

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 201

Session of 1983

INTRODUCED BY REIBMAN, FISHER, LLOYD, SINGEL, O'PAKE, ANDREZESKI, LINCOLN AND LEWIS, FEBRUARY 4, 1983

SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, OCTOBER 3, 1983

AN ACT

1 Providing for safe drinking water; and imposing powers and <—
2 duties on the Department of Environmental Resources in
3 relation thereto; AND APPROPRIATING CERTAIN FEDERAL FUNDS. <—

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the Pennsylvania
10 Safe Drinking Water Act.

11 Section 2. Legislative findings and declaration.

12 (a) Findings.--The General Assembly finds and declares that:

13 (1) An adequate supply of safe, pure drinking water is
14 essential to the public health, safety and welfare and that
15 such a supply is an important natural resource in the
16 economic development of the Commonwealth.

17 (2) The Federal Safe Drinking Water Act provides a
18 comprehensive framework for regulating the collection,
19 treatment, storage and distribution of potable water.

20 (3) It is in the public interest for the Commonwealth to
21 assume primary enforcement responsibility under the Federal
22 Safe Drinking Water Act.

23 (b) Declaration.--It is the purpose of this act to further
24 the intent of section 27, Article I of the Constitution of
25 Pennsylvania by:

26 (1) Establishing a State program to assure the provision
27 of safe drinking water to the public by establishing drinking
28 water standards and developing a State program to implement
29 and enforce the standards.

30 (2) Developing a process for implementing plans for the

1 provision of safe drinking water in emergencies.

2 (3) Providing public notice of potentially hazardous
3 conditions that may exist in a water supply.

4 Section 3. Definitions.

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

8 "Administrator." The Administrator of the United States
9 Environmental Protection Agency or his authorized
10 representative.

11 "Contaminant." Any physical, chemical, biological or
12 radiological substance or matter in water.

13 "Department." The Department of Environmental Resources.

14 "Drinking water standards." Any requirements established by
15 the National Primary Drinking Water Regulations and National
16 Secondary Drinking Water Regulations or any State regulations
17 adopted pursuant to this act.

18 "Environmental Hearing Board." The board established
19 pursuant to section 1921-A of the act of April 9, 1929 (P.L.177,
20 No.175), known as The Administrative Code of 1929, for the
21 purposes set forth in that section.

22 "Environmental Quality Board." The board established
23 pursuant to section 1920-A of The Administrative Code of 1929,
24 for the purposes set forth in that section.

25 "Federal Act." The Federal Safe Drinking Water Act, as
26 amended, (Public Law 93-593, 42 U.S.C. § 300(f) et seq.).

27 "Maximum contaminant level." The maximum permissible level
28 of a contaminant in water which is delivered to any user of a
29 public water system.

30 "National primary drinking water regulations." Primary

1 drinking water regulations promulgated by the administrator
2 pursuant to the Federal act.

3 "National secondary drinking water regulations." Secondary
4 drinking water regulations promulgated by the administrator
5 pursuant to the Federal act.

6 "Person." Any individual, partnership, association, company,
7 corporation, municipality, municipal authority, political
8 subdivision or any agency of Federal or State government. When
9 used in any clause prescribing and imposing a penalty, or
10 imposing a fine or imprisonment, or both, the term "person"
11 shall not exclude the members of an association and the
12 directors, officers or agents of a corporation.

13 "Public water system." A system for the provision to the
14 public of water for human consumption which has at least 15
15 service connections or regularly serves an average of at least
16 25 individuals daily at least 60 days out of the year. The term
17 includes:

18 (1) Any collection, treatment, storage and distribution
19 facilities under control of the operator of such system and
20 used in connection with such system.

21 (2) Any collection or pretreatment storage facilities
22 not under such control which are used in connection with such
23 a system.

24 (3) A system which provides water for bottling or bulk
25 handing for human consumption.

26 "Secretary." The Secretary of the Department of
27 Environmental Resources.

28 "State agency." Any State department, board, commission or
29 agency other than the Department of Environmental Resources.

30 "Supplier of water." Any person who owns or operates a

1 public water system.

2 Section 4. Powers and duties of Environmental Quality Board.

3 (a) Board to establish standards, rules and regulations.--

4 The Environmental Quality Board shall have the power and its
5 duty shall be to adopt such rules and regulations of the
6 department, as it deems necessary for the implementation of the
7 provisions of this act. The drinking water standards shall be no
8 less and no more stringent than the National Primary Drinking
9 Water Regulations and shall be no more stringent than the
10 National Secondary Drinking Water Regulations.

11 (b) Applicability of rules and regulations.--Rules and
12 regulations shall apply to each public water system in the
13 Commonwealth except that such rules and regulations shall not
14 apply to a public water system which:

15 (1) consists only of distribution and storage facilities
16 and which does not have any collection and treatment
17 facilities;

18 (2) obtains all of its water from, but is not owned or
19 operated by, a public water system to which such standards,
20 rules and regulations apply;

21 (3) does not sell water to any person; and

22 (4) does not provide water for potable purposes to any
23 carrier which conveys passengers in interstate commerce.

24 (c) Fees to be established.--The Environmental Quality Board
25 shall establish fees for permit applications, laboratory
26 certification and other services. Such fees shall bear a
27 reasonable relationship to the cost of administering this act.

28 Section 5. Powers and duties of department.

29 (a) State to assume primary enforcement.--The department
30 shall adopt and implement a public water supply program which

1 includes, but is not limited to, those program elements
2 necessary to assume State primary enforcement responsibility
3 under the Federal act.

4 (b) Department to establish compliance procedures.--The
5 department shall develop and implement procedures as may be
6 necessary and appropriate in order to obtain compliance with
7 this act or the rules and regulations promulgated, or permits
8 issued hereunder. Such procedures shall include, but not be
9 limited to:

10 (1) Monitoring and inspection.

11 (2) Maintaining an inventory of public water systems in
12 the Commonwealth.

13 (3) A systematic program for conducting sanitary surveys
14 of public water systems throughout the Commonwealth.

15 (4) The establishment and maintenance of a program for
16 the certification of laboratories conducting analytical
17 measurements of drinking water contaminants specified in the
18 drinking water standards; and the assurance of the
19 availability to the department of laboratory facilities
20 certified by the administrator and capable of performing
21 analytical measurements of all contaminants specified in the
22 drinking water standards.

23 (5) The establishment and maintenance of a permit
24 program concerning plans and specifications for the design
25 and construction of new or substantially modified public
26 water systems, which program:

27 (i) Requires all such plans and specifications, or
28 either, to be first approved by the department before any
29 work thereunder shall be commenced.

30 (ii) Requires that all such projects are designed to

1 comply with any rules and regulations of the department
2 concerning their construction and operation; and once
3 completed will be capable of compliance with the drinking
4 water standards; and will deliver water with sufficient
5 volume and pressure to the users of such systems.

6 (c) Department to enforce drinking water standards.--The
7 department shall have the power and its duties shall be to issue
8 such orders and initiate such proceedings as may be necessary
9 and appropriate for the enforcement of drinking water standards,
10 any other provision of law notwithstanding. These actions shall
11 include but are not limited to the following:

12 (1) To institute in a court of competent jurisdiction,
13 proceedings against any person to compel compliance with the
14 provisions of this act, or the rules and regulations
15 promulgated or conditions of permit issued hereunder.

16 (2) To initiate criminal prosecutions, including
17 issuance of summary citations by agents of the department.

18 (3) To do any and all things and actions not
19 inconsistent with any provision of this act for the effective
20 enforcement of this act, rules and regulations or permits
21 issued hereunder.

22 (d) Department to keep records.--The department shall keep
23 such records and make such reports as may be required by
24 regulations established by the administrator pursuant to the
25 Federal act.

26 (e) Department may require information from public water
27 systems.--The department may require any public water system to
28 install, use and maintain such monitoring equipment and methods
29 to perform such sampling, to maintain and retain such records of
30 information from monitoring and sampling activities, to submit

1 such reports of monitoring and sampling results and to provide
2 such other information as may be required to determine
3 compliance or noncompliance with this act or with regulations
4 promulgated pursuant to this act.

5 (f) Department has right to enter premises.--The department
6 and its agents shall have the right to enter any premise upon
7 presentation of appropriate credentials at any reasonable time
8 in order to determine compliance with this act, and to that end
9 may test, inspect or sample any feature of a public water system
10 and inspect, copy or photograph any monitoring equipment or
11 other feature of a public water system, or records required to
12 be kept under provisions of this act.

13 (g) Search warrants.--An agent or employee of the department
14 may apply for a search warrant to any Commonwealth official
15 authorized to issue a search warrant for the purposes of
16 inspecting or examining any property, building, premise, place,
17 book, record or other physical evidence, of conducting tests or
18 taking samples. Such warrant shall be issued upon probable
19 cause. It shall be sufficient probable cause to show any of the
20 following:

21 (1) the inspection, examination, test or sampling is
22 pursuant to a general administrative plan to determine
23 compliance with this act;

24 (2) the agent or employee has reason to believe that a
25 violation of this act has occurred or may occur; or

26 (3) the agent or employee has been refused access to the
27 property, building, premise, place, book, record or physical
28 evidence, or has been prevented from conducting tests or
29 taking samples.

30 (h) Additional authority of the department.--The department

1 is authorized to:

2 (1) Enter into agreements, contracts, or cooperative
3 arrangements under such terms and conditions as may be deemed
4 appropriate with other State agencies, Federal agencies,
5 interstate compact agencies, political subdivisions or other
6 persons, including agreements with county health departments
7 to delegate one or more of its regulatory functions to
8 inspect, monitor and enforce the act and drinking water
9 standards.

10 (2) Receive financial and technical assistance from the
11 Federal Government and other public or private agencies
12 appropriate.

13 (3) Establish fiscal controls and accounting procedures.

14 (4) Establish and collect fees for conducting
15 inspections, laboratory analyses and certifications as may be
16 necessary.

17 Section 6. Variances.

18 (a) Department may authorize variances.--The department may
19 authorize variances from the regulations issued to this act
20 under conditions and in such manner as are deemed necessary and
21 desirable; provided, however, that such variances shall be
22 granted only upon finding that:

23 (1) Because of characteristics of the raw water sources
24 which are reasonably available, the public water system is
25 unable to comply with such regulations despite application of
26 the best technology, treatment techniques or other means
27 which the department finds are generally available, taking
28 costs into consideration.

29 (2) The granting of the variance will not result in an
30 unreasonable risk to health.

1 Notwithstanding the foregoing, variances may be granted for no
2 longer than five years, subject to one or more renewals of no
3 longer than five years each. Before a variance is granted, the
4 department shall provide public notice and an opportunity for a
5 public hearing.

6 (b) Department may authorize exemptions.--The department may
7 exempt any public water system from any requirement of an
8 applicable drinking water standard upon finding that:

9 (1) due to compelling factors (which may include
10 economic factors), the public water system is unable to
11 comply with such requirements;

12 (2) the public water system was in operation on the
13 effective date of such requirement; and

14 (3) the granting of the exemption will not result in an
15 unreasonable risk to health.

16 Before an exemption to be granted under this subsection may take
17 effect, the department shall provide notice and opportunity for
18 public hearing on the proposed exemption. All exemptions granted
19 with respect to a contaminant level or treatment technique
20 prescribed by the Federal regulation shall expire on dates
21 prescribed in the Federal act.

22 (c) Board to adopt regulations governing variances and
23 exemptions.--Before the department shall grant any variance or
24 exemption, the board shall first adopt regulations governing the
25 procedures and conditions under which variances or exemptions
26 may be granted.

27 Section 7. Permits.

28 (a) Permit required.--It shall be unlawful for any person to
29 construct, operate or substantially modify a public water system
30 without first having received a written permit from the

1 department; provided that nothing in this section shall be
2 construed to mean that a permit shall be required by the
3 department for water line extensions to a public water system.
4 However, the public water system must notify the department in
5 writing of such extensions, and the department shall modify the
6 existing permit to reflect such a change.

7 (b) Applications.--Applications for permits shall be
8 submitted in writing to the department in such form and with
9 such accompanying data as shall be prescribed by the department,
10 and shall include maps, drawing specifications and designers'
11 reports prepared by a professional engineer, registered to
12 practice in Pennsylvania.

13 (c) Permit fee.--Each application shall be accompanied by a
14 permit fee established by regulations under this act.

15 (d) Permits issued under prior law.--Any permits issued
16 prior to the effective date of this act, under the act of April
17 22, 1905 (P.L.260, No.182), entitled "An act to preserve the
18 purity of the waters of the State, for the protection of the
19 public health," and the act of April 9, 1929 (P.L.177, No.175),
20 known as The Administrative Code of 1929, shall be deemed a
21 permit issued pursuant to this act.

22 (e) Conditions may be included in permit.--The department
23 may include in each permit general and specific conditions to
24 insure the proper operation of the public water system and the
25 furnishing of an adequate, safe and potable supply of water.

26 (f) Permit not transferable.--No permit may be transferred
27 without written approval by the department.

28 (g) Permit may be denied, etc.--The department may deny,
29 revoke, suspend, limit or modify a permit due to a finding that
30 the continued operation of a public water system is prejudicial

1 to the public health.

2 Section 8. Inspections and recordkeeping requirements.

3 (a) Department authorized to inspect, test, etc.--The
4 department is authorized to make inspections and conduct tests
5 or sampling, including the examination and copying of books,
6 papers, records and data, pertinent to any matter under
7 investigation in order to determine compliance with this act and
8 for this purpose, the duly authorized agents and employees of
9 the department are authorized at all reasonable times to enter
10 and examine any property, facility, operation or activity.

11 (b) Department authorized to establish recordkeeping
12 requirements.--The department and its agents are authorized to
13 require any supplier of water to establish and maintain such
14 records and make such reports and furnish such information as
15 the department may prescribe.

16 Section 9. Laboratories.

17 (a) Department to establish standards of performance.--The
18 department shall establish standards of performance, by rule or
19 regulation, for laboratories and laboratory officers which
20 conduct analytical measurements for the purpose of ascertaining
21 compliance by public water systems, including bottled and bulk
22 water operations, with the requirements of this act.

23 (b) Items to be included in standards.--Such standards may
24 include, but are not limited to, equipment, laboratory
25 procedures, standards for analytical methods, quality control,
26 staffing, records, reports and any other matters that may affect
27 the quality and reliability of laboratory performance.

28 (c) Laboratories to be inspected.--The department shall
29 periodically inspect and certify laboratories and laboratory
30 offices that meet the standards established under subsection

1 (a).

2 Section 10. Emergencies and imminent hazards.

3 (a) Plan to be promulgated for emergencies.--The department,
4 in conjunction with the Pennsylvania Emergency Management
5 Agency, shall promulgate with the approval of the board, an
6 adequate plan for the provision of safe drinking water under
7 emergency circumstances. When in the judgment of the department
8 an emergency exists which poses a danger to the public health,
9 the department shall notify the Pennsylvania Emergency
10 Management Agency. The Pennsylvania Emergency Management Agency
11 and the department may take such actions and issue such orders
12 as may be necessary to implement the plan and to assure that
13 safe drinking water is available.

14 (b) Department may order temporary emergency actions.--The
15 department, upon receipt of information that a contaminant which
16 is present in or is likely to enter a public water system may
17 present an imminent and substantial risk to the health of
18 persons, may take or order a public water system to take such
19 temporary emergency actions as it deems necessary in order to
20 protect the health of such persons.

21 (c) Department may implement emergency measures.--The
22 department shall be authorized to implement whatever measures
23 may be necessary and appropriate to notify the public of an
24 emergency or imminent hazard and to assess costs of notification
25 on the responsible water supplier.

26 Section 11. Public notification.

27 (a) General rule.--The permittee of a public water supply
28 system shall, as soon as practicable, give public notification
29 whenever the public water supply system:

30 (1) is not in compliance with the regulations adopted to

1 comply with National Primary Drinking Water Regulations;

2 (2) fails to perform monitoring as required by the
3 drinking water standards;

4 (3) is subject to a variance granted for an inability to
5 meet a maximum contaminant level requirement;

6 (4) is subject to an exemption; or

7 (5) fails to comply with the requirements prescribed by
8 a variance or exemption.

9 (b) Newspaper notice.--Such notice shall be given by the
10 permittee by publication in a newspaper of general circulation
11 within the area served by such water system at least once every
12 three months so long as the violation, variance or exemption
13 continues.

14 (c) Direct notice.--Such notice shall also be given with the
15 water bills or in writing to the customer at least once every
16 three months so long as the violation, variance or exemption
17 continues.

18 (d) Alternate notice.--The department may prescribe
19 alternative notice requirements for violations of other
20 regulations adopted pursuant to this act.

21 Section 12. Public nuisances.

22 (a) Violation constitutes a public nuisance.--Any violation
23 of any provision of this act, any rule or regulation of the
24 department, any order of the department, or any term or
25 condition of any permit, shall constitute a public nuisance. Any
26 person or municipality committing such a violation shall be
27 liable for the costs of abatement of any pollution and any
28 public nuisance caused by such violation. The Environmental
29 Hearing Board and any court of competent jurisdiction is hereby
30 given jurisdiction over actions to recover the costs of such

1 abatement.

2 (b) Abatement of violation.--Any activity or condition
3 declared by this act to be a nuisance or which is otherwise in
4 violation of this act, shall be abatable in the manner provided
5 by law or equity for the abatement of public nuisances. In
6 addition, the department may proceed in equity to abate such
7 nuisances or to restrain or prevent any violation of this act.

8 Section 13. Penalties and remedies.

9 (a) Duty to comply with orders of the department.--It shall
10 be the duty of any person to proceed diligently to comply with
11 any order issued pursuant to section 5. If such person fails to
12 proceed diligently or fails to comply with the order within such
13 time, if any, as may be specified, the person shall be guilty of
14 contempt and shall be punished by the court in an appropriate
15 manner and for this purpose, application may be made by the
16 department to the Commonwealth Court, which court is hereby
17 granted jurisdiction.

18 (b) Civil action to compel compliance.--Any person having an
19 interest which is or may be adversely affected may commence a
20 civil action on his own behalf to compel compliance with this
21 act or any rule, regulation, order or permit issued pursuant to
22 this act:

23 (1) against the department where there is alleged a
24 failure of the department to perform any act which is not
25 discretionary with the department. Jurisdiction for such
26 actions is in Commonwealth Court; or

27 (2) against any other person alleged to be in violation
28 of any provision of this act or any rule, regulation, order
29 or permit issued pursuant to this act. Any other provision of
30 law to the contrary notwithstanding, the courts of common

1 pleas shall have jurisdiction of such actions and venue in
2 such actions shall be as set forth in the Rules of Civil
3 Procedure concerning actions in assumpsit.

4 (c) Summary offense.--Any person who violates any provision
5 of this act, or any rule or regulation of the department, any
6 order of the department, or any condition of any permit of the
7 department issued pursuant to this act, is guilty of a summary
8 offense and, upon conviction, shall be subject to a fine of not
9 less than \$50 nor more than \$5,000, and costs, for each separate
10 offense and, in default of the payment of such fine or costs, a
11 person shall be imprisoned for not less than 30 days nor more
12 than 90 days.

13 (d) Misdemeanor of the third degree.--Any person who
14 willfully or negligently violates any provision of this act, any
15 rule or regulation of the department, any order of the
16 department, or any condition of any permit issued pursuant to
17 the act is guilty of a misdemeanor of the third degree and, upon
18 conviction, shall be subject to a fine of not less than \$1,250
19 nor more than \$12,500 for each separate offense or to
20 imprisonment for a period of not more than one year, or both.

21 (e) Misdemeanor of the second degree.--Any person who, after
22 a conviction of a misdemeanor for any violation within two years
23 as above provided, willfully or negligently violates any
24 provision of this act, any rule or regulation of the department,
25 any order of the department, or any condition of any permit
26 issued pursuant to this act is guilty of a misdemeanor of the
27 second degree and, upon conviction, shall be subject to a fine
28 of not less than \$1,250 nor more than \$25,000 for each offense
29 or to imprisonment for a period of not more than two years, or
30 both.

1 (f) Civil penalties.--In addition to proceeding under any
2 other remedy available at law or in equity for a violation of
3 any provision of this act, any rule or regulation of the
4 department or order of the department or any term or condition
5 of any permit issued by the department, the department may
6 assess a civil penalty upon a person for such violation. Such a
7 penalty may be assessed whether or not the violation was willful
8 or negligent. When the department assesses a civil penalty, it
9 shall inform the person of the amount of the penalty. The person
10 charged with the penalty shall then have 30 days to pay the
11 penalty in full or, if the person wishes to contest either the
12 amount of the penalty or the fact of the violation, the person
13 shall within the 30-day period, file an appeal of the action
14 with the Environmental Hearing Board. Failure to appeal within
15 30 days shall result in a waiver of all legal rights to contest
16 the violation or the amount of the penalty. The maximum civil
17 penalty which may be assessed pursuant to this section is \$5,000
18 per day for each violation. Each violation for each separate day
19 and each violation of any provision of this act, any rule or
20 regulation under this act, any order to the department or any
21 term or condition of the permit shall cause through the separate
22 and distinct offense under this section.

23 (g) Penalties to be concurrent.--The penalties and remedies
24 prescribed by this act shall be deemed concurrent and the
25 existence of or exercise of any remedy shall not prevent the
26 department from exercising any other remedy hereunder, at law or
27 in equity.

28 (h) Separate offenses.--Violations on separate days shall
29 constitute separate offenses for purposes of this act.

30 Section 14. Safe Drinking Water Fund.

1 All fines and penalties collected under the penalty
2 provisions of this act and all permit fees shall be paid into
3 the State Treasury in a special fund known as the Safe Drinking
4 Water Fund which shall be administered by the department for use
5 in protecting the public from the hazards of unsafe drinking
6 water.

7 Section 15. Continuation of existing rules and regulations.

8 All rules and regulations promulgated pursuant to any
9 statutes repealed by this act are continued in full force and
10 effect until superseded and repealed by rules and regulations
11 promulgated pursuant to this act.

12 SECTION 16. APPROPRIATIONS OF FEDERAL MONEY. ←

13 THE FOLLOWING FEDERAL AUGMENTATION AMOUNTS, OR AS MUCH
14 THEREOF AS MAY BE NECESSARY, ARE HEREBY SPECIFICALLY
15 APPROPRIATED TO SUPPLEMENT THE SUM APPROPRIATED FROM
16 COMMONWEALTH REVENUES FOR GENERAL GOVERNMENT OPERATIONS OF THE
17 DEPARTMENT OF ENVIRONMENTAL RESOURCES:

18 (1) THE SUM OF \$1,100,000 FOR THE SAFE DRINKING WATER
19 ACT FOR IMPLEMENTATION OF THE SAFE DRINKING WATER PROGRAM.

20 (2) THE SUM OF \$100,000 FOR THE SAFE DRINKING WATER ACT
21 FOR ADMINISTRATION IN SUPPORT OF THE SAFE DRINKING WATER
22 PROGRAM.

23 Section ~~16~~ 17. Repeals. ←

24 The following acts are repealed:

25 Act of April 22, 1905 (P.L.260, No.182), entitled "An act to
26 preserve the purity of the waters of the State, for the
27 protection of the public health."

28 Act of April 30, 1929 (P.L.897, No.396), entitled "An act
29 regulating the manufacturing, bottling, and selling of certain
30 waters, and requiring permits therefor; prescribing the

1 authority of the Department of Health and of local boards of
2 health and health officers with respect thereto; and providing
3 penalties."

4 Section ~~17~~ 18. Effective date. <—

5 (a) The provisions in section 3, section 4 ~~and~~, section 5(a) <—
6 and (b) AND SECTION 16 shall take effect immediately. <—

7 (b) The remaining provisions of this act, including the
8 repealer provisions of section ~~16~~, 17, shall be effective upon <—
9 publication in the Pennsylvania Bulletin of the notice of the
10 pertinent adopted regulations.