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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 707 Session of  
2017

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INTRODUCED BY McILHINNEY, COSTA, GREENLEAF, RAFFERTY, MENSCH,  
DINNIMAN, TARTAGLIONE, HUGHES, SCHWANK AND BROWNE,  
MAY 12, 2017

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REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MAY 12, 2017

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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 definitions; providing for applications and  
6 requests for approval for facilities and activities in  
7 critical zone, for wellhead protection, for surface water  
8 intake protection, for civil and criminal penalties and for  
9 other enforcement; and making editorial changes.

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

12 Section 1. The title of the act of May 1, 1984 (P.L.206,  
13 No.43), known as the Pennsylvania Safe Drinking Water Act, is  
14 amended to read:

15 AN ACT

16 Providing for safe drinking water; imposing powers and duties on  
17 the Department of Environmental [Resources] Protection in  
18 relation thereto; and appropriating certain funds.

19 Section 2. The definition of "department" in section 3 of  
20 the act is amended and the section is amended by adding  
21 definitions to read:

1 Section 3. Definitions.

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

5 \* \* \*

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

17 "Department." The Department of Environmental [Resources]  
18 Protection.

19 \* \* \*

20 "Groundwater." Water beneath the surface of the ground that  
21 exists in a zone of saturation.

22 \* \* \*

23 "Surface waters." Water on the surface of the earth,  
24 including water in a perennial or intermittent stream, river,  
25 lake, reservoir, pond, spring, wetland, swamp, marsh, natural  
26 seep, estuary or other surface water, whether the body of water  
27 is natural or artificial.

28 \* \* \*

29 "Wellhead." A groundwater well source that is used for  
30 community water systems.

1 "Wellhead protection area." The surface and subsurface area  
2 surrounding a water well or wellfield, supplying a public water  
3 system, through which contaminants are reasonably likely to move  
4 toward and reach the water well or wellfield.

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

8 "Zone II." The capture zone of the source that shall be  
9 deemed to be the circular area within a radius of one-half mile  
10 from the source, unless a more detailed wellhead protection area  
11 has been established by the Department of Environmental  
12 Protection or a delineation is conducted by a registered  
13 professional geologist and approved by the department.

14 Section 3. The act is amended by adding sections to read:

15 Section 7.1. Applications and requests for approval for  
16 facilities and activities in critical zone.

17 (a) Applicants.--An applicant for a facility, a discharge or  
18 other activity in a critical zone that requires a department  
19 permit or approval must demonstrate in its application or  
20 request for approval that the facility, discharge or other  
21 activity will not degrade the existing water quality of the  
22 critical zone.

23 (b) Issuance of permits and approvals in critical zones.--  
24 The department shall not issue a permit or approval for any  
25 facility, discharge or other activity within a critical zone  
26 unless the applicant or other person proposing the facility,  
27 discharge or other activity demonstrates that the facility,  
28 discharge or other activity will not degrade the existing water  
29 quality of the critical zone.

30 (c) Powers and duties of Environmental Quality Board and

1 department.--

2 (1) The Environmental Quality Board is authorized to  
3 promulgate rules and regulations to carry out the purposes of  
4 this section.

5 (2) The department may issue orders and take other  
6 actions that are necessary to carry out the purposes of this  
7 section.

8 (d) Declaration of public nuisance.--

9 (1) A violation of this section, the rules and  
10 regulations promulgated under this section, or any order  
11 issued pursuant to this section, is declared to be a  
12 nuisance, abatable in law or equity, by the department, the  
13 district attorney of any county or the solicitor of any  
14 municipality affected, or by a citizen.

15 (2) A facility, discharge or other activity that  
16 requires a permit or approval from the department that  
17 degrades the water quality of a critical zone is declared to  
18 be unlawful and a nuisance, abatable in law or equity, by the  
19 department, the district attorney of any county or the  
20 solicitor of any municipality affected, or by a citizen.

21 Section 7.2. Wellhead protection.

22 (a) Municipal ordinance.--Each municipality that has  
23 adopted, or in the future adopts, a zoning ordinance, including  
24 any joint municipal zoning ordinance, shall also adopt,  
25 implement and enforce a wellhead protection ordinance if:

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

27 (2) Zone I or Zone II of a wellhead exists within the  
28 municipality.

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

1 (b) Restrictions.--The wellhead protection ordinance  
2 required by this section shall regulate land use in Zone I and  
3 Zone II, restricting establishment or operation of land uses  
4 that could cause contamination of groundwater that supplies  
5 wellheads for community water systems.

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

22 Section 7.3. Surface water intake protection.

23 (a) Municipal ordinance.--Each municipality that has  
24 adopted, or in the future adopts, a zoning ordinance, including  
25 any joint municipal zoning ordinance, shall also adopt,  
26 implement and enforce a surface water intake protection  
27 ordinance if:

28 (1) One or more surface water intakes exist within the  
29 municipality.

30 (2) The critical zone of an intake exists within the

1 municipality.

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

4 (b) Restrictions.--The surface water intake ordinance  
5 required by this section shall regulate land use near any  
6 surface water intake and the critical zone for the intakes,  
7 restricting establishment or operation of land uses that could  
8 cause contamination of water that supplies the intake for  
9 community water systems.

10 (c) Departmental regulations.--The department shall develop  
11 regulations governing the adoption of the ordinance and shall  
12 establish the form and content of a surface water intake  
13 protection ordinance. The model ordinance shall enumerate the  
14 land uses to be regulated under the ordinance and the  
15 restrictions applicable to the land uses in the critical zone  
16 and shall set forth any appropriate exceptions, enforcement  
17 procedures and reporting requirements. These regulations and the  
18 model ordinance shall be deemed to establish Statewide minimum  
19 requirements for surface water intake protection. Nothing in  
20 this act may be deemed to limit, restrict or prohibit the power  
21 of any municipality to establish requirements for surface water  
22 intake protection that are more stringent than those set forth  
23 in this act or in the department's regulations or the model  
24 wellhead protection ordinance established under this section.  
25 Section 7.4. Civil and criminal penalties.

26 (a) Civil penalties.--

27 (1) In addition to proceeding under any other remedy  
28 available at law or in equity for a violation of section 7.1  
29 or a rule or regulation promulgated under section 7.1 or an  
30 order issued pursuant to section 7.1, the department may

1 assess a civil penalty for the violation. The penalty may be  
2 assessed whether or not the violation was willful. The civil  
3 penalty so assessed shall not exceed \$25,000 per day for each  
4 violation. In determining the amount of the penalty, the  
5 department shall consider all of the following:

6 (i) The willfulness of the violation.

7 (ii) Damage to water or other natural resources of  
8 the Commonwealth or their uses.

9 (iii) Financial benefit to the person in consequence  
10 of the violation.

11 (iv) Deterrence of future violations.

12 (v) Cost to the department.

13 (vi) The nature and size of the affected resource  
14 and the facility, activity or land use causing the  
15 violation.

16 (vii) The compliance history of the violator.

17 (viii) The severity and duration of the violation.

18 (ix) Degree of cooperation in resolving the  
19 violation.

20 (x) The speed with which compliance is ultimately  
21 achieved.

22 (xi) Whether the violation was voluntarily reported.

23 (xii) Other relevant factors.

24 (2) The civil penalty shall be payable to the Safe  
25 Drinking Water Account and shall be collectible in any manner  
26 provided by law for the collection of debts, including the  
27 collection of interest at the rate established by law, which  
28 shall run from the date of assessment of the penalty. Upon  
29 failure by the liable person to pay the penalty after demand,  
30 the amount, together with interest and any costs that may

1 accrue, shall constitute a debt of the person to the Safe  
2 Drinking Water Account. The debt shall constitute a lien on  
3 all property owned by the person when a notice of lien  
4 incorporating a description of the property of the person  
5 subject to the action is duly filed with the prothonotary of  
6 the court of common pleas where the property is located. Upon  
7 entry by the prothonotary, the lien shall attach to the  
8 revenues and all real and personal property of the person,  
9 whether or not the person is solvent. The notice of lien  
10 shall create a lien with priority over all subsequent claims  
11 or liens that are filed against the person.

12 (b) Criminal penalties.--

13 (1) A person who violates section 7.1, a rule or  
14 regulation adopted under section 7.1 or an order of the  
15 department issued pursuant to section 7.1 commits a summary  
16 offense and shall, upon conviction, be sentenced to pay a  
17 fine of not less than \$100 nor more than \$2,500 for each  
18 separate offense and, in default of the payment of the fine,  
19 may be sentenced to imprisonment for 90 days for each  
20 separate offense. Employees of the department authorized to  
21 conduct inspections or investigations are declared to be law  
22 enforcement officers authorized to issue or file citations  
23 for summary violations under section 7.1, and the General  
24 Counsel is hereby authorized to prosecute these offenses. For  
25 purposes of this subsection, a summary offense may be  
26 prosecuted before any district justice in the county where  
27 the offense occurred.

28 (2) A person who willfully or negligently violates  
29 section 7.1, a rule or regulation adopted under section 7.1  
30 or an order of the department issued pursuant to section 7.1



1 commits a misdemeanor of the third degree and shall, upon  
2 conviction, be sentenced to pay a fine of not less than  
3 \$2,500 nor more than \$50,000 for each separate offense or to  
4 imprisonment for a period of not more than two years for each  
5 separate offense, or both.

6 Section 7.5. Other enforcement.

7 A person may commence a civil action to compel compliance  
8 with section 7.1 or a rule, regulation or order issued pursuant  
9 to section 7.1. In addition to seeking to compel compliance, a  
10 person may request the court to award civil penalties. The court  
11 shall use the factors and amounts contained in section 7.4(a) in  
12 awarding civil penalties under this section. The penalties shall  
13 be paid into the Safe Drinking Water Account.

14 Section 4. This act shall take effect in 180 days.