

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 604 Session of 2021

INTRODUCED BY FRITZ, RYAN, CAUSER, ROTHMAN, GAYDOS, KAIL, GLEIM, HAMM, ECKER, BROOKS, WARNER, PICKETT, MOUL, MILLARD, COX, O'NEAL, HERSHEY, KEEFER, ZIMMERMAN, ROWE, WHEELAND, OBERLANDER, DAVANZO, IRVIN AND MERCURI, APRIL 8, 2021

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MARCH 30, 2022

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 the time frame required by law, or, if not specified
2 by law, within 45 days of the date the application was filed
3 under section 1903-C.

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

6 (i) 1906-C(c); or <--

7 ~~(ii) 1907-C(d).~~

8 (II) 1907-C(D); OR <--

9 (III) 1909-C.

10 (b) Failure to act.--If the department does not comply with
11 subsection (a), section ~~1910-C~~ 1911-C applies. <--

12 Section 1905-C. Administratively complete application.

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

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

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

30 Section 1906-C. Administratively incomplete application.

1 (a) Written statement.--An application determined by the
2 department to be administratively incomplete shall be returned
3 to the applicant within 15 days of the date the application was
4 filed under section 1903-C accompanied by a written statement of
5 the specific necessary information or other information required
6 to complete the application.

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

11 (c) Tolling.--The time period under section 1904-C(a) shall
12 be tolled from the date the application is returned until the
13 date the application is refiled with the department.
14 Section 1907-C. Informal dispute resolution.

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

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

21 (c) Decision.--

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

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

26 (ii) if the department does not file a response
27 under subsection (b), within 20 days of service of the
28 submission of the dispute.

29 (2) Failure of a referee to comply with the time
30 requirements under paragraph (1) shall be deemed to be a

1 ruling in favor of the applicant.

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

3 (d) Tolling.--The time period under ~~section~~ section 1904- <--

4 C(a) shall be tolled during the time period the dispute is

5 pending before the referee.

6 Section 1908-C. Selection of referee.

7 (a) List.--If a dispute arises as to the administrative

8 completeness of an application, the applicant may request a list

9 of three referees from the master list of referees compiled by

10 the Environmental Hearing Board no later than three months

11 following the effective date of this subsection.

12 (b) Qualifications.--A referee under subsection (a) must be

13 a professional engineer, landscape architect, geologist or land

14 surveyor who has consented to serve as a referee under this

15 article.

16 (c) Process.--

17 (1) The department must eliminate one name from the list

18 under subsection (a) within five days after issuance of the

19 list. Failure to comply with the time requirement under this

20 paragraph shall be deemed a decision in favor of the

21 applicant.

22 (2) After elimination of a name under paragraph (1), the

23 applicant must, within five days of the elimination,

24 eliminate one name from the list. Failure to comply with the

25 time requirement under this paragraph shall be deemed a

26 decision in favor of the department.

27 (3) The individual whose name remains on the list shall

28 be the referee selected to decide the dispute under section

29 1907-C.

30 SECTION 1909-C. PUBLIC NOTICE AND COMMENT. <--

1 THE DEPARTMENT SHALL HOLD PUBLIC HEARINGS OR COMMENT PERIODS
2 ON PERMIT APPLICATIONS IF THE HEARINGS OR COMMENT PERIODS ARE
3 EXPLICITLY REQUIRED BY FEDERAL OR STATE LAW. THE TIME PERIOD
4 UNDER SECTION 1904-C(A) SHALL BE TOLLED WHILE THE DEPARTMENT
5 COMPLETES STATUTORILY REQUIRED PUBLIC HEARINGS OR COMMENT
6 PERIODS, BUT SHALL NOT BE TOLLED IF THE DEPARTMENT CONDUCTS A
7 HEARING OR COMMENT PERIOD THAT IS NOT REQUIRED BY STATUTE. NO
8 TOLLING UNDER THIS SECTION SHALL EXTEND A TIME PERIOD CLEARLY
9 ESTABLISHED BY A SEPARATE FEDERAL LAW OR LAW OF THIS
10 COMMONWEALTH THAT REQUIRES THE DEPARTMENT TO ISSUE, DENY OR MAKE
11 A DECISION REGARDING A PERMIT OR AUTHORIZATION WITHIN A CERTAIN
12 TIME PERIOD.

13 Section ~~1909-C~~ 1910-C. Approval of application. <--

14 The department shall approve the application if environmental
15 laws governing the applicable general permit, general plan
16 approval or individual permit are satisfied.

17 Section ~~1910-C~~ 1911-C. Application deemed approved. <--

18 An administratively complete application shall be deemed
19 approved and an individual permit or coverage or authorization
20 to proceed under a general plan approval or general permit shall
21 be deemed issued if any of the following paragraphs apply:

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

24 (2) The administratively complete application is
25 accompanied by an affidavit executed under penalty of perjury
26 by a professional engineer, landscape architect, geologist or
27 land surveyor licensed by the Commonwealth affirming that:

28 (i) the contents of the application are true and
29 correct to the best of the individual's knowledge,
30 information and belief; and

1 (ii) the requirements for issuance of the individual
2 permit or for coverage or authorization to proceed under
3 the general plan approval or general permit set forth in
4 all applicable environmental laws have been satisfied.

5 Section ~~1911-C~~ 1912-C. Construction. <--

6 If there is a conflict between a provision of this article
7 and another statutory provision:

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

10 (2) Paragraph (1) does not apply if the other statutory
11 provision specifically states that it governs over this
12 article.

13 Section 2. Repeals are as follows:

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

17 (2) All acts and parts of acts are repealed insofar as
18 they are inconsistent with the addition of Article XIX-C of
19 the act.

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

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