or the policies adopted pursuant to subsection (a)(2).

(iii) Upon disapproval of a regional plan or State water plan, the secretary shall advise the Statewide committee and affected regional committee in writing of the reasons for such disapproval.

(iv) Upon receipt of any notice of disapproval, the Statewide committee, any affected regional committee and the department shall undertake expeditious and diligent efforts to confer and resolve the issues identified as the reasons for disapproval. Within 90 days of receipt of any disapproval notice, the Statewide committee shall recommend a revised plan which addresses and resolves the issues.

(5) Final adoption of each regional plan component and the State water plan shall occur only upon the approval and recommendation by the Statewide committee to the secretary for the approval and adoption of the State water plan and subsequent adoption by the secretary.

(6) Upon adoption of the State water plan, the department shall publish notice of the adoption or amendment of the State water plan in the Pennsylvania Bulletin and on the department's World Wide Web site.

(d) Periodic review.--The Statewide committee and the department shall, at least once every five years and after consultation with the regional committees, review the State water plan to determine whether it reflects the objectives, policies and purposes of this chapter. This determination, including recommendations for revisions to regional plans, shall be set forth in writing.

(e) Plan amendment.--The State water plan may be amended in accordance with the requirements of this section.

Cross References. Section 3115 is referred to in sections 3102, 3112, 3114 of this title.

§ 3116. Use of plan.

(a) General use of plan.--The State water plan is intended to serve as a policy and guidance document, providing information, objectives, priorities and recommendations to be considered and weighed in a broad range of State, local and private decisions. The State water plan is not intended to constitute or contain legally binding regulations, prohibitions or prescriptions.

(b) Specific uses of plan.--Among other uses, it is intended that the State water plan will be used to:

(1) Identify and prioritize water resource and water supply development projects to be carried out by private organizations or government agencies.

(2) Provide information to public and private decision makers regarding water availability to help guide efficient investment and economic development.

(3) Identify opportunities for improving operation of this Commonwealth's existing water resources infrastructure.

(4) Guide the development and implementation of policies and programs by State agencies that will reduce the risk of flooding, water shortages from drought and conflicts between water users or uses.

(5) Guide policies on activities that directly and significantly affect the quantity and quality of water available with the objective of balancing and encouraging multiple uses of water resources.

(6) Educate public officials and the public at large regarding the sources and uses of water in this Commonwealth.

§ 3117. Statewide data system.

(a) General rule.--In cooperation with the Compact Basin Commissions and Federal, State and regional agencies with responsibilities relating to water resources management, the department shall establish and maintain a Statewide system to gather, process and distribute information on the availability, distribution, quality and use of water resources of this Commonwealth.

(b) Other commissions and agencies.--The department shall invite interested Compact Basin Commissions and Federal, State and regional agencies with responsibilities relating to water resources management to join the Statewide data system and shall cooperate with any such agency choosing to join the system.

(c) Fee.--Information gathered in the Statewide data system, subject to protection provided to confidential business information under section 3119 (relating to confidential information), shall be made available to any person on payment of a reasonable fee, as established by the department with the advice of the Statewide committee, to cover the expenses of making such information available to that person.

Cross References. Section 3117 is referred to in section 3131 of this title.

§ 3118. Water use registration and reporting.

(a) Interim registration program.--Pending the adoption of regulations for registration and reporting under subsection (b), each public water supply agency and each hydropower facility, irrespective of the amount of withdrawal, and each person whose total withdrawal or withdrawal use from one or

more points of withdrawal within a watershed operated as a system either concurrently or sequentially exceeds an average rate of 10,000 gallons a day in a 30-day period shall register with the department the source, location and amount of withdrawal or use or both. Registrations shall be submitted not later than 12 months after the effective date of this chapter or 30 days following the initiation of any such withdrawal or use, whichever is later. Registrations shall be submitted on forms as prescribed by the department.

(b) General rule; requirements for registration and reporting.--In order to provide accurate information for water resources planning, the department in consultation with the Statewide committee shall recommend and the Environmental Quality Board shall adopt regulations establishing requirements for the registration, periodic reporting and recordkeeping of withdrawals in accordance with the following provisions:

(1) Each public water supply agency and each hydropower facility, irrespective of the amount of withdrawal, and each person whose total withdrawal or withdrawal use from one or more points of withdrawal within a watershed operated as a system either concurrently or sequentially exceeds an average rate of 10,000 gallons a day in a 30-day period shall comply with recordkeeping and periodic reporting requirements established by regulation. Such regulations shall require water users subject to the registration requirements of this section to monitor, maintain records and submit to the department periodic reports regarding the source, location and amount of withdrawals or uses or both from surface waters and groundwaters, including the amount of consumptive and nonconsumptive uses, the locations and amounts of any waters returned and discharged and the amounts of water transferred between public water supply agencies via interconnections. Such regulations shall not require submission of periodic reports more frequently than annually. Where alternative methods exist to obtain a reasonably accurate evaluation of withdrawals or withdrawal uses, consumptive or nonconsumptive uses and return flows, such regulations shall allow for use of the alternative methods to obtain a reasonable estimate or indirect calculation of such in lieu of direct metering or measurement. With respect to withdrawal uses, other than public water supply agency withdrawals and hydropower facilities, involving a withdrawal of less than 50,000 gallons per day in a 30-day period, the regulations shall provide for the use of alternative methods to obtain a reasonable estimate or indirect calculation of such in lieu of direct metering or measurement.

(2) The regulations may provide for the adjustment of or variations in registration, recordkeeping or periodic reporting requirements for identified classification of user or volume of withdrawal if such requirements are not necessary to obtain information required to adequately assess water uses, monitor demands and otherwise prepare accurate and complete regional and State water plans and, if applicable, critical area resource plans.

(3) The regulations shall include a process under which water users may document and register practices or projects that they have implemented to reduce water withdrawals or consumptive use, promote groundwater recharge or otherwise conserve or enhance water supplies for consideration and use in providing appropriate recognition and credit during the implementation of existing or future water supply programs.

(4) To avoid duplication of efforts, regulations implementing the periodic reporting requirements of this subsection shall provide that the requirements may be satisfied by the filing of discharge monitoring reports prepared under the Clean Streams Law, water supply reports prepared under the Safe Drinking Water Act, water withdrawal and use reports prepared and submitted pursuant to regulations adopted by the Delaware River Basin Commission and Susquehanna River Basin Commission, or other reports submitted under other applicable statutes and regulations, to the extent that the reports provide the required information.

(5) Nothing in this section shall be construed to authorize the department or the Environmental Quality Board to require metering of homeowner wells.

(6) Where a registered withdrawal is terminated or is reduced to an amount which over a 12-month period is less than the 30-day average threshold amounts requiring registration, the person responsible for such withdrawal may file a written notice with the department of such termination and reduction. After filing such notice, the person shall be relieved of further obligations relating to period reporting under this section.

(7) Persons required to register and report water withdrawals or uses under this section shall keep records required by regulation for a period of five years and make such records available for inspection by the department upon request.

(8) Registration of a withdrawal or use shall not be construed as a determination of a person's water rights or approval of a withdrawal or use by any agency of the Commonwealth or by a Compact Basin Commission.

(c) Confidentiality of information.--Information provided to the department under this section shall be subject to the provisions of section 3119 (relating to confidential information).

Cross References. Section 3118 is referred to in section 3131 of this title.

§ 3119. Confidential information.

(a) General rule.--Except as provided in subsection (b), information required to be submitted to the department under this chapter shall be subject to the provisions of the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

(b) Exception.--The department, the Statewide committee and any regional committee shall not disclose confidential information required to be submitted to the department under this chapter unless:

(1) the confidential information is contained in a report in which the identity of the submitting person has been removed and the confidential information is aggregated by hydrologic unit or region; or

(2) the confidential information is disclosed to employees, contractors, agents or authorized representatives of the department, including the State and regional planning committees for the purposes of this chapter.

(c) Confidential information submitted.--If a person submits confidential information under this chapter, the person must identify the information that is confidential information and provide a justification for its confidential nature. The department, Statewide committee or regional committees shall

hold the confidential information in a file separate from the general records relating to the person.

References in Text. The act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, referred to in subsec. (a), was repealed by the act of Feb. 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

Cross References. Section 3119 is referred to in sections 3117, 3118, 3131 of this title.

§ 3120. Water conservation.

(a) Technical assistance center.--The department shall establish and maintain a water resources technical assistance center to promote voluntary water conservation and to provide technical assistance on water resources uses issues, including methods for efficient water use, including reduction of unaccounted-for water loss and the replenishment and conservation of water resources. The center shall:

(1) Establish a voluntary Statewide water conservation program for all water users.

(2) Establish guidelines for the development of voluntary water use reduction plans in critical water planning areas.

(3) Establish voluntary water use reduction goals for all water users.

(4) Identify water conservation principles, practices and technology to assist all water users in conserving water.

(5) Develop a water conservation educational program for households, industry and other water users.

(6) Establish a Governor's Water Conservation Award to recognize outstanding conservation of water.

(7) Develop a program to promote voluntary reduction of unaccounted for water loss.

(8) Identify principles, practices and technologies to encourage groundwater recharge.

(b) Grant approval.--When approving funding pursuant to the act of March 1, 1988 (P.L.82, No.16), known as the Pennsylvania Infrastructure Investment Authority Act, the Pennsylvania Infrastructure Investment Authority shall give special consideration to funding projects that:

(1) address unaccounted-for water loss or that implement water conservation practices by a public water supply agency whose unaccounted-for water loss rate exceeds 20%, provided that, as a condition for such assistance, the applicant shall agree to attempt to recover the true cost of service from ratepayers and adopt and implement a water system management program that conforms to minimum standards established by the department, the Pennsylvania Public Utility Commission or any Compact Basin Commission for water metering, meter testing and replacement, leak detection, unaccounted-for water tracking and reporting and conservation education; or

(2) provide for interconnection between water systems to improve reliability.

Cross References. Section 3120 is referred to in section 3121 of this title.

§ 3121. Grants.

(a) Authorization.--The department is authorized to provide grants for the following purposes:

(1) Reimbursement of up to 75% of the cost of preparing a voluntary water use reduction plan under section 3120(a) (2) (relating to water conservation).

(2) Water resources education, technical assistance and water conservation, including the promotion of voluntary reduction of unaccounted-for water loss, under section 3120(a).

(b) Funding.--Grants shall be made from funds available for this purpose.

SUBCHAPTER C

ADMINISTRATION AND ENFORCEMENT

Sec.

3131. Administration.

3132. Public nuisance.

3133. Enforcement orders.

3134. Civil remedies.

3135. Preservation of rights and remedies.

3136. Relation to other laws.

§ 3131. Administration.

(a) Use of funds.--The department shall use fees collected from the use of the Statewide data system to defray the reasonable costs of administering sections 3117 (relating to Statewide data system) and 3118 (relating to water use registration and reporting).

(b) Public records and confidentiality of information.--Except as provided in section 3119 (relating to confidential information) or in another statute, reports and other information obtained by the Statewide committee, a regional committee or the department under this chapter shall be a matter of public record and shall be available for inspection and review at the offices of the department, the Statewide committee or the appropriate regional committee.

(c) Investigations and inspections.--To determine compliance with this chapter, the department is authorized, during reasonable hours and upon reasonable notice, to make such reasonable inspections, conduct such reasonable tests or sampling or examine books, papers and records related specifically to any withdrawal under investigation pursuant to section 3118 (relating to water use registration and reporting) as it deems necessary.

(d) Water Resources Fund.--Fines and penalties collected under this chapter shall be paid into the State Treasury in a special fund known as the Water Resources Fund. This fund shall be administered by the department to carry out the purposes of this chapter.

(e) Use of other funds.--Money in the Clean Water Fund established by the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, may be used by the department for purposes of this chapter.

§ 3132. Public nuisance.

(a) General rule.--A violation of this chapter or an order or regulation under this chapter shall constitute a public nuisance.

(b) Applicability of other law.--Nothing in this chapter shall be construed as affecting the application of 18 Pa.C.S. § 5101 (relating to obstructing administration of law or other governmental function).

Cross References. Section 3132 is referred to in section 3134 of this title.

§ 3133. Enforcement orders.

(a) Issuance.--The department may issue orders necessary to aid in the enforcement of this chapter. An order may be issued if the department finds that a person is in violation of this chapter or of a regulation issued under this chapter. The department may, in its order, require compliance with terms and conditions necessary to effect the purposes of this chapter.

(b) Effective date.--An order issued under this section shall take effect upon notice unless the order specifies otherwise.

(c) Other remedies preserved.--The right of the department to issue an order under this section is in addition to any penalty which may be imposed or any other action taken under this chapter.

(d) Duty to comply.--It shall be the duty of any person to proceed diligently to comply with any order issued by the department under this section. If such person fails to proceed diligently or fails to comply with the order within such time, if any, which may be specified in the order, the person shall be guilty of contempt and shall be punished by the court in an appropriate manner. For this purpose, application may be made by the department to the Commonwealth Court, which court is hereby granted jurisdiction.

§ 3134. Civil remedies.

(a) Abatement of nuisances.--An activity or condition declared to be a public nuisance under section 3132 (relating to public nuisance) shall be restrained or prevented in the manner provided by law or equity for abatement of public nuisances, and the reasonable expense thereof may be recovered from the violator.

(b) Civil remedies.--The department may bring an action in any court of competent jurisdiction to restrain and abate the violation of this chapter or any regulation issued under this chapter. Any other provision of law to the contrary notwithstanding, the courts of common pleas and Commonwealth Court shall have jurisdiction of such actions, and venue in such actions shall be set forth in the Pennsylvania Rules of Civil Procedure concerning actions in assumpsit.

(c) Civil penalties.--In addition to proceeding under any other remedy available under this chapter for the violation of any provision of this chapter or any regulation or order issued under this chapter, the department may assess a civil penalty upon a person for such violation. The maximum civil penalty that may be assessed is \$1,000 per day for each violation. Each violation of any provision of this chapter and each violation for each separate day shall constitute a separate and distinct offense. The civil penalty may be assessed whether or not the violation was willful or negligent. In determining the amount of a civil penalty, the department shall consider the degree of willfulness and duration of the violation, savings resulting to the person as the result of the violation, the damage to water resources of this Commonwealth resulting from the violation and other relevant factors. When the department proposes to assess a civil penalty, it shall inform the person of the proposed amount of such penalty. The person charged with the civil penalty shall then have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, the person shall within the 30-day period file an appeal of the action with the Environmental Hearing Board. Failure to appeal within the 30-day period shall result in a waiver of all legal rights to contest the violation and the amount of the civil penalty.

(d) Remedies to be concurrent.--The remedies prescribed in this chapter shall be deemed concurrent, and the existence or exercise of any remedy shall not prevent the department from exercising any other remedy under this chapter, at law or in equity.

§ 3135. Preservation of rights and remedies.

(a) Other remedies.--The collection of a penalty under this chapter shall not be construed as estopping the Commonwealth, a municipality or an authorized agency from proceeding in courts of law or equity to abate public nuisances under existing law.

(b) Remedies additional and cumulative.--It is declared to be the purpose of this section to provide additional and cumulative remedies to protect the public interest in the water resources of this Commonwealth.

(c) Pending suits.--This chapter does not apply to suits instituted prior to its effective date.

§ 3136. Relation to other laws.

(a) Limitations upon department.--Nothing contained in this chapter shall be construed to authorize, diminish or expand the existing authority of the department, including the Environmental Quality Board, to regulate, control or require permits for the withdrawal or use of water. Nothing contained in this chapter shall be construed to authorize, diminish or expand the existing authority of the department under the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law. Further, nothing set forth in this chapter, any regulations adopted under this chapter or in the State water plan shall authorize the department to take any action to:

(1) Modify or impair any permits, agreements or other approvals issued under other State statutes or vested rights related to water withdrawals or uses.

(2) Interfere with or impose additional conditions upon the use or operation of any existing reservoir or water storage facility.

(3) Regulate or impose any conditions upon any activity or use not currently authorized under applicable State statutes and regulations.

(b) Limitations on water allocation authority.--The General Assembly reiterates the declarations of other statutes reflecting the need to manage water resources on a watershed basis without respect to political boundaries and the understanding that water management programs should be based upon an accurate and current State water plan. Accordingly, no political subdivision shall have any power to allocate water resources or to regulate the location, amount, timing, terms or conditions of any water withdrawal by any person.

(c) Limitations on municipalities.--Nothing in subsection (b) shall affect the power of any municipality to adopt and enforce ordinances pursuant to 35 Pa.C.S. Pt. V (relating to emergency management services) or regulate the use of land pursuant to the Pennsylvania Municipalities Planning Code or other laws. Further, each municipality shall retain and may exercise such authority as conferred by other statutes to adopt ordinances and regulations concerning:

(1) mandatory connection to and use of available public water supplies; and

(2) the prohibition or regulation of withdrawals from particular sources of water that may be contaminated in order to protect public health and safety from exposure to the contamination or avoid the induced migration of the contamination.

(d) Limitations relating to compacts.--Nothing in this chapter shall be construed to supersede or abrogate any provisions of the act of July 7, 1961 (P.L.518, No.268), known as the Delaware River Basin Compact, or the act of July 17, 1968 (P.L.368, No.181), referred to as the Susquehanna River Basin Compact Law, and this chapter shall be construed in pari materia with such compacts.

PART IV
ENVIRONMENTAL PROTECTION

Chapter

41. Environmental Laboratory Accreditation

Enactment. Unless otherwise noted, Part IV was added December 15, 1999, P.L.949, No.68, effective December 31, 1999.

Part Heading. The heading of Part IV was amended June 29, 2002, P.L.596, No.90, effective in 60 days.

CHAPTER 41
ENVIRONMENTAL LABORATORY ACCREDITATION

Sec.

- 4101. Scope of chapter.
- 4102. Definitions.
- 4103. Establishment of program.
- 4104. Powers and duties.
- 4105. Powers and duties of Environmental Quality Board.
- 4106. Requirements of certificate of accreditation.
- 4107. Interim requirements.
- 4108. Advisory committee.
- 4109. Unlawful conduct.
- 4110. Penalties.
- 4111. Records.
- 4112. Whistleblower protection.
- 4113. Continuation of existing rules and regulations.

Enactment. Chapter 41 was added June 29, 2002, P.L.596, No.90, effective in 60 days.

Special Provisions in Appendix. See section 4 of Act 90 of 2002 in the appendix to this title for special provisions relating to continuation of Environmental Laboratory Accreditation Act.

§ 4101. Scope of chapter.

This chapter deals with environmental laboratory accreditation.

§ 4102. Definitions.

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

"Accreditation." A determination by the Department of Environmental Protection that an environmental laboratory is capable of performing one or more classes of testing or analysis of environmental samples in accordance with this chapter.

"Certificate of accreditation." A document issued by the Department of Environmental Protection certifying that an environmental laboratory has met standards for accreditation.

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

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

"Environmental laboratory." A facility engaged in the testing or analysis of environmental samples.

"Environmental Quality Board." The board established under section 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

"Environmental sample." A solid, liquid, gas or other specimen taken for the purpose of testing or analysis as required by an environmental statute.

"Environmental statute." A statute administered by the Department of Environmental Protection relating to the protection of the environment or of public health, safety and welfare.

"Laboratory supervisor." A technical supervisor of an environmental laboratory who supervises laboratory procedures and reporting of analytical data.

"NELAC." The National Environmental Laboratory Accreditation Conference.

"NELAP." The National Environmental Laboratory Accreditation Program.

"Secretary." The Secretary of Environmental Protection of the Commonwealth.

§ 4103. Establishment of program.

(a) **Establishment.**--The department shall establish an accreditation program for environmental laboratories.

(b) **Accreditation.**--An environmental laboratory must be accredited under this chapter and be in compliance with all the provisions of this chapter in order to generate data or perform analyses to be used to comply with an environmental statute.

(c) **Testing and analysis.**--All testing and analysis requirements of an environmental statute shall be performed by an environmental laboratory accredited under this chapter. Testing and analysis shall be performed in accordance with the requirements of this chapter, the environmental statutes and any conditions imposed by the department.

§ 4104. Powers and duties.

The department shall have the following powers and duties:

(1) Establish, administer and enforce an environmental laboratory accreditation program which shall include accreditation standards necessary for a State certification program. The program shall also include a NELAP accreditation program for those laboratories seeking this certification. The program may also include any other specific broad-based Federal or State accreditation program for certification.

(2) Issue, renew, deny, revoke, suspend or modify certificates of accreditation to environmental laboratories in accordance with regulations adopted by the Environmental Quality Board.

(3) Impose terms or conditions on accreditation as necessary to implement and enforce this chapter.

(4) Conduct inspections and tests or samplings, including the examination and copying of records and data pertinent to a matter under investigation. Duly authorized agents and employees of the department may at reasonable times enter and examine property, facilities, operations and activities subject to regulation under this chapter.

(5) Issue orders and initiate proceedings as necessary to implement and enforce this chapter.

(6) Require a fee for the processing of an application for a certificate of accreditation, including the issuance,

renewal, modification or other action relating to the certificate, in an amount sufficient to pay the department's cost of implementing and administering the accreditation program.

(7) Provide technical assistance and advice to persons and environmental laboratories subject to this chapter.

(8) Contract with third parties to inspect and monitor environmental laboratories.

(9) Cooperate with appropriate Federal, State, interstate and local government units and private organizations to implement this chapter.

(10) Allow the use of experimental procedures on a case-by-case basis to satisfy the testing or analysis requirements established under an environmental statute.

(11) Seek approval as an accrediting authority from NELAP.

§ 4105. Powers and duties of Environmental Quality Board.

(a) General rule.--The Environmental Quality Board shall adopt regulations as necessary to implement this chapter, to include the establishment of:

(1) Testing or analysis to be conducted by an environmental laboratory.

(2) Allowable fees for environmental laboratories.

(3) Requirements for education, training and experience of laboratory supervisors.

(4) Criteria and procedures to be used by the department to accredit environmental laboratories, which may include proficiency test samples and onsite audits.

(b) Accreditation.--An environmental laboratory shall be accredited pursuant to this chapter and in compliance with the provisions of this chapter in order to generate the data and perform analysis to be used to comply with an environmental statute.

(c) General certificate program.--The Environmental Quality Board may adopt regulations that establish a general certificate of accreditation program or certificates of accreditation by rule.

(d) Unique needs.--To the extent possible, the Environmental Quality Board shall establish requirements and procedures that address the unique needs of small businesses, municipalities, municipal authorities and in-house laboratories.

§ 4106. Requirements of certificate of accreditation.

(a) Forms.--Applications, certificates and other documents shall be in a form prescribed by the department.

(b) General requirements.--An environmental laboratory shall have the staff, management structure, equipment, quality assurance and quality control procedures and recordkeeping procedures necessary to ensure that the environmental laboratory generates valid and accurate test results in accordance with all conditions of accreditation and this chapter.

(c) Laboratory supervisor.--Testing, analysis and reporting of data by an accredited laboratory shall be under the direct supervision of a laboratory supervisor. The laboratory supervisor shall certify that each test or analysis is accurate and valid and that the test or analysis was performed in accordance with all conditions of accreditation. The department may disqualify a laboratory supervisor who is responsible for the submission of inaccurate test or analysis results.

(d) Access to records and data.--An accredited laboratory shall provide the department with access to inspect records and data maintained under this chapter and to conduct tests and sampling related to inspections.

§ 4107. Interim requirements.

(a) Registration.--All environmental laboratories shall register with the department by October 2, 2002, on a registration form prepared by the department. An environmental laboratory which begins testing or analysis of environmental samples after this date shall register with the department before beginning operations.

(b) Time for application.--All environmental laboratories shall apply for accreditation within six months after the Environmental Quality Board establishes an accreditation requirement by regulation for a type of laboratory. The submission of an application shall provide interim authorization to continue operations until the department takes final action on the application.

(c) NELAP accreditation.--An environmental laboratory may apply to the department for NELAP accreditation after the department is approved as an accrediting authority by NELAP. The department may grant NELAP accreditation to a laboratory that meets the requirements of this chapter and the most current version of the NELAC standards that are hereby incorporated by reference.

(d) Temporary fees.--Until regulations are promulgated under this chapter, the following fees shall be charged:

- (1) Five thousand dollars for the processing of an application for NELAP accreditation.
- (2) Fifty dollars for the processing of an application for registration.

§ 4108. Advisory committee.

The secretary shall appoint a Laboratory Accreditation Advisory Committee to provide technical assistance under this chapter. The committee shall consist of 11 members, including the following:

- (1) One representative of a municipal authority.
- (2) One representative from a commercial environmental laboratory.
- (3) One representative from an industrial environmental laboratory.
- (4) One representative from an academic laboratory.
- (5) One representative from a small environmental laboratory.
- (6) One environmental engineer.
- (7) One member of an association of community water supply systems.
- (8) One member of an association of wastewater systems.
- (9) One member with technical expertise in the testing and analysis of environmental samples.
- (10) Two members of the general public.

§ 4109. Unlawful conduct.

(a) General rule.--It shall be unlawful for a person to violate or to cause or assist in the violation of this chapter, to fail to comply with an order or condition of accreditation within the time specified by the department or to hinder, obstruct, prevent or interfere with the department in the performance of its duties under this chapter.

(b) Refusal of accreditation.--The department may refuse to issue a certificate of accreditation to an environmental laboratory which has demonstrated a lack of intention or ability to comply with this chapter or engaged in unlawful conduct or which has an employee, officer, contractor, agent or other person set forth in regulation who has engaged in unlawful activity under this chapter unless the applicant demonstrates

to the satisfaction of the department that the unlawful conduct is being or has been corrected.

(c) Denial of access.--It shall be unlawful for an accredited laboratory or other person subject to regulation under this chapter to deny the department access to make inspections and conduct tests or sampling, including the examination and copying of books, papers, records and data pertinent to any matter under investigation pursuant to this chapter. Failure to provide the department with access shall result in the immediate suspension of any accreditation of the laboratory. Upon notice from the department, the laboratory shall immediately cease testing or analysis of environmental samples. The department may revoke an accreditation for failure to provide the department with access to make inspections and conduct tests or sampling, including the examination and copying of books, papers, records and data pertinent to any matter under investigation pursuant to this chapter.

(d) Notice.--The environmental laboratory shall notify each of its customers in writing within 72 hours of receipt of the department's notice if the department suspends or revokes in whole or in part a certificate of accreditation. The notice shall be on a form and in a manner approved by the department.

§ 4110. Penalties.

(a) Criminal penalties.--

(1) A person who knowingly, willfully or recklessly misrepresents that a test or an environmental sample is accurate or was performed in accordance with procedures authorized pursuant to this chapter commits a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than \$1,250 nor more than \$12,500 or to imprisonment for a period of not more than one year, or both, for each separate offense.

(2) A person who knowingly, willfully or recklessly performs or reports an inaccurate test or analysis of an environmental sample commits a misdemeanor of the third degree and shall, upon conviction, be subject to a fine of not less than \$1,250 nor more than \$12,500 or to imprisonment for a period of not more than one year, or both, for each separate offense.

(3) A person who knowingly, willfully or recklessly misrepresents that an environmental laboratory holds a certificate of accreditation under this chapter commits a misdemeanor of the third degree and shall, upon conviction, be subject to a fine of not less than \$1,250 nor more than \$12,500 or to imprisonment for a period of not more than one year, or both, for each separate offense.

(b) Administrative penalties.--

(1) In addition to any other remedy available at law or equity, the department may assess an administrative penalty for a violation of this chapter. The penalty may be assessed whether or not the violation was willful or negligent. When determining the amount of the penalty, the department shall consider the willfulness of the violation, the damage or injury or threat of damage or injury to public health or the environment, the costs to the department for investigation and enforcement, the economic benefit of the violation to the person and other related factors. The department shall inform the person of the amount of the penalty. The administrative penalty shall not exceed \$5,000 per day per violation.

(2) Every day a violation continues shall be a separate violation.

(3) The amount of the penalty assessed after a hearing before the Environmental Hearing Board or after waiver of the right to appeal the assessment shall be payable to the Commonwealth and collectable in any manner provided at law for collection of debts. If any person liable to pay any such penalty neglects or refuses to pay the penalty after demand, the amount of the penalty, together with interest and cost that may accrue, shall constitute a judgment in favor of the department upon the property of such person from the date it has been entered and docketed of record by the prothonotary of the county in which the property is situated. The department may at any time transmit to the prothonotaries of any county in which the person holds property certified copies of all such judgments, and it shall be the duty of each prothonotary to enter and docket the judgment of record in his or her office and to index the judgment as judgments are indexed, without requiring the payment of costs by the department.

(c) Concurrent penalties.--Penalties and other remedies under this chapter shall be concurrent and shall not prevent the department from exercising any other available remedy at law or equity.

(d) Rebuttable presumption.--Failure of an environmental laboratory or laboratory supervisor to maintain adequate records or proficiency test samples as required creates a rebuttable presumption that the test or analysis was not conducted as required.

(e) Falsifying results.--It shall be unlawful to falsify the results of testing or analysis of environmental samples or to violate the provisions of 18 Pa.C.S. § 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities) in the context of the submission of the results of testing and analysis of environmental samples under an environmental statute.

§ 4111. Records.

Records required under this chapter shall be maintained for five years unless otherwise specified in regulation.

§ 4112. Whistleblower protection.

An employee of an environmental laboratory covered by this chapter shall be deemed to be an employee under the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law, in regard to good faith reports of potential violations of this chapter. Environmental laboratories covered by this chapter shall be deemed to be an employer under the Whistleblower Law in regard to good faith reports of potential violations of this chapter.

§ 4113. Continuation of existing rules and regulations.

All existing rules and regulations promulgated pursuant to any environmental statute remain in full force and effect until superseded and repealed by the rules and regulations promulgated pursuant to this chapter.

PART V
SPECIAL PROGRAMS

Chapter

61. Environmental Stewardship and Watershed Protection
62. Waste Transportation Safety
63. Disposal Fee
65. Uniform Environmental Covenants

Enactment. Unless otherwise noted, Part V was added December 15, 1999, P.L.949, No.68, effective December 31, 1999.

CHAPTER 61
ENVIRONMENTAL STEWARDSHIP AND WATERSHED
PROTECTION

Sec.

- 6101. Short title of chapter.
- 6102. Legislative findings.
- 6103. Definitions.
- 6104. Fund.
- 6105. Agencies.
- 6106. Property and equipment restrictions.
- 6107. Federal programs.
- 6108. Wild Resource Conservation Fund and duties of Department of Conservation and Natural Resources.
- 6109. Sewage construction payments to municipalities.
- 6110. Environmental infrastructure grants to water and wastewater treatment facilities (Deleted by amendment).
- 6111. Protection of Recycling Fund.
- 6112. Extension of fees.
- 6113. Effect of repeal of site-specific postclosure fund provisions.
- 6115. Commonwealth indebtedness.
- 6116. Establishment of bond fund and allocation and use of bond proceeds.
- 6117. County Environmental Initiative Program.
- 6118. Interfund transfer.
- 6119. Reporting.

Enactment. Chapter 61 was added December 15, 1999, P.L.949, No.68, effective December 31, 1999.

Cross References. Chapter 61 is referred to in section 6302 of this title.

§ 6101. Short title of chapter.

This chapter shall be known and may be cited as the Environmental Stewardship and Watershed Protection Act.

§ 6102. Legislative findings.

The General Assembly hereby determines, declares and finds as follows:

(1) Ninety-six percent of the water-quality-impaired watersheds in this Commonwealth are polluted because of nonpoint sources of pollution such as past mining activities, urban and agricultural runoff, atmospheric deposition, on-lot sewage systems and earthmoving.

(2) The Commonwealth continues to have unmet needs in the area of water and sewer infrastructure. New and improved water sources, treatment and distribution systems are necessary for public drinking water supplies.

(3) The Commonwealth owns approximately 2.4 million acres of State park and State forest lands and many of these lands suffer from past environmental problems, including unreclaimed mines, acid mine drainage and abandoned oil and gas wells.

(4) Open space, greenways, recreational trails, river corridors, fish and wildlife habitats, parks and recreation areas and scenic environments protect the environment, conserve natural resources and add value to communities.

(5) State programs and State funding should provide maximum flexibility for elected county and municipal

governmental officials to identify, prioritize and address local environmental concerns, including odor abatement problems at sewage treatment plants.

§ 6103. Definitions.

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

"Acquisition." The purchase or lease with an option to purchase of land, easements or buildings for public parks, conservation, historical or recreation uses.

"Authority." The Pennsylvania Infrastructure Investment Authority.

"Authorized organization." An entity involved in research, restoration, rehabilitation, planning, acquisition, development, education or other activities, which furthers the protection, enhancement, conservation, preservation or enjoyment of this Commonwealth's environmental, conservation, recreation or similar resources. The organization must be a tax-exempt institution under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) and registered with the Bureau of Charitable Organizations or an educational institution involved in these authorized activities or a municipal authority.

"Bond fund." The Growing Greener Bond Fund established under section 6116 (relating to establishment of bond fund and allocation and use of bond proceeds).

"Departments." The Department of Agriculture, the Department of Conservation and Natural Resources and the Department of Environmental Protection of the Commonwealth.

"Development." New construction, improvement, alteration or renovation required for and compatible with the physical development or improvement of land or buildings.

"Fund." The Environmental Stewardship Fund established in section 6104 (relating to fund).

"Geological hazard." A naturally occurring or manmade geologic condition or phenomenon that presents a risk or is a potential danger to life and property. The term includes, but is not limited to, landslide, avalanche, ground subsidence and coastal and beach erosion.

"Growing Greener bond referendum." The referendum authorized under the act of April 13, 2005 (P.L.1, No.1), known as the Growing Greener Environmental Stewardship and Watershed Protection Enhancement Authorization Act, and approved by the electorate authorizing the Commonwealth to incur indebtedness of up to \$625,000,000 for the maintenance and protection of the environment, open space and farmland preservation, watershed protection, abandoned mine reclamation, acid mine drainage remediation and other environmental initiatives.

"Interior land." Land that has at least 65% of its boundary lines immediately bordered by either State forest or State park lands.

"Planning." The preparation of park, recreation and open space plans, river corridor and watershed plans, master site development plans, feasibility studies, natural areas studies and inventories, greenways and recreational trail plans, maintenance management plans, conservation plans, zoning plans, land use plans, environmental management plans and research or education documents useful in assisting municipalities, Commonwealth agencies, conservation districts, watershed organizations and authorized organizations to address environmental improvement, natural resource management, park and recreation development and land conservation.

"Recreational trail." A thoroughfare or track across water, land or snow used for motorized and/or nonmotorized recreational purposes.

"Rehabilitation and repair." Restoration or renovation of facilities or conditions of existing public conservation and recreation resources. The term excludes routine maintenance.

"Technical assistance." Provision of financial grants and professional services. The term includes publications, research, videotapes, workshops, meetings, phone consultation and written and electronic communication.

"Watershed organization." An entity recognized by either or both the Department of Conservation and Natural Resources and the Department of Environmental Protection and established to promote local watershed conservation efforts in an identified watershed.

"Watershed protection." Activities that address regional water priorities, including priorities within the Delaware, Erie, Ohio, Potomac and Susquehanna watersheds and compliance by the Commonwealth with its commitments under Chesapeake Bay agreements and implementation of the provisions of Chapter 31 (relating to water resources planning).
(July 13, 2005, P.L.213, No.45, eff. imd.)

2005 Amendment. Act 45 added the defs. of "bond fund," "geological hazard," "Growing Greener bond referendum" and "watershed protection."

Cross References. Section 6103 is referred to in sections 2301, 2315 of Title 58 (Oil and Gas).

§ 6104. Fund.

(a) Establishment.--There is established a special fund in the State Treasury, to be known as the Environmental Stewardship Fund.

(b) Sources.--

(1) Money appropriated by the General Assembly, interest earned by the fund, penalties, money received from the Federal Government or other sources and money received from the fee established under section 6112(b) (relating to extension of fees) shall be deposited in the fund. Moneys appropriated by the General Assembly to the fund shall be transferred on a quarterly basis in increments of at least 20%.

(2) For fiscal years 1999-2000 through 2003-2004, the fund may receive money, upon approval of the Governor, from the Recycling Fund and the Hazardous Sites Cleanup Fund. The combined total of appropriations from these two funds for the program shall not exceed \$30,000,000 annually.

(3) It is the intent of the General Assembly that \$100,000,000 per fiscal year be appropriated from the General Fund for fiscal years 2000-2001 through 2003-2004 to the fund. The Governor's annual budget submission for fiscal years 2000-2001 through 2003-2004 shall include the sum of \$100,000,000 per fiscal year for allocation in accordance with this section.

(c) Appropriation.--The money in the fund is hereby appropriated, upon approval of the Governor, to the departments and the authority for the purpose of implementing the provisions of this chapter.

(d) Allocation.-- The money appropriated in subsection (c) shall be allocated annually as follows:

(1) For fiscal year 1999-2000, 28.4% to the Department of Conservation and Natural Resources, 43.7% to the

Department of Environmental Protection and 27.9% to the authority.

(2) For fiscal years 2000-2001 through 2003-2004, 24.1% to the Department of Conservation and Natural Resources, 37.4% to the Department of Environmental Protection, 14.8% to the Department of Agriculture and 23.7% to the authority.

(3) For fiscal year 2004-2005, moneys in the fund shall be allocated in accordance with paragraph (1).

(4) For fiscal year 2005-2006, up to \$20,000,000 of the moneys in the fund shall be deposited into the Hazardous Sites Cleanup Fund and the remaining moneys shall be allocated in accordance with paragraph (2).

(5) For fiscal year 2006-2007, up to \$30,000,000 of the moneys in the fund shall be deposited into the Hazardous Sites Cleanup Fund and the remaining moneys shall be allocated in accordance with paragraph (2).

(6) For fiscal year 2007-2008 and each year thereafter, moneys in the fund shall be allocated in accordance with paragraph (2).

(d.1) Calculation of allocations.--The annual allocations under subsection (d)(4), (5) and (6) shall be calculated after moneys have been deposited into the Hazardous Sites Cleanup Fund pursuant to subsection (d)(4) and (5) and after payments authorized by section 6115(d)(4) (relating to Commonwealth indebtedness). The annual allocations shall be determined by the Secretary of the Budget.

(d.2) Allocation reductions.--The annual allocation to the authority under subsection (d)(4), (5) and (6) shall be reduced, as and if necessary, by the following sums, which shall be determined by the Secretary of the Budget:

(1) Up to \$2,500,000 to the General Fund for reimbursement for any tax exclusion granted for certain energy efficient appliances pursuant to legislation enacted for this purpose.

(2) (Repealed).

(d.3) Additional deposit.--From within the funds allocated under section 6116 (relating to establishment of bond fund and allocation and use of bond proceeds), the Secretary of the Budget may deposit into the fund amounts equal to those deposited into the Hazardous Sites Cleanup Fund under subsection (d)(4) and (5) and may, at the secretary's discretion, apply the amount of the funds so deposited into the fund under this subsection against the amounts allocated in section 6116(c).

(e) Legislative oversight.--

(1) An annual expenditure plan for the fund shall be submitted by the Governor to the General Assembly as part of the Governor's annual budget submission. The expenditure plan shall be open for review and comment by the members of the General Assembly and shall include a detailed listing of the types of programs for the actual year, current year and proposed budget year.

(2) The Secretary of the Budget shall provide quarterly financial statements showing the status of the Recycling Fund, the Hazardous Sites Cleanup Fund and the Environmental Stewardship Fund to the chairman and minority chairman of the Appropriations Committee of the Senate and the chairman and minority chairman of the Appropriations Committee of the House of Representatives. Such statements shall be provided within 30 days of the close of each quarter of the fiscal year and shall commence with the quarter ending March 31, 2000.

(July 13, 2005, P.L.213, No.45, eff. imd.; July 2, 2012, P.L.751, No.85, eff. imd.)

2012 Repeal. Act 85 repealed subsec. (d.2)(2).

2005 Amendment. Act 45 amended subsec. (d) and added subsecs. (d.1), (d.2) and (d.3).

Cross References. Section 6104 is referred to in sections 6103, 6105, 6305 of this title.

§ 6105. Agencies.

(a) The Department of Conservation and Natural Resources.--

(1) The Department of Conservation and Natural Resources shall utilize money it receives from the fund for the following purposes:

(i) To rehabilitate, repair and develop State park and State forest lands and facilities and the acquisition of interior lands within State parks and State forests.

(ii) To provide grants to a county or other municipality, council of governments, conservation districts and authorized organizations for the purpose of planning, education, acquisition, development, rehabilitation and repair of greenways, recreational trails, open space, natural areas, river corridors, watersheds, community and heritage parks and recreation facilities; community conservation and beautification projects; forest conservation; and other conservation purposes. Grants under this paragraph may not be used by an authorized organization for land acquisition unless the authorized organization obtains the approval of all counties in which the land is situated. Grant moneys may also be used for the acquisition of farmland for the purposes set forth in this paragraph.

(iii) To provide grants to a county or other municipality and authorized organizations for the purpose of research, planning, inventories and technical assistance intended to protect and conserve the biological diversity of this Commonwealth.

(2) The Department of Conservation and Natural Resources may require matching funds as a condition of the award of a grant under this subsection.

(b) The Department of Environmental Protection.--

(1) The Department of Environmental Protection shall utilize money it receives from the fund for the following purposes:

(i) To implement acid mine drainage abatement and cleanup efforts and plug abandoned and orphan oil and gas wells.

(ii) To provide funding for technical assistance and financial incentives to facilitate re-mining.

(iii) To provide grants to a county or other municipality, council of governments, county conservation districts, watershed organizations and other authorized organizations for acid mine drainage abatement, mine cleanup efforts and well plugging.

(iv) To provide grants and technical assistance to a county or other municipality, council of governments, county conservation districts, watershed organizations and other authorized organizations to plan and implement local watershed-based conservation efforts.

(v) To improve water-quality-impaired watersheds, including those polluted by past mining activities, agricultural and urban runoff, atmospheric deposition, on-lot sewage systems and earthmoving activities.

- (vi) (Deleted by amendment).
- (vii) For watershed protection.

(2) County conservation districts may further distribute grants received under this section to watershed organizations and other authorized organizations to assist in the implementation of this chapter.

(3) The Department of Environmental Protection may require matching funds as a condition of the award of a grant under this subsection.

(4) For the period commencing with the effective date of this chapter and ending June 30, 2004, the Department of Environmental Protection may utilize up to 10% of the money allocated annually to it under section 6104(d) (relating to fund) to provide grants for safe drinking water projects and wastewater treatment projects. Grants under this paragraph shall be made for the same purposes and shall be subject to the same limitations as grants authorized in section 6110.

(c) Department of Agriculture.--Funds allocated to the Department of Agriculture under this chapter shall be deposited in the Agricultural Conservation Easement Purchase Fund and are subject to the provisions of the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law.

(d) The authority.--The authority shall utilize money it receives from the fund to provide financial assistance in the form of grants and matching grants for storm water, water and sewer infrastructure projects, including construction or rehabilitation of collection and conveyance systems. The authority shall develop criteria to be used to award grants under this subsection. The criteria and proposed changes thereto shall be submitted to the Environmental Resources and Energy Committee of the Senate and the Environmental Resources and Energy Committee of the House of Representatives for review and comment. The committees shall have 60 days to submit comments to the authority. Criteria shall be reviewed by the authority and the committees at least once every three years.

(e) Administrative expense limitation.--The departments and the authority may not expend more than 2.5% of the moneys received from the fund on administrative expenses. The Department of Environmental Protection may not expend more than an aggregate of 2.5% of the moneys received from the fund and the moneys directed to the Hazardous Sites Cleanup Fund pursuant to section 6104(d)(4) and (5) on administrative expenses. Grant recipients that receive moneys from the fund for the purposes set forth in this section may not expend more than 5% of the moneys received from the fund on administrative expenses.

(f) Expenditure limitation.--No moneys made available through the fund shall be used for any purpose which, directly or indirectly, precludes access to or use of any forested land for the practice of sustainable forestry and commercial production of timber or other forest products. This subsection shall not apply to funds used by the Department of Conservation and Natural Resources, counties or municipalities for the purchase or improvement of park land to be used for public recreation.

(g) Regulations.--The departments and the authority may promulgate regulations necessary to carry out the purposes of this chapter.

(July 13, 2005, P.L.213, No.45, eff. imd.)

2005 Amendment. Act 45 amended subsecs. (a), (b) and (e).

References in Text. Section 6110, referred to in subsec. (b)(4), was deleted by amendment.

Cross References. Section 6105 is referred to in section 6108 of this title.

§ 6106. Property and equipment restrictions.

(a) Prohibition.--Recipients of grants under this chapter may not dispose of or convert property or equipment acquired with a grant for purposes other than the purposes approved in the project application without the prior written approval of the agency awarding the grant.

(b) Remedy.--If a violation of subsection (a) occurs, the agency may:

(1) Require the recipient to refund all grants related to the project, including 10% annual interest compounded four times annually, from the date the original grant was received until the grant is repaid.

(2) Require acquisition by the recipient of equivalent replacement property, as determined by the agency.

(3) Take possession of the property or equipment funded by the agency.

§ 6107. Federal programs.

Agencies may utilize available Federal funds to augment funds available under this chapter.

§ 6108. Wild Resource Conservation Fund and duties of Department of Conservation and Natural Resources.

(a) Appropriation.--The moneys contained in the Wild Resource Conservation Fund are hereby appropriated, upon approval of the Governor, to the Department of Conservation and Natural Resources for the purposes of carrying out subsection (b), section 6105(a) (relating to agencies) and the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act.

(b) Projects and programs.--

(1) The Wild Resource Conservation Board may approve projects or programs for funding as necessary to preserve and enhance wild resources. Grants for approved projects shall be made by the Department of Conservation and Natural Resources from the Wild Resource Conservation Fund. The department shall not allocate money from the Wild Resource Conservation Fund under this paragraph if the allocation would exceed the money available in the Wild Resource Conservation Fund. The Wild Resource Conservation Board shall consider the recommendations of interested persons and representatives of agencies serving on the board when approving projects under this paragraph.

(2) In addition to the grants under paragraph (1), the Wild Resource Conservation Board may recommend projects or programs that promote the preservation and enhancement of wild resources to the Department of Conservation and Natural Resources for funding from the Environmental Stewardship Fund under section 6105(a).

(c) Sale of merchandise and voluntary contributions.--The Wild Resource Conservation Board, with the approval of the Department of Conservation and Natural Resources, shall have the right to issue for sale to the public stamps, decals or other items of personal property intended to signify the interest of the purchaser in contributing to programs established by the board under this section. Any contributions received and the net proceeds from the sale of merchandise shall be deposited in the Wild Resource Conservation Fund.

(d) Advisory committee.--The Wild Resource Conservation Board may establish an advisory committee to advise the board and the Department of Conservation and Natural Resources regarding the wild resource management objectives of the board

and the approval of projects to promote the preservation and enhancement of wild resources. Members of the committee shall be chosen from the general public and shall serve at the pleasure of the board.

(e) Activities of other agencies.--The authority granted pursuant to subsection (c) shall not affect or interfere with similar authority vested by law in any agency represented on the board to sell items of personal property which promote the independent programs of those respective agencies. Said agencies shall likewise have the right to issue for sale items of personal property intended to signify the interest of the purchaser in contributing to programs established by the department, the net proceeds of which shall be deposited in the Wild Resource Conservation Fund.

§ 6109. Sewage construction payments to municipalities.

(a) Certain payments permitted.--A county or other municipality, municipal authority or school district receiving payments on the effective date of this chapter pursuant to the act of August 20, 1953 (P.L.1217, No.339), entitled "An act providing for payments by the Commonwealth to municipalities which have expended money to acquire and construct sewage treatment plants in accordance with the Clean Streams Program and the act, approved the twenty-second day of June, one thousand nine hundred thirty-seven (Pamphlet Laws 1987), and making an appropriation," shall continue to receive all outstanding payments being funded under that act for the acquisition or construction of sewage treatment plants from the Commonwealth from funds appropriated for this purpose provided that the sewage treatment plant operations implement odor abatement programs as necessary.

(b) Equipment and plants.--Payments under this section for equipment and plants shall be discontinued upon the replacement, abandonment or removal from service of the equipment and plants.

(c) Certain payment prohibited.--No municipality, municipal authority or school district which is not presently receiving payments under the act of August 20, 1953 (P.L.1217, No.339), entitled "An act providing for payments by the Commonwealth to municipalities which have expended money to acquire and construct sewage treatment plants in accordance with the Clean Streams Program and the act, approved the twenty-second day of June, one thousand nine hundred thirty-seven (Pamphlet Laws 1987), and making an appropriation," may apply for or receive payments under that act. No new or additional costs of equipment or acquisition of sewage treatment plants for which construction has not commenced prior to the effective date of this chapter may be included in a request for payment by a municipality, municipal authority or school district. For purposes of this section, construction shall be deemed to have commenced when:

(1) the applicant has applied for or received a permit under the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, for construction or modification of the sewage treatment plant;

(2) the applicant has applied for or received construction financing or has dedicated capital funds for an identified project before January 1, 2000, and the appropriate construction permit under The Clean Streams Law has been applied for or received before January 1, 2001; or

(3) if a construction permit under The Clean Streams Law is not required, a signed contract or purchase order for an eligible acquisition or construction expense has been validly executed.

§ 6110. Environmental infrastructure grants to water and wastewater treatment facilities (Deleted by amendment).

2005 Amendment. Section 6110 was deleted by amendment July 13, 2005, P.L.213, No.45, effective immediately.

§ 6111. Protection of Recycling Fund.

(a) Market development funding.--The Department of Environmental Protection, on an annual basis, shall provide sufficient moneys for market development from the Recycling Fund to promote the long-term sustainability of recycling and to promote the continued growth of the recycling rate. For purposes of this subsection, "market development" shall mean a set of government policies and programs that promote the removal of marketplace barriers to recycling and that promote a productive end use for recyclables collected from residents and businesses.

(b) Review of expenditures.--Prior to submitting its annual Recycling Fund spending plan to the General Assembly, the Department of Environmental Protection shall submit details of its proposed expenditures under the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act, including additional expenditures for market development, for review and comment to the Recycling Fund Advisory Committee. At the same time, the department shall submit details of its actual expenditures under the Municipal Waste Planning, Recycling and Waste Reduction Act for the prior fiscal year, including actual expenditures for market development, for review and comment to the committee. The Department of Environmental Protection shall provide aggregate information on the program, including the total amount of funding applied for, the total amount of funding provided, the percentage of applications approved and the percentage of applications fully funded. The information on actual expenditures provided to the committee shall include a complete list of recipients funded by the Department of Environmental Protection pursuant to sections 901 and 902 of the Municipal Waste Planning, Recycling and Waste Reduction Act in the prior fiscal year. The list shall include:

- (1) The name of the recipient.
- (2) The amount of funding requested.
- (3) The amount of funding provided by the Department of Environmental Protection.

(c) Minimum level of funding.--For a period of five years from the effective date of this chapter, moneys expended for programs authorized in the Municipal Waste Planning, Recycling and Waste Reduction Act shall not fall below levels expended in fiscal year 1999-2000.

(d) Information to applicant.--When the Department of Environmental Protection denies an application for a grant or approves an application for less than the amount requested by the applicant, the department shall provide the applicant with a written statement indicating the reason for the denial or reduction in funding amount.

§ 6112. Extension of fees.

(a) Recycling fee.--(Repealed).

(b) Fee established.--Each operator of a municipal waste landfill shall pay, in the same manner prescribed in section 701 of the Municipal Waste Planning, Recycling and Waste Reduction Act, an amount equal to 25¢ per ton of weighted waste or 25¢ per three cubic yards of volume-measured waste for all solid waste received at the landfill. The fee established by

this subsection shall be paid to the State Treasury and deposited into the fund and shall not be subject to the provisions of section 701(d) of the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act. (Dec. 9, 2002, P.L.1404, No.175, eff. imd.; July 13, 2005, P.L.213, No.45, eff. imd.)

Cross References. Section 6112 is referred to in section 6104 of this title.

§ 6113. Effect of repeal of site-specific postclosure fund provisions.

(a) General rule.--Prior to certification of final closure and release by the Department of Environmental Protection of the landfill bond under the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and the regulations promulgated thereto, the trustee may release moneys from the trust to the county which established the trust upon written request from the county to the trustee in order for the county to spend the money to fund county conservation districts, protect farmland or accomplish any other purpose authorized by this chapter. Payment of debt service by a county on obligations issued to fund such purposes shall be deemed to be paid for a permitted purpose. Expenditure for farmland preservation must comply with the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law.

(b) Limitations.--Moneys in a site-specific postclosure trust that have not been released to the county prior to certification of final closure and release of the landfill bond may be used only for remedial measures and emergency actions that are necessary to prevent or abate adverse effects upon the environment after closure of the landfill. The county may withdraw actual costs incurred in establishing and administering the trust in an amount not to exceed 0.5% of the moneys deposited in the trust. The trustee may release moneys for remedial measures and emergency actions only upon written request of the operator of a landfill and upon prior written approval by the Department of Environmental Protection. Such request shall include the proposed amount and purpose of the withdrawal and a copy of the Department of Environmental Protection's written approval of the expenditure. A copy of the request shall be provided to the county and the host municipality. A copy of any withdrawal document prepared by the trustee shall be provided to the Department of Environmental Protection, the county and the host municipality. No withdrawal from this trust for remedial measures and emergency actions may be made until after the Department of Environmental Protection has certified closure of the landfill. Moneys remaining in a trust subsequent to certification of final closure of the landfill and release of the landfill's bond shall be given to the county that established the trust for use in a manner consistent with this chapter.

(c) Applicability.--This section shall not apply to any county of the third class having a population under the 1990 Federal Decennial Census of greater than 225,000 but less than 242,500.

§ 6115. Commonwealth indebtedness.

(a) Borrowing authorized.--

(1) Pursuant to section 7(a)(3) of Article VIII of the Constitution of Pennsylvania and the act of April 13, 2005 (P.L.1, No.1), known as the Growing Greener Environmental Stewardship and Watershed Protection Enhancement

Authorization Act, the issuing officials are authorized and directed to borrow, on the credit of the Commonwealth, money not exceeding in the aggregate the sum of \$625,000,000, in increments of not more than \$210,000,000 every two years over a five-year period after the effective date of this chapter, not including money borrowed to refund outstanding bonds, notes or replacement notes as may be necessary to carry out the purposes of this chapter.

(2) All bonds and notes issued under this chapter shall be:

(i) exempt from taxation for State and local purposes; and

(ii) eligible for tax-exempt bond funding status under existing Federal tax law.

(3) Borrowing authorized under paragraph (1) shall be carried out in accordance with the provisions of sections 307 and 308 of the act of February 9, 1999 (P.L.1, No.1), known as the Capital Facilities Debt Enabling Act, including the terms and conditions of section 307(c).

(b) Sale of bonds and notes.--

(1) All sales of bonds and notes shall be made in accordance with the provisions of section 309 of the Capital Facilities Debt Enabling Act.

(2) The proceeds realized from the sale of bonds and notes, except refunding bonds and replacement notes under this chapter, shall be used solely for the purposes of this chapter. The proceeds of the sale of refunding bonds and replacement notes shall be paid to the State Treasurer and applied to the payment of principal, any accrued interest and premium and cost of redemption of the bonds and notes for which the obligations have been issued.

(3) Pending the allocation under this chapter, money held or deposited by the State Treasurer may be invested or reinvested as are other funds in the custody of the State Treasurer in the manner provided by law. All earnings received from the investment or deposit of the funds shall be used for the same purposes as the proceeds realized from the sale of bonds and notes under this chapter.

(4) The necessary registry book shall be kept in the office of the authorized loan and transfer agent of the Commonwealth for the registration of bonds, at the request of owners of the bonds, according to the terms and conditions of issue directed by the issuing officials.

(5) There is hereby appropriated to the State Treasurer from the proceeds realized from the sale of bonds and notes under this chapter as much money as may be necessary for all costs and expenses in connection with the issue and sale and registration of the bonds and notes in connection with this chapter and the payment of interest arbitrage rebates.

(c) Temporary financing authorization.--

(1) Pending the issuance of bonds of the Commonwealth as authorized, the issuing officials are authorized, in accordance with this chapter and on the credit of the Commonwealth, to make temporary borrowings not to exceed one year in anticipation of the issue of bonds in order to provide funds in amounts as deemed advisable prior to the issue of bonds. In order to provide for and in connection with any temporary borrowing, the issuing officials are authorized in the name and on behalf of the Commonwealth to enter into purchase, loan or credit agreements or other agreements with any bank or trust company, other lending institution, investment banking firm or person in the United

States having power to enter into the agreement. The agreements may contain provisions not inconsistent with this chapter as authorized by the issuing officials.

(2) Temporary borrowings made under this subsection shall be made in accordance with the provisions of section 306(b), (c) and (d) of the Capital Facilities Debt Enabling Act.

(3) Outstanding notes evidencing the borrowings may be funded and retired by the issuance and sale of the bonds of the Commonwealth as authorized in this paragraph. The refunding bonds shall be issued and sold not later than a date one year after the date of issuance of the first notes evidencing the borrowing to the extent that payment of the notes has not otherwise been made or provided for by sources other than proceeds of replacement notes.

(4) The proceeds of all temporary borrowing shall be paid to the State Treasurer to be held and disposed of in accordance with this chapter.

(d) Debt retirement.--

(1) All bonds issued under this chapter shall be redeemed at maturity, together with all interest due. Principal and interest payments shall be paid as provided in this chapter.

(2) By November 1 of each year, the State Treasurer shall determine and report the following to the Secretary of the Budget:

(i) The amount of money necessary for the payment of interest on the outstanding obligations.

(ii) The principal of the obligation for the following fiscal year.

(iii) The times and amounts of the payments.

(3) The Governor shall include in each annual budget submitted to the General Assembly complete information relating to:

(i) The issuance of bonds and notes under this chapter.

(ii) The status of the fund created under this chapter.

(iii) The payment of principal of and interest on the bonds and notes at maturity.

(4) The Secretary of the Budget, upon approval by the Governor, shall utilize up to \$60,000,000 of the moneys in the fund on an annual basis for payment of principle and interest for debt service on bonds issued pursuant to this section and any other debt incurred by the Commonwealth for projects eligible for funding under this chapter.

(e) Refunding.--The issuing officials may by resolution issue refunding bonds for the purpose of refunding any outstanding debt issued under this chapter, either by voluntary exchange with the holders of the outstanding debt or to provide funds to redeem and retire the outstanding debt with accrued interest, and premium payable thereon, and to pay the costs of issuance and retirement of the debt, at maturity or at any call date. The issuance of the refunding bonds, the maturities and other details, the rights of the holders thereof and the duties of the issuing officials in respect thereto shall be governed by the provisions of this subsection, as applicable. Refunding bonds may be issued by the issuing officials to refund debt originally issued or to refund bonds previously issued for refunding purposes.

(f) Proceeds restricted.--The proceeds from the sale of bonds under this section shall only be used to fund capital

improvement projects under sections 6116 (relating to establishment of bond fund and allocation and use of bond proceeds) and 6117 (relating to county environmental initiative program) and shall not be used for salaries and other administrative costs or expenses.

(g) Prohibition.--No project shall be funded by the proceeds of the obligations incurred under this section if the project would cause the bonds to lose their Federal tax-exempt status under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(h) Definition.--As used in this section, the term "capital improvement project" or "project" means a project eligible for tax-exempt financing under the Internal Revenue Code of 1986. (July 13, 2005, P.L.213, No.45, eff. imd.)

2005 Amendment. Act 45 added section 6115.

Cross References. Section 6115 is referred to in sections 6104, 6116 of this title.

§ 6116. Establishment of bond fund and allocation and use of bond proceeds.

(a) Establishment of bond fund.--There is hereby established a special fund in the State Treasury to be known as the Growing Greener Bond Fund. Prior to allocation, moneys in the bond fund may be invested or reinvested as are other funds in the custody of the State Treasurer in a manner provided by law. The following amounts shall be deposited by the Treasury Department into the bond fund:

(1) Funds borrowed under section 6115(a) (relating to Commonwealth indebtedness) for use as prescribed in this chapter.

(2) Earnings derived from the investment of the money in the bond fund after deduction of investment expenses.

(3) Any other money appropriated to the bond fund.

(b) Plan.--An annual allocation plan for the bond fund shall be submitted by the Governor to the General Assembly as part of the Governor's annual budget. The allocation plan shall be open for review and comment by the members of the General Assembly and shall include a detailed listing of the types of programs to be funded for the fiscal year. The General Assembly may review and provide comment on the allocation plan.

(c) Allocation and use of funds.--Moneys in the bond fund shall be allocated and used as follows:

(1) The amount of \$230,000,000 to the Department of Environmental Protection for its existing programs for watershed protection, mine and acid mine drainage remediation, plugging of abandoned oil and gas wells, advanced energy projects as authorized in subparagraph (i), flood protection, geological hazards and brownfields remediation. At least \$60,000,000 shall be used for acid mine drainage abatement and mine cleanup efforts. The Department of Environmental Protection is authorized to make portions of these moneys available to the following Commonwealth agencies and authorities for the purposes designated:

(i) up to \$10,000,000 annually to the Energy Development Authority for advanced energy projects; and

(ii) up to \$5,000,000 annually to the Department of Community and Economic Development for brownfields remediation.

(2) The amount of \$217,500,000 to the Department of Conservation and Natural Resources for its existing programs for the improvement of State parks and State forests,

community park and recreation grants and open space preservation. Not less than \$100,000,000 of these moneys shall be used for facility and infrastructure improvements to State parks and State forests, and \$90,000,000 of these moneys shall be used for open space conservation. Except for interior lands of existing State park or State forest lands, funds under this subsection shall not be used for acquisition of additional State park or State forest lands without the approval of the board of commissioners in the county where the acquisition is situated.

(3) The amount of \$80,000,000 to the Department of Agriculture for its existing county-based farmland preservation programs.

(4) Not more than \$50,000,000 to the Department of Community and Economic Development for main street and downtown redevelopment related to smart growth, including improvements to existing water and wastewater infrastructure.

(5) The amount of \$27,500,000 to the Pennsylvania Fish and Boat Commission for capital improvement projects to its existing lands and facilities. The executive director of the Pennsylvania Fish and Boat Commission shall, no later than June 30 of each year, provide an annual allocation plan detailing the projects to be funded under this paragraph, the amount of each project and the anticipated environmental benefit of the project to the chairman and minority chairman of the Game and Fisheries Committee of the Senate and the chairman and minority chairman of the Game and Fisheries Committee of the House of Representatives.

(6) The amount of \$20,000,000 to the Pennsylvania Game Commission for capital improvement projects to its existing lands and facilities. The executive director of the Pennsylvania Game Commission shall, no later than June 30 of each year, provide an annual allocation plan detailing the projects to be funded under this paragraph, the amount of each project and the anticipated environmental benefit of the project to the chairman and minority chairman of the Game and Fisheries Committee of the Senate and the chairman and minority chairman of the Game and Fisheries Committee of the House of Representatives. Funds under this paragraph shall not be used for land acquisition.

(d) Definition.--As used in this section, the term "capital improvement project" or "project" means a project eligible for tax-exempt financing under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.). (July 13, 2005, P.L.213, No.45, eff. imd.)

2005 Amendment. Act 45 added section 6116.

Cross References. Section 6116 is referred to in sections 6103, 6104, 6115, 6117 of this title.

§ 6117. County Environmental Initiative Program.

(a) Establishment.--There is established the County Environmental Initiative Program. From within the amounts allocated in section 6116(c)(1), (2), (3) and (4) (relating to establishment of bond fund and allocation and use of bond proceeds), \$90,000,000 shall be available for capital improvement projects designated by counties as set forth in this section.

(b) Amount of funding.--Each county shall be provided with an annual funding amount according to its class as designated by the laws of this Commonwealth. Amounts shall be annually determined by the Secretary of the Budget, who shall notify the counties of the same on or before October 1 of each year. Within

the first six fiscal years after the effective date of this section, each county shall receive the following amounts:

- (1) Counties of the first, second and second A class - \$2,700,000.
- (2) Counties of the third class - \$1,750,000.
- (3) Counties of the fourth and fifth class - \$1,390,000.
- (4) Counties of the sixth, seventh and eighth class - \$1,000,000.

(c) Capital improvement project designation.--Each county, in consultation with the county conservation district where one exists, shall annually be permitted to designate capital improvement projects that are eligible to be funded under section 6116 up to its funding amount established pursuant to subsection (b). If a county's proposed project complies with all laws, regulations and procedures that apply to the program category for which funding is designated, the applicable department receiving an allocation under section 6116 shall fund the project. The applicable department shall consider a county's recurring environmental and conservation funding levels to ensure the project supplements existing efforts.

(d) Application of funding.--Funding provided to capital improvement projects under this section shall be applied against the total allocations made to the departments under section 6116(c)(1), (2), (3) and (4). Designation of a capital improvement project by a county under this section shall not obligate a department to provide funds to the project in excess of the amount of county environmental initiative funds so allocated.

(e) Reallocation.--If a county fails to designate capital improvement projects that will use the entirety of its funding amount for a fiscal year, the department shall allocate the remaining funds to other eligible projects.

(f) Definition.--As used in this section, the term "capital improvement project" or "project" means a project eligible for tax-exempt financing under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.). (July 13, 2005, P.L.213, No.45, eff. imd.)

2005 Amendment. Act 45 added section 6117.

Cross References. Section 6117 is referred to in sections 6115, 6119 of this title.

§ 6118. Interfund transfer.

(a) Transfer.--The Secretary of the Budget, in his discretion, may annually transfer funds from the Alternative Fuels Incentive Fund to the fund in such amounts as will allow the fund to continue to distribute moneys to the departments and the authority at historic levels.

(b) Amount.--In determining the amount to be transferred under subsection (a), the Secretary of the Budget shall assure that sufficient funds remain in the Alternative Fuels Incentive Fund so that implementation of the Alternative Fuels Incentive Program, as established in the act of November 29, 2004 (P.L.1376, No.178), known as the Alternative Fuels Incentive Act, shall not be affected. (July 13, 2005, P.L.213, No.45, eff. imd.)

2005 Amendment. Act 45 added section 6118.

§ 6119. Reporting.

(a) State departments and agencies.--Every State department and agency receiving funds under this chapter shall publish a report of all projects funded on the department or agency's publicly accessible Internet website at least annually.

(b) Counties.--Every county designating capital improvement projects under section 6117 (relating to county environmental initiative program) shall publish a report of all projects funded on the county's publicly accessible Internet website at least annually.
(July 13, 2005, P.L.213, No.45, eff. imd.)

2005 Amendment. Act 45 added section 6119.

CHAPTER 62
WASTE TRANSPORTATION SAFETY

Sec.

- 6201. Short title of chapter.
- 6202. Definitions.
- 6203. Establishment of program.
- 6204. Waste Transportation Safety Program.
- 6205. Compliance history review.
- 6206. Responsibilities of municipal or residual waste processing or disposal facilities.
- 6207. Enforcement.
- 6208. Penalties.
- 6209. Construction of chapter.

Enactment. Chapter 62 was added June 29, 2002, P.L.596, No.90, effective in 60 days, unless otherwise noted.

§ 6201. Short title of chapter.

This chapter shall be known and may be cited as the Waste Transportation Safety Act.

§ 6202. Definitions.

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

"Combination." Two or more vehicles physically interconnected in tandem.

"Department." The Department of Environmental Protection of the Commonwealth and its authorized representatives.

"Law enforcement officer." A Pennsylvania State Police officer or a police officer certified pursuant to 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education and training).

"Motor carrier vehicle." As defined in 75 Pa.C.S. § 102 (relating to definitions). For purposes of this chapter, the terms "truck," "truck tractor" and "combination" refer to vehicles used to transport municipal or residual waste.

"Municipal Waste Planning, Recycling and Waste Reduction Act." The act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act,

"Owner." A person other than a lienholder having the property right in or title to a vehicle.

"Qualified Commonwealth employee." Any of the following who have completed training in the inspection or weighing of vehicles as required by 75 Pa.C.S. Chs. 47 (relating to inspection of vehicles) and 49 (relating to size, weight and load):

(1) A law enforcement officer.

(2) A qualified Department of Transportation employee.

"Secretary." The Secretary of Environmental Protection of the Commonwealth.

"Solid Waste Management Act." The act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

"Transportation." The offsite removal of municipal and residual waste any time after generation.

"Transporter." The owner of a public or private waste transportation vehicle. An individual driving a waste transportation vehicle who is not the owner is not a "transporter" for purposes of this chapter.

"Waste trailer." A vehicle having a registered weight in excess of 10,000 pounds used to carry waste and designed to be towed by a motor vehicle.

"Waste transportation vehicle." Public and private motor carrier vehicles and waste trailers, as defined in this chapter, regularly used in transporting municipal or residual waste to a processing or disposal facility in this Commonwealth. The term does not include vehicles currently registered by the department pursuant to 25 Pa. Code § 285.225 (relating to transportation of residential septage).

§ 6203. Establishment of program.

(a) Establishment.--A Waste Transportation Safety Program is established to protect the public health, safety and welfare and the environment.

(b) Duties.--The Waste Transportation Safety Program shall:

(1) Ensure the responsible and safe transportation of municipal or residual waste to processing and disposal facilities by requiring written authorization from the department.

(2) Prohibit a waste processing or disposal facility from accepting municipal or residual waste from a waste transportation vehicle engaged in commerce without a valid authorization sticker issued by the department.

(3) Provide the department with the authority to deny or revoke written authorization where the agency finds that the transporter has failed or continues to fail to comply with applicable laws and regulations.

(4) Establish a transportation authorization fee for the administration and enforcement of this chapter.

(c) Relationship to other laws.--Notwithstanding anything to the contrary in this chapter, the Solid Waste Management Act or the Municipal Waste Planning, Recycling and Waste Reduction Act, no county and no municipality may implement a municipal waste or residual waste transportation authorization or licensing program after the effective date of this chapter.

§ 6204. Waste Transportation Safety Program.

(a) Written authorization required.--It shall be unlawful for a transporter to operate a waste transportation vehicle without obtaining written authorization from the department.

(b) Interim written application.--

(1) Within 120 days of the effective date of this chapter, a transporter currently doing business in the Commonwealth shall submit an application for interim written authorization on a form prescribed by the department. This form shall be accompanied by a fee of \$100 per truck or, in the case of a combination, \$50 per truck tractor and \$50 per waste trailer. Each application shall also be accompanied by a copy of the official base State registration provided for in 75 Pa.C.S. § 6144 (relating to vehicle registration and licensing), evidence of the current official certificate of inspection and a current certificate of insurance.

(2) A transporter seeking to do business in this Commonwealth after the effective date of this chapter shall submit an application for interim written authorization on a form prescribed by the department. This form shall be accompanied by a fee of \$100 per truck or, in the case of a

combination, \$50 per truck tractor and \$50 per waste trailer. Each application shall also be accompanied by a copy of the official base State registration provided for in 75 Pa.C.S. § 6144, evidence of the current official certificate of inspection and a current certificate of insurance.

(c) Interim written authorization.--Within 60 days of receipt of the fee and documentation required under subsection (b), the department shall issue and provide the transporter with an interim written authorization and authorization stickers for each truck, truck tractor and waste trailer. The authorization stickers shall indicate the transporter's interim written authorization number. An authorization sticker shall be displayed prominently on the left front side of the truck or truck tractor, and an authorization sticker shall be displayed prominently on the back of the truck or waste trailer. Each waste transportation vehicle shall carry a copy of the interim written authorization issued to the transporter by the department and, upon request, present the interim written authorization to the department or a qualified Commonwealth employee.

(d) Term of interim written authorization.--The interim written authorization shall be valid until the transporter receives final authorization unless suspended or revoked by the department.

(e) Compliance history.--Upon notification from the department, the transporter shall submit on a form provided by the department documentation of compliance history in conformity with section 6205 (relating to compliance history review).

(f) Final written authorization.--Upon evaluation of the transporter's compliance history under section 6205, the department shall make a determination on the issuance of a final written authorization. The final written authorization shall include the transporter's written authorization number, the expiration date and authorization stickers for each truck, truck tractor and waste trailer.

(g) Term of final written authorization.--The final written authorization shall be valid for one year unless suspended or revoked by the department. The terms and conditions of an expired written authorization shall automatically continue when the following conditions are met:

(1) The transporter has submitted a timely renewal application in accordance with subsection (h).

(2) The department is unable, through no fault of the transporter, to issue or deny a written authorization prior to the expiration date of the previous written authorization.

(h) Final written authorization application renewal.--Ninety days prior to expiration of final written authorization, a transporter shall submit an application for renewal of its final written authorization on a form prescribed by the department, accompanied by a fee of \$100 per truck or, in the case of a combination, \$50 per truck tractor and a \$50 per waste trailer. Each application shall also be accompanied by a copy of the official base State registration, the current official certificate of inspection and a current certificate of insurance pursuant to 75 Pa.C.S. (relating to vehicles) for each truck, truck tractor and waste trailer. After publishing a notice in the Pennsylvania Bulletin, no later than July 1 and effective no earlier than January 1 of the following year, the department shall evaluate and may modify the written authorization annual fee in an amount sufficient to cover the actual costs of the department, Pennsylvania State Police and the Department of Transportation in implementing and enforcing this chapter. The

annual fee paid to the department by a transporter shall not exceed \$200 per truck or, in the case of a combination, \$100 per truck tractor and \$100 per waste trailer.

(i) Transfer of written authorization.--Written authorization for a waste transportation vehicle may be transferred to another owner in accordance with the procedures in this section.

(j) Procedure for transfer.--In order to use the waste transportation vehicle to transport municipal or residual waste to a processing or disposal facility in this Commonwealth, the new owner shall be deemed to have interim written authorization upon the submission and receipt by the department of a complete application fee as set forth in subsection (b). The interim written authorization shall remain in effect until the department issues or denies final written authorization based upon a review of the new owner's compliance history information as required by this section.

(k) Powers and duties of Environmental Quality Board.--The Environmental Quality Board shall have the power and duty to adopt regulations to accomplish the purposes and to carry out the provisions of this chapter.

(l) Restricted account.--All fees, fines and penalties collected under the provisions of this chapter shall be paid into the State Treasury in a separate restricted account known as the Waste Transportation Safety Account, which is hereby established. The Waste Transportation Safety Account shall be administered by the department for the administration and enforcement of the Waste Transportation Safety Program, including the inspection of waste transportation vehicles and reimbursing the Pennsylvania State Police and the Department of Transportation for their costs in administering and enforcing this chapter.

Effective Date. Section 5(1) of Act 90 of 2002 provided that subsec. (a) shall take effect in 180 days.

§ 6205. Compliance history review.

(a) Transporter noncompliance.--In carrying out the provisions of this chapter, the department may deny, suspend, modify or revoke any written authorization if it finds or receives findings from the Pennsylvania State Police or the Department of Transportation that:

(1) The transporter has failed or continues to fail to comply with any provision of:

- (i) this chapter;
- (ii) the Solid Waste Management Act;
- (iii) the Municipal Waste Planning, Recycling and Waste Reduction Act;
- (iv) any other Federal or State statute relating to environmental protection, motor vehicle safety or to the protection of the public health, safety and welfare;
- (v) any rule or regulation of the department;
- (vi) any order of the department; or
- (vii) any condition of any permit, license or other written authorization issued by the department.

(2) The transporter has shown a lack of ability or intention to comply with:

- (i) any provision of this chapter;
- (ii) any of the acts referred to in this subsection;
- (iii) any rule or regulation of the department or order of the department; or

(iv) any condition of any permit or license issued by the department as indicated by past or continuing violations.

(b) Related corporations.--In the case of a corporate transporter, the department may deny, suspend, modify or revoke a written authorization if the department finds that a corporation is related to another past or present corporation which committed violations of the Solid Waste Management Act and this chapter. A corporation is related to another corporation if they have common principals or have parent or subsidiary corporation relationships.

Cross References. Section 6205 is referred to in section 6204 of this title.

§ 6206. Responsibilities of municipal or residual waste processing or disposal facilities.

(a) General rule.--No municipal or residual waste processing or disposal facility shall accept municipal or residual waste from a waste transportation vehicle without a current authorization sticker issued by the department. Failure to comply with this provision shall result in a penalty assessment of \$2,000 against the operator of the processing or disposal facility.

(b) Disposition.--All penalty assessments collected under this section shall be paid into the Waste Transportation Safety Account.

Effective Date. Section 5(1) of Act 90 of 2002 provided that subsec. (a) shall take effect in 180 days.

§ 6207. Enforcement.

(a) Authority of qualified Commonwealth employees.--A qualified Commonwealth employee shall be authorized to assist the department in enforcing provisions of this chapter. The authority granted under this section shall be exercised only when the employee is in uniform and is conducting an inspection of a vehicle as described in 75 Pa.C.S. Chs. 47 (relating to inspection of vehicles) and 49 (relating to size, weight and load).

(b) Training of qualified Commonwealth employees.--The Department of Transportation may train and qualify Commonwealth employees to inspect waste transportation vehicles as authorized under this section and as provided for in 75 Pa.C.S. Chs. 47 and 49. The Department of Transportation shall have the power to adopt regulations to implement this subsection, as necessary.

(c) Disposition.--All fines and penalties collected as a result of violations of this chapter shall be paid into the Waste Transportation Safety Account.

§ 6208. Penalties.

(a) Criminal penalties.--A transporter who violates the provisions of this chapter commits a misdemeanor of the third degree and, upon conviction for the first offense, shall pay a penalty of not less than \$5,000 nor more than \$10,000. Upon the second or subsequent conviction of an offense under this chapter, a transporter commits a misdemeanor of the second degree and shall pay a penalty of not less than \$10,000 nor more than \$25,000, and the court may order the operating privilege of the transporter to be suspended for a period of up to one year, or both.

(b) Civil penalties.--

(1) In addition to proceeding under any other remedy available at law or in equity for a violation of any provision of this chapter, the regulations promulgated

hereunder, any order of the department issued under this chapter or any term or condition of a written authorization, the department may assess a civil penalty upon a transporter. Such penalty may be assessed whether or not the violation was willful or negligent. In determining the amount of the penalty, the department shall consider the willfulness of the violation, the effect on waste transportation safety, damage to the natural resources of this Commonwealth or their uses, cost of restoration and abatement, savings resulting to the violator in consequence of such violation, deterrence of future violations and other relevant factors. If the violation leads to the issuance of a cessation order, a civil penalty shall be assessed.

(2) When the department assesses a civil penalty, it shall inform the transporter of the amount of the penalty. The transporter shall then have 30 days to pay the penalty in full or, if the transporter wishes to contest either the amount of the penalty or the fact of the violation, the transporter shall forward the proposed amount of the penalty to the department for placement in an escrow account with the State Treasurer or with a bank in this Commonwealth or post an appeal bond in the amount of the penalty. The bond must be executed by a surety licensed to do business in this Commonwealth and must be satisfactory to the department. If, through administrative or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the department shall, within 30 days, remit the appropriate amount to the transporter with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond to the department within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(3) The maximum civil penalty which may be assessed pursuant to this chapter is \$10,000 per violation. Each violation for each separate day and each violation of any provision of the chapter, any regulation promulgated hereunder, any order issued under this chapter or the terms or conditions of any written authorization shall constitute a separate offense under this chapter.

(4) Notwithstanding any other provisions of law to the contrary, there shall be a statute of limitations of five years upon actions brought by the Commonwealth under this chapter.

(c) Enforcement orders.--

(1) The department may issue orders to such transporters, counties and municipalities as it deems necessary to aid in the enforcement of this chapter. Such orders may include, but shall not be limited to, orders modifying, suspending or revoking written authorizations and orders requiring transporters, counties and municipalities to cease unlawful activities or operations of a waste transportation vehicle which in the course of operation is in violation of this chapter, any rule or regulation of the department or any terms and conditions of a written authorization issued under this chapter. An order issued under this chapter shall take effect upon notice unless the order specifies otherwise. An appeal to the Environmental Hearing Board shall not act as a supersedeas. The power of the department to issue an order under this chapter is in addition to any other remedy which may be afforded to the department pursuant to this chapter or any other act.

(2) It shall be the duty of any transporter to proceed diligently to comply with any order issued pursuant to this section. If such transporter fails to proceed diligently or fails to comply with the order within such time, if any, as may be specified, such transporter commits contempt and shall be punished by the court in an appropriate manner, and for this purpose application may be made to the Commonwealth Court, which is hereby granted jurisdiction.

(d) Injunctions.--

(1) In addition to any other remedies provided in this chapter, the department may institute a suit in equity in the name of the Commonwealth where unlawful conduct exists for an injunction to restrain a violation of this chapter, the regulations promulgated under this chapter, any order issued pursuant hereto or the terms or conditions of any written authorization. In any such proceeding, the court shall, upon the motion of the Commonwealth, issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct as defined by this chapter or is engaged in conduct which is causing immediate or irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with such proceedings. In addition to an injunction, the court in such equity proceedings may levy civil penalties as specified in this chapter.

(2) In addition to any other remedies provided for in this chapter, an action in equity may be brought in a court of competent jurisdiction for an injunction to restrain any and all violations of this chapter or the regulations promulgated under this chapter.

(3) Actions instituted under this section may be filed in the appropriate court of common pleas or in the Commonwealth Court, which courts are hereby granted jurisdiction to hear such actions.

(e) Concurrent remedies.--The penalties and remedies provided in this chapter shall be deemed concurrent and cumulative with all other existing provisions of law or equity. The existence or exercise of any remedy shall not prevent the department from exercising any other remedy under this chapter at any law or in equity.

(f) Forfeiture of waste transportation vehicle.--

(1) A waste transportation vehicle shall be deemed contraband and forfeited to the department if it is transporting municipal or residual waste to a processing or disposal facility in this Commonwealth without a written authorization if the transporter applied for and was denied the written authorization for that vehicle. The waste transportation vehicle forfeiture provisions established in this subsection shall also apply to a waste transportation vehicle used by a transporter who, after receiving notice from the department to obtain written authorization, fails to obtain written authorization under the requirements of the Waste Transportation Safety Program. The provisions of law relating to seizure, summary and judicial forfeiture and condemnation of intoxicating liquor shall apply to seizures and forfeitures under this chapter. Proceeds from the sale of forfeited waste transportation vehicles shall be deposited in the Waste Transportation Safety Account.

(2) The owner of any vehicle or conveyance forfeited under this chapter shall be responsible for any costs incurred in properly disposing of waste in the vehicle or conveyance.

(g) **Disposition.**--All fines and penalties collected under this section shall be paid into the Waste Transportation Safety Account.

§ 6209. Construction of chapter.

(a) **Liberal construction.**--This chapter shall be liberally construed so as best to effectuate the goals and purposes of this chapter.

(b) **Pari materia.**--This chapter shall be construed in pari materia with the Solid Waste Management Act and 75 Pa.C.S. (relating to vehicles).

CHAPTER 63
DISPOSAL FEE

Sec.

- 6301. Disposal fee for municipal waste landfills.
- 6302. Deposit of disposal fee.
- 6303. Surcharge.
- 6304. Sunset.
- 6305. Allocation for Environmental Stewardship Fund.
- 6306. Adjustments.

Enactment. Chapter 63 was added June 29, 2002, P.L.596, No.90, effective in ten days.

§ 6301. Disposal fee for municipal waste landfills.

(a) **Imposition.**--Except as otherwise provided in subsection (b), each operator of a municipal waste landfill shall pay, in the same manner prescribed in Chapter 7 of the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act, a disposal fee of \$4 per ton for all solid waste disposed of at the municipal waste landfill. The fee established in this section shall apply to process residue and nonprocessable waste from a resource recovery facility that is disposed of at the municipal waste landfill and is in addition to the fee established in section 701 of the Municipal Waste Planning, Recycling and Waste Reduction Act. The fee established by this subsection shall not be subject to the provisions of section 701(d) of the Municipal Waste Planning, Recycling and Waste Reduction Act.

(b) **Exceptions.**--The fee established under this section shall not apply to the following:

(1) Process residue and nonprocessable waste that is permitted for beneficial use or for use as alternate daily cover at a municipal waste landfill.

(2) Solid waste from a hazardous waste treatment facility that is converted into nonhazardous waste and disposed of at a municipal waste landfill.

(c) **Operator.**--For purposes of imposition of the disposal fee under this section, the term "operator" shall be defined consistent with the definition of "operator" in the Municipal Waste Planning, Recycling and Waste Reduction Act and shall include municipalities or municipal authorities that operate disposal facilities.

(July 13, 2005, P.L.213, No.45, eff. imd.)

2005 Amendment. Section 7 of Act 45 provided that the amendment of section 6301 shall be retroactive to July 9, 2002. Section 8 of Act 45 provided that the amendment of section 6301 shall be considered as a codification of the law in effect on July 9, 2002.

Cross References. Section 6301 is referred to in sections 6302, 6303 of this title.

§ 6302. Deposit of disposal fee.

(1) For the fiscal year 2002-2003, fees received by the department pursuant to section 6301 (relating to disposal fee for municipal waste landfills) shall be paid into the State Treasury as follows:

(i) The first \$50,000,000 in fees collected shall be deposited into the Environmental Stewardship Fund established in Chapter 61 (relating to environmental stewardship and watershed protection).

(ii) Any fees collected thereafter shall be deposited in the General Fund.

(2) For the fiscal year 2003-2004 and beyond, all fees collected shall be deposited into the Environmental Stewardship Fund established in Chapter 61.

Cross References. Section 6302 is referred to in sections 6303, 6306 of this title.

§ 6303. Surcharge.

(a) **Owners and operators.**--The owner or operator of a municipal waste landfill which collects and remits the fee established pursuant to section 6301 (relating to disposal fee for municipal waste landfills) may pass through and collect the fee from any person who delivered the waste to the municipal waste landfill as a surcharge in accordance with section 705 of the Municipal Waste Planning, Recycling and Waste Reduction Act on any fee schedule established pursuant to law, ordinance, resolution or contract for solid waste disposal operations at the municipal waste landfill.

(b) **Transporters and transfer stations.**--The transporter or transfer station that is charged a fee or surcharge pursuant to section 6302 (relating to deposit of disposal fee) or subsection (a) may pass through and obtain the fee from the generator of such waste as a surcharge in accordance with section 705 of the Municipal Waste Planning, Recycling and Waste Reduction Act on any fee schedule established pursuant to law, ordinance, resolution or contract for solid waste collection, transfer, transport and delivery.

§ 6304. Sunset (Deleted by amendment).

2005 Amendment. Section 6304 was deleted by amendment July 13, 2005, P.L.213, No.45, effective immediately.

§ 6305. Allocation for Environmental Stewardship Fund.

For fiscal years 2002-2003 through 2006-2007, the department shall utilize 10% of the money allocated annually to it under section 6104(d) (relating to fund) to provide grants for safe drinking water projects and wastewater treatment projects. Grants under this section shall be made for the same purposes and shall be subject to the same limitations as grants authorized in section 6110 (relating to environmental infrastructure grants to water and wastewater treatment facilities).

References in Text. Section 6110, referred to in this section, was deleted by amendment.

§ 6306. Adjustments.

When the Governor's proposed budget for the upcoming fiscal year, as submitted pursuant to section 12 of Article VIII of the Constitution of Pennsylvania, contains a revision to the revenue estimate for the current year of at least 3% less than the official revenue estimate for the current year, the funds deposited pursuant to section 6302(2) (relating to deposit of

disposal fee) may be adjusted by transferring or redirecting up to 25% of these deposits to the General Fund.

CHAPTER 63 DISPOSAL FEE

Sec.

- 6301. Disposal fee for municipal waste landfills.
- 6302. Deposit of disposal fee.
- 6303. Surcharge.
- 6304. Sunset (Deleted by amendment).
- 6305. Allocation for Environmental Stewardship Fund.
- 6306. Adjustments.

Enactment. Chapter 63 was added June 29, 2002, P.L.596, No.90, effective in ten days.

CHAPTER 65 UNIFORM ENVIRONMENTAL COVENANTS

Sec.

- 6501. Short title of chapter.
- 6502. Definitions.
- 6503. Nature of rights; subordination of interests.
- 6504. Contents of environmental covenant.
- 6505. Validity.
- 6506. Relationship to other land-use law.
- 6507. Notice.
- 6508. Recording.
- 6509. Duration.
- 6510. Amendment or termination by consent.
- 6511. Enforcement of environmental covenant.
- 6512. Registry; substitute notice.
- 6513. Uniformity of application and construction.
- 6514. Relation to Electronic Signatures in Global and National Commerce Act.
- 6515. Environmental Quality Board.
- 6516. Appealable actions.
- 6517. Relationship to other laws.

Enactment. Chapter 65 was added December 18, 2007, P.L.450, No.68, effective in 60 days.

§ 6501. Short title of chapter.

This chapter shall be known and may be cited as the Uniform Environmental Covenants Act.

§ 6502. Definitions.

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

"Activity and use limitations." Restrictions or obligations with respect to real property created under this chapter. The term includes engineering controls and institutional controls.

"Agency." Any of the following:

(1) The Department of Environmental Protection of the Commonwealth.

(2) A Federal agency which determines or approves the environmental response project pursuant to which the environmental covenant is created.

"Board." The Environmental Hearing Board.

"Common interest community." A condominium, cooperative or other real property, with respect to which a person, by virtue

of ownership of a parcel of real property or of ownership of an interest in real property, is obligated to pay for property taxes, insurance premiums, maintenance or improvement of other real property described in a recorded covenant which creates the common interest community.

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

"Engineering controls." Remedial actions directed exclusively toward containing or controlling the migration of regulated substances through the environment. The term includes slurry walls, liner systems, caps, leachate collection systems and groundwater recovery trenches.

"Environmental covenant." A servitude arising under an environmental response project which imposes activity and use limitations.

"Environmental response project." A plan or work performed for environmental remediation of real property, conducted:

- (1) under a Federal program governing environmental remediation of real property;
- (2) under a Commonwealth program governing environmental remediation of real property;
- (3) incident to closure of a solid or hazardous waste management unit if the closure is conducted with approval of an agency; or
- (4) under a Commonwealth voluntary cleanup program authorized by statute.

"Holder." A person that is the grantee of an environmental covenant as specified in section 6503(a) (relating to nature of rights; subordination of interests).

"Institutional controls." Measures undertaken to limit or prohibit certain activities which may interfere with the integrity of a remedial action or result in exposure to regulated substances at a site. The term includes fencing and restrictions on the future use of the site.

"Land Recycling Act." The act of May 19, 1995 (P.L.4, No.2), known as the Land Recycling and Environmental Remediation Standards Act.

"Person." Any individual, corporation, partnership, association or other entity recognized by law as the subject of rights, duties or obligations. The term includes the United States of America, a Federal agency, the Commonwealth, an agency or instrumentality of the Commonwealth and a political subdivision.

"Record." Information which is:

- (1) inscribed on a tangible medium or stored in an electronic or other medium; and
- (2) retrievable in perceivable form.

"State." A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

§ 6503. Nature of rights; subordination of interests.

(a) Nature.--Any person, including a person that owns an interest in the real property, or an agency may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

(b) Rights of agency.--The rights of an agency under this chapter or under an approved environmental covenant, other than as a holder, are not interests in real property.

(c) Obligations.--An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant.

Any person other than an agency that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights or protections granted or imposed under law other than this chapter except as provided in the environmental covenant.

(d) Rules.--The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) An interest which has priority under law other than this chapter is not affected by an environmental covenant unless the owner of the interest subordinates its interest to the covenant.

(2) As a condition to approval of an environmental covenant an agency may require that an owner of a prior interest subordinate that interest to the environmental covenant.

(3) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the agreement or record may be signed by any person authorized by the governing board of the owners association.

(4) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose an affirmative obligation on the person with respect to the environmental covenant nor affect that person's existing environmental liability.

Cross References. Section 6503 is referred to in section 6502 of this title.

§ 6504. Contents of environmental covenant.

(a) Required information.--An environmental covenant must:

(1) state that the instrument is an environmental covenant executed pursuant to this chapter;

(2) contain a legally sufficient description of the real property subject to the environmental covenant;

(3) contain a brief narrative description of the contamination and the remedy;

(4) describe the activity and use limitations on the real property;

(5) identify every holder;

(6) be signed, with the formalities required for a deed, by:

(i) the agency, unless there is a deemed approval under subsection (c) (4);

(ii) every holder; and

(iii) every owner in fee simple of the real property subject to the environmental covenant, unless waived by the agency; and

(7) identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) Permitted information.--In addition to the information required by subsection (a), an environmental covenant may contain other information, restrictions and requirements agreed to by the persons who signed it, including:

(1) requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for or proposals for any site work affecting the contamination on the property subject to the environmental covenant;

(2) requirements for periodic reporting describing compliance with the environmental covenant;

(3) rights of access to the property granted in connection with implementation or enforcement of the environmental covenant;

(4) restriction or limitation on amendment or termination of the environmental covenant in addition to those contained in sections 6509 (relating to duration) and 6510 (relating to amendment or termination by consent);

(5) rights of the holder in addition to its right to enforce the environmental covenant under section 6511 (relating to enforcement of environmental covenant); and

(6) a narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure and the location and extent of the contamination.

(c) Agency.--

(1) Prior to signing a covenant, an agency may review the covenant and provide its conditions for approval.

(2) In addition to other conditions for its approval of an environmental covenant, an agency may require those persons specified by the agency that have interests in the real property to sign the covenant.

(3) Except as set forth in paragraph (4), signature by an agency on an environmental covenant constitutes its approval of the environmental covenant.

(4) Failure of the department to approve or disapprove an environmental covenant within 90 days of receipt of all information reasonably required by the department to make a determination shall be deemed an approval of the environmental covenant.

(5) The department's decision to approve or not approve an environmental covenant is appealable to the board.

§ 6505. Validity.

(a) Nature.--An environmental covenant which complies with this chapter runs with the land.

(b) Impediments excluded.--An environmental covenant which is otherwise effective is valid and enforceable even if:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to a person other than the original holder;

(3) it is not of a character that has been recognized traditionally at common law;

(4) it imposes a negative burden;

(5) it imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(6) the benefit or burden does not touch or concern real property;

(7) there is no privity of estate or contract;

(8) the holder dies, ceases to exist, resigns or is replaced; or

(9) the persons identified as owner and holder in the environmental covenant are the same person.

(c) Prior instruments.--

(1) An instrument which creates restrictions or obligations with respect to real property which would, except for the fact that the instrument was recorded before the effective date of this chapter, qualify as activity and use limitations is not invalid or unenforceable:

(i) by reason of the limitations on enforcement of interests described in subsection (b); or

(ii) because it was identified as an easement, servitude, deed restriction or other interest.

(2) This chapter does not apply in any other respect to an instrument referred to in paragraph (1).

(d) Other interests.--

(1) This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, which is otherwise enforceable under the laws of this Commonwealth.

(2) Nothing in this chapter shall be construed to restrict, affect or impair the rights of any person to enter into or record a restrictive covenant, institutional control, easement, servitude or other restriction on the use of property permitted by law that does not satisfy the requirements of this chapter and does not have the permission, approval or consent of an agency, a political subdivision, a regulatory body or another unit of government. However, a restrictive covenant, institutional control, easement, servitude or other restriction on the use of property that does not satisfy the requirements of this chapter and does not have such permission, approval or consent is not subject to this chapter.

§ 6506. Relationship to other land-use law.

(a) Effect on unauthorized uses.--This chapter does not authorize a use of real property which is otherwise prohibited by:

- (1) zoning;
- (2) law other than this chapter regulating use of real property; or
- (3) a recorded instrument which has priority over the environmental covenant.

(b) Effect on authorized uses.--An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this chapter.

§ 6507. Notice.

(a) Recipients.--The owner or another person designated by the agency shall provide a copy of a signed environmental covenant as required by the agency to:

- (1) all persons who signed the environmental covenant;
- (2) all persons holding a recorded interest in the real property subject to the environmental covenant;
- (3) all persons in possession of the real property subject to the environmental covenant;
- (4) each political subdivision in which real property subject to the environmental covenant is located; and
- (5) any other persons the agency requires.

(b) Effect.--Failure to provide a copy of the environmental covenant as required by the agency does not affect the environmental covenant's validity.

§ 6508. Recording.

(a) Requirement.--An environmental covenant, any amendment or termination of the environmental covenant and a waiver under section 6510(a)(3)(i) or (b)(2) (relating to amendment or termination by consent) must be recorded in every county in which any portion of the real property subject to the environmental covenant is located. A recorded environmental covenant or a notice recorded under section 6512 (relating to registry; substitute notice) must be indexed in the grantor's index in the names of the owners of the real property subject to the environmental covenant and in the grantee's index in the name of the holder.

(b) Applicable law.--Except as otherwise provided in section 6509(c) (relating to duration), an environmental covenant is subject to the laws of this Commonwealth governing recording and priority of interests in real property. Recording of an environmental covenant pursuant to the laws of this Commonwealth provides the same constructive notice of the environmental covenant as the recording of a deed provides of an interest in real property.

§ 6509. Duration.

(a) Perpetual.--An environmental covenant is perpetual unless one of the following applies:

(1) It is limited by its terms to a specific duration or the occurrence of a specific event.

(2) It is terminated by consent under section 6510 (relating to amendment or termination by consent).

(3) It is terminated under subsection (b).

(4) It is terminated by foreclosure of an interest which has priority over the environmental covenant.

(5) It is terminated or modified by judicial decree in an eminent domain proceeding, but only if:

(i) the agency which signed the environmental covenant consents to the judicial action;

(ii) all persons identified in section 6510(a) and (b) are given notice of the pendency of the eminent domain proceeding; and

(iii) the court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(b) Judicial modification.--A court, in an action in which all persons identified in section 6510(a) and (b) have been given notice, may terminate or modify the environmental covenant on the real property subject to the environmental covenant if any of the following apply:

(1) The agency which signed an environmental covenant has determined that:

(i) the intended benefits of the environmental covenant can no longer be realized; or

(ii) changed circumstances indicate that the intended benefits can only be realized through modification of the environmental covenant.

(2) A standard allowing for a reopener of a completed environmental response project under section 505 of the Land Recycling Act is met.

(c) Other modifications.--Except as otherwise provided in subsection (a) or (b), an environmental covenant may not be extinguished, limited or impaired through:

(1) issuance of a tax deed;

(2) foreclosure of a tax lien; or

(3) application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement or of a similar doctrine.

Cross References. Section 6509 is referred to in sections 6504, 6508 of this title.

§ 6510. Amendment or termination by consent.

(a) Signature.--An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by all of the following:

(1) The agency.

(2) Unless waived by the agency, the current owner in fee simple of the real property subject to the environmental covenant.

(3) Each person that originally signed the environmental covenant or that person's successor in interest unless:

(i) the person waived the right to consent in a signed record; or

(ii) a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence.

(4) Except as otherwise provided in subsection (d)(2), the holder.

(b) Effect upon property interests subject to environmental covenants.--If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest:

(1) consents to the amendment; or

(2) has waived in a signed record the right to consent to the amendment.

(c) Effect of assignment.--Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(d) Assignment requirements.--Except as otherwise provided in the environmental covenant:

(1) a holder may not assign its interest without consent of the other parties;

(2) a holder may be removed and replaced by agreement of the other parties specified in subsection (a); and

(3) a court of competent jurisdiction may fill a vacancy in the position of holder.

Cross References. Section 6510 is referred to in sections 6504, 6508, 6509 of this title.

§ 6511. Enforcement of environmental covenant.

(a) Parties.--A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) a party to the environmental covenant;

(2) the agency or, if it is not the agency, the department;

(3) any other person to whom the environmental covenant expressly grants power to enforce;

(4) a person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the environmental covenant; and

(5) a political subdivision in which the real property subject to the environmental covenant is located.

(b) Regulatory authority.--

(1) This chapter does not limit the regulatory authority of the agency or the department under law other than this chapter.

(2) In addition to bringing an action under subsection (a), the department may issue any order necessary to enforce section 6517(b) (relating to relationship to other laws).

(c) Liability.--A person is not subject to liability for environmental remediation solely because the person has the right to enforce an environmental covenant.

Cross References. Section 6511 is referred to in section 6504 of this title.

§ 6512. Registry; substitute notice.

(a) Registry.--The department shall establish and maintain a registry which contains all environmental covenants and any amendment or termination of those covenants. The registry may

also contain any other information concerning environmental covenants and the real property subject to them which the department considers appropriate. The registry is a public record for purposes of the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

(b) Notice.--After an environmental covenant or an amendment or termination of an environmental covenant is filed in the registry under subsection (a), a notice of the environmental covenant, amendment or termination which complies with this section may be recorded in the land records in lieu of recording the entire environmental covenant. The notice must contain:

(1) a legally sufficient description and any available street address of the real property;

(2) the name and address of the owner in fee simple of the interest in the real property, the agency and the holder if other than the agency;

(3) a brief narrative description of the contamination and the remedy;

(4) a statement that the environmental covenant, amendment or termination is available in a registry at a listed address of the department and a disclosure of the method of any electronic access; and

(5) a statement that the notice is notification of an environmental covenant executed under this chapter.

(c) Sample form.--A statement in substantially the following form, executed with the same formalities as a deed, satisfies the requirements of subsection (b):

(1) This notice is filed in the land records of the (insert the name of the county in this Commonwealth in which the property is located) of Pennsylvania pursuant to 27 Pa.C.S. § 6512.

(2) This notice and the covenant, amendment or termination to which it refers may impose significant obligations with respect to the property described below.

(3) A legal description of the property is attached as Exhibit A to this notice. A brief narrative description of the contamination and the remedy is attached as Exhibit B to this notice. The address of the property that is subject to the environmental covenant is (insert address of property) (not available).

(4) The name and address of the owner of the fee simple interest in the real property on the date of this notice is (insert name of current legal owner of the property and the owner's current address as shown on the tax records of the county in which the property is located).

(5) The environmental covenant, amendment or termination was signed by (insert name and address of the agency).

(6) The environmental covenant, amendment or termination was filed in the registry on (insert date of filing).

(7) The full text of the covenant, amendment or termination and any other information required by the agency is on file and available for inspection and copying in the registry maintained for that purpose by the Department of Environmental Protection at (insert address and room of building in which the registry is maintained). The covenant, amendment or termination may be found electronically at (insert web address for covenant).

References in Text. The act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, referred to in subsec. (a), was repealed by the act of Feb. 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

Cross References. Section 6512 is referred to in section 6508 of this title.

§ 6513. Uniformity of application and construction.

In applying and construing this chapter as a uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states which enact it.

§ 6514. Relation to Electronic Signatures in Global and National Commerce Act.

(a) General rule.--Except as set forth in subsection (b), this chapter modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7001 et seq.).

(b) Exceptions.--

(1) This chapter does not modify, limit or supersede section 101(a) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001(a)).

(2) This chapter does not authorize electronic delivery of any of the notices described in section 103(b) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7003(b)).

§ 6515. Environmental Quality Board.

(a) Regulations.--The Environmental Quality Board has the power and duty to promulgate regulations for the proper performance of work of the department under this chapter. This subsection includes the establishment of fees under this chapter.

(b) Fees.--Fees under subsection (a) shall be deposited into the Industrial Land Recycling Fund.

§ 6516. Appealable actions.

Actions of the department under this chapter shall be considered appealable actions under the act of July 13, 1988 (P.L.530, No.94), known as the Environmental Hearing Board Act.

§ 6517. Relationship to other laws.

(a) Prospective environmental response projects.--

(1) Unless waived by the department, engineering controls or institutional controls required to demonstrate attainment of a remediation standard under the Land Recycling Act or the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, shall be in the form of an environmental covenant.

(2) If a deed acknowledgment is required by section 405 of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, or section 512(b) of the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, the requirement may be satisfied by reference to an environmental covenant recorded pursuant to this chapter.

(3) An environmental covenant shall not be required for property owned by the Federal Government prior to transfer of the property to a non-Federal entity or individual. Activity and use limitations on Federal property shall be incorporated into an installation's master plan or other similar and appropriate remedial documentation. Nothing in this paragraph shall limit any authority otherwise available to the department to enforce terms of an environmental response project at a Federal installation or on property owned by the Federal Government.

(b) Conversion to environmental covenant.--

(1) An instrument created prior to the effective date of this section which establishes activity and use limitations to demonstrate attainment or maintenance of a

standard under the Land Recycling Act or to demonstrate satisfaction of a corrective action requirement under the Storage Tank and Spill Prevention Act shall be converted to an environmental covenant within 60 months of the effective date of this section unless conversion is waived by the department.

(2) Failure to comply with this subsection does not invalidate the existing engineering controls and institutional controls described in paragraph (1) or preclude the conversion of those engineering controls and institutional controls to an environmental covenant at a later date.

Cross References. Section 6517 is referred to in section 6511 of this title.

PART VI SANCTIONS AND REMEDIES

Subpart

- A. General Provisions
- C. Immunity

Enactment. Part VI was added December 15, 1999, P.L.949, No.68, effective December 31, 1999.

SUBPART A GENERAL PROVISIONS

Chapter

- 77. Costs and Fees

Enactment. Subpart A was added December 20, 2000, P.L.980, No.138, effective in 60 days.

CHAPTER 77 COSTS AND FEES

Sec.

- 7707. Participation in environmental law or regulation.
- 7708. Costs for mining proceedings.

Enactment. Chapter 77 was added December 20, 2000, P.L.980, No.138, effective in 60 days, unless otherwise noted.

Special Provisions in Appendix. See the preamble of Act 138 of 2000 in the appendix to this title for special provisions relating to legislative findings and declarations.

§ 7707. Participation in environmental law or regulation.

A person that successfully defends against an action under Chapter 83 (relating to participation in environmental law or regulation) shall be awarded reasonable attorney fees and the costs of litigation. If the person prevails in part, the court may make a full award or a proportionate award.

§ 7708. Costs for mining proceedings.

(a) **Purpose.**--This section establishes costs and fees available in proceedings involving coal mining activities. The purpose of this section is to provide costs and fees to the same extent of section 525(e) of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et

seq.) and the regulations promulgated pursuant thereto. It is hereby determined that it is in the public interest for the Commonwealth to maintain primary jurisdiction over the enforcement and administration of the Surface Mining Control and Reclamation Act of 1977 and that the purpose of this section is to maintain primary jurisdiction over coal mining in this Commonwealth but in no event to authorize standards which are more stringent than Federal standards for the award of costs and fees.

(b) General rule.--Any party may file a petition for award of costs and fees reasonably incurred as a result of that party's participation in any proceeding involving coal mining activities which results in a final adjudication being issued by the Environmental Hearing Board or a final order being issued by an appellate court.

(c) Recipients of awards.--Appropriate costs and fees incurred for a proceeding concerning coal mining activities may be awarded:

(1) To any party from the permittee if:

(i) The party initiates or participates in any proceeding reviewing enforcement actions upon a finding that a violation of a Commonwealth coal mining act, regulation or permit has occurred or that an imminent hazard existed.

(ii) The Environmental Hearing Board determines that the party made a substantial contribution to the full and fair determination of the issues.

Except that the contribution of a party who did not initiate a proceeding shall be separate and distinct from the contribution made by a party initiating the proceeding.

(2) To any party, other than a permittee or his representative, from the department if that party:

(i) Initiates or participates in any proceeding concerning coal mining activities.

(ii) Prevails in whole or in part, achieving at least some degree of success on the merits.

Upon a finding that the party made a substantial contribution to a full and fair determination of the issues.

(3) To a permittee from the department when the permittee demonstrates that the department in a matter concerning coal mining activities issued an order of cessation, a compliance order or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee.

(4) To a permittee from any party where the permittee demonstrates that the party, in bad faith and for the purpose of harassing or embarrassing the permittee:

(i) initiated a proceeding under one or more of the coal mining acts or the regulations promulgated pursuant to any of those acts concerning coal mining activities; or

(ii) participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee.

(d) Time for filing.--The petition for an award of costs and fees shall be filed with the Environmental Hearing Board within 30 days of the date an adjudication of the Environmental Hearing Board becomes final.

(e) Contents of petition.--A petition filed under this section shall include the name of the party from whom costs and

fees are sought, and the following shall be submitted in support of the petition:

(1) An affidavit setting forth in detail all reasonable costs and fees reasonably incurred for or in connection with the party's participation in the proceeding.

(2) Receipts or other evidence of such costs and fees.

(3) Where attorney fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area and the experience, reputation and ability of the individual or individuals performing the services.

(f) Answer.--Any party shall have 30 days from service of the petition within which to file an answer to such petition.

(g) Exclusive remedy.--Except for section 601 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, section 18.3 of the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, section 13 of the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act, and section 13 of the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act, this section shall be the exclusive remedy for the awarding of costs and fees in proceedings involving coal mining activities.

(h) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Coal mining activities." The extraction of coal from the earth, waste or stockpiles, pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip mining, auger mining, dredging, quarrying and leaching and all surface activity connected with surface or underground coal mining, including, but not limited to, exploration, site preparation, coal processing or cleaning, coal refuse disposal, entry, tunnel, drift, slope, shaft and borehole drilling and construction, road construction, use, maintenance and reclamation, water supply restoration or replacement, repair or compensation for damages to structures caused by underground coal mining and all activities related thereto.

"Coal mining acts." The provisions of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act, and the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act, which govern coal mining or activities related to coal mining.

"Costs and fees." All reasonable costs and expenses, including attorney fees and expert witness fees, reasonably incurred as a result of participation in a proceeding involving coal mining activities.

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

"Proceeding." Appeals of final Department of Environmental Protection actions before the Environmental Hearing Board and judicial review of Environmental Hearing Board adjudications.

Effective Date. Section 4(1)(i) of Act 138 of 2000 provided that section 7708 shall take effect immediately.

Applicability. Section 3 of Act 138 of 2000 provided that section 7708 shall apply to all proceedings and petitions for costs and fees filed after the effective date of Act 138.

SUBPART C
IMMUNITY

Chapter

- 81. Good Samaritan
- 83. Participation in Environmental Law or Regulation

Enactment. Subpart C was added December 15, 1999, P.L.949, No.68, effective December 31, 1999.

CHAPTER 81
GOOD SAMARITAN

Sec.

- 8101. Short title of chapter.
- 8102. Findings.
- 8103. Purpose.
- 8104. Definitions.
- 8105. Eligibility and project inventory.
- 8106. Landowner liability limitation and exceptions.
- 8107. Project liability limitation and exceptions.
- 8108. Permits and zoning.
- 8109. Relationship to Federal and State programs.
- 8110. General permits.
- 8111. Exceptions.
- 8112. Water supply replacement.
- 8113. Orphan oil and gas wells.
- 8114. Regulations.

Enactment. Chapter 81 was added December 15, 1999, P.L.949, No.68, effective in 60 days.

§ 8101. Short title of chapter.

This chapter shall be known and may be cited as the Environmental Good Samaritan Act.

§ 8102. Findings.

The General Assembly finds and declares as follows:

(1) This Commonwealth's long history of mining and the extraction of oil and gas has left some lands and waters unreclaimed and polluted.

(2) These abandoned lands and polluted waters are unproductive, erode the tax base and are serious impediments to the economic welfare and growth of this Commonwealth.

(3) The unreclaimed lands and polluted waters present a danger to the health, safety and welfare of the people and the environment.

(4) This Commonwealth does not possess sufficient resources to reclaim all the abandoned lands and to abate the water pollution.

(5) Numerous landowners, citizens, watershed associations, environmental organizations and governmental entities who do not have a legal responsibility to reclaim the abandoned lands or to abate the water pollution are interested in addressing these problems but are reluctant to engage in such reclamation and abatement activities because of potential liabilities associated with the reclamation and abatement activities.

(6) It is in the best interest of the health, safety and welfare of the people of this Commonwealth and the environment to encourage reclamation of the abandoned lands and abatement of water pollution.

§ 8103. Purpose.

This chapter is intended to encourage the improvement of land and water adversely affected by mining and oil and gas extraction, to aid in the protection of wildlife, to decrease soil erosion, to aid in the prevention and abatement of the pollution of rivers and streams, to protect and improve the environmental values of this Commonwealth and to eliminate or abate hazards to health and safety. It is the intent of the General Assembly to encourage voluntary reclamation of lands adversely affected by mining or oil or gas extraction. The purpose of this chapter is to improve water quality and to control and eliminate water pollution resulting from mining or oil or gas extraction or exploration by limiting the liability which could arise as a result of the voluntary reclamation of abandoned lands or the reduction and abatement of water pollution. This chapter is not intended to limit the liability of a person who under existing law is or may become responsible to reclaim the land or address the water pollution or anyone who by contract, order or otherwise is required to or agrees to perform the reclamation or abate the water pollution.

§ 8104. Definitions.

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

"Abandoned lands." Land adversely affected by mineral or oil or gas extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition.

"Consideration." Something of value promised, given or performed in exchange for something which has the effect of making a legally enforceable contract. For the purpose of this chapter, the term does not include a promise to a landowner to repair damage caused by a reclamation project or water pollution abatement project when the promise is made in exchange for access to the land.

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

"Eligible land and water." Land and water adversely affected by mining or oil or gas extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition or left discharging water pollution and for which no person has a continuing reclamation or water pollution abatement obligation. The term shall also include land and water adversely affected by mining or oil or gas extraction and left in an unreclaimed or inadequately reclaimed condition or left discharging water pollution for which the Department of Environmental Protection has forfeited and collected the operators bonds and there is no outstanding litigation concerning the bond forfeiture.

"Landowner." A person who holds either legal or equitable interest in real property.

"Mineral." Any aggregate or mass of mineral matter, whether or not coherent, which is extracted by mining, including, but not limited to, limestone, dolomite, sand, gravel, slate, argillite, diabase, gneiss, micaceous sandstone known as bluestone, rock, stone, earth, fill, slag, iron ore, zinc ore, vermiculite, clay and anthracite and bituminous coal.

"Permitted mining activity site." A site permitted by the Department of Environmental Protection pursuant to one or more of the following acts:

(1) the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law;

(2) the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act;

(3) the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act;

(4) the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act; or

(5) the act of December 19, 1984 (P.L.1093, No.219), known as the Noncoal Surface Mining Conservation and Reclamation Act.

"Person." A natural person, partnership, association, association members, corporation, political subdivision of the Commonwealth, an agency, instrumentality or entity of Federal or State Government or other legal entity recognized by law as the subject of rights and liabilities.

"Project work area." That land necessary for a person to complete a reclamation project or a water pollution abatement project.

"Reclamation project." The restoration of eligible lands and water to productive use by regrading and revegetating the land to stable contours that blend in and complement the drainage pattern of the surrounding terrain with no highwalls, spoil piles or depressions to accumulate water and by plugging abandoned oil or gas wells and removing production or storage facilities, supplies and equipment from areas disturbed in siting, drilling, completing and producing such wells.

"Water pollution." Pollution of the waters of this Commonwealth as defined in section 1 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, which was caused by mining activities or oil or gas extraction or exploration for these resources.

"Water pollution abatement facilities." The methods for treatment or abatement of water pollution located on eligible lands and water. These methods include, but are not limited to, a structure, system, practice, technique or method constructed, installed or followed to reduce, treat or abate such water pollution.

"Water pollution abatement project." A plan for treatment or abatement of water pollution located on eligible lands and water. These plans include, but are not limited to, the practices to be followed and the installation, operation and maintenance of facilities to reduce, treat or abate such water pollution.

§ 8105. Eligibility and project inventory.

(a) **General rule.**--A landowner or person who voluntarily provides equipment, materials or services at no charge or at cost for a reclamation project or a water pollution abatement project in accordance with this chapter may be immune from civil liability and may raise the protections afforded by this chapter in any subsequent legal proceeding which is brought to enforce environmental laws or otherwise impose liability. A landowner or other person is only eligible for the protections and immunities provided by sections 8106 (relating to landowner liability limitation and exceptions) and 8107 (relating to project liability limitation and exceptions) if a detailed written plan of the proposed reclamation project or water pollution abatement project is submitted to and approved by the department. The project plan shall include the objective of the project and a description of the work that will be performed to accomplish the objective and must identify the project

location, project boundaries, the project participants and the owners of the land.

(b) Notice.--Upon receipt of each project plan, the department shall either give written notice by certified mail to adjacent property owners and riparian land owners located downstream of the proposed project or will provide public notice of the proposed project in a newspaper of general circulation, published in the locality of the proposed project, once a week for four consecutive weeks and shall give public notice in the Pennsylvania Bulletin. The person proposing the project may also provide public notice. Any person having an interest which may be adversely affected by the proposed project has the right to file with the department written objection to the proposed project within 30 days after receipt of the written notice or the last publication of the above notice, which shall conclude the public comment period. The department shall provide to the person proposing the project a copy of each written objection received during the public comment period.

(c) Advice.--The department may provide advice to the landowner or other interested person based upon the department's knowledge and experience in performing reclamation projects and water pollution abatement projects.

(d) Departmental review.--The department shall review each proposed reclamation project and approve the project if the department determines the proposed project:

(1) will result in the regrading of the land to stable contours that blend in and complement the drainage pattern of the surrounding terrain with no highwalls, spoil piles or depressions to accumulate water;

(2) will result in the appropriate revegetation of the site; and

(3) is not likely to result in water pollution as defined in section 1 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

The department shall review each proposed water pollution abatement project and approve the project if the department determines the proposed project is likely to improve the water quality and is not likely to make the water pollution worse.

(e) Additional review.--The department shall review each project plan in accordance with section 8111(b) (relating to exceptions).

(f) Project inventory.--The department shall develop and maintain a system to inventory and record each project, the project location and boundaries, each landowner and each person identified in a project plan provided to the department. The inventory shall include the results of the department's review of the proposed project and, where applicable, include the department's findings under section 8111(b).

(g) Appeal.--A person aggrieved by a department decision to approve or disapprove a reclamation project or a water pollution abatement project has the right to file an appeal with the Environmental Hearing Board in accordance with the act of July 13, 1988 (P.L.530, No.94), known as the Environmental Hearing Board Act, and in accordance with the Environmental Hearing Board's rules, 25 Pa. Code Ch. 1021 (relating to practice and procedures).

§ 8106. Landowner liability limitation and exceptions.

(a) General rule.--Except as specifically provided in subsections (b) and (c), a landowner who provides access to the land, without charge or other consideration, which results in the implementation of a reclamation project or a water pollution abatement project:

(1) Shall be immune from liability for any injury or damage suffered by the person implementing the reclamation project or the water pollution abatement project while the person is within the project work area.

(2) Shall be immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of an act or omission of a person implementing a reclamation project or water pollution abatement project which occurs during the implementation of the reclamation project or the water pollution abatement project.

(3) Shall be immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of a reclamation project or a water pollution abatement project.

(4) Shall not be deemed to assume legal responsibility for or incur liability for any pollution resulting from a reclamation project or water pollution abatement project.

(5) Shall not be subject to a citizen suit filed pursuant to section 601 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, for pollution resulting from a reclamation project or water pollution abatement project.

(6) Shall be immune from liability for the operation, maintenance or repair of the water pollution abatement facilities constructed or installed during the project unless the landowner negligently damages or destroys the water pollution abatement facilities or denies access to those persons who operate, maintain or repair the water pollution abatement facilities.

(b) Duty to warn.--A landowner shall warn a person implementing a reclamation project or water pollution abatement project of known, latent, dangerous conditions located on the project work area which known, latent, dangerous conditions are not the subject of the reclamation project or the water pollution abatement project. Nothing in this chapter shall limit in any way or affect a landowner's liability which results from the landowner's failure to warn of such known, latent, dangerous conditions.

(c) Exceptions to immunity.--Nothing in this chapter shall limit in any way or affect a landowner's liability which results from a reclamation project or water pollution abatement project and which would otherwise exist:

(1) For injury or damage resulting from the landowner's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(2) Where the landowner charges an access fee or requires other consideration before allowing access to the land for the purpose of implementing a reclamation project or water pollution abatement project or to operate, maintain or repair water pollution abatement facilities constructed or installed during a water pollution abatement project.

(3) For the landowner's unlawful activities.

(4) For damage to adjacent landowners or downstream riparian landowners which results from a reclamation project or water pollution abatement project where written notice or public notice of the proposed project was not provided.

Cross References. Section 8106 is referred to in section 8105 of this title.

§ 8107. Project liability limitation and exceptions.

(a) General rule.--Except as specifically provided in subsection (b), a person who provides equipment, materials or services at no cost or at cost for a reclamation project or a water pollution abatement project:

(1) Shall be immune from liability for any injury to or damage suffered by a person which arises out of or occurs as a result of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(2) Shall be immune from liability for any pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project unless the person affects an area that is hydrologically connected to the water pollution abatement project work area and causes increased pollution by activities which are unrelated to the implementation of a water pollution abatement project.

(3) Shall not be deemed to assume responsibility for or incur liability for the operation, maintenance and repair of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(4) Shall not be subject to a citizen suit under section 601 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, for pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(b) Exceptions.--

(1) Nothing in this chapter shall limit in any way the liability of a person who provides equipment, materials or services at no cost or at cost for a reclamation project or a water pollution abatement project which liability results from the reclamation project or the water pollution abatement project and which would otherwise exist:

(i) For injury or damage resulting from the person's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(ii) For the person's unlawful activities.

(iii) For damages to adjacent landowners or downstream riparian landowners which result from a reclamation project or a water pollution abatement project where written notice or public notice of the proposed project was not provided.

(2) Nothing in this chapter shall limit in any way the liability of a person who the department has found to be in violation of any of the following acts:

(i) The act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act.

(ii) The act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act.

Cross References. Section 8107 is referred to in section 8105 of this title.

§ 8108. Permits and zoning.

Nothing in this chapter shall be construed as waiving any existing permit requirements or waiving any local zoning requirements.

§ 8109. Relationship to Federal and State programs.

The provisions of this chapter shall not prevent the Commonwealth from enforcing requirements necessary or imposed by the Federal Government as a condition to receiving or

maintaining program authorization, delegation, primacy or Federal funds.

§ 8110. General permits.

If the department determines it will further the purposes of this chapter, the department may issue a general permit for each reclamation project or water pollution abatement project, which general permit shall:

- (1) Encompass all of the activities included in that reclamation project or water pollution abatement project.
- (2) Be issued in place of any required stream encroachment, earth disturbance or national pollution discharge elimination system permits.

§ 8111. Exceptions.

(a) **General rule.**--Any person who under existing law shall be or may become responsible to reclaim the land or treat or abate the water pollution or any person who for payment or consideration or who receives some other benefit through a contract or any person who through a consent order and agreement or otherwise agrees or is ordered to perform or complete reclamation or treat or abate water pollution as well as a surety which provided a bond for the site shall not be eligible for nor shall that person receive the benefit of the protections and immunities available under this chapter.

(b) **Projects near mining or coal refuse sites.**--This chapter shall not apply to a reclamation project or a water pollution abatement project that is located adjacent to, hydrologically connected to or in close proximity to a site permitted under the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act, the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act, or the act of December 19, 1984 (P.L.1093, No.219), known as the Noncoal Surface Mining Conservation and Reclamation Act, unless:

- (1) The reclamation project or water pollution abatement project is submitted to the department in writing before the project is started.
- (2) The department finds:
 - (i) The reclamation project or the water pollution abatement project will not adversely affect the permittee's obligations under the permit and the applicable law.
 - (ii) The activities on the project work area cannot be used by the permittee to avoid the permittee's reclamation or water pollution treatment or abatement obligations.
- (3) The department issues a written notice of its findings and the approval of the project.

(c) **Projects in lieu of civil penalties.**--This chapter shall not apply to a reclamation project or a water pollution abatement project that is performed in lieu of paying civil penalties.

(d) **Land Recycling and Environmental Remediation Standards Act.**--The act of May 19, 1995 (P.L.4, No.2), known as the Land Recycling and Environmental Remediation Standards Act, does not apply to reclamation projects or water pollution abatement projects implemented under this chapter.

Cross References. Section 8111 is referred to in section 8105 of this title.

§ 8112. Water supply replacement.

A public or private water supply affected by contamination or the diminution caused by the implementation of a reclamation project or the implementation of a water pollution abatement project shall be restored or replaced by the department with an alternate source of water adequate in quantity and quality for the purposes served by the water supply.

§ 8113. Orphan oil and gas wells.

A reclamation project or water pollution abatement project shall not be implemented in a manner which will limit access to an orphan gas well or an orphan oil well.

§ 8114. Regulations.

The department may promulgate rules and regulations necessary to implement the provisions of this chapter.

CHAPTER 83

PARTICIPATION IN ENVIRONMENTAL LAW OR REGULATION

Sec.

- 8301. Definitions.
- 8302. Immunity.
- 8303. Right to a hearing.
- 8304. Intervention.
- 8305. Construction.

Enactment. Chapter 83 was added December 20, 2000, P.L.980, No.138, effective in 60 days.

Special Provisions in Appendix. See the preamble of Act 138 of 2000 in the appendix to this title for special provisions relating to legislative findings and declarations.

Cross References. Chapter 83 is referred to in section 7707 of this title.

§ 8301. Definitions.

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

"Communication to the government." A written or oral statement or writing made:

- (1) before a legislative, executive or judicial proceeding or any other official proceeding authorized by law;
- (2) in connection with an issue under consideration or review by a legislative, executive or judicial body or any other official proceeding authorized by law; or
- (3) to a government agency in connection with the implementation and enforcement of environmental law and regulations.

"Enforcement of environmental law and regulation." Activity relating to the identification and elimination of violations of environmental laws and regulations, including investigations of alleged violations, inspections of activities subject to regulation under environmental law and regulations and responses taken to produce correction of the violations.

"Government agency." The Federal Government, the Commonwealth and any of the Commonwealth's departments, commissions, boards, agencies, authorities, political subdivisions or their departments, commissions, boards, agencies or authorities.

"Implementation of environmental law and regulation."

Activity relating to the development and administration of environmental programs developed under environmental law and regulations.

§ 8302. Immunity.

(a) **General rule.**--Except as provided in subsection (b), a person that, pursuant to Federal or State law, files an action in the courts of this Commonwealth to enforce an environmental law or regulation or that makes an oral or written communication to a government agency relating to enforcement or implementation of an environmental law or regulation shall be immune from civil liability in any resulting legal proceeding for damages where the action or communication is aimed at procuring favorable governmental action.

(b) **Exceptions.**--A person shall not be immune under this section if the allegation in the action or any communication to the government is not relevant or material to the enforcement or implementation of an environmental law or regulation and:

(1) the allegation in the action or communication is knowingly false, deliberately misleading or made with malicious and reckless disregard for the truth or falsity;

(2) the allegation in the action or communication is made for the sole purpose of interfering with existing or proposed business relationships; or

(3) the oral or written communication to a government agency relating to enforcement or implementation of an environmental law or regulation is later determined to be a wrongful use of process or an abuse of process.

§ 8303. Right to a hearing.

A person who wishes to raise the defense of immunity from civil liability under this chapter may file a motion with the court requesting the court to conduct a hearing to determine the preliminary issue of immunity. If a motion is filed, the court shall then conduct a hearing and if the motion is denied, the moving party shall have an interlocutory appeal of right to the Commonwealth Court, during which time all discovery shall be stayed.

§ 8304. Intervention.

A government agency has the right to petition to intervene or otherwise participate as an amicus curiae in the action involving public petition and participation.

§ 8305. Construction.

Nothing in this chapter shall be construed to limit any constitutional, statutory or common law protections of defendants to actions involving public petition and participation.

PART VII
MISCELLANEOUS PROVISIONS
(Reserved)

Enactment. Part VII (Reserved) was added December 15, 1999, P.L.949, No.68, effective December 31, 1999.

APPENDIX TO TITLE 27
ENVIRONMENTAL RESOURCES

Supplementary Provisions of Amendatory Statutes

Preamble

The General Assembly finds and declares as follows:

(1) It is contrary to the public interest to allow lawsuits, known as Strategic Lawsuits Against Public Participation (SLAPP), to be brought primarily to chill the valid exercise by citizens of their constitutional right to freedom of speech and to petition the government for the redress of grievances.

(2) It is in the public interest to empower citizens to bring a swift end to retaliatory lawsuits seeking to undermine their participation in the establishment of State and local environmental policy and in the implementation and enforcement of environmental law and regulations.

Explanatory Note. Act 138 added Subpart A of Part VI and Chapter 83 of Title 27.

2002, JUNE 29, P.L.596, NO.90

§ 4. Continuation of Environmental Laboratory Accreditation Act.

The addition of 27 Pa.C.S. Ch. 41 is a continuation of the act of April 2, 2002 (P.L.225, No.25), known as the Environmental Laboratory Accreditation Act. The following apply:

(1) All actions taken under the Environmental Laboratory Accreditation Act are valid under 27 Pa.C.S. Ch. 41.

(2) Orders and determinations which were made under the Environmental Laboratory Accreditation Act and which are in effect on the effective date of section 2 of this act shall remain valid until vacated or modified under 27 Pa.C.S. Ch. 41.

(3) Regulations which were promulgated under the Environmental Laboratory Accreditation Act and which are in effect on the effective date of section 2 of this act shall remain valid until amended under 27 Pa.C.S. Ch. 41.

(4) Any difference in language between 27 Pa.C.S. Ch. 41 and the Environmental Laboratory Accreditation Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Environmental Laboratory Accreditation Act.

Explanatory Note. Act 90 amended the heading of Part IV and added Chapters 41, 62 and 63 of Title 27.

2002, DECEMBER 16, P.L.1776, NO.220

§ 4. Continuation of prior law.

The addition of 27 Pa.C.S. Ch. 7 is a continuation of the act of May 20, 1993 (P.L.38, No.11), known as the Department of Environmental Resources Agricultural Advisory Board Act. The following apply:

(1) Except as otherwise provided in 27 Pa.C.S. Ch. 7, all activities initiated under the Department of Environmental Resources Agricultural Advisory Board Act shall continue and remain in full force and effect and may be completed under 27 Pa.C.S. Ch. 7. Orders, regulations, rules and decisions which were made under the Department of

Environmental Resources Agricultural Advisory Board Act and which are in effect on the effective date of section 3 of this act shall remain in full force and effect until revoked, vacated or modified under 27 Pa.C.S. Ch. 7.

(2) Except as set forth in paragraph (3), any difference in language between 27 Pa.C.S. Ch. 7 and the Department of Environmental Resources Agricultural Advisory Act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the Department of Environmental Resources Agricultural Advisory Board Act.

(3) Paragraph (2) does not apply to the addition of 27 Pa.C.S. § 702(b) and (c).

Explanatory Note. Act 220 added Chapters 7 and 31 of Title 27.