



Control of Pollution Act 1974

1974 CHAPTER 40

PART II

POLLUTION OF WATER

Miscellaneous

46 Operations by water authorities to remedy or forestall pollution of water

- (1) Where it appears to a water authority that pollution injurious to the fauna or flora of a stream in its area has been caused in consequence of discharges made by virtue of a consent given by the authority in pursuance of section 34 of this Act after the date when this section comes into force or discharges made by virtue of a variation of a consent in pursuance of that section which was made by the authority after that date, then, subject to the following subsection, it shall be the duty of the authority—
- (a) to exercise the powers conferred on it by section 37(1) of this Act with a view to ensuring that further discharges of a kind which caused the injurious pollution in question are not made by virtue of the consent or variation or are not so made after such a period as the authority considers necessary for the purpose of allowing a person making discharges by virtue of the consent or variation to secure that the discharges are not of such a kind or to make arrangements for discontinuing the discharges; and
 - (b) in a case where the authority considers that a period is necessary for the purpose aforesaid, to carry out as soon as reasonably practicable such operations as the authority considers appropriate with a view to remedying or mitigating the injurious pollution in question; and
 - (c) to carry out, as soon as reasonably practicable or after the expiration of the said period, such operations as are necessary for the purpose of restoring the fauna and flora of the stream, so far as it is reasonably practicable to do so, to the state in which they were immediately before discharges were made by virtue of the consent or variation.

Status: This is the original version (as it was originally enacted).

- (2) If it appears to a water authority that injurious pollution of a stream in its area has been caused in consequence of discharges made as mentioned in the preceding subsection but that further discharges so made after such a period as the authority considers reasonable in the circumstances will, after the carrying out of such operations as are mentioned in paragraph (c) of that subsection, not cause injurious pollution of the stream, then—
- (a) the authority shall not be required by virtue of paragraph (a) of the preceding subsection to exercise the powers there mentioned; but
 - (b) it shall be the duty of the authority—
 - (i) to carry out as soon as reasonably practicable such operations as are mentioned in paragraph (b) of the preceding subsection, and
 - (ii) to carry out, after the expiration of the period mentioned in the preceding provisions of this subsection, such operations as are mentioned in paragraph (c) of the preceding subsection.
- (3) The duty imposed on a water authority by virtue of subsection (1)(a) of this section shall be performed notwithstanding anything in subsections (1) and (2) of section 38 of this Act; but—
- (a) where in the performance of that duty a notice is served in consequence of which compensation would have been payable in pursuance of subsection (4) of that section if the notice had been served by virtue of subsection (3) of that section, compensation shall be so payable as if the notice had been so served; and
 - (b) nothing in this section shall be construed as restricting the powers conferred on the Secretary of State by section 37(2) of this Act.
- (4) Where it appears to a water authority that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or is or was present in, any relevant waters in its area, the authority may, without prejudice to any duty imposed on it by virtue of the preceding provisions of this section, carry out in its area or elsewhere such operations as it considers appropriate—
- (a) in a case where the matter appears likely to enter such waters, for the purpose of preventing it from doing so ; and
 - (b) in a case where the matter appears to be or to have been present in such waters, for the purpose of removing or disposing of the matter or of remedying or mitigating any pollution caused by its presence in the waters or of restoring the waters (including the fauna and flora in them), so far as it is reasonably practicable to do so, to the state in which they were immediately before the matter became present in the waters;
- but nothing in this subsection empowers a water authority to impede or prevent the making of any discharge in pursuance of a consent given by any authority by virtue of section 34 of this Act
- (5) Where a water authority carries out any operations in pursuance of this section the authority shall, subject to the following subsection, be entitled to recover the costs of doing so—
- (a) in the case of operations in pursuance of subsection (1) or (2) of this section, from the persons who made the discharges in question; and
 - (b) in the case of operations in pursuance of the preceding subsection, from any persons who caused or knowingly permitted the matter in question to be present at the place from which it was likely in the opinion of the authority to

enter the relevant waters or, as the case may be, to be present in the relevant waters.

- (6) No such costs shall be payable by a person—
- (a) in so far as he satisfies the court in which it is sought to recover the costs that the costs were incurred unnecessarily ; or
 - (b) for any operations in respect of water from an abandoned mine which that person permitted to reach such a place as is mentioned in paragraph (b) of the preceding subsection or to enter relevant waters; or
 - (c) if he is a person to whom compensation is payable by virtue of subsection (3) of this section in respect of a consent to which the operations in question relate.
- (7) In determining the damage which a person has suffered in consequence of pollution in respect of which operations have been or may be carried out in pursuance of this section, account shall be taken of the extent to which it is shown that the damage has been reduced by operations in pursuance of this section and of the extent to which it is shown that the damage is likely to be so reduced.
- (8) In this section—
- " injurious pollution ", in relation to a stream, means pollution injurious to the fauna or flora of the stream; and
 - " variation ", in relation to a consent, means a modification in pursuance of subsection (1) of section 37 of this Act . of the conditions to which the consent is subject or, in the case of an unconditional consent, the subjection of the consent to conditions in pursuance of that subsection.