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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1090 Session of  
2017

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INTRODUCED BY BENNINGHOFF, OBERLANDER, BAKER, BARRAR, BLOOM,  
V. BROWN, CAUSER, COX, CUTLER, DIAMOND, DUSH, ELLIS, EVERETT,  
FEE, GABLER, GILLEN, GODSHALL, GREINER, GROVE, A. HARRIS,  
J. HARRIS, HEFFLEY, IRVIN, JAMES, KAUFFMAN, M. K. KELLER,  
KORTZ, MASSER, MENTZER, MILLARD, B. MILLER, MUSTIO, NESBIT,  
ORTITAY, PICKETT, RADER, RAPP, ROAE, ROTHMAN, RYAN, SACCONE,  
SANKEY, SAYLOR, SCHEMEL, SCHLOSSBERG, SCHWEYER, SOLOMON,  
SONNEY, TOEPEL, WARD, WARNER, WENTLING AND WHEELAND,  
APRIL 7, 2017

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
APRIL 7, 2017

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AN ACT

1 Providing for erosion and sediment control requirements.

2 The General Assembly of the Commonwealth of Pennsylvania  
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Erosion and  
6 Sediment Control Act.

7 Section 2. Definitions.

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

11 "Administratively complete." Contains the necessary  
12 information, maps, fees and other documents requested as part of  
13 a permit application process, regardless of whether the

1 information, maps and other documents would be sufficient to  
2 justify issuance of the permit.

3 "Agricultural plowing or tilling activity." Earth  
4 disturbance activity involving the preparation and maintenance  
5 of soil for the production of agricultural crops. The term  
6 includes no-till cropping methods.

7 "Animal heavy use area." Barnyard, feedlot, loafing area,  
8 exercise lot or other similar area on an agricultural operation  
9 where due to the concentration of animals it is not possible to  
10 establish and maintain vegetative cover of a density capable of  
11 minimizing accelerated erosion and sedimentation by usual  
12 planting methods. The term does not include an entrance, pathway  
13 or walkway between areas where animals are housed or kept in  
14 concentration.

15 "Conservation district." A conservation district, as defined  
16 in section 3(c) of the act of May 15, 1945 (P.L.547, No.217),  
17 known as the Conservation District Law, that has a delegation  
18 agreement executed with the department to administer and enforce  
19 all or a portion of the requirements under 25 Pa. Code Ch. 102  
20 (relating to erosion and sediment control).

21 "Department." The Department of Environmental Protection of  
22 the Commonwealth.

23 "Earth disturbance." A construction activity or other human  
24 activity that disturbs the surface of the land.

25 "Expedited application." An application for a permit that is  
26 signed and sealed by a licensed professional.

27 "Licensed professional." A professional engineer, landscape  
28 architect, geologist or land surveyor licensed to practice in  
29 this Commonwealth.

30 "No-till cropping methods." The practice of planting crops

1 with minimal mechanical tillage.

2 "Oil and gas activities." Activities associated with oil and  
3 gas exploration, production, gathering, processing, treatment  
4 operations or transmission facilities.

5 "Permit." An erosion and sediment control permit required  
6 under this act.

7 Section 3. Erosion and sediment control permits.

8 (a) Permit requirement.--A person proposing the following  
9 activities must obtain an erosion and sediment control permit  
10 from the department of a conservation district before commencing  
11 the activity:

12 (1) Oil and gas activities that involve at least five  
13 acres of earth disturbance at any one time.

14 (2) Timber harvesting or road maintenance activities  
15 involving at least 25 acres of earth disturbance at any one  
16 time.

17 (3) Activity that does not require a National Pollutant  
18 Discharge Elimination System permit under 25 Pa. Code § 102.5  
19 (relating to permit requirements) and which involves at least  
20 five acres of earth disturbance at any one time, provided  
21 that no permit shall be required for agricultural plowing or  
22 tilling activities or animal heavy use areas.

23 (b) Review and issuance of permit.--

24 (1) The department or conservation district shall  
25 complete a review of a permit application within five  
26 business days of receipt to determine whether it is  
27 administratively complete and shall enter receipt of the  
28 application into the department's publicly accessible online  
29 permit tracking system. If a permit application is determined  
30 to be incomplete, the applicant shall be notified in writing

1 within five business days. The notification shall specify the  
2 deficiency of the permit application.

3 (2) If a permit application complies with 25 Pa. Code  
4 Ch. 102 (relating to erosion and sediment control) and is  
5 complete as determined by the department or a conservation  
6 district, the department or conservation district shall issue  
7 a permit to the applicant within 43 business days of  
8 determining that the application is administratively complete  
9 or, in the case of an expedited application, within 14  
10 business days of determining that the application is  
11 administratively complete.

12 (3) (i) If the department determines that the permit  
13 application is technically deficient for failure to  
14 comply with 25 Pa. Code Ch. 102, the department shall  
15 notify the applicant. The notification shall specify the  
16 provision or provisions with which the application does  
17 not comply.

18 (ii) Nothing in this subsection shall be construed  
19 to extend the permit review time periods contained in  
20 paragraph (2).

21 (4) The department shall create and implement an  
22 expedited permit process for applications that are signed and  
23 sealed by licensed professionals. Expedited permits may be  
24 utilized for all projects except the following:

25 (i) Projects in a watershed designated as high  
26 quality or exceptional value under 25 Pa. Code Ch. 93  
27 (relating to water quality standards).

28 (ii) Projects located entirely in or on a  
29 floodplain.

30 (iii) Projects on lands that are known to be

1 currently contaminated by the release of regulated  
2 substances as defined in section 103 of the act of May  
3 19, 1995 (P.L.4, No.2), known as the Land Recycling and  
4 Environmental Remediation Standards Act.

5 (iv) Oil, natural gas or natural gas liquids  
6 transmission projects.

7 (5) If a permit application is denied, the department or  
8 conservation district shall notify the applicant in writing  
9 within five business days of denying the permit application.  
10 The notification shall specify the justification for denying  
11 the permit application and cite the relevant law or  
12 regulation of this Commonwealth that is not sufficiently  
13 addressed in the permit.

14 (6) Failure by the department or a conservation district  
15 to issue a final determination on a permit within the time  
16 period specified in paragraph (2) shall result in the permit  
17 application being deemed approved. The permittee shall be  
18 subject and adhere to all relevant statutes and regulations  
19 applicable to the permit.

20 (7) (i) Failure by the department or a conservation  
21 district to issue a final determination on a permit  
22 within the time period specified in paragraph (2) shall  
23 entitle the permit applicant to reimbursement by the  
24 department for economic harm caused by the delay in  
25 making the final determination.

26 (ii) The amount of economic harm for which a permit  
27 applicant is eligible for reimbursement must be  
28 reasonably related to the impact that failure to issue a  
29 permit has had on the permit applicant's ability to  
30 commence construction operations, and may include the

1 permit fee, costs incurred in preparing and submitting  
2 the permit application, project financing costs and  
3 equipment rental charges.

4 (iii) Reimbursement costs shall be payable from the  
5 Clean Water Fund established under section 8 of the act  
6 of June 22, 1937 (P.L.1987, No.394), known as The Clean  
7 Streams Law.

8 (iv) The department or conservation district shall  
9 have the burden to prove that the reimbursement charges  
10 are not reasonably related to the impact of the  
11 department or conservation district's failure to issue a  
12 permit.

13 Section 4. Compliance with laws of this Commonwealth.

14 The department or a conservation district shall utilize a  
15 general permit to implement this act. The general permit shall  
16 impose only those terms that are strictly necessary to ensure  
17 compliance with the laws of this Commonwealth as administered by  
18 the department.

19 Section 5. Fees.

20 (a) General rule.--A permit application shall be accompanied  
21 by a \$500 administrative filing fee, plus an additional \$100 fee  
22 for each disturbed acre. Fees shall be paid to the primary  
23 reviewing entity in the event that both the department and a  
24 conservation district complete the review.

25 (b) Increase to fees.--No earlier than three years after the  
26 effective date of this section, the Environmental Quality Board  
27 may, by regulation, increase the fees to cover the  
28 administrative costs of processing the permit applications.

29 Section 6. Quarterly reports.

30 (a) Contents.--The department shall submit a quarterly

1 report to the Environmental Resources and Energy Committee of  
2 the Senate and the Environmental Resources and Energy Committee  
3 of the House of Representatives detailing the department's  
4 implementation of this act. The report shall contain the  
5 following:

6 (1) The number of permit applications received in the  
7 prior 12 months.

8 (2) The number of applications approved.

9 (3) The average time frame from date of submission for  
10 review of permit applications organized by the regional  
11 office of the department.

12 (4) The average time frame from the date of submission  
13 for technical review of applications organized by the  
14 regional office of the department.

15 (5) The number of permit application reviewers on staff  
16 in the department, organized by regional office of the  
17 department.

18 (6) The average workload of each permit application  
19 reviewer, which average shall be organized by the regional  
20 office of the department.

21 (7) Primary reasons for administrative or technical  
22 deficiencies or permit application denials, including the  
23 citations to the relevant law or regulation of this  
24 Commonwealth that are not sufficiently addressed in the  
25 report, which reasons shall be organized by the regional  
26 office of the department.

27 (8) The number of licensed professionals sanctioned by  
28 the department due to the submission of routinely deficient  
29 expedited permit applications and the primary reasons for the  
30 sanctions.

1 (9) Details, including dates and locations, of  
2 professional trainings administered or sponsored by the  
3 department related to the permit requirements imposed under  
4 this act.

5 (10) Other relevant information as determined by the  
6 department.

7 (b) Submission.--The initial quarterly report shall be  
8 submitted within 60 days of the effective date of this  
9 subsection. Subsequent quarterly reports shall be submitted no  
10 later than 30 days after the last day of the preceding quarter.

11 Section 7. Annual evaluation.

12 On an annual basis, the department shall commission an  
13 evaluation of the erosion and sediment control permit review  
14 process. The evaluation shall be conducted by a qualified,  
15 third-party entity knowledgeable in the department's permitting  
16 application process. The evaluation shall, at a minimum, examine  
17 and include the following:

18 (1) Consistency in application review timeframes and  
19 criteria among the department's regional offices and  
20 conservation districts.

21 (2) Adherence by department and conservation district  
22 permit review staff to established permit review protocols.

23 (3) Sufficiency of available professional trainings for  
24 department and conservation district permit review staff and  
25 the regulated community.

26 (4) Recommendations on increasing the effectiveness,  
27 consistency and predictability of the permit review process.

28 Section 8. Construction.

29 Nothing in this act shall be construed to exempt a person:

30 (1) seeking to commence a project involving oil and gas



1 activities that will cause less than five acres of earth  
2 disturbance; and

3 (2) that is not required to obtain a permit  
4 from complying with other applicable provisions of 25 Pa.  
5 Code Ch. 102 (relating to erosion and sediment control).

6 Section 9. Effective date.

7 This act shall take effect in 30 days.