“THE CLEAN STREAMS LAW”

Act of 1937, P.L. 1987, No. 394

The Clean Streams Law

On July 1, 1995, the Pennsylvania Department of Environmental Resources (DER) was split into two departments: the Department of Conservation and Natural Resources (DCNR) and the Department of Environmental Protection (DEP). Therefore all references, herein, to DER should be read as DEP.

"THE CLEAN STREAMS LAW"
Act of 1937, P.L. 1987, No. 394

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 and water quality; providing for the jurisdiction of courts in the enforcement thereof; providing additional remedies for abating pollution of waters; imposing certain penalties; repealing certain acts; regulating discharges of sewage and industrial wastes; regulating the operation of mines and regulating the impact of mining upon water quality, supply and quantity; placing responsibilities upon landowners and land occupiers and to maintain primary jurisdiction over surface coal mining in Pennsylvania. (Tit. amended Oct. 10, 1980, P.L.894, No.157)

ARTICLE I
GENERAL PROVISIONS AND PUBLIC POLICY

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.

"Department" means the Department of Environmental Resources, the Environmental Quality Board or the Environmental Hearing Board carrying out the provisions of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

"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 colliery, breaker, coal processing operations, dredging operations, 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.

"Industrial waste" shall be construed to mean any liquid, gaseous, radioactive, solid or other substance, not sewage, resulting from any manufacturing or industry, or from any establishment, as herein defined, and mine drainage, refuse, 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 including coal refuse disposal areas and coal collieries, coal breakers and other coal processing operations.

"Municipality" shall be construed to include any county, city, borough, town, township, school district, institution, or any authority created by any one or more of the foregoing.

"Person" shall be construed to include any natural person, partnership, association or corporation or any agency, instrumentality or entity of Federal or State Government. Whenever used in any clause prescribing and imposing a penalty, or imposing a fine or imprisonment, or both, the term "person" shall not exclude the members of an association and the directors, officers or agents of a corporation.

"Pollution" shall be construed to mean 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 department shall determine when a discharge constitutes pollution, as herein defined, and shall establish standards whereby and wherefrom 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.

"Sewer extension" shall be construed to include new pipelines or conduits and all other appurtenant constructions, devices and facilities except pumping stations and force mains added to an existing sewer system for the purpose of conveying sewage from individual structures or properties to the existing system. (Def. added July 7, 1989, P.L.237, No.40)

"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.

(1 amended Oct. 10, 1980, P.L.894, No.157)

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 1.

Section 2. Interpretation of Act.--A. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.

B. Section headings shall not be taken to govern or limit the scope of the sections of this act. The singular shall include the plural, and the masculine shall include the feminine and neuter.

Section 3. Discharge of Sewage and Industrial Wastes Not a Natural Use.--The discharge of sewage or industrial waste or any substance into the waters of this Commonwealth, which 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.

(3 amended July 31, 1970, P.L.653, No.222)

Section 4. Declaration of Policy.--

(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;

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

(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;

(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.

(4 amended July 31, 1970, P.L.653, No.222)

Section 5. Powers and Duties.--(a) 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 department 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.

(5) Review and take appropriate action on all permit applications submitted pursuant to the provisions of this act and to issue, modify, suspend, limit, renew or revoke permits pursuant to this act and to the rules and regulations of the department. In all cases involving surface coal mining operations as they are defined in section 3 of the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," following the department's decision whether to approve or deny a renewal, the burden shall be on the opponent of the department's decision.

(6) Receive and act upon complaints.

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

(8) 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 amended Oct. 10, 1980, P.L.894, No.157)

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 5.

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

(6 amended Oct. 10, 1980, P.L.894, No.157)

Section 7. Administrative Procedure and Judicial Review.--(a) Any person or municipality having an interest which is or may be adversely affected by any action of the department under this act shall have the right to appeal such action to the Environmental Hearing Board.

(b) The department may adopt rules and regulations establishing the procedure for, and limiting the time of, the taking of such appeals.

(c) The Environmental Hearing Board shall be subject to the provisions of Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(7 amended Oct. 10, 1980, P.L.894, No.157)

Section 8. Clean Water Fund.--(a) All fines collected under the penal provisions of this act, all civil penalties collected under section 605 of this act, all permit fees except those imposed pursuant to sections 202, 203 and 207 and all bond forfeitures and costs recovered under section 315 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

department for use in the elimination of pollution.

(b) The department may, pursuant to the rules and regulations adopted by the Environmental Quality Board, in the case of a discharge, except those discharges which are in any way connected with or relate to coal mining, 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 pollutional 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.

(8 amended Oct. 10, 1980, P.L.894, No.157)

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 8.

Compiler's Note: Section 12 of Act 173 of 1992 provided that section 8 is repealed insofar as it is inconsistent with that act.

ARTICLE II
SEWAGE POLLUTION

Section 201. Prohibition Against Discharge of Sewage.--No person or municipality shall place or permit to be placed, or discharge or permit to flow, or continue to discharge or permit to flow, into any of the waters of the Commonwealth any sewage, except as hereinafter provided in this act.

Section 202. Sewage Discharges.--No municipality or person shall discharge or permit the discharge of sewage in any manner, directly or indirectly, into the waters of this Commonwealth unless such discharge is authorized by the rules and regulations of the department 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 department is hereby declared to be a nuisance.

(202 amended Oct. 10, 1980, P.L.894, No.157)

Section 203. 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.

(203 amended July 31, 1970, P.L.653, No.222)

Section 204. Penalty.--(204 repealed July 31, 1970, P.L.653, No.222)

Section 205. Reports of Existing Municipal Sewers.--(205 repealed July 31, 1970, P.L.653, No.222)

Section 206. Applications for Permits for the Discharge of Sewage.--(206 repealed July 31, 1970, P.L.653, No.222)

Section 207. Approval of Plans, Designs, and Relevant Data by the Department.--(a) All plans, designs, and relevant data for the construction of any new sewer system, or for the extension of any existing sewer system, except as provided in section (b), by a person or municipality, or for the erection, construction, and location of any treatment works or intercepting sewers by a person or municipality, shall be submitted to the department for its approval before the same are constructed or erected or acquired. Any such construction or erection which has not been approved by the department by written permit, or any treatment works not operated or maintained in accordance with the rules and regulations of the department, is hereby also declared to be a nuisance and abatable as herein provided.

(b) Except as specifically provided by the rules and regulations of the department, plans, designs and relevant data for the construction of a sewer extension to collect no more than the volume of sewage from two hundred fifty single-family dwelling units or their equivalent by a person or municipality shall not require a permit from the department if such sewer extension is located, constructed, connected and maintained in accordance with the rules and regulations of the department and is consistent with the approved official plan, required by section 5 of the act of January 24, 1966 (1965 P.L.1535, No.537), known as the "Pennsylvania Sewage Facilities Act," for the municipality in which the sewer extension is to be located, constructed, connected or maintained. However, all such sewer extensions remain subject to any conditions imposed by the department, the municipality or any municipal authority whose interest may be affected by the sewer extension. Any such sewer extension which is located, constructed, connected or maintained contrary to the rules and regulations of the department, contrary to the terms and conditions of a permit, inconsistent with the approved official plan for the municipality or contrary to any conditions imposed by the department, municipality or municipal authority is also hereby declared to be a nuisance and abatable as provided herein.

(207 amended July 7, 1989, P.L.237, No.40)

Section 208. Revocation or Modification of Permits.--(208 repealed July 31, 1970, P.L.653, No.222)

Section 209. Prohibition Against Discharge of Sewage, Et Cetera, after Revocation of Permit.--On the expiration of the period of time prescribed, after the service of a notice of revocation, modification or change of any such permit from the department, the discharge of sewage into any waters of the

Commonwealth or treated sewage from treatment works shall cease and terminate, and the prohibition of this act against such discharge or treatment shall be in full force as though no permit had been granted, but a new permit may thereafter again be granted, as hereinbefore provided. A continuation of the discharge of sewage or the treatment of sewage after revocation, or in violation of any modification and change of any such permit, is hereby also declared to be a nuisance, and shall be punishable and abatable as herein provided.

(209 amended Oct. 10, 1980, P.L.894, No.157)

Section 210. 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 Commonwealth Court or to the court of common pleas of the county wherein the municipality is situated, which courts are hereby given jurisdiction.

(210 amended Oct. 10, 1980, P.L.894, No.157)

Section 211. Revenue Bonds.--For the purpose of financing the cost and expense, or its share of the cost and expense, of constructing or acquiring or extending any sewer, sewer system or sewage treatment works, either singly or jointly with other municipalities, a municipality may issue non-debt revenue bonds secured solely by a pledge, in whole or in part, of the annual rentals or charges imposed for the use of such sewer, sewer system or sewage treatment works. Said bonds shall not pledge the credit, nor create any debt, nor be a charge against the general revenues, nor be a lien against any property of the municipality, but shall be a lien upon and payable solely from the annual rentals or charges for the use of the sewer, sewer system or sewage treatment works.

Section 212. Issuance and Sale of Revenue Bonds; Maturity; Interest.--When a municipality shall issue any non-debt revenue bonds, the corporate authorities thereof shall sell the same to the highest bidder after public notice by advertisement once a week for three weeks, in at least one newspaper of general circulation, published in the municipality or the county in which the municipality is situate. Where bonds shall be advertised for sale as herein provided, and no bids shall have been received, then it shall be lawful for such municipality to sell the same at private sale for not less than par and accrued interest.

All such bonds shall be payable in not more than thirty years from the date of their issue, shall be issued in series payable in equal annual installments, and shall bear interest at a rate not exceeding six per centum per annum.

Section 213. Other Methods of Financing Preserved.--Anything in this act to the contrary notwithstanding, any municipality shall have power to issue bonds, revenue certificates or other obligations to finance, in whole or in part, the carrying out of any order or direction of the department without regard to the restrictions, limitations or provisions of this act relating to the issuance of bonds, revenue certificates or other obligations: Provided, That such bonds, revenue certificates or

other obligations are issued by the municipality in accordance with the provisions of any other law. This act shall be construed to provide an alternative method for the issuance of bonds, revenue certificates or other obligations by a municipality, and not an exclusive method therefor.

(213 amended Oct. 10, 1980, P.L.894, No.157)

ARTICLE III
INDUSTRIAL WASTES

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.

(301 amended July 31, 1970, P.L.653, No.222)

Section 302. Existing Industrial Waste Discharges.--(302 repealed July 31, 1970, P.L.653, No.222)

Section 303. Information as to Kind and Character of Discharge.--Every person who, on the effective date of this act, shall be discharging or permitting to be discharged or has an establishment temporarily closed which, in the future, may discharge or permit to be discharged, any industrial waste into the waters of the Commonwealth, shall file with the department within ninety days after the effective date of this act, on forms prepared and supplied by the department, such information, under oath, as the department may require with regard to such industrial waste, including the kind, characteristics, and rate of flow thereof, and concerning the treatment works, if any, either in operation or in contemplation. It shall be the duty of such persons to apply to the department for the forms necessary to comply with this provision. The falsity of any of the information thus supplied is hereby declared to be perjury and punishable as such.

(303 amended Oct. 10, 1980, P.L.894, No.157)

Section 304. Water Surveys.--The department shall have power to make a complete survey of the waters of the Commonwealth in order to ascertain the extent of pollution in each of said waters, and the remedies to be employed to purify said waters. It shall have power to adopt, prescribe, and enforce such rules and regulations, not inconsistent with this act, as may be deemed necessary for the protection of the purity of the waters of the Commonwealth, or parts thereof, and to purify those now polluted, and to assure the proper and practical operation and maintenance of treatment works approved by it. A violation of which rules and regulations, after notice, shall also constitute a nuisance under this act.

(304 amended Oct. 10, 1980, P.L.894, No.157)

Section 305. Investigations and Research.--In addition to any powers now possessed, the department shall investigate and ascertain, as far as practicable, all facts in relation to the pollution of the waters of the Commonwealth by industrial waste. Its agents may enter upon lands, buildings, and premises as may be necessary for its investigations. It shall conduct scientific experiments and researches under its personal supervision or in colleges and universities for the purpose of ascertaining reasonable and practical means for the treatment of industrial waste, so that when the same has been treated the effluent

thereof, when discharged into the waters of the Commonwealth, shall not be injurious to the public health or to animal or aquatic life, or prevent the use of the water for domestic, industrial or recreational purposes.

(305 amended Oct. 10, 1980, P.L.894, No.157)

Section 306. Protection of Clean Waters.--(306 repealed July 31, 1970, P.L.653, No.222)

Section 307. Industrial Waste Discharges.--(a) No person or municipality shall discharge or permit the discharge of industrial wastes in any manner, directly or indirectly, into any of the waters of the Commonwealth unless such discharge is authorized by the rules and regulations of the department 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.

(b) Public notice of every application for a permit or bond release under this section shall be given by notice published in a newspaper of general circulation, published in the locality where the permit is applied for, once a week for four weeks. The department shall prescribe such requirements regarding public notice and public hearings on permit applications and bond releases as it deems appropriate. For the purpose of these public hearings, the department shall have the authority and is hereby empowered to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of witnesses, or production of materials, and take evidence including but not limited to inspections of the area proposed to be affected and other operations carried on by the applicant in the general vicinity. Any person having an interest which is or may be adversely affected by any action of the department under this section may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law, and from the adjudication of said board such person may further appeal as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). The Environmental Hearing Board, upon the request of any party, may in its discretion order the payment of costs and attorney's fees it determines to have been reasonably incurred by such party in proceedings pursuant to this act. In all cases involving surface coal mining as it is defined in section 3 of the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," any person having an interest which is or may be adversely affected shall have the right to file written objections to the proposed permit application or bond release within thirty days after the last publication of the above notice. Such objections shall immediately be transmitted to the applicant by the department. If written objections are filed and an informal conference requested, the department shall then hold an informal conference in the locality of the surface mining operation. If an informal conference has been held, the department shall issue and furnish the applicant for a permit or bond release and persons who are parties to the administrative proceedings with the written finding of the department granting or denying the permit or bond release in whole or in part and

stating the reasons therefor, within sixty days of said hearings. If there has been no informal conference, the department shall notify the applicant for a permit or bond release of its decision within sixty days of the date of filing the application. The applicant, operator, or any person having an interest which is or may be adversely affected by an action of the department to grant or deny a permit or to release or deny release of a bond and who participated in the informal hearing held pursuant to this subsection or filed written objections, may proceed to lodge an appeal with the Environmental Hearing Board in the manner provided by law and from the adjudication of said board such person may further appeal as provided by Title 2 of the Pennsylvania Consolidated Statutes.

(c) 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 department is hereby declared to be a nuisance.

(307 amended Oct. 10, 1980, P.L.894, No.157)

Section 308. Approval of Plans, Designs, and Relevant Data by the 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 department for its approval before the works are constructed or erected. Any such construction or erection which has not been approved by the department by written permit, or any treatment works not maintained or operated in accordance with the rules and regulations of the department, is hereby declared to be a nuisance.

(308 amended Oct. 10, 1980, P.L.894, No.157)

Section 309. Penalties.--(309 repealed July 31, 1970, P.L.653, No.222)

Section 310. Acid Mine Drainage.--(310 repealed Aug. 23, 1965, P.L.372, No.194)

Section 311. Authorizing the Sanitary Water Board to Acquire Easements and Right of Ways by Purchase or Condemnation, or Otherwise.--(311 repealed Aug. 23, 1965, P.L.372, No.194)

Section 312. Condemnation Proceedings.--(312 repealed Aug. 23, 1965, P.L.372, No.194)

Section 313. Approval of Plans of Drainage.--(313 repealed Aug. 23, 1965, P.L.372, No.194)

Section 314. Authorizing Certain Corporations to Acquire Interests in Land by Eminent Domain.--Whenever the department 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 department 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 department, in which event they shall proceed in the manner and form set forth in the "Eminent Domain Code," act of June 22, 1964 (Sp.Sess., P.L.84, No.6), 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 department 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.

(314 amended Oct. 10, 1980, P.L.894, No.157)

Section 315. 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 department 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, refuse disposal, 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, No.194). 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 department, 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 on forms prescribed and furnished by the department in favor of the Commonwealth of Pennsylvania and with good and sufficient collateral, irrevocable bank letters of credit or corporate surety guarantees acceptable to the department to insure that there will be compliance with the law, the rules and regulations of the department, and the provisions and conditions of such permit including but not limited to 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 based on the cost to the Commonwealth of taking corrective measures in cases of the operator's failure to comply, or in such other amount and

form as may be established by the department pursuant to regulations for an alternate coal bonding program which shall achieve the objectives and purposes of the bonding program. The department may, from time to time, increase or decrease such amount: Provided, however, That no bond shall be filed for less than ten thousand dollars ($10,000) for the entire permit area. The department shall also establish the duration of the bond required for each operation and at the minimum 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 bond shall be conditioned upon the operator's faithful performance of the requirements of this act, the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act," the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," the act of September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act," and where applicable of the act of July 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid Waste Management Act" or the act of July 7, 1980 (No.97), known as the "Solid Waste Management Act": Provided, however, That an operator posting a bond sufficient to comply with this section of the act shall not be required to post a separate bond for the permitted area under each of the acts hereinabove enumerated: And provided further, That the foregoing proviso shall not prohibit the department from requiring additional bond amounts for the permitted area should such an increase be determined by the department to be necessary to meet the requirements of this act. Where the minerals are to be removed by the underground mining method, and the mining operations are reasonably anticipated to continue for a period of at least ten years from the date of application, the operator may elect to deposit collateral and file a collateral bond as provided in this subsection according to the following phased deposit schedule. The operator shall, prior to commencing mining operations, deposit ten thousand dollars ($10,000) or twenty-five per cent of the amount of bond determined under this subsection, whichever is greater. The operator shall, thereafter, annually deposit ten per cent of the remaining bond amount for a period of ten years. Interest accumulated by such collateral shall become part of the bond. The department may require additional bonding at any time to meet the intent of this subsection. The collateral shall be deposited, in trust, with the State Treasurer as provided in this subsection, or with a bank, selected by the department, which shall act as trustee for the benefit of the Commonwealth, according to rules and regulations promulgated hereunder, to guarantee the operator's compliance with this act and the acts hereinabove enumerated. The operator shall be required to pay all costs of the trust. The collateral deposit, or part thereof, shall be released of liability and returned to the operator, together with a proportional share of accumulated interest, upon the conditions of and pursuant to the schedule and criteria for release provided for in rules and regulations promulgated hereunder. Upon the completion of any mining operation and prior to the release by the department of any portion of the bond liability, the operator shall remove and clean up all temporary materials, property, debris or junk which were used in or resulted from his mining operations. The failure

to post a bond required by the department shall be sufficient cause for withholding a permit or for the suspension or revocation of an existing permit. If the operator fails or refuses to comply with the requirements of the act in any respect for which liability has been charged on the bond, the Secretary of the Department of Environmental Resources shall declare the bond forfeited, and shall certify the same to the Attorney General, who shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operator has deposited cash or securities as collateral in lieu of a corporate surety, the secretary shall declare said collateral forfeited. If the operator is or was engaged in surface mining operations at the time of the violation, the secretary shall direct the State Treasurer to pay said funds into the Surface Mining Conservation and Reclamation Fund, or to proceed to sell said securities to the extent forfeited and pay the proceeds thereof into the Surface Mining Conservation and Reclamation Fund. If the operator is or was engaged in the operation of a deep mine at the time of the violation, the secretary shall direct the State Treasurer to pay said funds into The Clean Water Fund, or to proceed to sell said securities to the extent forfeited and pay the proceeds thereof into The Clean Water Fund. Should any corporate surety fail to promptly pay, in full, a forfeited bond, it shall be disqualified from writing any further bonds under this act. Any operator aggrieved by reason of forfeiting the bond or converting collateral, as herein provided, shall have a right to appeal such action to the Environmental Hearing Board.

The department, in its discretion, may accept a self-bond from the permittee, without separate surety, if the permittee demonstrates to the satisfaction of the department a history of financial solvency, continuous business operation and continuous efforts to achieve compliance with all United States of America and Pennsylvania environmental laws, and, meets all of the following requirements:

(1) The permittee shall be incorporated or authorized to do business in Pennsylvania and shall designate an agent in Pennsylvania to receive service of suits, claims, demands or other legal process.

(2) The permittee or if the permittee does not issue separate audited financial statements, its parent, shall provide audited financial statements for at least its most recent three fiscal years prepared by a certified public accountant in accordance with generally accepted accounting principles. Upon request of the permittee, the department shall maintain the confidentiality of such financial statements if the same are not otherwise disclosed to other government agencies or the public.

(3) During the last thirty-six calendar months, the applicant has not defaulted in the payment of any dividend or sinking fund installment or preferred stock or installment on any indebtedness for borrowed money or payment of rentals under long-term leases or any reclamation fee payment currently due under the Federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1232, for each ton of coal produced in the Commonwealth of Pennsylvania.

(4) The permittee shall have been in business and operating no less than ten years prior to filing of application unless the permittee's existence results from a reorganization, consolidation or merger involving a company with such longevity.

However, the permittee shall be deemed to have met this requirement if it is a majority-owned subsidiary of a corporation which has such a ten-year business history.

(5) The permittee shall have a net worth of at least six times the aggregate amount of all bonds applied for by the operator under this section.

(6) The permittee shall give immediate notice to the department of any significant change in managing control of the company.

(7) A corporate officer of the permittee shall certify to the department that forfeiture of the aggregate amounts of self-bonds furnished for all operations hereunder would not materially affect the permittee's ability to remain in business or endanger its cash flow to the extent it could not meet its current obligations.

(8) The permittee may be required by the department to pledge real and personal property to guarantee the permittee's self-bond. The department is authorized to acquire and dispose of such property in the event of a default to the bond obligation and may use the moneys in The Clean Water Fund to administer this provision.

(9) The permittee may be required to provide third party guarantees or indemnifications of its self-bond obligations.

(10) The permittee shall provide such other information regarding its financial solvency, continuous business operation and compliance with environmental laws as the department shall require.

(11) An applicant shall certify to the department its present intention to maintain its present corporate status for a period in excess of five years.

(12) A permittee shall annually update the certifications required hereunder and provide audited financial statements for each fiscal year during which it furnishes self-bonds.

(13) The permittee shall pay an annual fee in the amount determined by the department of the cost to review and verify the permittee's application for self-bonding and annual submissions thereafter.

(c) The application for a permit to operate a mine shall include a determination of the probable hydrologic consequences of the operation, both on and off the site of the operation, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the site of the operations and surrounding areas so that an assessment can be made by the department of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability: Provided, however, That this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate Federal or State agency: And provided further, That the permit shall not be approved until such information is available and is incorporated into the application.

(d) The operator of a mine shall restore the recharge capacity of the area of the operation to approximate pre-mining conditions.

(e) The application shall also demonstrate that the proposed operation will be conducted so as to maximize the utilization

and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized: Provided, however, That such resource utilization and conservation shall not excuse the operator from complying in full with all environmental protection and health and safety standards.

(f) The application shall also set forth the manner in which the operator plans to comply with the requirements of the act of November 26, 1978 (P.L.1375, No.325), known as the "Dam Safety and Encroachments Act," the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," the act of January 8, 1960 (1959 P.L.2119, No.787), known as the "Air Pollution Control Act," the act of September 24, 1968 (P.L.1040, No.318), known as the "Coal Refuse Disposal Control Act," and where applicable of the act of July 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid Waste Management Act" or the act of July 7, 1980 (No.97), known as the "Solid Waste Management Act." No approval shall be granted unless the plan provides for compliance with the statutes hereinabove enumerated, and failure to comply with the statutes hereinabove enumerated during mining or thereafter shall render the operator liable to the sanctions and penalties provided in this act for violations of this act and to the sanctions and penalties provided in the statutes hereinabove enumerated for violations of such statutes. Such failure to comply shall be cause for revocation of any approval or permit issued by the department to the operator: Provided, however, That a violation of the statutes hereinabove enumerated shall not be deemed a violation of this statute unless this statute's provisions are violated, but shall only be cause for revocation of the operator's permit: And provided further, That nothing in this subsection shall be read to limit the department's authority to regulate activities in a coordinated manner. Compliance with the provisions of this subsection and with the provisions of this act and the provisions of the statutes hereinabove enumerated shall not relieve the operator of the responsibility of complying with the provisions of all other applicable statutes, including but not limited to the act of July 17, 1961 (P.L.659, No.339), known as the "Pennsylvania Bituminous Coal Mine Act," the act of November 10, 1965 (P.L.721, No.346), known as the "Pennsylvania Anthracite Coal Mine Act," and the act of July 9, 1976 (P.L.931, No.178), entitled "An act providing for emergency medical personnel; employment of emergency medical personnel and emergency communications in coal mines."

(g) The application for a permit shall include, upon a form prepared and furnished by the department, the written consent of the landowner to entry upon any land to be affected by the operation of the operator and by the Commonwealth and by any of its authorized agents prior to the initiation of mining operations, during mining operations, and for a period of five years after the operation is completed or abandoned for the purpose of reclamation, planting and inspection or for the construction of any such pollution abatement facilities as may be deemed necessary by the department for the prevention of pollution from mine drainage. Such forms shall be deemed to be recordable documents, and prior to the initiation of mining operations under the permit, such forms shall be recorded at the office of the recorder of deeds in the county or counties in

which the area to be affected under the permit is situate.

(h) Pursuant to the procedures set forth in subsection (b), the department shall designate an area as unsuitable for all or certain types of surface mining operations, as such operations are defined in section 3 of the act of May 31, 1945 (P.L.1198, No.418), known as the "Surface Mining Conservation and Reclamation Act," if the department determines that reclamation pursuant to the requirements of this act is not technologically and economically feasible.

(i) Pursuant to the procedures set forth in subsection (m), the department may designate an area as unsuitable for certain types of mining operations if such operations will:

(1) be incompatible with existing State or local land use plans or programs;

(2) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific and esthetic values and natural systems;

(3) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or

(4) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(j) The department shall forthwith develop a process to meet the requirements of this act. This process shall include:

(1) review by the department of coal mining lands;

(2) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to support and permit reclamation of mining operations;

(3) a method or methods for implementing land use planning decisions concerning mining operations; and

(4) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(k) Determinations of the unsuitability of land for mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the Federal, State and local levels.

(l) The requirements of this section shall not apply to lands on which mining operations are being conducted on August 3, 1977, or under a permit issued pursuant to this act, or where substantial legal and financial commitments as they are defined under § 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.), in such operation were in existence prior to January 4, 1977.

(m) Any person having an interest which is or may be adversely affected shall have the right to petition the department to have an area designated as unsuitable for mining operations, or to have such a designation terminated. Pursuant to the procedure set forth in this section, the department may initiate proceedings seeking to have an area designated as unsuitable for mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition the department shall hold a public hearing in the locality of the

affected area, after appropriate notice and publication of the date, time and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this section, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the department shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

(n) Prior to designating any land areas as unsuitable for mining operations, the department shall prepare a detailed statement on:

(1) the potential coal resources of the area;

(2) the demand for coal resources; and

(3) the impact of such designation on the environment, the economy and the supply of coal.

(o) Subject to valid existing rights as they are defined under § 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.), no mining operations except those which exist on August 3, 1977, shall be permitted:

(1) on any lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by Act of Congress;

(2) on any Federal lands within the boundaries of any National forest: Provided, however, That surface mining operations may be permitted on such lands if the Department of Interior and the department find that there are no significant recreational, timber, economic or other values which may be incompatible with such surface mining operations and surface operations and the impacts are incident to an underground coal mine;

(3) which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the department and the Federal, State or local agency with jurisdiction over the park or the historic site;

(4) within one hundred feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the department may permit such roads to be relocated or the area affected to lie within one hundred feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interests of the public and the landowners affected thereby will be protected; or

(5) within three hundred feet from any occupied dwelling, unless waived by the owner thereof, nor within three hundred feet of any public building, school, church, community, institutional building, or public park, nor within one hundred feet of a cemetery, nor within one hundred feet of the bank of a stream.

(315 amended Oct. 10, 1980, P.L.894, No.157)

Compiler's Note: The Department of Environmental Resources, referred to in subsec. (b), was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 316. Responsibilities of Landowners and Land Occupiers.

Whenever the department finds that pollution or a danger of pollution is resulting from a condition which exists on land in the Commonwealth the department may order the landowner or occupier to correct the condition in a manner satisfactory to the department 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 department 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 department 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, No.194), 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 department 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.

(316 amended Oct. 10, 1980, P.L.894, No.157)

Section 317. Penalties.--(317 repealed July 31, 1970, P.L.653, No.222)

ARTICLE IV
OTHER POLLUTIONS AND POTENTIAL POLLUTION
(Hdg. amended July 31, 1970, P.L.653, No.222)

Section 401. 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.

(401 amended July 31, 1970, P.L.653, No.222)

Section 402. Potential Pollution.--(a) Whenever the department 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 department 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 department may issue an order to a person or municipality regulating a particular activity. Rules and regulations adopted by the department 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 department or conducting an activity contrary to an order issued by the department, is hereby declared to be a nuisance.

(402 amended Oct. 10, 1980, P.L.894, No.157)

Section 403. Powers of Board.--(403 repealed July 31, 1970, P.L.653, No.222)

ARTICLE V
DOMESTIC WATER SUPPLIES

Section 501. Protection of Domestic Water Supplies.--In addition to the powers and authority hereinbefore granted, power and authority is hereby conferred upon the department, after due notice and public hearing, to make, adopt, promulgate, and enforce reasonable orders and regulations for the protection of any source of water for present or future supply to the public, and prohibiting the pollution of any such source of water rendering the same inimical or injurious to the public health or objectionable for public water supply purposes.

(501 amended Oct. 10, 1980, P.L.894, No.157)

Section 502. Penalty.--(502 repealed Oct. 10, 1980, P.L.894, No.157)

Section 503. Public Nuisances.--A violation of the orders and regulations adopted by the department, pursuant to section five hundred and one of this act, shall constitute a nuisance, and whenever such a pollution shall be maintained or continued contrary to such orders and regulations, the same may be abatable in the manner provided by this act.

(503 amended Oct. 10, 1980, P.L.894, No.157)

ARTICLE VI
PROCEDURE AND ENFORCEMENT
(Hdg. amended July 31, 1970, P.L.653, No.222)

Section 601. Abatement of Nuisances; Restraining Violations.--(a) Any activity or condition declared by this act to be a nuisance or which is otherwise in violation of this act, shall be abatable in the manner provided by law or equity for

the abatement of public nuisances. In addition, suits to abate 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 Commonwealth Court, or in the court of common pleas of the county where 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: Provided, however, That no action shall be brought by such district attorney or solicitor against any municipality discharging sewage under a permit of the department 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.

(c) Except as provided in subsection (e), any person having an interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this act or any rule, regulation, order or permit issued pursuant to this act against the department where there is alleged a failure of the department to perform any act which is not discretionary with the department or against any other person alleged to be in violation of any provision of this act or any rule, regulation, order or permit issued pursuant to this act. Any other provision of law to the contrary notwithstanding, the courts of common pleas shall have jurisdiction of such actions, and venue in such actions shall be as set forth in the Rules of Civil Procedure concerning actions in assumpsit.

(d) Whenever any person presents information to the department which gives the department reason to believe that any person is in violation of any requirement of this act or any condition of any permit issued hereunder or of the acts enumerated in subsection 315(h) or any condition or any permit issued thereunder, the department shall immediately order inspection of the operation at which the alleged violation is occurring, and the department shall notify the person presenting such information and such person shall be allowed to accompany the inspector during the inspection.

(e) No action pursuant to this section may be commenced prior to sixty days after the plaintiff has given notice in writing of the violation to the department and to any alleged violator, nor may such action be commenced if the department has commenced and is diligently prosecuting a civil action in a court of the United States or a state to require compliance with

this act or any rule, regulation, order or permit issued pursuant to this act, but in any such action in a court of the United States or of the Commonwealth any person may intervene as a matter of right.

(f) The provisions of subsection (b) to the contrary notwithstanding, any action pursuant to this section may be initiated immediately upon written notification to the department in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(g) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accord with the Rules of Civil Procedure.

(601 amended Oct. 10, 1980, P.L.894, No.157)

Section 602. Penalties.--(a) Any person or municipality who violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to this act is guilty of a summary offense and, upon conviction, such person or municipality shall be subject to a fine of not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for each separate offense, and, in default of the payment of such fine, a person shall be imprisoned for a period of ninety days.

(b) Any person or municipality who wilfully or negligently violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to the act is guilty of a misdemeanor of the third degree and, upon conviction, shall be subject to a fine of not less than two thousand five hundred dollars ($2,500) nor more than twenty-five thousand dollars ($25,000) for each separate offense or to imprisonment in the county jail for a period of not more than one year, or both.

(c) Any person or municipality who, after a conviction of a misdemeanor for any violation within two years as above provided, wilfully or negligently violates any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to this act is guilty of a misdemeanor of the second degree and, upon conviction, shall be subject to a fine of not less than two thousand five hundred dollars ($2,500) nor more than fifty thousand dollars ($50,000) for each separate offense or to imprisonment for a period of not more than two years, or both.

(d) Each day of continued violation of any provision of this act, any rule or regulation of the department, any order of the department, or any condition of any permit issued pursuant to this act shall constitute a separate offense.

(e) The maximum fines specified under this section are established pursuant to requirements set forth by the United States Environmental Protection Agency in accordance with the "Federal Water Pollution Control Act" (33 U.S.C. § 1251 et seq.) and in accordance with the "Surface Mining Control and Reclamation Act of 1977" (30 U.S.C. § 1201 et seq.).

(602 amended Oct. 10, 1980, P.L.894, No.157)

Section 603. Summary Proceedings.--All summary proceedings

under the provisions of this act may be brought before any district justice of the county where the offense occurred or the unlawful discharge of sewage, industrial waste or pollution was maintained, or in the county where the public is affected, and to that end jurisdiction is hereby conferred upon said district justices, subject to appeal by either party in the manner provided by law. In the case of any appeal from any such conviction in the manner provided by law for appeals from summary conviction, it shall be the duty of the district attorney of the county to represent the interests of the Commonwealth.

(603 amended Oct. 10, 1980, P.L.894, No.157)

Section 604. Complaints; Investigations.--Upon complaint made in writing by any responsible person to the department, it shall be the duty of the department through its agents to investigate any alleged source of pollution of the waters of the Commonwealth, and to institute appropriate proceedings under the provisions of this act to discontinue any such pollution if the offense complained of constitutes a violation of the provisions of this act.

(604 amended Oct. 10, 1980, P.L.894, No.157)

Section 605. Civil Penalties Generally.--(a) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act, rule, regulation, order of the department, or a condition of any permit issued pursuant to this act, the department, 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) per day for each violation. In determining the amount of the civil penalty the department shall consider the wilfullness 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 constitute a judgment in favor of the Commonwealth upon the property of such person from the date it has been entered and docketed of record by the prothonotary of the county where such is situated. The department may, at any time, transmit to the prothonotaries of the respective counties certified copies of all such judgments, and it shall be the duty of each prothonotary to enter and docket them 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.

(b) Civil penalties for violations of this act which are in any way connected with or relate to mining and violations of any rule, regulation, order of the department or condition of any permit issued pursuant to this act which are in any way connected with or related to mining, shall be assessed in the following manner and subject to the following requirements:

(1) The department may make an initial assessment of a civil penalty upon a person or municipality for such violation, whether or not the violation was wilful, by informing the person or municipality in writing within a period of time to be prescribed by rules and regulations of the amount of the penalty

initially assessed. The person or municipality charged with the violation shall then have thirty days to pay the proposed penalty in full, or if the person or municipality wishes to contest either the amount or the fact of the violation, to forward the proposed amount to the department for placement in an escrow account with the State Treasurer or any Pennsylvania bank, or post an appeal bond in the amount of the proposed penalty, such bond shall be executed by a surety licensed to do business in the Commonwealth and be satisfactory to the department, and thereafter to file an appeal to the Environmental Hearing Board within the same thirty-day period. The initial assessment shall become final if the amount or the appeal bond is not forwarded to the department or if no appeal if filed with the Environmental Hearing Board within thirty days of the written notice to the person or municipality of the initial assessment and thereafter the person or municipality charged with the violation and suffering the assessment shall be considered to have waived all legal rights to contest the fact of the violation or the amount of the penalty.

(2) If the violation leads to the issuance of a cessation order, a civil penalty shall be assessed.

(3) If the violation involves the failure to correct, within the period prescribed for its correction, a violation for which a cessation order, other abatement order or notice of violation has been issued, a civil penalty of not less than seven hundred fifty dollars ($750) shall be assessed for each day the violation continues beyond the period prescribed for its correction: Provided, however, That correction of a violation within the period prescribed for its correction shall not preclude assessment of a penalty for the violation.

(4) If through administrative or judicial review of the penalty assessed, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the department shall within thirty days of such determination remit the appropriate amount to the person or municipality, with any interest accumulated by the escrow deposit.

(c) Any other provision of law to the contrary notwithstanding, there shall be a statute of limitations of five years upon actions brought by the Commonwealth pursuant to this section.

(605 amended Oct. 10, 1980, P.L.894, No.157)

Section 606. Proceedings Where Waters Polluted from Many Sources.--Nothing contained in the laws of the Commonwealth shall estop the department from proceeding under the provisions of this act against any particular municipality or person discharging sewage or industrial waste or other noxious or deleterious substance into the waters of the Commonwealth even though said waters are, at the time, polluted from other sources.

(606 amended Oct. 10, 1980, P.L.894, No.157)

Section 607. Public Records; Evidence.--All papers, records, and documents of the department, and applications for permits pending before the department, shall be public records open to inspection during business hours: Provided, however, That information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding such mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record. Copies of all such public

records and the rules and regulations of the department shall be received in evidence in all courts and elsewhere, subject to the rules of law concerning evidence.

(607 amended Oct. 10, 1980, P.L.894, No.157)

Section 608. Existing Rules, Regulations, and Orders.--All rules and regulations heretofore adopted by the Sanitary Water Board and all orders made and actions taken by the Sanitary Water Board or the Secretary of Health under the provisions of law repealed by this act, shall continue in force with the same effect as if such laws had not been repealed, subject, however, to modification, change or annulment, as may be deemed necessary by the department, in order to comply with the provisions of this act.

(608 amended Oct. 10, 1980, P.L.894, No.157)

Section 609. Withholding of Permit.--The department shall not issue any permit required by this act or renew or amend any permit if it finds, after investigation and an opportunity for informal hearing that:

(1) the applicant has failed and continues to fail to comply with any provisions of law which are in any way connected with or related to the regulation of mining or of any relevant rule, regulation, permit or order of the department, or of any of the acts repealed or amended hereby; or

(2) the applicant has shown a lack of ability or intention to comply with such laws as indicated by past or continuing violations. Any person, partnership, association or corporation which has engaged in unlawful conduct as defined in section 611 or which has a partner, associate, officer, parent corporation, subsidiary corporation, contractor or subcontractor which has engaged in such unlawful conduct shall be denied any permit required by this act unless the permit application demonstrates that the unlawful conduct is being corrected to the satisfaction of the department. Persons other than the applicant, including independent subcontractors, who are proposed to operate under the permit shall be listed in the application and those persons shall be subject to approval by the department prior to their engaging in surface mining operations and such persons shall be jointly and severally liable with the permittee for violations of this act with which permittee is charged and in which such persons participate.

(609 amended Oct. 10, 1980, P.L.894, No.157)

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 Environmental Hearing Board of the department's order shall not act as a supersedeas: Provided, however, That, upon application and for cause shown, the Environmental Hearing Board 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.

(610 amended Oct. 10, 1980, P.L.894, No.157)

Section 611. Unlawful Conduct.--It shall be unlawful to fail to comply with any rule or regulation of the department or to fail to comply with any order or permit or license of the department, to violate any of the provisions of this act or rules and regulations adopted hereunder, or any order or permit or license of the department, to cause air or water pollution, or to hinder, obstruct, prevent or interfere with the department or its personnel in the performance of any duty hereunder or to violate the provisions of 18 Pa.C.S. section 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities). Any person or municipality engaging in such conduct shall be subject to the provisions of sections 601, 602 and 605.

(611 added Oct. 10, 1980, P.L.894, No.157)

Section 612. Legislative Oversight.--In order to maintain primary jurisdiction over surface coal mining in Pennsylvania pursuant to the Surface Mining and Control Reclamation Act of 1977, Public Law 95-87, the Environmental Quality Board shall have the authority to adopt initial regulations on an emergency basis in accordance with section 204(3) (relating to omission of notice of proposed rule making) of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law. Provided, however, within thirty days after the Secretary of the United States Department of Interior grants such primary jurisdiction to Pennsylvania, the Environmental Quality Board shall repropose the regulations adopted on an emergency basis, shall submit the regulations to the Senate Environmental Resources and House Mines and Energy Management Committees of the General Assembly for their review and comments, and shall schedule public hearings within ninety days after such grant of primary jurisdiction for the purpose of hearing public comment on any appropriate revisions.

At least thirty days prior to consideration by the Environmental Quality Board of any revised regulations or any new regulations under this act other than those initial regulations promulgated on an emergency basis, the department shall submit such regulation to the Senate Environmental Resources and House Mines and Energy Management Committees of the General Assembly for their review and comment.

(612 added Oct. 10, 1980, P.L.894, No.157)

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental

Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in section 612.

ARTICLE VII
SCOPE AND PURPOSE

Section 701. Existing Rights and Remedies Preserved.--The collection of any penalty under the provisions of this act shall not be construed as estopping the Commonwealth, or any district attorney or solicitor of a municipality, from proceeding in courts of law or equity to abate pollutions forbidden under this act, or abate nuisances under existing law. It is hereby declared to be the purpose of this act to provide additional and cumulative remedies to abate the pollution of the waters of this Commonwealth, and nothing in this act contained shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or statutory law, criminal or civil, nor shall any provision in this act, or the granting of any permit under this act, or any act done by virtue of this act, be construed as estopping the Commonwealth, persons or municipalities, in the exercise of their rights under the common law or decisional law or in equity, from proceeding in courts of law or equity to suppress nuisances, or to abate any pollution now or hereafter existing, or enforce common law or statutory rights.

Section 702. Fences along Streams.--No administrative agency of the Commonwealth or any political subdivision thereof shall require any person to erect a fence along a stream in a pasture or other field used for grazing of farm livestock for the purpose of keeping farm livestock out of the stream.

(702 added Oct. 16, 1980, P.L.894, No.169)

ARTICLE VIII
REPEALER

Section 801. Repeal.--The following acts and parts of acts of Assembly are hereby repealed:

Sections four, five, six, seven, eight, nine, ten, and eleven 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."

The act approved the fourteenth day of June, one thousand nine hundred and twenty-three (Pamphlet Laws, seven hundred ninety-three), entitled "An act to preserve the purity of the sources of public water supplies hereafter approved; authorizing the Advisory Board of the Department of Health to make orders and regulations therefor, and the Commissioner of Health to enforce the same; providing penalties for violation thereof, and for abatement of nuisances by injunction."

All other acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

ARTICLE IX
SHORT TITLE

(Hdg. added Aug. 23, 1965, P.L.372, No.194)

Section 901. Short Title.--This act shall be known and may be cited as "The Clean Streams Law."
(901 added Aug. 23, 1965, P.L.372, No.194)

ARTICLE X
SEVERABILITY CLAUSE
(Hdg. added Aug. 23, 1965, P.L.372, No.194)

Section 1001. Severability Clause.--The provisions of this act shall be severable. If any provision of this act is found by a court of record to be unconstitutional and void, the remaining provisions of the act shall, nevertheless, remain valid unless the court finds the valid provisions of the act are so essentially and inseparably connected with, and so depend upon, the void provision, that it cannot be presumed the legislature would have enacted the remaining valid provisions without the void ones; or unless the court finds the remaining valid provisions standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.
(1001 added Aug. 23, 1965, P.L.372, No.194)

APPENDIX

Supplementary Provisions of Amendatory Statutes

1980, OCTOBER 10, P.L.894, NO.157

Section 5. To the full extent provided by section 529 of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), the surface mining of anthracite shall continue to be governed by the Pennsylvania law in effect on August 3, 1977.

Compiler's Note: Act 157 amended the title and sections 1, 5, 6, 7, 8, 202, 207, 209, 210, 213, 303, 304, 305, 307, 308, 314, 315, 316 and 402, repealed section 502 and added or amended sections 503, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611 and 612 of Act 394.

Section 6. In order to maintain primary jurisdiction over coal mining in Pennsylvania, it is hereby declared that for a period of two years from the effective date of this act the department shall not enforce any provision of this act which was enacted by these amendments solely to secure for Pennsylvania primary jurisdiction to enforce Public Law 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, if the corresponding provision of that act is declared unconstitutional or otherwise invalid due to a final judgment by a Federal court of competent jurisdiction and not under appeal or is otherwise repealed or invalidated by final action of the Congress of the United States. If any such provision of Public Law 95-87 is declared unconstitutional or invalid, the corresponding provision of this act enacted by these amendments solely to secure for Pennsylvania primary jurisdiction to enforce the Federal Surface Mining Control and Reclamation Act of 1977,

Public Law 95-87 shall be invalid and the secretary shall enforce this act as though the law in effect prior to these amendments remained in full force and effect.

It is hereby determined that it is in the public interest for Pennsylvania to secure primary jurisdiction over the enforcement and administration of Public Law 95-87, the Federal Surface Mining Control and Reclamation Act of 1977, and that the General Assembly should amend this act in order to obtain approval of the Pennsylvania program by the United States Department of the Interior. It is the intent of this act to preserve existing Pennsylvania law to the maximum extent possible.