

The Code of Alabama 1975

Title 22 HEALTH, MENTAL HEALTH, AND ENVIRONMENTAL CONTROL.

Chapter 22 WATER POLLUTION CONTROL.

Section 22-22-1

Short title; definitions.

(a) This chapter may be cited as the "Alabama Water Pollution Control Act."

(b) For the purposes of this chapter, unless otherwise indicated, the following terms shall have the meanings respectively ascribed to them by this section:

(1) COMMISSION. The Alabama Department of Environmental Management.

(2) WATERS. All waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce.

(3) POLLUTION. The discharge of a pollutant or combination of pollutants. A pollutant includes but is not limited to dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. Pollutant does not mean (a) sewage from vessels; or (b) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state, and if the commission determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(4) SEWAGE. Water-carried human wastes from residences, buildings, industrial establishments or other places, together with such ground, surface, storm or other waters as may be present.

(5) INDUSTRIAL WASTES. Liquid or other wastes resulting from any process of industry, manufacture, trade or business or from the development of natural resources.

(6) OTHER WASTES. All other substances, whether liquid, gaseous, or solid, or energy in the form of heat from all other sources including, but not limited to, any vessels or other conveyances traveling or using the waters of this state, except industrial wastes or sewage.

(7) PERSON. Any and all persons, natural or artificial, including, but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, other legal entity, business organization or any governmental entity and any successor, representative, responsible corporate officer, agent or agency of the foregoing.

(8) DISCHARGE. The addition, introduction, leaking, spilling or emitting of any sewage, industrial waste, pollutant or other wastes into waters of the state.

(9) DIRECTOR. The director of the Alabama Department of Environmental Management.

(10) CHAIRMAN. The director of the Alabama Department of Environmental Management.

(11) VICE-CHAIRMAN. The director of the Alabama Department of Environmental Management.

(12) WATER IMPROVEMENT COMMISSION. The Alabama Department of Environmental Management.

(13) ALABAMA WATER IMPROVEMENT COMMISSION. The Alabama Department of Environmental Management.

(Acts 1971, No. 1260, p. 2175, §2; Acts 1979, No. 79-277, p. 415, §1; Acts 1982, No. 82-612, p. 1111, §11(b).)

Section 22-22-2

Purpose of chapter; declaration of policy.

Whereas the pollution of the waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, it is hereby declared to be the public policy of this state and the purpose of this chapter to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide for the prevention, abatement and control of new or existing water pollution; and to cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives.

(Acts 1971, No. 1260, p. 2175, §1.)

Section 22-22-7

Technical and other advisory committees.

(a) In order to make available to the commission the services of an advisory body on such technical matters as the commission shall require, there is hereby created the Technical Advisory Committee to the commission which shall consist of the Commissioner of Agriculture and Industries, the Commissioner of Conservation and Natural Resources, the Director of the Alabama Development Office and the State Geologist, each of whom shall be members of said advisory committee throughout his respective term and until the appointment of his successor. The Technical Advisory Committee shall meet on call of the chairman of the commission and shall advise the chairman and the commission on any technical matters referred to it by the chairman of the commission. From time to time, as circumstances may require, a member of the Technical Advisory Committee may designate a representative of his department or agency to perform the duties of the member making the designation. Such person, if any, designated

pursuant to this subsection, shall have the powers and be subject to the duties and responsibilities of the officer appointing him. The staffs and departments or the members of the Technical Advisory Committees supporting them in their official capacity are hereby authorized and directed to render whatever assistance is necessary to further the duties of said advisory committee or to accomplish the purposes of this chapter.

(b) The commission is authorized to provide for the establishment of other advisory committees, appointment of the membership of such committees, scope of investigation and other duties of such committees. The period of duration of such committees and the terms of members of such committees shall be established by the commission. No salary or compensation shall be allowed any member of such committees for services thereon. Travel, subsistence, and other expenses incurred by members of such committees in the discharge of their official duties as members of such committees, and when approved by the chairman or the director by direction of the commission, shall be paid at the rate allowed other state employees as provided by Article 2 of Chapter 7 of Title 36 of this code from any funds which are, or may become, available for the purpose of this chapter.

(Acts 1971, No. 1260, p. 2175, §3.)

Section 22-22-9

Powers and duties; enforcement of orders; permits; civil penalties for violations.

(a) It shall be the duty of the commission to control pollution in the waters of the state, and it shall specifically have the following powers:

- (1) To study and investigate all problems concerned with the improvement and conservation of the waters of the state;
- (2) To conduct, independently and in cooperation with others, studies, investigation and research and to prepare, or in cooperation with others prepare, a program or programs, any or all of which shall pertain to the purity and conservation of the waters of the state or to the treatment and disposal of pollutants or other wastes, which studies, investigations, research and program or programs shall be intended to result in the reduction of pollution of the waters of the state according to the conditions and particular circumstances existing in the various communities throughout the state; and
- (3) To propose remedial measures insofar as practical means are available for abatement of such pollution.

To this end, the commission may cooperate with any public agency, including federal agencies, or with any private agency in the conduct of such experiments, investigations and research and may receive, on behalf of the state, any moneys which any such agency may contribute as its share of the cost under any such cooperative arrangement; provided, that such moneys shall be used only for the purposes for which they are contributed and any unexpended balance remaining after the conclusion of the experiments, investigation and research, or other uses for which such moneys were granted or donated, shall remain to the credit of the Water Improvement Commission Fund, unless the terms of such grant, gift or donation specifically require the return of any unexpended balance.

(b) It shall be the duty of the commission to conduct surveys with respect to the pollution of any waters of the state, either navigable or not navigable, to establish criteria standards and limitations for recognized limits of pollution and, independently or in cooperation with other agencies, both public and private, to promote, through education and demonstration, water conservation and the abatement of water pollution.

(c) The commission may require any person discharging, or applying to discharge, pollution into the waters of the state to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods, sample pollution, in accordance with such methods, at such locations, intervals and procedures as the commission shall prescribe and provide such other information as the commission reasonably may require. Any records, reports or information obtained under this chapter shall be available to the public; except, that upon a showing satisfactory to the commission by any person that records, reports or information, or a particular part thereof, other than effluent data to which the commission has access under this chapter, if made public, would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the commission shall consider such record, report or information, or particular portion thereof, confidential in the administration of this chapter. Nothing in this subsection shall be construed to prevent disclosure of such report, record or information to federal or state representatives as necessary for purposes of administration of any federal or state water quality control laws or when relevant in any proceeding under this chapter. Any member of the commission or its employees or agents, without advance notice and upon presentation of appropriate credentials, may enter any property or any industrial or other establishment at any reasonable time for the purpose of collecting such information, and no owner or official in charge shall refuse to admit such member, employee or agent for any purposes necessary to the discharge of his official duty. Any records, reports or information obtained by any member, employee or agent of the commission from any person shall be subject to the provisions of this subsection concerning confidentiality.

(d) It shall be the further duty of the commission to extend its cooperation and to advise industries and municipalities relative to the control of waste and other deleterious matter of pollutive nature and to make available to industries and municipalities the benefits of its studies and findings.

(e) It shall be the duty of the commission to exercise general supervision over the administration and enforcement of all laws relating to pollution of the waters of the state. Whenever the commission determines that any person is violating, or is about to violate, any of the provisions of this chapter, or any rule or regulation or order or permit of the commission promulgated thereunder, the commission may notify such person of such determination of the commission. The notice may be served by registered or certified mail or by an officer empowered to serve process under existing laws or by an officer or agent of the commission. Within such time as may be specified in such notice, such person shall file with the commission a full report showing steps that have been taken and are being taken to control such discharge or pollution. Thereupon, the commission may make such orders as in its opinion are deemed reasonable.

(f) It shall be the duty of the commission, after notice as provided in this subsection and after consideration of the purpose of this chapter, to establish such standards of quality for any waters in relation to their reasonable and necessary use as shall be in the public interest, recognizing that, because of variable factors and varied use of waters, no single standard of treatment and no single standard of quality are practical and that the degree of treatment of pollutants and other wastes must take into account

the present and future uses, and such general policies relating to existing or proposed future pollution as it shall deem necessary to accomplish the purposes of this chapter and to modify, amend or cancel the same. Any provision of law to the contrary notwithstanding, the quality of pollution existing in an effluent at any time shall be subject to the control of the commission if it creates a health hazard. Prior to establishing standards as provided in this subsection, the commission shall cause to be published in a newspaper of general circulation in each county within which any such waters, wholly or partially, are located, a notice in substantially the following form:

NOTICE

Of Water Improvement Commission

Notice is hereby given that a hearing before the Water Improvement Commission of the State of Alabama will be held on the ____ day of ____, 20__ , at ____ for the purpose of establishing standards of quality in those certain waters in the county or counties of ____, Alabama, described as follows (Describe Waters) _____. Anyone desiring to be heard may appear at said meeting.

Water Improvement Commission

By: _____

Director

Such notice shall be published at least 45 days prior to the holding of any hearing of the commission for consideration of such standards; provided, that in any county where no such newspaper is available for publishing said notice, the prescribed notice shall be posted at the county courthouse of said county at least 45 days prior to holding of any such hearing of the commission. Any hearing required by this subsection may be conducted by a hearing officer appointed by the commission.

(g) It shall be the duty of the commission to receive and examine applications, plans, specifications and other data and to issue permits for the discharge of pollutants, industrial wastes entering directly or through a municipal or private treatment facility and other wastes into the waters of the state, stipulating in each permit the conditions under which such discharge may be permitted.

(h) It shall be the duty of the commission, and it shall have the authority, to adopt rules and regulations to carry out the provisions of this chapter and to accomplish the purpose of this chapter.

(i)(1) It shall be the duty of the commission to issue, modify or revoke orders:

a. Prohibiting or abating discharges of pollutants or other wastes directly or indirectly, into the waters of the state; and

b. Requiring the construction of new treatment or disposal systems, or any parts thereof, or the modification, extension or alteration of existing treatment or disposal systems, or any parts thereof or the adoption of other remedial measures to prevent, control or abate pollution.

(2) It shall be the duty of the commission to issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate pollution, permits for the discharge of pollutants or other wastes into the waters of the state and for the installation, modification or operation of treatment or disposal systems or any parts thereof.

(3) Every person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the commission in writing for a permit and must obtain such permit before discharging such pollution.

(4) Any and all pollution is hereby declared to be a public nuisance and, if it creates, or is about to create, a health hazard, shall be subject to immediate control of the commission by order or injunction. Any order issued under this subsection shall be deemed to be final and conclusive for the purposes of this chapter.

(j) The commission may enter into agreement with the responsible authorities of the federal government and of other states, subject to the approval of the Governor, relative to policies, methods, means and procedures to be employed to control pollution of any interstate waters and to carry out such agreements by procedures provided for in this chapter. This power shall not be deemed to extend to the modification of any agreement with any other state concluded by direct legislative act, but, unless otherwise expressly provided, the commission shall be the agency for the administration and enforcement of any such legislative agreement.

(k) Whenever the commission has cause to believe that any person is violating any permit, order or rule or regulation promulgated by the commission, the commission shall cause a prompt investigation to be made in connection therewith. If, upon inspection, the commission discovers a condition which is in violation of the provisions of this chapter, or any permit, order or rule or regulation promulgated pursuant thereto, it shall be authorized to order such violation to cease and to take such steps necessary to enforce such an order. The said order shall state the items which are in violation and shall provide a reasonable specified time within which the violation must cease. The person responsible shall make the corrections necessary to comply with the requirements of this chapter, permit, order or rule or regulation promulgated pursuant thereto, within the time specified in the order. Nothing in this subsection shall be deemed to prevent the commission or the Attorney General from prosecuting any violation of this chapter, or any permit, order or rule or regulation promulgated pursuant thereto, notwithstanding that such violation is corrected in accordance with any order.

(l) Any duly designated employee of the commission may administer oaths to witnesses and may conduct hearings or investigations, and any such duly designated employee of the commission may sign and issue subpoenas requiring persons to appear before him or the commission to give testimony and requiring the production of any papers, books, accounts, payrolls, documents or records, and the commission, through its designated officers, shall have the power to serve said subpoenas upon any such person by sending a

copy of such subpoena through the United States mail, postage prepaid, which said mail shall be registered or certified with return receipt attached, and such service shall be complete when said registered or certified mail shall be delivered to said person and such receipt returned to the commission, or its designated employee, signed by the person sought to be subpoenaed. Obedience to a subpoena issued by the commission or any person authorized and designated by the commission to issue said subpoena may be enforced by application to any judge of the circuit court of the county in which said subpoena was issued or to the judge of any circuit court in which such person subpoenaed resides in the same manner as is provided by law for the grand jury of a county to enforce its subpoenas and with the same penalty as provided therefor for the failure of any person failing or refusing to comply with such subpoena.

(m) The commission, the Attorney General or any district attorney may commence a civil action for damages for pollution of the waters of the state including, but not limited to, any reasonable costs to prevent, minimize or clean up any damage resulting from pollution resulting from the wrongful act, omission or negligence of a person. Such civil actions may be filed in the name of the state by the commission or the Attorney General in the county or counties where pollution occurs or in which the defendant resides or does business. Both punitive and compensatory damages may be recovered in a case where pollution resulted from willful or wanton conduct on the part of the defendant; compensatory damages alone may be awarded when the pollution is caused by a negligent act or omission. Should a verdict for damages be obtained in any such action, the court shall also assess and tax as costs against the defendant all reasonable costs incurred by the particular department or agency which investigated the pollution in such action. Such costs, as testified to by sworn affidavit, shall be paid over by the court to that department or agency which performed the investigation.

(n) Any person who violates any of the provisions of, or fails to perform any duty imposed by, this chapter, or any permit or regulation issued under this chapter, or who violates any order or determination of the commission promulgated pursuant to this chapter and causes the death of fish or other wildlife shall, in addition to the penalties and remedies provided in subdivision (18) of Section 22-22A-5 and subsection (m) of this section, be liable to pay to the state an additional amount equal to the sum of money reasonably necessary to restock such waters or replenish such wildlife, as determined by the commission after consultation with the Game and Fish Division or the Marine Resources Division of the Department of Conservation and Natural Resources or any other governmental agency. Such sums as may thus be recovered, including punitive damages, if any, shall be credited, regardless of who instituted such action, to the game and fish and/or seafood fund as the Commissioner of Conservation and Natural Resources may determine. If the pollution has caused damage to fish and/or other wildlife in excess of \$5,000.00, as determined by the Alabama Department of Conservation and Natural Resources or any other governmental agency, and testified to by sworn affidavit, the damage shall be presumed to have been the direct and proximate result of negligence of the person shown to be responsible for such pollution, and the burden shall then be upon such person to prove freedom of negligence in causing the pollution in such cases.

(o) Nothing contained or authorized in this chapter and no civil action by the commission, or the Attorney General or any district attorney, as provided for in this section, shall be construed to impair, or abridge or abrogate any cause of action which any person or class of persons may have by any other statutory or case law for the alleviation, abatement, control or prevention of pollution or for the restitution for damages

resulting therefrom. Nor shall any provision of this chapter be construed so as to create a new cause or causes of action with reference to this subsection.

(Acts 1971, No. 1260, p. 2175, §4; Acts 1979, No. 79-277, p. 415, §4; Acts 1982, No. 82-612, p. 1111, §14(a)(2); Acts 1986, No. 86-542, p. 1053, §4.)

Section 22-22-11

Disbursement of funds.

Funds which are or may become available from any source, appropriations or otherwise, to accomplish the purposes of this chapter, shall be disbursed by the commission or by its director in accordance with rules prescribed by the commission.

(Acts 1971, No. 1260, p. 2175, §3.)

Section 22-22-13

Chapter supplementary to other laws; powers of Attorney General not affected.

This chapter is intended to supplement existing law, and no part of this chapter shall be construed to repeal any existing laws specifically enacted for the protection of health or the control of radiation. All remedies for the prevention and abatement of water pollution given to the Attorney General through the authority of this chapter are merely cumulative. Nothing in this chapter shall be interpreted as negating or destroying any common law or statutory right, duty, power or authority of the Attorney General of Alabama.

(Acts 1971, No. 1260, p. 2175, §8.)

Section 22-22-14

Criminal penalty for violation of chapter, etc.

(a) Any person who willfully or with gross negligence violates any provision of the chapter, or rule, regulation or standard adopted under this chapter, or any condition or limitation in a permit issued under this chapter shall be punished by a fine of not less than \$2,500.00 nor more than \$25,000.00 per day of violation or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not less than \$5,000.00 nor more than \$50,000.00 per day of violation or by imprisonment for not less than one year and one day nor more than two years, or by both.

(b) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed, or required to be maintained, under this chapter or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall, upon conviction, be punished by a fine of not more than \$10,000.00 or by imprisonment for not more than six months, or by both.

(Acts 1973, No. 1166, p. 1959; Acts 1979, No. 79-277, p. 415, §7; Acts 1986, No. 86-542, p. 1053, §5.)