



*Rochester Committee
for Scientific Information
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Legal Aspects of Water Pollution*

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The problems surrounding the pollution of our State's waters have become a concern to the general public for the first time during the last several years. The Legislature of the State has attempted to modernize the machinery of our State government to deal with these problems.

I. THE EARLY ATTEMPTS AT CONTROL

The first General Public Health Law regarding water pollution was passed in 1909. The law prohibited any person, corporation, or municipality from discharging, in quantities injurious to the public health, any material into the waters of the State without written permission of the Commissioner of Health. However, a municipality was free to discharge sewage unless the Public Health Commissioner obtained a Court Order prohibiting the discharge. Furthermore, any industry or municipality that has been discharging into the State's waters prior to 1903 could continue at the same level. The impossibility of developing a uniform and effective water pollution program for the State, using the tools provided in the 1909 statute, is obvious.

In 1949 the Public Health Law was amended. The new law declared that the public policy of the State of New York is to maintain reasonable standards of purity of the water of the State. A Water Pollution Control Board was set up to adopt classifications and standards of quality for all waters of the State. The Board had general powers over the water pollution problems of the State. (Section 1200-1236 of the New York State Public Health Law) The purpose of this new law was stated by Governor Dewey in his message to the Legislature:

"This Bill, if enacted into law, will set in motion technical studies of the condition of our water courses and of their best and most practical uses, which will be translated into a system of water quality standards and stream classifications. These classifications will provide a pattern to which all waste producers will be required to adhere, by means of treatment facilities for their liquid wastes."

The Board published standards for many streams, rivers and lakes, but accomplished little in terms of enforcement.

II. THE WATER RESOURCES COMMISSION

The law was again amended in 1961 setting up the basic structure we now find. The Water Pollution Control Board was abolished and in its place the Water Resources Commission was formed. (Section 1200-1263a of the New York State Public Health Law and Section 400-580 New York State Conservation Law)

The Commissioners of the State Departments of Conservation, Agriculture and Markets, and Health and Commerce, together with the Attorney General, and the Superintendent of Public Works, make up the six regular members of the Water Resources Commission. Four non-voting advisory members are appointed by the Governor with the consent of the Senate. The advisory members represent various interest groups: industry, local political subdivisions, agricultural groups, and sportsmen. While the Commission has the power to employ a staff, it also is directed to use the employees of the various member departments. For example, all engineering work regarding the investigation of pollution is under the supervision of the Department of Health. One can easily question how impartial the Commission can be in setting up local classifications when part of its staff comes from the Department of Health, which is normally a participant in local Hearings.

The Commission is charged with providing for the proper conservation, development, regulation, and use of the state waters. It has the power to conduct surveys, investigate and conduct Hearings concerning the water resources of the State.

The Commission is empowered to devise regional plans of water utilization. All towns involved in the region must approve of the idea of the regional plan and an interested governmental municipality must petition the Board to adopt a regional proposal. (Section 435-441 New York State Conservation Law) The Commission also is empowered to promulgate rules necessary to insure proper water supply planning, (Section 442-447 New York Conservation Law) and also is empowered to approve plans for any new use of our water supply. (Section 450-480 New York Conservation Law)

The Legislature has set up several guidelines for the Water Resources Commission in setting the classifications of the waters of the State. The Commission must attempt to find the best usage in the interests of the public taking account of many factors, the character of the district, suitability of particular uses, history of past uses, and the extent of the present fouling of the waters. The Commission is charged to encourage the most appropriate use of the lands bordering the body of water.

The Commission must adopt general classifications for the waters of the State. After a Hearing concerning a body of water, the Commission is charged to adopt a classification for that water, and to spell out the standards of quality and purity inherent in the classification. In establishing standards the Commission considers: the extent floating solids are permitted in the water; the extent to which suspended solids may be permitted; the extent to which coliform organisms or any other organism of human origin may be permitted in the waters; the extent of the oxygen demand which may be permitted; and other physical chemical or biological properties of bodies of water. At the present time by statute the classification system of the Water Resources Control Board is still in effect. This system of classifications may be changed by the Water Resource Commission after a full investigation and hearing.

III. NEW STANDARDS OF WATER PURITY UNDER LAW

The first legislative change in the standards to be applied since 1949 occurred in 1965. The Bill named for Senator VanLare who introduced it became effective on July 1, 1965. (Section 1205c) As interpreted by Dr. Robert D. Hennigan, P.E., Director of the New York State Department of Health, Bureau of Water Resources Services, the amendment sets up maximum amounts of organisms of the coliform group that will be permitted in certain waters of the State. The State Public Health Department has taken the position that the standards set in the statute must be enforced by all state and local health departments until the Water Resources Commission sets even more stringent standards.

According to a letter of October 25, 1965, from Mr. Hennigan of the New York State Department of Health all organisms of the coliform group (intestinal Bacilli) and not just coliform organisms of human origin must be counted. The Rochester Committee for Scientific Information has stated publicly since August of 1965 that this was the only reasonable reading of the statute.

The standards for bacteria in water established in Section 1205c are based on measurements of "most probable number" of bacteria (MPN) made by a laboratory procedure called the multiple dilution technique. Consequently, this procedure must be used to provide legal evidence of violation of standards. However, Mr. Hennigan stated in a letter to the Committee dated December 30, 1965 "it will probably be desirable to include within the standard the Millipore filter technique also". This is a technicality which is of importance here, because the Millipore filter method is less cumbersome and less costly, and can be used by the Rochester Committee for Scientific Information.

The law sets the following minimum standards for the waters of the State:

	<u>Average MPN/100 milliliter Sample</u>
a) Water for drinking, culinary or food processing if uses approved disinfectant treatments (other than by modern plant).	50
b) Water for drinking, culinary or food processing if coagulation, sedimentation, filtrating, and disinfectant methods are used.	5,000
c) Water used for bathing.	2,400
d) Water for shell fishing in title salt waters for market purposes.	70
e) Water for bathing in title salt waters.	2,400
f) All affluents for sewage treatment plants passing into surface waters which pass through residential communities shall be treated so that the surface waters shall meet the minimum standards of	2,400

The averages are determined in a series of four more samples collected during any thirty-day period. The statute also says that the minimum standards must not be exceeded in more than 20% of the sample collected during the thirty-day period.

In 1966 a controversy arose as to whether the term "average" in the law meant arithmetic or logarithmic. The State Health Department took the position that when applied to drinking water it meant arithmetic but when applied to bathing water it meant logarithmic. The Rochester Committee for Scientific Information and legislators in the Monroe County area who voted on the law were of the opinion that average meant an arithmetic average.

The Public Health Law also states that all sewage entering into the waters of the State must at least go through a primary treatment process.

IV. ENFORCEMENT OF STANDARDS BY THE DEPARTMENT OF HEALTH

The Department of Health has a responsibility to prevent the pollution of waters in the State in accordance with the classifications set up by the Commission. Voluntary cooperation is encouraged by the statute. The Department has the responsibility of establishing a water quality surveillance network, the preparation and development of a general comprehensive plan to be submitted to the Water Resources Commission, the conducting of studies and research, and the supervising of the issuance of all permits for the discharge of sewage and industrial wastes, the investigation and devising of a public education program to aid and secure the support of pollution control action. (Section 1210 of the New York State Public Health Law)

After a Hearing the Public Health Department has the authority to fine a violator of the standards set up by the Commission. A violation may be reviewed by either the courts of New York State or the Water Resources Commission at the election of the alleged violator. Violations are punishable by fines up to \$500.00 and an additional fine of \$100.00 for each additional day's violation. An injunction may also be obtained by the Public Health Department. If it can be proven that there was a willful violation the violator is guilty of a misdemeanor and a fine of up to \$500.00 and/or a prison term of up to one year may be imposed. Each day's violation is to be considered as a separate crime.

The 1965 Pure Water Act abolished the one-year period before an order to abate pollution will become absolute. It permitted the Commissioner to issue orders to abate pollution and to establish reasonable timetables for compliance with such orders. This Act also eliminated independent applications to the Water Resources Commission for dilatory relief by a polluter on the grounds of lack of known methods of wastes treatment. The time for an appeal was reduced by the Act from four months to 60 days.

The State and local public health departments also have supervisory powers over the installation of sewage services in realty subdivisions. (Section 1115-1120 of the New York State Public Health Law) The approval of the sewage plans for subdivisions must fit in with the general health of the community. The Commissioner of Public Health in addition to his other powers has the power to investigate and examine into nuisances or questions affecting the security of life and health in any locality. If it is found by the Commissioner that a nuisance exists a report shall be

issued to the Governor and if the Governor declares that the situation is a public nuisance he may order the situation changed, abated or removed. The expense of such abatement would be paid by the municipality where the nuisance occurs. A nuisance has been defined as anything which is injurious to health. A public nuisance would be one that affects an indefinite number of persons or all the residents of a particular locality or all the people coming within the extent of its range or operation. In addition to aiding the Commission of Health local boards of health also have independent powers to investigate and abate public nuisances which may affect health. (Section 1300-1308 of the New York Public Health Law).

V. SUBSIDIES FOR COMPLIANCE

To help in obtaining voluntary compliance with an improved water pollution program the State of New York approved a well-publicized state aid program for municipalities in need of building sewage treatment works. Any municipality if it qualifies under the Act may first obtain financing for an engineering study of projects for collection, treatment, and disposal of sewage. The Commissioner of the Department of Health has the power to supply a State Grant which would pay the entire cost of the comprehensive study and report. If a municipality wishes to build a sewage treatment work which is approved by the Commissioner, the State will grant aid of no less than 30% of the actual costs of the project, and guarantee that 60% of the actual cost will be paid by combined Federal assistance and State assistance. Thus, the maximum amount that any municipality would be forced to pay for an approved sewage treatment plant would be 40% of the actual cost. (Section 1263-1263c of the New York Public Health Law)

VI. INTERSTATE CONTROL OF POLLUTION

By statute the State of New York entered into certain compacts with other states to improve the general condition of the waters of the State. (Delaware River Basin Compact, Section 801 of the Conservation Law; New England Interstate Water Pollution Control Compact, Section 1180 of the New York Public Health Law; Ohio River Valley Water Sanitation Compact, Section 1190 of the New York State Public Health Law; Tri-State Compact and Interstate Sanitation Commission, Section 1299 New York State Public Health Law)

VII. CHANGES OCCURRING IN 1966

The 1966 Legislature made several minor changes in the Public Health Law. The State Health Department was given the power to pass rules and set standards providing for the testing and measuring of sewage, industrial waste or other wastes as their outlet into classified waters of the State. A new Section 1226 was enacted which stated that the discharge of sewage, industrial waste or other wastes into the classified waters of the State is prohibited unless its use is in compromise with the rules of the State Health Department.

Starting September 1, 1966 the County Health Commissioner was authorized and empowered to bring an action in the Courts of New York State to collect any penalty assessed for violation of the Public Health Law.

THE ROCHESTER COMMITTEE FOR
SCIENTIFIC INFORMATION

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