

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1659 Session of  
2011

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AS REPORTED FROM COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 23, 2012

## AN ACT

1 Providing for the effective and thorough review of permit  
2 applications to the Department of Environmental Protection  
3 and other entities to ensure environmental protection and  
4 foster economic growth.

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

## CHAPTER 1

## PRELIMINARY PROVISIONS

9 Section 101. Short title.

10 This act shall be known and may be cited as the Department of  
11 Environmental Protection Permit Review and Issuance Act.

12 Section 102. Definitions.

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

4 "Applicant." The person submitting an application for a  
5 permit to the Department of Environmental Protection.

6 "Application." Any submittal to the Department of  
7 Environmental Protection by a person that seeks or otherwise  
8 requests a permit. The term includes, but is not limited to:

- 9 (1) New permits.
- 10 (2) Permit renewals.
- 11 (3) Permit amendments.
- 12 (4) Permit modifications.
- 13 (5) Permit transfers.
- 14 (6) Change of ownership.

15 "Department." The Department of Environmental Protection, as  
16 well as Commonwealth subdivisions with the authority to issue  
17 permits on behalf of or in lieu of the Department of  
18 Environmental Protection, by delegation from or under a  
19 cooperative agreement with the Commonwealth or with the  
20 authority to issue permits delegated from or authorized directly  
21 by the United States.

22 ~~"Licensed permit review professional." An individual, not~~ ←  
23 ~~employed by the Department of Environmental Protection, who is~~  
24 ~~eligible to review permits as specified in section 304.~~

25 "Permit." An approval, permit, plan approval, registration,  
26 license or other authorization or decision.

27 "Person." An individual, firm, joint venture, partnership,  
28 corporation, association, municipality, municipal authority,  
29 cooperative association or joint stock association, including  
30 any trustee, receiver, assignee or personal representative

1 thereof.

2 "Regional office." An office of the Department of  
3 Environmental Protection, INCLUDING THE BUREAU OF DISTRICT  
4 MINING OFFICES, from which permits are issued, but which is  
5 separate from the primary department office.

6 CHAPTER 3

7 PERMIT ISSUANCE

8 Section 301. Applicability.

9 (a) General rule.--Except as provided in subsection (b), the  
10 provisions of this act shall apply to the department and any  
11 person who submits an application to the department after the  
12 effective date of this section.

13 (b) Exceptions.--This act shall not apply to any of the  
14 following:

15 (1) a permit issued solely to comply with Federal law  
16 AND WHERE THERE IS NO SPECIFIC STATE STATUTORY BASIS FOR THE  
17 ISSUANCE OF SUCH PERMIT;

18 (2) an administrative consent order or other enforcement  
19 action relating to a permit or lack thereof; or

20 (3) the revocation of a permit.

21 Section 302. Permit submission process.

22 (a) Preapplication meeting.--All applicants shall  
23 participate in a meeting with the department prior to submitting  
24 an application.

25 (1) During the preapplication meeting, the applicant  
26 shall submit at least the following:

27 (i) Project description, including, but not limited  
28 to, scope of work, primary emissions points, discharge  
29 outfalls and water intake points.

30 (ii) Location of the project, including county,

1 municipality and location on the site.

2 (iii) Business schedule for project completion.

3 (2) During the preapplication meeting, the department  
4 shall provide for the applicant at least the following:

5 (i) An overview of the permit review program.

6 (ii) A determination of which specific application  
7 or applications will be necessary to complete the  
8 project.

9 (iii) A statement notifying the applicant if the  
10 specific permit being sought requires a mandatory public  
11 hearing or comment period.

12 (iv) A review of the timetable established in the  
13 permit review program for the specific permit being  
14 sought.

15 (v) A determination of what information must be  
16 included in the application, including a description of  
17 any required modeling or testing.

18 (3) The department shall ensure that participants  
19 representing the department in the preapplication meeting do  
20 so on behalf of the specific permit review program area from  
21 which the permit is being sought.

22 (b) Application submission.--Upon the ~~applicant's submitting~~ ←  
23 FORMAL SUBMISSION OF the ~~application~~ PERMIT APPLICATION BY THE ←  
24 APPLICANT to the department ~~with any required information,~~ ←  
25 ~~including any potential supplemental data,~~ the application shall  
26 be marked in such a manner as to indicate that it has officially  
27 been received by the department. At that time, the applicant  
28 shall receive an official permit review schedule that shows when  
29 a final decision will be determined.

30 (c) Permit review and determination.--

1 (1) Upon officially receiving an application, the  
2 department and applicant shall proceed with the following  
3 time frames unless otherwise prohibited by law:

4 (i) Application completeness and technical review  
5 shall take no more than 30 days.

6 (ii) Applicant response to deficiencies identified  
7 by the department during the completeness and technical  
8 review shall take no more than ~~30~~ 90 days. ←

9 (iii) Final review and determination by the  
10 department of the application or resubmitted application,  
11 if returned after the completeness and technical review,  
12 shall take no more than ~~30~~ 60 days. ←

13 ~~(2) The review schedule specified in paragraph (1) shall~~ ←  
14 ~~not apply if:~~

15 ~~(i) Review times are mandated by statute and cannot~~  
16 ~~be accommodated within the time periods established in~~  
17 ~~paragraph (1).~~

18 ~~(ii) Public hearings are mandated by statute and~~  
19 ~~cannot be accommodated within the time periods~~  
20 ~~established in paragraph (1).~~

21 ~~(iii) Public comment periods are mandated by statute~~  
22 ~~and cannot be accommodated within the time periods~~  
23 ~~established in paragraph (1).~~

24 ~~(iv) The applicant requests an alternate review~~  
25 ~~schedule.~~

26 ~~(3)~~ (2) An applicant may request a review schedule ←  
27 different from the review schedule in paragraph (1). Prior to  
28 an alternate review schedule commencing, the following must  
29 occur:

30 (i) ~~The department must determine that there are no~~ ←

1 ~~statutory prohibitions to the alternate review schedule.~~

2 ~~(ii) The department must agree to the request in~~  
3 ~~writing.~~

4 ~~(iii) The applicant and the department must develop~~  
5 ~~a mutually agreed upon alternate permit application~~  
6 ~~review schedule.~~

7 ~~(iv) (II) The applicant and the department must each~~ ←  
8 ~~agree in writing to the alternate review schedule~~  
9 ~~indicating acceptance of the alternate review schedule.~~

10 ~~(4) (3) If the department fails to issue a decision on~~ ←  
11 ~~an application in accordance with the review schedule in~~  
12 ~~paragraph (1) or the alternate review schedule as provided~~  
13 ~~for in paragraph (3) (2), the application shall be deemed~~ ←  
14 ~~approved.~~

15 ~~(5) The applicant may select a licensed permit review~~ ←  
16 ~~professional, as provided for in section 304, to undertake~~  
17 ~~the review of the permit application rather than a department~~  
18 ~~review.~~

19 ~~Section 303. Electronic public database.~~

20 ~~(a) Duty to develop. The department shall develop an~~  
21 ~~electronic database that is publicly accessible to perform the~~  
22 ~~following functions:~~

23 ~~(1) List all permits subject to this act.~~

24 ~~(2) List and track the status of all applications being~~  
25 ~~reviewed as required by this act.~~

26 ~~(b) Contents. The database developed under subsection (a)~~  
27 ~~shall include the following information:~~

28 ~~(1) A statement indicating that if the review is an~~  
29 ~~alternate review schedule as provided for in section 302(c)~~  
30 ~~and why the alternate review schedule was granted.~~

1           ~~(2) The date the application was officially received by~~  
2 ~~the department.~~

3           ~~(3) The date that the application was determined to have~~  
4 ~~undergone and completed the administrative and technical~~  
5 ~~review.~~

6           ~~(4) The date the application was returned to the~~  
7 ~~applicant for deficiencies noted in the administrative and~~  
8 ~~technical review, if applicable.~~

9           ~~(5) The date the application was returned by the~~  
10 ~~applicant to the department with corrections as determined in~~  
11 ~~the administrative and technical review.~~

12           ~~(6) The date of any required public hearings or public~~  
13 ~~comment periods.~~

14           ~~(7) A statement indicating whether the permit is being~~  
15 ~~reviewed by a licensed permit review professional as provided~~  
16 ~~for in section 304.~~

17           ~~(8) A list of licensed permit review professionals~~  
18 ~~licensed by the department.~~

19           ~~(c) Electronic database fee. The department may, through~~  
20 ~~regulation, establish a fee assessed on each permit to develop~~  
21 ~~and maintain the database required in subsection (a).~~

22 ~~Section 304. Licensed permit review professional.~~

23           ~~(a) Program to be developed. The department shall develop~~  
24 ~~through regulation a program to license nondepartment employees~~  
25 ~~to undertake the review of applications submitted to the~~  
26 ~~department.~~

27           ~~(b) Licensing fee. The department may establish a licensing~~  
28 ~~fee through regulation. The licensing fee shall only be adequate~~  
29 ~~to allow the department to develop and administer the program.~~

30           ~~(c) Time frames. The licensed permit review professional~~

1 ~~shall perform the reviews within the time frames provided for in~~  
2 ~~section 302.~~

3 ~~(d) Department to consider recommendations. In making a~~  
4 ~~decision regarding an application that has been reviewed by a~~  
5 ~~licensed permit review professional, the department shall accept~~  
6 ~~the recommendations provided by the licensed permit review~~  
7 ~~professional, unless the recommendations are clearly erroneous.~~

8 ~~(e) Limitation. The licensed permit review professional may~~  
9 ~~not make a final determination regarding the permit application.~~

10 ~~(f) Qualifications. A licensed permit review professional~~  
11 ~~must:~~

12 ~~(1) Have successfully completed training in an~~  
13 ~~environmental education program prior to becoming a licensed~~  
14 ~~permit review professional.~~

15 ~~(2) Have at least five years of relevant environmental~~  
16 ~~work experience prior to becoming a licensed permit review~~  
17 ~~professional.~~

18 ~~(3) Have successfully completed a licensing program~~  
19 ~~administered by the department.~~

20 ~~(4) Renew the license annually.~~

21 ~~Section 305. Reports.~~

22 ~~(a) General rule. Annually, the department shall prepare~~  
23 ~~and make publicly available a report analyzing the permit review~~  
24 ~~program. The report shall be differentiated by the office~~  
25 ~~designated as the headquarters office and each regional office~~  
26 ~~and summarized on a Statewide basis.~~

27 ~~(b) Contents. The report shall include:~~

28 ~~(1) The number and types of applications as provided for~~  
29 ~~in section 302(b) submitted to the primary headquarters~~  
30 ~~office or in each regional office.~~



1           ~~(2) The number and types of applications, as provided~~  
2 ~~for in section 302(b), submitted to the primary headquarters~~  
3 ~~office or in each regional office and returned to the~~  
4 ~~applicant for deficiencies as identified in the~~  
5 ~~administrative and technical review.~~

6           ~~(3) A description of the most prevalent reason that~~  
7 ~~applications in each category, as provided in section 302(b),~~  
8 ~~were returned to the primary headquarters office or in each~~  
9 ~~regional office.~~

10           ~~(4) The number and types of permits, as provided for in~~  
11 ~~section 302(b), that were approved by the primary~~  
12 ~~headquarters office or in each regional office.~~

13           ~~(5) The number and types of permits, as provided for in~~  
14 ~~section 302(b), denied by the primary headquarters office or~~  
15 ~~in each regional office.~~

16           ~~(6) A description of the most prevalent reason that~~  
17 ~~applications in each category, as provided for in section~~  
18 ~~302(b), were denied by the primary headquarters office or in~~  
19 ~~each regional office.~~

20           ~~(7) The number and types of applications, as provided~~  
21 ~~for in section 302(b), submitted to the primary headquarters~~  
22 ~~office or in each regional office, but were still pending at~~  
23 ~~the time the report was published.~~

24           ~~(8) A description, based on the information contained in~~  
25 ~~the report, of the department's consistency in all aspects of~~  
26 ~~decision making and actions as they relate to reviewing~~  
27 ~~applications and issuing permits and the department's efforts~~  
28 ~~to promote such consistency by the regional offices.~~

29 SECTION 303. PLAN TO IMPROVE PERMIT EFFICIENCIES. 

30 WITHIN 90 DAYS FROM THE EFFECTIVE DATE OF THIS SECTION, THE

1 DEPARTMENT SHALL IMPLEMENT A PLAN TO USE QUALIFIED  
2 NONDEPARTMENTAL EMPLOYEES ON THE MERITS OF USING QUALIFIED  
3 NONDEPARTMENTAL EMPLOYEES TO UNDERTAKE PERMIT APPLICATION  
4 REVIEWS AS A WAY TO ENHANCE THE TIMELINESS AND EFFECTIVENESS OF  
5 THE PERMIT REVIEW PROCESS WHILE ENSURING THAT PERMIT  
6 APPLICATIONS COMPLY WITH CURRENT HEALTH, SAFETY AND  
7 ENVIRONMENTAL REQUIREMENTS. THE PLAN SHALL IDENTIFY HOW THE  
8 DEPARTMENT CAN MORE FULLY UTILIZE GENERAL PERMITS IN LIEU OF  
9 INDIVIDUAL PERMITS FOR SPECIFIED CATEGORIES OF PERMIT-REQUIRED  
10 ACTIVITIES. THE PLAN SHALL ALSO PROVIDE GUIDANCE ON THE PROPER  
11 LEVEL OF SCRUTINY FOR STAMPED ENGINEERING SUBMITTALS THAT  
12 ACCOMPANY PERMIT APPLICATIONS, INCLUDING A DETERMINATION ON  
13 WHETHER CERTAIN STANDARDIZED ENGINEERING PRINCIPLES, WHEN  
14 SUBMITTED AND SEALED BY A LICENSED PROFESSIONAL, CAN BE REVIEWED  
15 MORE EFFICIENTLY, THEREBY ALLOWING MORE STAFF TIME TO BE  
16 DEDICATED TO REVIEWING OTHER FACETS OF THE APPLICATION. A COPY  
17 OF THE PLAN SHALL BE SUBMITTED TO ALL MEMBERS OF THE  
18 ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE OF THE SENATE AND  
19 THE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE OF THE HOUSE OF  
20 REPRESENTATIVES.

21 SECTION 304. ESTABLISHMENT OF DEPARTMENT-WIDE PROGRAM.

22 IF FUNDS ARE APPROPRIATED BY THE GENERAL ASSEMBLY, THE  
23 DEPARTMENT MAY USE UP TO \$1,000,000 TO ESTABLISH A DEPARTMENT-  
24 WIDE PROGRAM FOR THE ELECTRONIC SUBMISSION, REVIEW AND APPROVAL  
25 OF ANY PERMIT APPLICATION SUBMITTED TO THE DEPARTMENT.

26 Section ~~306~~ 305. Appealable actions. ←

27 Any person aggrieved by a final decision of the department  
28 under this act shall have the right, within 30 days from notice  
29 of the action, to appeal the final action to the Environmental  
30 Hearing Board in accordance with the act of July 13, 1988

1 (P.L.530, No.94), known as the Environmental Hearing Board Act,  
2 and 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure  
3 of Commonwealth agencies). The Environmental Hearing Board is  
4 expressly granted jurisdiction over such appeals, including  
5 review of final decisions of entities other than the department  
6 and the authority to issue decisions that are binding on such  
7 entities.

8 Section ~~307~~ 306. Construction. ←

9 Nothing in this act shall be construed to modify:

10 (1) any requirement of law that is necessary to retain

11 Federal delegation to or assumption by the Commonwealth; or

12 (2) the authority to implement a Federal law or program.

13 Section ~~308~~ 307. Effective date. ←

14 This act shall take effect in 120 days.