

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 87 Session of 2011

INTRODUCED BY PYLE, BENNINGHOFF, BURNS, CAUSER, CHRISTIANA, CLYMER, P. COSTA, DENLINGER, ELLIS, GABLER, GEIST, GEORGE, GIBBONS, GROVE, HALUSKA, HARHAI, HARRIS, HESS, M.K. KELLER, KORTZ, OBERLANDER, PICKETT, RAPP, ROAE, TALLMAN, VULAKOVICH, TOBASH AND STEVENSON, FEBRUARY 23, 2011

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, FEBRUARY 23, 2011

A RESOLUTION

1 Urging the Environmental Protection Agency to stop its unlawful
2 application of the Guidance Memo relating to the Federal
3 Water Pollution Control Act, which is a substantive change to
4 the permitting procedure conferred on the states, and restore
5 the regulatory environment that existed prior to the release
6 of the Guidance Memo.

7 WHEREAS, Under section 402 of the Federal Water Pollution
8 Control Act (62 Stat. 1155, 33 U.S.C. § 1342), National
9 Pollutant Discharge Elimination System (NPDES) permits are
10 typically issued by states for discharge of nondredged and
11 nonfill material; and

12 WHEREAS, Once the Environmental Protection Agency (EPA)
13 approves a state permitting program, the state has exclusive
14 authority to issue NPDES permits; and

15 WHEREAS, Through a 1991 Memorandum of Agreement executed
16 between the Commonwealth of Pennsylvania and the EPA, the
17 Department of Environmental Protection (DEP) was identified as
18 the lead agency with exclusive authority for administering and

granting NPDES permits for mining-related activities in this Commonwealth; and

WHEREAS, In September 2010, the EPA informed the DEP that it was altering the Commonwealth's administration of its permitting program and would conduct its own additional review of NPDES permits; and

WHEREAS, This abrupt change in the Commonwealth's permitting process was not the result of any accompanying Federal statutory or regulatory changes; and

WHEREAS, As a result of this change, the DEP is required to provide the EPA's Region 3 field office with all pending mining-related NPDES permit applications, whose activity will either discharge into the Monongahela River or into any designated total maximum daily load impaired stream for its independent review; and

WHEREAS, The EPA's Region 3 field office is not sufficiently staffed to perform these types of reviews in a timely manner, causing indefinite delays in the permitting process; and

WHEREAS, The EPA's objections to the issuance of these permit applications vary, but generally are based on what the Federal agency perceives are inconsistencies between the applications and an interim final Guidance Memo that the EPA released in April 2010, designed to provide a framework for regional reviews of surface mining projects in Appalachia based on conductivity levels it associated with adverse impacts to streams; and

WHEREAS, Although the stated intent of the Guidance Memo is to limit its applicability to surface mining projects only, a number of the permits being delayed in this Commonwealth are for activities other than this type of mining; and

WHEREAS, The Guidance Memo is based on flawed studies with

1 limited application and unconfirmed conclusions that cannot be
2 used to develop a predictive cause and effect relationship
3 between the EPA's established benchmark threshold for
4 conductivity levels and healthy streams in this Commonwealth;
5 and

6 WHEREAS, Despite the representation that the Guidance Memo is
7 an interim document, it nevertheless is applied by the EPA in a
8 binding manner in its current version, even though the EPA
9 continues to receive comments on it; and

10 WHEREAS, The EPA's application of the Guidance Memo
11 constitutes a substantive change in the basic application of the
12 permitting process; and

13 WHEREAS, By substituting the issuance of agency guidance for
14 formal rulemaking, the EPA circumvents the clear requirements of
15 the Administrative Procedure Act (60 Stat. 237, 5 U.S.C. § 551
16 et seq.) for public notice and comments; and

17 WHEREAS, This unnecessary extended review of NPDES permit
18 applications by the EPA has led to a significant backlog of
19 permits that could result in coal contracts being lost, mining
20 jobs being destroyed and this Commonwealth losing its major
21 source of affordable and reliable electric generation; therefore
22 be it

23 RESOLVED, That the House of Representatives of the
24 Commonwealth of Pennsylvania urge the Environmental Protection
25 Agency to stop its unlawful application of the Guidance Memo
26 relating to the Federal Water Pollution Control Act, which is a
27 substantive change to the permitting procedure conferred on the
28 states, and restore the regulatory environment that existed
29 prior to the release of the Guidance Memo; be it further

30 RESOLVED, That the Commonwealth of Pennsylvania reassert its

1 rightful role as the sole agency with permitting authority of
2 mining-related National Pollutant Discharge Elimination System
3 permits; and be it further

4 RESOLVED, That the Chief Clerk of the House of
5 Representatives transmit a copy of this resolution to the
6 Governor of Pennsylvania, the Environmental Protection Agency
7 Administrator and all members of the Pennsylvania Congressional
8 Delegation.