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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1106 Session of  
2019

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INTRODUCED BY PUSKARIC, TURZAI, KAUFER, MIHALEK, KAIL, FRITZ,  
TOOHIL, NELSON, O'NEAL, GILLESPIE, GREINER, ROTHMAN,  
BERNSTINE, MOUL, B. MILLER, KAUFFMAN, CAUSER, DUNBAR,  
ZIMMERMAN, OWLETT AND SCHMITT, APRIL 29, 2019

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, APRIL 29, 2019

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AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled  
2 "An act providing for and reorganizing the conduct of the  
3 executive and administrative work of the Commonwealth by the  
4 Executive Department thereof and the administrative  
5 departments, boards, commissions, and officers thereof,  
6 including the boards of trustees of State Normal Schools, or  
7 Teachers Colleges; abolishing, creating, reorganizing or  
8 authorizing the reorganization of certain administrative  
9 departments, boards, and commissions; defining the powers and  
10 duties of the Governor and other executive and administrative  
11 officers, and of the several administrative departments,  
12 boards, commissions, and officers; fixing the salaries of the  
13 Governor, Lieutenant Governor, and certain other executive  
14 and administrative officers; providing for the appointment of  
15 certain administrative officers, and of all deputies and  
16 other assistants and employes in certain departments, boards,  
17 and commissions; providing for judicial administration; and  
18 prescribing the manner in which the number and compensation  
19 of the deputies and all other assistants and employes of  
20 certain departments, boards and commissions shall be  
21 determined," providing for environmental permits and plan  
22 approvals; making related repeals; and abrogating  
23 regulations.

24 The General Assembly of the Commonwealth of Pennsylvania  
25 hereby enacts as follows:

26 Section 1. The act of April 9, 1929 (P.L.177, No.175), known  
27 as The Administrative Code of 1929, is amended by adding an

1 article to read:

2 ARTICLE XIX-C

3 ENVIRONMENTAL PERMITS AND PLAN APPROVALS

4 Section 1901-C. Scope.

5 (a) Environmental permits and plans.--This article applies  
6 to general permits, general plan approvals and individual  
7 permits.

8 (b) Municipalities.--Nothing in this article shall be  
9 construed as limiting the rights of a municipality in the lawful  
10 performance of the municipality's functions.

11 Section 1902-C. Definitions.

12 The following words and phrases when used in this article  
13 shall have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

15 "Department." The Department of Environmental Protection of  
16 the Commonwealth.

17 "Environmental law." Commonwealth statutes and regulations  
18 promulgated in accordance with the act of July 31, 1968  
19 (P.L.769, No.240), referred to as the Commonwealth Documents  
20 Law, relating to the protection of the environment. The term  
21 includes:

22 (1) The act of June 22, 1937 (P.L.1987, No.394), known  
23 as The Clean Streams Law, the act of January 8, 1960 (1959  
24 P.L.2119, No.787), known as the Air Pollution Control Act,  
25 the act of November 26, 1978 (P.L.1375, No.325), known as the  
26 Dam Safety and Encroachments Act, and the act of July 7, 1980  
27 (P.L.380, No.97), known as the Solid Waste Management Act.

28 (2) Federal statutes and regulations relating to the  
29 protection of the environment, to the extent the statute and  
30 regulation are administered or enforced by the Commonwealth.

1 "General permit." A permit required by an environmental law  
2 issued for a category of activities in which projects in that  
3 category have been determined to be similar in nature and  
4 capable of being adequately regulated utilizing standardized  
5 specifications and conditions without the necessity of applying  
6 for and obtaining an individual permit.

7 "General plan approval." A plan approval required by an  
8 environmental law issued for a category of activities in which  
9 projects in that category have been determined to be similar in  
10 nature and capable of being adequately regulated utilizing  
11 standardized specifications and conditions without the necessity  
12 of applying for and obtaining an individual permit.

13 "Individual permit." A permit required by an environmental  
14 law that contains site-specific terms and conditions.

15 "Necessary information." Plans, forms, fees, notifications,  
16 receipts, analyses, certifications, reports, drawings, diagrams  
17 or letters.

18 Section 1903-C. Filing of application.

19 An application for an individual permit or for coverage or  
20 authorization to proceed under a general plan approval or  
21 general permit shall be stamped by the department with the date  
22 of filing. An application shall be deemed to be filed with the  
23 department on the date the application is delivered to the  
24 department.

25 Section 1904-C. Time period.

26 (a) Action.--

27 (1) Subject to paragraph (2), the department must issue,  
28 modify, renew, transfer or refuse to issue, modify, renew or  
29 transfer an individual permit or coverage or authorization to  
30 proceed under a general plan approval or general permit

1 within 30 days of the date the application was filed under  
2 section 1903-C.

3 (2) The time requirement under paragraph (1) may be  
4 tolled under sections:

5 (i) 1906-C(c); or

6 (ii) 1907-C(d).

7 (b) Failure to act.--If the department does not comply with  
8 subsection (a), section 1910-C applies.

9 Section 1905-C. Administratively complete application.

10 (a) Contents.--An application is administratively complete  
11 if the application contains the necessary information or other  
12 information requested in the application, notwithstanding  
13 whether the necessary information or other information supplied  
14 in the application is sufficient to grant the application.

15 (b) Disagreements.--Disagreements between the department and  
16 the applicant as to the substance or merits of, or professional  
17 judgment contained within, the application shall not render the  
18 application to be administratively incomplete.

19 (c) Presumption.--An application accompanied by an affidavit  
20 executed under penalty of perjury by a professional engineer  
21 licensed by the Commonwealth affirming that the application is  
22 administratively complete to the best of the engineer's  
23 knowledge, information and belief shall be presumed to be  
24 administratively complete, unless the department rebuts the  
25 presumption by clear and convincing evidence in a proceeding  
26 under section 1907-C.

27 Section 1906-C. Administratively incomplete application.

28 (a) Written statement.--An application determined by the  
29 department to be administratively incomplete shall be returned  
30 to the applicant within 10 days of the date the application was

1 filed under section 1903-C accompanied by a written statement of  
2 the specific necessary information or other information required  
3 to complete the application.

4 (b) Identification.--An omission not identified in the  
5 manner provided under subsection (a) shall be deemed to be cured  
6 if not contained in the written statement required under  
7 subsection (a).

8 (c) Tolling.--The time period under section 1904-C(a) shall  
9 be tolled from the date the application is returned until the  
10 date the application is refiled with the department.

11 Section 1907-C. Informal dispute resolution.

12 (a) Referee.--A dispute as to the administrative  
13 completeness of the application may be submitted by the  
14 applicant to a referee selected under section 1908-C.

15 (b) Response.--The department must file a written response  
16 to the applicant's submission of the dispute within 10 days of  
17 service of the submission of the dispute.

18 (c) Decision.--

19 (1) The referee's decision must be rendered without the  
20 necessity of a hearing:

21 (i) within 10 days of the filing of the department's  
22 written response; or

23 (ii) if the department does not file a response  
24 under subsection (b), within 20 days of service of the  
25 submission of the dispute.

26 (2) Failure of a referee to comply with the time  
27 requirements under paragraph (1) shall be deemed to be a  
28 ruling in favor of the applicant.

29 (3) A decision under this section is not appealable.

30 (d) Tolling.--The time period under section section 1904-

1 C(a) shall be tolled during the time period the dispute is  
2 pending before the referee.

3 Section 1908-C. Selection of referee.

4 (a) List.--If a dispute arises as to the administrative  
5 completeness of an application, the applicant may request a list  
6 of three referees from the master list of referees compiled by  
7 the Environmental Hearing Board no later than three months  
8 following the effective date of this subsection.

9 (b) Qualifications.--A referee under subsection (a) must be  
10 a professional engineer who has consented to serve as a referee  
11 under this article.

12 (c) Process.--

13 (1) The department must eliminate one name from the list  
14 under subsection (a) within five days after issuance of the  
15 list. Failure to comply with the time requirement under this  
16 paragraph shall be deemed a decision in favor of the  
17 applicant.

18 (2) After elimination of a name under paragraph (1), the  
19 applicant must, within five days of the elimination,  
20 eliminate one name from the list. Failure to comply with the  
21 time requirement under this paragraph shall be deemed a  
22 decision in favor of the department.

23 (3) The individual whose name remains on the list shall  
24 be the referee selected to decide the dispute under section  
25 1907-C.

26 Section 1909-C. Approval of application.

27 The department shall approve the application if environmental  
28 laws governing the applicable general permit, general plan  
29 approval or individual permit are satisfied.

30 Section 1910-C. Application deemed approved.

1 An administratively complete application shall be deemed  
2 approved and an individual permit or coverage or authorization  
3 to proceed under a general plan approval or general permit shall  
4 be deemed issued if any of the following paragraphs apply:

5 (1) The department fails to comply with the time  
6 requirement under section 1904-C(a).

7 (2) The administratively complete application is  
8 accompanied by an affidavit executed under penalty of perjury  
9 by a professional engineer licensed by the Commonwealth  
10 affirming that:

11 (i) the contents of the application are true and  
12 correct to the best of the engineer's knowledge,  
13 information and belief; and

14 (ii) the requirements for issuance of the individual  
15 permit or for coverage or authorization to proceed under  
16 the general plan approval or general permit set forth in  
17 all applicable environmental laws have been satisfied.

18 Section 1911-C. Construction.

19 If there is a conflict between a provision of this article  
20 and another statutory provision:

21 (1) Except as set forth in paragraph (2), the provision  
22 of this article governs.

23 (2) Paragraph (1) does not apply if the other statutory  
24 provision specifically states that it governs over this  
25 article.

26 Section 2. Repeals are as follows:

27 (1) The General Assembly declares that the repeal under  
28 paragraph (2) is necessary to effectuate the addition of  
29 Article XIX-C of the act.

30 (2) All acts and parts of acts are repealed insofar as

1       they are inconsistent with the addition of Article XIX-C of  
2       the act.

3       Section 3. Regulations in the Pennsylvania Code are  
4       abrogated insofar as they are inconsistent with the addition of  
5       Article XIX-C of the act.

6       Section 4. This act shall take effect in 60 days.