

**CLEAN WATERS ACT.**

**New South Wales**



ANNO UNDEVICESIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 78, 1970.**

An Act to make provisions with respect to the prevention or the reduction of pollution of certain waters; and for purposes connected therewith. [Assented to, 9th December, 1970.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

**PART I.**

**PRELIMINARY.**

**1.** (1) This Act may be cited as the "Clean Waters Act, 1970".

Short title and commencement.

(2)

No. 78, 1970 (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division  
of Act.

2. This Act is divided into Parts, as follows :—

PART I.—PRELIMINARY—*ss.* 1–5.

PART II.—CLEAN WATERS ADVISORY COMMITTEE AND  
CLEAN WATERS APPEALS BOARD—*ss.* 6–10.

PART III.—CLASSIFICATION OF WATERS—*ss.* 11–15.

PART IV.—CONTROL OF POLLUTION OF WATERS—  
*ss.* 16–27.

PART V.—GENERAL—*ss.* 28–37.

Act binds  
Crown.

3. (1) This Act binds the Crown.

(2) Where a dispute arises between the Under Secretary and any person acting on behalf of the Crown or a statutory authority with respect to—

(a) the giving of a direction to that person or authority under subsection four of section sixteen of this Act, or the granting of an approval to that person under section nineteen of this Act for the installation, construction or modification of any apparatus, equipment or works; or

(b) the grant or transfer of a licence under section twenty of this Act,

the Under Secretary or that person or authority may refer the dispute to the Premier for settlement and the decision of the Premier on the dispute shall be given effect to by the Under Secretary and that person or authority.

(3) Where a dispute is decided by the Premier under subsection two of this section, the person acting on behalf of the Crown or the statutory authority who or which was a party to the dispute shall not be entitled to appeal under section twenty-five of this Act against the decision on the dispute that is required by subsection two of this section to be given effect to by the Under Secretary.

4.

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4. (1) Subject to subsection two of this section, nothing in this Act affects any of the provisions of any other Act, or any regulations, ordinances or by-laws thereunder or takes away any powers vested in any person or body by any other Act, or any regulations, ordinances or by-laws made under any other Act. No. 78, 1970  
Effect of  
this Act on  
other Acts.

(2) Where the provisions of this Act are inconsistent with any of the provisions of any other Act or any regulation, ordinance or by-law made under any other Act (other than the Prevention of Oil Pollution of Navigable Waters Act, 1960, or the State Pollution Control Commission Act, 1970, or any regulation thereunder), the provisions of this Act shall prevail.

(3) Where the provisions of any regulation made under this Act are inconsistent with any of the provisions of any regulation, ordinance or by-law made under any other Act (other than a regulation made under the Prevention of Oil Pollution of Navigable Waters Act, 1960, or the State Pollution Control Commission Act, 1970), the provisions of the regulation made under this Act shall prevail.

5. In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpre-  
tation.

“authorised officer” means a person authorised in writing by the Under Secretary either generally or in a special case to act as an authorised officer for the purposes of section twenty-nine of this Act;

“Board” means the Clean Waters Appeals Board constituted under section nine of this Act;

“classified waters” means any waters classified by the Under Secretary under section eleven of this Act;

“Committee” means the Clean Waters Advisory Committee constituted under section six of this Act;

“Department” means the Department of Public Health;  
“fish”

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“fish” has the meaning ascribed thereto in the Fisheries and Oyster Farms Act, 1935;

“licence” means a valid and unexpired licence issued under this Act, whether it is an original or a renewed licence;

“local authority” has the meaning ascribed thereto in the Public Health Act, 1902;

“occupier”, in relation to any premises, means the person in occupation or control of the premises and, in relation to any premises where different parts are occupied or controlled by different persons, means, in relation to any such part, the person in occupation or control of that part;

“pollute”, in relation to any waters, means—

- (a) to place in or on the waters any matter, whether solid, liquid or gaseous, so that the physical, chemical or biological condition of the waters is changed; or
- (b) to place in or on the waters any refuse, litter, debris or other matter, whether solid or liquid or gaseous, so that the change in the condition of the waters or the refuse, litter, debris or other matter, either alone or together with any other refuse, litter, debris or matter present in the waters makes, or is likely to make, the waters unclean, noxious, poisonous or impure, detrimental to the health, safety, welfare or property of persons, undrinkable for farm animals, poisonous or harmful to aquatic life, animals, birds or fish in or around the waters or unsuitable for use in irrigation, or obstructs or interferes with, or is likely to obstruct or interfere with persons in the exercise or enjoyment of any right in relation to the waters; or

(c)

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(c) to place in or on the waters any matter, No. 78, 1970  
whether solid, liquid or gaseous, that is  
of a prescribed nature, description or class  
or that does not comply with any standard  
prescribed in respect of that matter,

and "pollutant" and "pollution" have correspond-  
ing interpretations;

"premises" includes place, ship, boat and any other  
vessel whatsoever;

"regulations" means regulations made under this Act;

"statutory authority" means the Broken Hill Water  
Board, the Electricity Authority of New South  
Wales, the Electricity Commission of New South  
Wales, the Hunter District Water Board, the Mari-  
time Services Board of New South Wales, the  
Metropolitan Meat Industry Board, the Metropoli-  
tan Water Sewerage and Drainage Board, the Water  
Conservation and Irrigation Commission, any  
person deemed by the Transport (Division of  
Functions) Act, 1932, to be a statutory body  
representing the Crown and any statutory body  
declared by the Governor, by proclamation  
published in the Gazette, to be a statutory authority  
for the purposes of this Act;

"Under Secretary" means the Under Secretary of the  
Department and, where an officer of the Depart-  
ment has been authorised in writing by the Under  
Secretary to exercise or perform any of the powers,  
authorities, duties or functions of the Under Secre-  
tary under this Act or the regulations either  
generally or in a particular case, includes, in relation  
to the exercise or performance of any such powers,  
authorities, duties or functions either generally or  
in that particular case, as the case may be, that  
officer;

"wastes"

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“wastes” means any solid, gas or liquid, with or without matter in suspension or solution therein, which is or may be discharged from premises in the course of any process or operation carried on in connection with any mine (within the meaning of the Mines Inspection Act, 1901, or the Coal Mines Regulation Act, 1912), open cut working (within the meaning of the Coal Mines Regulation Act, 1912), coal washing, trade, industry, agriculture or sewage treatment or in the course of any domestic process or operation;

“waters” means any river, stream, lake, lagoon, natural or artificial watercourse, dam or tidal waters (including the sea), or part thereof, and includes any underground or artesian water, or any part thereof.

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## PART II.

### CLEAN WATERS ADVISORY COMMITTEE AND CLEAN WATERS APPEALS BOARD.

Clean  
Waters  
Advisory  
Committee.

6. (1) For the purposes of this Act there shall be constituted a Clean Waters Advisory Committee which shall consist of sixteen members.

(2) The members of the Committee shall be—

(a) the person for the time being holding office as or duly acting in the office of Director-General of Public Health, or a person from time to time nominated by him; and

(b) fifteen members appointed by the Governor (in this section referred to as “appointed members”) of whom—

(i) one shall be an officer of the Department of Public Works nominated by the Minister for Public Works;

(ii)

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- (ii) one shall be an officer of the Chief Secretary's Department nominated by the Chief Secretary; **No. 78, 1970**
  - (iii) one shall be a representative of the Water Conservation and Irrigation Commission nominated by the Minister for Conservation;
  - (iv) one shall be a representative of the Maritime Services Board of New South Wales nominated by the Treasurer;
  - (v) one shall be a representative of the Metropolitan Water Sewerage and Drainage Board nominated by that Board;
  - (vi) one shall be a representative of the Hunter District Water Board nominated by that Board;
  - (vii) one shall be a representative of the State Planning Authority of New South Wales nominated by that Authority;
  - (viii) one shall be a representative of the Local Government Association of New South Wales nominated by that Association;
  - (ix) one shall be a representative of the Shires Association of New South Wales nominated by that Association; and
  - (x) six shall be nominated by the Minister, of whom one shall be appointed to represent primary industry, one to represent secondary industry, one to represent persons and bodies concerned or interested in promoting the conservation of the natural environment, one to represent persons and bodies concerned or interested in recreational pursuits and two shall be persons with such technical qualifications as the Minister considers appropriate.

(3)

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**No. 78, 1970** (3) (a) The member referred to in paragraph (a) of subsection two of this section shall be chairman of the Committee.

(b) The chairman shall preside at all meetings of the Committee at which he is present and in the absence of the chairman from any meeting the members present shall appoint one of their number to preside at that meeting.

(4) The appointed members shall hold office for a period of three years and shall be eligible for reappointment.

(5) If a casual vacancy occurs in the office of an appointed member, the Governor may appoint a person having the like qualification or being representative of the like interest as his predecessor to hold office as a member of the Committee for the balance of his predecessor's term of office.

(6) An appointment to fill a casual vacancy shall be made on the nomination of the person or body by whom the nomination of the person whose office has been vacated was made.

(7) Any nomination of an appointed member shall be made within the time and in the manner prescribed and in default of any person or body entitled to make any such nomination doing so within that time and in that manner the Governor may appoint any person to the Committee as if that person had been duly nominated by the person or body entitled to make the nomination.

**Sub-committees.** 7. (1) The Committee may establish sub-committees for the purpose of advising the Committee upon such matters within the scope of the Committee's functions as may be referred to the sub-committees by the Committee.

(2) A person may be appointed to a sub-committee whether or not he is a member of the Committee.

(3)



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(3) A sub-committee may exercise and discharge such **No. 78, 1970** of the Committee's powers, authorities, duties and functions as may be delegated to it by the Committee.

(4) Notwithstanding any such delegation, the Committee may continue to exercise and discharge any of the powers, authorities, duties and functions so delegated.

(5) The Committee may at any time revoke any such delegation, either wholly or in part.

(6) Every member of a sub-committee shall be entitled to receive such travelling expenses and, if the Minister so approves, such fees for attending meetings and transacting business of the sub-committee, and making inspections for the purposes of this Act, as may be prescribed.

(7) The office of a member of a sub-committee shall not, by reason of the member accepting or receiving any expenses or fees to which he is entitled under subsection six of this section, be deemed to be an office of profit under the Crown for the purposes of the Constitution Act, 1902.

**8.** (1) The Committee may initiate and refer to the Minister— Functions  
of  
Committee.

- (a) recommendations for making, altering or repealing any regulation;
- (b) recommendations relating to the administration of this Act; and
- (c) recommendations for the prevention, control, abatement or mitigation of pollution.

(2) It shall be the duty of the Committee to make recommendations to the Under Secretary in respect of matters referred to it by the Under Secretary and to consider and advise the Minister upon such matters and questions as the Minister may from time to time refer to it relating to—

- (a) any proposal for making, altering or repealing any regulation;

(b)

- No. 78, 1970** (b) the administration of this Act; and
- (c) the prevention, control, abatement or mitigation of pollution.

(3) The Committee shall, not later than the thirtieth day of September in each year, forward to the Minister a report of its work and activities during the year ended the thirtieth day of June then last past.

(4) A copy of the report shall be laid before both Houses of Parliament.

**Clean  
Waters  
Appeals  
Board.**

**9.** (1) For the purposes of this Act there shall be constituted a Clean Waters Appeals Board which shall consist of five members.

(2) One of the members of the Board shall, by the instrument of his appointment, be appointed as chairman of the Board and another of the members shall, by the instrument of his appointment, be appointed as deputy chairman of the Board.

(3) The members of the Board shall be appointed by the Governor, shall hold office for four years and shall be eligible for reappointment.

(4) If a casual vacancy occurs in the office of a member of the Board, the Governor may appoint a person to hold office as a member of the Board for the balance of his predecessor's term of office.

(5) The chairman shall preside at all meetings of the Board at which he is present and in the absence of the chairman from any meeting of the Board the deputy chairman shall preside.

**10.**

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**10.** (1) In this section "body constituted under this Part" means the Committee or the Board. No. 78, 1970

(2) The procedure for the calling of meetings of a body constituted under this Part and for the conduct of business at those meetings shall, subject to the regulations, be as determined by that body. Provisions applicable to the Committee and the Board.

(3) The number of members who shall constitute a quorum of a body constituted under this Part shall be as prescribed and the decision of the majority of members present at any meeting at which a quorum is present shall be the decision of that body.

(4) The person entitled to preside at any meeting of a body constituted under this Part shall have a deliberative vote and, in the event of an equality of votes, a casting vote.

(5) A member of a body constituted under this Part shall be deemed to have vacated his office if he—

- (a) dies;
- (b) resigns his office by writing under his hand addressed to the Governor;
- (c) becomes a mentally ill person, a protected person, or an incapable person, within the meaning of the Mental Health Act, 1958;
- (d) absents himself from four consecutive meetings of the body of which reasonable notice has been given to him either personally or in the ordinary course of post except on leave granted by the Minister before the last of those meetings; or
- (e) is removed from office by the Governor.

(6) Without limiting the operation of subsection five of this section a member of a body constituted under this Part shall be deemed to have vacated his office upon his attaining the age of seventy years.

(7)

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(7) Every member of a body constituted under this Part shall be entitled to receive such travelling expenses, and every such member (other than the member referred to in paragraph (a) of subsection two of section six of this Act) shall, if the terms of his appointment so provide, be entitled to receive such fees for attending meetings and transacting business of the body and, in the case of a member of the Committee, such fees for making inspections for the purposes of this Act, as may be prescribed.

(8) The office of a member (other than the member referred to in paragraph (a) of subsection two of section six of this Act) shall not, by reason of the member's accepting or receiving any expenses or fees to which he is entitled under subsection seven of this section, be deemed to be an office of profit under the Crown for the purposes of the Constitution Act, 1902.

(9) The provisions of the Public Service Act, 1902, shall not apply to or in respect of the appointment of any member of a body constituted under this Part, and any such member shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office.

(10) No act or proceeding of a body constituted under this Part shall be invalidated or prejudiced by reason only of the fact that at the time the act or proceeding was done, taken or commenced, there was a vacancy in the office of any member of the body.

(11) All acts and proceedings of a body constituted under this Part shall, notwithstanding the subsequent discovery of any defect in the appointment of any member thereof, or that any member was disqualified to act, be as valid as if the member had been duly appointed and was qualified to act and had acted as a member of the body, and as if the body had been properly and fully constituted.

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**PART**

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## PART III.

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## CLASSIFICATION OF WATERS.

**11.** (1) Subject to this Part, the Under Secretary may, <sup>Under Secretary may classify</sup> by notification published in the Gazette, classify or reclassify <sup>waters.</sup> any waters by reference to any prescribed classification.

(2) The Under Secretary shall not cause a notification under subsection one of this section classifying any waters to be published in the Gazette—

- (a) where no objection to the proposal to classify the waters as referred to in a notice published under section twelve of this Act is made within the prescribed time referred to in subsection one of section thirteen of this Act—until after the expiration of that prescribed time; or
- (b) where an objection to such a proposal is so made—until the objection has been finally determined.

(3) The regulations prescribing any classification for the purposes of subsection one of this section shall specify, in relation to waters of that classification, a standard applicable to waters of that classification.

**12.** Not less than one month before the publication of a <sup>Proposal for</sup> notification under section eleven of this Act classifying <sup>classifying</sup> any <sup>waters to be</sup> waters, the Under Secretary shall cause a notice describing <sup>published.</sup> generally the waters and specifying the classification he proposes to assign to them to be published in the Gazette and in a newspaper circulating in such area as the Under Secretary considers appropriate having regard to the situation of the waters.

**13.** (1) Any person may, in the prescribed manner, <sup>Objections to classifica-</sup> within the prescribed time after publication of the notices <sup>tion of</sup> or the later of the notices published under section twelve <sup>waters.</sup> of this Act and on payment of the prescribed fee, object to the classification proposed to be assigned to any waters as referred to in the notice or notices.

(2)

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No. 78, 1970 — (2) Any such objection shall be lodged with the Under Secretary who shall forward it to the Board.

Determina-  
tion of  
objections  
by the  
Board. **14.** (1) Where an objection is made to a classification proposed to be assigned to any waters as referred to in a notice under section twelve of this Act, the Board shall hear and determine the objection and shall either—

- (a) confirm the proposed classification; or
- (b) direct that some other prescribed classification be assigned to the waters.

(2) Proceedings before the Board shall be in the nature of a rehearing.

(3) A determination of the Board under subsection one of this section shall be final and shall be given effect to by the Under Secretary, but nothing in this subsection prevents the Under Secretary, where he considers the circumstances so warrant, from reclassifying, in accordance with this Part, any waters in respect of which the Board has made such a determination.

Proceedings  
of Board. **15.** (1) The Board may by notice in writing served on any person require that person—

- (a) to attend before it for the purpose of giving evidence; or
- (b) to produce to the Board any documents, relating to any proceedings before the Board.

(2) A person who refuses or fails to comply with the requirement of a notice under subsection one of this section is guilty of an offence against this Act and liable to a penalty not exceeding five hundred dollars.

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PART

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## PART IV.

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## CONTROL OF POLLUTION OF WATERS.

16. (1) A person shall not pollute any waters or cause or permit any waters to be polluted. Prohibition  
of pollution  
of waters.

(2) Without limiting the generality of subsection one of this section, a person shall be deemed to pollute waters if—

- (a) he places any matter, whether solid, liquid or gaseous, in a position where it falls, descends, is washed, is blown or percolates, or is likely to fall, descend, be washed, be blown or percolate, into any waters, or onto the bed of any waters, when dry, or causes or permits any such matter to be placed in such a position; or
- (b) he places any such matter on the bed, when dry, of any waters, or causes or permits any such matter to be placed on such a bed,

and the matter would, had it been placed in any waters have polluted or have been likely to pollute those waters.

(3) Notwithstanding the foregoing provisions of this section but subject to subsection four of this section, it shall not be an offence against this Act arising under those provisions for any person to pollute any waters, during a period of two years from the commencement of this Act or during such further period as may be prescribed either generally or in respect of specified waters or pollution from any specified premises or classes of premises, by means of any wastes of substantially the same nature and volume as wastes by means of which those waters were being polluted by him at the commencement of this Act.

(4) Where—

- (a) at any time during the period or further period referred to in subsection three of this section a person is engaged in any activities as a result of  
which

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which any waters are being polluted and that person would but for that subsection be guilty of an offence against this Act arising under the provisions of subsection one or two of this section; and

- (b) the Under Secretary is satisfied that satisfactory means are reasonably available to eliminate or reduce the pollution of those waters by that person,

the Under Secretary may by instrument in writing served on that person direct that person to cease polluting those waters or, for the purpose of reducing the pollution of those waters by that person, to take such steps or to install such apparatus, equipment or works within such time as may be specified in the direction.

(5) A direction given under subsection four of this section shall have no force or effect—

- (a) until the time limited for appealing against the direction has expired; and
- (b) where within that time an appeal against the direction has been made under this Act, until the Board confirms the direction.

(6) Notwithstanding the foregoing provisions of this section it shall not be an offence against this Act arising under those provisions for a person to pollute any waters if he holds a licence and does not pollute the waters in contravention of any of the conditions of the licence.

(7) Any person who contravenes the provisions of this section or, being the holder of a licence, contravenes any condition of the licence is guilty of an offence against this Act and is liable to a penalty not exceeding ten thousand dollars and to a further penalty not exceeding five thousand dollars for each day the offence continues.



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17. (1) A person in whom is vested, or who has the care, control or management of, or who is the occupier of any land on which is situated, a drain, whether open or not, shall, if the drain discharges or is likely to be used for discharging any pollutants into any classified waters, be guilty of an offence against this Act unless a licence is in force in respect of the drain.

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Licences  
in respect  
of certain  
drains.

(2) Without limiting the generality of subsection one of this section, a drain shall, for the purposes of that subsection, be deemed to discharge or to be likely to be used for discharging pollutants into any classified waters if—

- (a) it discharges or is likely to be used for discharging any matter, whether solid, liquid or gaseous, into or onto any place from which the matter falls, descends, is washed, is blown or percolates or is likely to fall, descend, be washed, be blown or percolate into any classified waters or onto the bed of any classified waters, when dry; or
- (b) it discharges or is likely to be used for discharging any matter into or onto the bed, when dry, of any classified waters,

and the matter would, had it been discharged into any classified waters, have polluted or have been likely to pollute those waters.

(3) Nothing in this section applies to or in respect of any drain from which any pollutants are discharged, or which is likely to be used for discharging any pollutants, into any other drain with the consent of the person in whom the other drain is vested, or who has the care, control or management of the other drain, or who is the occupier of the land on which the other drain is situated, or into any other drain in respect of which a licence is held by the person in whom the

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**No. 78, 1970** firstmentioned drain is vested, or who has the care, control or management of the firstmentioned drain, or who is the occupier of the land on which the firstmentioned drain is situated.

(4) In this section, "drain" means any drain, line of pipes, sewer, stormwater channel or artificial watercourse.

(5) Any person guilty of an offence against this Act arising under this section is liable to a penalty not exceeding five thousand dollars and to a further penalty not exceeding two thousand dollars for each day the offence continues.

**Postpone-  
ment of  
operation  
of sections  
16 and 17.**

**18.** Notwithstanding any provision of section sixteen or seventeen of this Act, where a person becomes the occupier of any premises and immediately before he became the occupier of the premises the premises were occupied by a person who was the holder of a licence, that firstmentioned person is not guilty of an offence against this Act arising under any such provision if, had he been the holder of the licence, he would not have been guilty of the offence and—

- (a) if the offence occurred during the prescribed period after he became the occupier of the premises; or
- (b) if he has, during that prescribed period, made application under subsection eight of section twenty of this Act for the transfer to him of the licence and the offence occurred during the period commencing on the day on which he became the occupier of the premises and ending on the day on which the application is finally determined.

**Under  
Secretary's  
approval to  
installation  
or con-  
struction of  
certain  
apparatus,  
etc.,  
required.**

**19.** (1) A person shall not install, construct or modify any apparatus, equipment or works for the discharge of pollutants into any waters, except in accordance with an approval in writing given by the Under Secretary or in accordance with a direction given by the Under Secretary under subsection four of section sixteen of this Act.

(2)

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(2) An application for an approval under subsection one of this section shall be made to the Under Secretary in the prescribed manner and shall be accompanied by the prescribed fee. **No. 78, 1970**

(3) An approval under subsection one of this section may be unconditional or subject to such conditions as may be specified in the approval.

(4) Any person who contravenes the provisions of subsection one of this section or of any conditions attached to an approval given under that subsection is guilty of an offence against this Act and is liable to a penalty not exceeding five thousand dollars.

**20.** (1) An application for a licence or transfer thereof shall be made to the Under Secretary in or to the effect of the prescribed form and shall be accompanied by the prescribed fee. **Licences.**

(2) The Under Secretary—

- (a) may grant any application for a licence or transfer thereof, either subject to conditions or unconditionally; or
- (b) may refuse any such application.

(3) A licence specifying a drain (as defined in subsection four of section seventeen of this Act) from which pollutants may be discharged into any waters shall, if those waters are classified waters, be deemed, for the purposes of that section, to be a licence in respect of that drain.

(4) The Under Secretary may during the currency of a licence, by a notice in writing served on the holder of the licence—

- (a) revoke the licence or suspend it for such period expiring not later than the date of expiry of the licence as he thinks fit;

(b)

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- (b) revoke or vary any condition attached to the licence ;  
or
  - (c) attach new conditions to the licence.

(5) Before imposing any conditions under paragraph (a) of subsection two, or exercising any powers under subsection four, of this section, the Under Secretary shall refer his proposal to do so to the Committee and, in imposing any such conditions or exercising any such powers, shall have regard to any recommendation with respect thereto made by the Committee.

(6) In exercising his powers under subsection two or four of this section the Under Secretary shall have regard to the extent of the pollution of any waters likely to be caused by the applicant, if his application is granted, or being caused by the licensee, as the case may be, and where the application or licence is in respect of pollution of classified waters, to the classification of those classified waters.

(7) The revocation or suspension of a licence, the revocation or variation of any condition attached to a licence or the attaching of a new condition to a licence, under subsection four of this section shall not have any force until the time limited for appealing against the Under Secretary's decision has expired and, where within that time an appeal against the decision has been made under this Act, until the Board confirms the decision.

(8) A person, with the consent of the holder of a licence, may make application in or to the effect of the prescribed form, accompanied by the prescribed fee, to the Under Secretary for approval of the transfer to him of the licence held by that holder.

**Duration of licences.**      **21.** A licence shall remain in force for a period of one year from the date of its issue and may from time to time be renewed for a period of one year upon application made within the prescribed time.

**22.**

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**22.** The Under Secretary may, by notice in writing served on an applicant for an approval under section nineteen of this Act or for a licence, require the applicant to furnish to the Under Secretary such information and such plans and specifications as the Under Secretary considers necessary and relevant to the application and specifies in the notice.

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Under Secretary may require applicant to furnish information, etc.

**23.** The Under Secretary shall cause to be kept such registers of licences as may be prescribed.

Registers of licences.

**24.** (1) The fee payable for a licence or for an approval under section nineteen of this Act shall be such amount as may be prescribed, not exceeding one thousand dollars.

Fees.

(2) Different fees for licences or any such approval may be prescribed according to any prescribed factors.

(3) The fee payable in respect of the transfer of a licence shall be as prescribed.

**25.** (1) Subject to subsection three of section three of this Act, any applicant for, or holder of, a licence who is aggrieved by any decision of the Under Secretary under subsection two or four of section twenty of this Act in relation to the application or licence, and any applicant for an approval under subsection one of section nineteen or subsection eight of section twenty of this Act who is aggrieved by any decision of the Under Secretary in relation to his application, may appeal against the decision to the Board.

Appeals.

(2) Any person to whom a direction is given under subsection four of section sixteen of this Act and who is aggrieved by the direction may appeal against the direction to the Board.

(3) Any such appeal shall be in the nature of a rehearing and shall be made in accordance with the regulations.

(4)

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(4) The Board shall not, in deciding any such appeal, decide it in such a manner that—

- (a) its decision would be likely to affect the condition of any waters in such a manner that those waters would not comply with their classification under this Act; or
- (b) its decision is inconsistent with the provisions of this Act or the regulations.

(5) The decision of the Board in respect of any such appeal shall be final and shall be given effect to by the Under Secretary, but nothing in this subsection prevents the Under Secretary, where he considers the circumstances so warrant, from subsequently exercising any of his powers under any of the provisions referred to in subsection one or two of this section.

Minister's  
emergency  
powers.

26. (1) The Minister may, in circumstances that he considers to be an emergency, by instrument in writing served on any person—

- (a) authorise that person, subject to such conditions as may be specified in the instrument, to discharge into any waters any pollutants or any specified class of pollutants; or
- (b) order that person not to discharge into any waters, whether or not they are classified waters and whether or not that person is the holder of a licence, any pollutants or any specified class of pollutants or not to discharge into any such waters any pollutants or any specified class of pollutants otherwise than in accordance with any conditions specified in the instrument.

(2) A person who discharges any pollutants or any specified class of pollutants into any waters, if he is authorised to do so by an instrument under subsection one of this section and does so in accordance with any conditions specified in the instrument, is, notwithstanding any other provision of this

Act.

*Clean Waters.*

Act, not guilty of an offence against this Act arising under **No. 78, 1970** section sixteen or seventeen of this Act by reason of that discharge.

(3) A person who discharges any pollutants or any specified class of pollutants into any waters in contravention of an order referred to in paragraph (b) of subsection one of this section that has been served on him, is, notwithstanding any other provision of this Act, guilty of an offence against this Act and is liable to a penalty not exceeding ten thousand dollars and to a further penalty not exceeding five thousand dollars for each day the offence continues.

**27.** (1) Where any waters, whether or not they are classified waters, are polluted by any person, any statutory authority or local authority may and shall, if directed to do so by the Under Secretary, take such action as is necessary to remove, disperse, destroy or mitigate the pollution and may recover all costs and expenses incurred by it in connection with the removal, dispersal, destruction or mitigation of the pollution from that person. **Removal of pollutants.**

(2) Any such costs and expenses may be recovered as a debt in a court of competent jurisdiction.

**PART V.****GENERAL.**

**28.** (1) The Under Secretary may, by notice in writing served on the occupier of any premises, require that occupier to furnish to him, within such period as may be specified in the notice, such information as to any manufacturing, industrial or trade process carried on in or on the premises or as to any wastes discharged or removed or likely to be discharged or removed therefrom as he requires by the notice. **Occupier of premises may be required to furnish information.**

(2)

No. 78, 1970

(2) A person who neglects or fails to comply with any requirement made under this section is guilty of an offence against this Act and liable to a penalty not exceeding five hundred dollars.

(3) Any information furnished or statement made to the Under Secretary pursuant to any requirement made under subsection one of this section shall not, if the person furnishing the information or making the statement objected, at the time of furnishing or making it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against that person for any offence, not being the offence of neglecting or failing to comply with any requirement made under this section.

Powers of  
authorised  
officers.

29. (1) An authorised officer may enter—

- (a) any premises used as a factory or any premises in which an industry or trade is being carried on, at any time during which any manufacturing, industrial or trade process is being carried on therein;
- (b) any premises, not being a dwelling-house or the land used in connection therewith, from which he reasonably suspects pollutants have been, are being or are likely to be, discharged into any waters, at any time; and
- (c) any other premises, at any reasonable time,

and may therein—

- (i) examine and inspect any apparatus, equipment or works used for or in connection with the discharge of wastes into waters;
- (ii) take and remove samples of any wastes that are being, or are likely to be, or of a kind that are usually, discharged from the premises into waters;

(iii)



*Clean Waters.*

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- (iii) take and remove such samples and make such examination and inquiry and such tests as he considers necessary to ascertain whether the provisions of this Act or of any requirement made under or pursuant to this Act or the conditions in force and attached to any licence or approval are being or have been complied with; and
- (iv) take such photographs as he considers necessary in connection with the administration of this Act or the regulations.

(2) An authorised officer may, by notice in writing, require—

- (a) the occupier of any premises from which pollutants are being or are usually discharged into any waters to produce to that authorised officer any reports, books, plans, maps or documents relating to the discharge from the premises of pollutants into the waters or relating to any manufacturing, industrial or trade process carried on on those premises; or
- (b) any local authority or statutory authority to produce to that authorised officer any reports, books, plans, maps or documents in the custody or possession of the local authority or statutory authority relating to any apparatus, equipment or works used for the discharge of pollutants directly or indirectly into waters.

and may take copies of any such reports, books, plans, maps or documents.

(3) Every authorised officer shall be provided with a certificate of his appointment, and on applying for admission to any premises where he is empowered by this Act to enter, shall, if requested to do so, produce the certificate to the occupier of the premises.

(4)

**No. 78, 1970** (4) Any person who wilfully delays or obstructs an authorised officer, or fails to comply with any requirement made by an authorised officer, in the exercise of his powers under this Act, or who, being the occupier of any premises, refuses to permit or to assist an authorised officer to do, perform or carry out the matters or things, or any of the matters or things, which he is authorised to do, perform or carry out is guilty of an offence against this Act and is liable to a penalty not exceeding five hundred dollars.

**Disclosure of information.** **30.** If any person discloses any information obtained by him in connection with the administration or execution of this Act, he is, unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained or, where the information relates to the carrying on on any premises of any trade or industry, with the consent of the occupier of those premises;
- (b) in connection with the administration or execution of this Act; or
- (c) subject to the provisions of section twenty-eight of this Act, for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings,

guilty of an offence against this Act and liable to a penalty not exceeding one thousand dollars.

**Serving of notices.** **31.** Any notice under section fifteen, subsection four of section twenty, section twenty-two, or subsection one of section twenty-eight, and any instrument under subsection four of section sixteen or section twenty-six, of this Act may be served—

- (a) by delivering it personally to the person to whom it is addressed;

(b)

*Clean Waters.*

- (b) by delivering it to the place last shown in the records of the Under Secretary as the place of abode or business of the person to whom it is addressed and by leaving it there with some person for him; or
- (c) by posting it by certified mail in an envelope duly stamped and addressed to the person to whom it is addressed at the place last shown in the records of the Under Secretary as his place of abode or business.

**32.** (1) Any instrument or notice purporting to be an instrument or notice issued or made for the purposes of this Act (including subsection three or four of this section) and to have been signed by the Minister, the Under Secretary or the chairman of the Board shall be admissible in any proceedings under this Act and shall, in the absence of evidence to the contrary, be deemed to be such an instrument or notice and to have been so signed.

(2) Proof shall not, in the absence of evidence to the contrary, be required of the appointment of the Under Secretary or the chairman or any member of the Board.

(3) A certificate signed by the Under Secretary certifying any one or more of the following matters, that is to say—

- (a) that a notice, a copy of which is set out in the certificate, was for the purposes of section twelve of this Act published in the Gazette or a newspaper specified in the certificate on a day so specified;
- (b) that a person was, or was not, at a time or during a period so specified, the holder of a licence;
- (c) that a licence was or was not, at a time or during a period so specified, subject to conditions so specified;
- (d) that a licence was, at a time so specified, revoked, or suspended for a period so specified;

(e)

No. 78, 1970

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- (e) that a condition attached to a licence was, at a time so specified, revoked or varied;
  - (f) that a new condition was, at a time so specified, attached to a licence;
  - (g) that a drain was or was not specified in a licence as a drain from which pollutants may be discharged into any waters;
  - (h) that an approval for the installation, construction or modification of any apparatus, equipment or works so specified was, or was not, given under section nineteen of this Act;
  - (i) that any such approval was, or was not, given subject to conditions so specified;
  - (j) that an instrument referred to in subsection four of section sixteen of this Act was executed by the Under Secretary on a day so specified and that the instrument contained a direction so specified; or
  - (k) that a person was or was not, at a time or during a period so specified, an authorised officer,

is admissible in any proceedings under this Act and shall be prima facie evidence of the matters so certified.

(4) A document certified—

- (a) by the Under Secretary to be a true copy of an instrument made by the Minister under subsection one of section twenty-six of this Act or a true copy of a notice under subsection one of section twenty-eight of this Act; or
- (b) by the chairman of the Board to be a true copy of a notice made under subsection one of section fifteen of this Act,

is admissible in any proceedings under this Act as if it were the original document of which it purports to be a copy.

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**33.** (1) Proceedings for an offence against this Act or the regulations may be taken before a court of petty sessions held before a stipendiary magistrate sitting alone or before the Supreme Court in its summary jurisdiction. No. 78, 1970  
Proceedings  
for  
offences.

(2) Proceedings for an offence against this Act or the regulations shall not be instituted without the written consent of the Minister or of such officer of the Department as may be authorised in writing by the Minister for the purposes of this subsection.

(3) If proceedings in respect of an offence against this Act or the regulations are brought in a court of petty sessions held before a stipendiary magistrate, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, two thousand dollars (including any daily penalty) or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(4) If proceedings in respect of an offence against this Act are brought in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

**34.** Where any person has been convicted of an offence against this Act arising under section sixteen of this Act the court by which he is convicted, in addition to imposing a penalty for the offence, may order that person to take such steps within such time as may be specified in the order to prevent the continuance or recurrence of the offence and may upon application enlarge the time so specified; and if, upon the expiration of the time originally specified or so enlarged the order has not been complied with, the person so convicted shall be liable to a penalty not exceeding five thousand dollars for every day that the non-compliance continues after that time. Power to  
order con-  
travention  
to be  
remedied.

**35.**

No. 78, 1970 **35.** Nothing in this Act or the regulations affects any right that a person may have under any rule of law to restrict or prevent, or to obtain damages in respect of, the pollution of any waters.

Other rights to restrict or prevent pollution, etc., not affected.

Regulations. **36.** (1) The Governor may make regulations, not inconsistent with this Act for or with respect to—

- (a) the issue, renewal, revocation, suspension or transfer of licences and the granting of approvals under subsection one of section nineteen of this Act;
- (b) prescribing standards for the purpose of determining when matter is to be treated as poisonous, noxious or polluting for the purposes of this Act;
- (c) prescribing tests for the determination of the extent of pollution of any waters and providing that any determination made in accordance with those tests shall be conclusive evidence of the extent of pollution of any waters in respect of which the tests have been made;
- (d) requiring, or empowering the Under Secretary to require, the installation, maintenance and operation of apparatus or equipment for the measuring, sampling or analysing of pollutants, or effluents containing pollutants, that are discharged or likely to be discharged into waters from any premises;
- (e) the manner of installing, maintaining and operating any apparatus or equipment referred to in paragraph (d) of this subsection;
- (f) the recording by any apparatus or equipment referred to in paragraph (d) of this subsection or otherwise of any measurements or analyses made by means of any such apparatus or equipment;
- (g) the marking of places where pollutants are discharged into any waters;

(h)

*Clean Waters.*

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- (h) prohibiting or regulating bathing, swimming or boating or any other aquatic activity specified in the regulations in, on, or around any waters that form part of any public water supply system; No. 78, 1970
- (i) the classification by the Under Secretary of any waters as classified waters;
- (j) the hearing by the Board of objections referred to in section thirteen, or appeals referred to in section twenty-five, of this Act;
- (k) exempting any persons or class of persons, or any premises or class of premises, from any specified provision or provisions of this Act, in such circumstances, if any, and subject to such conditions, if any, as may be specified in the regulations;
- (l) generally, the prevention, control, abatement or mitigation of the pollution of waters;
- (m) prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The provisions of section 26B of the Public Health Act, 1902, do not apply to regulations made under this Act.

(3) The regulations may impose a penalty not exceeding five thousand dollars for an offence against the regulations and in the case of a continuing offence a further penalty not exceeding two thousand dollars for each day the offence continues.

(4) Regulations under this section may be so made as to apply to the whole of the State or to any specified part or parts thereof, to all waters or to any specified waters or classes of waters, to all premises or any specified class of premises or to any specified person or to any specified class or classes of persons.

(5)

*Clean Waters.*

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**No. 78, 1970** (5) Regulations made for the purposes of paragraph (b) or (c) of subsection one of this section may prescribe standards or tests by reference to standards or tests specified in any work or document that has been published and is referred to in the regulations or by reference to any such standards or tests as amended in any manner specified in any such work or document.

(6) Nothing in this section limits or restricts the conditions that may be imposed under section nineteen or twenty of this Act, but any such condition that is inconsistent with a regulation made under this section shall have no force or effect.

**Amendment of Act No. 41, 1919. Sec. 313. (Subjects for consideration.)** 37. The Local Government Act, 1919, is amended by inserting next after paragraph (o) of section three hundred and thirteen the following new paragraph :—

(p) whether the use of the building is likely to cause pollution (as defined in the Clean Waters Act, 1970) of any waters, as so defined.

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