

ENVIRONMENTAL RESOURCES (27 PA.C.S.)
Act of Dec. 15, 1999, P.L. 949, No. 68
Session of 1999
No. 1999-68

Cl. 27

HB 868

AN ACT

Amending Title 27 (Environmental Resources) of the Pennsylvania Consolidated Statutes, providing for watershed protection and environmental stewardship; establishing the Environmental Stewardship Fund; conferring powers and duties on the Department of Agriculture, the Department of Conservation and Natural Resources, the Department of Environmental Protection and the Pennsylvania Infrastructure Investment Authority; imposing a recycling fee; providing for use of site-specific postclosure funds and for immunity for certain persons who reclaim abandoned lands or abate certain water pollution; making appropriations; and making repeals.

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

Section 1. Title 27 of the Pennsylvania Consolidated Statutes is amended by adding parts to read:

TITLE 27

ENVIRONMENTAL PROTECTION

Part

- I. Preliminary Provisions (Reserved)
- II. Administrative Provisions (Reserved)
- III. Conservation and Natural Resources (Reserved)
- IV. Environmental Protection (Reserved)
- V. Special Programs
- VI. Sanctions and Remedies
- VII. Miscellaneous Provisions (Reserved)

PART I

PRELIMINARY PROVISIONS

(Reserved)

PART II

ADMINISTRATIVE PROVISIONS

(Reserved)

PART III

CONSERVATION AND NATURAL RESOURCES

(Reserved)

PART IV

ENVIRONMENTAL PROTECTION

(Reserved)

PART V

SPECIAL PROGRAMS

Chapter

- 61. Environmental Stewardship and Watershed Protection.

CHAPTER 61

ENVIRONMENTAL STEWARDSHIP AND WATERSHED PROTECTION

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- 6111. Protection of Recycling Fund.
- 6112. Extension of fees.
- 6113. Effect of repeal of site-specific postclosure fund provisions.

§ 6101. Short title of chapter.

This chapter shall be known and may be cited as the Environmental Stewardship and Watershed Protection Act.

§ 6102. Legislative findings.

The General Assembly hereby determines, declares and finds as follows:

(1) Ninety-six percent of the water-quality-impaired watersheds in this Commonwealth are polluted because of nonpoint sources of pollution such as past mining activities, urban and agricultural runoff, atmospheric deposition, on-lot sewage systems and earthmoving.

(2) The Commonwealth continues to have unmet needs in the area of water and sewer infrastructure. New and improved water sources, treatment and distribution systems are necessary for public drinking water supplies.

(3) The Commonwealth owns approximately 2.4 million acres of State park and State forest lands and many of these lands suffer from past environmental problems, including unreclaimed mines, acid mine drainage and abandoned oil and gas wells.

(4) Open space, greenways, recreational trails, river corridors, fish and wildlife habitats, parks and recreation areas and scenic environments protect the environment, conserve natural resources and add value to communities.

(5) State programs and State funding should provide maximum flexibility for elected county and municipal governmental officials to identify, prioritize and address local environmental concerns, including odor abatement problems at sewage treatment plants.

§ 6103. Definitions.

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

"Acquisition." The purchase or lease with an option to purchase of land, easements or buildings for public parks, conservation, historical or recreation uses.

"Authority." The Pennsylvania Infrastructure Investment

Authority.

"Authorized organization." An entity involved in research, restoration, rehabilitation, planning, acquisition, development, education or other activities, which furthers the protection, enhancement, conservation, preservation or enjoyment of this Commonwealth's environmental, conservation, recreation or similar resources. The organization must be a tax-exempt institution under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) and registered with the Bureau of Charitable Organizations or an educational institution involved in these authorized activities or a municipal authority.

"Departments." The Department of Agriculture, the Department of Conservation and Natural Resources and the Department of Environmental Protection of the Commonwealth.

"Development." New construction, improvement, alteration or renovation required for and compatible with the physical development or improvement of land or buildings.

"Fund." The Environmental Stewardship Fund established in section 6104 (relating to fund).

"Interior land." Land that has at least 65% of its boundary lines immediately bordered by either State forest or State park lands.

"Planning." The preparation of park, recreation and open space plans, river corridor and watershed plans, master site development plans, feasibility studies, natural areas studies and inventories, greenways and recreational trail plans, maintenance management plans, conservation plans, zoning plans, land use plans, environmental management plans and research or education documents useful in assisting municipalities, Commonwealth agencies, conservation districts, watershed organizations and authorized organizations to address environmental improvement, natural resource management, park and recreation development and land conservation.

"Recreational trail." A thoroughfare or track across water, land or snow used for motorized and/or nonmotorized recreational purposes.

"Rehabilitation and repair." Restoration or renovation of facilities or conditions of existing public conservation and recreation resources. The term excludes routine maintenance.

"Technical assistance." Provision of financial grants and professional services. The term includes publications, research, videotapes, workshops, meetings, phone consultation and written and electronic communication.

"Watershed organization." An entity recognized by either or both the Department of Conservation and Natural Resources and the Department of Environmental Protection and established to promote local watershed conservation efforts in an identified watershed.

§ 6104. Fund.

(a) Establishment.--There is established a special fund in the State Treasury, to be known as the Environmental Stewardship Fund.

(b) Sources.--

(1) Money appropriated by the General Assembly, interest

earned by the fund, penalties, money received from the Federal Government or other sources and money received from the fee established under section 6112(b) (relating to extension of fees) shall be deposited in the fund. Moneys appropriated by the General Assembly to the fund shall be transferred on a quarterly basis in increments of at least 20%.

(2) For fiscal years 1999-2000 through 2003-2004, the fund may receive money, upon approval of the Governor, from the Recycling Fund and the Hazardous Sites Cleanup Fund. The combined total of appropriations from these two funds for the program shall not exceed \$30,000,000 annually.

(3) It is the intent of the General Assembly that \$100,000,000 per fiscal year be appropriated from the General Fund for fiscal years 2000-2001 through 2003-2004 to the fund. The Governor's annual budget submission for fiscal years 2000-2001 through 2003-2004 shall include the sum of \$100,000,000 per fiscal year for allocation in accordance with this section.

(c) Appropriation.--The money in the fund is hereby appropriated, upon approval of the Governor, to the departments and the authority for the purpose of implementing the provisions of this chapter.

(d) Allocation.--It is the intent of the General Assembly that the money appropriated in subsection (c) be allocated annually as follows:

(1) For fiscal year 1999-2000, 28.4% to the Department of Conservation and Natural Resources, 43.7% to the Department of Environmental Protection and 27.9% to the authority.

(2) For fiscal years 2000-2001 through 2003-2004, 24.1% to the Department of Conservation and Natural Resources, 37.4% to the Department of Environmental Protection, 14.8% to the Department of Agriculture and 23.7% to the authority.

(3) For fiscal year 2004-2005 and each year thereafter, moneys in the fund shall be allocated in accordance with paragraph (1).

(e) Legislative oversight.--

(1) An annual expenditure plan for the fund shall be submitted by the Governor to the General Assembly as part of the Governor's annual budget submission. The expenditure plan shall be open for review and comment by the members of the General Assembly and shall include a detailed listing of the types of programs for the actual year, current year and proposed budget year.

(2) The Secretary of the Budget shall provide quarterly financial statements showing the status of the Recycling Fund, the Hazardous Sites Cleanup Fund and the Environmental Stewardship Fund to the chairman and minority chairman of the Appropriations Committee of the Senate and the chairman and minority chairman of the Appropriations Committee of the House of Representatives. Such statements shall be provided within 30 days of the close of each quarter of the fiscal year and shall commence with the quarter ending March 31, 2000.

§ 6105. Agencies.

(a) The Department of Conservation and Natural Resources.--

(1) The Department of Conservation and Natural Resources shall utilize money it receives from the fund for the following purposes:

(i) To rehabilitate, repair and develop State park and State forest lands and facilities and the acquisition of interior lands within State parks and State forests.

(ii) To provide grants to a county or other municipality, conservation districts and authorized organizations for the purpose of planning, education, acquisition, development, rehabilitation and repair of greenways, recreational trails, open space, natural areas, river corridors, watersheds, community and heritage parks and recreation facilities; community conservation and beautification projects; forest conservation; and other conservation purposes. Grants under this paragraph may not be used by an authorized organization for land acquisition unless the authorized organization obtains the approval of all counties in which the land is situated. Grant moneys may also be used for the acquisition of farmland for the purposes set forth in this paragraph.

(iii) To provide grants to a county or other municipality and authorized organizations for the purpose of research, planning, inventories and technical assistance intended to protect and conserve the biological diversity of this Commonwealth.

(2) The Department of Conservation and Natural Resources may require matching funds as a condition of the award of a grant under this subsection.

(b) The Department of Environmental Protection.--

(1) The Department of Environmental Protection shall utilize money it receives from the fund for the following purposes:

(i) To implement acid mine drainage abatement and cleanup efforts and plug abandoned and orphan oil and gas wells.

(ii) To provide funding for technical assistance and financial incentives to facilitate re-mining.

(iii) To provide grants to a county or other municipality, county conservation districts, watershed organizations and other authorized organizations for acid mine drainage abatement, mine cleanup efforts and well plugging.

(iv) To provide grants and technical assistance to a county or other municipality, county conservation districts, watershed organizations and other authorized organizations to plan and implement local watershed-based conservation efforts.

(v) To improve water-quality-impaired watersheds, including those polluted by past mining activities, agricultural and urban runoff, atmospheric deposition, on-lot sewage systems and earthmoving activities.

(vi) To provide grants for safe drinking water

projects and wastewater treatment projects as provided for in section 6110 (relating to environmental infrastructure grants to water and wastewater treatment facilities).

(2) County conservation districts may further distribute grants received under this section to watershed organizations and other authorized organizations to assist in the implementation of this chapter.

(3) The Department of Environmental Protection may require matching funds as a condition of the award of a grant under this subsection.

(4) For the period commencing with the effective date of this chapter and ending June 30, 2004, the Department of Environmental Protection may utilize up to 10% of the money allocated annually to it under section 6104(d) (relating to fund) to provide grants for safe drinking water projects and wastewater treatment projects. Grants under this paragraph shall be made for the same purposes and shall be subject to the same limitations as grants authorized in section 6110.

(c) Department of Agriculture.--Funds allocated to the Department of Agriculture under this chapter shall be deposited in the Agricultural Conservation Easement Purchase Fund and are subject to the provisions of the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law.

(d) The authority .--The authority shall utilize money it receives from the fund to provide financial assistance in the form of grants and matching grants for storm water, water and sewer infrastructure projects, including construction or rehabilitation of collection and conveyance systems. The authority shall develop criteria to be used to award grants under this subsection. The criteria and proposed changes thereto shall be submitted to the Environmental Resources and Energy Committee of the Senate and the Environmental Resources and Energy Committee of the House of Representatives for review and comment. The committees shall have 60 days to submit comments to the authority. Criteria shall be reviewed by the authority and the committees at least once every three years.

(e) Administrative expense limitation.--The departments, authority and grant recipients that receive moneys from the fund for the purposes set forth in this section may not expend more than 2% of the moneys on administrative expenses.

(f) Expenditure limitation.--No moneys made available through the fund shall be used for any purpose which, directly or indirectly, precludes access to or use of any forested land for the practice of sustainable forestry and commercial production of timber or other forest products. This subsection shall not apply to funds used by the Department of Conservation and Natural Resources, counties or municipalities for the purchase or improvement of park land to be used for public recreation.

(g) Regulations.--The departments and the authority may promulgate regulations necessary to carry out the purposes of this chapter.

§ 6106. Property and equipment restrictions.

(a) Prohibition.--Recipients of grants under this chapter

may not dispose of or convert property or equipment acquired with a grant for purposes other than the purposes approved in the project application without the prior written approval of the agency awarding the grant.

(b) Remedy.--If a violation of subsection (a) occurs, the agency may:

(1) Require the recipient to refund all grants related to the project, including 10% annual interest compounded four times annually, from the date the original grant was received until the grant is repaid.

(2) Require acquisition by the recipient of equivalent replacement property, as determined by the agency.

(3) Take possession of the property or equipment funded by the agency.

§ 6107. Federal programs.

Agencies may utilize available Federal funds to augment funds available under this chapter.

§ 6108. Wild Resource Conservation Fund and duties of Department of Conservation and Natural Resources.

(a) Appropriation.--The moneys contained in the Wild Resource Conservation Fund are hereby appropriated, upon approval of the Governor, to the Department of Conservation and Natural Resources for the purposes of carrying out subsection (b), section 6105(a) (relating to agencies) and the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act.

(b) Projects and programs.--

(1) The Wild Resource Conservation Board may approve projects or programs for funding as necessary to preserve and enhance wild resources. Grants for approved projects shall be made by the Department of Conservation and Natural Resources from the Wild Resource Conservation Fund. The department shall not allocate money from the Wild Resource Conservation Fund under this paragraph if the allocation would exceed the money available in the Wild Resource Conservation Fund. The Wild Resource Conservation Board shall consider the recommendations of interested persons and representatives of agencies serving on the board when approving projects under this paragraph.

(2) In addition to the grants under paragraph (1), the Wild Resource Conservation Board may recommend projects or programs that promote the preservation and enhancement of wild resources to the Department of Conservation and Natural Resources for funding from the Environmental Stewardship Fund under section 6105(a).

(c) Sale of merchandise and voluntary contributions.--The Wild Resource Conservation Board, with the approval of the Department of Conservation and Natural Resources, shall have the right to issue for sale to the public stamps, decals or other items of personal property intended to signify the interest of the purchaser in contributing to programs established by the board under this section. Any contributions received and the net proceeds from the sale of merchandise shall be deposited in the Wild Resource Conservation Fund.

(d) Advisory committee.--The Wild Resource Conservation

Board may establish an advisory committee to advise the board and the Department of Conservation and Natural Resources regarding the wild resource management objectives of the board and the approval of projects to promote the preservation and enhancement of wild resources. Members of the committee shall be chosen from the general public and shall serve at the pleasure of the board.

(e) Activities of other agencies.--The authority granted pursuant to subsection (c) shall not affect or interfere with similar authority vested by law in any agency represented on the board to sell items of personal property which promote the independent programs of those respective agencies. Said agencies shall likewise have the right to issue for sale items of personal property intended to signify the interest of the purchaser in contributing to programs established by the department, the net proceeds of which shall be deposited in the Wild Resource Conservation Fund.

§ 6109. Sewage construction payments to municipalities.

(a) Certain payments permitted.--A county or other municipality, municipal authority or school district receiving payments on the effective date of this chapter pursuant to the act of August 20, 1953 (P.L.1217, No.339), entitled "An act providing for payments by the Commonwealth to municipalities which have expended money to acquire and construct sewage treatment plants in accordance with the Clean Streams Program and the act, approved the twenty-second day of June, one thousand nine hundred thirty-seven (Pamphlet Laws 1987), and making an appropriation," shall continue to receive all outstanding payments being funded under that act for the acquisition or construction of sewage treatment plants from the Commonwealth from funds appropriated for this purpose provided that the sewage treatment plant operations implement odor abatement programs as necessary.

(b) Equipment and plants.--Payments under this section for equipment and plants shall be discontinued upon the replacement, abandonment or removal from service of the equipment and plants.

(c) Certain payment prohibited.--No municipality, municipal authority or school district which is not presently receiving payments under the act of August 20, 1953 (P.L.1217, No.339), entitled "An act providing for payments by the Commonwealth to municipalities which have expended money to acquire and construct sewage treatment plants in accordance with the Clean Streams Program and the act, approved the twenty-second day of June, one thousand nine hundred thirty-seven (Pamphlet Laws 1987), and making an appropriation," may apply for or receive payments under that act. No new or additional costs of equipment or acquisition of sewage treatment plants for which construction has not commenced prior to the effective date of this chapter may be included in a request for payment by a municipality, municipal authority or school district. For purposes of this section, construction shall be deemed to have commenced when:

(1) the applicant has applied for or received a permit under the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, for construction or modification of the sewage treatment plant;

(2) the applicant has applied for or received construction financing or has dedicated capital funds for an identified project before January 1, 2000, and the appropriate construction permit under The Clean Streams Law has been applied for or received before January 1, 2001; or

(3) if a construction permit under The Clean Streams Law is not required, a signed contract or purchase order for an eligible acquisition or construction expense has been validly executed.

§ 6110. Environmental infrastructure grants to water and wastewater treatment facilities.

(a) Separate account.--

(1) Savings realized in section 6109 (relating to sewage construction payments to municipalities) shall be placed in an account within the fund, which shall be cumulative, separate from the allocations in section 6104(d) (relating to fund) and for expenditure by the Department of Environmental Protection for environmental infrastructure grants to a county or other municipality, municipal authorities and school districts for water and wastewater treatment facilities which:

(i) install or implement new or innovative technologies in their operations;

(ii) implement pollution prevention techniques in their operations;

(iii) undertake treatment process modernization or other improvements, including rehabilitation of collection and conveyance systems; or

(iv) implement odor abatement programs in their operations.

(2) A grant from the account shall not be used for the construction of a new facility. An applicant for funding must disclose in the application if funding has been applied for from both the account and the authority. An applicant that receives funding from the account shall not receive funding from the authority under this chapter for the same portion of the project or equipment. An applicant that receives funding from the authority under this chapter shall not receive funding from the account for the same portion of the project or equipment.

(b) Limitation.--Funding under this section shall be limited to improvements to the physical operation of the treatment facility and shall not be used for administrative purposes or for machinery or equipment peripherally related to the operation.

(c) Funding availability.--Funding shall be available to all counties or other municipalities, municipal authorities and school districts on the basis of cost of the environmental or public health improvement and not based on demographics, per capita income or other unit of measure not tied to the cost of the environmental improvement.

(d) Calculation of fund moneys.--The account shall annually receive the difference between:

(1) the amount paid under the act of August 20, 1953

(P.L.1217, No.339), entitled "An act providing for payments

by the Commonwealth to municipalities which have expended money to acquire and construct sewage treatment plants in accordance with the Clean Streams Program and the act, approved the twenty-second day of June, one thousand nine hundred thirty-seven (Pamphlet Laws 1987), and making an appropriation," in 2001-2002; and

(2) the amount paid under section 6109.

§ 6111. Protection of Recycling Fund.

(a) Market development funding.--The Department of Environmental Protection, on an annual basis, shall provide sufficient moneys for market development from the Recycling Fund to promote the long-term sustainability of recycling and to promote the continued growth of the recycling rate. For purposes of this subsection, "market development" shall mean a set of government policies and programs that promote the removal of marketplace barriers to recycling and that promote a productive end use for recyclables collected from residents and businesses.

(b) Review of expenditures.--Prior to submitting its annual Recycling Fund spending plan to the General Assembly, the Department of Environmental Protection shall submit details of its proposed expenditures under the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act, including additional expenditures for market development, for review and comment to the Recycling Fund Advisory Committee. At the same time, the department shall submit details of its actual expenditures under the Municipal Waste Planning, Recycling and Waste Reduction Act for the prior fiscal year, including actual expenditures for market development, for review and comment to the committee. The Department of Environmental Protection shall provide aggregate information on the program, including the total amount of funding applied for, the total amount of funding provided, the percentage of applications approved and the percentage of applications fully funded. The information on actual expenditures provided to the committee shall include a complete list of recipients funded by the Department of Environmental Protection pursuant to sections 901 and 902 of the Municipal Waste Planning, Recycling and Waste Reduction Act in the prior fiscal year. The list shall include:

(1) The name of the recipient.

(2) The amount of funding requested.

(3) The amount of funding provided by the Department of Environmental Protection.

(c) Minimum level of funding.--For a period of five years from the effective date of this chapter, moneys expended for programs authorized in the Municipal Waste Planning, Recycling and Waste Reduction Act shall not fall below levels expended in fiscal year 1999-2000.

(d) Information to applicant.--When the Department of Environmental Protection denies an application for a grant or approves an application for less than the amount requested by the applicant, the department shall provide the applicant with a written statement indicating the reason for the denial or reduction in funding amount.

§ 6112. Extension of fees.

(a) Recycling fee.--No fee shall be imposed under section 701 of the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act, on or after October 15, 2004.

(b) Fee established.--Each operator of a municipal waste landfill shall pay, in the same manner prescribed in section 701 of the Municipal Waste Planning, Recycling and Waste Reduction Act, an amount equal to 25¢ per ton of weighted waste or 25¢ per three cubic yards of volume measured waste for all solid waste received at the landfill. These fees shall be paid to the State Treasury and deposited into the fund.

§ 6113. Effect of repeal of site-specific postclosure fund provisions.

(a) General rule.--Prior to certification of final closure and release by the Department of Environmental Protection of the landfill bond under the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and the regulations promulgated thereto, the trustee may release moneys from the trust to the county which established the trust upon written request from the county to the trustee in order for the county to spend the money to fund county conservation districts, protect farmland or accomplish any other purpose authorized by this chapter. Payment of debt service by a county on obligations issued to fund such purposes shall be deemed to be paid for a permitted purpose. Expenditure for farmland preservation must comply with the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law.

(b) Limitations.--Moneys in a site-specific postclosure trust that have not been released to the county prior to certification of final closure and release of the landfill bond may be used only for remedial measures and emergency actions that are necessary to prevent or abate adverse effects upon the environment after closure of the landfill. The county may withdraw actual costs incurred in establishing and administering the trust in an amount not to exceed 0.5% of the moneys deposited in the trust. The trustee may release moneys for remedial measures and emergency actions only upon written request of the operator of a landfill and upon prior written approval by the Department of Environmental Protection. Such request shall include the proposed amount and purpose of the withdrawal and a copy of the Department of Environmental Protection's written approval of the expenditure. A copy of the request shall be provided to the county and the host municipality. A copy of any withdrawal document prepared by the trustee shall be provided to the Department of Environmental Protection, the county and the host municipality. No withdrawal from this trust for remedial measures and emergency actions may be made until after the Department of Environmental Protection has certified closure of the landfill. Moneys remaining in a trust subsequent to certification of final closure of the landfill and release of the landfill's bond shall be given to the county that established the trust for use in a manner consistent with this chapter.

(c) Applicability.--This section shall not apply to any county of the third class having a population under the 1990

Federal Decennial Census of greater than 225,000 but less than 242,500.

PART VI
SANCTIONS AND REMEDIES

Subpart
C. Immunity

SUBPART C
IMMUNITY

Chapter
81. Good Samaritan.

CHAPTER 81
GOOD SAMARITAN

Sec.

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§ 8101. Short title of chapter.

This chapter shall be known and may be cited as the Environmental Good Samaritan Act.

§ 8102. Findings.

The General Assembly finds and declares as follows:

(1) This Commonwealth's long history of mining and the extraction of oil and gas has left some lands and waters unreclaimed and polluted.

(2) These abandoned lands and polluted waters are unproductive, erode the tax base and are serious impediments to the economic welfare and growth of this Commonwealth.

(3) The unreclaimed lands and polluted waters present a danger to the health, safety and welfare of the people and the environment.

(4) This Commonwealth does not possess sufficient resources to reclaim all the abandoned lands and to abate the water pollution.

(5) Numerous landowners, citizens, watershed associations, environmental organizations and governmental entities who do not have a legal responsibility to reclaim the abandoned lands or to abate the water pollution are interested in addressing these problems but are reluctant to engage in such reclamation and abatement activities because of potential liabilities associated with the reclamation and abatement activities.

(6) It is in the best interest of the health, safety and welfare of the people of this Commonwealth and the environment to encourage reclamation of the abandoned lands

and abatement of water pollution.

§ 8103. Purpose.

This chapter is intended to encourage the improvement of land and water adversely affected by mining and oil and gas extraction, to aid in the protection of wildlife, to decrease soil erosion, to aid in the prevention and abatement of the pollution of rivers and streams, to protect and improve the environmental values of this Commonwealth and to eliminate or abate hazards to health and safety. It is the intent of the General Assembly to encourage voluntary reclamation of lands adversely affected by mining or oil or gas extraction. The purpose of this chapter is to improve water quality and to control and eliminate water pollution resulting from mining or oil or gas extraction or exploration by limiting the liability which could arise as a result of the voluntary reclamation of abandoned lands or the reduction and abatement of water pollution. This chapter is not intended to limit the liability of a person who under existing law is or may become responsible to reclaim the land or address the water pollution or anyone who by contract, order or otherwise is required to or agrees to perform the reclamation or abate the water pollution.

§ 8104. Definitions.

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

"Abandoned lands." Land adversely affected by mineral or oil or gas extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition.

"Consideration." Something of value promised, given or performed in exchange for something which has the effect of making a legally enforceable contract. For the purpose of this chapter, the term does not include a promise to a landowner to repair damage caused by a reclamation project or water pollution abatement project when the promise is made in exchange for access to the land.

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

"Eligible land and water." Land and water adversely affected by mining or oil or gas extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition or left discharging water pollution and for which no person has a continuing reclamation or water pollution abatement obligation. The term shall also include land and water adversely affected by mining or oil or gas extraction and left in an unreclaimed or inadequately reclaimed condition or left discharging water pollution for which the Department of Environmental Protection has forfeited and collected the operators bonds and there is no outstanding litigation concerning the bond forfeiture.

"Landowner." A person who holds either legal or equitable interest in real property.

"Mineral." Any aggregate or mass of mineral matter, whether or not coherent, which is extracted by mining, including, but not limited to, limestone, dolomite, sand, gravel, slate, argillite, diabase, gneiss, micaceous sandstone known as bluestone, rock, stone, earth, fill, slag, iron ore, zinc ore,

vermiculite, clay and anthracite and bituminous coal.

"Permitted mining activity site." A site permitted by the Department of Environmental Protection pursuant to one or more of the following acts:

- (1) the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law;
- (2) the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act;
- (3) the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act;
- (4) the act of September 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act; or
- (5) the act of December 19, 1984 (P.L.1093, No.219), known as the Noncoal Surface Mining Conservation and Reclamation Act.

"Person." A natural person, partnership, association, association members, corporation, political subdivision of the Commonwealth, an agency, instrumentality or entity of Federal or State Government or other legal entity recognized by law as the subject of rights and liabilities.

"Project work area." That land necessary for a person to complete a reclamation project or a water pollution abatement project.

"Reclamation project." The restoration of eligible lands and water to productive use by regrading and revegetating the land to stable contours that blend in and complement the drainage pattern of the surrounding terrain with no highwalls, spoil piles or depressions to accumulate water and by plugging abandoned oil or gas wells and removing production or storage facilities, supplies and equipment from areas disturbed in siting, drilling, completing and producing such wells.

"Water pollution." Pollution of the waters of this Commonwealth as defined in section 1 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, which was caused by mining activities or oil or gas extraction or exploration for these resources.

"Water pollution abatement facilities." The methods for treatment or abatement of water pollution located on eligible lands and water. These methods include, but are not limited to, a structure, system, practice, technique or method constructed, installed or followed to reduce, treat or abate such water pollution.

"Water pollution abatement project." A plan for treatment or abatement of water pollution located on eligible lands and water. These plans include, but are not limited to, the practices to be followed and the installation, operation and maintenance of facilities to reduce, treat or abate such water pollution.

§ 8105. Eligibility and project inventory.

(a) General rule.--A landowner or person who voluntarily provides equipment, materials or services at no charge or at cost for a reclamation project or a water pollution abatement project in accordance with this chapter may be immune from civil liability and may raise the protections afforded by this chapter

in any subsequent legal proceeding which is brought to enforce environmental laws or otherwise impose liability. A landowner or other person is only eligible for the protections and immunities provided by sections 8106 (relating to landowner liability limitation and exceptions) and 8107 (relating to project liability limitation and exceptions) if a detailed written plan of the proposed reclamation project or water pollution abatement project is submitted to and approved by the department. The project plan shall include the objective of the project and a description of the work that will be performed to accomplish the objective and must identify the project location, project boundaries, the project participants and the owners of the land.

(b) Notice.--Upon receipt of each project plan, the department shall either give written notice by certified mail to adjacent property owners and riparian land owners located downstream of the proposed project or will provide public notice of the proposed project in a newspaper of general circulation, published in the locality of the proposed project, once a week for four consecutive weeks and shall give public notice in the Pennsylvania Bulletin. The person proposing the project may also provide public notice. Any person having an interest which may be adversely affected by the proposed project has the right to file with the department written objection to the proposed project within 30 days after receipt of the written notice or the last publication of the above notice, which shall conclude the public comment period. The department shall provide to the person proposing the project a copy of each written objection received during the public comment period.

(c) Advice.--The department may provide advice to the landowner or other interested person based upon the department's knowledge and experience in performing reclamation projects and water pollution abatement projects.

(d) Departmental review.--The department shall review each proposed reclamation project and approve the project if the department determines the proposed project:

(1) will result in the regrading of the land to stable contours that blend in and complement the drainage pattern of the surrounding terrain with no highwalls, spoil piles or depressions to accumulate water;

(2) will result in the appropriate revegetation of the site; and

(3) is not likely to result in water pollution as defined in section 1 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

The department shall review each proposed water pollution abatement project and approve the project if the department determines the proposed project is likely to improve the water quality and is not likely to make the water pollution worse.

(e) Additional review.--The department shall review each project plan in accordance with section 8111(b) (relating to exceptions).

(f) Project inventory.--The department shall develop and maintain a system to inventory and record each project, the project location and boundaries, each landowner and each person identified in a project plan provided to the department. The

inventory shall include the results of the department's review of the proposed project and, where applicable, include the department's findings under section 8111(b).

(g) Appeal.--A person aggrieved by a department decision to approve or disapprove a reclamation project or a water pollution abatement project has the right to file an appeal with the Environmental Hearing Board in accordance with the act of July 13, 1988 (P.L.530, No.94), known as the Environmental Hearing Board Act, and in accordance with the Environmental Hearing Board's rules, 25 Pa. Code Ch. 1021 (relating to practice and procedures).

§ 8106. Landowner liability limitation and exceptions.

(a) General rule.--Except as specifically provided in subsections (b) and (c), a landowner who provides access to the land, without charge or other consideration, which results in the implementation of a reclamation project or a water pollution abatement project:

(1) Shall be immune from liability for any injury or damage suffered by the person implementing the reclamation project or the water pollution abatement project while the person is within the project work area.

(2) Shall be immune from liability for or any injury to or damage suffered by a third party which arises out of or occurs as a result of an act or omission of a person implementing a reclamation project or water pollution abatement project which occurs during the implementation of the reclamation project or the water pollution abatement project.

(3) Shall be immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of a reclamation project or a water pollution abatement project.

(4) Shall not be deemed to assume legal responsibility for or incur liability for any pollution resulting from a reclamation project or water pollution abatement project.

(5) Shall not be subject to a citizen suit filed pursuant to section 601 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, for pollution resulting from a reclamation project or water pollution abatement project.

(6) Shall be immune from liability for the operation, maintenance or repair of the water pollution abatement facilities constructed or installed during the project unless the landowner negligently damages or destroys the water pollution abatement facilities or denies access to those persons who operate, maintain or repair the water pollution abatement facilities.

(b) Duty to warn.--A landowner shall warn a person implementing a reclamation project or water pollution abatement project of known, latent, dangerous conditions located on the project work area which known, latent, dangerous conditions are not the subject of the reclamation project or the water pollution abatement project. Nothing in this chapter shall limit in any way or affect a landowner's liability which results from the landowner's failure to warn of such known, latent, dangerous

conditions.

(c) Exceptions to immunity.--Nothing in this chapter shall limit in any way or affect a landowner's liability which results from a reclamation project or water pollution abatement project and which would otherwise exist:

(1) For injury or damage resulting from the landowner's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(2) Where the landowner charges an access fee or requires other consideration before allowing access to the land for the purpose of implementing a reclamation project or water pollution abatement project or to operate, maintain or repair water pollution abatement facilities constructed or installed during a water pollution abatement project.

(3) For the landowner's unlawful activities.

(4) For damage to adjacent landowners or downstream riparian landowners which results from a reclamation project or water pollution abatement project where written notice or public notice of the proposed project was not provided.

§ 8107. Project liability limitation and exceptions.

(a) General rule.--Except as specifically provided in subsection (b), a person who provides equipment, materials or services at no cost or at cost for a reclamation project or a water pollution abatement project:

(1) Shall be immune from liability for any injury to or damage suffered by a person which arises out of or occurs as a result of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(2) Shall be immune from liability for any pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project unless the person affects an area that is hydrologically connected to the water pollution abatement project work area and causes increased pollution by activities which are unrelated to the implementation of a water pollution abatement project.

(3) Shall not be deemed to assume responsibility for or incur liability for the operation, maintenance and repair of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(4) Shall not be subject to a citizen suit under section 601 of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, for pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(b) Exceptions.--

(1) Nothing in this chapter shall limit in any way the liability of a person who provides equipment, materials or services at no cost or at cost for a reclamation project or a water pollution abatement project which liability results from the reclamation project or the water pollution abatement project and which would otherwise exist:

(i) For injury or damage resulting from the person's acts or omissions which are reckless or constitute gross

negligence or willful misconduct.

(ii) For the person's unlawful activities.

(iii) For damages to adjacent landowners or downstream riparian landowners which result from a reclamation project or a water pollution abatement project where written notice or public notice of the proposed project was not provided.

(2) Nothing in this chapter shall limit in any way the liability of a person who the department has found to be in violation of any of the following acts:

(i) The act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act.

(ii) The act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act.

§ 8108. Permits and zoning.

Nothing in this chapter shall be construed as waiving any existing permit requirements or waiving any local zoning requirements.

§ 8109. Relationship to Federal and State programs.

The provisions of this chapter shall not prevent the Commonwealth from enforcing requirements necessary or imposed by the Federal Government as a condition to receiving or maintaining program authorization, delegation, primacy or Federal funds.

§ 8110. General permits.

If the department determines it will further the purposes of this chapter, the department may issue a general permit for each reclamation project or water pollution abatement project, which general permit shall:

(1) Encompass all of the activities included in that reclamation project or water pollution abatement project.

(2) Be issued in place of any required stream encroachment, earth disturbance or national pollution discharge elimination system permits.

§ 8111. Exceptions.

(a) General rule.--Any person who under existing law shall be or may become responsible to reclaim the land or treat or abate the water pollution or any person who for payment or consideration or who receives some other benefit through a contract or any person who through a consent order and agreement or otherwise agrees or is ordered to perform or complete reclamation or treat or abate water pollution as well as a surety which provided a bond for the site shall not be eligible for nor shall that person receive the benefit of the protections and immunities available under this chapter.

(b) Projects near mining or coal refuse sites.--This chapter shall not apply to a reclamation project or a water pollution abatement project that is located adjacent to, hydrologically connected to or in close proximity to a site permitted under the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act, the act of April 27, 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence and Land Conservation Act, the act of September 24,

1968 (P.L.1040, No.318), known as the Coal Refuse Disposal Control Act, or the act of December 19, 1984 (P.L.1093, No.219), known as the Noncoal Surface Mining Conservation and Reclamation Act, unless:

(1) The reclamation project or water pollution abatement project is submitted to the department in writing before the project is started.

(2) The department finds:

(i) The reclamation project or the water pollution abatement project will not adversely affect the permittee's obligations under the permit and the applicable law.

(ii) The activities on the project work area cannot be used by the permittee to avoid the permittee's reclamation or water pollution treatment or abatement obligations.

(3) The department issues a written notice of its findings and the approval of the project.

(c) Projects in lieu of civil penalties.--This chapter shall not apply to a reclamation project or a water pollution abatement project that is performed in lieu of paying civil penalties.

(d) Land Recycling and Environmental Remediation Standards Act.--The act of May 19, 1995 (P.L.4, No.2), known as the Land Recycling and Environmental Remediation Standards Act, does not apply to reclamation projects or water pollution abatement projects implemented under this chapter.

§ 8112. Water supply replacement.

A public or private water supply affected by contamination or the diminution caused by the implementation of a reclamation project or the implementation of a water pollution abatement project shall be restored or replaced by the department with an alternate source of water adequate in quantity and quality for the purposes served by the water supply.

§ 8113. Orphan oil and gas wells.

A reclamation project or water pollution abatement project shall not be implemented in a manner which will limit access to an orphan gas well or an orphan oil well.

§ 8114. Regulations.

The department may promulgate rules and regulations necessary to implement the provisions of this chapter.

PART VII

MISCELLANEOUS PROVISIONS

(Reserved)

Section 2. (a) The sum of \$2,000,000 is hereby appropriated, upon approval of the Governor, to the Department of Environmental Protection from the Hazardous Sites Cleanup Fund for the fiscal year July 1, 1999, to June 30, 2000, for the purposes of expanding the Small Business and Household Pollution Prevention Program to provide onsite assessments and recommendations for pollution prevention and energy efficiency techniques for fiscal year 1999-2000. The General Assembly may appropriate up to \$2,000,000 in additional funds from the Hazardous Sites Cleanup Fund for the fiscal year July 1, 2000, to June 30, 2001, for this purpose.

(b) The sum of \$44,675,000, or as much thereof as may be necessary, is hereby appropriated to the Environmental Stewardship Fund for the fiscal year July 1, 1999, to June 30, 2000, to carry out the provisions of 27 Pa.C.S. Ch. 61.

(c) The sum of \$20,000,000, or as much thereof as may be necessary, is hereby appropriated to the Agricultural Conservation Easement Purchase Fund for the fiscal year July 1, 1999, to June 30, 2000, to carry out the provisions of the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law.

Section 3. (a) The following acts and parts of acts are repealed:

Section 1936-A(b) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Act of August 20, 1953 (P.L.1217, No.339), entitled "An act providing for payments by the Commonwealth to municipalities which have expended money to acquire and construct sewage treatment plants in accordance with the Clean Streams Program and the act, approved the twenty-second day of June, one thousand nine hundred thirty-seven (Pamphlet Laws 1987), and making an appropriation."

Section 1108(b), (c), (f) and (i) of the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act.

Sections 5(d) and 6(b)(3), (4), (5) and (6), (c), (d), (e), (f) and (g) of the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with:

- (1) subsection (a);
- (2) the addition of 27 Pa.C.S. Ch. 61;
- (3) the addition of 27 Pa.C.S. Ch. 81; or
- (4) section 2 of this act.

Section 4. This act shall take effect as follows:

- (1) This section shall take effect immediately.
- (2) The following provisions shall take effect in 60

days:

- (i) The addition of 27 Pa.C.S. Ch 81.
- (ii) Section 3(b)(3) of this act.

(3) The remainder of this act shall take effect December 31, 1999, or immediately, whichever is later.

APPROVED--The 15th day of December, A. D. 1999.

THOMAS J. RIDGE