AN ACT

Providing for erosion and sediment control requirements.

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

Section 1. Short title.

This act shall be known and may be cited as the Erosion and Sediment Control Act.

Section 2. 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:

"Administratively complete." Contains the necessary information, maps, fees and other documents requested as part of a permit application process, regardless of whether the
information, maps and other documents would be sufficient to
justify issuance of the permit.

"Agricultural plowing or tilling activity." Earth
disturbance activity involving the preparation and maintenance
of soil for the production of agricultural crops. The term
includes no-till cropping methods.

"Animal heavy use area." Barnyard, feedlot, loafing area,
exercise lot or other similar area on an agricultural operation
where due to the concentration of animals it is not possible to
establish and maintain vegetative cover of a density capable of
minimizing accelerated erosion and sedimentation by usual
planting methods. The term does not include an entrance, pathway
or walkway between areas where animals are housed or kept in
concentration.

"Conservation district." A conservation district, as defined
in section 3(c) of the act of May 15, 1945 (P.L.547, No.217),
known as the Conservation District Law, that has a delegation
agreement executed with the department to administer and enforce
all or a portion of the requirements under 25 Pa. Code Ch. 102
(relating to erosion and sediment control).

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

"Earth disturbance." A construction activity or other human
activity that disturbs the surface of the land.

"Expedited application." An application for a permit that is
signed and sealed by a licensed professional.

"Licensed professional." A professional engineer, landscape
architect, geologist or land surveyor licensed to practice in
this Commonwealth.

"No-till cropping methods." The practice of planting crops
with minimal mechanical tillage.

"Oil and gas activities." Activities associated with oil and gas exploration, production, gathering, processing, treatment operations or transmission facilities.

"Permit." An erosion and sediment control permit required under this act.

Section 3. Erosion and sediment control permits.

(a) Permit requirement.--A person proposing the following activities must obtain an erosion and sediment control permit from the department of a conservation district before commencing the activity:

(1) Oil and gas activities that involve at least five acres of earth disturbance at any one time.

(2) Timber harvesting or road maintenance activities involving at least 25 acres of earth disturbance at any one time.

(3) Activity that does not require a National Pollutant Discharge Elimination System permit under 25 Pa. Code § 102.5 (relating to permit requirements) and which involves at least five acres of earth disturbance at any one time, provided that no permit shall be required for agricultural plowing or tilling activities or animal heavy use areas.

(b) Review and issuance of permit.--

(1) The department or conservation district shall complete a review of a permit application within five business days of receipt to determine whether it is administratively complete and shall enter receipt of the application into the department's publicly accessible online permit tracking system. If a permit application is determined to be incomplete, the applicant shall be notified in writing.
within five business days. The notification shall specify the
deficiency of the permit application.

(2) If a permit application complies with 25 Pa. Code
Ch. 102 (relating to erosion and sediment control) and is
complete as determined by the department or a conservation
district, the department or conservation district shall issue
a permit to the applicant within 43 business days of
determining that the application is administratively complete
or, in the case of an expedited application, within 14
business days of determining that the application is
administratively complete.

(3) (i) If the department determines that the permit
application is technically deficient for failure to
comply with 25 Pa. Code Ch. 102, the department shall
notify the applicant. The notification shall specify the
provision or provisions with which the application does
not comply.

(ii) Nothing in this subsection shall be construed
to extend the permit review time periods contained in
paragraph (2).

(4) The department shall create and implement an
expedited permit process for applications that are signed and
sealed by licensed professionals. Expedited permits may be
utilized for all projects except the following:

(i) Projects in a watershed designated as high
quality or exceptional value under 25 Pa. Code Ch. 93
(relating to water quality standards).

(ii) Projects located entirely in or on a
floodplain.

(iii) Projects on lands that are known to be
currently contaminated by the release of regulated substances as defined in section 103 of the act of May 19, 1995 (P.L.4, No.2), known as the Land Recycling and Environmental Remediation Standards Act.

(iv) Oil, natural gas or natural gas liquids transmission projects.

(5) If a permit application is denied, the department or conservation district shall notify the applicant in writing within five business days of denying the permit application. The notification shall specify the justification for denying the permit application and cite the relevant law or regulation of this Commonwealth that is not sufficiently addressed in the permit.

(6) Failure by the department or a conservation district to issue a final determination on a permit within the time period specified in paragraph (2) shall result in the permit application being deemed approved. The permittee shall be subject and adhere to all relevant statutes and regulations applicable to the permit.

(7) (i) Failure by the department or a conservation district to issue a final determination on a permit within the time period specified in paragraph (2) shall entitle the permit applicant to reimbursement by the department for economic harm caused by the delay in making the final determination.

(ii) The amount of economic harm for which a permit applicant is eligible for reimbursement must be reasonably related to the impact that failure to issue a permit has had on the permit applicant's ability to commence construction operations, and may include the
permit fee, costs incurred in preparing and submitting
the permit application, project financing costs and
equipment rental charges.

(iii) Reimbursement costs shall be payable from the
Clean Water Fund established under section 8 of the act
of June 22, 1937 (P.L.1987, No.394), known as The Clean
Streams Law.

(iv) The department or conservation district shall
have the burden to prove that the reimbursement charges
are not reasonably related to the impact of the
department or conservation district's failure to issue a
permit.

Section 4. Compliance with laws of this Commonwealth.
The department or a conservation district shall utilize a
general permit to implement this act. The general permit shall
impose only those terms that are strictly necessary to ensure
compliance with the laws of this Commonwealth as administered by
the department.

Section 5. Fees.
(a) General rule.--A permit application shall be accompanied
by a $500 administrative filing fee, plus an additional $100 fee
for each disturbed acre. Fees shall be paid to the primary
reviewing entity in the event that both the department and a
conservation district complete the review.

(b) Increase to fees.--No earlier than three years after the
effective date of this section, the Environmental Quality Board
may, by regulation, increase the fees to cover the
administrative costs of processing the permit applications.

Section 6. Quarterly reports.
(a) Contents.--The department shall submit a quarterly
report to the Environmental Resources and Energy Committee of
the Senate and the Environmental Resources and Energy Committee
of the House of Representatives detailing the department's
implementation of this act. The report shall contain the
following:

(1) The number of permit applications received in the
    prior 12 months.

(2) The number of applications approved.

(3) The average time frame from date of submission for
    review of permit applications organized by the regional
    office of the department.

(4) The average time frame from the date of submission
    for technical review of applications organized by the
    regional office of the department.

(5) The number of permit application reviewers on staff
    in the department, organized by regional office of the
    department.

(6) The average workload of each permit application
    reviewer, which average shall be organized by the regional
    office of the department.

(7) Primary reasons for administrative or technical
    deficiencies or permit application denials, including the
    citations to the relevant law or regulation of this
    Commonwealth that are not sufficiently addressed in the
    report, which reasons shall be organized by the regional
    office of the department.

(8) The number of licensed professionals sanctioned by
    the department due to the submission of routinely deficient
    expedited permit applications and the primary reasons for the
    sanctions.
(9) Details, including dates and locations, of professional trainings administered or sponsored by the department related to the permit requirements imposed under this act.

(10) Other relevant information as determined by the department.

(b) Submission.--The initial quarterly report shall be submitted within 60 days of the effective date of this subsection. Subsequent quarterly reports shall be submitted no later than 30 days after the last day of the preceding quarter.

Section 7. Annual evaluation.  
On an annual basis, the department shall commission an evaluation of the erosion and sediment control permit review process. The evaluation shall be conducted by a qualified, third-party entity knowledgeable in the department's permitting application process. The evaluation shall, at a minimum, examine and include the following:

(1) Consistency in application review timeframes and criteria among the department's regional offices and conservation districts.

(2) Adherence by department and conservation district permit review staff to established permit review protocols.

(3) Sufficiency of available professional trainings for department and conservation district permit review staff and the regulated community.

(4) Recommendations on increasing the effectiveness, consistency and predictability of the permit review process.

Section 8. Construction.  
Nothing in this act shall be construed to exempt a person:

(1) seeking to commence a project involving oil and gas
activities that will cause less than five acres of earth
disturbance; and

(2) that is not required to obtain a permit
from complying with other applicable provisions of 25 Pa. Code Ch. 102 (relating to erosion and sediment control).

Section 9. Effective date.

This act shall take effect in 30 days.