

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 859 Session of 2011

INTRODUCED BY McILHINNEY, RAFFERTY, FONTANA, BAKER, COSTA,  
WASHINGTON, TOMLINSON, ERICKSON, HUGHES, ALLOWAY, MENSCH AND  
STACK, MARCH 22, 2011

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 22, 2011

AN ACT

1 Amending the act of May 1, 1984 (P.L.206, No.43), entitled "An  
2 act providing for safe drinking water; imposing powers and  
3 duties on the Department of Environmental Resources in  
4 relation thereto; and appropriating certain funds," further  
5 providing for safe drinking water, for definitions, for  
6 powers and duties of the Department of Environmental  
7 Protection and for civil and criminal penalties; and making  
8 editorial changes.

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

11 Section 1. The definition of "department" in section 3 of  
12 the act of May 1, 1984 (P.L.206, No.43), known as the  
13 Pennsylvania Safe Drinking Water Act, is amended and the section  
14 is amended by adding definitions to read:

15 Section 3. Definitions.

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

19 \* \* \*

20 "Critical zone." For surface water intakes, the critical

1 zone is the area that extends from one-quarter mile downstream  
2 of a drinking water intake for a community water system to 25  
3 miles upstream from the intake, including an area one-quarter  
4 mile upland from the bank of the surface water body. For  
5 groundwater wells which provide water for a community water  
6 system, the term includes the capture zone of the source, which  
7 shall be deemed to be the circular area within a radius of one-  
8 half mile from the well, unless a more detailed wellhead  
9 protection area has been established by the Department of  
10 Environmental Protection.

11 "Department." The Department of Environmental [Resources]  
12 Protection.

13 \* \* \*

14 "Groundwater." Water beneath the surface of the ground that  
15 exists in a zone of saturation.

16 \* \* \*

17 "Surface waters." Water on the surface of the earth,  
18 including water in a perennial or intermittent stream, river,  
19 lake, reservoir, pond, spring, wetland, swamp, marsh, natural  
20 seep, estuary or other surface water, whether such body of water  
21 is natural or artificial.

22 \* \* \*

23 "Wellhead." A groundwater well source that is used for  
24 community water systems.

25 "Wellhead protection area." The surface and subsurface area  
26 surrounding water well or wellfield, supplying a public water  
27 system, through which contaminants are reasonably likely to move  
28 toward and reach such water well or wellfield.

29 "Zone I." The circular area within a radius of 100 to 400  
30 feet from the well, based on site specific source and aquifer

1 characteristics.

2 "Zone II." The capture zone of the source which shall be  
3 deemed to be the circular area within a radius of one-half mile  
4 from the source, unless a more detailed wellhead protection area  
5 has been established by the Department of Environmental  
6 Protection or a delineation is conducted by a registered  
7 professional geologist and approved by the department.

8 Section 2. The act is amended by adding sections to read:

9 Section 7.1. Applications and requests for approval for  
10 facilities and activities in the critical zone.

11 (a) Applicants.--An applicant for a facility, a discharge or  
12 other activity in a critical zone that requires a department  
13 permit or approval must demonstrate in its application or  
14 request for approval that the facility, discharge or other  
15 activity will not degrade the existing water quality of the  
16 critical zone.

17 (b) Issuance of permits and approvals in critical zones.--  
18 The department shall not issue a permit or approval for any  
19 facility, discharge or other activity within a critical zone  
20 unless the applicant or other person proposing the facility,  
21 discharge or other activity demonstrates that the facility,  
22 discharge or other activity will not degrade the existing water  
23 quality of the critical zone.

24 (c) Powers and duties of Environmental Quality Board and  
25 department.--

26 (1) The Environmental Quality Board is authorized to  
27 promulgate rules and regulations to carry out the purposes of  
28 this act.

29 (2) The department may issue orders and take such other  
30 actions as are necessary to carry out the purposes of this

1 act.

2 (d) Declaration of public nuisance.--

3 (1) A violation of this act, the rules and regulations  
4 promulgated thereto, or any orders issued thereunder, is  
5 hereby declared to be a nuisance, abatable in law or equity,  
6 by the department, the district attorney of any county or the  
7 solicitor of any municipality affected or by a citizen.

8 (2) Any facility, discharge or other activity that  
9 requires a permit or approval from the department that  
10 degrades the water quality of a critical zone is hereby  
11 declared to be unlawful and a nuisance, abatable in law or  
12 equity, by the department, the district attorney of any  
13 county or the solicitor of any municipality affected, or by a  
14 citizen.

15 Section 7.2. Wellhead protection.

16 (a) Municipal ordinance.--Each municipality which has  
17 adopted or which in the future adopts a zoning ordinance,  
18 including any joint municipal zoning ordinance, shall also  
19 adopt, implement and enforce a wellhead protection ordinance if:

20 (1) One or more wellheads exist within the municipality.

21 (2) Zone I or Zone II of a wellhead exists within the  
22 municipality.

23 (3) A wellhead or Zone I or Zone II of a wellhead is  
24 created in that municipality at any time in the future.

25 (b) Restrictions.--The wellhead protection ordinance  
26 required by this subsection shall regulate land use in Zone I  
27 and Zone II, restricting establishment or operation of land uses  
28 that could cause contamination of groundwater that supplies  
29 wellheads for community water systems.

30 (c) Departmental regulations.--The department shall develop

1 regulations governing the adoption of such an ordinance and  
2 shall establish the form and content of a model wellhead  
3 protection ordinance. Such a model ordinance shall include  
4 acceptable methodologies for the delineation of Zone I and Zone  
5 II, shall enumerate the land uses to be regulated under the  
6 ordinance and the restrictions applicable to such land uses in  
7 Zone I and Zone II, and shall set forth any appropriate  
8 exceptions, enforcement procedures and reporting requirements.  
9 These regulations and the model wellhead protection ordinance  
10 shall be deemed to establish Statewide minimum requirements for  
11 wellhead protection. Nothing in this act shall be deemed to  
12 limit, restrict or prohibit the power of any municipality to  
13 establish requirements for wellhead protection that are more  
14 stringent than those set forth in this act, or in the  
15 department's regulations or the model wellhead protection  
16 ordinance established under this section.

17 Section 7.3. Surface water intake protection.

18 (a) Municipal ordinance.--Each municipality which has  
19 adopted or in the future adopts a zoning ordinance, including  
20 any joint municipal zoning ordinance, shall also adopt,  
21 implement and enforce a surface water intake protection  
22 ordinance if:

23 (1) One or more surface water intakes exist within the  
24 municipality.

25 (2) The critical zone of an intake exists within the  
26 municipality.

27 (3) An intake or critical zone of an intake is created  
28 in that municipality at any time in the future.

29 (b) Restrictions.--The surface water intake ordinance  
30 required by this section shall regulate land use near any

1 surface water intake and the critical zone for such intakes,  
2 restricting establishment or operation of land uses that could  
3 cause contamination of water that supplies the intake for  
4 community water systems.

5 (c) Departmental regulations.--The department shall develop  
6 regulations governing the adoption of such an ordinance and  
7 shall establish the form and content of a surface water intake  
8 protection ordinance. Such a model ordinance shall enumerate the  
9 land uses to be regulated under the ordinance and the  
10 restrictions applicable to such land uses in the critical zone  
11 and shall set forth any appropriate exceptions, enforcement  
12 procedures and reporting requirements. These regulations and the  
13 model ordinance shall be deemed to establish Statewide minimum  
14 requirements for surface water intake protection. Nothing in  
15 this act shall be deemed to limit, restrict or prohibit the  
16 power of any municipality to establish requirements for surface  
17 water intake protection that are more stringent than those set  
18 forth in this act, or in the department's regulations or the  
19 model wellhead protection ordinance established under this  
20 section.

21 Section 7.4. Civil and criminal penalties.

22 (a) Civil penalties.--

23 (1) In addition to proceeding under any other remedy  
24 available at law or in equity for a violation of a provision  
25 of this act or any rule or regulation promulgated under this  
26 act or any order issued pursuant to this act, the department  
27 may assess a civil penalty for the violation. The penalty may  
28 be assessed whether or not the violation was willful. The  
29 civil penalty so assessed shall not exceed \$25,000 per day  
30 for each violation. In determining the amount of the penalty,

1 the department shall consider the willfullness of the  
2 violation; damage to water or other natural resources of the  
3 Commonwealth or their uses; financial benefit to the person  
4 in consequence of the violation; deterrence of future  
5 violations; cost to the department; the nature and size of  
6 the affected resource and the facility, activity or land use  
7 causing the violation; the compliance history of the  
8 violator; the severity and duration of the violation; degree  
9 of cooperation in resolving the violation; the speed with  
10 which compliance is ultimately achieved; whether the  
11 violation was voluntarily reported; and other relevant  
12 factors.

13 (2) The civil penalty shall be payable to the Safe  
14 Drinking Water Account and shall be collectible in any manner  
15 provided by law for the collection of debts, including the  
16 collection of interest at the rate established by law, which  
17 shall run from the date of assessment of the penalty. Upon  
18 failure by the liable person to pay such penalty after  
19 demand, the amount, together with interest and any costs that  
20 may accrue, shall constitute a debt of such person, to the  
21 Safe Drinking Water Account. The debt shall constitute a lien  
22 on all property owned by said person when a notice of lien  
23 incorporating a description of the property of the person  
24 subject to the action is duly filed with the prothonotary of  
25 the court of common pleas where the property is located. Upon  
26 entry by the prothonotary, the lien shall attach to the  
27 revenues and all real and personal property of the person,  
28 whether or not the person is solvent. The notice of lien  
29 shall create a lien with priority over all subsequent claims  
30 or liens which are filed against the person.

1 (b) Criminal penalties.--

2 (1) Any person who violates any provision of this act,  
3 any rule or regulation adopted under this act, or any order  
4 of the department issued pursuant to this act commits a  
5 summary offense and shall, upon conviction, be sentenced to  
6 pay a fine of not less than \$100 nor more than \$2,500 for  
7 each separate offense and, in default of the payment of such  
8 fine, may be sentenced to imprisonment for 90 days for each  
9 separate offense. Employees of the department authorized to  
10 conduct inspections or investigations are hereby declared to  
11 be law enforcement officers authorized to issue or file  
12 citations for summary violations under this act, and the  
13 General Counsel is hereby authorized to prosecute these  
14 offenses. For purposes of this subsection, a summary offense  
15 may be prosecuted before any district justice in the county  
16 where the offense occurred.

17 (2) Any person who willfully or negligently violates any  
18 provision of this act any rule or regulation adopted under  
19 this act or any order of the department issued pursuant to  
20 this act commits a misdemeanor of the third degree and shall,  
21 upon conviction, be sentenced to pay a fine of not less than  
22 \$2,500 nor more than \$50,000 for each separate offense or to  
23 imprisonment for a period of not more than two years for each  
24 separate offense, or both.

25 Section 7.5. Other enforcement.

26 Any person may commence a civil action to compel compliance  
27 with this act or any rule, regulation or order issued pursuant  
28 to this act. In addition to seeking to compel compliance, any  
29 person may request the court to award civil penalties. The court  
30 shall use the factors and amounts contained in section 6(a) in



1 awarding civil penalties under this section. Such penalties  
2 shall be paid into the Safe Drinking Water Account.

3 Section 3. This act shall take effect in 180 days.