DELAWARE POLLUTION CASE

Interstate commission on the
Delaware River basin

Delaware Pollution Case.

In Chancery of New Jersey

Between

DEPARTMENT OF HEALTH OF THE STATE OF NEW JERSEY,
Complainant,

and

CITY OF GLOUCESTER CITY and CITY OF CAMDEN,
Defendants.

On Bill.

On Motion to Strike Answers.

SUPPLEMENTAL BRIEF *AMICUS CURIAE* ON BEHALF OF INTERSTATE COMMISSION ON DELAWARE RIVER BASIN.

HOBART, MINARD & COOPER,
Solicitors for Interstate Commission on Delaware River Basin,
1180 Raymond Boulevard,
Newark, New Jersey.

DUANE E. MINARD,
G. ADDISON HOBART,
Of Counsel.

February 15, 1943.

Arthur W. Cross, Inc., Law Printers, 71-73 Clinton Street, Newark, N. J.

INDEX.

PAGE

APPENDICES

TABLE OF CASES.

PAGE

NEW JERSEY REVISED STATUTES.

Delaware Polution Case.

In Chancery of New Jersey

Between

DEPARTMENT OF HEALTH OF THE STATE OF NEW JERSEY,
Complainant,

and

CITY OF GLOUCESTER CITY and CITY OF CAMDEN,
Defendants.

On Bill.
On Motion to Strike Answers.

SUPPLEMENTAL BRIEF *AMICUS CURIAE* ON BEHALF OF INTERSTATE COMMISSION ON DELAWARE RIVER BASIN.

Statement.

On November 25, 1942 the Attorney General, as solicitor for complainant, served notice of a motion to strike the answers of both defendants.

On December 16, 1942, notice of a motion, and an accompanying petition to this court, for leave to file a brief *amicus curiae* on behalf of Interstate Commission on Delaware River Basin (herein referred to as "Incodel"), a party in interest, and a copy of the proposed brief, were served upon the solicitors for defendants, respectively, in anticipation of the hearing of the Attorney General's motion

then set before His Honor, Albert S. Woodruff, Vice-Chancellor, for January 11, 1943.

On December 28, 1942, the originals of said notice, petition (with proof of service thereof), said brief *amicus curiae* and a form of an order with the Attorney General's consent endorsed thereon, for leave to file such brief, were sent to the Vice-Chancellor pursuant to Chancery Rule 116.

Prior to the hearing date of said motion, the City of Camden filed an amended answer repeating, in the same form as in the original answer, the first eleven defenses and adding thereto defenses numbered "Twelfth" to "Sixteenth", inclusive. Thereupon the hearing of the motion to strike the answers was postponed until February 15, 1943.

This supplemental brief *amicus curiae* is submitted to bring our main brief down to date and to discuss the additional defenses set up in the amended answer of the City of Camden, and, also, at the request of the Attorney General, to discuss certain aspects of the seventh defense of the City of Camden.

For convenience, the numbering of the points in our main brief will be continued herein.

Since our main brief was sent to the Vice-Chancellor in typewritten form it has been printed by our client, and the printed form is submitted to court and counsel in substitution for the typewritten form. References thereto herein are given for the printed form.

A Correction.

In our main brief, and in Point I (p. 8, l. 6 of text) the word "constitutionality" should be changed to "*un*constitutionality", in the second line of the quotation from *State Board* v. *Newark Milk Co.*

ARGUMENT.

I-A.

Constitutional Objections—General.

Point I of our main brief cited one of the more recent opinions of the Court of Errors and Appeals in support of the proposition that "Statutes Are Presumed Constitutional". The original answer of defendant, City of Camden, pleaded eleven constitutional objections to the act in question. The amended answer brings this number up to sixteen.

Before considering these numerous objections *seriatim,* it is appropriate to amplify our Point I by stating some of the applicable general principles set forth by the most eminent authorities.

In Judge Cooley's Treatise on Constitutional Limitations (2d Ed., 1871), the circumstances under which a legislative enactment may be declared unconstitutional are enumerated and discussed. The following summary (sub paragraphs (a) to (g), inclusive) of applicable general principles are taken from that work.

(a) The task of considering the constitutionality of an act of the legislature is a delicate one, and only to be entered upon with reluctance and hesitation (p. 160, 182).

(b) As a general rule, a court will not pass upon a constitutional question, and decide a statute to be invalid, unless a decision upon that very point becomes necessary to the determination of the cause (p. 163).

(c) In any case where a constitutional question is raised, although it may be legitimately presented by the record, yet, if the record also presents some other and clear ground upon which the court may rest its judgment, and thereby render the constitutional question immaterial to the case, that course will be adopted, and the question of constitutional power will be left for consideration until a case arises which cannot be disposed of without considering it, and when consequently a decision upon such question will be unavoidable (p. 163).

Respecting the statements of law in the next above paragraphs (b) and (c), the discussions under Points III, IV, (pp. 12-27) VI and VII (pp. 48-50) of our main brief show that it is unnecessary to decide this act unconstitutional because the State Department of Health has, without it, ample authority to fix, and enforce by this suit, similar, or the same, standards of water quality, and this court has ample authority, both under its inherent equity powers and by express statutes, to grant the relief prayed in the complaint.

(d) The rule of law appears to be, that, except where the constitution has imposed limits upon the legislative power, it must be considered as practically absolute, whether it operates according to natural justice or not in any particular case (pp. 168-174). There is no provision

in the New Jersey constitution forbidding to the legislature the powers described in this act; on the contrary the authorities cited in Point III (pp. 12-27) of our main brief demonstrate the inherent powers of the sovereign, represented by the legislature, to do all that this act commands. Defendants are political subdivisions of, and created by, the state government. They have no independent, or inherent, rights, as citizens, against the acts of the state government, under either the federal or state constitution.

(e) A reasonable doubt of the validity of an act of the legislature must be resolved in favor of the legislation, and the act be sustained (p. 182-3).

(f) Whenever an act of the legislature can be so construed and applied as to avoid conflict with the constitution and give it the force of law, such construction will be adopted by the courts (pp. 184-185).

These principles set forth in Judge Cooley's work were cited, and fully discussed and sustained, in Mr. Justice Garrison's exhaustive opinion, delivered for the Court of Errors and Appeals (1909), in *Attorney-General* v. *McGuinness*, 78 N. J. L. 346, at pages 369-376. In *Attorney-General* v. *McKelvey*, 78 N. J. L. 621, 622, in an opinion of the same Court delivered by Mr. Justice Swayze, he said that these fundamental principles have been nowhere better stated than by Mr. Justice Garrison in the *McGuinness* case. They were cited and followed in the opinion of the same court delivered by Mr. Justice Heher in *State Board* v. *Newark Milk Co.*, 118 N. J. E. 504, 519 (1935).

Principles so well established, and consistently followed for so many years in New Jersey, are controlling in this case.

(g) The powers of the legislature spring from the very nature of free government, and depend for their enforcement upon legislative wisdom, discretion and conscience. The legislature is to make laws for the public good, and not for the benefit of individuals. What is for the public good, and what are public purposes, are questions which the legislature must decide upon its own judgment; and in respect to which it is vested with a large discretion which cannot be controlled by the courts. Where the power which is exercised is legislative in character, the courts can enforce only those limitations which the constitution imposes, and not those implied restrictions which, resting in theory only, the people have been satisfied to leave to the judgment, patriotism and sense of justice of their representatives (p. 128-129).

In *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495 (May 24, 1937) (then) Mr. Justice Stone, in the opinion of the court, said:

> *(p. 510)* "This restriction upon the judicial function, in passing on the constitutionality of statutes, is not artificial or irrational. A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function."

In *Williams* v. *Baltimore,* 289 U. S. 36, Mr. Justice Cardozo expressed the opinion of the court, as follows:

(p. 42) "It is not the function of a court to determine whether the public policy that finds expression in legislation of this order is well or ill conceived."

* * * * * *

"The judicial function is exhausted with the discovery that the relation between means and ends is not wholly vain and fanciful, an illusory pretense. Within the field where men of reason may reasonably differ, the legislature must have its way."

* * * * * *

" 'As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute'."

* * * * * *

"The assailants of the statute have the burden of proving everything essential to their case."

* * * * * *

(p. 45) "The General Assembly, weighing these and other considerations, has found them adequate to justify a temporary exemption from the burdens of taxation. Nothing in the Constitution of Maryland or in the decisions of her courts enables us to say that there has been a clear abuse of power. We may not nullify for doubt alone. There must be something near to certainty. We do not reach it here."

* * * * * *

(p. 46) "The problem in last analysis is one of legislative policy, with a wide margin of discretion conceded to the lawmakers. Only in cases of plain abuse will there be revision by the courts."

The Statute in Question Is a Declaratory Act.

The statute in question is, in effect, merely a declaration of existing law. As shown by the authorities cited under our point III (pp. 12-27) there is nothing new in this statute except that a standard of quality of water, which the State Department of Health already had the power to fix and enforce, is now specified by the legislature, for the information of all parties interested. This may be regarded as a statute declaratory of the common law powers to abate public nuisances and to protect the health and welfare of the people of the state, by appeal to the injunctive powers of the Court of Chancery which existed in England "of a very ancient date", 3 *Daniel's Chy. Pl. & Pr.* 1740-1, and which were confirmed in the Court of Chancery in New Jersey by Article XXII of the Constitution of July 2, 1776 (*1 Comp. Stat. xxxii*) and again by Article X (Paragraph 1), of the present Constitution.

A declaratory statute is one which is passed in order to put an end to a doubt as to what is the common law, or the meaning of another statute, and which declares what it is and ever has been, *Cooley's Const. Lim.* (2d ed.) page 93. The act in question is just that. It prescribes the test standards applicable under the implied powers of the State, the enforcement of which the legislature has committed to the State Department of Health.

IV-A.

The Alleged Delegation of Legislative Power.

The third defense filed by both defendants, alleging that the adoption in the act of minimum standards of purety to be ascertained according to "Standard Methods for the Examination of Water and Sewage", promulgated by the American Public Health Association, constituted an unlawful delegation of legislative authority, is discussed under point IV of our main brief (pp. 27-40).

The act in question specifies the territorial limits of the several zones (*Art. II, pp. 481-2*). It also specifies the characteristics and extent of pollution which are to be avoided to preserve the quality of the water in each zone (*Art. III, pp. 483-7*). The "Standard Methods for Examination of Water and Sewage", complained of, do not prescribe the standards of purety required by the act; they are specified merely as the scientific tests by which "analyses and tests regarding the minimum requirements herein prescribed, shall be determined" (*Art. III, p. 487*). This is no more than prescribing that specified temperatures shall be determined by centigrade, or fahrenheit, or that specified weights shall be determined according to troy or avoirdupois tables.

Incidentally, it is observed that in the Tri-State Compact between New Jersey, New York and Connecticut, adopted by New Jersey in Chapter 321, laws of 1935 *(p. 1041)*, under which the Interstate Sanitary Commission was created *(R. S. Title 32, sub-title 7, chapter 18)* to control and abate pollution in New York Harbor and adjacent

waters, and in tributary streams, the territory is classified according to conditions *(R. S. 32:18-3)*, and classified standards of purity are prescribed for various zones according to the use and adaptability of the waters, with power given to the commission to vary the classifications and standards as experience shall indicate *(R. S. 32:18-7, 8)*. In all essential respects the provisions of that compact are comparable with those of chapter 146 of the laws of 1939 involved in this case. The only material difference is that that compact did not, as the act of 1939 did, specify the scientific method of analysis for determining sanitary conditions, but left the commission free to adopt its own methods of analysis.

The same is true of Article VI of the Ohio River Valley Water Sanitation Compact, entered into by the states of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Tennessee and West Virginia, put into operation in 1940 (33 U. S. C. A. § 567a).

The authorities cited in Point IV of the main brief show that the legislature, or the State Department of Health, may adopt, and the court may take judicial notice of, recognized scientific methods, or analyses, for determining standards of purity of water and for other purposes.

In addition to what is there shown of the authenticity, and official character, of "Standard Methods", the court's attention is directed to certain additional authorities. In "*Library Guide for the Chemist*" (1st Ed.), by Byron A. Soule, published by McGraw-Hill Book Co., N. Y. (1938) appears the following, under the heading of "'Official' Methods":

> "Frequently the analyst is called upon to test materials for the purpose of determining whether

they meet certain specifications either governmental or as agreed upon in business transactions. In all such cases he should use methods having legal status. A few of the more important sources of information regarding acceptable procedures are given in the following list."

* * * * * *

"American Public Health Association, 'Standard Methods for the Examination of Water and Sewage', American Public Health Association, New York", for "Physical, Chemical and bacteriological examinations".

As already shown, these "Standard Methods" have been adopted as "official," by the United States Treasury Department. They are also recognized as "official" in other scientific works, *"Lunge & Keane's, Technical Methods of Chemical Analysis"*, by Charles A. and Thorne Kean (Vol. 3), published by Gurney & Jackson, London, (1931); *Handbook of Chemistry* (4th ed.), by Norbert A. Lange, published by Handbook Publishers, Inc., Sandusky, Ohio, (1941); *"Thorpe's Dictionary of Applied Chemistry"*, by Jocelyn Field and Whiteley Thorpe, supplement, vol. 2.

These additional authorities and references have been supplied by the Research Bureau of Encyclopedia Britannica.

What was said on this subject in the main brief, supplemented by the above under this Point IV-A, demonstrates the lack of merit of the third defense.

VIII.

The Seventh Defense of the City of Camden.

(Non-Concurrence of Pennsylvania.)

The seventh defense filed by the City of Camden alleges that Zone III in said agreement referred to in Chapter 146, P. L. 1939 is totally within the State of New Jersey and the Commonwealth of Pennsylvania and the Commonwealth of Pennsylvania has not approved or ratified said agreement and said agreement is ineffective in said zone to accomplish its purposes and is therefore unreasonable, inequitable and unjust.

In the first place, the title to the bed of the river, and the river itself, east of the thalweg of the stream in zone III, which are tidal waters, vests in the State of New Jersey *3 Kent's Com.,* 427, 429; *Farnham on Waters,* Sec. 7, page 30; *Corfield* v. *Coryell,* 4 Wash. C. Ct. Rep. 370, 384; *Gough* v. *Bell,* 21 N. J. L. 160, 22 N. J. L. 441-454, *aff.* 23 N. J. L. 624, 654; *McCarter* v. *Hudson County Water Co.,* 70 N. J. E. 527, 528, *aff.* 70 N. J. E. 695.

In the *McCarter* case both courts held (Chy., 70 N. J. E., at p. 530, and the Court of Errors and Appeals, 70 N. J. E., at p. 701) that the state "has complete dominion" over the waters within its territorial limits, and has the right and duty, *independent of any statute,* to protect its citizens in the public enjoyment of its streams. Between December 21, 1771 (*Allison's Laws,* p. 347) and the passage of (but excluding) the act in question, sixty-six separate acts of the New Jersey legislature were passed in which this state

asserted its sovereign right of title and jurisdiction to protect Delaware River from pollution, obstructions, or otherwise. Many more are listed in *Hood's Index* (1903 ed.) (pp. 375-380) and in Compiled Statutes. The sixty-six acts which have been examined are exclusive of (and in addition to) the compacts, and joint, or concurrent, enterprises, or purposes, affecting Delaware River, hereinafter listed under point X of this supplemental brief.

This digression, and what is later shown under this point demonstrates that the concurrence of Pennsylvania is totally unnecessary, and that this seventh defense is entirely irrelevant to the issues of this case.

In addition, the authorities cited in the discussion of the fifteenth defense, under point XII, and those cited under point I-A, of this supplemental brief, show that questions of unreasonableness, inequitableness and injustice, upon which the seventh defense is rested, are not matters within the jurisdiction of this court, or matters of which the City of Camden can complain of in any jurisdiction, except to the legislature itself.

Before this act was passed copies of resolutions of the departments of health adopting the reciprocal agreement by all four states involved (New Jersey, June 7, 1938; New York, June 8, 1938; Pennsylvania, June 23, 1938; Delaware, June 28, 1938) were in the possession of the Department of Health of the State of New Jersey, and were within the knowledge of the legislature of New Jersey when the act in question was passed. The statute recites (at page 479) such adoption by all four states. The truth of that recital of facts by the legislature must be accepted, and is not open to judicial question.

The discussion under point III of our main brief shows that the State Department of Health has the power, under other statutes there cited, to adopt and enforce all of the sanitary standards in question, within the territorial limits of New Jersey, indepedent of the act in question. The inherent right of this court to grant injunctive relief, independent of any statute, was fully discussed by Chancellor Green in *Holsam* v. *Boiling Springs Bleaching Co.*, 14 N. J. E. 335, 342.

References to, and quotations from, Chancellor Walker's opinion in *State Board of Health* v. *Town of Phillipsburg*, in our main brief (p. 25) and the discussion therein under "State Jurisdiction over Delaware River" (p. 26-7), clearly dispose of this defense.

A similar defense was urged in *Trenton Board of Health* v. *Hutchison*, 39 N. J. E. 218, 220, wherein Vice-Chancellor Bird, referring to the fact that others may also have polluted a stream, said (p. 220):

> "It has been pressed upon my attention that many others are equally or more guilty. This I cannot consider. I allowed some testimony on this point, not because I thought it admissible, but that the defendants might be heard above, if I should be in error. I think each one is separately liable for the nuisance to which he contributes. It is no shelter to the one charged that another may have aided directly or remotely, or otherwise."

That case was affirmed by the Court of Errors and Appeals in 39 N. J. E. 569.

The fact that pollution from other causes might also create a nuisance is no bar to an injunction. This is prac-

tically the unanimous holding of courts throughout the country. See cases collected in 46 A. L. R. 46.

The effectiveness of this act by its own terms is discussed in the next point (IX).

This defense has no merit and should be stricken out.

IX.

Twelfth Defense Filed by Camden in Its Amended Answer.

(Non-Concurrence of Other States.)

The twelfth defense filed by Camden alleges that the terms and provisions of Chap. 146, P. L. 1939 have not become effective in that an act substantially in the same form as said act has not been passed by the legislature and approved by the government of one of the other three states, constitutent to the Delaware river basin.

This defense undoubtedly refers to section 5 of the statute, which reads as follows:

> "5. The terms and provisions of said reciprocal agreement shall become effective upon receipt by the Secretary of State of this State of a certificate from the Executive Secretary of The Interstate Commission on the Delaware River Basin that an act in substantially the same form as this act has been passed by the Legislature, and approved by the Governor, of one of the other three States constituent to said Delaware river basin, together with a certified copy of said act of said State, and thereupon the Secretary of State shall advise the Department of Health of this State accordingly". *(p. 489.)*

The Executive Secretary of The Interstate Commission on the Delaware River Basin, under date of July 18, 1939, sent a certificate to the New Jersey Secretary of State, accompanied by a certified copy of the New York Act, stating that Chapter 600, Laws of New York, 1939 *(p. 1409)* "is an Act in substantially the same form as that which was passed by the Legislature of New Jersey and approved by the Governor." A copy of that certificate and of the New York Act are attached hereto as appendices "A" and "B", respectively.

On July 26, 1939, the Secretary of State advised the New Jersey Department of Health that he had received such certificate and a certified copy of the New York Act. A copy of that letter is attached hereto as Appendix "C".

These documents are covered by the certificate of the Secretary of State hereto attached as Appendix "D".

The New York act is "in substantially the same form" as Chapter 146 of the Laws of 1939. The only difference is that, while in the New Jersey act the recitals as well as the terms of the agreement are incorporated, the New York act contains the terms of the agreement, without the recitals, and the New York Department of Health is authorized and empowered to make and execute said agreement in the name of the State of New York. The object, and effect, of the two acts are the same and the provisions of the two acts are entirely harmonious. In each instance the respective departments of health are authorized and directed to enforce the agreement "within the territorial limits of this state, by the exercise of such administrative and legal authority and the institution and prosecution of

such actions or other proceedings, as may be necessary or appropriate, pursuant to the laws and practice of this state" (*N. J. Act sec. 3; N. Y. Act. sec. 10*).

An act, in substantial identity with the terms of the New Jersey Act was adopted by the legislature of Delaware in 1941 *(Del. P. L. p. 280, Ch. 93)*, but that act has not yet been certified to the Secretary of State of New Jersey. However, since the New Jersey act became effective when *one* of the constituent states had acted and its act had been certified as specified in section 5, the specified proceedings respecting the New York act was sufficient to make the New Jersey act effective.

The Twelfth defense is without foundation and should be stricken.

X.

The Thirteenth Defense Filed by Camden in Its Amended Answer.

(Intervention of An Alien Will.)

This defense alleges that the act in question is unconstitutional and void in that it permits an alien will to determine when it shall become effective, in violation of Article 3, paragraph 1, of the state constitution. That paragraph reads as follows:

"1. Departments of government.

The powers of the government shall be divided into three distinct departments—the legislative, executive and judicial; and no person or persons belonging to, or constituting one of these departments,

> shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided."

It is assumed that this objection is directed to the provision of section 5 of the act providing that its going into operation depended upon concurrent action by another state, evidenced by the final act of the Secretary of State (p. 489).

It is not essential that a legislative act shall become operative at the time it leaves the hands of the legislature, and is approved by the Governor. It may be conditional, and its taking effect may be made to depend, upon some subsequent event. Legislation may in some cases be adopted, of which the parties interested are at liberty to avail themselves, or not, at their option. In these cases the legislative act is regarded as complete when it has passed through the constitutional formalities necessary to perfected legislation, notwithstanding the fact that its actually going into operation as a law may depend upon its subsequent acceptance. *Cooley, Const. Limitations* (2d ed. 1871), 117-118. This question was considered in *Texas Co.* v. *Dickinson,* 79 N. J. L. 292 (1910), where a New Jersey statute was upheld which imposed upon foreign corporations seeking to do business in this state the same license fees as were imposed upon New Jersey corporations by the laws of the home state of such foreign company. Mr. Justice Reed, delivering the opinion of the Supreme Court, said (p. 296-7):

> "The constitutionality of these statutes has been upheld against the objection that they involve the passing of laws which are to take effect upon the

contingency of certain legislation in other states, since it is competent in the legislature of a state in its providence to enact statutes which become operative only upon the happening of the contingency named therein. *19 Cyc. 1265.*

The most thoroughly discussed case in which the ability of the legislature to enact statutes of this character is vindicated, is People *v.* Philadelphia Fire Association, 92 N. Y. 311. Similar conclusions were reached in Home Insurance Co. *v.* Swigert, 104 Ill. 653, and in Phoenix Insurance Co. *v.* Welch, 29 Kan. 672, Mr. Justice Brewer writing the opinion. The validity of our legislation was recognized in the case of State *v.* Parker, 26 Vroom 357 (55 N. J. L.).

The fact that the contingency arose, or was controlled by the legislation of a foreign state, did not within the meaning of the constitution, incorporate the foreign legislation into the local statute. Although the constitution of the State of New York contains a clause similar to the clause in ours invoked in this case, it seems not to have been invoked as being prohibitive of the legislation dealt with in the case of People *v.* Philadelphia Fire Association, supra."

A similar statute was upheld in *State* v. *Insurance Company of North America,* 115 Ind. 257.

In the case of *Home Insurance Company* v. *Swigert,* 104 Ill. 653, 665, the court said (14a C. J. 1269, note):

(p. 1269)

"Where the contingency upon which the ultimate operation of a law is made to depend, consists of a vote of the people, or the action of some foreign deliberative or legislative body, as is the case here, it is erroneous to suppose the legislature in

such cases abandons its own legislative functions, o delegates its powers to the people in the one cas or to such foreign deliberative or legislative body i the other. In either case the law is complete whe it comes from the hands of the legislature, otherwis it would be inoperative and void, for we fully recog nize the principle a law properly so called, canno have a mere fragmentary or inchoate existence; an even if it could, neither the people by a vote, nor an other independent body, could complete the unfin ished work of the legislature, and thus make it a law But while this is so, nothing is better settled than that the operation and even remedial character of a perfect and complete law may, by virtue of limitations contained in the law itself, based upon contingent extrinsic matters, be enlarged, diminished, or wholly defeated. Such laws, though adopted absolutely and perfect in all their parts, yet by their own limitations they are applicable to a hypothetical condition of things only, and which may or may not ever happen. That it is perfectly competent for the legislature to pass such laws is shown by long legislative experience, and a decided weight of judicial authority. Indeed, we have not the slightest doubt of the validity of laws of this character, and to hold otherwise would clearly lead to the most serious consequences."

In *Minneapolis St. P. and S. Ste. M. R. Co.* v. *Comm.*, (136 Wis. 146) 17 L. R. A. (new series) 821, the court said:

(p. 830)

"The division of governmental powers into executive, legislative, and judicial, while of great importance in the creation or organization of a state and from the viewpoint of institutional law and oth-

erwise, is not an exact classification. No such exact delimitation of governmental powers is possible. In the process of enacting a law there is frequently necessary the preliminary determination of a fact or group of facts by the legislature; and it is well settled that the legislature may declare the general rule of law to be in force and take effect upon the subsequent establishment of the facts necessary to make it operative, or to call for its application, as the bankruptcy law of the United States with referance to legislative action regarding exemption laws existing or to be thereafter enacted (Hanover Nat. Bank *v.* Moyses, 186 U. S. 181, 46 L. ed. 1113, 22 Sup. Ct. Rep. 857); or the law may be made to take effect conditionally, depending upon the action of the legislature of another state fixing the amount to be exacted (Phoenix Ins. Co. *v.* Welch, 29 Kan. 672; Section 1221, Stat. 1898, and cases in note). * * *

"In short, as said by Redfield, Ch. J., in State *v.* Parker, 26 Vt. 357, 'it makes no essential difference what is the nature of the contingency, so it be an equal and a fair one, a moral and legal one, not opposed to sound policy, and so far connected with the object and purpose of the statute as not to be a mere idle and arbitrary one.' "

There are instances, too numerous to mention, of acts describing frames of municipal government which are complete as enacted but which are not intended to go into operation unless, and until, accepted and adopted on a referendum by the people of one or more municipalities.

The question of the intervention of an "alien will" in determining when a statute goes into operation is discussed in the opinion of the Court of Errors and Appeals delivered by Mr. Justice Garrison in *Attorney-General* v. *McGuin-*

ness, 78 N. J. L. 346, at pages 377-385 (1909). That opinion reviews all of the preceding authorities on that question. The distinction there made is between acts which depend for their completion upon additional legislative action by "some other will", and those that are complete when they leave the hands of the legislature, but become effective only when accepted by local adoption. In other words an act that is incomplete without further legislative action is held to be void. On the other hand an act which is complete when it leaves the hands of the legislature, but comes into operation upon the happening of a specified event is not a delegation of legislative power to an alien will, and is therefore valid. The situation respecting such an act is no different from a provision of an act that it shall not become effective until a given date, or until a specified event, or concurrent action by another state, occurs.

A notable example of such an instance appears in the Workmen's Compensation law *(R. S. 34:15-7).* That section makes the act applicable only to employers and employees who shall jointly accept its provisions. Such an optional provision occurs in the Workmen's Compensation laws of nearly all of the states having such laws, and has been in the New Jersey law since 1911 *(P. L. 1911, p. 135, Ch. 95).* That act, as a whole, was sustained in *Troth* v. *Millville Bottle Works,* 86 N. J. L. 558, *aff.* 89 N. J. L. 219, and many other decisions.

The act in question was complete in all of its terms when it left the hands of the legislature. The added section 5 merely fixed the time when it should become operative, and is characteristic of all concurrent, complementary and reciprocal acts of legislation, which are expressly recognized as a class in section 1:1-3 of revised statutes.

All such laws, by their terms, go into operation only if, and when, one or more other states pass a similar act for the same concurrent or cooperative purpose. To such acts, section 1:2-3 of revised statutes does not apply.

In all such cases the action of an "alien will" intervenes only to put the act into operation. There are two classes of such legislation represented by very numerous instances on our statute books:

(a) Acts to create joint political bodies or corporations to exercise unitary control over interstate areas or facilities, and whose ultimate operative date depends upon an act of Congress.

(b) Concurrent, complementary, or reciprocal acts, like the present (see point II of our main brief, pp. 8-12), in which two or more states undertake the same, or similar, administrative functions in adjacent areas, or on the same subject, within their own territorial limits, respectively.

Both classes require the concurring action of the states involved.

The first class (a) is represented by state laws ratifying and adopting the numerous interstate compacts to which New Jersey is a party. They need not be enumerated here, or referred to other than by citation. *Compiled Statutes, volume 4, pages 5360-1, 5365, 5373, 5377; R. S. 52:28-15; 52:28-43, 45; 32:3-15; 32:8-12; 32:17-12; 32:18-21.*

In many, if not all, of those instances the legislature has passed, not only the original acts but also, numerous subsequent acts for appropriations for, or additional regulations of, such joint enterprises, which were not conditioned upon the approval of Congress, but which provided that

they should become effective upon the passage of simila concurring or reciprocal acts of other states. See laws re lating to the Port of New York Authority, *2 Cum. Supp 3724; R. S. 32:1-61, 82, 84-85, 105, 108;* Delaware Boundary *R. S. 52:28-35 to 38;* Delaware River Camden-Philadelphi Bridge, *R. S. 32:3-17; 32:8-14;* Interstate Sanitary Com mission, *R. S. 32:18-22;* Atlantic States Marine Fisherie Commission, *R. S. 32:21-1, et seq.;* and Palisades Interstat Park, *R. S. 32:14, 15, 16, 17.*

In the second class (b) numerous acts have been passe (without the approval of Congress) whose operation de pended upon the enactment by other states of similar con curring, complementary or reciprocal acts, including th laws relating to Delaware River boundary between Penn sylvania and New Jersey (1783) *4 Comp. Stat. 5369, 5371 R. S. 52:28-27, 28.* (The second paragraph of that act give each state concurrent jurisdiction over the river, *R. S 52:28-25);* Trenton Delaware Bridge, *N. J. P. L. 1798, p 321, sec. 17, Pa. P. L. 1798, p. 285;* Delaware & Raritan Canal, *P. L. 1824, p. 175;* Camden and Philadelphia Ferry *Pa. P. L. 1837-8, p. 25, sec. 3;* Belvidere Bridge over Dela ware River, *P. L. 1872, p. 1404;* Brownsburg Bridge ove Delaware River, *P. L. 1860, pp. 270-271;* Carpentersville Bridge over Delaware River *(P. L. 1854, p. 414);* Point Pleasant Bridge over Delaware River, *P. L. 1853, pp. 417 418;* Boundary between New York and New Jersey in Rari tan Bay (1888), *R. S. 52:28-22;* Gloucester County Tun nel, *R. S. 32:13A;* Cape May County Ferry, *R. S. 32:13B-14;* Inheritance Taxes, *R. S. 54:37-3;* Fire Insurance Com panies, *R. S. 54:18-7;* Finance and Insurance Companies, *R. S. 17:22-4;* Motor Vehicles, *R. S. 39:4-9.1, 39:3-15, 16, 17;* and the laws relating to the acquisition, construction and

operation of interstate (toll) bridges over Delaware River between New Jersey and Pennsylvania, *R. S. 32:9-1 to 16; 32:10-6; 32:11-1, 6; 32:11A-8.*

Between 1795 and 1903 thirty-four other acts were passed by the New Jersey legislature, authorizing the construction and operation of interstate bridges over Delaware River, which required concurrent legislative action by Pennsylvania *(Hood's Index "Bridges", pp. 171-180).* A good many of those bridges were built, and operated as toll bridges, under such concurrent legislation, by private corporations until they were taken over by the Delaware River Joint Toll Bridge Commission, organized pursuant to chapter 297 *(p. 527)* laws of 1912 *(R. S. Title 32, Chapter 8).*

Reciprocal legislation between nations is a long established practice in many matters of international commerce fisheries, sealing and other regulations, *Bouvier's L. Dict.,* (Rawle's 3rd Rev.) page 2839, and the laws of nations apply to the relations between sovereign states in all matters not expressly delegated to the federal government.

The above references show a consistent course of legislation followed during the past 160 years (1783-1943), without a single instance of judicial criticism or disapproval. The legislative history above related perfectly illustrates the wisdom of the statement at the end of the above quotation from *Home Ins. Co.* v. *Swigert,* 104 Ill. 653, 665, copied from the note in 14a Corpus Juris, page 1269:

> "Indeed, we have not the slightest doubt of the validity of laws of this character, *and to hold otherwise would clearly lead to the most serious consequences."* (Italics ours.)

A proper regard for the balance of equities involved in this defense requires that it be stricken, as well as for the reason that it has no inherent merit.

XI.

Fourteenth Defense Filed by the City of Camden in Its Amended Answer.

(Due Process.)

The fourteenth defense filed by Camden alleges that Chapter 146 of P. L. 1939 is unconstitutional and void in that it deprives the defendant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

The amendment reads in part as follows:

> " * * * nor shall any State deprive any person of life, liberty, or property, without due process of law * * *."

The defendant municipality cannot present this objection.

In *Jersey City* v. *Martin,* 126 N. J. L. 353, *Justice* Heher, delivering the unanimous opinion of the Court of Errors and Appeals, after noting that a municipality is merely a political subdivision of the state, and subject to its control, said:

> (p. 361)
>
> "The state's authority over the rights and property of its municipalities is not restricted by the contract or due process clauses of the Federal Consti-

tution. The state, 'at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. * * * The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it'. Hunter *v.* Pittsburgh, 207 U. S. 161; 28 S. Ct. 40; 52 L. ed. 151. See, also, Trenton *v.* New Jersey, *supra,* (262 U. S. 182); Worcester *v.* Worcester Consolidated Street Railway Co., 196 U. S. 539; 25 S. Ct. 327; 49 L. ed. 591."

The cases of *Trenton* v. *New Jersey,* 262 U. S. 182, at pages 187 and 188 (above cited) and *Newark* v. *New Jersey,* 262 U. S. 192, 196 are directly opposed to this defense.

In *Risty* v. *Chicago, R. I. & P. R. Co.,* 270 U. S. 378, 390; 70 L. ed. 641, 651, the United States Supreme Court said:

(p. 651)

"The power of the state and its agencies over municipal corporations within its territory is not restrained by the provisions of the 14th Amendment. Trenton *v.* New Jersey, 262 U. S. 182, 67 L. ed. 937, 29 A. L. R. 1471, 43 Sup. Ct. Rep. 534; and see Pawhuska *v.* Pawhuska Oil & Gas Co., 250 U. S. 394, 63 L. ed. 1054, P. U. R. 1919E, 178, 39 Sup. Ct. Rep. 526."

These authorities are sufficient to show that defendant is not competent to present this defense and it should be stricken.

XII.

Fifteenth Defense Filed by Camden in Its Amended Answer.

(Confiscation.)

The fifteenth defense filed by Camden alleges that Chapter 146 P. L. 1939 is invalid in that it takes defendant's property without first making just compensation therefor, in violation of Article 4, Section 7, Paragraph 8 of the N. J. Constitution.

This paragraph reads as follows:

> "Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners."

The power of the legislature to impose duties upon municipal corporations is complete, and their rights and franchises can never become such vested rights as against the state that they cannot be taken away. If the legislative action in these cases operates injuriously to individuals, the remedy is not with the courts, *Cooley, Const. Lim.*, pages 190-193, 233.

It is difficult to see how this provision affects the defendant municipality. The Department of Health is not a "person" nor a "private corporation", but is an agency of the state *(R. S. 26:2-1 et seq.)* and no *private* property is involved.

The paragraph of the constitution referred to states that "private" property shall not be taken. Obviously a municipal sewer system is public, and not private, property. Property held by the public, and for public use, is not within the letter or meaning of this clause. This was established by Chancellor Zabriskie in *Freeholders* v. *Red Bank Co.*, 18 N. J. E. 91, 93, as long ago as 1866, and is still the law of this state. This precise question is fully considered in *Van Cleve* v. *Passaic Valley Sewerage Commissioners*, 71 N. J. L. 183, where the City of Paterson challenged the constitutionality of an act of the legislature upon this very ground. It claimed a vested right to empty its sewage in the Passaic River, which was interfered with by the act there in question. The city claimed that this method of sewage disposal could not be abolished without compensation to it. It relied upon certain acts of the legislature as authority to dispose of its sewage in this manner and contended that, consequently, it was not maintaining a public nuisance. It also urged the fact that it had incurred large expense in installing its sewers, in reliance upon that legislative authority, and the long acquiescence on the part of land owners along the river, as grounds against injunction to restrain the continuance of such sewage disposal.

The discussion of this subject begins at page 223 of the opinion of the Supreme Court in that case, delivered by Mr. *Justice* Pitney.

Referring to *Simmons* v. *Paterson*, 15 Dick. Ch. (60 N. J. E.) 385, an opinion of the Court of Errors and Appeals cited on behalf of the City as sustaining legislative authority to empty its sewage in the river, the opinion of *Justice* Pitney states,

(p. 223-5)

"But it was not held in that case, and we fail t see how it can be held, that the legislative authorit referred to is irrevocable by the legislature. Th acts that conferred the authority have not any sem blance of contractual form or quality. And if the had, they would be none the less repealable so soon at least, as such repeal is demanded in the interes of the public health and safety. In Stone *v.* Missis sippi, 101 U. S. 814, 819, Chief Justice Waite said 'No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants'. In Butchers' Union Co. *v.* Crescent City Co., 111 *Id.* 746, 751, Mr. Justice Miller said: 'A wise public policy forbids the legis- lative body to divest itself of the power to enact laws for the preservation of health and the repression of crime'. See, also, New Orleans Gas Co. *v.* Louisiana Light Co., 115 *Id.* 650, 672; Mugler *v.* Kansas, 123 *Id.* 623, 664.

In our judgment, the acts under which Paterson was authorized to empty its sewage into the Passaic river amount merely to a legislative license, revoc- able at the will of the legislature; certainly, when- ever the public health and safety require. The act before us, in withdrawing that license—prohibiting further pollution of the river, and requiring that the sewage of the city shall hereafter be discharged into the sewers to be constructed under this act—is only a reasonable exercise of the police power of the state, subject to which power public and private rights and property alike are held.

It is perhaps unnecessary to discuss the question whether Paterson's rights in the sewers have such attributes of private property as would render them inviolable by the legislature. See *Dill. Mun. Corp.*

(4th ed.) secs. 66, 71; 20 *Am. & Eng. Encycl. L.* (2d. ed.), tit. *'Municipal Corporations'*, 1220. Even treating them as private property, they are subject to police regulations, such as this act imposes, to the end that their use may not unduly endanger the public health. State *v.* Wheeler, 15 Vroom 88, 91.

We are not willing, however, to assent to the notion that the municipal sewers, and the privilege of discharging them into the river, are held by the city as private property in such sense that the legislature cannot impair the city's rights therein without compensation. The municipal corporation is simply one of the governmental agencies of the state, and is subject to legislative control without limitation, saving such as the constitution imposes. The only limitation that is cited as pertinent to the present case is the prohibition of special laws, which, as we have already seen, is not violated. The constitutional provision that private property shall not be taken for public use without compensation has no applicancy. The sewers are already public property, the municipal corporation being but a public trustee, with powers conferred by the legislature for the purposes of the trust. Those powers may be revoked, and the trust resumed by the state, at the will of the legislature. Meriwether *v.* Garrett, 102 U. S. 472, 513; Essex Public Road Board *v.* Skinkle, 20 Vroom 641, 671; Millburn *v.* South Orange, 26 *Id.* 254, 257; Newark *v.* Watson, 27 *Id.* 667, 673."

That part of the decision was affirmed by the Court of Errors and Appeals at 71 N. J. L. 574, 577-579.

If there is a "taking of property" under the "police power", as here, even a private owner need not be compensated. *Manhattan Co.* v. *Van Keuren*, 23 N. J. E. 251;

American Print Works v. *Lawrence* (Court of Errors a
Appeals), 23 N. J. L. 590.

The only possible "property" involved would be t
right to discharge untreated sewage in the river. Such
"right" can never become vested in, or property of, even
private person. It is always subject to the police power
the state. Even private property taken under t
police power is not a taking for "public use" and there
no necessity to make compensation. *(6 R. C. L. 478, 480)*
In *State* v. *Wheeler,* 44 N. J. L. 91, Justice Magie, upholdi
a statute forbidding pollution, said:

(p. 91)

"Nor does such a construction render this a
objectionable. The design of the act is not to tak
property for public use, nor does it do so within th
meaning of the constitution. It is intended to re
strain and regulate the use of private property so a
to protect the common right of all the citizens of th
state. Such acts are plainly within the police powe
of the legislature, which power is the mere appli
cation to the whole community of the maxim, 'si
utere tuo, ut alienum non laedas'. Nor does such
restraint, although it may interfere with the profit
able use of property by its owner, make it an appro
priation to a public use so as to entitle him to com
pensation. Commonwealth *v.* Alger, 5 Cush. 53
Commonwealth *v.* Tewksbury, 11 Metc. 55. Of th
right of the legislature thus to restrain the use o
private property in order to secure the general com
fort, health and prosperity of the state, 'no questio
ever was or, upon acknowledged general principles
ever can be made, so far as natural persons are con
cerned'. Redfield, *C. J.,* in Thorpe *v.* Rutland R. R.

27 Vt. 149. The same view has been always held in this state, and notably in the case of State *v.* Common Pleas of Morris, 7 Vroom 72. It was also there held that the extent to which such interference with the injurious use of property may be carried, is a matter exclusively for the judgment of the legislature when not controlled by fundamental law.

Nor is there anything to render such legislation objectionable because in some instances it may restrain the profitable use of private property, when such use in fact does not directly injure the public in comfort or health. For to limit such legislation to cases where actual injury has occurred would be to deprive it of its most effective force. Its design is preventive, and to be effective it must be able to restrain acts which tend to produce public injury. Many instances of such an exercise of this power can be found. The state regulates the use of property in intoxicating liquors by restraining their sale, not on the ground that each particular sale does injury, for then the sale would be prohibited, but for the reason that their unrestricted sale tends to injure the public morals and comfort. The state is not bound to wait until contagion is communicated from a hospital established in the heart of a city—it may prohibit the establishment of such a hospital there, because it is likely to spread contagion. So the keeping of dangerous explosives and inflammable substances, and the erection of buildings of combustible materials within the limits of a dense population, may be prohibited because of the probability or possibility of public injury. Such instances might be indefinitely multiplied, but these are sufficient to illustrate this case. The object of this legislation is to protect the public comfort and health. For that purpose the legislature may restrain any use of private property

which *tends* to the injury of those public interes
That the pollution of the sources of the public wa
supply does so tend, no one will deny."

The fifteenth defense of the City of Camden is witho
merit and should be stricken.

XIII.

Sixteenth Defense Filed by the City of Camden in Its Amended Answer.

(Delegation of Judicial Power.)

The sixteenth defense filed by Camden alleges tha
chapter 146, P. L. 1939 is unconstitutional and void in tha
it is an unlawful delegation of judicial power, in violatio
of Article 3, section 1 of the Constitution of the State o
New Jersey. This is the same section mentioned in th
thirteenth defense *(supra)* and the section is quoted where
that defense is considered in this brief.

This defense is, in effect, so closely allied with the sec-
ond defense of both defendants discussed in point III of
our main brief (pp. 12-27) that a large part of that dis-
cussion, and the authorities, are applicable to this defense.
The complaint in the second defense was of an alleged dele-
gation of legislative power. Here it is of an alleged dele-
gation of judicial power.

Unless, and until, some particulars of this defense are
disclosed, it is absolutely inconceivable wherein this act
delegates any power to the State Department of Health
except some fact-finding, or discretionary powers, which

ve been discussed under point III of our main brief. The t is silent on judicial power, except that the enforcement the provisions of the act are to be accomplished by the institution and prosecution of such actions, suits or other roceedings as may be necessary or appropriate, as are now may hereafter be provided under the laws and practice this State." *(P. L. 1939, p. 489.)*

Nothing could be plainer or simpler than that.

A similar objection, on the ground of an alleged delegation of judicial power, was made to chapter 57, laws of 1913 (p. 91) in *Erie Railroad* v. *Board of Public Utility Commissioners,* 107 N. J. L. 409, 411-412 (affirmed on the opinion below, 109 N. J. L. 264; aff. 254 U. S. 394). It was there claimed that the statute giving certain powers to the Board of Public Utility Commissioners with respect to railroad crossings was unconstitutional because it impaired the judicial power in two respects: (a) the Chancery court, because of its general power to regulate conflicting easements (b) and the Supreme court because of its right to prosecute by indictment for a nuisance. Justice Parker said: *(p. 412)* "In view of the well settled and conceded powers * * * this proposition appears frivolous." This defense is also frivolous.

In *State Board* v. *Newark Milk Company,* 118 N. J. E. 504, 512-513, the Court of Errors and Appeals pointed out (as has been done elsewhere in this brief) that the power to restrain a nuisance, dangerous to the health of the community, is inherent in the courts of equity.

At page 513 of that opinion reference was made, with approval, to *Hutchinson* v. *Board of Health of the City of*

Trenton, 39 N. J. E. 569 involving, and sustaining, a st ute which expressly conferred upon local Boards of Hea the right to invoke the injunctive process of this court restrain violations of the law. The same direction as the means of enforcing the act here in question was giv to the State Department of Health *(P. L. 1939, Ch. 146, S 3, pp. 488-9),* and the Attorney General is designated l law to attend generally to all matters in which the sta is a party or in which its rights or interests are involve and to be sole legal advisor, attorney or counsel for all sta boards and represent them in all suits or actions of an kind that may be brought for or against them in any court of this state *(R. S. 52:17-2, pgfs. g. and h.).*

In *Plainfield Water Co.* v. *Board of Public Utilit Comm.,* 117 N. J. L. 18, Justice Parker overruled the con tention that the legislature had undertaken to confer ju dicial powers upon an administrative body, and held tha the Board of Public Utility Commissioners could determine whether an increased water rate should be permitted and when that rate should cease. The court stated that the power to order the refund of overcharges was analogous to the power to require a railroad to construct an over- head crossing, "which is every day practice."

The right of the Department of Health to bring an action to preserve water supply, abate pollution, etc., has been upheld in numerous cases cited under point III of our main brief.

The sixteenth defense has no merit and should be stricken.

Conclusion.

For the reasons set forth in our main brief, and this supemental brief, *amicus curiae*, it is respectfully submitted at defenses 1 to 5 inclusive in the answer of the City of oucester City, and defenses 1 to 5, inclusive, 7, and 10 to , inclusive, of the answer and amended answer of the ty of Camden, should each, and all, be stricken, pursuant the Attorney General's motion.

Respectfully submitted,

HOBART, MINARD & COOPER,
Solicitors for Interstate Commission
on Delaware River Basin,
1180 Raymond Boulevard,
Newark, New Jersey.

DUANE E. MINARD,
G. ADDISON HOBART,
Of Counsel.

February 15, 1943.

APPENDIX "A".

THE INTERSTATE COMMISSION ON THE DELAWARE RIVER BASIN
BROAD STREET STATION BUILDING, PHILADELPHIA,
PENNSYLVANIA

DELAWARE NEW YORK
NEW JERSEY PENNSYLVANIA

July 18, 1939

Hon. Thomas A. Mathis
Secretary of State
Department of State
Trenton, New Jersey

Dear Mr. Mathis:

"Chapter 146, P. L. 1939, New Jersey, is 'An Act To Promote Interstate Cooperation For The Conservation and Protection of Water Resources In The Delaware River Basin'.

"Section 5 of this Act reads:

> 'The terms and provisions of said reciprocal agreement shall become effective upon receipt by the Secretary of State of this State of a Certificate from the Executive Secretary of the Interstate Commission on the Delaware River Basin, that an Act in substantially the same form as this Act has been passed by the Legislature, and approved by the Governor, of one of the other three states constitutent to said Delaware River Basin, together with a certified copy of said Act of said state, and thereupon the Secretary of State shall advise the Department of Health of this state accordingly.'

"This letter is to certify that Chapter 600, Laws of New York, 1939, a properly executed copy of which is enclosed

is an Act in substantially the same form as that which was passed by the Legislature of New Jersey and approved by the Governor.

"Will you, therefore, kindly advise the Department of Health of New Jersey accordingly.

"Respectfully yours,"

DAVID W. ROBINSON
Executive Secretary

DWR
NNM
Enc.

Filed July 19, 1939.

THOMAS A. MATHIS,
Secretary of State.

APPENDIX "B".

LAWS OF NEW YORK.—By Authority

CHAPTER 600

AN ACT to promote interstate cooperation for the correction and elimination of future pollution and the abatement of existing pollution of the water resources in the Delaware river basin

Became a law May 31, 1939, with the approval of the Governor. Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. That part of the area of the Delaware river basin lying within this state is hereby established and de-

clared to be a component part of an interstate region for intergovernmental cooperation between this state and the states of New Jersey, Pennsylvania and Delaware, or either of them, to correct and eliminate pollution, as herein provided, of the water resources thereof by means of integrated plans, and the interstate commission on the Delaware river basin is hereby recognized as the duly established regional commission or agency of this state for the attainment of such intergovernmental cooperation. The four representatives of this state on the Delaware river basin commission shall be designated by the joint legislative committee on interstate cooperation during the continuance of such committee and thereafter shall be appointed by the governor, by and with the advice and consent of the senate, and shall serve during the term of the governor by whom they were appointed. Such representatives shall possess and exercise the powers conferred by this act, which may be necessary to effectuate the objectives and purposes of the agreement herein authorized, subject to the supervision and approval of the department of health.

§ 2. To consummate the purposes and objects enumerated in this act, the department of health is hereby authorized and empowered to make and execute, in the name of this state, but not inconsistent with law, an agreement with the appropriate officer, board, commission or other governmental agency or body, possessing and exercising similar and co-extensive functions and powers, of the states of New Jersey, Pennsylvania and Delaware, or either of them, in which shall be embodied ways and means, in accordance with the terms and provisions of this act, to effectuate such purposes and objects, including the creation of zones of operation and the adoption of standards of quality of water and other kindred subjects incidental thereto and correlative therewith in the Delaware river basin and the waters

and watershed of the Delaware river and its tributaries, and such department may, of its own volition or upon recommendation of the interstate commission on the Delaware river basin, propose and agree to modifications, additions or abolition of such zones and standards or any of the covenants of such agreement, as hereafter provided, whenever public health, and public welfare will be better served in the correction and elimination of pollution of the water resources of the Delaware river and its tributaries.

§ 3. In such agreement, each of the signatory states shall pledge to each of the other signatory states faithful cooperation in the correction and elimination of future pollution and in the correction of existing pollution of the waters of the interstate Delaware river and its West Branch from the New York-Pennsylvania boundary line down to the Atlantic ocean.

§ 4. It is recognized that, due to such variable factors as location, size, character, and flow, and of the many varied uses of the waters of the interstate Delaware river and its aforesaid West Branch, such as water supply, recreation, navigation, industrial developments, maintenance of fish life, shellfish culture, agriculture, and other purposes, that no single standard of sewage and waste treatment and of quality of receiving waters is practical for all parts of the river. Therefore, in order to apply minimum requirements for the attainment of correction and elimination of pollution which will be appropriate to the varied factors including the existing and potential quality and uses of the waters, such agreement shall divide the interstate Delaware river into four zones, to wit:

a. Zone one is that part of the Delaware river and its West Branch extending from the New York-Pennsylvania boundary line to the head of tidewater at Trenton, New Jersey and Morrisville, Pennsylvania.

b. Zone two is that part of the Delaware river extending from the head of tidewater at Trenton, New Jersey and Morrisville, Pennsylvania, to a line drawn perpendicular to the channel of the Delaware river from the mouth of Pennypack creek in Philadelphia, Pennsylvania, to the corresponding point on the New Jersey shore.

c. Zone three is that part of the Delaware river extending from the aforesaid line connecting the mouth of Pennypack creek in Philadelphia and the corresponding point in New Jersey to the Pennsylvania-Delaware boundary line.

d. Zone four is that part of the Delaware river extending from the Pennsylvania-Delaware boundary line to the Atlantic ocean.

§ 5. In order to put and maintain the waters of the interstate Delaware river and its West Branch as aforesaid, in a clean and sanitary condition, such agreement shall provide that no sewage, industrial wastes or other polluting matter shall be discharged into, or be permitted to flow or fall into, or be placed in any respective zone of the interstate Delaware river as herein established, unless such sewage, industrial waste or other artificial polluting matter shall first have been so treated as to produce an effluent which will meet the following minimum requirements:

a. Zone 1: 1. Such effluent shall be free of noticeable floating solids, color, oil, grease, or sleek, and practically free of suspended solids.

2. Such effluent shall be sufficiently free of turbidity that it will not cause noticeable turbidity in the water of the Delaware river.

3. Such effluent shall show a reduction of organic substances of at least eighty-five per centum as measured by the bio-chemical oxygen demand, and furthermore, such ef-

fluent in no case shall exceed a bio-chemical oxygen demand, of fifty parts per million, and furthermore, the discharge of such effluent, after dispersion in the water of the river, shall not cause a reduction of the dissolved oxygen content of such water of more than five per centum. The aforesaid reduction in dissolved oxygen content shall be determined by the average results obtained from dissolved oxygen tests made upon samples collected on not less than six consecutive days from points in the river above and below the point or points of effluent discharge.

4. Such effluent shall be of such quality that the most probable number of organisms of the Coli Aerogenes group shall not exceed one per milliliter in more than ten per centum of the samples of sewage effluent tested by the confirmed test, and provided further that no single sample shall contain more than one hundred organisms of the Coli Aerogenes group in one milliliter.

5. Such effluent shall be sufficiently free of acids, alkalis, and other toxic or deleterious substances, that it will not create a menace to the public health through the use of the waters of the Delaware river for public water supplies, for recreation, bathing, agriculture and other purposes; nor be inimical to fish, animal or acquatic life.

§ 6. Such effluent shall be free of offensive odors and also be free of substances capable of producing offensive tastes or odors in public water supplies derived from the Delaware river at any place below the discharge of such effluent.

b. Zone 2: 1. Such effluent shall be free of noticeable floating solids, color, oil or grease, and practically free of both suspended solids and sleek.

2. Such effluent shall be sufficiently free of turbidity that it will not cause noticeable turbidity in the water of the Delaware river.

3. Such effluent shall show a reduction of organic substance of at least eighty-five per centum as measured by the bio-chemical oxygen demand, and furthermore, such effluent in no case shall exceed a bio-chemical oxygen demand of one hundred parts per million, and furthermore, the discharge of such effluent, after dispersion in the water of the river, shall not cause a reduction of the dissolved oxygen content of such water of more than ten per centum. The aforesaid reduction in dissolved oxygen content shall be determined by the average results obtained by dissolved oxygen tests made upon samples collected on not less than six consecutive days from points in the river above and below the point or points of effluent discharge.

4. Such effluent shall be of such quality that the most probable number of organisms of the Coli Aerogenes group shall not exceed one per milliliter in more than twenty-five per centum of the samples of sewage effluent tested by the confirmed test, and provided further that no single sample shall contain more than one hundred organisms of the Coli Aerogenes group in one milliliter.

5. Such effluent shall be sufficiently free of acids, alkalis, and other toxic or deleterious substances, that it will not create a menace to the public health through the use of the water of the Delaware river for public water supplies, for recreation, industrial and other purposes; nor be inimical to fish, animal or aquatic life.

6. Such effluent shall be free of offensive odors and also be free of substances capable of producing offensive tastes and odors in public water supplies derived from the Dela-

ware river at any place above or below the discharge of such effluent.

c. Zone 3: 1. Such effluent shall be free of noticeable floating solids, oil or grease, and substantially free of both suspended solids and sleek.

2. Such effluent shall be sufficiently free of turbidity that it will not cause substantial turbidity in the water of the Delaware river after dispersion in the water of the river.

3. Such effluent shall show a reduction of at least fifty-five per centum of the total suspended solids and a reduction of not less than thirty-five per centum of the bio-chemical demand. (It is the intent of this requirement to restore the dissolved oxygen content of the river water in this zone to at least fifty per centum saturation. To accomplish this, it may be necessary in the case of certain wastes, to obtain reductions greater than those required under this item.)

4. Such effluent, if it be discharged within two miles of a public water works intake or within prejudicial influence thereof, shall at all times be effectively treated with a germicide.

5. Such effluent shall be sufficiently free of acids, alkalis, and other toxic or deleterious substances, that it will not create a menace to the public health through the use of the waters of the Delaware river for public water supplies, or render such waters unfit for industrial and other purposes; or cause the water of the Delaware river to be harmful to fish life.

6. Such effluent shall be practically free of substance capable of producing offensive tastes or odors in public water supplies derived from the Delaware River.

d. Zone 4: 1. Such effluent shall be free of noticeable floating solids, oil, or grease, and substantially free of both suspended solids and sleek.

2. Such effluent shall be sufficiently free of turbidity that it will not cause substantial turbidity in the waters of the Delaware river after dispersion in the water of the river.

3. Such effluent shall show a reduction of at least fifty-five per centum of the total suspended solids and shall be subject to such further treatment as may be needed to prevent a nuisance.

4. Such effluent, if it be discharged within prejudicial influence of a public water works intake, or of recreational areas, or of shell fish grounds, shall at all times be effectively treated with a germicide, except that in the case of recreational area influence, such treatment need not be provided during the period from October fifteenth to May fifteenth of each year.

5. Such effluent shall be sufficiently free of acids, alkalis, and other toxic or deleterious substances that it will not create a menace to the public health through the use of the waters of the Delaware river for public water supplies, or render such waters unfit for commercial fishing, shell fish culture, recreational, industrial, or other purposes.

6. Such effluent shall be practically free of substances capable of producing offensive tastes or odors in public water supplies derived from the Delaware river.

§ 6. It is further recognized that the quality of the waters of the intrastate tributaries of the Delaware river and its aforesaid West Branch are of interstate concern at their points of confluence with the Delaware river and its

West Branch. Therefore, such agreement also shall provide that sewage, industrial waste or other artificial polluting matter discharged into, or permitted to flow or to fall into, or be placed in any intrastate tributary of the aforesaid Delaware river, shall be treated to that degree, if any, necessary to maintain the waters of such intrastate tributary immediately above its confluence with the aforesaid Delaware river in a condition at least equal to the clean and sanitary condition of the waters of the Delaware river immediately above the confluence of such tributary.

§ 7. Such agreement also shall provide that analyses and tests regarding the minimum requirements herein prescribed, shall be determined in accordance with the provisions contained in the American Public Health Association's latest edition on "Standard Methods for the Examination of Water and Sewage."

§ 8. The aforesaid requirements to be included in such agreement for the treatment of sewage, industrial wastes or other artificial polluting matter and as to the sanitary quality of receiving waters are minima. It is the intent and purpose of these requirements to accomplish reasonable and adequate elimination and correction of pollution.

§ 9. The department of health is hereby authorized and directed to cooperate with the interstate commission on the Delaware river basin in the further study of the sanitary conditions of the waters of the Delaware river and its tributaries and may approve, adopt and enforce reasonable modifications, changes or alterations in the zones herein defined and may, in specific instances, in order to protect the public health or to promote the public welfare, approve, adopt and enforce a higher degree of treatment of the water in such river and its tributaries than the standards herein prescribed.

§ 10. The department of health is hereby empowered and directed to enforce the terms and conditions of such reciprocal agreement within the territorial limits of this state, by the exercise of such administrative and legal authority, and the institution and prosecution of such actions or other proceedings, as may be necessary or appropriate, pursuant to the laws and practice of this state.

§ 11. The department of health is authorized and empowered to apply to the congress of the United States for its consent to such agreement in accordance with the provisions of subdivision three of section ten of article one of the constitution of the United States.

§ 12. This act shall take effect immediately.

STATE OF NEW YORK
DEPARTMENT OF STATE } *ss.:*

I have compared the preceding with the original law on file in this department, and do hereby certify that the same is a correct transcript therefrom, and of the whole of said original law.

GIVEN under my hand and the official seal of the Department of State, at the City of Albany, this 22nd day of July in the year one thousand nine hundred and thirty-nine.

PATRICK W. MCMATHOR
Deputy Secretary of State

Filed July 26, 1939.

THOMAS A. MATHIS,
Secretary of State.

APPENDIX "C".

STATE OF NEW JERSEY
DEPARTMENT OF STATE

Trenton, July 26, 1939.

Dr. J. Lynn Mahaffey,
Director of Health,
State House,
Trenton, N. J.

Dear Sir:

This is to advise you that in a communication under date of July 25, 1939 signed by David W. Robinson, Executive Secretary of The Interstate Commission on The Delaware River Basin, has forwarded to this Department a certified copy of Chapter 600, Laws of the State of New York, 1939, for the purpose of filing in accordance with Chapter 146, P. L. of New Jersey 1939, approved July 1, 1939 as the same is set out in the Fifth Section of the said Act.

Very truly yours,

THOMAS A. MATHIS,
Secretary of State.

ca/aa

State Dept. of Health
Received at Trenton
Jul. 27, 1939

APPENDIX "D".

STATE OF NEW JERSEY

[State Seal]

DEPARTMENT OF STATE.

I, JOSEPH A. BROPHY, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing are true copies of Chapter 600, P. L. 1939 and letters of transmittal in connection therewith pertaining to the Delaware River Basin in accordance with Chapter 146, P. L. 1939, Laws of New Jersey, Approved July 1, 1939 and the letter advising the State Department of Health of New Jersey of the action pertaining thereto.

[Seal of Secretary of State]

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this twenty-seventh day of January A. D. 1943.

J. A. BROPHY,
Secretary of State.