
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 416 Session of
2017

INTRODUCED BY RAFFERTY, ALLOWAY, SCHWANK, BREWSTER AND LEACH,
FEBRUARY 27, 2017

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY,
FEBRUARY 27, 2017

AN ACT

1 Providing for protection of existing riparian buffers, for
2 restoration of impaired riparian buffers, for exemptions, for
3 municipal authority, for powers and duties of Department of
4 Environmental Protection, for property inspections, for
5 delegation to a municipality, for municipal action appeals,
6 for penalties, civil action and liability for costs and for
7 effect on other Commonwealth laws or regulations and
8 municipal ordinances.

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1 Section 12. Preemption and limitation.

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4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Riparian
8 Buffer Protection Act.

9 Section 2. Definitions.

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

13 "Department." The Department of Environmental Protection of
14 the Commonwealth.

15 "Earth disturbance." A construction or other human activity
16 that disturbs the surface of the land, including land clearing
17 and grubbing, grading, excavations, embankments, land
18 development, agricultural plowing or tilling, operation of
19 animal heavy use areas, timber harvesting activities, mineral
20 extraction, and the moving, depositing, stockpiling or storing
21 of soil, rock or earth material.

22 "Earth disturbance activity." An act that comprises,
23 facilitates or results in earth disturbance.

24 "Exceptional value water." Surface water of exceptional
25 value that satisfies the provisions of 25 Pa. Code § 93.4b(b)
26 (relating to qualifying as high quality or exceptional value
27 waters).

28 "Floodplain." A land area that:

29 (1) is susceptible to flooding; and

30 (2) has at least a 1% probability of flooding occurring

1 in a calendar year based on the basin being fully developed
2 as shown on a current land use plan. For an area without a
3 mapped 100-year floodplain, the 100-year floodplain is
4 considered to extend for a horizontal distance of 50 feet
5 from the top of the stream bank.

6 "High quality water." Surface water having quality that
7 exceeds levels necessary to support propagation of fish,
8 shellfish, wildlife and recreation in and on the water by
9 satisfying the provisions of 25 Pa. Code § 93.4b(a).

10 "Impaired riparian buffer." A riparian buffer that, as a
11 result of land development activity, contains impervious cover
12 or is no longer a natural riparian buffer.

13 "Impervious cover." A surface that does not readily absorb
14 precipitation and surface water. The term includes:

15 (1) A building.

16 (2) A parking area.

17 (3) A driveway.

18 (4) A road.

19 (5) A sidewalk.

20 (6) A swimming pool.

21 (7) An area in concrete, asphalt, packed stone or an
22 equivalent surface, including a surface with a coefficient of
23 runoff of 0.7 or higher.

24 (8) Disturbed soil with a bulk density of 95% of the
25 value at which plant growth limitation is expected for
26 average plant material.

27 "Land development." A land change, including clearing,
28 grubbing, stripping, removal of vegetation, dredging, grading,
29 excavating, transporting and filling of land, construction,
30 subdivision, paving or other increase in impervious cover.

1 "Land development activity." An act that comprises,
2 facilitates or results in land development.

3 "Municipality." A political subdivision of this
4 Commonwealth, including a county, city, borough, township,
5 incorporated town or home rule municipality.

6 "Natural riparian buffer." A riparian buffer dominated by
7 native vegetation, including trees, shrubs or herbaceous plants,
8 and providing any of the following functions:

9 (1) maintaining the integrity of an adjacent stream
10 channel or shoreline or helping stabilize a stream bank,
11 including reducing erosion;

12 (2) reducing the impact of an upland source of pollution
13 by trapping, filtering or converting sediments, nutrients or
14 other contaminants;

15 (3) supplying food, cover, shelter, habitat or thermal
16 protection to fish, other aquatic life or other wildlife;

17 (4) protecting or benefiting the ecological and
18 absorptive capacity of soil, floodplain or wetland area;

19 (5) increasing storage and infiltration of floodwater
20 and reducing floodwater velocity; or

21 (6) reducing the impact of climate change by absorbing
22 greenhouse gases.

23 "Nonconforming use or structure." A use or structure that
24 was legally established prior to the effective date of this
25 section, but does not comply with the provisions of this act.

26 "Nontidal wetlands." An area not influenced by tidal
27 fluctuations that is inundated or saturated by surface water or
28 groundwater at a frequency and duration sufficient to support,
29 and under normal circumstances support a prevalence of
30 vegetation typically adapted for life in saturated soil

1 conditions.

2 "One hundred-year floodplain." The area of land adjacent to
3 a stream that is subject to inundation during a storm event that
4 has a recurrence interval of 100 years.

5 "Ordinance." An ordinance adopted by a municipality for
6 riparian buffers.

7 "Permit." A final permit issued by a municipality for
8 undertaking a land development activity.

9 "Person." An individual, partnership, firm, association,
10 joint venture, public or private corporation, trust, estate,
11 commission, board, public or private institution, utility,
12 cooperative, city, county or other political subdivision and an
13 interstate body or other legal entity.

14 "Pollution." Contamination of waters of this Commonwealth,
15 including contamination by alteration of the physical, chemical
16 or biological properties of the waters, or change in
17 temperature, taste, color or odor of the waters, or the
18 discharge of a liquid, gaseous, radioactive, solid or other
19 substance into the waters that does, will or is likely to:

- 20 (1) degrade water quality;
- 21 (2) create a nuisance;
- 22 (3) render waters harmful, detrimental or injurious to:
- 23 (i) public health, safety or welfare;
- 24 (ii) domestic, municipal, commercial, industrial,
25 agricultural, recreational or other legitimate beneficial
26 use; or
- 27 (iii) livestock, wild animals, birds, or fish or
28 other aquatic life; or
- 29 (4) cause or contribute to the failure of a water body
30 to meet applicable water quality standards or criteria

1 enacted by the Commonwealth or a river basin commission of
2 which the Commonwealth is a voting member.

3 "Riparian." Belonging or related to the bank of a water
4 body, river, stream, wetland, lake, pond or impoundment.

5 "Riparian buffer area." An area adjacent to a water body.

6 "Riparian buffer restoration." Returning an impaired
7 riparian buffer to a natural riparian buffer dominated by native
8 vegetation, including trees, shrubs or herbaceous plants.

9 "Sewage facility." As used in the act of January 24, 1966
10 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage
11 Facilities Act.

12 "Stream." A perennial or intermittent watercourse with a
13 defined channel, bed and banks.

14 "Stream bank." Sloping land that contains a stream channel
15 and the normal flow of the stream.

16 "Stream channel." The part of a watercourse either naturally
17 or artificially created that contains an intermittent or
18 perennial base flow of groundwater origin. A base flow of
19 groundwater origin may be distinguished by any of the following
20 physical indicators:

21 (1) Hydrophytic vegetation, hydric soil or other
22 hydrologic indicators in the area where groundwater enters
23 the stream channel in the vicinity of the stream headwaters,
24 channel bed or channel banks.

25 (2) Flowing water not directly related to a storm event.

26 (3) A historical record of a local high groundwater
27 table, including a well or stream gauge record.

28 "Vernal pond." A small body of standing water that forms in
29 the spring from meltwater and is often dry by midsummer or may
30 be dry before the end of the spring growing season.

1 "Water body." A natural or manmade pond, lake, wetland,
2 impoundment, stream or watercourse. The term does not include a
3 pond or facility designed and constructed solely to contain
4 storm water.

5 "Watercourse." A channel of conveyance of surface water
6 having a defined bed and banks, including a stream, river, brook
7 or creek, whether natural or artificial, with perennial,
8 intermittent or seasonal flow. The term does not include a
9 channel or ditch designed and constructed solely to carry storm
10 water.

11 "Watershed." The land area that drains into a particular
12 stream, water body or watercourse.

13 Section 3. Protection of existing riparian buffers.

14 (a) Prohibition.--Except as provided below, land development
15 may not be permitted within a riparian buffer area.

16 (b) Width of riparian buffer area.--Except as required under
17 subsection (c), the width of the riparian buffer area protected
18 under subsection (a) shall be a minimum of 100 feet on each side
19 of the stream as measured from the top of the bank.

20 (c) Additional width requirements.--The following apply:

21 (1) If the water body is designated as high quality or
22 exceptional value, the minimum width shall be 300 feet on
23 each side of the water body as measured from the top of the
24 bank.

25 (2) In the case of the presence of a nontidal wetland or
26 vernal pond wholly or partially within the riparian buffer
27 area, an additional 25 feet shall be added to the widths
28 under this section from the wetland or vernal pond boundary.

29 (3) The following additional distances shall be added to
30 the minimum widths under this section based on the following

1 formula:

- 2 (i) ten feet if slope is 10% - 15%;
- 3 (ii) twenty feet if slope 16% - 17%;
- 4 (iii) thirty feet if slope is 18% - 20%;
- 5 (iv) fifty feet if slope is 21% - 23%;
- 6 (v) sixty feet if slope is 24% - 25%; or
- 7 (vi) seventy feet if slope exceeds 25%.

8 (4) If the water body has been identified as impaired in
9 accordance with section 303 of the Federal Water Pollution
10 Control Act (62 Stat. 1155, 33 U.S.C. § 1313) and
11 implementing State regulations, an additional 50 feet shall
12 be added to the minimum 100 foot width. In the case of a
13 water body that has been identified as impaired by the
14 department, the developer may choose to either extend the
15 riparian buffer area an additional 50 feet from the top of
16 the bank beyond the other requirements or to implement the
17 following improvements in the riparian buffer area and in the
18 developed area adjacent to the riparian buffer area:

19 (i) The improvements to the buffer area shall be as
20 follows:

21 (A) Fifty percent or more of trees planted in
22 the riparian buffer area must be of two inch caliper
23 or greater. Tree species composition shall consist of
24 a diverse mix of native tree species planted in the
25 proper hydrologic zone as listed in Appendix B of the
26 Pennsylvania Stormwater Best Management Practices
27 Manual.

28 (B) An applicant shall develop and implement an
29 operation and maintenance plan for the riparian
30 buffer to be approved by the department. The

1 operation and maintenance plan shall require
2 maintenance activities for a minimum of five years,
3 include measures to control invasive species, deer
4 and rodent damage and require replacement of all
5 deceased trees for a minimum of the first three
6 years.

7 (C) An applicant shall provide permanent
8 protection of a riparian buffer area by placing a
9 conservation easement on the property.

10 (ii) The improvements to the adjacent area shall be
11 as follows:

12 (A) Achieve no net increase in predevelopment to
13 postdevelopment volume, rate, peak and concentration
14 of pollutants in water quality using alternative site
15 design, low impact development principles such as
16 limiting disturbance, infiltration best management
17 practices and other environmentally sound storm water
18 best management practices.

19 (B) Through deed restriction for the lots sold
20 and as a condition of a final land development plan
21 approval, ban the use of fertilizers, pesticides,
22 herbicides or other chemicals on lawns and other
23 portions of the property, except that herbicides may
24 be used for invasive species control in riparian
25 buffer areas if part of an operation and maintenance
26 plan approved by the department.

27 (C) A development shall replace the trees
28 removed during the development process with the
29 caliper of removed trees matched by the sum of the
30 caliper of replacement trees.

1 (d) Condition of other approvals and permits.--Full
2 compliance with the provisions of this act shall be a condition
3 of an approval or permit by a Commonwealth agency or political
4 subdivision, including the following:

5 (1) An approval of land development activity.

6 (2) A building permit.

7 (3) A zoning hearing board approval.

8 (4) A conditional use approval.

9 (5) A subdivision approval.

10 (6) An erosion and sediment control permit.

11 (7) A grading permit.

12 (8) An encroachment permit.

13 (9) A National Pollutant Discharge Elimination System
14 permit.

15 (10) An approval for a planning module for a sewage
16 facility.

17 Section 4. Restoration of impaired riparian buffers.

18 (a) General rule.--For a property with an impaired riparian
19 buffer, riparian buffer restoration shall be a condition of a
20 governmental approval or permit, including the following:

21 (1) An approval of land development activity.

22 (2) A building permit.

23 (3) A zoning hearing board approval.

24 (4) A conditional use approval.

25 (5) A subdivision approval.

26 (6) An erosion and sediment control permit.

27 (7) A grading permit.

28 (8) An encroachment permit.

29 (9) A National Pollutant Discharge Elimination System
30 permit.

1 (10) An approval for a planning module for a sewage
2 facility.

3 (b) Requirement.--Riparian buffer restoration shall conform
4 to the width requirements set forth in section 3.

5 (c) Trees and plants.--As part of riparian buffer
6 restoration, 50% or more of the trees planted in the riparian
7 buffer area must be of two inch caliper or greater. Plant
8 species composition shall consist of a diverse mix of native
9 species planted in the proper hydrologic zone as listed in
10 Appendix B of the Pennsylvania Stormwater Best Management
11 Practices Manual.
12 Section 5. Exemptions.

13 (a) Land development activity.--The following land uses
14 shall be exempt from a prohibition or requirement under section
15 3 or 4:

16 (1) A land use existing as of the effective date of this
17 act, except as follows:

18 (i) when the existing land use or a building or
19 structure involved in the use is enlarged, increased or
20 extended to occupy a greater area of land;

21 (ii) when the existing land use or a building or
22 structure involved in the use is moved, in whole or in
23 part, to another portion of the property; or

24 (iii) when the existing land use ceases for a period
25 of more than one year.

26 (2) Agricultural production that is consistent with
27 Federal and State law, the regulations promulgated by the
28 department and best management practices established by the
29 State Conservation Commission and the Department of
30 Agriculture.

1 (3) Selective logging provided that the logging
2 practices comply with the best management practices set forth
3 by the Bureau of Forestry, provided the logging does not
4 occur within 100 feet of a stream.

5 (4) A crossing by a transportation facility or utility
6 line. The issuance of a permit for a use or activity under
7 this paragraph is contingent upon the completion of:

8 (i) A feasibility study that identifies alternative
9 routing strategies that do not impact a riparian buffer
10 area.

11 (ii) A mitigation plan to minimize impacts on the
12 riparian buffer area utilizing natural channel design
13 practices to the greatest degree possible.

14 (5) A temporary stream restoration project, stream bank
15 restoration project or vegetation restoration project to
16 restore the stream or riparian zone to an ecologically
17 healthy state utilizing natural channel design practices to
18 the greatest degree possible.

19 (6) A structure that, by its nature, cannot be located
20 anywhere except within the riparian buffer area. The
21 structure shall include a dock, boat launch, public water
22 supply collection, treatment, storage and distribution
23 facility, facility for natural water quality treatment and
24 purification and sewage collection, conveyance, treatment and
25 disposal facility. The structures shall provide for the
26 minimum practicable disturbance of the riparian buffer area
27 by minimizing size and location and by taking advantage of
28 collocation, if possible. A storm water conveyance structure
29 or outfall that is not included in this group and shall be
30 located outside of the buffer area.

1 (7) A wildlife and fisheries management activity
2 consistent with the purposes of, but not limited to:

3 (i) The act of December 5, 1972 (P.L.1277, No.283),
4 known as the Pennsylvania Scenic Rivers Act.

5 (ii) The act of April 28, 1978 (P.L.87, No.41),
6 known as the Pennsylvania Appalachian Trail Act.

7 (iii) The act of June 23, 1982 (P.L.597, No.170),
8 known as the Wild Resource Conservation Act.

9 (iv) 30 Pa.C.S. (relating to fish).

10 (v) 34 Pa.C.S. (relating to game).

11 (8) Construction of a single-family residence, including
12 the usual appurtenances, if:

13 (i) Based on the size, shape or topography of the
14 property, as of the effective date of this section, it is
15 not reasonably possible to construct a single-family
16 dwelling without encroaching upon the riparian buffer
17 area.

18 (ii) The land development conforms with all other
19 zoning and land use regulations.

20 (iii) The dwelling is not located, in whole or part,
21 in a 100-year floodplain.

22 (iv) A septic tank, septic drain field or other
23 sewage management facility is not located within the
24 riparian buffer area.

25 (v) To the maximum extent practicable the dwelling
26 avoids disturbance of the riparian buffer area.

27 (vi) An encroachment into the riparian buffer area
28 is offset by an equal amount of wider riparian buffer
29 width elsewhere on the same property so the average width
30 and total area of the riparian buffer meet the

1 requirements as set forth in section 3.

2 (vii) The construction, dwelling or property was not
3 originally presented for approval and following the
4 effective date of this act, is not part of a multilot
5 subdivision.

6 (9) Other uses permitted by the department under the act
7 of June 22, 1937 (P.L.1987, No.394), known as The Clean
8 Streams Law, and the act of November 26, 1978 (P.L.1375,
9 No.325), known as the Dam Safety and Encroachments Act.

10 (b) Requirements.--The exempted uses, structures and
11 activities shall comply with the requirements of 25 Pa. Code Ch.
12 102 (relating to erosion and sediment control) and the
13 applicable best management practices and may not diminish water
14 quality except as permitted by the department.

15 (c) Location.--The exempted uses shall be located as far
16 from the stream bank as reasonably possible.

17 Section 6. Municipal authority.

18 (a) Authority.--A municipality may enact a local land use
19 ordinance to protect, preserve and restore riparian buffers. A
20 riparian buffer ordinance adopted by a municipality shall
21 conform to this act.

22 (b) Existing ordinance.--A municipality that has enacted a
23 riparian buffer ordinance prior to the effective date of this
24 section may continue to enforce the ordinance until:

25 (1) the municipality revises or amends the ordinance; or

26 (2) the municipality is required by law to update a
27 municipal ordinance necessary to implement an applicable
28 watershed storm water management plan under the act of
29 October 4, 1978 (P.L.864, No.167), known as the Storm Water
30 Management Act, or fulfill a legal obligation regarding its

1 Municipal Separate Storm Sewer Program or total maximum daily
2 load. At this time, the municipality shall amend the
3 ordinance to conform to the provisions of this act.

4 (c) Variances.--A municipality that enacts an ordinance
5 under this act shall provide for the consideration of variances.

6 The following apply:

7 (1) In granting a variance, the municipality may allow
8 the buffer width to be relaxed and the permitted buffer area
9 to become narrower at some points as long as the average
10 width and total area meet the requirements under section 3.
11 The averaging of the buffer area may be used to allow for the
12 presence of an existing structure or to recover a lost lot,
13 however, the buffer width may not be narrowed by more than
14 25%, and new land development activity may not take place
15 within the 100-year floodplain.

16 (2) The municipality may offer credit for additional
17 density elsewhere on the site in compensation for the loss of
18 developable land due to the requirements of this act. The
19 compensation may increase the total number of dwelling units
20 on the site up to the amount permitted under the base zoning
21 requirements.

22 (3) A municipality may grant a variance if the applicant
23 demonstrates any of the following:

24 (i) Strict compliance would prevent all economic use
25 of the property or constitute a legally defined taking.

26 (ii) The project would serve a public need and no
27 feasible alternative is available.

28 (iii) The project consists of the repair and
29 maintenance of public improvements where avoidance and
30 minimization of adverse impacts to the riparian buffer

1 area have been addressed.

2 (4) The following procedures apply:

3 (i) An applicant shall submit a written request for
4 a variance to the municipality. The application shall
5 include specific reasons justifying the variance and any
6 other information necessary to evaluate the proposed
7 variance request.

8 (ii) The municipality may require an alternative
9 analysis that clearly demonstrates that no other feasible
10 alternatives exist and that minimal impact will occur as
11 a result of the project or development.

12 (iii) In granting a request for a variance, the
13 municipality may require additional site design,
14 landscape planting, fencing, the placement of signs and
15 the establishment of water quality best management
16 practices in order to reduce impacts on water quality,
17 wetlands and floodplains.

18 (d) Inspections.--The municipality may conduct
19 investigations where probable cause exists to carry out its
20 authority as prescribed in this act. For this purpose, the
21 municipality may enter where probable cause exists upon public
22 or private property to investigate and inspect property that
23 contains riparian buffers.

24 (e) Enforcement.--The following apply:

25 (1) The zoning enforcement officer or other person
26 designated by the governing body of a municipality shall
27 enforce the requirements of this act in accordance with this
28 section.

29 (2) If, upon inspection or investigation, the zoning
30 enforcement officer or other authorized agent determines that

1 an activity violates the requirements of this act, the
2 activity shall be considered to be in violation of this act.

3 (3) Upon the determination of a violation, the
4 municipality shall issue a notice of violation to the permit
5 holder, property owner or party in charge of the activity on
6 the property. The notice must be in writing and require the
7 immediate stoppage of the work on the property. The notice
8 shall include:

9 (i) The name and address of the owner.

10 (ii) The address or description and location of the
11 property where the violation occurred.

12 (iii) A description of the violation.

13 (iv) A description of the corrective actions needed
14 to return to compliance and a time schedule to complete
15 the corrective actions.

16 (4) Where an emergency exists, a written notice shall
17 not be required to stop work. Written notice of the stop-work
18 order shall be presented to the appropriate responsible
19 parties within three business days of the emergency order.

20 Section 7. Powers and duties of department.

21 (a) General rule.--The department may grant a variance for a
22 property located in a municipality that does not enact an
23 ordinance under this act.

24 (b) Buffer area.--In granting a variance, the department may
25 allow the buffer width to be relaxed and the permitted buffer
26 area to become narrower at points if the average width and total
27 area meet the requirements set forth in section 3. The averaging
28 of the buffer area may be used to allow for the presence of an
29 existing structure or to recover a lost lot. The buffer width
30 may not be narrowed by more than 25%, and new land development

1 activity may not take place within the 100-year floodplain.

2 (c) Grant criteria.--The department may grant a variance if
3 an applicant for the variance demonstrates any of the following:

4 (1) Strict compliance would prevent all economic use of
5 the property or constitute a legally defined taking.

6 (2) The project would serve a public need and a feasible
7 alternative is not available.

8 (3) The project consists of the repair and maintenance
9 of public improvements which addressed avoidance and
10 minimization of adverse impacts to the riparian buffer area.

11 (d) Application requirements.--In determining whether to
12 grant a request for a variance, the following apply:

13 (1) An applicant for a variance must submit a written
14 request for a variance to the department. The application
15 shall include specific reasons justifying the variance and
16 any other information necessary to evaluate the proposed
17 variance.

18 (2) The department may require an analysis clearly
19 demonstrating that feasible alternatives do not exist and
20 that minimal impact will occur as a result of the project.

21 (3) The department may require additional site design,
22 landscape planting, fencing, the placement of signs and the
23 establishment of water quality best management practices in
24 order to reduce impacts on water quality, wetlands and
25 floodplains.

26 Section 8. Property inspections.

27 (a) General rule.--The department may enter upon a property
28 at a reasonable time for the purpose of inspecting property that
29 contains riparian buffers to enforce the provisions of this act.

30 (b) Entry denial prohibited.--A person may not deny entry to

1 any agent of the department conducting an inspection under
2 subsection (a) or otherwise obstruct, hamper or interfere with
3 the agent while conducting the inspection.

4 (c) Violations.--If the department determines that an
5 activity violates the requirements of this act as a result of an
6 investigation under subsection (a), the activity shall be in
7 violation of this act.

8 (d) Violation notice.--Except as provided in subsection (e),
9 upon determining a violation occurred under this act, the
10 department shall issue a written notice of the violation to the
11 permit holder, property owner or party in charge of the activity
12 on the property. The notice shall require the immediate stoppage
13 of all work on the property. The notice shall include all of the
14 following:

15 (1) The name and address of the owner.

16 (2) The address or description of the property where the
17 violation occurred.

18 (3) A description of the violation.

19 (4) A description of the corrective actions needed to
20 return to compliance under this act and a time schedule to
21 complete the corrective actions.

22 (e) Emergency order.--When an emergency exists as determined
23 by the department, the department shall issue a stop-work order
24 and may not provide the written notice required under subsection
25 (d). Written notice as required under subsection (d) shall not
26 be issued later than three business days of the order.

27 Section 9. Delegation to a municipality.

28 (a) Authority to delegate.--The department may delegate to a
29 municipality any responsibilities under this act. The
30 municipality acting under the agreement shall have the same

1 powers and duties otherwise vested in the department under this
2 act.

3 (b) Supervision.--The department shall monitor the
4 activities of a municipality that acts under an agreement under
5 subsection (a).

6 (c) Appeals.--No later than 30 days after notice of an
7 action by a municipality under an agreement under subsection
8 (a), a person aggrieved by the action may appeal to the
9 Environmental Hearing Board in accordance with the act of July
10 13, 1988 (P.L.530, No.94), known as the Environmental Hearing
11 Board Act.

12 Section 10. Municipal action appeals.

13 (a) General rule.--No later than 10 days after notice of an
14 action by a municipality imposed under this act, a person
15 aggrieved by the action may appeal in writing to the zoning
16 hearing board. No later than 45 days after the zoning hearing
17 board receives the appeal, the person shall receive a hearing
18 before the zoning hearing board.

19 (b) Judicial review.--A person aggrieved by an action of a
20 municipality imposed under this act shall have the right to
21 appeal de novo to the court of common pleas of the county where
22 the municipality is located.

23 Section 11. Penalties, civil action and liability for costs.

24 (a) Penalties.--The penalties that may be assessed for a
25 violation of this act may include:

26 (1) If, through inspection, it is determined that the
27 corrective actions specified in a stop-work order have not
28 been completed within the specified time, the responsible
29 party shall be deemed in violation, and in addition to other
30 penalties, a performance bond shall be subject to forfeiture.

1 (2) A permit issued by the department or a municipality
2 may be suspended, revoked or modified if, through inspection,
3 it is determined the corrective actions specified in a stop-
4 work order have not been completed within the specified time.

5 (3) A person who violates a provision of this act,
6 regulation or ordinance authorized under this act, permit
7 condition or stop-work order and the owner of the land where
8 the violation occurs shall be liable for a civil penalty of
9 not less than \$1,000 and not more than \$2,000 per violation
10 per day. Each day the violation continues shall constitute a
11 separate offense.

12 (4) The following apply:

13 (i) If a person violates a provision of this act,
14 regulation or ordinance authorized by this act,
15 permitting conditions or stop-work order, the
16 Commonwealth or municipality may issue a citation to the
17 owner of the land where the violation occurs or other
18 responsible person, requiring the person to appear in the
19 appropriate court to answer charges for the violation.

20 (ii) Upon conviction, the owner of the land where
21 the violation occurs or other responsible person shall be
22 liable for a criminal penalty in the form of imprisonment
23 for not more than 90 days or a fine of not less than
24 \$1,000 and not more than \$2,000 per violation per day, or
25 both. Every day that the violation continues will be
26 considered a separate offense.

27 (b) Civil action for recovery of damages.--The following
28 apply:

29 (1) In addition to any other sanction authorized under
30 this act, a person who fails to comply with the provisions of

1 this act or a regulation or ordinance authorized by this act
2 shall be liable to the Commonwealth or municipality in a
3 civil action for damages equal to one and one-half times the
4 cost of restoring the buffer.

5 (2) The damages recovered under this subsection shall be
6 used for the restoration of buffer systems or for the
7 administration of programs for the protection and restoration
8 of water quality, streams, wetlands and floodplains.

9 (c) Liability for costs.--A person who violates a provision
10 of this act or a regulation or ordinance authorized by this act
11 may be liable for a cost or expense incurred by the Commonwealth
12 or a municipality as a result.

13 Section 12. Preemption and limitation.

14 The provisions of 58 Pa.C.S. (relating to oil and gas) shall
15 not be deemed to be preempted or limited by the provisions of
16 this act.

17 Section 13. Severability.

18 If a provision of this act or a regulation or ordinance
19 authorized by this act is declared invalid or unconstitutional
20 by a court of competent jurisdiction, the validity of the
21 remainder shall not be affected by the invalidity or
22 unconstitutionality.

23 Section 14. Effective date.

24 This act shall take effect in 60 days.