

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1659 Session of 2011

INTRODUCED BY PYLE, EVANKOVICH, BAKER, BARBIN, BARRAR, BROOKS, BURNS, CALTAGIRONE, CAUSER, CHRISTIANA, CLYMER, D. COSTA, P. COSTA, CUTLER, DeLUCA, DUNBAR, ELLIS, J. EVANS, EVERETT, FARRY, GABLER, GEIST, GERGELY, GIBBONS, GILLEN, GINGRICH, GODSHALL, GROVE, HACKETT, HALUSKA, HARHAI, HARKINS, HARRIS, HEFFLEY, HELM, HESS, KAUFFMAN, F. KELLER, M. K. KELLER, KNOWLES, KORTZ, KOTIK, LONGIETTI, MAHER, MAJOR, MALONEY, MARSHALL, MASSER, MATZIE, METCALFE, METZGAR, MILLER, MIRABITO, MOUL, MURT, MUSTIO, NEUMAN, OBERLANDER, PERRY, PETRARCA, PICKETT, PRESTON, QUIGLEY, RAPP, RAVENSTAHL, REED, REESE, ROAE, ROCK, SACCONI, SAINATO, SANTONI, SAYLOR, CULVER, SONNEY, STEVENSON, SWANGER, TOBASH, TOEPEL, TOOHL, TURZAI, VEREB, VULAKOVICH, WATSON, WHITE, DALEY AND KRIEGER, NOVEMBER 9, 2011

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 21, 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:

7 CHAPTER 1

8 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 "Permit." An approval, permit, plan approval, registration,
23 license or other authorization or decision.

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

29 "Regional office." An office of the Department of
30 Environmental Protection, including the Bureau of District

1 Mining Offices, from which permits are issued, but which is
2 separate from the primary department office.

3 CHAPTER 3

4 PERMIT ISSUANCE

5 Section 301. Applicability.

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

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

12 ~~(1) a permit issued solely to comply with Federal law~~ ←
13 ~~and where there is no specific State statutory basis for the~~
14 ~~issuance of such permit;~~

15 (1) A PERMIT ISSUED SOLELY TO COMPLY WITH FEDERAL LAW. ←

16 (2) A PERMIT FOR A PROJECT THAT IS SUBJECT TO AN
17 EXISTING SPECIFIC STATE STATUTORY OR REGULATORY REVIEW
18 DEADLINE THAT IS SOONER THAN THE APPLICABLE DEADLINE UNDER
19 THIS ACT. ANY ADDITIONAL PERMIT RELATED TO THE SAME PROJECT
20 THAT DOES NOT HAVE A SPECIFIC STATE STATUTORY OR REGULATORY
21 REVIEW DEADLINE SHALL BE REVIEWED IN ACCORDANCE WITH THE
22 STATUTORY OR REGULATORY DEADLINE FOR THE PERMIT EXEMPTED
23 UNDER THIS PARAGRAPH.

24 ~~(2) an~~ (3) AN administrative consent order or other ←
25 enforcement action relating to a permit or lack thereof; or ←
26 THEREOF. ←

27 ~~(3) the~~ (4) THE revocation of a permit. ←

28 Section 302. Permit submission process.

29 (a) Preapplication meeting.--All applicants shall, AT THEIR ←
30 OPTION, HAVE AN OPPORTUNITY TO participate in a meeting with the

1 department prior to submitting an application.

2 (1) During the preapplication meeting, the applicant
3 shall submit at least the following:

4 (i) Project description, including, but not limited
5 to, scope of work, primary emissions points, discharge
6 outfalls and water intake points.

7 (ii) Location of the project, including county,
8 municipality and location on the site.

9 (iii) Business schedule for project completion.

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

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

13 (ii) A determination of which specific application
14 or applications will be necessary to complete the
15 project.

16 (iii) A statement notifying the applicant if the
17 specific permit being sought requires a mandatory public
18 hearing or comment period.

19 (iv) A review of the timetable established in the
20 permit review program for the specific permit being
21 sought.

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

25 (3) The department shall ensure that participants
26 representing the department in the preapplication meeting do
27 so on behalf of the specific permit review program area from
28 which the permit is being sought.

29 (b) Application submission.--Upon the formal submission of
30 the permit application by the applicant to the department, the

1 application shall be marked in such a manner as to indicate that
2 it has officially been received by the department. At that time,
3 the applicant shall receive an official permit review schedule
4 that shows when a final decision will be determined.

5 (c) Permit review and determination.--

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

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

11 (ii) Applicant response to deficiencies identified
12 by the department during the completeness and technical
13 review shall take no more than 90 days.

14 (iii) Final review and determination by the
15 department of the application or resubmitted application,
16 if returned after the completeness and technical review,
17 shall take no more than 60 days.

18 (2) An applicant may request a review schedule different
19 from the review schedule in paragraph (1). Prior to an
20 alternate review schedule commencing, the following must
21 occur:

22 (i) The applicant and the department must develop a
23 mutually agreed upon alternate permit application review
24 schedule.

25 (ii) The applicant and the department must each
26 agree in writing to the alternate review schedule
27 indicating acceptance of the alternate review schedule.

28 (3) If the department fails to issue a decision on an
29 application in accordance with the review schedule in
30 paragraph (1) or the alternate review schedule as provided

1 for in paragraph (2), the application shall be deemed
2 approved.

3 Section 303. Plan to improve permit efficiencies.

4 Within 90 days from the effective date of this section, the
5 department shall implement a plan to use qualified
6 nondepartmental employees on the merits of using qualified
7 nondepartmental employees to undertake permit application
8 reviews as a way to enhance the timeliness and effectiveness of
9 the permit review process while ensuring that permit
10 applications comply with current health, safety and
11 environmental requirements. The plan shall identify how the
12 department can more fully utilize general permits in lieu of
13 individual permits for specified categories of permit-required
14 activities. The plan shall also provide guidance on the proper
15 level of scrutiny for stamped engineering submittals that
16 accompany permit applications, including a determination on
17 whether certain standardized engineering principles, when
18 submitted and sealed by a licensed professional, can be reviewed
19 more efficiently, thereby allowing more staff time to be
20 dedicated to reviewing other facets of the application. A copy
21 of the plan shall be submitted to all members of the
22 Environmental Resources and Energy Committee of the Senate and
23 the Environmental Resources and Energy Committee of the House of
24 Representatives.

25 Section 304. Establishment of department-wide program.

26 If funds are appropriated by the General Assembly, the
27 department may use up to \$1,000,000 to establish a department-
28 wide program for the electronic submission, review and approval
29 of any permit application submitted to the department.

30 Section 305. Appealable actions.

1 Any person aggrieved by a final decision of the department
2 under this act shall have the right, within 30 days from notice
3 of the action, to appeal the final action to the Environmental
4 Hearing Board in accordance with the act of July 13, 1988
5 (P.L.530, No.94), known as the Environmental Hearing Board Act,
6 and 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure
7 of Commonwealth agencies). The Environmental Hearing Board is
8 expressly granted jurisdiction over such appeals, including
9 review of final decisions of entities other than the department
10 and the authority to issue decisions that are binding on such
11 entities.

12 Section 306. Construction.

13 Nothing in this act shall be construed to modify:

14 (1) any requirement of law that is necessary to retain
15 Federal delegation to or assumption by the Commonwealth; or

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

17 Section 307. Effective date.

18 This act shall take effect in 120 days.