

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2958 Session of
1990

INTRODUCED BY HAYDEN, EVANS, LEVDANSKY, ROEBUCK, WILLIAMS,
DONATUCCI, RIEGER AND JOSEPHS, OCTOBER 2, 1990

REFERRED TO COMMITTEE ON CONSERVATION, OCTOBER 2, 1990

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
18 against industrial users of the publicly owned treatment

1 works.

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

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

12 Section 3. Definitions.

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

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

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

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

27 "Pretreatment standard or requirement." Any substantive or
28 procedural provision of the Federal Water Pollution Control Act
29 (62 Stat. 1155, 33 U.S.C. § 1251 et seq.) or the act of June 22,
30 1937 (P.L.1987, No.394), known as The Clean Streams Law, or any

1 rule or regulation, ordinance or term or condition of a permit
2 or order adopted or issued by the Commonwealth or a POTW for the
3 implementation or enforcement of an industrial waste
4 pretreatment program established under the Federal Water
5 Pollution Control Act or The Clean Streams Law.

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

19 Section 4. Penalty.

20 In addition to proceeding under any other remedy available at
21 law or equity for violation of pretreatment standards and/or
22 requirements, a publicly owned treatment works with an approved
23 pretreatment program may assess a civil penalty upon an
24 industrial user for the violation. The penalty may be assessed
25 whether or not the violation was willful or negligent. The civil
26 penalty shall not exceed \$10,000 per day for each violation.
27 Each violation for each separate day shall constitute a separate
28 and distinct offense under this section.

29 Section 5. Injunctive relief.

30 (a) General rule.--A POTW shall have the power to obtain

1 injunctive relief to enforce compliance with or restrain
2 violations of any pretreatment standard. Injunctive relief shall
3 be granted upon a showing of a violation of any pretreatment
4 standard. No further proof shall be necessary to establish the
5 POTW's entitlement to injunctive relief.

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

13 Section 6. Construction with other laws.

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

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

26 Section 7. Penalty cumulative and concurrent.

27 (a) Other remedies preserved.--The penalty authorized in
28 this act is intended to be concurrent and cumulative, and the
29 provisions of this act shall not abridge or alter any right of
30 action or remedy, now or hereafter existing in equity, or under

1 the common law or statutory law, criminal or civil, available to
2 a person, municipality or this Commonwealth.

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

13 Section 8. Repeal.

14 All acts and parts of acts are repealed insofar as they are
15 inconsistent with this act.

16 Section 9. Effective date.

17 This act shall take effect in 30 days.