Rochester Committee
for Scientific Information
Rochester, NY

RCSI Bulletin 42
Recent Changes in New York State's Anti-Pollution Laws

By: Thomas A. Fink
April 1968

THE ROCHESTER COMMITTEE FOR SCIENTIFIC INFORMATION
P.O. Box 5236, River Campus Station
Rochester, New York 14627

Legal Aspects of Pollution
Report # 2 #42 April, 1968

Recent Changes In New York State's Anti-Pollution Laws

by
Thomas A. Fink, Counsel

The 1966-1967 session of the New York State Legislature created two new offices for the control of environmental pollution, and changed a key water pollution control law. The change in the law is detrimental to the cause of pure water, and the effectiveness of the new state organizations hinges on their staffing and budgets.

The New York State Public Health Law was amended to permit New York State to join the Mid-Atlantic States Air Pollution Control Compact. The purpose of the Compact is to attempt to solve the common problems of the signatories by setting control measures for regional airsheds. The Compact is sanctioned by Federal Law. The signatories so far are New York and New Jersey. Delaware, Connecticut and Pennsylvania are other prospective members. The Commission has the power to set air pollution standards and to enforce these standards by either obtaining an injunction or other penal penalties. (Article 12-C of New York State Public Health Law).

The New York State Legislature also created a New York vehicle pollution control corporation. The purpose of the corporation is to encourage research and development of surface transportation methods and techniques through private funding which eliminate automotive air pollution and an attempt to develop new types of rapid transit and transportation which require technological organization beyond the scope of individual products or services presently in operation. This corporation is an independent corporation but is funded by the New York State Legislature. (Chapter 7888 of Laws of 1967).

The Legislature also created the New York State Pure Waters Authority. This independent authority financed by the State of New York has as its purpose the planning, financing, construction, maintenance and operation of sewage treatment works and solid waste disposal facilities and the construction, on behalf of municipalities, of sewage treatment works, sewage collecting systems and solid waste disposal facilities. The authority is also to assist municipalities in the planning, financing, construction, maintenance and operation of sewage treatment works, sewage collecting systems and solid waste disposal facilities. It has been found that many of the local communities do not have the personnel who can take advantage of the Federal and State funds which are offered to those communities that build approved sewage treatment facilities. It has also been found that the requirements that the State of New York has set guarding standards of sewage disposal cannot be adequately met by local municipalities without the aid of outside experts. It is hoped that the New York State Pure Waters Authority will be able to fulfill the gap and provide municipalities

with the help they need to secure the proper funding so that adequate sewage treatment plants can be built. This will include the designing and construction of the plants under the supervision of the Authority. (Sections 1280 to 1298 of the New York State Public Health Law).

The effectiveness of the new authorities and corporations upon the complex pollution problems that the public now faces cannot be seen until after they commence their operations. If the authorities and corporations are not staffed with competent personnel who are dedicated to the eradication of pollution, then these amendments to our New York State Law will have produced no positive results.

The only change to the standards set by New York State Law was an amendment to the so-called VanLare Law. The law had previously read that a standard was set for certain waters of the State used for bathing and drinking, based on the average number of coliform organisms found during a 30-day period. After the VanLare Law was publicized, there was a dispute between public health officials and independent scientists as to what the interpretation of the word average should be. The Rochester Committee for Scientific Information took the position that an average as described in the VanLare Law meant the arithmetic average that all laymen are familiar with. This position was accepted by legislators who had been a part of the legislative process. The New York State Public Health Department took the position that an average meant an arithmetic average only when the waters that were being measured were waters used for drinking purposes. When computing the averages of waters used for bathing purposes a logarithmic average was used. The use of a logarithmic average would tend to eliminate extremes in counts and thus would lower the average. In the 1967 Legislature a measure was introduced and passed by both Houses of the Legislature which would include in front of the word average the word arithmetic. This Bill was vetoed by Governor Rockefeller. A second Bill was introduced at the suggestion of the New York State Health Department which included before the word average the word median. The use of the median average was criticized by the Rochester Committee for Scientific Information as it was held to be an inappropriate means of measuring hazards in waters used for bathing and drinking. The Health Department Bill also changed the period of measurement from any 30-day period to a calendar month. This meant that even though there were a number of high counts in the latter part of one month and the early part of another month that this dangerous situation would not be recognized under the Public Health Law. The original law had provided that not only would the water have to meet an average monthly count, but not more than 20% of the samples could exceed the standard as set by the Legislature. The new law changed the standard as it applied to the 20% test. For drinking water which would be subjected to an approved treatment process it was raised from a coliform value of 5,000 for 100 ML of sample to 20,000 for 1 Ml of sample. Water used for bathing, fishing or boating was raised from a coliform value of 2,400 for 100 ML of sample to 5,000 for 100 ML of sample. By using a median average and then raising the 20% test, the effect of this statute was to lower the standards in New York State. These standards were already among the lowest standards in the United States. This Health Department Bill was also passed by both Houses of the Legislature and on the advice of the New York State Public Health Department signed into law by the Governor. No data was at any time given to substantiate a need for lowering the coliform standards.

The Navigation Law (Section 33 C) was amended to require that all sewage passing through marine toilets be equipped by a chlorinator or chemical treatment facility meeting the standards set forth by the State Commissioner of Health and all marinas that provide the holding tanks must not pollute the waters of the State. This law was to go into effect as of April 24, 1967, but as of the present date the Commissioner has not established any standards and a proposal is being submitted to the Legislature to postpone the effective date of the statute change until the Commissioner is able to determine the standards he will approve.

It is hoped that the 1968 session of the Legislature will be more aware of the need for setting meaningful standards of cleanliness for public waters.

The Rochester Committee for Scientific Information presented a statement at a Hearing of the Constitutional Convention urging the Convention to include in their Conservation Article a policy provision calling for the abatement of air and water pollution. We understand that this policy was also called for by many other groups throughout the State. The policy was included in the defeated Constitution which also called for the abatement of excessive and unnecessary noise.