

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 971 Session of 2011

INTRODUCED BY GEORGE, BARBIN, BRADFORD, BRIGGS, CALTAGIRONE, COHEN, DEASY, DeLUCA, GOODMAN, HALUSKA, HESS, HORNAMAN, JOSEPHS, MUNDY, MURPHY, MURT, M. O'BRIEN, SANTARSIERO, SCHRODER, K. SMITH, STURLA, VITALI, WAGNER AND YOUNGBLOOD, MARCH 9, 2011

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 9, 2011

AN ACT

1 Amending the act of December 19, 1984 (P.L.1140, No.223),  
 2 entitled "An act relating to the development of oil and gas  
 3 and coal; imposing duties and powers on the Department of  
 4 Environmental Resources; imposing notification requirements  
 5 to protect landowners; and providing for definitions, for  
 6 various requirements to regulate the drilling and operation  
 7 of oil and gas wells, for gas storage reservoirs, for various  
 8 reporting requirements, including certain requirements  
 9 concerning the operation of coal mines, for well permits, for  
 10 well registration, for distance requirements, for well casing  
 11 requirements, for safety device requirements, for storage  
 12 reservoir obligations, for well bonding requirements, for a  
 13 Well Plugging Restricted Revenue Account to enforce oil and  
 14 gas well plugging requirements, for the creation of an Oil  
 15 and Gas Technical Advisory Board, for oil and gas well  
 16 inspections, for enforcement and for penalties," further  
 17 providing for definitions, for well permits, for well  
 18 location restrictions, for protection of fresh groundwater  
 19 and casing requirements and for protection of water supplies;  
 20 providing for hydraulic fracturing chemicals and surface  
 21 impoundments, for hydraulic fracture fluids monitoring and  
 22 for use of surface impoundments for temporary flowback  
 23 storage; and further providing for bonding, for enforcement  
 24 orders, for penalties, for civil penalties, for well plugging  
 25 funds and for local ordinances.

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

28 Section 1. Section 103 of the act of December 19, 1984

(P.L.1140, No.223), known as the Oil and Gas Act, is amended by adding definitions to read:

Section 103. Definitions.

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

"12-digit Hydrologic Unit Code." A subwatershed, generally ranging in size from 10,000 to 40,000 acres, as designated by the United States Geological Survey and the United States Department of Agriculture Natural Resources Conservation Service.

\* \* \*

"Body of water." A natural or artificial lake, pond, reservoir, swamp, marsh or wetland.

\* \* \*

"Erosion and sediment control permit." A permit issued by the Department of Environmental Protection and required for earth disturbance activities associated with oil and gas activities.

"FEMA." The Federal Emergency Management Agency.

"Flood." A general but temporary condition of partial or complete inundation of normally dry land areas from the overflow of streams, rivers or other waters of this Commonwealth.

"Floodplain." The lands adjoining a river or stream that have been or may be expected to be inundated by flood waters in a 100-year frequency flood. Unless otherwise specified, the boundary of the floodplain is as indicated on maps and flood insurance studies provided by the Federal Emergency Management Agency or equivalent floodplain maps and studies. In an area where no such maps or studies have defined the boundary of the

100-year floodplain, it is assumed, absent evidence to the contrary, that the floodplain extends from the stream to 100 feet from the top of the streambank.

"Floodway." The channel of the watercourse and portions of the adjoining floodplains which are reasonably required to carry and discharge the 100-year frequency flood. Unless otherwise specified, the boundary of the floodway is as indicated on maps and flood insurance studies provided by the Federal Emergency Management Agency. In an area where no Federal Emergency Management Agency maps or studies have defined the boundary of the 100-year frequency floodway, it is assumed, absent evidence to the contrary, that the floodway extends from the stream to 50 feet from the top of the streambank.

\* \* \*

"Stream." A watercourse.

"Top of streambank." The first substantial break in slope between the edge of the bed of the stream and the surrounding terrain.

"Watercourse." A channel or conveyance of surface water having defined bed and banks, whether natural or artificial, with perennial or intermittent flow.

\* \* \*

"Wild trout stream." A stream classified as supporting naturally reproducing trout populations by the Fish and Boat Commission.

"Wilderness trout stream." A surface water designated by the Fish and Boat Commission to protect and promote native trout fisheries and maintain and enhance wilderness aesthetics and ecological requirements necessary for the natural reproduction of trout.

1       \* \* \*

2       Section 2. Section 201(a), (b), (e)(5), (f) and (g) of the  
3 act, amended July 2, 1992 (P.L.365, No.78), are amended and the  
4 section is amended by adding a subsection to read:

5 Section 201. Well permits.

6       (a) No person shall drill a well or alter any existing well,  
7 except for alterations which satisfy the requirements of  
8 subsection (j), without having first obtained a well permit  
9 pursuant to subsections (b), (c), (d) and (e). A copy of the  
10 permit shall be kept at the well site during preparation or  
11 construction of the well site or access road, or drilling,  
12 operation or alteration of the well. However, no person shall be  
13 required to obtain a permit to redrill a nonproducing well, if:

14           (1) the redrilling has been evaluated and approved as  
15 part of an order from the department authorizing the cleaning  
16 out and plugging or replugging of a nonproducing well,  
17 pursuant to section 13(c) of the act of December 18, 1984  
18 (P.L.1069, No.214), known as the Coal and Gas Resource  
19 Coordination Act; and

20           (2) the redrilling is incidental to the plugging or  
21 replugging operation and the well subsequently is plugged  
22 within 15 days of redrilling.

23       (b) The permit application shall be accompanied by a plat  
24 prepared by a competent engineer or a competent surveyor, on  
25 forms to be furnished by the department, showing the political  
26 subdivision and county in which the tract of land upon which the  
27 well to be drilled, operated or altered, is located, the name of  
28 the surface landowner of record and lessor, the name of all  
29 surface landowners or water purveyors whose water supplies are  
30 within [1,000] 2,500 feet of the proposed well location, the

1 name of the owner of record or operator of all known underlying  
2 workable coal seams, if any, the acreage in the tract to be  
3 drilled, the proposed location of the well determined by survey,  
4 the courses and distances of such location from two or more  
5 permanent identifiable points or landmarks on said tract  
6 boundary corners, the proposed angle and direction of such well,  
7 if the well is to be deviated substantially from a vertical  
8 course, the number or other identification to be given the well,  
9 the workable coal seams, if any, underlying the tract of land  
10 upon which the well is to be drilled, operated or altered, which  
11 are to be cased off in accordance with section 207, and such  
12 information needed by the department to administer this act. The  
13 applicant shall forward, by certified mail, a copy of said plat  
14 to each political subdivision in which the well is to be  
15 located, the surface landowner, all surface landowners or water  
16 purveyors whose water supplies are within [1,000] 2,500 feet of  
17 the proposed well location, the owner and lessee, if any, of  
18 such coal seams, and every coal operator required to be  
19 identified on the well permit application and shall submit proof  
20 of such notification with the well permit application. With  
21 respect to surface owners, notification shall be accomplished  
22 under this section by sending notice to the persons to whom the  
23 tax notices for said surface property are sent, as indicated in  
24 the assessment books in the county in which the property is  
25 located. With respect to surface landowners or water purveyors  
26 whose water supplies are within [1,000] 2,500 feet of the  
27 proposed well location, notification shall be made on forms and  
28 in a manner prescribed by the department sufficient to identify,  
29 for such persons, the rights afforded them under section 208 and  
30 the advisability of taking their own predrilling or

1 prealteration survey. With respect to the political subdivision  
2 in which the well is to be located, notification shall be made  
3 on forms and in a manner prescribed by the department. If the  
4 applicant submits to the department written approval of the  
5 proposed well location by the political subdivision in which the  
6 well is to be located, the surface landowner and the coal  
7 operator, lessee or owner, if any, of the coal underlying the  
8 proposed well location and no objections are raised by the  
9 department within 15 days of filing or if no such approval has  
10 been submitted and no objections are made to such proposed well  
11 location within 15 days from receipt of such notice by the  
12 political subdivision in which the well is to be located, the  
13 surface landowner and the coal operator, lessee or owner, if  
14 any, or by the department, the same shall be filed and become a  
15 permanent record of such location, subject to inspection at any  
16 time by any interested person. The application form to operate  
17 an abandoned or orphan well shall notify the applicant of its  
18 responsibilities to plug the well upon abandonment.

19 \* \* \*

20 (e) The department shall issue a permit within 45 days of  
21 the submission of a permit application unless the department  
22 denies the permit application for one or more of the five  
23 reasons set forth below: Provided, however, That the department  
24 shall have the right to extend such period for 15 days for cause  
25 shown upon notification to the applicant of the reasons for that  
26 extension. The department may impose such permit terms and  
27 conditions as are necessary to assure compliance with this act  
28 and other laws administered by the department. The department  
29 shall have the authority to deny a permit to any person for the  
30 following reasons:

1           \* \* \*

2           (5) the applicant, with respect to any other well or  
3 wells which the applicant operates, is in continuing  
4 violation of this act or any other applicable statute  
5 administered by the department. [The right of the department  
6 to deny a permit under this paragraph shall not be effective  
7 until a final administrative determination has been made of  
8 any of these violations and no appeal is pending in which a  
9 stay has been granted.]

10          (f) Upon issuance of a permit, the well operator may proceed  
11 [with the drilling of] to prepare or construct the well site and  
12 access roads and drill, operate or alter the well at the exact  
13 location shown on the plat after providing the department, the  
14 surface landowner and the local political subdivision in which  
15 the well is to be located 24 hours' notice of the date that  
16 drilling will commence. In noncoal areas where more than one  
17 well is to be drilled as part of the same development project,  
18 only the first well of the project need be located by survey.  
19 The remaining wells of the project shall be shown on the plat in  
20 a manner prescribed by regulation. Prior to drilling each of the  
21 additional project wells, the well operator shall notify the  
22 department of his intention and provide reasonable notice of the  
23 date drilling will commence. Whenever, before or during the  
24 drilling of any well which is not within the outside boundaries  
25 of an operating coal mine, the well operator shall encounter  
26 conditions of such a nature as to render drilling of the bore  
27 hole or portions thereof more hazardous than usual, or otherwise  
28 impossible, then the well operator shall have the right, upon  
29 verbal notice to the department, to immediately plug all or  
30 portions of the bore hole, if drilling has occurred, and to

1 commence a new bore hole not more than 50 feet distant if the  
2 location of the new bore hole does not violate section 205 and  
3 if, for wells subject to the act of July 25, 1961 (P.L.825,  
4 No.359), known as the Oil and Gas Conservation Law, the new  
5 location complies with any existing law, regulation or spacing  
6 order and if the new bore hole is a minimum of 330 feet distant  
7 from the nearest lease boundary. Within ten days of commencement  
8 of the new bore hole, the well operator shall file with the  
9 department a written notice of intention to plug, a well record,  
10 a completion report, a plugging certificate for the original  
11 bore hole and an amended plat for the new bore hole. The well  
12 operator shall forward a copy of the amended plat to the surface  
13 landowner identified on the well permit application within ten  
14 days of commencement of the new well bore.

15 (g) The well permit number and operator's name, address and  
16 telephone number shall be posted at the drilling site, in a  
17 conspicuous manner, prior to initiating preparation or  
18 construction of the well site or access road or commencement of  
19 drilling, operation or alteration of the well.

20 (g.1) The department shall authorize conservation districts  
21 to conduct a quarterly review of erosion and sediment control  
22 permit applications issued on an expedited basis for all earth  
23 disturbance associated with oil and gas activities. Conservation  
24 districts shall conduct such review and submit a report to the  
25 department of their findings. The department shall revoke any  
26 permits related to the oil and gas operations for which an  
27 expedited erosion and sediment control permit was issued if a  
28 finding is made in the report that the erosion and sediment  
29 control permit application contained material omission or  
30 misstatement.



1       \* \* \*

2       Section 3. Section 205 of the act is amended to read:

3       Section 205. Well location restrictions.

4       (a) Wells may not be drilled within [200] 1,000 feet  
5       measured horizontally from any existing building or existing  
6       water well without the written consent of the owner thereof.  
7       Where the distance restriction would deprive the owner of the  
8       oil and gas rights of the right to produce or share in the oil  
9       or gas underlying said surface tract, the well operator may be  
10      granted a variance from said distance restriction upon  
11      submission of a plan which shall identify the additional  
12      measures, facilities or practices to be employed during well  
13      site construction, drilling and operations. The variance, if  
14      granted, shall include such additional terms and conditions as  
15      the department shall require to insure the safety and protection  
16      of affected persons and property. The provisions may include  
17      insurance, bonding and indemnification, as well as technical  
18      requirements.

19      (b) No well site may be prepared or well drilled within 100  
20      feet measured horizontally from any [stream, spring or body of  
21      water as identified on the most current 7 ½ minute topographic  
22      quadrangle map of the United States Geological Survey]  
23      watercourse, natural or artificial lake, pond or reservoir or  
24      within [100 feet of any wetlands greater than one acre in size]  
25      the boundary of a wetland or the boundary that affects the  
26      functions and values of a wetland. However, no well may be  
27      drilled using hydraulic fracturing or horizontal drilling within  
28      2,500 feet of a surface water source, and within 1,000 feet of a  
29      groundwater source, that serves a public water system. The  
30      distance from the public water supply source, as identified by

1 the department, shall be measured as follows:

2       (1) For a surface water intake on a lake or reservoir,  
3 the distance shall be measured from the boundary of the lake  
4 or reservoir.

5       (2) For a surface water intake on a flowing stream, the  
6 distance shall be measured from a semicircular radius  
7 extending upstream of the surface water intake.

8       (3) For a groundwater source, the distance shall be  
9 measured from the wellhead or spring.

10 The department may waive such distance restrictions upon  
11 submission of a plan which shall identify the additional  
12 measures, facilities or practices to be employed during well  
13 site construction, drilling and operations. Such waiver, if  
14 granted, shall impose such permit conditions as are necessary to  
15 protect the waters of the Commonwealth.

16       (c) [The] On making a determination on a well permit, the  
17 department shall[, on making a determination on a well permit,]  
18 consider and may deny or condition a well permit based on the  
19 impact of the proposed well on public resources to include, but  
20 not be limited to, the following:

21       (1) Publicly owned parks, forests, gamelands and  
22 wildlife areas.

23       (2) National or State scenic rivers.

24       (3) National natural landmarks.

25       (4) Habitats of rare and endangered flora and fauna and  
26 other critical communities.

27       (5) Historical and archaeological sites listed on the  
28 Federal or State list of historic places.

29       (6) Bodies of water and watercourses, including, but not  
30 limited to, wetlands, wild trout streams and wilderness trout

1 streams.

2 (d) Prior to submitting a permit application to the  
3 department for a well or well site within a wild trout stream,  
4 High Quality or Exceptional Value watershed as indicated by the  
5 12-digit Hydrologic Unit Code, the applicant shall consult with  
6 the Pennsylvania Fish and Boat Commission.

7 Section 4. Section 207 of the act is amended by adding a  
8 subsection to read:

9 Section 207. Protection of fresh groundwater; casing  
10 requirements.

11 \* \* \*

12 (e) The department shall inspect each permitted well drilled  
13 in any formation using hydraulic fracturing or horizontal  
14 drilling, or both, during each phase of cementing, completing  
15 and altering. The permittee may not proceed to the next phase of  
16 the drilling operation until an inspection by the department has  
17 been performed. The department shall allocate an appropriate  
18 portion of the well permit fees to fund the inspection and may  
19 increase the permit fees to meet an increase in the inspection  
20 costs.

21 Section 5. Section 208(c) and (d) of the act are amended and  
22 the section is amended by adding subsections to read:

23 Section 208. Protection of water supplies.

24 \* \* \*

25 (b.1) Upon a written request by any landowner residing  
26 within 5,500 feet but farther than 2,500 feet of a proposed gas  
27 well using hydraulic fracturing, the well permit applicant shall  
28 conduct a predrilling or prealteration survey, using a facility  
29 or laboratory certified by the department, and send a copy of  
30 the survey by certified mail to the requestor. A predrilling or

prealteration survey shall provide at a minimum the testing results for chemicals or chemical compounds known to be commonly used for hydraulic fracturing including, but not limited to, the following: all major cations and anions, arsenic, benzene, toluene, ethylbenzene, xylenes, manganese, dissolved methane, total dissolved solids, chlorides, nutrients and radionuclides.

(c) Unless rebutted by one of the five defenses established in subsection (d), it shall be presumed that a well operator is responsible for the pollution of a water supply that is within [1,000] 2,500 feet of the oil or gas well, where the pollution occurred within [six] 12 months after the completion of drilling or alteration of such well.

(c.1) In case of horizontal drilling, the presumption under subsection (c) covers the entire length of the horizontal drilling and extends an additional 2,500 feet from the end or ends of the horizontal well bore.

(d) In order to rebut the presumption of liability established in subsection (c), the well operator must affirmatively prove one of the following five defenses:

(1) The pollution existed prior to the drilling or alteration activity as determined by a predrilling or prealteration survey.

(2) The landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey.

(3) The water supply is not within [1,000] 2,500 feet of the well.

(4) The pollution occurred more than [six] 12 months after completion of drilling or alteration activities.

(5) The pollution occurred as the result of some cause

1 other than the drilling or alteration activity.

2 \* \* \*

3 Section 6. The act is amended by adding sections to read:

4 Section 208.1. Hydraulic fracturing chemicals and surface  
5 impoundments.

6 (a) Notwithstanding a trade secret claim, a well operator  
7 shall file a report with the department for each well that is  
8 drilled using the hydraulic fracturing process within 30 days of  
9 completion of such well. The report shall include, without  
10 limitation, the complete list of the chemicals and chemical  
11 compounds used in the fracturing fluid products, specifying the  
12 volume of fluid utilized in each separate hydraulic fracturing  
13 operation and the Chemical Abstract Service registry number for  
14 each constituent chemical. The department shall make the report  
15 available to the public upon a written request.

16 (b) In case of a medical emergency, the operator shall  
17 provide the concentration of each constituent chemical and the  
18 formula for each chemical compound to medical emergency  
19 personnel or local emergency personnel, or both.

20 (c) The well operator shall keep a copy of the report at the  
21 well site and produce it upon request by the department, local  
22 emergency personnel or surface landowners residing within 5,500  
23 feet of the well.

24 Section 208.2. Hydraulic fracture fluids monitoring.

25 For each individual hydraulic fracturing operation performed  
26 at a well site, the well operator shall maintain the data  
27 indicating the total volume of fracturing fluids used for the  
28 operation as well as the total volume of fluids that returned to  
29 the surface. The well operator shall compile the data and the  
30 necessary records to support the data, and submit it to the

1 department on a semi-annual basis.

2 Section 208.3. Use of surface impoundments for temporary  
3 flowback storage.

4 Where centralized flowback impoundments are used to  
5 temporarily store flowback water, the department shall require  
6 the use of dual liner systems with a leak detection system  
7 installed between the two liners. The department shall inspect  
8 such impoundments on a monthly basis.

9 Section 7. Section 215(a), (c), (d), (d.1) and (f) of the  
10 act, amended July 2, 1992 (P.L.365, No.78), are amended to read:  
11 Section 215. Bonding.

12 (a) (1) Except as provided in subsection (d) hereof, upon  
13 filing an application for a well permit and before continuing  
14 to operate any oil or gas well, the owner or operator thereof  
15 shall file with the department a bond for the well and the  
16 well site on a form to be prescribed and furnished by the  
17 department. Any such bond filed with an application for a  
18 well permit shall be payable to the Commonwealth and  
19 conditioned that the operator shall faithfully perform all of  
20 the drilling, water supply replacement, restoration and  
21 plugging requirements of this act. Any such bond filed with  
22 the department for a well in existence on the effective date  
23 of this act shall be payable to the Commonwealth and  
24 conditioned that the operator shall faithfully perform all of  
25 the water supply replacement, restoration and plugging  
26 requirements of this act. The amount of the bond required  
27 shall be in the [amount of \$2,500 per well for at least two  
28 years following the effective date of this act, after which  
29 time the bond amount] following amounts and may be adjusted  
30 by the Environmental Quality Board every two years to reflect

1 the projected costs to the Commonwealth of performing well  
2 plugging:

3 (i) For wells less than 2,500 feet in depth:

4 (A) \$2,500 per well, provided the operator shall  
5 not be required to provide a bond under this item  
6 exceeding \$35,000 for 25 wells.

7 (B) For operating 26 to 50 wells, \$35,000 plus  
8 \$2,500 per well, provided the operator may not be  
9 required to provide a bond under this item exceeding  
10 \$60,000.

11 (C) For operating 51 to 100 wells, \$60,000 plus  
12 \$2,500 per well, provided the operator may not be  
13 required to provide a bond under this item exceeding  
14 \$100,000.

15 (D) For operating over 100 wells, \$100,000 plus  
16 \$2,500 per well, provided the operator may not be  
17 required to provide a bond under this item exceeding  
18 \$250,000.

19 (ii) For wells less between 2,500 feet and 5,000  
20 feet in depth:

21 (A) \$5,000 per well, provided the operator may  
22 not be required to provide a bond under this item  
23 exceeding \$70,000 for 25 wells.

24 (B) For operating 26 to 50 wells, \$70,000 plus  
25 \$5,000 per well, provided the operator may not be  
26 required to provide a bond under this item exceeding  
27 \$120,000.

28 (C) For operating 51 to 100 wells, \$120,000 plus  
29 \$5,000 per well, provided the operator may not be  
30 required to provide a bond under this item exceeding

1           \$200,000.

2           (D) For operating over 100 wells, \$200,000 plus  
3           \$5,000 per well, provided the operator may not be  
4           required to provide a bond under this item exceeding  
5           \$500,000.

6           (iii) For wells over 5,000 feet in depth:

7           (A) \$12,500 per well, provided the operator may  
8           not be required to provide a bond under this item  
9           exceeding \$220,000 for 25 wells.

10          (B) For operating 26 to 50 wells, \$220,000 plus  
11          \$12,500 per well, provided the operator may not be  
12          required to provide a bond under this item exceeding  
13          \$375,000.

14          (C) For operating 51 to 100 wells, \$375,000 plus  
15          \$12,500 per well, provided the operator may not be  
16          required to provide a bond under this item exceeding  
17          \$625,000.

18          (D) For operating over 100 wells, \$625,000 plus  
19          \$12,500 per well.

20          [(2) In lieu of individual bonds for each well, an owner  
21          or operator may file a blanket bond, on a form prepared by  
22          the department, covering all of its wells in Pennsylvania as  
23          enumerated on the bond form. A blanket bond shall be in the  
24          amount of \$25,000 for at least two years following the  
25          effective date of this act, after which time the bond amount  
26          may be adjusted by the Environmental Quality Board every two  
27          years to reflect the projected costs to the Commonwealth of  
28          performing well plugging.]

29          (3) Liability under such bond shall continue until the  
30          well has been properly plugged in accordance with this act



1 and for a period of one year after filing of the certificate  
2 of plugging with the department. Each bond shall be executed  
3 by the operator and a corporate surety licensed to do  
4 business in the Commonwealth and approved by the secretary.  
5 The operator may elect to deposit cash, certificates of  
6 deposit or automatically renewable irrevocable letters of  
7 credit from financial institutions chartered or authorized to  
8 do business in Pennsylvania and regulated and examined by the  
9 Commonwealth or a Federal agency which may be terminated at  
10 the end of a term only upon the financial institution giving  
11 90 days prior written notice to the permittee and the  
12 department or negotiable bonds of the United States  
13 Government or the Commonwealth, the Pennsylvania Turnpike  
14 Commission, the General State Authority, the State Public  
15 School Building Authority or any municipality within the  
16 Commonwealth, or United States Treasury Bonds issued at a  
17 discount without a regular schedule of interest payments to  
18 maturity, otherwise known as Zero Coupon Bonds, having a  
19 maturity date of not more than ten years after the date of  
20 purchase and at such maturity date having a value of not less  
21 than \$25,000, with the department in lieu of a corporate  
22 surety. The cash deposit, certificate of deposit, amount of  
23 such irrevocable letter of credit or market value of such  
24 securities shall be equal at least to the sum of the bond.  
25 The secretary shall, upon receipt of any such deposit of  
26 cash, letters of credit or negotiable bonds, immediately  
27 place the same with the State Treasurer, whose duty it shall  
28 be to receive and hold the same in the name of the  
29 Commonwealth, in trust, for the purpose for which such  
30 deposit is made. The State Treasurer shall at all times be

1 responsible for the custody and safekeeping of such deposits.  
2 The operator making deposit shall be entitled from time to  
3 time to demand and receive from the State Treasurer, on the  
4 written order of the secretary, the whole or any portion of  
5 any collateral so deposited, upon depositing with him, in  
6 lieu thereof, other collateral of the classes herein  
7 specified having a market value at least equal to the sum of  
8 the bond, and also to demand, receive and recover the  
9 interest and income from said negotiable bonds as the same  
10 becomes due and payable. Where negotiable bonds, deposited as  
11 aforesaid, mature or are called, the State Treasurer, at the  
12 request of the owner thereof, shall convert such negotiable  
13 bonds into such other negotiable bonds of the classes herein  
14 specified as may be designated by the owner. Where notice of  
15 intent to terminate a letter of credit is given, the  
16 department shall give the operator 30 days' written notice to  
17 replace the letter of credit with other acceptable bond  
18 guarantees as provided herein and, if the owner or operator  
19 fails to replace the letter of credit within the 30-day  
20 notification period, the department shall draw upon and  
21 convert such letter of credit into cash and hold it as a  
22 collateral bond guarantee.

23 \* \* \*

24 (c) If the well owner or operator fails or refuses to comply  
25 with the applicable requirements of this act identified in  
26 subsection (a), the regulations promulgated hereunder or the  
27 conditions of the permit relating thereto, the department may  
28 declare the bond forfeited and shall certify the same to the  
29 Attorney General, who shall proceed to enforce and collect the  
30 full amount of the bond and, where the owner or operator has

1 deposited cash or securities as collateral in lieu of a  
2 corporate surety, the department shall declare said collateral  
3 forfeited and shall direct the State Treasurer to pay the full  
4 amount of said funds into the Well Plugging Restricted Revenue  
5 Account or to proceed to sell said security to the extent  
6 forfeited and pay the proceeds thereof into the Well Plugging  
7 Restricted Revenue Account. Should any corporate surety or  
8 financial institution fail to promptly pay, in full, a forfeited  
9 bond, it shall be disqualified from writing any further bonds  
10 under the act or any other environmental act administered by the  
11 department. Any person aggrieved by reason of forfeiting the  
12 bond or converting collateral, as herein provided, shall have a  
13 right to appeal to the Environmental Hearing Board in the manner  
14 provided by law. Upon forfeiture of a [blanket] bond for a  
15 violation occurring at one or more well sites, the person whose  
16 bond is forfeited shall submit a replacement bond to cover all  
17 other wells of which he is owner or operator within ten days of  
18 said forfeiture. Failure to submit said replacement bond  
19 constitutes a violation of this section as to each of the wells  
20 owned or operated by said person.

21 (d) [(1) Any operator of not more than 200 wells who cannot  
22 obtain a bond for a well drilled prior to April 18, 1985, as  
23 required under subsection (a), due to an inability to  
24 demonstrate sufficient financial resources may, in lieu of  
25 the bond:

26 (i) Submit to the department a fee in the amount of  
27 \$50 per well, or a blanket fee of \$500 for ten to 20  
28 wells, or a blanket fee of \$1,000 for more than 20 wells,  
29 which shall be a nonrefundable fee paid each year that  
30 the operator has not filed a bond with the department.

1 All fees collected in lieu of a bond under this  
2 subsection shall be used for the purposes authorized by  
3 this act. The Environmental Quality Board shall have the  
4 power, by regulation, to increase the amount of the fees  
5 established under this subsection.

6 (ii) (A) Make phased deposits of collateral to  
7 fully collateralize the bond. Such payment shall be  
8 based on the number of wells the operator owns or  
9 operates. The operator shall make an initial deposit  
10 and shall, thereafter, make annual deposits in  
11 accordance with the schedule in clause (B). Interest  
12 accumulated by the collateral shall become a part of  
13 the bond until such time as the collateral plus  
14 accumulated interest equals the amount of the  
15 required bond. The collateral shall be deposited, in  
16 trust, with the State Treasurer as provided in this  
17 subsection, or with a bank selected by the department  
18 which shall act as trustee for the benefit of the  
19 Commonwealth to guarantee the operator's compliance  
20 with the drilling, water supply replacement,  
21 restoration and plugging requirements of this act.  
22 The operator shall be required to pay all costs of  
23 the trust.

24 (B) An operator of up to ten existing wells who  
25 does not intend to operate additional wells shall  
26 deposit \$250 per well and shall, thereafter, annually  
27 deposit \$50 per well until the obligations of this  
28 section are fully met. An operator of 11 to 25 wells  
29 or an operator of up to ten wells who applies for one  
30 or more permits for additional wells shall deposit

1           \$2,000 and shall, thereafter, annually deposit \$1,150  
2           plus \$150 for each additional well to be permitted  
3           that year until the obligations of this section are  
4           fully met. An operator of 26 to 50 wells shall  
5           deposit \$3,000 and shall, thereafter, annually  
6           deposit \$1,300 plus \$400 for each additional well to  
7           be permitted that year until the obligations of this  
8           section are fully met. An operator of 51 to 100 wells  
9           shall deposit \$4,000 and shall, thereafter, annually  
10          deposit \$1,500 plus \$400 for each additional well to  
11          be permitted that year until the obligations of this  
12          section are fully met. Operators of 101 to 200 wells  
13          shall deposit \$8,000 and shall, thereafter, annually  
14          deposit \$1,600 plus \$1,000 for each additional well  
15          to be permitted that year until the obligations of  
16          this section are fully met. Operators of more than  
17          200 wells shall fully bond their wells immediately.  
18          The department shall reduce the amount of phased  
19          collateral payments or the period of time over which  
20          phased collateral payments shall be made on behalf of  
21          owners or operators who, prior to the effective date  
22          of this amendatory act, have paid a fee in lieu of  
23          bond pursuant to subparagraph (i), and who, within  
24          one year of the effective date of this amendatory  
25          act, choose to enter the phased collateral program  
26          pursuant to this subparagraph (ii) rather than to  
27          continue to make payments in lieu of bond. Payments  
28          made in lieu of bond prior to the effective date of  
29          this amendatory act shall not be credited in any  
30          other manner, nor shall the department be required to

1 refund such fees at any time. The Environmental  
2 Quality Board shall have the power, by regulation, to  
3 change the annual deposits established under this  
4 clause if it is found to be necessary to accommodate  
5 a change in the amount of the bond required under  
6 this section.

7 (2) An operator may continue to pay a fee in lieu of  
8 bond or make phased deposits of collateral to fully  
9 collateralize the bond so long as the operator does not miss  
10 any payments for wells as provided under this subsection and  
11 so long as the operator remains in compliance with the  
12 provisions of this act and regulations and permits issued  
13 thereunder. If an operator has missed any payments for wells  
14 as provided under this subsection, the operator shall:

15 (i) immediately submit the appropriate bond amount  
16 in full; or

17 (ii) cease all operations and plug the wells in  
18 accordance with section 210.

19 (d.1) (1) An individual who cannot obtain a bond to drill  
20 new wells due to an inability to demonstrate financial  
21 resources may meet the collateral bond requirements of  
22 subsection (a) by making phased deposits of collateral to  
23 fully collateralize the bond. Such individuals shall be  
24 limited to drilling ten new wells per calendar year. The  
25 individual shall, for each well to be drilled, deposit \$500  
26 and shall, thereafter, annually deposit 10% of the remaining  
27 bond amount for a period of ten years. Interest accumulated  
28 by the collateral shall become a part of the bond until such  
29 time as the collateral, plus accumulated interest, equals the  
30 amount of the required bond. The collateral shall be

1 deposited, in trust, with the State Treasurer as provided in  
2 subsection (a) or with a bank selected by the department  
3 which shall act as trustee for the benefit of the  
4 Commonwealth, to guarantee the individual's compliance with  
5 the drilling, water supply replacement, restoration and  
6 plugging requirements of this act. The individual shall be  
7 required to pay all costs of the trust.

8 (2) Individuals may continue to use phased collateral to  
9 obtain permits so long as they have not missed any payments  
10 for wells drilled under this provision and so long as they  
11 remain in compliance with this act and regulations and  
12 permits issued thereunder. If an individual has missed any  
13 payments for wells under this subsection, the operator shall:

14 (i) immediately submit the appropriate bond amount  
15 in full; or

16 (ii) cease all operations and plug the wells in  
17 accordance with section 210.

18 For the purposes of this subsection an "individual" is defined  
19 as an applicant who is a natural person doing business under his  
20 own name] The Environmental Quality Board may, by regulation,

21 develop an alternative financial assurance requirement in which  
22 an operator may voluntarily choose to participate. An operator  
23 participating in the alternative financial assurance requirement  
24 established pursuant to this paragraph may be exempt from a bond  
25 specified under subsection (a). The alternative financial  
26 assurance requirement may require an insurance policy, trust  
27 fund or financial mechanism but must provide for full coverage  
28 of an operator's well plugging liability as determined by the  
29 board. The alternative financial assurance mechanism may only be  
30 utilized to plug wells upon abandonment and may not be forfeited

1 or otherwise recovered for violations of this act.

2 \* \* \*

3 [(f) Owners or operators who have failed to meet the  
4 requirements of this section prior to the effective date of this  
5 amendatory act shall not be required to make payments pursuant  
6 to this section on a retroactive basis as a condition of  
7 obtaining a permit under this act nor shall such failure be  
8 deemed a violation of this act.]

9 Section 8. Sections 503(c), 505 and 506 of the act are  
10 amended to read:

11 Section 503. Enforcement orders.

12 \* \* \*

13 (c) Prior to the [suspension or] revocation of a well permit  
14 or registration, the department shall serve written notice upon  
15 the well operator or its agent of the intention of the  
16 department to [suspend or] revoke and shall state with  
17 specificity the statutory provisions, appropriate rule or  
18 regulation or other reason and the factual circumstances which  
19 surround the violation upon which the suspension or revocation  
20 is to be based. The well operator shall have 15 days to request  
21 a conference with the department to give such cause why such  
22 action should not be taken. Upon receipt of such written notice,  
23 the department shall hold a conference and shall, within 15 days  
24 thereafter, make a decision on whether to [suspend or] revoke  
25 the well permit or registration. The department shall provide  
26 written notice of its decision to revoke to the well operator or  
27 its agent, which shall become effective upon receipt thereof and  
28 the operator shall immediately plug the well.

29 \* \* \*

30 Section 505. Penalties.



1 (a) Any person who violates any provisions of the act is  
2 guilty of a summary offense and, upon conviction thereof, shall  
3 be sentenced to pay a fine of not more than [\$300] \$10,000 or  
4 undergo imprisonment of not more than 90 days, or both. Each  
5 day's continuance of such violation shall be a separate and  
6 distinct offense.

7 (b) Any person who willfully violates any provisions of this  
8 act or any order of the department issued pursuant to the  
9 provisions of this act is guilty of a misdemeanor and, upon  
10 conviction thereof, shall be sentenced to pay a fine of not more  
11 than [\$5,000] \$150,000 or undergo imprisonment of not more than  
12 one year, or both. Each day's continuance of such violation  
13 shall be a separate distinct offense.

14 (c) The department shall have the authority to institute  
15 prosecutions against any person or municipality under this act.  
16 Section 506. Civil penalties.

17 In addition to proceeding under any other remedy available at  
18 law or in equity for a violation of a provision of this act or a  
19 rule or regulation of the department or any order of the  
20 department, the Environmental Hearing Board, after hearing, may  
21 assess a civil penalty upon a person for such violation. Such a  
22 penalty may be assessed whether or not the violation was  
23 willful. The civil penalty so assessed shall not exceed  
24 [\$25,000, plus \$1,000] \$100,000, plus \$10,500 for each day of  
25 continued violation. In determining the amount of the civil  
26 penalty, the board shall consider the willfulness of the  
27 violation, damage or injury to the natural resources of the  
28 Commonwealth or their uses, endangerment of the safety of  
29 others, costs of remedying the harm, savings resulting to the  
30 person in consequence of such violation and other relevant

factors. It shall be payable to the Commonwealth and shall be collectible in any manner provided at law for the collection of debts. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person but only after same has been entered and docketed of record by the prothonotary of the county where such is situated. The board may, at any time, transmit to the prothonotaries of the respective counties certified copies of all such liens, and it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof.

Section 9. Sections 601(a) and 602 of the act, amended July 2, 1992 (P.L.365, No.78), are amended to read:

Section 601. Well plugging funds.

(a) All fines, civil penalties, permit and registration fees collected under this act are hereby appropriated to the Department of Environmental [Resources] Protection to carry out the purposes of this act.

\* \* \*

Section 602. Local ordinances.

Except with respect to ordinances adopted pursuant to the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, [and], the act of October 4, 1978 (P.L.851, No.166), known as the Flood Plain Management Act, and the act of March 31, 1927 (P.L.98, No.69), known as the Second Class City Zoning Law, all local ordinances and enactments purporting to regulate oil and gas well operations regulated by

1 this act are hereby preempted and superseded to the extent the  
2 ordinances and enactments regulate the method of oil and gas  
3 well operations. No ordinances or enactments adopted pursuant to  
4 the aforementioned acts shall contain provisions which impose  
5 conditions, requirements or limitations on the [same features]  
6 method of oil and gas well operations regulated by this act or  
7 that accomplish the same purposes as set forth in this act. [The  
8 Commonwealth, by this enactment, hereby preempts and supersedes  
9 the regulation of oil and gas wells as herein defined] Nothing  
10 in this act shall affect the traditional power of local  
11 government to regulate zoning and land development of oil and  
12 gas activities as well as other aspects, such as the time and  
13 the place of operations to protect the health, safety and  
14 welfare of the general public through local ordinances and  
15 enactments.

16 Section 10. This act shall take effect in 60 days.