AN ACT

1 Providing for legionnaires' disease prevention and reporting and
2 imposing duties on the Department of Environmental Protection
3 and the Department of Health.
4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:
6 Section 1. Short title.
7 This act shall be known and may be cited as the Legionnaires'
8 Disease Prevention and Reporting Act.
9 Section 2. Definitions.
10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:
13 "Covered building." A building that meets any of the
14 following criteria:
15 (1) A health care facility where patient stays exceed 24
16 hours.
17 (2) A building that contains one or more areas for the
18 purpose of housing or treating occupants receiving treatment
for burns, chemotherapy, solid organ transplantation or bone
marrow transplantation.

(3) A building that contains one or more areas for the
purpose of housing or treating occupants that are
immunocompromised or at-risk, on medications that weaken the
immune system or have renal disease, diabetes or chronic lung
disease.

(4) A building that contains a whirlpool or spa either
in the building or on the site.

(5) A building that is more than 10 stories high,
including any level that is below grade.

(6) A building that includes multiple housing units with
one or more centralized potable water-heater systems.

(7) A building identified by the owner or designee as
being for the purpose of housing occupants over 65 years of
age.

(8) A building containing open-circuit and closed-
circuit cooling towers or evaporative condensers that provide
cooling or refrigeration, or both, for the heating, venting,
air-conditioning or refrigeration system or other systems or
devices in the building.

(9) A building that contains ornamental fountains,
misters, atomizers, air washes, humidifiers or other
nonpotable water systems or devices that release water
aerosols in the building or on the site.

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

"Health care facility." As defined in section 802.1 of the
act of July 19, 1979 (P.L.130, No.48), known as the Health Care
Facilities Act.
"Legionnaires' disease." A pulmonary disease caused by the Legionella bacterium.

"Public water system." As defined in section 3 of the PSDWA.

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

Section 3. Powers and duties of Environmental Quality Board. In consultation with the Department of Health, the Environmental Quality Board may adopt rules and regulations under the PSDWA, as necessary, to require disinfectant requirements that exceed the provisions of section 6(a) or testing requirements of public water systems under the PSDWA to minimize the growth and transmission of Legionella bacteria and requirements for the monitoring of public water systems during construction activities that may impact public water systems.

Section 4. Powers and duties of department.

(a) Public drinking water supply program.--The department shall amend the public drinking water supply program established under section 5 of the PSDWA to incorporate the requirements under sections 3 and 6 of this act.

(b) Enforcement.--

(1) The department shall enforce the drinking water standards established under this act.

(2) In implementing and enforcing the provisions of this act, including monitoring and reporting regarding a covered building, the powers and duties under section 5(b), (c), (d), (e), (f), (g) and (h) of the PSDWA shall apply.

(c) Samples and testing.--Upon receipt of notification from the Department of Health under section 5(a), the department shall sample and test the public water system for the presence of Legionella bacteria at all locations identified by the
Department of Health. The following shall apply:

(1) A Legionella culture analysis must be performed by a laboratory that is approved to perform the analysis by the department's Environmental Laboratory Accreditation Program.

(2) The laboratory under paragraph (1) must have certification through the Environmental Legionella Isolation Techniques Evaluation (ELITE) Program of the Centers for Disease Control and Prevention or an internationally recognized Legionella identification proficiency program.

(d) Further testing.--The department shall conduct, or require the owner or operator of the applicable public water system to conduct, further testing to confirm the presence of Legionella bacteria in any source in which the bacteria is detected through initial testing under this subsection, as the department determines to be necessary.

(e) Qualified professionals.--When testing for the Legionella bacteria is required under this act, the department shall ensure that the sampling shall be conducted by qualified water safety and management professionals certified in accordance with ASSE Series 12000-2018, Professional Qualifications Standard for Infection Control Risk Assessment for All Building Systems.

(f) Publication of notice requirements.--Not later than 120 days after the effective date of this subsection, in consultation with the Department of Health, the department shall transmit notice to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin of the form and manner of the notice required under section 6(b), including the specific information to be included in that notice.

Section 5. Powers and duties of Department of Health.
For every reported diagnosis of Legionnaires' disease, the Department of Health shall immediately provide notification to the department of the diagnosis in a manner that is compliant with the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936). The notification shall include addresses where the individual diagnosed with Legionnaires' disease resided, frequently visited or was employed in the 14 days immediately prior to the individual's diagnosis.

Section 6. Duties of owner or operator of public water system.

(a) Residuals and testing.--Notwithstanding any other provision of law, the owner or operator of a public water system shall:

   (1) Maintain a minimum free chlorine residual of 0.5 milligrams per liter or a minimum combined chlorine residual of 1.0 milligrams per liter in all active parts of the distribution system at all times. For purposes of this paragraph, maintaining the residual shall be based on 95% of samples monitored weekly at the total coliform rule sites.

   (2) Conduct disinfectant residual testing at frequent and regular intervals to determine the amount and type of detectable disinfectant residual existing at different points in the public water system.

(b) Notice.--

   (1) The owner or operator of a public water system shall provide a timely written notice, in a form and manner as determined by the department under section 4(f), to all residential, commercial and institutional customers and residents served by the public water system and located in an affected area of disruptions in the water distribution system.
that could result in increased levels of Legionella bacteria being present in the public water system.

(2) The notice under this subsection shall include, but not be limited to, the following:

(i) Notification of planned or unplanned events that reduce water delivery pressure below 20 pound-force per square inch, or 140 kilopascal, caused by, but not limited to, new construction tie-ins, replacement of valves, hydrants or meters, pumping failures, pipeline breaks or other system repairs or emergency conditions that may affect Legionella bacteria in the water distribution system and temporarily increase the level of Legionella bacteria in the public water system.

(ii) The estimated length of time that the level of Legionella bacteria may remain elevated, as determined by the department.

(iii) General information on the possible sources of Legionella bacteria in the public water system and the health effects of Legionnaires' disease and related illnesses to at-risk populations.

(iv) Measures that consumers can take to reduce or eliminate exposure to Legionella bacteria, including, but not limited to, flushing water lines during and after completion of construction work, removing and cleaning faucet aerator screens and showerheads and installing a water filter or water treatment device certified to remove Legionella bacteria.

(v) Recommendations for severely immunocompromised individuals who wish to take extra measures to avoid waterborne Legionella and other types of infection,
including, but not limited to, bringing water to a full
boil for one minute, use of a point-of-use personal use,
end-of-tap or under-sink filter or use of bottled water
as described in "Guidance for People with Severely
Weakened Immune Systems" by the Environmental Protection

(3) If a public water system serves a municipality in
which the primary language of 10% or more of the residents is
a language other than English, the owner or operator of the
public water system shall provide the notice required under
this subsection in both English and the other language to the
residents.

(4) The owner or operator of a public water system shall
not be required to provide the notice required under this
subsection until the department has published the public
notice required under this section.

Section 7. Duties of owner or operator of covered building.

(a) Management program and plan.--

(1) Not later than one year after the effective date of
this subsection, the owner or operator of a covered building
shall implement a water management program to minimize the
growth and transmission of Legionella bacteria in the water
system of the covered building, consistent with the American
Society of Heating, Refrigeration, and Air Conditioning
Engineers (ASHRAE) Standard 188-2018 or comparable standards
adopted by a nationally recognized, accepted and appropriate
organization.

(2) A copy of the sampling and management plan and
sampling results shall be retained for at least three years
and provided to the department and the Department of Health
(3) The owner or operator of a covered building shall make the water management program available upon request to an employee of the department, the Department of Health or any other department or agency with license or inspection authority for the covered building.

(b) Procedures.—Consistent with Standard 188-2018 under subsection (a)(1), the water management program team must establish procedures to confirm initially and on an ongoing basis that the Legionnaires' disease risk management plan is implemented as designed and that, when implemented as designed, the Legionnaires' disease risk management plan controls the hazardous conditions throughout the building water systems.

(c) Sampling and analysis.—In addition to the sampling required by the water management plan, an owner or operator of a covered building shall conduct Legionella culture sampling and analysis of the potable water system in a time frame to be determined by the department upon any of the following:

(1) A determination by the department that one or more cases of Legionnaires' disease are, or may be, associated with the covered building.

(2) Any other conditions specified by the department or the Department of Health.

(d) Reviews.—The owner or operator of a covered building shall annually review its sampling and water management plan and shall conduct an additional review under any of the following conditions:

(1) If one or more cases of Legionnaires' disease are, or may be, associated with the covered building.

(2) Upon completion of any construction, modification or
repair activities that may affect the potable water system of
the covered building.

(3) Upon expansion or relocation of the covered
building's hematopoietic stem cell transplant and solid organ
transplant units.

(4) Any other conditions specified by the department or
the Department of Health.

(e) Covered buildings with cooling tower systems.--For
covered buildings with cooling tower systems, the owner or
operator shall obtain or update a maintenance program and plan
for each cooling tower developed in accordance with Standard
188-2018 under subsection (a)(1). In addition, the maintenance
program and plan shall include the following elements:

(1) A schedule for routine bacteriological culture
sampling and analysis to assess microbiological activity at
intervals not to exceed 30 days while the cooling tower is in
use and that requires additional bacteriological culture
sampling and analysis, as needed, to validate process
adjustments.

(2) A schedule for routine Legionella culture sampling
and analysis within 14 days of seasonal start-up and,
thereafter, at intervals not to exceed 90 days while the
cooling tower is in use. Cooling towers in use year-round
must sample at intervals not to exceed 90 days and within two
weeks after start-up following maintenance.

(3) In addition to the routine Legionella culture
sampling and analysis required under this subsection,
conditions that require immediate Legionella culture sampling
and analysis, which shall include, but are not limited to,
(i) Power failure of sufficient duration to allow for the growth of bacteria.

(ii) Loss of biocide treatment of sufficient duration to allow for the growth of bacteria.

(iii) Failure of conductivity control, or any other control methods, to maintain proper cycles of concentration.

(iv) A determination by the department or local health department that one or more cases of Legionnaires' disease is, or may be, associated with the cooling tower, based upon epidemiologic data or laboratory testing.

(v) Any other conditions specified by the department or the d of Health.

(4) Provisions requiring immediate and appropriate action, including remedial action, in response to bacteriological and Legionella culture analyses.

(5) Provisions requiring that any Legionella culture analyses must be performed in accordance with section 4(c).

(6) A shutdown and disinfection plan for removing or permanently discontinuing use of a cooling tower.

(7) Provisions requiring treatment and manual or automated flushing of any piping, basin, sump or wetted surface during idle conditions.

(8) Provisions requiring cleaning and disinfection prior to start-up of a stagnant cooling tower that has been shut down without treatment and recirculation for more than five consecutive days.

Section 8. Covered building water systems.

(a) Development of rules and regulations.--Not later than 180 days after the effective date of this subsection, in
consultation with the Department of Health and a public stakeholder group that shall be comprised of no more than five public members, including one representative of a public health organization dedicated to eradicating Legionnaires' disease and one representative of an organization representing owners or operators of public water systems, the department shall adopt rules and regulations applicable to the water systems of covered buildings to implement the provisions of this act.

(b) Contents.--

(1) The rules and regulations adopted under this section shall include requirements for the monitoring and testing for Legionella bacteria in the water system of covered buildings. 

(2) In potable water systems, the sampling and management plan must include at a minimum:

(i) Legionella culture sampling sites as determined by the environmental assessment.

(ii) Provisions requiring Legionella culture sampling and analysis at intervals not to exceed 90 days for the first year following adoption of the sampling and management plan. The following shall apply:

(A) Thereafter, the plan shall include provisions for annual Legionella culture sampling and analysis. 

(B) The plan shall further require that those portions of any potable water system that serve hematopoietic stem cell transplant or solid organ transplant patients shall continue to be sampled and analyzed at intervals not to exceed 90 days.

(iii) Provisions requiring actions in response to Legionella culture analysis results, including all
responsive actions required and specific time frames for such actions.

(c) Sample sites.--

(1) Sample sites shall include, but not be limited to, the following locations:

(i) One sample of the inlet cold water supply at the first available tap.

(ii) One sample from the return piping of the circulated potable water heating system.

(iii) One sample from the outlet of a heating system.

(iv) At least three samples collected from each floor as follows:

(A) One sample from the tap closest to first delivery of hot water from the riser.

(B) One sample from the middle of the water system.

(C) One sample from the last outlet before the water returns to the piping that conveys water back to the heater.

(D) During an investigation of Legionnaires' disease, samples from the portion of the water supply that serves locations in the covered building that housed affected patients or residents.

(2) If risers supply multiple circulation loops with each loop providing water to a group of rooms, sample sites shall be designated to represent each loop.

(3) One additional random sample shall be collected from each floor when wings have extensive lengths of piping and complex paths.
During the initial building assessment, a surface sample shall be performed at locations representing the middle or end of the hot water line on each floor.

Section 9. Public nuisance.

(a) Violation.--A violation of a provision of this act, rule or regulation of the department, order of the department or term or condition of a permit shall constitute a public nuisance.

(b) Liability.--A person or municipality committing a violation as described in subsection (a) shall be liable for the costs of abatement of any pollution and any public nuisance caused by the violation.

(c) Jurisdiction.--The Environmental Hearing Board and a court of competent jurisdiction shall have jurisdiction over actions to recover the costs of abatement of a public nuisance under this act.

(d) Abatement.--An activity or condition that is declared by this act to be a public nuisance, or that is otherwise in violation of this act, shall be abatable in the manner provided by law or equity for the abatement of public nuisances.

(e) Equitable remedies.--The department may proceed in equity to abate the nuisance or restrain or prevent a violation of this act.

Section 10. Penalties and remedies.

(a) Duty, penalty and remedy.--It shall be the duty of a person to proceed diligently to comply with an order issued under this act. If the person fails to proceed diligently or fails to comply with the order within the time, if any, as may be specified, the person shall be guilty of contempt and shall be punished by the court in an appropriate manner. For this purpose, application may be made by the department to
Commonwealth Court, which shall have jurisdiction over the matter.

(b) Actions.--A person having an interest that is or may be adversely affected may commence a civil action on the person's own behalf to compel compliance with this act or a rule, regulation, order or permit issued under this act against any of the following:

(1) The department, if there is alleged a failure of the department to perform an act that is not discretionary with the department. Commonwealth Court shall have jurisdiction over this action.

(2) Another person alleged to be in violation of a provision of this act or a rule, regulation, order or permit issued under this act. The following shall apply:

(i) Notwithstanding any other provision of law, a court of common pleas shall have jurisdiction over this action.

(ii) Venue for this action shall be as specified under the Rules of Civil Procedure concerning actions in assumpsit.

(c) Specific penalties.--

(1) A person who violates a provision of this act, rule or regulation of the department, order of the department or term or condition of a permit issued under this act is guilty of a summary offense and, upon conviction, shall be subject to a fine of not less than $50 nor more than $5,000, and costs, for each separate offense. In default of the payment of the fine or costs, the person shall be subject to imprisonment for not less than 30 days nor more than 90 days.

(2) A person who willfully or negligently violates a
provision of this act, rule or regulation of the department, order of the department or term or condition of a permit issued under this act is guilty of a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than $1,250 nor more than $12,500 for each separate offense or to imprisonment for a period of not more than one year, or both.

(3) A person who, after a conviction of a misdemeanor for a violation within two years as provided in paragraph (2), willfully or negligently violates a provision of this act, rule or regulation of the department, order of the department or term or condition of a permit issued under this act is guilty of a misdemeanor of the second degree and, upon conviction, shall be subject to a fine of not less than $1,250 nor more than $25,000 for each offense or to imprisonment for a period of not more than two years, or both.

(d) Pre-enforcement conference.--Notwithstanding any other provision of this act, before the department shall institute a criminal proceedings against a person under subsection (c), the department shall, in writing, provide the person with an opportunity for a pre-enforcement conference.

(e) Civil penalties.--In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act, rule or regulation of the department, order of the department or term or condition of a permit issued under this act, the department may assess a civil penalty upon a person for the violation. The following shall apply:

(1) The penalty may be assessed whether or not the violation was willful or negligent.
(2) When the department assesses a civil penalty, the department shall inform the person of the amount of the penalty.

(3) The person charged with the penalty shall then have 30 days to pay the penalty in full or, if the person wishes to contest the amount of the penalty or the fact of the violation, the person shall within the 30-day period, file an appeal of the action with the Environmental Hearing Board.

(4) Failure to appeal within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(5) The maximum civil penalty which may be assessed under this section shall be $5,000 per day for each violation.

(6) Each violation for each separate day and each violation of a provision of this act, rule or regulation of the department, order of the department or term or condition of a permit issued under this act shall constitute a separate and distinct offense under this section.

(f) Nonexclusive penalties and remedies.--The penalties and remedies prescribed by this act shall be deemed concurrent and the existence of or exercise of a remedy shall not prevent the department from exercising any other remedy at law or in equity.

(g) Violations on separate days.--Violations on separate days shall constitute separate offenses for purposes of this act.

Section 11. Reports.

Not later than one year after the effective date of this section and annually thereafter, in conjunction with the Department of Health, the department shall submit a report to
the Governor and the General Assembly that shall include the following:

(1) The number of cases of Legionnaires' disease in this Commonwealth reported in each of the previous 10 years.

(2) The number of reported Legionella-positive test results received by the department or the Department of Health.

(3) The number and type of violations of this act for which penalties were assessed.

(4) Recommendations for legislative action as may be necessary to further control Legionella bacteria in the public water supply and affected covered buildings.

Section 12. Effective date.

This act shall take effect immediately.