
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

SENATOR BRIGHTBILL, ENVIRONMENTAL RESOURCES AND ENERGY, IN
SENATE, RE-REPORTED AS AMENDED, JANUARY 28, 1992

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

1 and State law for enforcement of pretreatment standards
2 against industrial users of the publicly owned treatment
3 works.

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

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

14 Section 3. Definitions.

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

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

23 "BOARD." THE BOARD OF DIRECTORS OF A MUNICIPAL AUTHORITY, <—
24 THE GOVERNING BODY OF A POLITICAL SUBDIVISION OR THE HEAD OF A
25 STATE AGENCY WHICH HAS RESPONSIBILITY FOR ADMINISTERING A
26 PRETREATMENT PROGRAM FOR A PUBLICLY OWNED TREATMENT WORKS.

27 "Industrial user." An establishment which discharges or
28 introduces industrial wastes into a publicly owned treatment
29 works (POTW).

30 "Industrial waste." The term shall have the meaning ascribed

1 to it in the act of June 22, 1937 (P.L.1987, No.394), known as
2 The Clean Streams Law, and the regulations adopted thereunder.

3 "Pretreatment standard or requirement." Any substantive or
4 procedural provision of the Federal Water Pollution Control Act
5 (62 Stat. 1155, 33 U.S.C. § 1251 et seq.) or the act of June 22,
6 1937 (P.L.1987, No.394), known as The Clean Streams Law, or any
7 rule or regulation, ordinance or term or condition of a permit
8 or order adopted or issued by the Commonwealth or a POTW for the
9 implementation or enforcement of an industrial waste
10 pretreatment program established under the Federal Water
11 Pollution Control Act or The Clean Streams Law.

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

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

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

30 Section 4. Penalty.

~~In addition to proceeding under any other remedy available at~~ <—

(A) ASSESSMENT.-- <—

(1) IN ADDITION TO PROCEEDING UNDER ANY OTHER REMEDY AVAILABLE AT law or equity for violation of pretreatment standards and/or requirements, a publicly owned treatment works with an approved pretreatment program may assess a civil penalty upon an 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 \$25,000 per day for each violation, REGARDLESS OF JURISDICTIONAL BOUNDARIES. 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.~~

(2) THE PUBLICLY OWNED TREATMENT WORKS SHALL INCLUDE AS PART OF THE NOTICE OF AN ASSESSMENT OF CIVIL PENALTIES A DESCRIPTION OF THE APPLICABLE APPEALS PROCESS TO BE FOLLOWED, INCLUDING THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE PERSON RESPONSIBLE FOR ACCEPTING SUCH APPEAL.

(B) OPERATIONAL UPSETS.--FOR PURPOSES OF THIS SECTION, A SINGLE OPERATIONAL UPSET WHICH LEADS TO SIMULTANEOUS VIOLATIONS OF MORE THAN ONE PRETREATMENT STANDARD OR REQUIREMENT SHALL BE TREATED AS A SINGLE VIOLATION AS REQUIRED BY THE FEDERAL WATER POLLUTION CONTROL ACT (62 STAT. 1155, 33 U.S.C. § 1251 ET SEQ.).

1 THE PUBLICLY OWNED TREATMENT WORKS MAY, HOWEVER, RECOVER ITS
2 COSTS FOR REESTABLISHING THE OPERATION OF THE POTW, IN ADDITION
3 TO ANY CIVIL PENALTY IMPOSED UNDER THIS SECTION.

4 (C) POLICY.--THE BOARD OF THE PUBLICLY OWNED TREATMENT WORKS
5 SHALL PUBLICLY ADOPT A FORMAL, WRITTEN CIVIL PENALTY ASSESSMENT
6 POLICY AND MAKE IT PUBLICLY AVAILABLE. EACH INDUSTRIAL
7 DISCHARGER PARTICIPATING IN THE PRETREATMENT PROGRAM SHALL BE
8 GIVEN WRITTEN NOTICE OF THE POLICY. IN DEVELOPING THE PENALTY
9 ASSESSMENT POLICY, THE PUBLICLY OWNED TREATMENT WORKS SHALL
10 CONSIDER DAMAGE TO AIR, WATER, LAND OR OTHER NATURAL RESOURCES
11 OF THIS COMMONWEALTH AND THEIR USES; COST OF RESTORATION AND
12 ABATEMENT; SAVINGS RESULTING TO THE PERSON IN CONSEQUENCE OF THE
13 VIOLATION; HISTORY OF PAST VIOLATIONS; DETERRENCE OF FUTURE
14 VIOLATIONS; AND OTHER RELEVANT FACTORS.

15 (D) USES FOR PENALTIES.--CIVIL PENALTIES COLLECTED PURSUANT
16 TO THIS ACT SHALL BE PLACED IN A RESTRICTED ACCOUNT AND SHALL
17 ONLY BE USED BY THE PUBLICLY OWNED TREATMENT WORKS FOR THE
18 REPAIR OF DAMAGE AND ANY ADDITIONAL MAINTENANCE NEEDED OR ANY
19 ADDITIONAL COSTS IMPOSED AS A RESULT OF THE VIOLATION FOR WHICH
20 THE PENALTY WAS IMPOSED, TO PAY ANY PENALTIES IMPOSED ON THE
21 PUBLICLY OWNED TREATMENT WORKS BY THE FEDERAL OR STATE
22 GOVERNMENT FOR VIOLATION OF PRETREATMENT STANDARDS, FOR THE
23 COSTS INCURRED BY THE PUBLICLY OWNED TREATMENT WORKS TO
24 INVESTIGATE AND TAKE THE ENFORCEMENT ACTION THAT RESULTED IN A
25 PENALTY BEING IMPOSED, FOR THE MONITORING OF DISCHARGES IN THE
26 PRETREATMENT PROGRAM AND FOR CAPITAL IMPROVEMENTS TO THE
27 TREATMENT WORKS, INCLUDING SEWAGE COLLECTION LINES, WHICH MAY BE
28 REQUIRED BY THE PRETREATMENT PROGRAM. ANY REMAINING FUNDS MAY BE
29 USED FOR CAPITAL IMPROVEMENTS TO THE TREATMENT WORKS, INCLUDING
30 COLLECTION LINES.

1 SECTION 5. INJUNCTIVE RELIEF.

2 (A) GENERAL RULE.--

3 (1) THE POTW SHALL HAVE THE POWER TO OBTAIN INJUNCTIVE
4 RELIEF TO ENFORCE COMPLIANCE WITH OR RESTRAIN ANY VIOLATIONS
5 OF ANY PRETREATMENT STANDARD. INJUNCTIVE RELIEF SHALL BE
6 GRANTED UPON THE SHOWING OF ONE OR MORE OF THE FOLLOWING:

7 (I) A DISCHARGE FROM AN INDUSTRIAL USER PRESENTS AN
8 IMMINENT DANGER OR SUBSTANTIAL HARM TO THE POTW OR THE
9 PUBLIC;

10 (II) A DISCHARGE FROM AN INDUSTRIAL USER PRESENTS AN
11 IMMINENT OR SUBSTANTIAL ENDANGERMENT TO THE ENVIRONMENT;

12 (III) A DISCHARGE FROM AN INDUSTRIAL USER CAUSES THE
13 POTW TO VIOLATE ANY CONDITION OF ITS DISCHARGE PERMIT; OR

14 (IV) THE INDUSTRIAL USER HAS SHOWN A LACK OF ABILITY
15 OR INTENTION TO COMPLY WITH A PRETREATMENT STANDARD.

16 (2) NOTWITHSTANDING PARAGRAPH (1), AN INJUNCTION
17 AFFECTING AN INDUSTRIAL OPERATION NOT DIRECTLY RELATED TO THE
18 CONDITION OR VIOLATION IN QUESTION, MAY BE ISSUED IF THE
19 COURT DETERMINES THAT OTHER ENFORCEMENT PROCEDURES WOULD NOT
20 BE ADEQUATE TO AFFECT PROMPT CORRECTION OF THE CONDITION OR
21 VIOLATION. IN ADDITION TO AN INJUNCTION, THE COURT AND ANY
22 SUCH PROCEEDINGS MAY LEVY CIVIL PENALTIES IN ACCORDANCE WITH
23 SECTION 4.

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

1 Section 6. Construction with other laws.

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

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

14 Section 7. Penalty cumulative and concurrent.

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

21 (b) Appeal.--The industrial user charged with the penalty
22 shall have 30 days to pay the proposed penalty in full, or, if
23 the industrial user wishes to contest either the amount of the
24 penalty or the fact of the violation, the industrial user must
25 file an appeal of the action pursuant to the municipal law or
26 home rule charter or, in the absence of either of these, within
27 30 days pursuant to 2 Pa.C.S. (relating to administrative law
28 and procedure). Failure to appeal within this period shall
29 result in a waiver of all legal rights to contest the violation
30 or the amount of the penalty.

1 Section 8. Repeal.

2 All acts and parts of acts are repealed insofar as they are
3 inconsistent with this act.

4 Section 9. Effective date.

5 This act shall take effect in 30 days.