

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

**No. 1483** Session of  
1981

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LETTERMAN, GREENWOOD, ITKIN, KANUCK AND McCALL, JUNE 3, 1981

REFERRED TO COMMITTEE ON CONSERVATION, JUNE 3, 1981

AN ACT

1 Amending Title 32 (Forests, Waters and State Parks) of the  
2 Pennsylvania Consolidated Statutes, adding provisions  
3 relating to water resources management and making repeals.

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1 hereby enacts as follows:

2 Section 1. Title 32, act of November 25, 1970 (P.L.707,  
3 No.230), known as the Pennsylvania Consolidated Statutes, is  
4 amended by adding a part to read:

5 TITLE 32

6 FORESTS, WATERS AND STATE PARKS

7 Part

8 III. Water Resources Management

9 PART III

10 PART III. WATER RESOURCES MANAGEMENT

11 Chapter

12 51. General Provisions

13 53. Water Resources Planning

14 55. Withdrawals by Public Water Supply Agencies

15 57. Withdrawals in Protected Areas

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18 CHAPTER 51

19 GENERAL PROVISIONS

20 Subchapter

21 A. Preliminary Provisions

22 B. Intergovernmental Cooperation

23 SUBCHAPTER A

24 PRELIMINARY PROVISIONS

25 Sec.

26 5101. Short title of part.

27 5102. Definitions.

28 5103. Statement of legislative findings.

29 5104. Policy and purposes.

30 § 5101. Short title of part.

1 This part shall be known and may be cited as the "Water  
2 Resources Management Code."

3 § 5102. Definitions.

4 The following words and phrases when used in this part shall  
5 have, unless the context clearly indicates otherwise, the  
6 meanings given them in this section:

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

11 "Acquisition." The act of acquiring or the water rights  
12 acquired.

13 "Board." The Environmental Quality Board of the  
14 Commonwealth.

15 "Department." The Department of Environmental Resources of  
16 the Commonwealth.

17 "General permit." A permit issued by the department pursuant  
18 to this part for which the holder need not file an individual  
19 application.

20 "Ground water." Water beneath the surface of the ground,  
21 whether or not flowing through known and definite channels,  
22 including all water contained in aquifers, artesian and  
23 nonartesian basins, underground water courses and other bodies  
24 of water below the surface of the earth.

25 "Person." Any natural person, partnership, association,  
26 corporation, municipality, municipal authority, receiver or  
27 trustee and any department, board, commission or authority of  
28 the Commonwealth or of the Federal Government, or any other  
29 legal entity whatsoever which is recognized by law as the  
30 subject of rights and duties. Whenever used in a section

1 prescribing and imposing a penalty or sanction, the term  
2 "person" includes the members of an association and the officers  
3 of a corporation, municipality or municipal authority.

4 "Public water supply agency." Any person, partnership,  
5 association, corporation, municipality, municipal authority,  
6 district or other entity supplying or authorized to supply water  
7 to the public.

8 "Reasonable and beneficial use." The use of water for a  
9 useful and productive purpose which is reasonable and consistent  
10 with the public interest, in such quantity and manner as is  
11 necessary for efficient utilization. Beneficial uses include,  
12 but are not limited to, domestic, agricultural, industrial,  
13 commercial, power, municipal, navigation, fish and wildlife and  
14 recreational uses.

15 "Residential domestic use." The use of water for personal  
16 need and household purposes including drinking, bathing,  
17 cooking, laundry and sanitation, heating and cooling of  
18 residences, maintenance of pets and livestock used for household  
19 sustenance and maintenance of residential gardens, orchards and  
20 grounds.

21 "Secretary." The Secretary of Environmental Resources of the  
22 Commonwealth.

23 "State water resources plans." Plans for the management of  
24 water quantity and quality prepared by the Department of  
25 Environmental Resources, or its predecessor agencies, pursuant  
26 to this part, section 1904-A of the act of April 9, 1929  
27 (P.L.177, No.175), known as "The Administrative Code of 1929,"  
28 section 5 of the act of June 22, 1937 (P.L.1987, No.394), known  
29 as "The Clean Streams Law," or other laws applicable as of the  
30 effective date of this part.

1 "Stream" or "watercourse." Any distinct body of water  
2 flowing in a defined channel, bed and banks, whether natural or  
3 artificial, with perennial or intermittent flow, including any  
4 river, creek, slough or canal.

5 "Surface water." Water on the surface of the earth  
6 including, but not limited to, water in any river, stream, water  
7 course, lake, reservoir, pond, spring, swamp or marsh and  
8 diffused surface water, whether natural or artificial.

9 "Water resources." All water on or beneath the surface of  
10 the ground including all surface waters and ground waters.

11 "Water resources of this Commonwealth." All water resources  
12 wholly or partly within, or forming part of the boundary of,  
13 this Commonwealth.

14 "Water rights." The privilege to withdraw, take, divert or  
15 use water resources of this Commonwealth.

16 "Withdraw" or "withdrawal of water." The diversion, removal  
17 or taking of water from surface or ground waters.

18 § 5103. Statement of legislative findings.

19 The General Assembly finds that:

20 (1) The water resources of this Commonwealth are public  
21 natural resources held in trust by the Commonwealth for the  
22 benefit of all of the people. As trustee of these resources,  
23 the Commonwealth has a duty to protect, conserve and manage  
24 the waters of this Commonwealth for the use and enjoyment of  
25 all Pennsylvanians, including generations yet to come.

26 (2) Without adequate planning and management of water  
27 resources, recurring periods of drought and uncontrolled  
28 development of limited resources in some areas threaten to  
29 create water shortages. These shortages render water supplies  
30 incapable of meeting essential needs, cause conflicts between

1 competing users of the common resource, disrupt or damage  
2 economic activities and utility services and contribute to  
3 pollution and unsanitary conditions; all of which are  
4 detrimental to the health, safety and welfare of the people  
5 of Pennsylvania.

6 (3) The agriculture, employment, industry, economic  
7 development, environmental quality and government of the  
8 entire Commonwealth and the health, safety and welfare of its  
9 people are and will continue to be vitally affected by the  
10 use, conservation and management of Pennsylvania's water  
11 resources.

12 (4) Ground and surface waters are interconnected and  
13 part of a single hydrologic resource. Uncoordinated  
14 development and use of those resources, following separate  
15 and often illogical and inconsistent laws, fosters conflicts  
16 between competing users, discourages investment and economic  
17 development and prevents the most efficient utilization of  
18 valuable water resources.

19 (5) The multiple uses of these resources, for municipal,  
20 industrial and agricultural water supply, navigation,  
21 hydroelectric power and energy production, recreation, water  
22 quality maintenance and conservation of fish and wildlife,  
23 are interdependent.

24 § 5104. Policy and purposes.

25 The policy and purpose of this part are to:

26 (1) Assure comprehensive and systematic planning and  
27 management of the Commonwealth's water resources recognizing  
28 that water resources are both finite and renewable.

29 (2) Develop, use and manage water resources to provide  
30 the best possible accommodation and balance among multiple

1 uses and functions in order to assure the greatest benefits  
2 to the people of Pennsylvania.

3 (3) Provide for the conjunctive management of ground and  
4 surface waters which comprise a single hydrologic system.

5 (4) Establish a management system to assure reasonably  
6 secure, quantified water rights in delineated protected  
7 areas.

8 (5) Protect, conserve, develop and utilize water  
9 resources in a manner consistent with the Commonwealth's  
10 duties as trustee of natural resources and the people's right  
11 to pure water and the preservation of the natural, scenic,  
12 historic and aesthetic values of the environment.

13 (6) Provide a coordinated framework for cooperation  
14 between Federal, interstate, state and local government  
15 agencies in the planning and management of water resources.

16 SUBCHAPTER B

17 INTERGOVERNMENTAL COOPERATION

18 Sec.

19 5111. Intergovernmental cooperation and coordination.

20 5112. Administrative agreements with other agencies.

21 § 5111. Intergovernmental cooperation and coordination.

22 The department shall cooperate and coordinate with  
23 appropriate river basin commissions and Federal, interstate,  
24 state, local and other agencies for the purpose of assuring  
25 efficient planning and management of water resources.

26 § 5112. Administrative agreements with other agencies.

27 The department may enter into administrative agreements with  
28 appropriate river basin commissions and Federal, interstate and  
29 other agencies for the following purposes:

30 (1) To facilitate the submission and coordinated review

1 of permit applications.

2 (2) To avoid unnecessary duplication of staff functions  
3 and hearings.

4 (3) To provide for coordinated inspection, monitoring  
5 and enforcement of applicable laws and regulations.

6 (4) To accept delegations of authority from any river  
7 basin commission or Federal or interstate agency relating to  
8 the planning regulation and management of water resources.

9 CHAPTER 53

10 WATER RESOURCES PLANNING

11 Sec.

12 5301. State Water Plan.

13 5302. State Water Plan contents.

14 5303. Regional Water Plan advisory committees.

15 5304. State Water Resources Policy Advisory Committee.

16 5305. Adoption and periodic review of State Water Plan.

17 5306. Water use registration and reporting system.

18 § 5301. State Water Plan.

19 (a) Preparation and adoption of plan.--The department shall  
20 prepare and the board shall adopt a comprehensive State Water  
21 Plan for the immediate and long range development, conservation,  
22 use and management of the water resources of this Commonwealth.

23 (b) Matters considered.--The State Water Plan shall include  
24 all elements of water quantity and quality management in order  
25 to assess and formulate that combination of policies, programs  
26 and projects which can address the total water quantity and  
27 quality needs and objectives of the Commonwealth in the most  
28 cost-effective manner with due consideration of significant  
29 economic, social and environmental impacts.

30 § 5302. State Water Plan contents.

1 (a) General rule.--The State Water Plan shall include:

2 (1) A complete inventory of the water resources of this  
3 Commonwealth including an assessment of their reliable yields  
4 for instream and withdrawal uses during periods of drought.

5 (2) An identification of instream use needs including  
6 flows required to support and sustain navigation, fisheries,  
7 wildlife, a balanced aquatic environment, important  
8 recreational uses, hydroelectric generation, waste  
9 assimilative capacity and the values of streams included  
10 within the State or Federal wild and scenic rivers systems.

11 (3) An assessment and projection of existing and future  
12 withdrawal use demands for domestic, public water supply,  
13 agricultural, electric generation and energy production,  
14 commercial, industrial and other uses.

15 (4) An analysis of the water quality of the water  
16 resources of this Commonwealth including point and nonpoint  
17 sources of pollution, waste treatment needs and the impact of  
18 water quality on the supply and uses of such waters.

19 (5) An assessment of flood damage and storm water  
20 management problems.

21 (6) An assessment of navigation needs and the means for  
22 restoration, development and improvement of transportation by  
23 water.

24 (7) An assessment of potential opportunities to develop  
25 and improve hydroelectric power generation at existing and  
26 new dams and reservoirs and policies to assure equitable  
27 distribution of power derived from water resources of this  
28 Commonwealth.

29 (8) An assessment of water resources needs to serve  
30 environmental and ecological purposes including the

1 protection of important wetlands.

2 (9) An assessment of both structural and nonstructural  
3 alternatives to address identified problems or needs  
4 including an economic and environmental evaluation and  
5 screening of potential Federal, State, regional or other  
6 projects affecting water resources of this Commonwealth.

7 (10) A review and evaluation of laws, regulations,  
8 policies and institutional arrangements for the development,  
9 use, conservation, distribution, marketing and management of  
10 water resources.

11 (11) Recommendations for policies, programs, projects  
12 and other mechanisms to implement the provisions of the plan.

13 (b) Basin water budgets.--The State Water Plan shall include  
14 a basin water budget for each significant hydrologic unit within  
15 which existing or future demands are found or projected to  
16 approach or exceed the limits of available water resources.

17 (1) Each basin water budget shall include:

18 (i) A balanced combination of instream and  
19 withdrawal water uses.

20 (ii) The quantities of water available for each  
21 major category of use in the foreseeable future.

22 (iii) Reserves for future water uses in order to  
23 provide flexibility in addressing changes in water use  
24 patterns over the effective life of the State Water Plan.

25 (2) The balanced combination of uses and water budget  
26 allocations for categories of use shall reflect the needs and  
27 priorities of the Commonwealth and the affected region.

28 § 5303. Regional Water Plan advisory committees.

29 (a) Membership.--A regional water plan advisory committee  
30 shall be established in each major region. Each such committee

1 shall be composed of a balanced membership of persons, appointed  
2 by the secretary, representing county and local government  
3 officials, agriculture, industry, labor, professional,  
4 conservation, environmental and citizen interests. The secretary  
5 shall seek suggestions and nominations for membership on each  
6 committee from appropriate officials, agencies and organizations  
7 which represent such interests.

8 (b) Powers and duties.--Each regional water plan advisory  
9 committee shall advise the department regarding development of  
10 the State Water Plan in the region. Utilizing an open process  
11 for public participation, each committee shall periodically  
12 consider and provide to the department guidance and  
13 recommendations regarding regional interests and priorities and  
14 provisions of the State Water Plan relating to the region.  
15 Unless inconsistent with overriding Statewide interests and  
16 priorities, regional interests and priorities should be  
17 reflected in the State Water Plan and applicable basin water  
18 budgets for the region.

19 § 5304. State Water Resources Policy Advisory Committee.

20 (a) Membership.--The State Water Resources Policy Advisory  
21 Committee shall be composed of not more than 50 members,  
22 appointed by the secretary for terms of two years, representing  
23 a balance of interests concerned with water resources, including  
24 Federal, State and local government officials; industry, energy,  
25 commercial and public water supply operators; labor,  
26 professional organizations, conservation, public health,  
27 environmental, recreational and civic organizations and private  
28 citizens. The secretary shall seek suggestions and nominations  
29 for membership on the committee from appropriate officials,  
30 agencies and organizations which represent such interests.

1 (b) Duties.--The committee shall:

2 (1) Discuss and advise the department regarding legal,  
3 institutional and policy issues relating to water resources  
4 planning and management.

5 (2) Review and advise the department on all significant  
6 elements of the State Water Plan and proposed rules,  
7 regulations, standards and procedures issued pursuant to this  
8 part.

9 (3) Serve as liaison between the Commonwealth and  
10 persons interested in water and assist in focusing public  
11 awareness and discussion of important water resources  
12 management issues.

13 § 5305. Adoption and periodic review of State Water Plan.

14 (a) Adoption.--Following provision to the affected regional  
15 water plan advisory committees and State Water Resources Policy  
16 Advisory Committee of an adequate opportunity to review, comment  
17 and submit recommendations, and after notice and public hearing,  
18 the board shall adopt and periodically amend the State Water  
19 Plan.

20 (b) Periodic review and revision.--The State water planning  
21 process shall be continuous and the State Water Plan shall be  
22 updated on a regular annual basis, and more often as necessary,  
23 to reflect changing conditions. At least once every ten years,  
24 following each census, the State Water Plan shall be  
25 comprehensively reviewed and revised.

26 (c) Acceptance of existing plans and studies.--Pending  
27 development and adoption of plans following the process set  
28 forth in this chapter, those water quality and quantity plans  
29 and studies adopted or in preparation pursuant to other laws  
30 applicable as of the effective date of this chapter shall be

1 deemed to constitute the State Water Plan for purposes of this  
2 part.

3 § 5306. Water use registration and reporting system.

4 (a) General rule.--In order to provide accurate information  
5 as a basis of future water planning, the board may by regulation  
6 establish requirements for:

7 (1) The registration of existing and new ground or  
8 surface water withdrawals which equal or exceed an average  
9 rate of 10,000 gallons per day in any 30-day period.

10 (2) The maintenance of records and submission of  
11 periodic reports on actual water withdrawals and uses by  
12 persons responsible for withdrawals subject to registration.

13 (b) Confidentiality of information.--Upon cause shown by any  
14 person that a record or information provided to the department  
15 under this section, if made public, would disclose production  
16 methods or data, sales figures or processes unique to that  
17 person, or would adversely affect the competitive position of  
18 that person by revealing trade secrets, the department shall  
19 consider such records or information confidential. Nothing in  
20 this part shall be construed to prevent disclosure of any record  
21 or information:

22 (1) To a Federal, State or river basin commission agent  
23 as necessary for purposes of administering any Federal or  
24 State water resources management law or compact.

25 (2) When relevant, in any proceeding under this part or  
26 other State law.

27 CHAPTER 55

28 WITHDRAWALS BY PUBLIC WATER SUPPLY AGENCIES

29 Sec.

30 5501. Scope of chapter.

- 1 5502. Permit requirement.
- 2 5503. Existing withdrawals and water rights.
- 3 5504. General permits.
- 4 5505. Application review criteria for existing uses.
- 5 5506. Application review criteria for new uses.
- 6 5507. Criteria for competing applications.
- 7 5508. Emergency permits.
- 8 5509. Permit conditions.
- 9 5510. Nature of water rights authorized by permit.
- 10 5511. Duration and renewal of permits.
- 11 5512. Review and modification of permits.
- 12 5513. Eminent domain.

13 § 5501. Scope of chapter.

14 The provisions of this chapter shall apply to the withdrawal  
15 of water resources of this Commonwealth by public water supply  
16 agencies and to the acquisition of water rights by public water  
17 supply agencies.

18 § 5502. Permit requirement.

19 No public water supply agency may withdraw water resources of  
20 this Commonwealth, or acquire any water rights, without a prior  
21 written individual or general permit from the department.

22 § 5503. Existing withdrawals and water rights.

23 (a) Agencies with prior approvals.--Any public water supply  
24 agency which on the effective date of this chapter holds a valid  
25 permit, order of confirmation or approval to withdraw water  
26 resources or to acquire water rights issued pursuant to the  
27 following acts or compacts shall be deemed to comply with the  
28 permit requirements of section 5502 (relating to permit  
29 requirement).

30 (1) The act of June 14, 1923 (P.L.704, No.294), entitled

1 "An act relating to limited power permits and limited water  
2 supply permits from the Water Supply Commission of  
3 Pennsylvania and the conditions thereof, to the flooding and  
4 use by holders of limited power permits of islands owned by  
5 the Commonwealth, to the unlawful use for water or steam  
6 power development of dams and changes in streams hereafter  
7 constructed or made otherwise than under limited power  
8 permits, and to proceedings for the enforcement of this act."

9 (2) The act of June 24, 1939 (P.L.842, No.365), entitled  
10 "An act relating to the acquisition of rights to divert water  
11 from rivers, streams, natural lakes, and ponds, or other  
12 surface waters within the Commonwealth or partly within and  
13 partly without the Commonwealth; defining various words and  
14 phrases; vesting in the Water and Power Resources Board  
15 certain powers and authorities for the conservation, control  
16 and equitable use of the waters within the Commonwealth in  
17 the interests of the people of the Commonwealth; making  
18 available for public water supply purposes, water rights  
19 heretofore or hereafter acquired but not used; providing for  
20 hearings by the Water and Power Resources Board and for  
21 appeals from its decisions; fixing fees; granting to all  
22 public water supply agencies heretofore or hereafter created  
23 the right of eminent domain as to waters and the land covered  
24 by said waters; repealing all acts or parts of acts  
25 inconsistent herewith, including Act No. 109, Pamphlet Laws  
26 152, approved April 13, 1905, Act No. 307, Pamphlet Laws 455,  
27 approved June 7, 1907, Act No. 64, Pamphlet Laws 258,  
28 approved April 8, 1937."

29 (3) The Delaware River Basin Compact, authorized under  
30 the act of July 7, 1961 (P.L.518, No.268), known as the

1 "Delaware River Basin Compact."

2 (4) The Susquehanna River Basin Compact, authorized  
3 under the act of July 17, 1968 (P.L.368, No.181), referred to  
4 as the Susquehanna River Basin Compact Law.

5 Within the time limits established by regulation adopted by the  
6 board, the department shall review all such existing withdrawals  
7 and water rights pursuant to section 5505 (relating to  
8 application review criteria for existing uses) and issue to each  
9 public water supply agency a new or modified permit reflecting  
10 all applicable provisions of this chapter.

11 (b) Agencies without prior approvals.--

12 (1) Any public water supply agency which on the  
13 effective date of this chapter withdraws water resources or  
14 has previously acquired water rights but does not as of that  
15 date hold a valid permit, order of confirmation or approval  
16 pursuant to the acts listed in subsection (a) shall within  
17 two years of the effective date of this part apply for a  
18 permit. The permit applications shall be reviewed pursuant to  
19 section 5505.

20 (2) Failure of a public water supply agency to apply for  
21 a permit to continue an existing withdrawal or water rights  
22 within two years of the effective date of this part, shall be  
23 deemed to constitute an abandonment of the withdrawal,  
24 diversion or water rights. To revive the withdrawal or water  
25 rights, the public water supply shall apply for and obtain a  
26 permit under the provisions of section 5506 (relating to  
27 application review criteria for new uses).

28 (c) Compliance with chapter.--All such existing withdrawals  
29 and the use by public water supply agencies of all existing  
30 water rights shall comply with the operating, monitoring and all

1 other provisions of this chapter.

2 § 5504. General permits.

3 (a) Basis for issuance.--In accordance with rules adopted by  
4 the board, the department may issue general permits on a  
5 watershed, basin, regional or Statewide basis for any category  
6 of withdrawal or acquisition of water rights if the department  
7 determines that the withdrawal or acquisition can be adequately  
8 regulated and managed utilizing standardized specifications and  
9 conditions or will have an insignificant effect upon water  
10 resources.

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

17 (c) Registration of rights.--The department shall require  
18 the registration of any withdrawal or acquisition of water  
19 rights developed or operated pursuant to a general permit.

20 (d) Publication.--Any general permit shall be published in  
21 the Pennsylvania Bulletin at least 30 days prior to the  
22 effective date of the permit.

23 § 5505. Application review criteria for existing uses.

24 (a) General rule.--The department shall issue a permit for  
25 the continuation of an existing withdrawal and water rights if  
26 the department determines:

27 (1) The existing withdrawal or exercise of water rights  
28 is a reasonable and beneficial use and is reasonably  
29 necessary for the present and future needs of the area served  
30 by the public water supply agency.

1 (2) There is sufficient water available for all existing  
2 uses including existing withdrawals by other public water  
3 supply agencies.

4 (3) The withdrawal or acquisition of water rights was  
5 allowable under statutory or common law of this Commonwealth.

6 (4) The public water supply agency is implementing, or  
7 will implement within a specified period, reasonable water  
8 conservation measures.

9 (b) Limitation on withdrawals and rights.--Where the  
10 department finds that the quantity of existing withdrawals  
11 exceeds the reliable yield of the affected water resources or  
12 that water rights held by two or more public water supply  
13 agencies are otherwise in conflict, the department may require  
14 adjustments in the quantities withdrawn, condition withdrawals  
15 and modify the water rights as necessary to assure that the  
16 water resources are equitably shared and efficiently used in the  
17 public interest.

18 § 5506. Application review criteria for new uses.

19 Prior to issuing an individual or general permit for a new or  
20 increased withdrawal or acquisition of new or additional water  
21 rights, the department shall determine that:

22 (1) The proposed withdrawal or acquisition of water  
23 rights is a reasonable and beneficial use and is reasonably  
24 necessary for the present and future needs of the area served  
25 by the public water supply agency, considering the most  
26 efficient use of existing sources of water supply.

27 (2) The proposed withdrawal or acquisition of water  
28 rights is consistent with the State water resources plans and  
29 any applicable river basin plans adopted by a river basin  
30 commission created by interstate compact.

1 (3) The methods of development and use will incorporate  
2 reasonable conservation practices and measures and be  
3 consistent with efficient utilization of water resources.

4 (4) The proposed withdrawal will not interfere with  
5 navigation, conflict with rights held by other public water  
6 supply agencies or adversely affect public health and safety.

7 (5) Other presently existing legal uses of water will be  
8 adequately protected or compensated.

9 (6) The proposed withdrawal is consistent with the  
10 public interest and the reasonable protection of public  
11 natural resources and the environment.

12 § 5507. Criteria for competing applications.

13 (a) General rule.--If two or more applications which  
14 otherwise comply with the criteria of section 5506 (relating to  
15 application review criteria for new uses) are pending and in  
16 competition for water resources which are inadequate to serve  
17 both or all, or for any other reason are in conflict, preference  
18 shall be given to the use or combination of uses which best  
19 serves the public interest.

20 (b) Determining public interest.--In determining which use  
21 best serves the public interest, the department shall consider:

22 (1) The economic, social and environmental values and  
23 impacts of the proposed use.

24 (2) Any alternative sources of supply available to each  
25 of the competing public water supply agencies.

26 § 5508. Emergency permits.

27 In the event of an emergency requiring immediate action to  
28 protect health, safety or the public interest or to avoid  
29 substantial injury to persons or property, and the circumstances  
30 do not allow a complete review of applications and

1 determinations as required by this chapter, the department may  
2 issue an emergency permit authorizing such withdrawals or  
3 acquisition of water rights as it deems necessary and proper  
4 under the circumstances, pending review and determination as  
5 otherwise required by this chapter.

6 § 5509. Permit conditions.

7 (a) General rule.--The department may impose such permit  
8 terms and conditions regarding development, operation and  
9 monitoring of withdrawals and acquisition of water rights as are  
10 reasonably necessary to protect the public interest in water  
11 resources and to assure compliance with this chapter and other  
12 laws administered by the department and any river basin  
13 commission created by interstate compact.

14 (b) Limitation on rights in emergency.--The withdrawal and  
15 use of water or exercise of water rights authorized by permit  
16 may be suspended or made subject to special limits or conditions  
17 in the event of an emergency declared pursuant to the applicable  
18 emergency provisions of this part, the provisions of Part V of  
19 Title 35 (relating to emergency management services) or any  
20 interstate compact.

21 § 5510. Nature of water rights authorized by permit.

22 (a) Quantity, source and use.--Permits issued to public  
23 water supply agencies shall authorize the withdrawal of or  
24 acquisition of water rights in specified quantities of water  
25 from designated sources at specific locations for use in  
26 specified service areas.

27 (b) Time limitations.--Permits may be issued authorizing  
28 withdrawals only during specified time periods or seasons, or  
29 under specified flow or ground water conditions, where such  
30 conditional use would promote more efficient utilization of

1 water resources.

2 (c) Granting special rights.--Without regard to common law  
3 rules applicable prior to the effective date of this chapter,  
4 permits may authorize a public water supply agency to withdraw,  
5 transport and use surface water beyond riparian land, and to  
6 withdraw, transport and use ground water beyond overlying land,  
7 if the withdrawal and use otherwise complies with the  
8 requirements of this chapter. The holder of any water rights  
9 damaged by such withdrawal, transport and use shall be entitled  
10 to compensation from the public water supply agency in  
11 accordance with the act of June 22, 1964 (1st Sp.Sess., P.L.84,  
12 No.6), known as the "Eminent Domain Code," or through the  
13 provision of alternative water supplies in accordance with  
14 conditions imposed on the permit issued to the public water  
15 supply agency.

16 § 5511. Duration and renewal of permits.

17 (a) Duration.--Each individual and general permit granted to  
18 a public water supply agency shall be issued for a specified  
19 period, not exceeding 50 years, determined in accordance to  
20 regulations adopted by the board.

21 (b) Criteria for determining duration.--In determining the  
22 appropriate duration of permits, the following factors shall be  
23 considered:

24 (1) The time period required to repay and retire bonds  
25 and loans used to finance the public water supply facilities  
26 or to amortize investments made in such facilities.

27 (2) The source of supply and time periods applicable to  
28 permits held by other users of the same water resources.

29 (c) Renewal.--Applications for renewal of permits shall be  
30 filed within the time periods established by regulation adopted

1 by the board.

2 § 5512. Review and modification of permits.

3 (a) Periodic review.--The department shall conduct a  
4 periodic review, at least once every ten years, of all  
5 outstanding permits to public water supply agencies in each  
6 basin or watershed for the purpose of determining that:

7 (1) Each authorized withdrawal is being utilized for the  
8 purposes and areas intended and in accordance with the terms  
9 and conditions of the permit.

10 (2) The water withdrawn is not wasted and reasonable  
11 conservation measures are being implemented.

12 (3) Any conflicts or impacts previously unforeseen are  
13 identified and resolved.

14 (b) Modification.--The department may at any time modify,  
15 suspend or revoke a permit or impose additional conditions to  
16 the extent the department determines is necessary to:

17 (1) Respond to new information or changed hydrologic  
18 conditions.

19 (2) Protect the public interest.

20 (3) Assure compliance with this chapter or other laws  
21 administered by the department or any river basin commission  
22 created by interstate compact.

23 § 5513. Eminent domain.

24 (a) General rule.--Except as provided in subsection (b), any  
25 public water supply agency incorporated under the laws of this  
26 Commonwealth which holds a permit issued by the department under  
27 this chapter shall have the power and may exercise the right of  
28 eminent domain in accordance with the act of June 22, 1964 (1st  
29 Sp.Sess., P.L.84, No.6), known as the "Eminent Domain Code," to  
30 condemn and appropriate any waters, water rights, lands or other

1 property necessary to implement the withdrawal or diversion  
2 authorized by the permit.

3 (b) Limitation.--The right of eminent domain shall not be  
4 exercised to condemn or appropriate waters or water rights which  
5 serve an existing and continuing residential domestic use unless  
6 the public water supply agency provides to the domestic user an  
7 adequate alternate supply of potable water.

8 CHAPTER 57

9 WITHDRAWALS IN PROTECTED AREAS

10 Sec.

11 5701. Scope of chapter.

12 5702. Determination of protected areas.

13 5703. Management plan and regulations.

14 5704. Withdrawal permits.

15 5705. Existing withdrawals.

16 5706. General permits within protected area.

17 5707. Application review criteria for existing withdrawals.

18 5708. Application review criteria for new or increased  
19 withdrawals.

20 5709. Criteria for competing applications.

21 5710. Emergency permits.

22 5711. Permit conditions.

23 5712. Nature of water rights authorized by permit.

24 5713. Duration and renewal of permits.

25 5714. Review and modification of permits.

26 5715. Voluntary sales and transfers of permit water rights.

27 5716. Eminent domain.

28 § 5701. Scope of chapter.

29 The provisions of this chapter shall apply to the declaration  
30 and delineation of protected areas and to the management of

1 water withdrawals in protected areas.

2 § 5702. Determination of protected areas.

3 (a) General rule.--In accordance to the procedures set forth  
4 in this section, the board may determine and delineate as a  
5 protected area a watershed or hydrogeologic unit where the board  
6 finds that demands upon ground or surface water resources have  
7 developed or threaten to develop to such a degree as to:

8 (1) Exceed the reliable yield of the water resources.

9 (2) Create a shortage of water having sufficient quality  
10 to meet needs.

11 (3) Impair or have substantial adverse impacts upon  
12 instream uses, water quality or the environment.

13 (4) Conflict with the requirements or effectuation of  
14 State water resources plans giving due consideration to both  
15 water quantity and quality impacts.

16 (b) Procedures.--The following procedures shall be followed  
17 in the determination and delineation of protected areas:

18 (1) Proposals for determination of a protected area may  
19 be initiated by any of the following:

20 (i) The department as a result of State water  
21 resources plans or other information.

22 (ii) Request from a county, municipality or regional  
23 water resources advisory committee.

24 (iii) Recommendation from an interstate river basin  
25 commission created by compact or Federal or State law.

26 (iv) Concurrent resolution adopted by the General  
27 Assembly.

28 (2) Following investigation by the department and after  
29 public notice and public hearing, the board shall:

30 (i) Determine whether conditions warrant declaration

1 and delineation of a protected area.

2 (ii) Delineate the appropriate geographic limits of  
3 the protected area and water resources to be protected.

4 (iii) Forward its findings and management plan to  
5 the Governor.

6 (3) The determination and delineation of a protected  
7 area shall become effective upon approval by the Governor.

8 § 5703. Management plan and regulations.

9 (a) Adoption.--Within delineated protected areas, the board  
10 shall adopt a management plan and regulations to manage water  
11 withdrawals in a manner designed to:

12 (1) Assure development, use and conservation of limited  
13 water resources consistent with State water resources plans  
14 and policies and purposes of this part.

15 (2) Protect the just and equitable interests of all  
16 users of the water resources.

17 (3) Balance and reconcile alternative and conflicting  
18 uses.

19 (b) Content.--The management plans and regulations may  
20 include but shall not be limited to:

21 (1) A water withdrawal permit system for significant  
22 withdrawals as provided in sections 5704 (relating to  
23 withdrawal permits) through 5714 (relating to review and  
24 modification of permits).

25 (2) A water budget for the balanced use of available  
26 resources.

27 (3) Standards for surface and ground water development  
28 and well-spacing.

29 (4) Standards for conservation measures to be  
30 implemented by water users.

1           (5) Requirements for the interconnection of users in  
2           order to facilitate sharing and most effective utilization of  
3           limited supplies.

4 § 5704. Withdrawal permits.

5           (a) General rule.--Within any delineated protected area, no  
6           person shall, without a prior written individual or general  
7           permit from the department, develop, operate or expand:

8                 (1) Any ground water withdrawal where the total of all  
9                 withdrawals developed or used by the person from a single  
10                ground water basin equals or exceeds an average of 10,000  
11                gallons per day in any 30-day period.

12               (2) Any surface water withdrawal where:

13                     (i) the total of all withdrawals developed or used  
14                     by the person from a surface water source equals or  
15                     exceeds an average of 10,000 gallons per day in any 30-  
16                     day period; or

17                     (ii) the withdrawal, in combination with withdrawals  
18                     by all users of a surface stream, exceeds at any location  
19                     5% of the seven-day, ten-year low flow of the stream.

20           (b) Public water supply agencies.--Any withdrawal within a  
21           delineated protected area by a public water supply agency  
22           commenced after the effective date of a protected area  
23           delineation shall be subject to the permit requirements of this  
24           chapter. Any withdrawal permit issued to a public water supply  
25           agency under this chapter shall also constitute a permit  
26           pursuant to Chapter 55 (relating to withdrawals by public water  
27           supply agencies).

28 § 5705. Existing withdrawals.

29           (a) General rule.--

30                 (1) Any person who on the effective date of a protected

1 area determination has developed and commenced a withdrawal  
2 subject to the permit requirements of section 5704 (relating  
3 to withdrawal permits) shall apply for a permit within two  
4 years of the effective date of the protected area  
5 determination. The permit applications shall be reviewed  
6 pursuant to section 5707 (relating to application review  
7 criteria for existing withdrawals).

8 (2) Failure to apply for a permit within two years of  
9 the effective date of the protected area determination shall  
10 be deemed to constitute an abandonment of the withdrawal. To  
11 revive the withdrawal, a permit shall be obtained under the  
12 provisions of section 5708 (relating to application review  
13 criteria for new and increased withdrawals).

14 (b) Public water supply agencies.--Any permit issued to a  
15 public water supply agency pursuant to Chapter 55 (relating to  
16 withdrawals by public water supply agencies) for a withdrawal  
17 commenced prior to the effective date of a protected area  
18 determination shall be deemed to constitute a permit under  
19 section 5704. Any such permit shall be subject to such  
20 modification or the imposition of additional conditions as the  
21 department finds are necessary to implement the management plan  
22 for the protected area.

23 (c) Compliance with chapter.--All such existing withdrawals  
24 shall comply with the operating, monitoring and all other  
25 provisions of this chapter.

26 § 5706. General permits within protected area.

27 (a) Basis for issuance.--In accordance with rules adopted by  
28 the board, the department may issue general permits within a  
29 protected area for any category of withdrawal if the department  
30 determines that the withdrawal can be adequately regulated and

1 managed utilizing standardized specifications and conditions or  
2 will have an insignificant effect upon water resources in the  
3 protected area.

4 (b) Content.--General permits shall specify such siting,  
5 operating, monitoring and other conditions as are necessary to  
6 conserve and manage water resources in the protected area and to  
7 protect water rights, health, safety and the environment under  
8 which withdrawals can be developed and operated without applying  
9 for and obtaining individual permits.

10 (c) Registration of withdrawal.--The department shall  
11 require the registration of any withdrawal developed or operated  
12 pursuant to a general permit.

13 (d) Publication.--All general permits shall be published in  
14 the Pennsylvania Bulletin at least 30 days prior to the  
15 effective date of the permit.

16 § 5707. Application review criteria for existing withdrawals.

17 (a) General rule.--The department shall issue an initial  
18 permit for the continuation of an existing withdrawal if the  
19 department determines:

20 (1) The existing withdrawal is a reasonable and  
21 beneficial use.

22 (2) The withdrawal was allowable under the common law or  
23 prior statutory law of this Commonwealth.

24 (3) There is sufficient water available for all existing  
25 withdrawals.

26 (4) The user is implementing, or will implement within a  
27 specified period, reasonable water conservation measures.

28 (b) Limitation on withdrawals.--Where the quantity of  
29 existing withdrawals in a protected area is found to exceed the  
30 reliable yield of resources in the area, the department shall

1 require adjustments in the quantities withdrawn and condition  
2 withdrawals as necessary to assure that limited water resources  
3 in the protected area are equitably shared in accordance with  
4 the management plan for the protected area.

5 (c) Compensation for reduced water supply.--In the event  
6 that the department refuses to issue a permit upon timely  
7 application for an existing withdrawal which was allowable under  
8 the common law of this Commonwealth, where the user has  
9 implemented or will implement reasonable conservation measures  
10 and for which there are available adequate water resources to  
11 supply all existing withdrawals, the user shall be entitled to  
12 reasonable compensation based upon damages sustained in the  
13 lessening of the user's water supply.

14 § 5708. Application review criteria for new or increased  
15 withdrawals.

16 Prior to issuing an individual or general permit for a new or  
17 increased withdrawal within a protected area, the department  
18 shall determine that:

19 (1) The proposed withdrawal is a reasonable and  
20 beneficial use and is reasonably necessary to serve the  
21 present and future needs of the applicant.

22 (2) There is sufficient water available for the proposed  
23 withdrawal and other presently existing legal use of water in  
24 the protected area will be adequately protected.

25 (3) The proposed withdrawal is consistent with the  
26 management plan for the protected area, State water resources  
27 plans and any applicable river basin plans adopted by a river  
28 basin commission created by interstate compact.

29 (4) The methods of development and use will incorporate  
30 reasonable conservation practices and measures and be

1 consistent with efficient utilization of water resources in  
2 the protected area.

3 (5) The proposed withdrawal and use is consistent with  
4 the reasonable protection of public natural resources and the  
5 environment.

6 § 5709. Criteria for competing applications.

7 (a) General rule.--If two or more applications which  
8 otherwise comply with the criteria of section 5708 (relating to  
9 application review criteria for new or increased withdrawals)  
10 are pending and in competition for water resources which are  
11 inadequate to serve both, or for any other reason are in  
12 conflict, preference shall be given to the use or combination of  
13 uses which best serves the public interest.

14 (b) Determining public interest.--In determining which use  
15 best serves the public interest, the department shall consider:

16 (1) The economic, social and environmental values and  
17 impacts of the proposed uses.

18 (2) Any alternative sources of supply available to each  
19 of the competing applicants.

20 (3) The overall balance of water uses in the protected  
21 area.

22 § 5710. Emergency permits.

23 In the event of an emergency requiring immediate action to  
24 protect health, safety or the public interest or to avoid  
25 substantial injury to persons or property, and the circumstances  
26 do not allow a complete review of applications and  
27 determinations as required by this chapter, the department may  
28 issue an emergency permit authorizing such withdrawals as it  
29 deems necessary and proper under the circumstances, pending  
30 review and determination as otherwise required by this chapter.

1 § 5711. Permit conditions.

2 (a) General rule.--The department may impose such permit  
3 terms and conditions regarding development, operation and  
4 monitoring of withdrawals and uses as are reasonably necessary  
5 to protect the public interest in the water resources of the  
6 protected area and to assure compliance with this chapter and  
7 other laws administered by the department or any river basin  
8 commission created by interstate compact.

9 (b) Limitation on rights in emergency.--The withdrawal,  
10 development, operation and use of water authorized by permit may  
11 be suspended or made subject to special limits or conditions in  
12 the event of an emergency declared pursuant to the applicable  
13 emergency provisions of this part, the provisions of Part V of  
14 Title 35 (relating to emergency management services) or any  
15 interstate compact.

16 § 5712. Nature of water rights authorized by permit.

17 (a) Quantity, source and use.--Permits issued under this  
18 chapter shall authorize the withdrawal of specified quantities  
19 of water from designated sources at specific locations for  
20 specified uses including the authorized amount of consumptive  
21 and nonconsumptive uses.

22 (b) Time limitations.--Permits may be issued authorizing  
23 withdrawals only during specified time periods or seasons, or  
24 under specified flow or ground water conditions, where such  
25 conditional use would promote more efficient utilization of  
26 water resources.

27 (c) Granting special rights.--Without regard to common law  
28 rules applicable prior to the effective date of a protected area  
29 determination, permits issued under this chapter may authorize  
30 the withdrawal and use of surface water beyond riparian land, or

1 the withdrawal and use of ground water beyond overlying land, if  
2 such withdrawal and use otherwise complies with the requirements  
3 of this chapter.

4 § 5713. Duration and renewal of permits.

5 (a) Duration.--Each individual and general permit under this  
6 chapter shall be issued for a specified period determined in  
7 accordance with regulations adopted by the board. The duration  
8 of an initial permit issued for any use, other than a public  
9 water supply or public utility, shall not exceed 30 years. The  
10 duration of an initial permit for a public water supply or  
11 public utility shall not exceed 50 years.

12 (b) Criteria for determining duration.--The duration of  
13 permits shall be based on a reasonable system of classification  
14 according to type of use. In determining the appropriate  
15 duration of permits, the following factors shall be considered:

16 (1) The time period required to repay and retire loans  
17 and bonds used to finance the facilities and the general  
18 amortization periods for investments in each type of use.

19 (2) The source of supply and time periods applicable to  
20 permits held by other uses of the same water resources.

21 (c) Renewal.--Applications for renewal of permits shall be  
22 filed within the time periods established by regulations adopted  
23 by the board.

24 § 5714. Review and modification of permits.

25 (a) Periodic review.--The department shall conduct a  
26 periodic review, at least once every five years, of all  
27 outstanding permits in a protected area for the purpose of  
28 determining that:

29 (1) Each authorized withdrawal is being utilized for the  
30 purposes intended and in accordance with the terms and

1 conditions of the permit.

2 (2) The water withdrawn is not wasted and reasonable  
3 conservation measures are being implemented.

4 (3) Any conflicts or impacts previously unforeseen are  
5 identified and resolved.

6 (b) Modification.--The department may at any time modify,  
7 suspend or revoke a permit or impose additional conditions to  
8 the extent the department determines is necessary to:

9 (1) Respond to new information or changed hydrologic  
10 conditions.

11 (2) Protect the public interest.

12 (3) Assure compliance with this chapter or other laws  
13 administered by the department or any river basin commission  
14 created by interstate compact.

15 § 5715. Voluntary sales and transfers of permit water rights.

16 (a) General rule.--Prior to the expiration of any permit  
17 under this chapter, the holder of a permit may sell or transfer  
18 any portion of the unexpired permit water rights to another user  
19 subject to the written approval of the department.

20 (b) Approval by department.--The department shall review any  
21 proposed sale or transfer of permit water rights and approve the  
22 sale or transfer, including any change in the type or location  
23 of use, if it finds that:

24 (1) The sale, transfer or change will not cause injury  
25 to another water user.

26 (2) The withdrawal and new use is a reasonable and  
27 beneficial use.

28 (3) The transfer and new use are consistent with the  
29 management plan for the protected area, State water resources  
30 plan and any river basin plan adopted by a river basin

1 commission created by interstate compact.

2 § 5716. Eminent domain.

3 (a) General rule.--Except as provided in subsection (b), any  
4 government agency or public utility created by or incorporated  
5 under the laws of this Commonwealth which holds a permit under  
6 this chapter authorizing a withdrawal and use to serve the  
7 public shall have the power and may exercise the right of  
8 eminent domain in accordance with the act of June 22, 1964 (1st  
9 Sp.Sess., P.L.84, No.6), known as the "Eminent Domain Code," to  
10 condemn and appropriate any waters or water rights, including  
11 water rights granted by a permit previously issued pursuant to  
12 this chapter, necessary to implement a withdrawal and use  
13 authorized by the permit.

14 (b) Limitation.--The right of eminent domain shall not be  
15 exercised in a protected area to condemn or appropriate waters  
16 or water rights which serve an existing and continuing  
17 residential domestic use unless the government agency or public  
18 utility provides to the domestic user an adequate alternative  
19 supply of potable water.

20 CHAPTER 59

21 WATER RESOURCES EMERGENCIES

22 Sec.

23 5901. State Water Resources Emergency Plan.

24 5902. Local water supply emergency planning.

25 5903. Emergency management actions.

26 § 5901. State Water Resources Emergency Plan.

27 (a) Adoption.--The department, in consultation with the  
28 Pennsylvania Emergency Management Agency, the Public Utility  
29 Commission and other interested agencies, shall develop and  
30 adopt a State Water Resources Emergency Plan for effective

1 response to periods of drought or other water emergency  
2 conditions which may cause a water supply shortage threatening  
3 the health, safety, welfare or economic well-being of the  
4 citizens of this Commonwealth.

5 (b) Contents.--The plan shall include but shall not be  
6 limited to:

7 (1) Criteria for identifying the onset of a water  
8 emergency and various stages of severity based upon such  
9 factors as stream flows, ground water levels, available  
10 reservoir storage, precipitation and season.

11 (2) Provisions establishing the relative priorities of  
12 water uses in various stages of an emergency based upon a  
13 reasonable system of classification according to type of use,  
14 water sources, method of withdrawal and other relevant  
15 factors.

16 (3) Management actions to be taken at various stages of  
17 an emergency to assure equitable sharing of available  
18 supplies and conservation of water resources.

19 § 5902. Local water supply emergency planning.

20 The board may by regulation establish requirements for:

21 (1) The development and submission of emergency  
22 contingency plans by public water supply agencies and by  
23 significant water users who operate withdrawals of ground or  
24 surface waters in excess of 500,000 gallons per day in any  
25 30-day period.

26 (2) The minimum content of such plans including  
27 provisions to identify emergency conditions which might  
28 threaten a water shortage, to implement conservation programs  
29 and to implement effective measures to respond to a  
30 threatened shortage in a manner consistent with the State

1 Water Resources Emergency Plan.

2 (3) The review of such emergency contingency plans by  
3 the department.

4 § 5903. Emergency management actions.

5 (a) General rule.--Whenever a drought, water resources or  
6 water supply emergency is declared by the Governor pursuant to  
7 Part V of Title 35 (relating to emergency management services)  
8 or by a river basin commission pursuant to an interstate  
9 compact, the department may undertake the emergency management  
10 actions to assure equitable sharing of available supplies and  
11 conservation of water resources necessary to meet essential  
12 needs in a manner consistent with the State Water Resources  
13 Emergency Plan.

14 (b) Measures authorized.--Emergency management actions may  
15 include but are not limited to the following measures:

16 (1) Order the temporary reduction or suspension of  
17 nonessential and low-priority water uses.

18 (2) Order temporary modification of conditions in  
19 existing water withdrawal permits including restrictions in  
20 the timing or quantity of water use.

21 (3) Supervise the storage and release of water in all  
22 public and private reservoir facilities subject to State  
23 regulation.

24 (4) Cooperate with Federal agencies responsible for  
25 operation of Federal reservoir facilities to develop and  
26 implement emergency schedules for storage and release of  
27 waters.

28 (5) Require the emergency interconnection of public and  
29 private water systems and prescribe the delivery of water  
30 through such interconnections.

1 (6) Mandate implementation of specific water  
2 conservation measures.

3 (7) Regulate the diversion and withdrawal of waters in  
4 designated emergency areas in excess of such quantities as  
5 may be prescribed by order or regulation including the  
6 establishment of requirements for emergency withdrawal  
7 permits.

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

15 CHAPTER 61

16 ADMINISTRATION AND ENFORCEMENT

17 Subchapter

18 A. Regulations and Administration

19 B. Enforcement

20 SUBCHAPTER A

21 REGULATIONS AND ADMINISTRATION

22 Sec.

23 6101. Regulations and standards.

24 6102. Applications, permits and records.

25 6103. Public hearings.

26 6104. Administrative procedure and judicial review.

27 6105. Investigation and searches.

28 6106. Water Resources Fund.

29 § 6101. Regulations and standards.

30 (a) Adoption.--The board shall adopt such regulations and

1 standards for the development, management, use and conservation  
2 of water resources and administration of the water management  
3 program as necessary and proper to carry out the purposes of  
4 this part. The regulations shall include but are not limited to  
5 rules establishing:

6 (1) Criteria and procedures for obtaining permits.

7 (2) Requirements for the content of permit applications.

8 (3) Requirements for monitoring, inspection and  
9 reporting of water withdrawals, diversions and usage by  
10 regulated water users.

11 (4) Reasonable registration, permit application and  
12 annual permit fees for the purpose of reimbursing the  
13 Commonwealth for the costs of administration of this part.

14 (b) Matters considered.--In adopting regulations pursuant to  
15 this part, the board shall consider:

16 (1) The conjunctive use and management of ground and  
17 surface waters as part of a single hydrologic system within  
18 watersheds as a whole.

19 (2) The application of sound resource management  
20 principles and reasonable conservation practices.

21 (3) The state of scientific, hydrologic, geologic and  
22 technological knowledge.

23 (4) The economic, social and environmental impact upon  
24 this Commonwealth and its citizens.

25 § 6102. Applications, permits and records.

26 (a) Public records.--Except as provided in subsection (b) or  
27 in the act of June 21, 1957 (P.L.390, No.212), referred to as  
28 the Right-to-Know Law, all registrations, permit applications,  
29 permits, reports and other information obtained by the  
30 department under the provisions of this part shall be a matter

1 of public record and shall be available for inspection at the  
2 department's offices.

3 (b) Confidentiality of information.--Upon cause shown by any  
4 person that a record or information to which the department has  
5 access under this part, if made public, would disclose  
6 production methods or data, sales figures or processes unique to  
7 that person or would adversely affect the competitive position  
8 of that person by revealing trade secrets, the department shall  
9 consider such records or information confidential in the  
10 administration of this part. Nothing in this part shall be  
11 construed to prevent disclosure of any record or information:

12 (1) To a Federal, State or river basin commission agent  
13 as necessary for purposes of administering any Federal or  
14 State water resources management law or interstate compact.

15 (2) When relevant, in any proceeding under this part or  
16 other State law.

17 § 6103. Public hearings.

18 The department may, at its discretion, hold a public hearing  
19 on any permit application under Chapter 55 (relating to  
20 withdrawals by public water supply agencies) or 57 (relating to  
21 withdrawals in protected areas), or on any other action taken  
22 under this part, for purposes of obtaining information and  
23 public comment.

24 § 6104. Administrative procedure and judicial review.

25 (a) General rule.--Any person aggrieved by any action of the  
26 department under this part shall have the right within 30 days  
27 of receipt of notice of such action to appeal to the  
28 Environmental Hearing Board. Any appeal of a general permit  
29 issued pursuant to section 5504 (relating to general permits) or  
30 5706 (relating to general permits within protected area) shall

1 be filed within 30 days of the date of publication of the  
2 general permit in the Pennsylvania Bulletin. Hearings under this  
3 part and any appeal shall be in accordance with section 1921-A,  
4 act of April 9, 1929 (P.L.177, No.175), known as "The  
5 Administrative Code of 1929," and Title 2 (relating to  
6 administrative law and procedure).

7 (b) Supersedeas.--An appeal to the board of any action of  
8 the department shall not act as a supersedeas. A supersedeas may  
9 be granted by the board upon a showing by the petitioner:

10 (1) That irreparable harm to the petitioner or other  
11 interested parties will result if the supersedeas is denied.

12 (2) That there is a likelihood of the petitioner's  
13 success on the merits.

14 (3) That the grant of a supersedeas will not result in  
15 irreparable harm to the Commonwealth.

16 The board may grant a supersedeas subject to such security as it  
17 may deem proper.

18 § 6105. Investigation and searches.

19 (a) General rule.--The department is authorized to make such  
20 inspection, conduct such tests or sampling or examine books,  
21 papers and records pertinent to any matter under investigation  
22 pursuant to this part as it deems necessary to determine  
23 compliance with this part. For this purpose, the duly authorized  
24 agents and employees of the department are authorized at all  
25 reasonable times to enter and examine any property, facility,  
26 operation or activity.

27 (b) Cooperation of person in charge.--The owner, operator or  
28 other person in charge of the property, facility, operation or  
29 activity, upon presentation of proper identification and purpose  
30 for inspection by the agents or employees of the department,

1 shall give the agents and employees free and unrestricted entry  
2 and access.

3 (c) Compelling entry and inspection.--Upon refusal to grant  
4 entry or access, the agent or employee may obtain a search  
5 warrant or other suitable order authorizing entry and  
6 inspection. It is sufficient probable cause to issue a search  
7 warrant authorizing examination and inspection if there is  
8 probable cause to believe that the object of the investigation  
9 is subject to regulation under this part and access, examination  
10 or inspection is necessary to enforce the provisions of this  
11 part.

12 (d) Application for search warrant.--Application for such  
13 warrant or order may be made to any district justice or court  
14 each of which is hereby given jurisdiction to issue a search  
15 warrant or other suitable order authorizing such entry and  
16 inspection.

17 § 6106. Water Resources Fund.

18 (a) Establishment and use.--All fines and civil penalties  
19 collected under this part shall be paid into the State Treasury  
20 into a special fund known as the Water Resources Fund which  
21 shall be administered by the department for the following  
22 purposes:

23 (1) To protect the citizens of this Commonwealth from  
24 water shortages and to respond to droughts and other water  
25 resources emergencies.

26 (2) To assist in financing water resources planning and  
27 conservation programs.

28 (b) Disbursements.--Disbursements from the fund shall be  
29 made in accordance to regulations adopted by the board.

30

SUBCHAPTER B

ENFORCEMENT

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Sec.

- 6111. Unlawful conduct.
- 6112. Enforcement orders.
- 6113. Civil remedies.
- 6114. Civil penalties.
- 6115. Criminal penalties.
- 6116. Summary proceedings.
- 6117. Preservation of rights and remedies.

§ 6111. Unlawful conduct.

(a) General rule.--It is unlawful for any person to:

(1) Violate or assist in the violation of any of the provisions of this part or of any rules and regulations adopted under this part.

(2) Fail to comply with any order by the department.

(3) Develop, increase or operate a water withdrawal or acquire water rights contrary to the terms and conditions of a general or individual permit issued under this part.

(4) Attempt to obtain a permit by misrepresentation or failure to disclose all relevant facts.

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

§ 6112. Enforcement orders.

(a) Issuance.--The department may issue such orders as are necessary to aid in the enforcement of the provisions of this part. The orders shall include but shall not be limited to orders modifying, suspending or revoking permits and orders requiring persons to cease any activity which is in violation of

1 the provisions of this part. An order may be issued if the  
2 department finds that a person is in violation of any provision  
3 of this part or of any rule or regulation issued under this  
4 part. The department may, in its order, require compliance with  
5 such terms and conditions as are necessary to effect the  
6 purposes of this part.

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

10 (c) Contempt.--Any person violating or failing to comply  
11 with any order of the department shall be deemed to be in  
12 contempt of such order. Upon petition by the department, the  
13 Commonwealth Court or the court of common pleas of the county  
14 where the unlawful conduct occurred or is occurring shall, if it  
15 finds after hearing or otherwise that the respondent is not in  
16 compliance with the order, adjudge the respondent in contempt of  
17 the order and shall assess civil penalties in an amount not less  
18 than \$100 nor exceeding \$10,000 per violation plus an amount not  
19 exceeding \$500 for each continuing day of violation. Where the  
20 respondent has not as of the date of hearing before the court  
21 complied with the order of the department or board, the court  
22 shall specifically order the respondent to immediately and fully  
23 comply with the order and may issue any further order as may be  
24 appropriate.

25 (d) Other remedies preserved.--The right of the department  
26 to issue an order under this section is in addition to any  
27 penalty which may be imposed or any action taken pursuant to  
28 this part. The failure to comply with any such order is hereby  
29 declared to be unlawful conduct and a nuisance.

30 § 6113. Civil remedies.

1 (a) Availability of remedies for abatement of nuisances.--  
2 Any activity or condition declared by this part to be unlawful  
3 conduct shall be restrained or prevented in the manner provided  
4 by law or equity for abatement of public nuisances and the  
5 expense thereof shall be recoverable from the violator in such  
6 manner as may now or hereafter be provided by law.

7 (b) Actions by government units.--In addition, suits to  
8 restrain or prevent any unlawful conduct as defined in this part  
9 or to compel action to discontinue any unlawful conduct may be  
10 instituted in equity or at law in the name of the Commonwealth  
11 upon relation of the Attorney General or upon relation of any  
12 district attorney of any county or upon relation of the  
13 solicitor of any affected municipality after 30 days' notice has  
14 first been served upon the Attorney General of the intention of  
15 the district attorney or solicitor to so proceed. The  
16 proceedings may be prosecuted in the Commonwealth Court or in  
17 the court of common pleas of the county where the activity has  
18 taken place or the public is affected. Except in cases of  
19 emergency where, in the opinion of the court, immediate  
20 abatement of the unlawful conduct is required to protect the  
21 public interest, the court may in its decree fix a reasonable  
22 time during which the person responsible for the unlawful  
23 conduct may abate and correct the violation. The expense of the  
24 proceedings shall be recoverable from the violator in such  
25 manner as may now or hereafter be provided by law.

26 (c) Damages recoverable by private citizens.--Any person  
27 injured by the unlawful development or operation of a withdrawal  
28 which violates the provisions of Chapter 55 (relating to  
29 withdrawals by public water supply agencies), 57 (relating to  
30 withdrawals in protected areas) or 59 (relating to water

1 resources emergencies) may, in addition to any other remedy  
2 provided under this part, recover damages caused by the  
3 violation from the person operating the withdrawal.

4 § 6114. Civil penalties.

5 (a) Assessment.--The Environmental Hearing Board, in an  
6 action instituted before it by the department, may assess a  
7 civil penalty upon any person for:

8 (1) A violation of Chapter 55 (relating to withdrawals  
9 by public water supply agencies) or 57 (relating to  
10 withdrawals in protected areas) or any rule, regulation or  
11 permit issued under those chapters.

12 (2) A violation of any order of the department.

13 (3) A violation of any regulation or order relating to  
14 water resources management issued under Chapter 59 (relating  
15 to water resources emergencies) or Part V of Title 35  
16 (relating to emergency management services).

17 The penalty may be assessed whether or not the violation was  
18 willful. The civil penalty assessed shall not exceed \$10,000,  
19 plus \$500 for each day of continued violation. In determining  
20 the amount of the civil penalty, the board shall consider the  
21 willfulness of the violation, damage or injury to the water  
22 resources and other water users, the cost of restoration of the  
23 water resources, the cost to the Commonwealth of enforcing the  
24 provisions of this part against such person and other relevant  
25 factors. The assessment of the civil penalty shall be made after  
26 hearing unless hearing is specifically waived by the respondent.

27 (b) Collection.--Civil penalties shall be payable to the  
28 Commonwealth and shall be collectible in any manner provided by  
29 law for the collection of debts. If any person liable to pay any  
30 penalty neglects or refuses to pay the penalty after demand, the

1 amount, together with interest and any costs that may accrue,  
2 shall be a lien in favor of the Commonwealth upon the property,  
3 both real and personal, of that person but only after the amount  
4 of the lien has been entered and docketed of record by the  
5 prothonotary of the county where the property is situated. The  
6 board may, at any time, transmit to the prothonotaries of the  
7 respective counties certified copies of all such liens and it  
8 shall be the duty of each prothonotary to enter and docket the  
9 liens of record in his office and to index the liens as  
10 judgments are indexed, without requiring the payment of costs as  
11 a condition precedent to their entry.

12 (c) Liability of officers of corporation, etc.--Any officer  
13 of any corporation, association or municipality, who knowingly,  
14 willfully, recklessly or with gross negligence engages in or  
15 authorizes unlawful conduct as defined in this part shall be  
16 subject to the imposition of civil penalties in accordance with  
17 subsection (a). Any civil penalty imposed upon the officer shall  
18 be in addition to and separate from any civil penalty imposed  
19 upon the corporation, association or municipality. Nothing in  
20 this subsection shall be construed to affect the liability or  
21 duty of any officer of a corporation, association or  
22 municipality for the purposes of criminal penalties imposed  
23 under this part or for the purposes of any other rights or  
24 remedies.

25 (d) Other remedies preserved.--The right of the department  
26 to seek and of the hearing board to assess civil penalties shall  
27 be in addition to any other remedy available at law or equity  
28 for such violations or unlawful conduct.

29 § 6115. Criminal penalties.

30 (a) Penalty for unlawful conduct.--Any person who engages in

1 unlawful conduct as defined in this part commits a summary  
2 offense and, upon conviction, shall be sentenced to pay a fine  
3 of not less than \$50 nor more than \$1,000 for each separate  
4 offense and, in default of the payment of such fine, to  
5 imprisonment for a period of not more than 60 days.

6 (b) Subsequent offenses.--Any person who, within two years  
7 after a conviction of a summary offense as provided in  
8 subsection (a), engages in unlawful conduct as defined in this  
9 part is guilty of a misdemeanor of the third degree and, upon  
10 conviction, shall be sentenced to pay a fine of not less than  
11 \$500 nor more than \$5,000 for each separate offense or to  
12 imprisonment for a period of not more than one year, or both.

13 (c) Separate offenses.--Each day of continued violation of  
14 any provision of this part or any rule or regulation or order of  
15 the department issued pursuant to this part shall constitute a  
16 separate offense under subsections (a) and (b).

17 § 6116. Summary proceedings.

18 (a) Venue.--All summary proceedings under the provisions of  
19 this part may be brought before any district justice of the  
20 county where the unlawful conduct has occurred or the public  
21 affected.

22 (b) Appeals.--In the case of any appeal from any such  
23 conviction, the district attorney of the county shall represent  
24 the interests of the Commonwealth.

25 § 6117. Preservation of rights and remedies.

26 (a) Penalty not estoppel to other remedies.--The collection  
27 of any penalty under the provisions of this part shall not be  
28 construed as estopping the Commonwealth, any municipality or  
29 other authorized agency from proceeding in courts of law or  
30 equity to abate unlawful conduct or nuisances under existing

1 law.

2 (b) Remedies additional and cumulative.--It is declared to  
3 be the purposes of this part to provide additional and  
4 cumulative remedies to protect the public interest in water  
5 resources of this Commonwealth.

6 Section 2. (a) The following acts and supplements thereto  
7 are repealed:

8 The act of June 14, 1923 (P.L.700, No.293), entitled "An act  
9 authorizing the condemnation and appropriation of lands, waters,  
10 and other property by public service companies holding limited  
11 power permits and limited water supply permits granted by the  
12 Water Supply Commission of Pennsylvania, and providing a method  
13 for the assessment of damages arising from such appropriation,"  
14 insofar as it relates to public water supply agencies, water  
15 supply projects and limited water supply permits.

16 The act of June 14, 1923 (P.L.704, No.294), entitled "An act  
17 relating to limited power permits and limited water supply  
18 permits from the Water Supply Commission of Pennsylvania and the  
19 conditions thereof, to the flooding and use by holders of  
20 limited power permits of islands owned by the Commonwealth, to  
21 the unlawful use for water or stream power development of dams  
22 and changes in streams hereafter constructed or made otherwise  
23 than under limited power permits, and to proceedings for the  
24 enforcement of this act," insofar as it relates to water supply  
25 agencies, water supply projects and limited water supply  
26 permits.

27 The act of June 24, 1939 (P.L.842, No.365), entitled "An act  
28 relating to the acquisition of rights to divert water from  
29 rivers, streams, natural lakes, and ponds, or other surface  
30 waters within the Commonwealth or partly within and partly

1 without the Commonwealth; defining various words and phrases;  
2 vesting in the Water and Power Resources Board certain powers  
3 and authorities for the conservation, control and equitable use  
4 of the waters within the Commonwealth in the interests of the  
5 people of the Commonwealth; making available for public water  
6 supply purposes, water rights heretofore or hereafter acquired  
7 but not used; providing for hearings by the Water and Power  
8 Resources Board and for appeals from its decisions; fixing fees;  
9 granting to all public water supply agencies heretofore or  
10 hereafter created the right of eminent domain as to waters and  
11 the land covered by said waters; repealing all acts or parts of  
12 acts inconsistent herewith, including Act No. 109, Pamphlet Laws  
13 152, approved April 13, 1905, Act No. 307, Pamphlet Laws 455,  
14 approved June 7, 1907, Act No. 64, Pamphlet Laws 258, approved  
15 April 8, 1937."

16 (b) All other acts or parts of acts inconsistent with this  
17 act are repealed to the extent of such inconsistency.

18 Section 3. The provisions of this act shall not affect any  
19 suit or prosecution pending or to be instituted to enforce any  
20 right or penalty or punish any offense or abate any violation  
21 under the authority of any act or part thereof repealed by this  
22 act.

23 Section 4. This act shall take effect in 60 days.