

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 795 Session of  
1991

INTRODUCED BY HAYDEN, REBER, EVANS, HECKLER, VEON, CORRIGAN,  
KOSINSKI, WILLIAMS, PISTELLA, McNALLY, O'DONNELL, BELARDI,  
COLAIZZO, STURLA, JOSEPHS, THOMAS, PESCI, MELIO, PRESTON AND  
RICHARDSON, MARCH 18, 1991

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF  
REPRESENTATIVES, AS AMENDED, MAY 7, 1991

## AN ACT

1 Providing for enhanced penalty authority for publicly owned  
2 treatment works which are authorized to enforce industrial  
3 pretreatment standards for industrial waste discharges.

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 Publicly  
8 Owned Treatment Works Penalty Law.

9 Section 2. Legislative findings.

10 The General Assembly finds as follows:

11 (1) Proper pretreatment of industrial wastes prior to  
12 discharge into publicly owned treatment works is essential  
13 for the proper functioning of the treatment works and the  
14 prevention of pollution of the waters of this Commonwealth.

15 (2) Publicly owned treatment works with approved  
16 pretreatment programs have the responsibility under Federal  
17 and State law for enforcement of pretreatment standards

1 against industrial users of the publicly owned treatment  
2 works.

3 (3) Municipalities with jurisdiction over indirect  
4 discharges to and discharges from a publicly owned treatment  
5 works need adequate remedies and penalties for effective  
6 enforcement of the pretreatment programs.

7 (4) Limitations upon assessment of fines or penalties  
8 which may exist in certain municipal codes or home rule  
9 charters may prevent municipalities from pursuing effective  
10 enforcement and satisfying minimum pretreatment program  
11 requirements established under the Federal Water Pollution  
12 Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.).

### 13 Section 3. Definitions.

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

17 "Approved pretreatment program." A program for pretreatment  
18 of industrial waste approved by the Environmental Protection  
19 Agency or the Department of Environmental Resources in  
20 accordance with the Federal Water Pollution Control Act (62  
21 Stat. 1155, 33 U.S.C. § 1251 et seq.).

22 "Industrial user." An establishment which discharges or  
23 introduces industrial wastes into a publicly owned treatment  
24 works (POTW).

25 "Industrial waste." The term shall have the meaning ascribed  
26 to it in the act of June 22, 1937 (P.L.1987, No.394), known as  
27 The Clean Streams Law, and the regulations adopted thereunder.

28 "Pretreatment standard or requirement." Any substantive or  
29 procedural provision of the Federal Water Pollution Control Act  
30 (62 Stat. 1155, 33 U.S.C. § 1251 et seq.) or the act of June 22,

1 1937 (P.L.1987, No.394), known as The Clean Streams Law, or any  
2 rule or regulation, ordinance or term or condition of a permit  
3 or order adopted or issued by the Commonwealth or a POTW for the  
4 implementation or enforcement of an industrial waste  
5 pretreatment program established under the Federal Water  
6 Pollution Control Act or The Clean Streams Law.

7 "Publicly owned treatment works (POTW)." A publicly owned  
8 treatment works as defined by section 212 of the Federal Water  
9 Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.)  
10 which is owned by a state or municipality, as defined by section  
11 502(4) of the Federal Water Pollution Control Act. The term  
12 includes devices and systems used in the storage, treatment,  
13 recycling and reclamation of municipal sewage or industrial  
14 wastes of a liquid nature. It also includes sewers, pipes and  
15 other conveyances only if they convey wastewater to a POTW  
16 plant. The term also means:

17 (1) A municipality, as defined in section 502(4) of the  
18 Federal Water Pollution Control Act, which has jurisdiction  
19 over indirect discharges to and discharges from this type of  
20 treatment works.

21 (2) An authority created under the act of May 2, 1945  
22 (P.L.382, No.164), known as the Municipality Authorities Act  
23 of 1945, which has jurisdiction over indirect discharges to  
24 and discharges from this type of treatment works.

#### 25 Section 4. Penalty.

26 In addition to proceeding under any other remedy available at  
27 law or equity for violation of pretreatment standards and/or  
28 requirements, a publicly owned treatment works with an approved  
29 pretreatment program may assess a civil penalty upon an  
30 industrial user for the violation. The penalty may be assessed

<—

whether or not the violation was willful or negligent. The civil penalty shall not exceed ~~\$10,000~~ \$25,000 per day for each violation. Each violation for each separate day shall constitute a separate and distinct offense under this section.

Section 5. Injunctive relief.

(a) General rule.--A POTW shall have the power to obtain injunctive relief to enforce compliance with or restrain violations of any pretreatment standard. Injunctive relief shall be granted upon a showing of a violation of any pretreatment standard. No further proof shall be necessary to establish the POTW's entitlement to injunctive relief.

(b) Jurisdiction.--A POTW's power to seek injunctive relief shall apply to all industrial users regardless of jurisdictional boundaries. Injunctive proceedings may be prosecuted in the court of common pleas where the POTW is located, the activity has taken place, the condition exists or the public is affected, and to that end jurisdiction is hereby conferred in law and equity upon such courts.

Section 6. Construction with other laws.

(a) Other laws superseded.--The authority contained in this act shall apply to every publicly owned treatment works authorized by law to enforce an approved pretreatment program and shall supersede any limitation in a municipal law or a home rule charter as to the maximum amount of penalty that would otherwise apply under existing law.

(b) Uniform penalty.--This act shall not be construed to modify jurisdiction or procedures for the assessment or collection of fines and penalties by municipalities or publicly owned treatment works. It shall have the sole effect of making the penalty provided for in this act uniformly available to

1 publicly owned treatment works.

2 Section 7. Penalty cumulative and concurrent.

3 (a) Other remedies preserved.--The penalty authorized in  
4 this act is intended to be concurrent and cumulative, and the  
5 provisions of this act shall not abridge or alter any right of  
6 action or remedy, now or hereafter existing in equity, or under  
7 the common law or statutory law, criminal or civil, available to  
8 a person, municipality or this Commonwealth.

9 (b) Appeal.--The industrial user charged with the penalty  
10 shall have 30 days to pay the proposed penalty in full, or, if  
11 the industrial user wishes to contest either the amount of the  
12 penalty or the fact of the violation, the industrial user must  
13 file an appeal of the action pursuant to the municipal law or  
14 home rule charter or, in the absence of either of these, within  
15 30 days pursuant to 2 Pa.C.S. (relating to administrative law  
16 and procedure). Failure to appeal within this period shall  
17 result in a waiver of all legal rights to contest the violation  
18 or the amount of the penalty.

19 Section 8. Repeal.

20 All acts and parts of acts are repealed insofar as they are  
21 inconsistent with this act.

22 Section 9. Effective date.

23 This act shall take effect in 30 days.