

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 744

Session of 1977

INTRODUCED BY KURY, MURRAY, MELLOW, HOLL AND WOOD, APRIL 19, 1977

SENATOR SMITH, APPROPRIATIONS, RE-REPORTED AS AMENDED, JANUARY 30, 1978

AN ACT

1 Providing for the regulation of land and water use for flood
2 control and storm water management purposes, imposing duties
3 and conferring powers on the Department of Environmental
4 Resources, municipalities and counties, providing for
5 enforcement and penalties, and making appropriations.

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

14      Section 1.   Short title.

15           This act shall be known and may be cited as the "Storm Water  
16 Management Act."

17      Section 2.   Statement of legislative findings.

18           The General Assembly finds that:

19           (1)   Inadequate management of accelerated runoff of storm  
20 water resulting from development throughout a watershed  
21 increases flood flows and velocities, contributes to erosion  
22 and sedimentation, overtaxes and carrying capacity of streams  
23 and storm sewers, greatly increases the cost of public  
24 facilities to carry and control storm water, undermines flood  
25 plain management and flood control efforts in downstream  
26 communities, reduces ground-water recharge, and threatens  
27 public health and safety.

28           (2)   A comprehensive program of storm water management,  
29 including reasonable regulation of development and activities  
30 causing accelerated runoff, is fundamental to the public

1 health, safety and welfare and the protection of the people  
2 of the Commonwealth, their resources and the environment.

3 Section 3. Purpose and policy.

4 The policy and purpose of this act is to:

5 (1) Encourage planning and management of storm water  
6 runoff in each watershed which is consistent with sound water  
7 and land use practices.

8 (2) Authorize a comprehensive program of storm water  
9 management designated to preserve and restore the flood  
10 carrying capacity of Commonwealth streams; to preserve to the  
11 maximum extent practicable natural storm water runoff regimes  
12 and natural course, current and cross-section of water of the  
13 Commonwealth; and to protect and conserve ground waters and  
14 ground-water recharge areas.

15 (3) Encourage local administration and management of  
16 storm water consistent with the Commonwealth's duty as  
17 trustee of natural resources and the people's constitutional  
18 right to the preservation of natural, economic, scenic,  
19 aesthetic, recreational and historic values of the  
20 environment.

21 Section 4. Definitions.

22 The following words and phrases when used in this act shall  
23 have, unless the context clearly indicates otherwise, the  
24 meanings given to them in this section:

25 "Department." The Department of Environmental Resources of  
26 the Commonwealth of Pennsylvania.

27 "Governmental unit." Any county, municipality, political  
28 subdivision or the Commonwealth, and any department, authority,  
29 agency or board thereof or any agent of the foregoing.

30 "Municipality." A city, borough, town or township, or any

1 county or other governmental unit when acting as an agent  
2 thereof, or any combination thereof acting jointly.

3 "Pennsylvania Municipalities Planning Code." The act of July  
4 31, 1968 (P.L.805, No.247), as amended.

5 "Person." An individual, partnership, public or private  
6 association or corporation, firm, trust, estate, municipality,  
7 governmental unit, public utility or any other legal entity  
8 whatsoever which is recognized by law as the subject of rights  
9 and duties. Whenever used in any section prescribing or imposing  
10 a penalty, the term "person" shall include the members of a  
11 partnership, the officers, members, servants and agents of an  
12 association, the shareholders, officers, agents and servants of  
13 a corporation, and the officers of a municipality or county, but  
14 shall exclude any department, board, bureau or agency of the  
15 Commonwealth.

16 "Public utility service." The rendering of the following  
17 services for the public:

18 (1) gas, electricity or steam production, generation,  
19 transmission or distribution;

20 (2) water diversion, pumping, impoundment, or  
21 distribution;

22 (3) railroad transportation of passengers or property;

23 (4) operation of a canal, turnpike, tunnel, bridge,  
24 wharf or similar structure;

25 (5) transportation of natural or artificial gas, crude  
26 oil, gasoline or petroleum products, materials for  
27 refrigeration or other fluid substances by pipeline or  
28 conduit;

29 (6) telephone or telegraph communications; and

30 (7) sewage collection, treatment or disposal.

1 "Storm water." Drainage runoff from the surface of the land  
2 resulting from precipitation or snow or ice melt.

3 "Watershed" The entire region or area drained by a river or  
4 other body of water, whether natural or artificial.

5 "Watershed storm water plan." A plan for storm water  
6 management adopted by a county in accordance with section 5.  
7 Section 5. Watershed storm water plans and contents.

8 (a) Within two years following the effective date of this  
9 act, each county shall prepare and adopt a watershed storm water  
10 management plan for each watershed located in the county as  
11 designated by the department, in consultation with the  
12 municipalities located within each watershed, and shall  
13 periodically review and revise such plan at least every five  
14 years.

15 (b) Each watershed storm water plan shall include, but is  
16 not limited to:

17 (1) a survey of existing runoff characteristics in small  
18 as well as large storms, including the impact of soils,  
19 slopes, vegetation and existing development;

20 (2) a survey of existing significant obstructions and  
21 their capacities;

22 (3) An assessment of projected and alternative land  
23 development patterns in the watershed, and the potential  
24 impact of runoff quantity, velocity and quality;

25 (4) an analysis of present and projected development in  
26 flood hazard areas, and its sensitivity to damages from  
27 future flooding or increased runoff;

28 (5) a survey of existing drainage problems and proposed  
29 solutions;

30 (6) a review of existing and proposed storm water

1 collection systems and their impacts;

2 (7) an assessment of alternative runoff control  
3 techniques and their efficacy in the particular watershed;

4 (8) an identification of existing and proposed State,  
5 Federal and local flood control projects located in the  
6 watershed and their design capacities;

7 (9) a designation of those areas to be served by storm  
8 water collection and control facilities within a ten-year  
9 period, an estimate of the design capacity and costs of such  
10 facilities, a schedule and proposed methods of financing the  
11 development, construction and operation of such facilities,  
12 and an identification of the existing or proposed  
13 institutional arrangements to implement and operate the  
14 facilities;

15 (10) an identification of flood plains within the  
16 watershed;

17 (11) criteria and standards for the control of storm  
18 water runoff from existing and new development which are  
19 necessary to minimize dangers to property and life and carry  
20 out the purposes of this act; and

21 (12) provisions for periodically reviewing, revising and  
22 updating the plan.

23 (c) Each watershed storm water plan shall:

24 (1) contain such provisions as are reasonably necessary  
25 to manage storm water such that development or activities in  
26 each municipality within the watershed do not adversely  
27 affect health, safety and property in other municipalities  
28 within the watershed and in basins to which the watershed is  
29 tributary; and

30 (2) consider and be consistent with other existing

1 municipal, county, regional and State environmental and land  
2 use plans.

3 Section 6. Municipal and public participation in watershed  
4 planning.

5 (a) The county shall establish, in conjunction with each  
6 watershed storm water planning program, a watershed plan  
7 advisory committee composed of at least one representative from  
8 each municipality within the watershed and such other agencies  
9 or groups as are necessary and proper to carry out the purposes  
10 of the committee.

11 (b) Each committee shall be responsible for advising the  
12 county throughout the planning process, evaluating policy and  
13 project alternatives, coordinating the watershed storm water  
14 plans with other municipal plans and programs, and reviewing the  
15 plan prior to adoption.

16 (c) Prior to adoption, each plan shall be reviewed by the  
17 official planning agency and governing body of each  
18 municipality, the county planning commission and regional  
19 planning agencies for consistency with other plans and programs  
20 affecting the watershed. All such reviews shall be submitted to  
21 the department with the proposed plan.

22 Section 7. Joint plans and coordination of planning.

23 Where a watershed includes land in more than one county, the  
24 department may require that the affected counties:

25 (1) prepare, adopt and submit a joint plan for the  
26 entire watershed; or

27 (2) take such other actions as may be necessary and  
28 appropriate to coordinate storm water planning for the entire  
29 watershed.

30 Section 8. Adoption and amendment.

1 (a) Prior to adoption or amendment of a watershed storm  
2 water plan, the county shall hold a public hearing pursuant to  
3 public notice of not less than two weeks. The notice shall  
4 contain a brief summary of the principal provisions of the plan,  
5 and a reference to the places within each affected municipality  
6 where copies may be examined or purchased at cost.

7 (b) Adoption or amendment of the plan shall be by resolution  
8 carried by an affirmative vote of at least a majority of the  
9 members of the county governing body. The resolution shall refer  
10 expressly to the maps, charts, textural matter and other  
11 materials intended to form the whole or part of the official  
12 plan, or amendment thereto, and the action shall be recorded on  
13 the adopted plan, part or amendment.

14 Section 9. Review and approval by the department.

15 (a) The department shall, in consultation with the  
16 Department of Community Affairs, review all watershed storm  
17 water plans and revisions or amendments thereto. It shall  
18 approve the plan if it determines:

19 (1) that the plan is consistent with municipal flood  
20 plain management plans, State programs which regulate dams,  
21 encroachments, and water obstructions, and State and Federal  
22 flood control programs; and

23 (2) that the plan is compatible with other watershed  
24 storm water plans for the basin in which the watershed is  
25 located, and is consistent with the policies and purposes of  
26 this act.

27 (b) Any person aggrieved by a final decision of the  
28 department approving or disapproving a watershed plan or  
29 amendment thereto, may appeal the decision to the Environmental  
30 Hearing Board in accordance with the provisions of section 1921-



1 A of the act of April 9, 1929 (P.L.177, No.175), known as "The  
2 Administrative Code of 1929," and the act of June 4, 1945  
3 (P.L.1388, No.442), known as the "Administrative Agency Law."  
4 Section 10. Failure to submit plan; mandamus.

5 The department may institute an action in mandamus in the  
6 Commonwealth Court or the court of common pleas of the county or  
7 counties in which the watershed is located, to compel counties  
8 to adopt and submit plans in accordance with this act.

9 Section 11. Effect of watershed storm water plans.

10 (a) After adoption and approval of a watershed storm water  
11 plan in accordance with this act, the location, design and  
12 construction within the watershed of storm water management  
13 systems, obstructions, flood control projects, subdivisions and  
14 major land developments, highways and transportation facilities,  
15 facilities for the provision of public utility services and  
16 facilities owned or financed in whole or in part by funds from  
17 the Commonwealth shall be conducted in a manner consistent with  
18 the watershed storm water plan.

19 (b) Within six months following adoption and approval of the  
20 watershed storm water plan, each municipality shall adopt or  
21 amend, and shall implement such ordinances and regulations,  
22 including zoning, subdivision and development, building code,  
23 and erosion and sedimentation ordinances, as are necessary to  
24 regulate development within the municipality in a manner  
25 consistent with the applicable watershed storm water plan and  
26 the provisions of this act.

27 Section 12. Failure of municipalities to adopt implementing  
28 ordinances.

29 (a) If the department finds that a municipality has failed  
30 to adopt or amend, and implement such ordinances and regulations

1 as required by section 11, the department shall provide written  
2 notice of violation to the municipality.

3 (b) If, within 60 days of receipt of a notice of violation,  
4 the municipality has not fully complied with the requirements of  
5 section 11, the department may issue an order to the  
6 municipality and its officers requiring compliance with such  
7 terms and conditions as are necessary to carry out this act. Any  
8 order issued under this section shall take effect upon receipt  
9 of notice, unless the order specifies otherwise. Any person  
10 aggrieved by an action of the department in issuing an order  
11 shall have the right within 30 days of receipt of notice of such  
12 action to appeal such action to the Environmental Hearing Board,  
13 pursuant to section 1921-A of "The Administrative Code of 1929,"  
14 and the "Administrative Agency Law."

15 (c) Any municipality or person failing to comply with an  
16 order issued pursuant to this section from which no appeal has  
17 been taken, which has been sustained on appeal, or for which no  
18 supersedeas has been granted, shall be deemed in contempt of  
19 such order. Upon petition and certification of the order by the  
20 department, the Commonwealth Court or the court of common pleas  
21 of the county in which the municipality is located, shall, if it  
22 finds that the municipality and its officers are not in  
23 compliance with the order, adjudge the same in contempt and  
24 shall assess civil penalties of an amount not less than \$100 nor  
25 greater than \$10,000 per violation plus \$500 for each continuing  
26 day of violation.

27 (d) Where the municipality or its officers have not as of  
28 the date of hearing before the court complied with the  
29 department's order, the court shall specifically order full  
30 compliance with the department's order by a date set by the

1 court, and may issue any further order as may be appropriate.

2 Section 13. Duty of persons engaged in the development of land.

3 Any landowner and any person engaged in the alteration or  
4 development of land which may affect storm water runoff  
5 characteristics shall implement such measures consistent with  
6 the provisions of the applicable watershed storm water plan as  
7 are reasonably necessary to prevent injury to health, safety or  
8 other property. Such measures shall include such actions as are  
9 required:

10 (1) to assure that the maximum rate of storm water  
11 runoff is no greater after development than prior to  
12 development activities; or

13 (2) to manage the quantity, velocity and direction of  
14 resulting storm water runoff in a manner which otherwise  
15 adequately protects health and property from possible injury.

16 Section 14. Powers and duties of the Department of  
17 Environmental Resources.

18 The Department of Environmental Resources shall have the  
19 power and its duty shall be to:

20 (1) Coordinate the management of storm water in the  
21 Commonwealth.

22 (2) Provide in cooperation with the Department of  
23 Community Affairs technical assistance to counties and  
24 municipalities in implementing this act.

25 (3) Publish guidelines for storm water management, and  
26 model storm water ordinances for use by counties and  
27 municipalities.

28 (4) Review, in cooperation with the Department of  
29 Community Affairs, and approve all watershed plans and  
30 revisions thereto.

1 (5) Cooperate with appropriate agencies of the United  
2 States or of other states or any interstate agencies with  
3 respect to the planning and management of storm water.

4 (6) Serve as the agency of the Commonwealth for the  
5 receipt of moneys from the Federal Government of other public  
6 or private agencies or persons and expend such moneys AS ←  
7 APPROPRIATED BY THE GENERAL ASSEMBLY for studies and research  
8 with respect to planning and management of storm water.

9 (7) Conduct studies and research regarding the causes,  
10 effects and hazards of storm water and methods for storm  
11 water management.

12 (8) Conduct and supervise educational programs with  
13 respect to storm water management.

14 (9) Require the submission of records and periodic  
15 reports by county and municipal agencies as necessary to  
16 carry out the purposes of this act.

17 (10) Do any other acts not inconsistent with this act  
18 necessary to carry out the purposes and policies of this act.

19 Section 15. Civil remedies.

20 (a) Any activity conducted in violation of the provisions of  
21 this act or of any watershed storm water plan, regulations or  
22 ordinances adopted hereunder, is hereby declared a public  
23 nuisance.

24 (b) Suits to restrain, prevent or abate violation of this  
25 act or of any watershed storm water plan, regulations or  
26 ordinances adopted hereunder, may be instituted in equity or at  
27 law by the department, any affected county or municipality, or  
28 any person. Such proceedings may be prosecuted in the  
29 Commonwealth Court, or in the court of common pleas of the  
30 county where the activity has taken place, the condition exists,

1 or the public affected, and to that end jurisdiction is hereby  
2 conferred in law and equity upon such courts. Except in cases of  
3 emergency where, in the opinion of the court, the circumstances  
4 of the case require immediate abatement of the unlawful conduct,  
5 the court may, in its decree, fix a reasonable time during which  
6 the person responsible for the unlawful conduct shall correct or  
7 abate the same. The expense of such proceedings shall be  
8 recoverable from the violator in such manner as may now or  
9 hereafter be provided by law.

10 (c) Any person injured by conduct which violates the  
11 provisions of section 13 may, in addition to any other remedy  
12 provided under this act, recover damages caused by such  
13 violation from the landowner or other responsible person.

14 Section 16. Criminal penalties.

15 (a) Any person who violates the provisions of this act or of  
16 a watershed storm water plan, regulation or ordinance adopted  
17 hereunder, is guilty of a summary offense and, upon conviction,  
18 shall be sentenced to pay a fine of not less than \$100 nor more  
19 than \$1,000 for each separate offense, and, in default of the  
20 payment of such fine, to imprisonment for a period of not more  
21 than 60 days.

22 (b) Any person who, within two years after a conviction in a  
23 summary proceeding as provided in subsection (a), violates the  
24 provisions of this act or of a watershed storm water plan,  
25 regulations or ordinances adopted hereunder, is guilty of a  
26 misdemeanor and, upon conviction, shall be sentenced to pay a  
27 fine of not less than \$500 nor more than \$5,000 for each  
28 separate offense or to imprisonment for a period of not more  
29 than one year, or both.

30 (c) Each day of continued violation shall constitute a

1 separate offense under subsections (a) and (b). Any criminal  
2 penalty collected under this act shall be paid to the  
3 municipality or municipalities in which the violation occurred  
4 to be used by said municipality or municipalities in achieving  
5 the purposes of this act.

6 Section 17. Preservation of existing rights and remedies.

7 (a) The collection of any penalty under the provisions of  
8 this act shall not be construed as estopping the Commonwealth,  
9 any county, municipality or person from proceeding in courts of  
10 law or equity to abate nuisances under existing law or to  
11 restrain, at law or in equity, violation of this act.

12 (b) It is hereby declared to be the purpose of this act to  
13 provide additional and cumulative remedies to abate nuisances.

14 Section 18. Appropriations.

15 The sum of \$500,000 or as much thereof as may be necessary,  
16 is hereby appropriated for the fiscal period beginning July 1,  
17 ~~1977~~ 1978, and ending June 30, ~~1978~~ 1979, to the Department of ←  
18 Environmental Resources for the purposes of administrative and  
19 general expenses in implementing the provisions of this act.

20 Section 19. Repealer and savings clause.

21 (a) All acts or parts of acts inconsistent herewith are  
22 hereby repealed to the extent of such inconsistency.

23 (b) The provisions of this act shall not effect any suit or  
24 prosecution pending or to be instituted to enforce any right or  
25 penalty or punish any offense under the authority of any act of  
26 Assembly or part thereof repealed by this act.

27 Section 20. Effective date.

28 This act shall take effect immediately.