

## No. 222

## AN ACT

## HB 1353

Amending the act of June 22, 1937 (P.L.1987), entitled, as amended, "An act to preserve and improve the purity of the waters of the Commonwealth for the protection of public health, animal and aquatic life, and for industrial consumption, and recreation; empowering and directing the creation of indebtedness or the issuing of non-debt revenue bonds by political subdivisions to provide works to abate pollution; providing protection of water supply; providing for the jurisdiction of courts in the enforcement thereof; requiring the approval of the Attorney General for prosecutions thereunder; providing additional remedies for abating pollution of waters; imposing certain penalties; repealing certain acts; requiring permits for the operation of coal mines, and placing responsibilities upon landowners and land occupiers," defining certain terms and redefining certain other terms, further regulating discharge of sewage and industrial waste and the operation of mines, imposing certain powers and duties on the board, the Department of Health and the Department of Mines and Mineral Industries, adding a member to the board for the purposes of this act, regulating municipal sewage and imposing certain duties on municipalities, further regulating the operation of mines, further providing for certain eminent domain authorization, further stating the responsibilities of landowners and land occupiers, setting forth enforcement procedures and providing penalties.

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

Section 1. The title and section 1, act of June 22, 1937 (P.L.1987), known as "The Clean Streams Law," title amended August 23, 1965 (P.L.372), and section 1 amended May 8, 1945 (P.L.435) and August 23, 1965 (P.L.372), are amended to read:

## AN ACT

To preserve and improve the purity of the waters of the Commonwealth for the protection of public health, animal and aquatic life, and for industrial consumption, and recreation; empowering and directing the creation of indebtedness or the issuing of non-debt revenue bonds by political subdivisions to provide works to abate pollution; providing protection of water supply; providing for the jurisdiction of courts in the enforcement thereof; **[requiring the approval of the Attorney General for prosecutions thereunder;]** providing additional remedies for abating pollution of waters; imposing certain penalties; repealing certain acts; **[requiring permits for]** *regulating discharges of sewage and industrial wastes; regulating* the operation of **[coal]** mines; and placing responsibilities upon landowners and land occupiers.

Section 1. Definitions.—Be it enacted, &c., That the following words or phrases, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section.

"Board" shall be construed to mean the Sanitary Water Board in the Department of Health, or its duly constituted successor, *except for the*

*purposes of this act, the board shall, in addition to those persons designated as members by section 439 of the act of April 9, 1929 (P.L.177), known as "The Administrative Code of 1929," include as a member a person designated by the Chairman of the State Soil and Water Conservation Commission, which person shall have all the rights, privileges and duties, and shall receive the allowances and reimbursements established by law for members of the Sanitary Water Board.*

*"Department" means the Department of Health of the Commonwealth of Pennsylvania, except that in connection with a matter involving a bituminous strip mine or a matter involving a coal mine refuse disposal area, "department" shall mean the Department of Mines and Mineral Industries of the Commonwealth of Pennsylvania.*

*"Establishment" shall be construed to include any industrial establishment, mill, factory, tannery, paper or pulp mill, garage, oil refinery, oil well, boat, vessel, mine, [coal mine,] coal colliery, breaker, [or] coal processing operations, [not including] dredging operations [within the limits of a stream], except where the dredger holds an unexpired and valid permit issued by the Pennsylvania Water and Power Resources Board prior to the effective date of this act, quarry, and each and every other industry or plant or works [in the operation of which industrial wastes are produced].*

*"Industrial waste" shall be construed to mean any liquid, gaseous, [or] radioactive, solid or other substance, not sewage, resulting from any manufacturing or industry, or from any establishment, as herein defined, and mine drainage, silt, coal mine solids, rock, debris, dirt and clay from coal mines, coal collieries, breakers or other coal processing operations. "Industrial waste" shall include all such substances whether or not generally characterized as waste.*

*"Institution" shall include healing, preventive, mental, health, educational, correctional and penal institutions, almshouses, and county and city homes operated by the State, or any political subdivision thereof, and whose sewage is not admitted to a public sewer system.*

*"Mine" shall be construed to mean any coal mine, clay mine or other facility from which minerals are extracted from the earth.*

*"Municipality" [or "municipal"] shall be construed to include any county, [county authority, municipal authority,] city, borough, town, township, school district, [and] institution, [as above defined] or any authority created by any one or more of the foregoing.*

*"Person" shall be construed to include any natural person, [copartnership] partnership, association or [private] corporation. Whenever used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term "person" shall include the members of an association and the officers of a corporation.*

*"Pollution" shall be construed to mean [noxious and deleterious*

substances rendering unclean the waters of the Commonwealth to the extent of being harmful or inimical to the public health, or to animal or aquatic life, or to the use of such waters for domestic water supply, or industrial purposes, or for recreation] *contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or change in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid or other substances into such waters.* The [Sanitary Water Board] board shall determine when [the] a discharge [of any industrial waste, or the effluent therefrom,] constitutes pollution, as herein defined, and shall establish standards whereby and wherefrom [, so far as reasonably practicable and possible,] it can be ascertained and determined whether any such discharge does or does not constitute pollution as herein defined.

“Sewage” shall be construed to include any substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals.

“Waters of the Commonwealth” shall be construed to include any and all rivers, streams, creeks, rivulets, *impoundments, ditches, water courses, storm sewers*, lakes, dammed water, ponds, springs and all other bodies *or channels of conveyance* of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

Section 2. Section 3 of the act is amended to read:

Section 3. Discharge of Sewage and Industrial Wastes Not a Natural Use.—The discharge of sewage or industrial waste or any [noxious and deleterious substances] *substance* into the waters of this Commonwealth, which [is or may become inimical and injurious to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation] *causes or contributes to pollution as herein defined or creates a danger of such pollution* is hereby declared not to be a reasonable or natural use of such waters, to be against public policy and to be a public nuisance.

Section 3. Section 4 of the act, added August 23, 1965 (P.L.372), is amended to read:

Section 4. [Findings and Declarations] *Declaration of Policy*.—[It is hereby determined by the General Assembly of Pennsylvania and declared as a matter of legislative findings that:

(1) *The Clean Streams Law as presently written has failed to prevent an increase in the miles of polluted water in Pennsylvania.*

(2) The present Clean Streams Law contains special provisions for mine drainage that discriminate against the public interest.

(3) Mine drainage is the major cause of stream pollution in Pennsylvania and is doing immense damage to the waters of the Commonwealth.

(4) Pennsylvania, having more miles of water polluted by mine drainage than any state in the nation, has an intolerable situation which seriously jeopardizes the economic future of the Commonwealth.

(5) (1) Clean, unpolluted streams are absolutely essential if Pennsylvania is to attract new manufacturing industries and to develop Pennsylvania's full share of the tourist industry [, and];

[(6)] (2) Clean, unpolluted water is absolutely essential if Pennsylvanians are to have adequate out of door recreational facilities in the decades ahead;

**[The General Assembly of Pennsylvania therefore declares it to be the policy of the Commonwealth of Pennsylvania that:**

(1) (3) It is the objective of the Clean Streams Law not only to prevent further pollution of the waters of the Commonwealth, but also to reclaim and restore to a clean, unpolluted condition every stream in Pennsylvania that is presently polluted [, and];

[(2)] (4) The prevention and elimination of water pollution is recognized as being directly related to the economic future of the Commonwealth; and

(5) *The achievement of the objective herein set forth requires a comprehensive program of watershed management and control.*

Section 4. The act is amended by adding after section 4, four new sections to read:

*Section 5. Powers and Duties.—(a) The board and the department, in adopting rules and regulations, in establishing policy and priorities, in issuing orders or permits, and in taking any other action pursuant to this act, shall, in the exercise of sound judgment and discretion, and for the purpose of implementing the declaration of policy set forth in section 4 of this act, consider, where applicable, the following:*

(1) *Water quality management and pollution control in the watershed as a whole;*

(2) *The present and possible future uses of particular waters;*

(3) *The feasibility of combined or joint treatment facilities;*

(4) *The state of scientific and technological knowledge;*

(5) *The immediate and long-range economic impact upon the Commonwealth and its citizens.*

(b) *The board shall have the power and its duty shall be to:*

(1) *Formulate, adopt, promulgate and repeal such rules and regulations and issue such orders as are necessary to implement the provisions of this act.*

(2) *Establish policies for effective water quality control and water*

*quality management in the Commonwealth of Pennsylvania and coordinate and be responsible for the development and implementation of comprehensive public water supply, waste management and other water quality plans.*

*(3) Review all Commonwealth research programs pertaining to public water supply, water quality control and water quality management: Provided, however, That this section shall not be construed to limit the authority of each department to conduct research programs and operations as authorized by law.*

*(4) Report from time to time to the Legislature and to the Governor on the Commonwealth's public water supply and water quality control program.*

*(c) The Department of Health shall have the power and its duty shall be to direct the Commonwealth's water quality control program pursuant to the provisions of this act and to the rules, regulations and policies established by the board and it shall provide such administrative services for the board as the board may require.*

*(d) The department shall have the power and its duty shall be to:*

*(1) Review and take appropriate action on all permit applications submitted pursuant to the provisions of this act and to issue, modify, suspend or revoke permits pursuant to this act and to the rules and regulations of the board. Notwithstanding any provision of this act providing for the board to issue, modify, suspend or revoke permits, the department may take such action if authorized to do so by the rules and regulations of the board.*

*(2) Receive and act upon complaints.*

*(3) Issue such orders as may be necessary to implement the provisions of this act or the rules and regulations of the board.*

*(4) Make such inspections of public or private property as are necessary to determine compliance with the provisions of this act, and the rules, regulations, orders or permits issued hereunder.*

*(5) Report to, and at the direction of, the board.*

*(6) Perform such other duties as the board may direct.*

*Section 6. Application and Permit Fees.—The department is hereby authorized to charge and collect from persons and municipalities in accordance with the rules and regulations of the board reasonable filing fees for applications filed and for permits issued.*

*Section 7. Administrative Procedure and Judicial Review.—(a) Any person or municipality who shall be aggrieved by any action of the department under this act shall have the right to appeal such action to the board.*

*(b) The board may adopt rules and regulations establishing the procedure for, and limiting the time of, the taking of such appeals. Hearings may be held before one or more members of the board or before a hearing examiner appointed by the board. When a board*

*member serves as a hearing officer, he shall be entitled to receive an additional fifty dollars (\$50.00) per diem.*

*(c) The board shall be subject to the provisions of the Administrative Agency Law, approved June 4, 1945 (P.L.1388), and its amendments.*

*Section 8. Clean Water Fund.—(a) All fines collected under the penal provisions of this act and all civil penalties collected under section 605 of this act shall be paid into the Treasury of the Commonwealth in a special fund known as "The Clean Water Fund," which shall be administered by the Sanitary Water Board for use in the elimination of pollution.*

*(b) The department may, pursuant to the rules and regulations adopted by the board, in the case of a discharge which is authorized only if pursuant to a permit issued by the department, accept payments which would be paid into The Clean Water Fund in lieu of requiring the permittee to construct or operate a treatment facility. Such rules and regulations allowing such payments shall include the following:*

*(1) That the department finds that the use of the funds so received would provide greater benefit to citizens of the Commonwealth and would more appropriately conform to the declarations of policy of this act than would the construction and operation of a treatment facility.*

*(2) That in determining the amounts of such payments, the department shall consider the cost of construction and operation of a treatment facility, the quantity and quality of the discharge, the effect of the discharge on waters of the Commonwealth, the period of time for which the discharge will continue and other relevant factors.*

*(3) That the permit authorizing the discharge be subject to such conditions as the department might impose, including conditions relating to procedures for the effective cessation of any polluttional discharge upon closing of the operation.*

*(4) That allowing the discharge will not adversely affect any treatment program which is being conducted or is contemplated in the watershed in which the discharge is located.*

*(5) That any such payments accepted in lieu of requiring the permittee to construct or operate a treatment facility shall be used for abatement programs or the construction of consolidated treatment facilities which would be more effective than a larger number of smaller programs or facilities, and further, that such funds shall be used only for such projects, including gathering and collection systems, on the watershed or on the body of water into which such permittee is discharging.*

Section 5. Sections 202 and 203 of the act are amended to read:

Section 202. [Extent of Applicability of Act to Existing] Sewage Discharges.—[Any] No municipality [discharging sewage from any sewer system owned and maintained by the municipality, and any] or person

*[discharging] shall discharge or permit the discharge of sewage in any manner, directly or indirectly, into [or in such manner as to cause pollution of] the waters of this Commonwealth [without regard to the fact that such discharge began prior or subsequent to the twenty-second day of April, one thousand nine hundred and five, or whether such continued discharge has been by virtue of or without a permit issued by the Secretary of Health, the Commissioner of Health or the board, in accordance with the provisions of an act, approved the twenty-second day of April, one thousand nine hundred and five (Pamphlet Laws, two hundred sixty), entitled "An act to preserve the purity of the waters of the State for the protection of the public health," shall discontinue the discharge of sewage into or in such manner as to cause pollution of the waters of this Commonwealth upon the order of the board, issued pursuant to the provisions of this act, at such time as the board shall be of opinion that such discharge of sewage is or may become inimical or injurious to the public health, animal or aquatic life, or to the use of the water for domestic or industrial consumption or recreation, and on such notice, any permit heretofore granted to such municipality or person for the discharge of sewage into the waters of the Commonwealth shall be deemed to be revoked and annulled: Provided, however, That the discharge of sewage into a stream impregnated with acid coal mine drainings be permitted when the discharge of sewage does not create a condition inimical to the public interest] unless such discharge is authorized by the rules and regulations of the board or such person or municipality has first obtained a permit from the department. Such permit before being operative shall be recorded in the office of the recorder of deeds for the county wherein the outlet of said sewer system is located and in case the municipality or person fails or neglects to record such permit, the department shall cause a copy thereof to be so recorded, and shall collect the cost of recording from the municipality or person. No such permit shall be construed to permit any act otherwise forbidden by any decree, order, sentence or judgment of any court, or by the ordinances of any municipality, or by the rules and regulations of any water company supplying water to the public, or by laws relative to navigation. For the purposes of this section, a discharge of sewage into the waters of the Commonwealth shall include a discharge of sewage by a person or municipality into a sewer system or other facility owned, operated or maintained by another person or municipality and which then flows into the waters of the Commonwealth. A discharge of sewage without a permit or contrary to the terms and conditions of a permit or contrary to the rules and regulations of the board is hereby declared to be a nuisance.*

Section 203. [Orders to Discontinue Existing Sewage Discharges; Nuisances.—In the case of a municipality, orders to discontinue existing discharges of sewage shall be by notice in writing (after investigation and hearing and an opportunity for all persons interested therein to be heard

thereon), which notice shall be served personally or by registered mail on the corporate authorities of the municipality owning or maintaining and using the sewage system. The length of time, after receipt of the notice, within which the discharge of sewage shall be discontinued shall be stated in the notice, and shall in no case exceed two years.

In the case of a person, orders to discontinue existing discharges of sewage shall be by notice in writing, served personally on such person or by registered mail addressed to the last known post-office address of the person discharging the sewage, and such notice shall specify a reasonable time, not exceeding one year, to be fixed by the board within which the discharge of such sewage shall be discontinued.

The continued discharge of sewage by persons or municipalities, after the expiration of the time fixed in any such notice, is hereby declared to be a nuisance, and shall be abatable and punishable as provided in this act.] *Municipal Sewage.*—(a) *Whether or not a municipality is required by other provisions of this act to have a permit for the discharge of sewage, if the department finds that the acquisition, construction, repair, alteration, completion, extension or operation of a sewer system or treatment facility is necessary to properly provide for the prevention of pollution or prevention of a public health nuisance, the department may order such municipality to acquire, construct, repair, alter, complete, extend, or operate a sewer system and/or treatment facility. Such order shall specify the length of time, after receipt of the order, within which such action shall be taken.*

(b) *The department may from time to time order a municipality to file a report with the department pertaining to sewer systems or treatment facilities owned, operated, or maintained by such municipality or pertaining to the effect upon the waters of the Commonwealth of any sewage discharges originating from sources within the municipality. The report shall contain such plans, facts, and information which the department may require to enable it to determine whether existing sewer systems and treatment facilities are adequate to meet the present and future needs or whether the acquisition, construction, repair, alteration, completion, extension, or operation of a sewer system or treatment facility should be required to meet the objectives of this act. Whether or not such reports are required or received by the department, the department may issue appropriate orders to municipalities where such orders are found to be necessary to assure that there will be adequate sewer systems and treatment facilities to meet present and future needs or otherwise to meet the objectives of this act. Such orders may include, but shall not be limited to, orders requiring municipalities to undertake studies, to prepare and submit plans, to acquire, construct, repair, alter, complete, extend, or operate a sewer system or treatment facility, or to negotiate with other municipalities for combined or joint sewer systems or treatment*



*facilities. Such orders may prohibit sewer system extensions, additional connections, or any other action that would result in an increase in the sewage that would be discharged into an existing sewer system or treatment facility.*

Section 6. Sections 204, 205, 206 and 208 of the act are repealed.

Section 7. Sections 210 and 301 of the act are amended to read:

Section 210. **[Municipal Financing of Pollution Abatement.—Any municipality upon whom an order of the board is served to abate its discharge of untreated or inadequately treated sewage, shall, unless said order to abate said discharge be reversed on appeal, take steps for the acquisition or construction of a sewer or sewerage system or sewage treatment works, or both, or for the repair, alteration, extension or completion of an existing sewer, sewerage system or sewage treatment works, or both, as may be necessary for the treatment of its sewage, in compliance with the order of the board. The cost of the acquisition, construction, repair, alteration, completion or extension of the sewer, sewerage system or sewage treatment works, as may be necessary to comply with said order, shall be paid out of funds on hand available for such purpose, or out of the general funds of such municipality not otherwise appropriated. If there be no sufficient funds on hand or unappropriated, then the necessary funds shall be raised by the issuance of bonds, such bond issue to be subject only to the approval of the Department of Internal Affairs. If the estimated cost of the steps necessary to be taken by such municipality to comply with such order is such that the bond issue, necessary to finance such project, would not raise the total outstanding bonded indebtedness of such municipality in excess of the constitutional limit imposed upon such indebtedness by the Constitution of this Commonwealth, then, and in that event, the necessary bonds may be issued as a direct obligation of such municipality and retired pursuant to general law governing the issue of such bonds, if the electors of the municipality shall vote in favor of the increase in indebtedness where the consent of the electors is required. If the amount of such bonds necessary to be issued would raise the total outstanding bonded indebtedness of such municipality above such constitutional limitation on such indebtedness, or if the consent of the electors cannot be secured, or if such municipality by its corporate authorities shall determine against the issuance of direct obligation bonds, then such municipality shall be requested to issue non-debt revenue bonds and provide for the payment of the interest and principal of such bonds from funds to be raised by imposing a sewer rental or charge, in accordance with and as authorized by the act, approved the eighteenth day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, twelve hundred eighty-six), entitled "An act empowering cities (except cities of the first class), boroughs, incorporated towns, and townships to charge and collect annual rentals for the use of certain sewers, sewage systems, and treatment works, including charges for operation, inspection, maintenance, repair, depreciation, and the amortization of indebtedness and interest thereon," or other legislation**

relating to the imposition and collection of such rentals and charges.

The funds made available by the issuance of either direct obligation bonds or revenue bonds secured by rental charges as herein provided, shall constitute a sanitary fund, and shall be used for no other purpose than for carrying out such order or orders of the board.

The Attorney General, at the instance of the board, may enforce this provision of the act by action of mandamus] *Duties of Municipalities.*—*It shall be the duty of the corporate authorities of a municipality upon whom an order is issued pursuant to section 203 of this act to proceed diligently in compliance with such order. If the corporate authorities fail to proceed diligently, or if the municipality fails to comply with the order within the specified time, the corporate authorities shall be guilty of contempt and shall be punished by the court in an appropriate manner and, for this purpose, application may be made by the Attorney General to the Court of Common Pleas of Dauphin County, until such time as the Commonwealth Court comes into existence and thereafter the Commonwealth Court instead of said Court of Common Pleas of Dauphin County, or to the court of common pleas of the county wherein the municipality is situated, which courts are hereby given jurisdiction.*

Section 301. Prohibition Against Discharge of Industrial Wastes.—No person *or municipality* shall place or permit to be placed, or discharged or permit to flow, or continue to discharge or permit to flow, into any of the waters of the Commonwealth any industrial wastes, except as hereinafter provided in this act.

Section 8. Sections 302 and 306 of the act are repealed.

Section 9. Section 307 of the act, amended May 8, 1945 (P.L.435), is amended to read:

Section 307. [Regulation of Establishments Erected or Opened or Reopened in the Future] *Industrial Waste Discharges.*—No person *or municipality* shall [hereafter erect, construct or open, or reopen or operate, any establishment which, in its operation, results in the] discharge *or permit the discharge* of industrial wastes [which would flow or be discharged] *in any manner, directly or indirectly*, into any of the waters of the Commonwealth [and thereby cause a pollution of the same,] unless such [person shall first provide proper and adequate treatment works for the treatment of such industrial wastes, approved by the board, so that if and when flowing or discharged into the waters of the Commonwealth the effluent thereof shall not be inimical or injurious to the public health or to animal or aquatic life, or prevent the use of water for domestic, industrial or recreational purposes, except when, in the opinion of the board, such industrial waste is not inimical or injurious to the public health or to animal or aquatic life, or to the use of the water for domestic, industrial or recreational purposes, and shall grant a permit for the discharge of such industrial waste into the waters of the Commonwealth. But no permit shall ever be issued by the board authorizing the discharge of untreated industrial

waste into the clean waters of the State as above defined] *discharge is authorized by the rules and regulations of the board or such person or municipality has first obtained a permit from the department. For the purposes of this section, a discharge of industrial wastes into the waters of the Commonwealth shall include a discharge of industrial wastes by a person or municipality into a sewer system or other facility owned, operated or maintained by another person or municipality and which then flows into the waters of the Commonwealth.* Public notice of every application for a permit under this section shall be given by notice published in a newspaper of general circulation, published in the county where the permit is applied for, once a week for four weeks. *A discharge of industrial wastes without a permit or contrary to the terms and conditions of a permit or contrary to the rules and regulations of the board is hereby declared to be a nuisance.* [But any such permit shall be revocable or subject to modification and change by the board at any time thereafter upon reasonable notice, served personally or by registered mail addressed to the last known post-office address of the holder of the permit, and the owner or operator of such establishment may be required to install treatment works, approved by the board, for the treatment of such industrial waste, or for the deposition of solids in such industrial waste in the manner and to the extent as the board may require. The discharge of industrial waste into any of the waters of the Commonwealth from any such establishment contrary to the provisions of this section, or without a permit, or after the time fixed in the notice of the board when a permit is revoked, or in violation of any modification thereof, is hereby declared to be a nuisance and to be punishable and abatable as herein provided.]

Section 10. Section 308 of the act is amended to read:

Section 308. Approval of Plans, Designs, and Relevant Data by the [Sanitary Water Board] *Department*.—All plans, designs, and relevant data for the erection and construction of treatment works by any person *or municipality* for the treatment of industrial wastes shall be submitted to the [board] *department* for its approval before the works are constructed or erected. Any such construction or erection which has not been approved by the [board] *department* by written permit, or any treatment works not maintained or operated in accordance with the rules and regulations of the board, is hereby declared *to be* a nuisance [and to be punishable and abatable as herein provided].

Section 11. Section 309 of the act is repealed.

Section 11.1. Section 314 of the act, added April 20, 1956 (P.L.1479), is amended to read:

Section 314. Authorizing Certain Corporations to Acquire Interests in Land by Eminent Domain.—Whenever the Sanitary Water Board shall direct any corporation to cease discharging industrial waste into any waters of the Commonwealth, pursuant to the public policy set forth in this act, and such directive would materially affect the operations of that corporation's business,

then such corporation if not otherwise vested with the right of eminent domain may make application to the board for an order, finding that the use by the applicant of a specified interest in a specifically described piece of land is necessary in connection with the elimination, reduction or control of the pollution of any of the waters of this Commonwealth. For the purposes of this act, such corporations are vested with the right of eminent domain which shall be exercised only upon authorization of the board, in which event they shall proceed in the manner and form set forth in [section forty-one, act of April twenty-nine, one thousand eight hundred seventy-four (Pamphlet Laws 73), and its amendments] *the "Eminent Domain Code," act of June 22, 1964 (P.L.84), as amended*: Provided, That no property devoted to a public use or owned by a public utility or used as a place of public worship or used for burial purposes shall be taken under the right of eminent domain: And provided further, That where any existing public street or road is vacated by any municipality in order to facilitate any undertaking in connection with land acquired under the right of eminent domain as provided for above, the corporation acquiring such land shall reimburse all public utilities, *municipalities and municipality authorities* for the costs of relocating and reconstructing their facilities necessitated by the closing of any such street or road.

In the event the application by the corporation to the board is denied, then the corporation so applying may appeal to the court of common pleas in the county where the specified land in which the specified interest is sought to be obtained by eminent domain is situated, and the court shall be empowered to review all questions of fact as well as of law.

Section 12. Sections 315 and 316 of the act, added August 23, 1965 (P.L.372), are amended to read:

Section 315. [Permits for Operation of Coal Mines.—(a) Before any coal mine is opened, reopened, or continued in operation, an application for a permit approving the proposed drainage and disposal of industrial wastes shall be submitted to the Sanitary Water Board. The application shall contain complete drainage plans including any restoration measures that will be taken after operations have ceased and such other information as the board by regulation shall require.

(b) It shall be unlawful to open, reopen, or continue in operation any coal mine, or to change or alter any approved plan of drainage and disposal of industrial wastes, unless and until the board, after consultation with the Department of Mines and Mineral Industries, has issued a permit approving the plan or change of plan. A permit shall not be issued if the board shall be of the opinion that the discharge from the mine would be or become inimical or injurious to the public health, animal or aquatic life, or to the use of the water for domestic or industrial consumption or recreation. In issuing a permit the board may impose such conditions as are necessary to protect the waters of the Commonwealth. The permittee shall comply with such permit conditions and with the rules and regulations of the board.

(c) The board may modify, suspend or revoke any permit issued pursuant to this section. Such action may be taken if the board finds that a discharge from the mine is causing or is likely to cause pollution to waters of the Commonwealth or if it finds that the operator is in violation of any provision of this act or any rule or regulation of the Sanitary Water Board. An order of the board modifying, revoking or suspending a permit shall take effect upon notice from the board, unless the order specifies otherwise. Any party aggrieved by such order shall be given the opportunity to appear before the board at a hearing at which the board shall reconsider its order and issue an adjudication, from which the aggrieved party may appeal in the manner provided by the "Administrative Agency Law," act of June 4, 1945 (P.L.1388), as amended. The right of the board to suspend or revoke a permit is in addition to any penalty which may be imposed pursuant to this act.

(d) Any permit approving the drainage and disposal of industrial wastes from a coal mine and issued by the board prior to the effective date of this act shall be deemed to be a permit issued pursuant to this section. The permit shall be valid for one year from the effective date of this act or for such additional period as the board might allow. Nothing herein shall limit the board's power to modify, suspend, or revoke any such permit under the provisions of subsection (c) of this section] *Operation of Mines.—(a) No person or municipality shall operate a mine or allow a discharge from a mine into the waters of the Commonwealth unless such operation or discharge is authorized by the rules and regulations of the board or such person or municipality has first obtained a permit from the department. Operation of the mine shall include preparatory work in connection with the opening or reopening of a mine, backfilling, sealing, and other closing procedures, and any other work done on land or water in connection with the mine. A discharge from a mine shall include a discharge which occurs after mining operations have ceased, provided that the mining operations were conducted subsequent to January 1, 1966, under circumstances requiring a permit from the Sanitary Water Board under the provisions of section 315 (b) of this act as it existed under the amendatory act of August 23, 1965 (P.L.372). The operation of any mine or the allowing of any discharge without a permit or contrary to the terms or conditions of a permit or contrary to the rules and regulations of the board, is hereby declared to be a nuisance. Whenever a permit is requested to be issued pursuant to this subsection, and such permit is requested for permission to operate any mining operations, the city, borough, incorporated town or township in which the operation is to be conducted shall be notified by registered mail of the request, at least ten days before the issuance of the permit or before a hearing on the issuance, whichever is first.*

(b) *The department may require an applicant for a permit to operate a mine, or a permittee holding a permit to operate a mine under the provisions of this section, to post a bond or bonds in favor of the*

*Commonwealth of Pennsylvania and with good and sufficient sureties acceptable to the department to insure that there will be compliance with the law, the rules and regulations of the board, and the provisions and conditions of such permit including conditions pertaining to restoration measures or other provisions insuring that there will be no polluting discharge after mining operations have ceased. The department shall establish the amount of the bond required for each operation and may, from time to time, increase or decrease such amount. Liability under each bond shall continue until such time as the department determines that there is no further significant risk of a pollutional discharge. The failure to post a bond required by the department shall be sufficient cause for withholding the issuance of a permit or for the revocation of an existing permit.*

Section 316. Responsibilities of Landowners and Land Occupiers [to allow access].

Whenever the Sanitary Water Board finds that pollution [of waters of the Commonwealth] or a danger of pollution is resulting from a condition which exists on land in the Commonwealth [and that the owner or occupier of such land has refused to allow a mine operator or other person or an appropriate agency of the Commonwealth access to the land to take whatever measures are necessary to eliminate the pollution,] the board may order the landowner or occupier to [allow such access] *correct the condition in a manner satisfactory to the board or it may order such owner or occupier to allow a mine operator or other person or agency of the Commonwealth access to the land to take such action. For the purpose of this section, "landowner" includes any person holding title to or having a proprietary interest in either surface or subsurface rights.*

*For the purpose of collecting or recovering the expense involved in correcting the condition, the board may assess the amount due in the same manner as civil penalties are assessed under the provisions of section 605 of this act: Provided, however, That if the board finds that the condition causing pollution or a danger of pollution resulted from mining operations conducted prior to January 1, 1966, or, if subsequent to January 1, 1966, under circumstances which did not require a permit from the Sanitary Water Board under the provisions of section 315 (b) of this act as it existed under the amendatory act of August 23, 1965 (P.L.372), then the amount assessed shall be limited to the increase in the value of the property as a result of the correction of the condition.*

*If the board finds that the pollution or danger of pollution results from an act of God in the form of sediment from land for which a complete conservation plan has been developed by the local soil and water conservation district and the Soil Conservation Service, U.S.D.A. and the plan has been fully implemented and maintained, the landowner shall be excluded from the penalties of this act.*

Section 13. Section 317 of the act is repealed.

Section 14. The title of Article IV and sections 401 and 402 of the act are amended to read:

ARTICLE IV  
[PETTY] OTHER POLLUTIONS AND  
POTENTIAL POLLUTION

Section 401. [Petty Pollutions Prohibited.—It shall be unlawful for any person to put or place into any of the waters of the Commonwealth any explosive, or to put or to allow any substance of any kind or character injurious or inimical to the public health or to animal or aquatic life, or to the uses of water for industrial purposes or for recreation, to be turned into or to run or flow or wash or to be emptied into any of the waters of the Commonwealth.

Any person violating the provisions of this section shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than one hundred dollars nor more than five hundred dollars, and, in default of the payment of such fine and costs of prosecution, the person, or if such person be an association or copartnership, then the members thereof, or if such person be a corporation, then the officers thereof, shall be imprisoned in the county jail for a period of sixty days.

Any person who shall continue to violate the provisions of this section, after conviction in a summary proceeding as above provided, shall be guilty of a misdemeanor, and, upon conviction thereof in the court of quarter sessions, shall be sentenced to pay a fine of not less than five hundred dollars nor more than one thousand dollars, and such person, or if such person be an association or copartnership, then the members thereof, or if such person be a corporation, then the officers thereof, shall be imprisoned in the county jail for a period of not less than three months nor more than one year. Each day during which this section is violated shall constitute a separate offense.

Nothing contained in this section shall be construed to apply to any sewage or industrial waste the discharge of which is regulated or prohibited by the preceding sections of this act, but this section shall apply to explosives, and to all other substances injurious or inimical to the public health or animal or aquatic life, or to the use of the water for domestic, industrial or recreational purposes, and to any sewage or industrial waste the discharge of which is not regulated or prohibited by the preceding sections of this act. This section shall not be construed to prohibit the use of explosives for engineering purposes when a written permit has been given therefor by proper National, State or municipal authorities] *Prohibition Against Other Pollutions.—It shall be unlawful for any person or municipality to put or place into any of the waters of the Commonwealth, or allow or permit to be discharged from property owned or occupied by such person or municipality into any of the waters of the Commonwealth, any substance of any kind or character resulting in pollution as herein*

*defined. Any such discharge is hereby declared to be a nuisance.*

Section 402. [Abatement of Petty Pollutions.—The violation of any of the provisions of the preceding section of this act is hereby declared to constitute a nuisance and to be abatable as herein provided] *Potential Pollution.—(a) Whenever the board finds that any activity, not otherwise requiring a permit under this act, including but not limited to the impounding, handling, storage, transportation, processing or disposing of materials or substances, creates a danger of pollution of the waters of the Commonwealth or that regulation of the activity is necessary to avoid such pollution, the board may, by rule or regulation, require that such activity be conducted only pursuant to a permit issued by the department or may otherwise establish the conditions under which such activity shall be conducted, or the board may issue an order to a person or municipality regulating a particular activity. Rules and regulations adopted by the board pursuant to this section shall give the persons or municipalities affected a reasonable period of time to apply for and obtain any permits required by such rules and regulations.*

*(b) Whenever a permit is required by rules and regulations issued pursuant to this section, it shall be unlawful for a person or municipality to conduct the activity regulated except pursuant to a permit issued by the department. Conducting such activity without a permit, or contrary to the terms or conditions of a permit or conducting an activity contrary to the rules and regulations of the board or conducting an activity contrary to an order issued by the department, is hereby declared to be a nuisance.*

Section 15. Section 403 of the act is repealed.

Section 16. The title of Article VI and sections 601, 602, 605 and 609 of the act are amended to read:

#### ARTICLE VI PROCEDURE AND ENFORCEMENT

Section 601. Abatement of [Pollutions] *Nuisances; Restraining Violations.—(a) [All pollutions hereinbefore declared to be nuisances or maintained contrary to the provisions of this act,] Any activity or condition declared by this act to be a nuisance, shall be abatable in the manner [now] provided by law or equity for the abatement of public nuisances. In addition, suits to abate [pollution of any of the waters of the Commonwealth] such nuisances or suits to restrain or prevent any violation of this act may be instituted in equity or at law in the name of the Commonwealth upon relation of the Attorney General, or upon relation of any district attorney of any county, or upon relation of the solicitor of any municipality affected, after notice has first been served upon the Attorney General of the intention of the district attorney or solicitor to so proceed. Such proceedings may be prosecuted in the [court of common pleas of Dauphin*



County] *Commonwealth Court*, or in the court of common pleas of the county where the [nuisance has been or is being committed, or of any county through which or along the borders of which flows the water into which such pollution has been discharged at any point above] *activity has taken place, the condition exists, or the public affected*, and to that end jurisdiction is hereby conferred in law and equity upon such courts: Provided, however, That no action shall be brought by such district attorney or solicitor against any municipality discharging sewage under a permit of the board heretofore issued or hereafter issued under this act: And provided further, That, except in cases of emergency where, in the opinion of the court, the exigencies of the cases require immediate abatement of said nuisances, the court may, in its decree, fix a reasonable time during which the person or municipality responsible for the nuisances may make provision for the abatement of the same.

*(b) In cases where the circumstances require it or the public health is endangered, a mandatory preliminary injunction or special injunction may be issued upon the terms prescribed by the court, notice of the application therefor having been given to the defendant in accordance with the rules of equity practice, and in any such case the Attorney General, the district attorney or the solicitor of any municipality shall not be required to give bond.*

Section 602. [Preliminary Injunctions.—In cases where the circumstances require it or the public health is endangered, a mandatory preliminary injunction or special injunction may be issued upon the terms prescribed by the court, notice of the application therefor having been given to the defendant in accordance with the rules of equity practice, and in any such case the Attorney General, the district attorney or the solicitor of any municipality shall not be required to give bond] *Penalties.*—*(a) Any person or municipality who violates any provision of this act or any rule or regulation or order of the board or any order of the department issued pursuant to this act is guilty of a summary offense and, upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each separate offense, and, in default of the payment of such fine, the person, or if such person be a partnership, then the members thereof, or if such person be a corporation or association, then the officers, members, agents, servants or employes thereof, shall be imprisoned in the county jail for a period of sixty days.*

*(b) Any person or municipality who, after a conviction in a summary proceeding within two years as above provided, violates any provision of this act or any rule or regulation or order of the board or any order of the department issued pursuant to this act is guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each separate offense or to imprisonment in the county jail*

*for a period of not more than one year, or both. In the case of a partnership the members thereof, and in the case of a corporation or an association the officers, members, agents, servants or employes thereof, may be subject to any such sentence of imprisonment.*

*(c) Each day of continued violation of any provision of this act or any rule or regulation or order of the board or any order of the department issued pursuant to this act shall constitute a separate offense under subsections (a) and (b) of this section.*

Section 605. [Appeals.—Any order, decision, rule or regulation made by the board shall be subject to appeal to the court of common pleas of Dauphin County, within thirty days from its entry, by any person or municipality, but in such appeal, the decision, rule or regulation of the board shall be prima facie evidence of the correctness thereof, and the burden to establish the incorrectness thereof shall be upon the appellant. Said court may affirm or modify any such order, decision, rule or regulation if it be established by the appellant that the discharge of sewage or industrial waste, or the erection, maintenance or operation of any treatment works, is not nor likely to become inimical or injurious to the public health or to animal or aquatic life, or to the use of the water for domestic, industrial or recreational purposes, and if the court so finds, it may set aside such order, decision, rule or regulation of the board. Any order (other than an order to discontinue the discharge of industrial waste), decision, rule or regulation appealed from shall not be superseded by the appeal, but shall be in force until the order of the court is made, as above provided. The setting aside of any order or decision of the board by the court upon any such appeal shall not prevent or preclude said board from again instituting subsequent proceedings against the same person or municipality when, in its opinion, the public health is endangered, or animal or aquatic life destroyed, or water rendered unfit for domestic, industrial or recreational purposes, subject to appeal as above provided]

*Civil Penalties.—In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act or a rule or regulation of the board or an order of the department, the board, after hearing, may assess a civil penalty upon a person or municipality for such violation. Such a penalty may be assessed whether or not the violation was wilful. The civil penalty so assessed shall not exceed ten thousand dollars (\$10,000), plus five hundred dollars (\$500) for each day of continued violation. In determining the amount of the civil penalty the board shall consider the wilfulness of the violation, damage or injury to the waters of the Commonwealth or their uses, cost of restoration, and other relevant factors. It shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided at law for the collection of debts. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall be a lien in favor of the Commonwealth upon the property, both real and*

*personal, of such person but only after same has been entered and docketed of record by the prothonotary of the county where such is situated. The board may, at any time, transmit to the prothonotaries of the respective counties certified copies of all such liens, and it shall be the duty of each prothonotary to enter and docket the same of record in his office, and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof.*

Section 609. [Application and Permit Fees.—The board is hereby authorized to fix and collect from persons and municipalities a reasonable filing fee for applications filed and for permits issued] *Withholding of Permit.—The department may withhold the issuance of any permit required by this act when the applicant has been found to be in violation of any relevant provision of this act, or of any relevant rule, regulation or order of the board, or of any relevant order of the department, and that the said violation demonstrates a lack of ability or intention on the part of the applicant to comply with the law or with the conditions of the permit sought. In such case, the department shall forthwith notify the applicant in writing of the grounds for withholding issuance of the permit, setting forth in reasonable detail the nature of the violation and affording the applicant a prompt opportunity to appear before the board and be heard. Should the applicant wish to do so, he may offer evidence of his ability and intention to comply with the provisions of this act and the rules, regulations and orders of the board and of the conditions of the permit notwithstanding such violation, and should the department be satisfied, it may in its discretion grant said permit under such terms and conditions as it may deem necessary.*

Section 17. The act is amended by adding after section 609, a new section to read:

*Section 610. Enforcement Orders.—The department may issue such orders as are necessary to aid in the enforcement of the provisions of this act. Such orders shall include, but shall not be limited to, orders modifying, suspending or revoking permits and orders requiring persons or municipalities to cease operations of an establishment which, in the course of its operation, has a discharge which is in violation of any provision of this act. Such an order may be issued if the department finds that a condition existing in or on the operation involved is causing or is creating a danger of pollution of the waters of the Commonwealth, or if it finds that the permittee, or any person or municipality is in violation of any relevant provision of this act, or of any relevant rule, regulation or order of the board or relevant order of the department: Provided, however, That an order affecting an operation not directly related to the condition or violation in question, may be issued only if the department finds that the other enforcement procedures, penalties and remedies available under this act would probably not be adequate*

*to effect prompt or effective correction of the condition or violation. The department may, in its order, require compliance with such conditions as are necessary to prevent or abate pollution or effect the purposes of this act. An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the board of the department's order shall not act as a supersedeas: Provided, however, That, upon application and for cause shown, the board or the Commonwealth Court may issue such a supersedeas. The right of the department to issue an order under this section is in addition to any penalty which may be imposed pursuant to this act. The failure to comply with any such order is hereby declared to be a nuisance.*

Section 18. All rules, regulations, orders and permits, heretofore adopted or issued by the Sanitary Water Board or the Department of Health of the Commonwealth of Pennsylvania under the provisions of law repealed by this act, shall continue in force with the same effect as if such provisions of law had not been repealed subject, however, to such modification, change or annulment as may be deemed necessary by the Sanitary Water Board or the Department of Health or the Department of Mines and Mineral Industries in order to comply with the provisions of this act.

Section 19. The provisions of this act shall not affect any suit or prosecution pending or to be instituted to enforce any right or penalty or punish any offense under the authority of any act of Assembly or part thereof repealed by this act.

Section 20. This act shall take effect immediately.

APPROVED—The 31st day of July, A. D. 1970.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly No. 222.



Secretary of the Commonwealth.