

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2157 Session of
2008

INTRODUCED BY QUINN, McILVAINE SMITH, BOBACK, BRENNAN, CLYMER,
FREEMAN, GEORGE, GINGRICH, GOODMAN, HARPER, HELM, MAHONEY,
MANTZ, MELIO, MENSCH, MILNE, MOUL, MOYER, MUNDY, MURT,
NICKOL, PETRONE, REICHLEY, ROSS, SCHRODER, SIPTROTH,
K. SMITH, STEIL, WATSON AND YOUNGBLOOD, JANUARY 14, 2008

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
JANUARY 14, 2008

AN ACT

1 Amending the act of May 1, 1984 (P.L.206, No.43), entitled "An
2 act providing for safe drinking water; imposing powers and
3 duties on the Department of Environmental Resources in
4 relation thereto; and appropriating certain funds," further
5 providing for safe drinking water, for definitions, for
6 powers and duties of the Department of Environmental
7 Protection and for civil and criminal penalties; and making
8 editorial changes.

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

11 Section 1. The definition of "department" in section 3 of
12 the act of May 1, 1984 (P.L.206, No.43), known as the
13 Pennsylvania Safe Drinking Water Act, is amended and the section
14 is amended by adding definitions to read:

15 Section 3. Definitions.

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

19 * * *

1 "Critical zone." For surface water intakes, the critical
2 zone is the area that extends from one-quarter mile downstream
3 of a drinking water intake for a community water system to 25
4 miles upstream from the intake, including an area one-quarter
5 mile upland from the bank of the surface water body. For
6 groundwater wells which provide water for a community water
7 system, the term includes the capture zone of the source, which
8 shall be deemed to be the circular area within a radius of one-
9 half mile from the well, unless a more detailed wellhead
10 protection area has been established by the Department of
11 Environmental Protection.

12 "Department." The Department of Environmental [Resources]
13 Protection.

14 * * *

15 "Groundwater." Water beneath the surface of the ground that
16 exists in a zone of saturation.

17 * * *

18 "Surface waters." Water on the surface of the earth,
19 including water in a perennial or intermittent stream, river,
20 lake, reservoir, pond, spring, wetland, swamp, marsh, natural
21 seep, estuary or other surface water, whether such body of water
22 is natural or artificial.

23 * * *

24 "Wellhead." A groundwater well source that is used for
25 community water systems.

26 "Wellhead protection area." The surface and subsurface area
27 surrounding water well or wellfield, supplying a public water
28 system, through which contaminants are reasonably likely to move
29 toward and reach such water well or wellfield.

30 "Zone I." The circular area within a radius of up to 400

1 feet from the well, based on site specific source and aquifer
2 characteristics.

3 "Zone II." The capture zone of the source which shall be
4 deemed to be the circular area within a radius of one-half mile
5 from the source, unless a more detailed wellhead protection area
6 has been established by the Department of Environmental
7 Protection or a delineation is conducted by a registered
8 professional geologist and approved by the department.

9 Section 2. The act is amended by adding sections to read:

10 Section 7.1. Applications and requests for approval for
11 facilities and activities in the critical zone.

12 (a) Applicants.--An applicant for a facility, a discharge or
13 other activity in a critical zone that requires a department
14 permit or approval must demonstrate in its application or
15 request for approval that the facility, discharge or other
16 activity will not degrade the existing water quality of the
17 critical zone.

18 (b) Issuance of permits and approvals in critical zones.--
19 The department shall not issue a permit or approval for any
20 facility, discharge or other activity within a critical zone
21 unless the applicant or other person proposing the facility,
22 discharge or other activity demonstrates that the facility,
23 discharge or other activity will not degrade the existing water
24 quality of the critical zone.

25 (c) Powers and duties of Environmental Quality Board and
26 department.--

27 (1) The Environmental Quality Board is authorized to
28 promulgate rules and regulations to carry out the purposes of
29 this act.

30 (2) The department may issue orders and take such other

1 actions as are necessary to carry out the purposes of this
2 act.

3 (d) Declaration of public nuisance.--

4 (1) A violation of this act, the rules and regulations
5 promulgated thereto, or any orders issued thereunder, is
6 hereby declared to be a nuisance, abatable in law or equity,
7 by the department, the district attorney of any county or the
8 solicitor of any municipality affected or by a citizen.

9 (2) Any facility, discharge or other activity that
10 requires a permit or approval from the department that
11 degrades the water quality of a critical zone is hereby
12 declared to be unlawful and a nuisance, abatable in law or
13 equity, by the department, the district attorney of any
14 county or the solicitor of any municipality affected, or by a
15 citizen.

16 Section 7.2. Wellhead protection.

17 (a) Municipal ordinance.--Each municipality which has
18 adopted or which in the future adopts a zoning ordinance,
19 including any joint municipal zoning ordinance, shall also
20 adopt, implement and enforce a wellhead protection ordinance if:

21 (1) One or more wellheads exist within the municipality.

22 (2) Zone I or Zone II of a wellhead exists within the
23 municipality.

24 (3) A wellhead or Zone I or Zone II of a wellhead is
25 created in that municipality at any time in the future.

26 (b) Restrictions.--The wellhead protection ordinance
27 required by this subsection shall regulate land use in Zone I
28 and Zone II, restricting establishment or operation of land uses
29 that could cause contamination of groundwater that supplies
30 wellheads for community water systems.

1 (c) Departmental regulations.--The department shall develop
2 regulations governing the adoption of such an ordinance and
3 shall establish the form and content of a model wellhead
4 protection ordinance. Such a model ordinance shall include
5 acceptable methodologies for the delineation of Zone I and Zone
6 II, shall enumerate the land uses to be regulated under the
7 ordinance and the restrictions applicable to such land uses in
8 Zone I and Zone II, and shall set forth any appropriate
9 exceptions, enforcement procedures and reporting requirements.
10 These regulations and the model wellhead protection ordinance
11 shall be deemed to establish Statewide minimum requirements for
12 wellhead protection. Nothing in this act shall be deemed to
13 limit, restrict or prohibit the power of any municipality to
14 establish requirements for wellhead protection that are more
15 stringent than those set forth in this act, or in the
16 department's regulations or the model wellhead protection
17 ordinance established under this section.

18 Section 7.3. Surface water intake protection.

19 (a) Municipal ordinance.--Each municipality which has
20 adopted or in the future adopts a zoning ordinance, including
21 any joint municipal zoning ordinance, shall also adopt,
22 implement and enforce a surface water intake protection
23 ordinance if:

24 (1) One or more surface water intakes exist within the
25 municipality.

26 (2) The critical zone of an intake exists within the
27 municipality.

28 (3) An intake or critical zone of an intake is created
29 in that municipality at any time in the future.

30 (b) Restrictions.--The surface water intake ordinance

required by this section shall regulate land use near any surface water intake and the critical zone for such intakes, restricting establishment or operation of land uses that could cause contamination of water that supplies the intake for community water systems.

(c) Departmental regulations.--The department shall develop regulations governing the adoption of such an ordinance and shall establish the form and content of a surface water intake protection ordinance. Such a model ordinance shall enumerate the land uses to be regulated under the ordinance and the restrictions applicable to such land uses in the critical zone and shall set forth any appropriate exceptions, enforcement procedures and reporting requirements. These regulations and the model ordinance shall be deemed to establish Statewide minimum requirements for surface water intake protection. Nothing in this act shall be deemed to limit, restrict or prohibit the power of any municipality to establish requirements for surface water intake protection that are more stringent than those set forth in this act, or in the department's regulations or the model wellhead protection ordinance established under this section.

Section 7.4. Civil and criminal penalties.

(a) Civil penalties.--

(1) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act or any rule or regulation promulgated under this act or any order issued pursuant to this act, the department may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed \$25,000 per day

1 for each violation. In determining the amount of the penalty,
2 the department shall consider the willfullness of the
3 violation; damage to water or other natural resources of the
4 Commonwealth or their uses; financial benefit to the person
5 in consequence of the violation; deterrence of future
6 violations; cost to the department; the nature and size of
7 the affected resource and the facility, activity or land use
8 causing the violation; the compliance history of the
9 violation; the severity and duration of the violation; degree
10 of cooperation in resolving the violation; the speed with
11 which compliance is ultimately achieved; whether the
12 violation was voluntarily reported; and other relevant
13 factors.

14 (2) The civil penalty shall be payable to the Safe
15 Drinking Water Account and shall be collectible in any manner
16 provided by law for the collection of debts, including the
17 collection of interest at the rate established by law, which
18 shall run from the date of assessment of the penalty. Upon
19 failure by the liable person to pay such penalty after
20 demand, the amount, together with interest and any costs that
21 may accrue, shall constitute a debt of such person, to the
22 Safe Drinking Water Account. The debt shall constitute a lien
23 on all property owned by said person when a notice of lien
24 incorporating a description of the property of the person
25 subject to the action is duly filed with the prothonotary of
26 the court of common pleas where the property is located. Upon
27 entry by the prothonotary, the lien shall attach to the
28 revenues and all real and personal property of the person,
29 whether or not the person is solvent. The notice of lien
30 shall create a lien with priority over all subsequent claims

1 or liens which are filed against the person.

2 (b) Criminal penalties.--

3 (1) Any person who violates any provision of this act,
4 any rule or regulation adopted under this act, or any order
5 of the department issued pursuant to this act commits a
6 summary offense and shall, upon conviction, be sentenced to
7 pay a fine of not less than \$100 nor more than \$2,500 for
8 each separate offense and, in default of the payment of such
9 fine, may be sentenced to imprisonment for 90 days for each
10 separate offense. Employees of the department authorized to
11 conduct inspections or investigations are hereby declared to
12 be law enforcement officers authorized to issue or file
13 citations for summary violations under this act, and the
14 General Counsel is hereby authorized to prosecute these
15 offenses. For purposes of this subsection, a summary offense
16 may be prosecuted before any district justice in the county
17 where the offense occurred.

18 (2) Any person who willfully or negligently violates any
19 provision of this act any rule or regulation adopted under
20 this act or any order of the department issued pursuant to
21 this act commits a misdemeanor of the third degree and shall,
22 upon conviction, be sentenced to pay a fine of not less than
23 \$2,500 nor more than \$50,000 for each separate offense or to
24 imprisonment for a period of not more than two years for each
25 separate offense, or both.

26 Section 7.5. Other enforcement.

27 Any person may commence a civil action to compel compliance
28 with this act or any rule, regulation or order issued pursuant
29 to this act. In addition to seeking to compel compliance, any
30 person may request the court to award civil penalties. The court

1 shall use the factors and amounts contained in section 6(a) in
2 awarding civil penalties under this section. Such penalties
3 shall be paid into the Safe Drinking Water Account.

4 Section 3. This act shall take effect in 180 days.