

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 744

Session of 1977

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

AS AMENDED ON THIRD CONSIDERATION, MARCH 6, 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.

TABLE OF CONTENTS

- 6 Section 1. Short title.
7 Section 2. Statement of legislative findings.
8 Section 3. Purpose and policy.
9 Section 4. Definitions.
10 Section 5. Watershed storm water plans and contents.
11 Section 6. Municipal and public participation in watershed
12 planning.
13 Section 7. Joint plans and coordination of planning.
14 Section 8. Adoption and amendment.
15 Section 9. Review and approval by the department.
16 Section 10. Failure to submit plan; mandamus.
17 Section 11. Effect of watershed storm water plans.
18 Section 12. Failure of municipalities to adopt implementing
19

1 ordinances.

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

4 Section 14. Powers and duties of the Department of
5 Environmental Resources.

6 Section 15. Civil remedies.

7 Section 16. Criminal penalties.

8 Section 17. Preservation of existing rights and remedies.

9 Section 18. Appropriations.

10 Section 19. Repealer and savings clause.

11 Section 20. Effective date.

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~~ THE carrying capacity of <—
23 streams and storm sewers, greatly increases the cost of
24 public facilities to carry and control storm water,
25 undermines flood plain management and flood control efforts
26 in downstream communities, reduces ground-water recharge, and
27 threatens 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 efficiency 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, the county soil and
9 water conservation district and such other agencies or groups as
10 are necessary and proper to carry out the purposes of the
11 committee.

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

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

23 Section 7. Joint plans and coordination of planning.

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

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

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

1 Section 8. Adoption and amendment.

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

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

15 Section 9. Review and approval by the department.

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

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

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

28 (b) Any person aggrieved by a final decision of the
29 department approving or disapproving a watershed plan or
30 amendment thereto, may appeal the decision to the Environmental

1 Hearing Board in accordance with the provisions of section 1921-
2 A of the act of April 9, 1929 (P.L.177, No.175), known as "The
3 Administrative Code of 1929," and the act of June 4, 1945
4 (P.L.1388, No.442), known as the "Administrative Agency Law."
5 Section 10. Failure to submit plan; mandamus.

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

10 Section 11. Effect of watershed storm water plans.

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

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

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

30 (a) If the department finds that a municipality has failed

1 to adopt or amend, and implement such ordinances and regulations
2 as required by section 11, the department shall provide written
3 notice of violation to the municipality.

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

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

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

1 ~~compliance with the department's order by a date set by the~~
2 ~~court, and may issue any further order as may be appropriate.~~

3 (B) WITHIN 60 DAYS OF RECEIPT OF THE NOTICE OF VIOLATION, ←
4 THE MUNICIPALITY SHALL REPORT TO THE DEPARTMENT THE ACTION WHICH
5 IT IS TAKING TO COMPLY WITH THE REQUIREMENT OR REGULATION.

6 (C) IF WITHIN 180 DAYS OF RECEIPT OF THE NOTICE OF
7 VIOLATION, THE MUNICIPALITY HAS FAILED TO COMPLY WITH SUCH
8 REQUIREMENT OR REGULATION, AS DETERMINED BY THE DEPARTMENT, THE
9 SECRETARY OF COMMUNITY AFFAIRS SHALL NOTIFY THE STATE TREASURER
10 TO WITHHOLD PAYMENT OF ALL FUNDS PAYABLE TO THE MUNICIPALITY
11 FROM THE GENERAL FUND OR ANY OTHER FUND. UPON NOTIFICATION, THE
12 STATE TREASURER SHALL HOLD IN ESCROW ALL MONEYS DUE TO SUCH
13 MUNICIPALITY FROM THE COMMONWEALTH UNTIL SUCH TIME AS THE
14 DEPARTMENT NOTIFIES THE STATE TREASURER THAT THE MUNICIPALITY
15 HAS COMPLIED WITH SUCH REQUIREMENT OR REGULATION.

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

17 Any landowner and any person engaged in the alteration or
18 development of land which may affect storm water runoff
19 characteristics shall implement such measures consistent with
20 the provisions of the applicable watershed storm water plan as
21 are reasonably necessary to prevent injury to health, safety or
22 other property. Such measures shall include such actions as are
23 required:

24 (1) to assure that the maximum rate of storm water
25 runoff is no greater after development than prior to
26 development activities; or

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

30 Section 14. Powers and duties of the Department of

1 Environmental Resources.

2 The Department of Environmental Resources shall have the
3 power and its duty shall be to:

4 (1) Coordinate the management of storm water in the
5 Commonwealth.

6 (2) Provide in cooperation with the Department of
7 Community Affairs technical assistance to counties and
8 municipalities in implementing this act.

9 (3) Publish guidelines for storm water management, and
10 model storm water ordinances for use by counties and
11 municipalities.

12 (4) Review, in cooperation with the Department of
13 Community Affairs, and approve all watershed plans and
14 revisions thereto.

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

18 (6) Serve as the agency of the Commonwealth for the
19 receipt of moneys from the Federal Government ~~of~~ OR other ←
20 public or private agencies or persons and expend such moneys
21 as appropriated by the General Assembly for studies and
22 research with respect to planning and management of storm
23 water.

24 (7) Conduct studies and research regarding the causes,
25 effects and hazards of storm water and methods for storm
26 water management.

27 (8) Conduct and supervise educational programs with
28 respect to storm water management.

29 (9) Require the submission of records and periodic
30 reports by county and municipal agencies as necessary to

1 carry out the purposes of this act.

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

4 Section 15. Civil remedies.

5 (a) Any activity conducted in violation of the provisions of
6 this act or of any watershed storm water plan, regulations or
7 ordinances adopted hereunder, is hereby declared a public
8 nuisance.

9 (b) Suits to restrain, prevent or abate violation of this
10 act or of any watershed storm water plan, regulations or
11 ordinances adopted hereunder, may be instituted in equity or at
12 law by the department, any affected county or municipality, or
13 any aggrieved person. Such proceedings may be prosecuted in the
14 Commonwealth Court, or in the court of common pleas of the
15 county where the activity has taken place, the condition exists,
16 or the public affected, and to that end jurisdiction is hereby
17 conferred in law and equity upon such courts. Except in cases of
18 emergency where, in the opinion of the court, the circumstances
19 of the case require immediate abatement of the unlawful conduct,
20 the court may, in its decree, fix a reasonable time during which
21 the person responsible for the unlawful conduct shall correct or
22 abate the same. The expense of such proceedings shall be
23 recoverable from the violator in such manner as may now or
24 hereafter be provided by law.

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

29 Section 16. Criminal penalties.

30 (a) Any person who violates the provisions of this act or of

1 a watershed storm water plan, regulation or ordinance adopted
2 hereunder, is guilty of a summary offense and, upon conviction,
3 shall be sentenced to pay a fine of not less than \$100 nor more
4 than \$1,000 for each separate offense, and, in default of the
5 payment of such fine, to imprisonment for a period of not more
6 than 60 days.

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

15 (c) Each day of continued violation shall constitute a
16 separate offense under subsections (a) and (b). Any criminal
17 penalty collected under this act shall be paid to the
18 municipality or municipalities in which the violation occurred
19 to be used by said municipality or municipalities in achieving
20 the purposes of this act.

21 Section 17. Preservation of existing rights and remedies.

22 (a) The collection of any penalty under the provisions of
23 this act shall not be construed as estopping the Commonwealth,
24 any county, municipality or aggrieved person from proceeding in
25 courts of law or equity to abate nuisances under existing law or
26 to restrain, at law or in equity, violation of this act.

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

29 Section 18. Appropriations.

30 The sum of \$500,000 or as much thereof as may be necessary,

1 is hereby appropriated for the fiscal period beginning July 1,
2 1978, and ending June 30, 1979, to the Department of
3 Environmental Resources for the purposes of administrative and
4 general expenses in implementing the provisions of this act.

5 Section 19. Repealer and savings clause.

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

8 (b) The provisions of this act shall not ~~effect~~ AFFECT any ←
9 suit or prosecution pending or to be instituted to enforce any
10 right or penalty or punish any offense under the authority of
11 any act of Assembly or part thereof repealed by this act.

12 Section 20. Effective date.

13 This act shall take effect immediately.