

# THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

(Act 6 of 1974)

[As amended by the Water (Prevention and Control of Pollution) Amendment Act, 2024 (5 of 2024), dt. 15-2-2024]

An Act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith;

WHEREAS it is expedient to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution and for conferring on and assigning to such Boards powers and functions relating thereto;

AND WHEREAS Parliament has no power to make laws for the States with respect to any of the matters aforesaid except as provided in articles 249 and 250 of the Constitution;

AND WHEREAS in pursuance of clause (1) of article 252 of the Constitution resolutions have been passed by all the Houses of the Legislatures of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal to the effect that the matters aforesaid should be regulated in those States by Parliament by law;

Be it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows—

## CHAPTER I PRELIMINARY

### 1. Short title, application and commencement

(1) This Act may be called the Water (Prevention and Control of Pollution) Act, 1974.

(2) It applies in the first instance to the whole of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and the Union Territories; and it shall apply to such other State which adopts this Act by resolution passed in that behalf under clause (1) of article 252 of the Constitution.

(3) It shall come into force, at once in the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and in the Union Territories, and

in any other State which adopts this Act under clause (1) of article 252 of the Constitution on the date of such adoption and any reference in this Act to the commencement of this Act shall, in relation to any State or Union Territory, mean the date on which this Act comes into force in such State or Union Territory.

## 2. Definitions

In this Act, unless the context otherwise requires,—

- (a) “Board” means the Central Board or a State Board;
- <sup>1</sup>[(b) “Central Board” means the Central Pollution Control Board constituted under section 3;]
- (c) “member” means a member of a Board and includes the Chairman thereof;
- <sup>1</sup>[(d) “occupier” in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance;]
- <sup>2</sup>[(dd) “outlet” includes any conduit pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes or is likely to cause, pollution;]
- (e) “pollution” means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms;
- (f) “prescribed” means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;
- (g) “sewage effluent” means effluent from any sewerage system or sewage disposal works and includes sullage from open drains;
- <sup>2</sup>[(gg) “sewer” means any conduit pipe or channel, open or closed, carrying sewage or trade effluent;]
- <sup>1</sup>[(h) “State Board” means a State Pollution Control Board constituted under section 4;]
- (i) “State Government” in relation to a Union Territory means the Administrator thereof appointed under article 239 of the Constitution;
- (j) “stream” includes—
  - (i) river;
  - (ii) water course (whether flowing or for the time being dry);
  - (iii) inland water (whether natural or artificial);
  - (iv) sub-terranean waters;

<sup>1</sup> Substituted by Act 53 of 1988.

<sup>2</sup> Inserted by Act 44 of 1978.

- (v) sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf;
- (k) “trade effluent” includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any <sup>1</sup>[industry, operation or process, or treatment and disposal system], other than domestic sewage.

#### COMMENTS

Sec. 2(d) : The term “occupier” has been defined to mean any person who has control over the affairs of the factory or premises. Where the affairs of such factory or premises are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory. In contrast, s. 2 of the Air (Prevention and Control of Pollution) Act, 1981, has defined the very same term without any reference to the managing agent. Therefore, by ignoring the reference ‘managing agent’ in this clause, the term occupier would only mean any person having control over the affairs of the factory or premises by whatever name called. The designation of an individual may not be material so as to bring him within the meaning of the term ‘occupier’. What is relevant is the substance of control (*de facto*) over the affairs of the factory or premises. If the control is comprehensive and complete, then any person who exercises such a control over the premises or factory will be treated as occupier under the Act. The word “person” as defined under r. 2(e) of the Environment (Protection) Rules, 1986 means, in relation to any factory or premises, a person or occupier or his agent who has control over the affairs of the factory or premises and includes in relation to any substance, the person in possession of the substance. Sec. 2(n) of the Factories Act, 1948 defines occupier thus : “Occupier” of a factory means the person who has ultimate control over the affairs of the factory that (i) in the case of a firm or other association of individuals, one of the individual partners or members thereof shall be deemed to be the occupier; (ii) in the case of a company, any one of the directors shall be deemed to be the occupier; (iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

Further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire—

- (1) the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under : (a) section 6, section 7, section 7A, section 7B, section 11 or section 12; (b) section 17, insofar as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock; (c) section 18, section 19, section 42, section 46, section 47 or section 49, in relation to the workers employed on such repair or maintenance;
- (2) the owner of the ship or his agent or master or other office-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44, or section 45, Chapter VI, Chapter VII, Chapter VIII or Chapter IX or section 108, section 109 or section 110, in relation to (a) the workers employed directly by him, or by or through any agency; and (b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person.

**Sec. 2(f):** “Prescribe” means to assert a right or title to the enjoyment of a thing, on the ground of having hitherto had the uninterrupted and immemorial enjoyment of it. It is to lay down authoritatively as a guide, direction, or rule; to impose as a peremptory order; to dictate; to point; to direct; to give as a guide, direction, or rule of action; to give law.—*State v. Truax*, 130 Wash. 69, 226 P. 259, 260, 33 A.L.R. 1206; *McMahon v. Devlin*, 254 N.Y. 397, 173 N.E. 560, 561. In modern statutes relating to matters of an administrative nature, such as procedure, registration, etc., it is

<sup>1</sup> Substituted for “trade or industry” by Act 53 of 1988.

usual to indicate in general terms the nature of the proceedings to be adopted, and to leave the details to be prescribed or regulated by rules or orders to be made for that purpose in pursuance of an authority contained in the Act.—*Sweet. Mansfield v. People*, 164 Ill. 611, 45 N.E. 976

Sec. 53 of the Air (Prevention and Control of Pollution) Act, 1981 and s. 25 of the Environment (Protection) Act, 1986 confer power upon the Central Government to frame rules for the purpose of carrying out the objects of those Acts. Secs. 63 and 64 of the Water (Prevention and Control of Pollution) Act, 1974 also confer such power upon the Central Government and State Government respectively and the reference here is to such rules formulated in exercise of such power.

**Sec. 2(h)** : Under s. 4 of the Act the State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Pollution Control Board under such name as may be specified in the notification, to exercise the powers conferred on and perform the function assigned to that Board under this Act.

**Sec. 2(i)** : Art. 239 of the Constitution of India relating to administration of Union Territories reads : (1) Save as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify; (2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union Territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his control of ministers.

**Sec. 2(j)** : A stream is a water course having a source and terminus, banks, and channel, through which waters flow at least periodically, and it usually empties into other streams, lakes, or the ocean, but it does not lose its character as a water course even though it may break up and disappear. It may be a river, brook, or rivulet; or anything in fact that is liquid and flows in a line or course in one direction.—*Mogle v. Moore* 16 Cal. 2d 1, 104 P.2d 785, 789; *Everett v. Davis*, Cal. App. 107 P. 2d 650, 655

Under the Act a stream has been defined to include river water courses, inland water, subterranean water, sea or tidal water. In the case of inland water, it can be either natural or artificial. In case of water course it may be a perennial flowing water course or it may be dry for the time being. It is not necessary that the trade effluent discharged should flow to a stream in its etymological sense; even though it is stagnated yet it would mix with subterranean water which is also included in the definition of stream.—*Punjab State Board for the Prevention and Control of Water Pollution v. Raja Ram Corn Products (Punjab) Ltd.* (1990-1) 97 PLR 58

## CHAPTER II

### THE CENTRAL AND STATE BOARDS FOR PREVENTION AND CONTROL OF WATER POLLUTION

#### 3. Constitution of Central Board

(1) The Central Government shall, with effect from such date (being a date not later than six months of the commencement of this Act in the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and in the Union Territories) as it may, by notification in the Official Gazette, appoint, constitute a Central Board to be called the <sup>1</sup>[Central Pollution Control Board] to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

(2) The Central Board shall consist of the following members, namely, —

- (a) a full-time Chairman, being a person having special knowledge or practical experience in respect of <sup>2</sup>[matters relating to environmental protection] or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Central Government;

<sup>1</sup> Substituted for certain words by Act 53 of 1988.

<sup>2</sup> Substituted for certain words by Act 44 of 1978.

- (b) <sup>1</sup>[such number of officials, not exceeding five], to be nominated by the Central Government to represent that government;
  - (c) such number of persons, not exceeding five to be nominated by the Central Government, from amongst the members of the State Boards, of whom not exceeding two shall be from those referred to in clause (c) of sub-section (2) of section 4;
  - (d) <sup>2</sup>[such number of non-officials, not exceeding three], to be nominated by the Central Government, to represent the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the Central Government, ought to be represented;
  - (e) two persons to represent the companies or corporations owned, controlled or managed by the Central Government, to be nominated by that government;
  - <sup>3</sup>(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.]
- (3) The Central Board shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by the aforesaid name, sue or be sued.

#### COMMENTS

Sec. 3 of the Water Pollution Act deals with the constitution of a Central Board to be called the Central Board for the Prevention and Control of Water Pollution. The composition of the Central Board is specified in sub-s. (2). In terms of sub-s. (3), the Central Board shall be a body corporate having its own name perpetual assumption and common seal. The Board can acquire, hold and dispose of property and file any suit or be sued in its own name. The Central Pollution Control Board constituted under s. 3 shall exercise the powers and perform the functions of the Central Board for the control and prevention of air pollution under the Air (Prevention and Control of Pollution) Act, 1981 also vide s. 3 of that Act.

#### **4. Constitution of State Boards**

(1) The State Government shall, with effect from such date <sup>4</sup>[x x x] as it may, by notification in the Official Gazette, appoint, constitute a <sup>5</sup>[State Pollution Control Board,] under such name as may be specified in the notification, to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

- (2) A State Board shall consist of the following members, namely,—
  - (a) a <sup>6</sup>[xxx] Chairman, being a person having special knowledge or practical experience in respect of <sup>7</sup>[matters relating to environmental protection] or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by

<sup>1</sup> Substituted for "five officials" by Act 44 of 1978.

<sup>2</sup> Substituted for "three non-officials" by Act 44 of 1978.

<sup>3</sup> Substituted by Act 53 of 1988.

<sup>4</sup> Certain words omitted by Act 44 of 1978.

<sup>5</sup> Substituted for "State Board" by Act 53 of 1988.

<sup>6</sup> Word "full-time" omitted by Act 44 of 1978.

<sup>7</sup> Substituted for certain words by Act 44 of 1978.

the State Government <sup>1</sup>[in such manner as may be prescribed by the Central Government]:

<sup>2</sup>[PROVIDED that the Chairman may be either whole-time or part-time as the State Government may think fit;]

- (b) <sup>3</sup>[such number of officials, not exceeding five,] to be nominated by the State Government to represent that government;
- (c) <sup>4</sup>[such number of persons, not exceeding five,] to be nominated by the State Government from amongst the members of the local authorities functioning within the State;
- (d) <sup>5</sup>[such number of non-officials, not exceeding three] to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the State Government, ought to be represented;
- (e) two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that government;
- <sup>6</sup>[(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government.]

(3) Every State Board shall be a body corporate with the name specified by the State Government in the notification under sub-section (1), having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by the said name, sue or be sued.

(4) Notwithstanding anything contained in this section, no State Board shall be constituted for a Union Territory and in relation to a Union Territory, the Central Board shall exercise the powers and perform the functions of a State Board for that Union Territory:

PROVIDED that in relation to any Union Territory, the Central Board may delegate all or any of its powers and functions under this sub-section to such person or body of persons as the Central Government may specify.

#### COMMENTS

Sec. 4 deals with constitution by the State Government of State-level Water Pollution Control Board. Sub-s. (2) provides for the composition of the State-level Board. Under sub-s. (3), State-level Board also shall be a body corporate. In respect of Union Territory, the Central Board shall exercise the powers and functions for that Union Territory concerned. Sec. 4 of the Water Pollution Act, 1974 corresponds to s. 5 of the Air (Prevention and Control of Pollution) Act, 1981 which also deals with the constitution of State Pollution Control Boards.

<sup>1</sup> Inserted by the Water (Prevention and Control of Pollution) Amendment Act, 2024 (5 of 2024), dt. 15-2-2024.  
*Note* : (i) In the States of Himachal Pradesh and Rajasthan and the Union territories, this amendment is effective from 15-2-2024.

(ii) In any other State which adopts this Act, under article 252 of the Constitution on the date of such adoption.

<sup>2</sup> Inserted by Act 44 of 1978.

<sup>3</sup> Substituted for "five officials" by Act 44 of 1978.

<sup>4</sup> Substituted for "five persons" by Act 44 of 1978.

<sup>5</sup> Substituted for "three non-officials" by Act 44 of 1978.

<sup>6</sup> Substituted by Act 53 of 1988.

## 5. Terms and conditions of service of members

(1) Save as otherwise provided by or under this Act, a member of a Board, other than a member-secretary, shall hold office for a term of three years from the date of his nomination:

PROVIDED that a member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

<sup>1</sup>[(2) The term of office of a member of a Board nominated under clause (b) or clause (e) of sub-section (2) of section 3 or clause (b) or clause (e) of sub-section (2) of section 4 shall come to an end as soon as he ceases to hold the office under the Central Government or the State Government or, as the case may be, the company or corporation owned, controlled or managed by the Central Government or the State Government, by virtue of which he was nominated.]

(3) The Central Government or, as the case may be, the State Government may, if it thinks fit, remove any member of a Board before the expiry of his term of office, after giving him a reasonable opportunity of showing cause against the same.

(4) A member of a Board, other than the member-secretary, may at any time resign his office by writing under his hand addressed—

(a) in the case of the Chairman, to the Central Government or, as the case may be, the State Government; and

(b) in any other case, to the Chairman of the Board;

and the seat of the Chairman or such other member shall thereupon become vacant.

(5) A member of a Board, other than the member-secretary, shall be deemed to have vacated his seat if he is absent without reason, sufficient in the opinion of the Board, from three consecutive meetings of the Board, <sup>2</sup>[or where he is nominated under clause (c) or clause (e) of sub-section (2) of section 3 or under clause (c) or clause (e) of sub-section (2) of section 4, if he ceases to be a member of the State Board or of the local authority or, as the case may be, of the company or corporation owned, controlled or managed by the Central Government or the State Government and such vacation of seat shall, in either case, take effect from such date as the Central Government or, as the case may be, the State Government may, by notification in the Official Gazette, specify.]

(6) A casual vacancy in a Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the member in whose place he was nominated.

(7) A member of a Board <sup>3</sup>[shall be eligible for renomination.]

(8) The other terms and conditions of service of a member of a Board, other than the Chairman and member-secretary, shall be such as may be prescribed.

(9) The other terms and conditions of service of the Chairman shall be such as may be prescribed <sup>4</sup>[by the Central Government].

<sup>1</sup> Substituted by Act 44 of 1978.

<sup>2</sup> Substituted for certain words by Act 44 of 1978.

<sup>3</sup> Substituted for "shall not be eligible for renomination for more than two terms" by Act 53 of 1988.

<sup>4</sup> Inserted by the Water (Prevention and Control of Pollution) Amendment Act, 2024 (5 of 2024), dt. 15-2-2024.

*Note* : (i) In the States of Himachal Pradesh and Rajasthan and the Union territories, this amendment is effective from 15-2-2024.

(ii) In any other State which adopts this Act, under article 252 of the Constitution on the date of such adoption.

COMMENT

This section provides for terms and conditions of service of a member of both the Central and State Boards. Under sub-s. (2), the term of office of the members of the Board is provided for. Under sub-s. (3) powers are conferred on the Central and State Governments to remove any member nominated to the Board after giving a reasonable opportunity of showing cause for the same. Under sub-s. (4), a member other than the Member-Secretary may resign from office. Under s. 5, a member of the Board other than a Member-Secretary is deemed to have vacated the office if he is absent without reason, sufficient in the opinion of the Board from three consecutive meetings of the Board. A casual vacancy arising in that office of the Board may be filled in for the remainder of the term. Under sub-s. (7), a Member of the Board shall not be eligible for renomination for more than two terms. The terms and conditions of service of the Chairman of the Board as well as the Members of the Board other than the Member-Secretary shall be prescribed by the Central Government and State Government. This section is in *pari materia* with s. 7 of the Air (Prevention and Control of Pollution) Act, 1981 which also deals with the terms and conditions of service of the members of the Pollution Control Board. Non-official members of the Central Board resident in Delhi shall be paid an allowance of rupees seventy-five per day for each day of the actual meetings of the Central Board.

(2) Non-official members of the Central Board, not resident in Delhi shall be paid allowances of rupees seventy-five per day (Inclusive of daily allowance) for each day of the actual meetings of the Central Board and also travelling allowance at such rate as is admissible to a Grade I Officer of the Central Government and that in case of a member of Parliament who is also a member of the Central Board, the said daily and travelling allowance will be admissible when the Parliament is not in session and on production of a certificate by a member that he has not drawn any such allowance for the same journey and halts from any other government source.

## 6. Disqualifications

- (1) No person shall be a member of Board, who—
  - (a) is, or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or
  - (b) is of unsound mind and stands so declared by a competent court, or
  - (c) is, or has been, convicted of an offence which, in the opinion of the Central Government or, as the case may be, of the State Government, involves moral turpitude, or
  - (d) is, or at any time has been, convicted of an offence under this Act, or
  - (e) has directly or indirectly by himself or by any partner, any share or interest in any firm or company carrying on the business of manufacture, sale or hire of machinery, plant, equipment, apparatus or fittings for the treatment of sewage or trade effluents, or
  - (f) is a director or a secretary, manager or other salaried officer or employee of any company or firm having any contract with the Board, or with the government constituting the Board, or with a local authority in the State, or with a company or corporation owned, controlled or managed by the government, for the carrying out of sewerage schemes or for the installation of plants for the treatment of sewage or trade effluents, or
  - (g) has so abused, in the opinion of the Central Government or, as the case may be, of the State Government, his position as a member, as to render his continuance on the Board detrimental to the interest of the general public.

(2) No order of removal shall be made by the Central Government or the State Government, as the case may be, under this section unless the member concerned has been given a reasonable opportunity of showing cause against the same.

(3) Notwithstanding anything contained in sub-sections (1) and (7) of section 5, a member who has been removed under this section shall not be eligible for renomination as a member.

#### **7. Vacation of seats by members**

If a member of a Board becomes subject to any of the disqualifications specified in section 6, his seat shall become vacant.

#### **8. Meetings of Boards**

A Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed:

PROVIDED that if, in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose.

#### **9. Constitution of committees**

(1) A Board may constitute as many committees consisting wholly of members or wholly of other persons or partly of members and partly of other persons, and for such purpose or purposes as it may think fit.

(2) A committee constituted under this section shall meet at such time and at such place, and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(3) The members of a committee (other than the members of the Board) shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the Board as may be prescribed.

#### **COMMENTS**

Sec. 9 of the Act corresponds to s. 11 of the Air (Prevention and Control of Pollution) Act, 1981, both provide for the constitution of committees. Under r. 6 of the Water (Prevention and Control of Pollution) Rules, 1975 providing for the fees and other allowances to be paid to such members of a committee of the Central Board as are not members of the Board under sub-s. (3) of s. 9, a member of a committee of the Central Board shall be paid in respect of meetings of the committee travelling and daily allowances, if he is a non-official, at the rates specified in rule 5, as if he were a member of the Central Board and if he is government servant, at the rates, admissible under the relevant rules, of the respective government under whom he is serving. The procedure for transaction of business of committees constituted by the Central Board under sub-s. (1) of s. 9 is prescribed by r. 11 of the Water Pollution (Prevention for Transaction of Business) Rules, 1975.

#### **10. Temporary association of persons with Board for particular purposes**

(1) A Board may associate with itself in such manner, and for such purposes, as may be prescribed any person whose assistance or advice it may desire to obtain in performing any of its functions under this Act.

(2) A person associated with the Board under sub-section (1) for any purpose shall have a right to take part in the discussions of the Board relevant to that purpose, but shall not have a right to vote at a meeting of the Board, and shall not be a member for any other purpose.

<sup>1</sup>[(3) A person associated with the Board under sub-section (1) for any purpose shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the Board, as may be prescribed.]

<sup>1</sup> Inserted by Act 44 of 1978.

COMMENTS

In terms of this section, power is conferred on the Board to associate an outsider in the Board whose assistance or advice the Board may consider desirable to obtain in performing any of its functions. The outsider so associated with the Board shall have a right to take part in the discussion of the Board. Rule 10 of the Water (Prevention and Control of Pollution) Rules, 1975 lays down the manner and purpose of association of persons with Central Board. As per r. 10: (1) The Central Board may invite any person, whose assistance or advice it considers useful to obtain in performing any of its functions, to participate in the deliberations of any of its meetings; (2) If the person associated with the Board under sub-r. (1) happens to be a non-official, resident in Delhi, he shall be entitled to get an allowance of rupees seventy-five per day for each day of actual meeting of the Central Board in which he is associated; (3) If such person is non-resident in Delhi, he shall be entitled to get an allowance of rupees seventy-five per day (inclusive of daily allowance) for each day of actual meeting of the Central Board in which he is so associated and also to travelling allowance at such rates as is admissible to a Grade I Officer of the Central Government; (4) Notwithstanding anything in sub-rr. (2) and (3), if such person is a government servant or an employee in a government undertaking he shall be entitled to travelling and daily allowances only at the rates admissible under the relevant rules applicable to him.

**11. Vacancy in Board not to invalidate acts or proceedings**

No act or proceeding of a Board or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board or such committee, as the case may be.

COMMENTS

This section corresponds to s. 13 of the Air (Prevention and Control of Pollution) Act, both state that any vacancy in a Board or committee does not vitiate the proceedings thereof. The question of vacancy arises only if a duly constituted Board under s. 4(2) existed.—*H.C. Kathiweala v. Maharashtra (Prevention and Control of Pollution) Board, 1982 Cr. LR. 290 (Bom)*

<sup>1</sup>[11A. Delegation of powers to Chairman

The Chairman of a Board shall exercise such powers and perform such duties as may be prescribed or as may, from time to time, be delegated to him by the Board.]

COMMENTS

Sec. 23 of the Environment (Protection) Act, 1986 and s. 15 of the Air (Prevention and Control of Pollution) Act, 1981 also contain similar provisions for delegation of powers of the Board.

**12. Member-secretary and officers and other employees of Board**

(1) The terms and conditions of service of the member-secretary shall be such as may be prescribed.

(2) The member-secretary shall exercise such powers and perform such duties as may be prescribed or as may, from time to time, be delegated to him by the Board or its Chairman.

(3) Subject to such rules as may be made by the Central Government or, as the case may be, the State Government in this behalf, a Board may appoint such officers and employees as it considers necessary for the efficient performance of its functions.<sup>2</sup>[xxx]

<sup>1</sup>[(3A) The method of recruitment and the terms and conditions of service (including the scales of pay) of the officers (other than the member-secretary) and other employees of the Central Board or a State Board shall be such as may be

<sup>1</sup> Inserted by Act 44 of 1978.

<sup>2</sup> Omitted by Act 44 of 1978.

determined by regulations made by the Central Board or, as the case may be, by the State Board:

PROVIDED that no regulation made under this sub-section shall take effect unless—

- (a) in the case of a regulation made by the Central Board, it is approved by the Central Government; and
- (b) in the case of a regulation made by a State Board, it is approved by the State Government.]

<sup>1</sup>[(3B) The Board may, by general or special order, and subject to such conditions and limitations, if any, as may be specified in the order, delegate to any officer of the Board such of its powers and functions under this Act as it may deem necessary.]

(4) Subject to such conditions as may be prescribed, a Board may from time to time appoint any qualified person to be a consulting engineer to the Board and pay him such salaries and allowances and subject him to such other terms and conditions of service as it thinks fit.

#### COMMENTS

This section corresponding to s. 14 of the Air (Prevention and Control of Pollution) Act, 1981 provides for prescribing the terms and conditions of service of the members of the Board are different from the terms and conditions of service of Member-Secretary of the Board. Provisions relating to the salaries, allowances and other terms and conditions of service are elaborated in r. 4 of the Water (Prevention and Control of Pollution) Rules, 1975.

### CHAPTER III

#### JOINT BOARDS

#### **13. Constitution of Joint Boards**

(1) Notwithstanding anything contained in this Act, an agreement may be entered into—

- (a) by two or more governments of contiguous States, or
- (b) by the Central Government (in respect of one or more Union Territories) and one or more governments of States contiguous to such Union Territory or Union Territories,

to be in force for such period and to be subject to renewal for such further period, if any, as may be specified in the agreement to provide for the constitution of a Joint Board

- (i) in a case referred to in clause (a), for all the participating States, and
- (ii) in a case referred to in clause (b), for the participating Union Territory or Union Territories and the State or States.

(2) An agreement under this section may—

- (a) provide, in a case referred to in clause (a) of sub-section (1), for the apportionment between the participating States and in a case referred to in clause (b) of that sub-section, for the apportionments between the Central Government and the participating State Government or State Governments, of the expenditure in connection with the Joint Board;

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<sup>1</sup> Inserted by Act 53 of 1988.

- (b) determine, in a case referred to in clause (a) of sub-section (1), which of the participating State Governments and in a case referred to in clause (b) of that sub-section, whether the Central Government or the participating State Government (if there are more than one participating State, also which of the participating State Governments) shall exercise and perform the several powers and functions of the State Government under this Act and the references in this Act to the State Government shall be construed accordingly;
- (c) provide for consultation, in a case referred to in clause (a) of sub-section (1), between the participating State Governments and in a case referred to in clause (b) of that sub-section, between the Central Government and the participating State Government or State Governments either generally or with reference to particular matters arising under this Act;
- (d) make such incidental and ancillary provisions, not inconsistent with this Act, as may be deemed necessary or expedient for giving effect to the agreement.

(3) An agreement under this section shall be published, in a case referred to in clause (a) of sub-section (1), in the Official Gazette of the participating States and in a case referred to in clause (b) of that sub-section, in the Official Gazette of the participating Union Territory or Union Territories and participating State or States.

#### **14. Composition of Joint Boards**

(1) A Joint Board constituted in pursuance of an agreement entered into under clause (a) of sub-section (1) of section 13 shall consist of the following members, namely,—

- (a) a full-time chairman, being a person having special knowledge or practical experience in respect of <sup>1</sup>[matters relating to environmental protection] or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Central Government;
- (b) two officials from each of the participating States to be nominated by the concerned participating State Government to represent that government;
- (c) one person to be nominated by each of the participating State Governments from amongst the members of the local authorities functioning within the State concerned;
- (d) one non-official to be nominated by each of the participating State Governments to represent the interests of agriculture, fishery or industry or trade in the State concerned or any other interest which, in the opinion of the participating State Government, is to be represented;
- (e) two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the participating State Governments;

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<sup>1</sup> Substituted for certain words by Act 44 of 1978.

<sup>1</sup>[(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.]

(2) A Joint Board constituted in pursuance of an agreement entered into under clause (b) of sub-section (1) of section 13 shall consist of the following members, namely,—

- (a) a full-time Chairman, being a person having special knowledge or practical experience in respect of <sup>2</sup>[matters relating to environmental protection] or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Central Government;
- (b) two officials to be nominated by the Central Government from the participating Union Territory or each of the participating Union Territories, as the case may be, and two officials to be nominated, from the participating State or each of the participating States, as the case may be, by the concerned participating State Government;
- (c) one person to be nominated by the Central Government from amongst the members of the local authorities functioning within the participating Union Territory or each of the participating Union Territories, as the case may be, and one person to be nominated, from amongst the members of the local authorities functioning within the participating State or each of the participating States, as the case may be, by the concerned participating State Government;
- (d) one non-official to be nominated by Central Government and one person to be nominated by the participating State Government or State Governments to represent the interests of agriculture, fishery or industry or trade in the Union Territory or in each of the Union Territories or the State or in each of the States, as the case may be, or any other interest which in the opinion of the Central Government or, as the case may be, of the State Government is to be represented;
- (e) two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the Central Government and situate in the participating Union Territory or Territories and two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the participating State Governments;

<sup>1</sup>[(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.]

(3) When a Joint Board is constituted in pursuance of an agreement under clause (b) of sub-section (1) of section 13, the provisions of sub-section (4) of section 4 shall cease to apply in relation to the Union Territory for which the Joint Board is constituted.

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1 Substituted by Act 53 of 1988.

2 Substituted for certain words by Act 44 of 1978.

(4) Subject to the provisions of sub-section (3), the provisions of sub-section (3) of section 4 and sections 5 to 12 (inclusive) shall apply in relation to the Joint Board and its member-secretary as they apply in relation to a State Board and its member-secretary.

(5) Any reference in this Act to the State Board shall, unless the context otherwise requires, be construed as including a Joint Board.

### **15. Special provisions relating to giving of directions**

Notwithstanding anything contained in this Act where any Joint Board is constituted under section 13—

- (a) the government of the State for which the Joint Board is constituted shall be competent to give any direction under this Act only in cases where such direction relates to a matter within the exclusive territorial jurisdiction of the State;
- (b) the Central Government alone shall be competent to give any direction under this Act where such direction relates to a matter within the territorial jurisdiction of two or more States or pertaining to a Union Territory.

## **CHAPTER IV**

### **POWERS AND FUNCTIONS OF BOARDS**

#### **16. Functions of Central Board**

(1) Subject to the provisions of this Act, the main function of the Central Board shall be to promote cleanliness of streams and wells in different areas of the States.

(2) In particular and without prejudice to the generality of the foregoing function, the Central Board may perform all or any of the following functions, namely,—

- (a) advise the Central Government on any matter concerning the prevention and control of water pollution;
- (b) co-ordinate the activities of the State Boards and resolve disputes among them;
- (c) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
- (d) plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution on such terms and conditions as the Central Board may specify;
- (e) organise through mass media a comprehensive programme regarding the prevention and control of water pollution;
- <sup>1</sup>[(ee) perform such of the functions of any State Board as may be specified in an order made under sub-section (2) of section 18;]
- (f) collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith;

<sup>1</sup> Inserted by Act 53 of 1988.

- (g) lay down, modify or annul, in consultation with the State Government concerned, the standards for a stream or well:

PROVIDED that different standards may be laid down for the same stream or well or for different streams or wells, having regard to the quality of water, flow characteristics of the stream or well and the nature of the use of the water in such stream or well or streams or wells;

- (h) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of water pollution;
- (i) perform such other functions as may be prescribed.

(3) The Board may establish or recognise a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

### COMMENTS

This section provides for functions of the Central Board. Sub-s. (2) gives an illustrative list of the functions of the Central Board.

For the purpose of assisting the Central Board in the performance of its functions, the Board may appoint a consulting engineer to the Board for a specified period not exceeding four months that the Board may, with the prior approval of the Central Government extend the period of the appointment from time to time that if at the time of the initial appointment the Central Board had reason to believe that the services of the consulting engineer would be required for a period of more than four months, the Central Board shall not make the appointment without the prior approval of the Central Government. The Central Board shall have the right to terminate the services of the consulting engineer before the expiry of the specified period, if, in the opinion of the Board, the consulting engineer is not discharging his duties properly or to the satisfaction of the Board or such a course of action is necessary in the public interest after giving him a reasonable opportunity of showing cause against the proposed action. (*Rules 11 and 12 of Water (Prevention and Control of Pollution) Rules, 1975*).

### **17. Functions of State Board**

(1) Subject to the provisions of this Act, the functions of a State Board shall be—

- (a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;
- (b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;
- (c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;
- (d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
- (e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;

- (f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;
  - (g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;
  - (h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;
  - (i) to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;
  - (j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;
  - (k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;
  - (l) to make, vary or revoke any order—
    - (i) for the prevention, control or abatement of discharges of waste into streams or wells;
    - (ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution;
  - (m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;
  - (n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;
  - (o) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.
- (2) The Board may establish or recognise a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

### **18. Power to give directions**

<sup>1</sup>[(1)] In the performance of its functions under this Act—

- (a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and
- (b) every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it:

PROVIDED that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

<sup>2</sup>[(2) Where the Central Government is of the opinion that any State Board has defaulted in complying with any directions given by the Central Board under sub-section (1) and as a result of such default a grave emergency has arisen and it is necessary or expedient so to do in the public interest, it may, by order, direct the Central Board to perform any of the functions of the State Board in relation to such area for such period and for such purposes, as may be specified in the order.

(3) Where the Central Board performs any of the functions of the State Board in pursuance of a direction under sub-section (2), the expenses, if any, incurred by the Central Board with respect to the performance of such functions may, if the State Board is empowered to recover such expenses, be recovered by the Central Board with interest (at such reasonable rate as the Central Government may, by order, fix) from the date when a demand for such expenses is made until it is paid from the person or persons concerned as arrears of land revenue or of public demand.

(4) For the removal of doubts, it is hereby declared that any directions to perform the functions of any State Board given under sub-section (2) in respect of any area would not preclude the State Board from performing such functions in any other area in the State or any of its other functions in that area.]

#### COMMENTS

This section corresponds to s. 5 of the Environment (Protection) Act, 1986 and s. 18 of the Air (Prevention and Control of Pollution) Act, 1981, and deals with the power of the Board to give directions.

### **CHAPTER V**

#### **PREVENTION AND CONTROL OF WATER POLLUTION**

### **19. Power of State Government to restrict the application of the Act to certain areas**

(1) Notwithstanding anything contained in this Act, if the State Government, after consultation with, or on the recommendation of the State Board, is of opinion that the provisions of this Act need not apply to entire State, it may, by notification in the Official Gazette, restrict the application of this Act to such area or areas as may be declared therein as water pollution, prevention and control area or areas and thereupon the provisions of this Act shall apply only to such area or areas.

(2) Each water pollution, prevention and control area may be declared either by reference to a map or by reference to the line of any watershed or the boundary of any district or partly by one method and partly by another.

<sup>1</sup> Existing section 18 renumbered as sub-section (1) thereof by Act 53 of 1988.

<sup>2</sup> Inserted by Act 53 of 1988.

- (3) The State Government may, by notification in the Official Gazette—
- (a) alter any water pollution, prevention and control area whether by way of extension or reduction; or
  - (b) define a new water pollution, prevention and control area in which may be merged one or more water pollution, prevention and control areas, or any part or parts thereof.

### **20. Power to obtain information**

(1) For the purpose of enabling a State Board to perform the functions conferred on it by or under this Act, the State Board or any officer empowered by it in that behalf, may make surveys of any area and gauge and keep records of the flow or volume and other characteristics of any stream or well in such area, and may take steps for the measurement and recording of the rainfall in such area or any part thereof and for the installation and maintenance for those purposes of gauges or other apparatus and works connected therewith, and carry out stream surveys and may take such other steps as may be necessary in order to obtain any information required for the purposes aforesaid.

(2) A State Board may give directions requiring any person who in its opinion is abstracting water from any such stream or well in the area in quantities which are substantial in relation to the flow or volume of that stream or well or is discharging sewage or trade effluent into any such stream or well, give such information as to the abstraction or the discharge at such times and in such form as may be specified in the directions.

(3) Without prejudice to the provisions of sub-section (2), a State Board may, with a view to preventing or controlling pollution of water, give directions requiring any person in charge of any establishment where any <sup>1</sup>[industry, operation or process, or treatment and disposal system] is carried on, to furnish to it information regarding the construction, installation or operation of such establishment or of any disposal system or of any extension or addition thereto in such establishment and such other particulars as may be prescribed.

#### **COMMENTS**

This section corresponds to s. 25 of the Air (Prevention and Control of Pollution) Act as well as s. 20 of the Environment (Protection) Act.

### **21. Power to take samples of effluents and procedure to be followed in connection therewith**

(1) A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well.

(2) The result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3), (4) and (5) are complied with.

(3) Subject to the provisions of sub-sections (4) and (5), when a sample (composite or otherwise as may be warranted by the process used) of any sewage or trade effluent is taken for analysis under sub-section (1), the person taking the sample shall—

<sup>1</sup> Substituted for "industry or trade" by Act 53 of 1988.

- (a) serve on the person in charge of, or having control over, the plant or vessel or in occupation of the place (which person is hereinafter referred to as the occupier) or any agent of such occupier, a notice, then and there in such form as may be prescribed of his intention to have it so analysed;
- (b) in the presence of the occupier or his agent, divide the sample into two parts;
- (c) cause each part to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;
- (d) send one container forthwith—
  - (i) in a case where such sample is taken from any area situated in a Union Territory, to the laboratory established or recognised by the Central Board under section 16; and
  - (ii) in any other case, to the laboratory established or recognised by the State Board under section 17;
- (e) on the request of the occupier or his agent, send the second container—
  - (i) in a case where such sample is taken from any area situated in a Union Territory, to the laboratory established or specified under sub-section (1) of section 51; and
  - (ii) in any other case, to the laboratory established or specified under sub-section (1) of section 52.

<sup>1</sup>[(4) When a sample of any sewage or trade affluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (a) of sub-section (3) and the occupier or his agent wilfully absents himself, then—

- (a) the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (e) of sub-section (3) and such person shall inform the government analyst appointed under sub-section (1) or sub-section (2), as the case may be, of section 53, in writing about the wilful absence of the occupier or his agent; and
- (b) the cost incurred in getting such sample analysed shall be payable by the occupier or his agent and in case of default of such payment, the same shall be recoverable from the occupier or his agent, as the case may be, as an arrear of land revenue or of public demand:

PROVIDED that no such recovery shall be made unless the occupier or, as the case may be, his agent has been given a reasonable opportunity of being heard in the matter.]

(5) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent a notice under clause (a) of sub-section (3) and the occupier or his agent who

<sup>1</sup> Substituted by Act 44 of 1978.

is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in clause (b) of sub-section (3), then, the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (d) of sub-section (3).

#### COMMENTS

This section deals with the most important function of the State Board, namely, power to undertake samples of water from any stream or well or samples of any sewage or trade effluents which is passing from a plant or vessel or from or over any place into any such stream or well. Sub-s. (3) provides for the method of taking samples so that the result of the analysis of the samples may be accepted in any legal concern. An analysis of sub-s. (3) suggests that the Board is first of all obliged to give notice to the person in charge of or having control over the plant. Normally, the presence of the occupier is necessary while taking the sample. Samples shall be placed in a container which shall be marked and sealed and shall be signed by both the persons taking the sample and the occupier or his agent. But, where the occupier or his agent wilfully absents himself on the date of taking the sample, there is no need to take the signature of the occupier or his agent. The samples shall thereafter be sent for laboratory test. The Central Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water from any stream or well or samples of sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well in any Union Territory.

### **22. Reports of the result of analysis on samples taken under section 21**

(1) Where a sample of any sewage or trade effluent has been sent for analysis to the laboratory established or recognised by the Central Board or, as the case may be, the State Board, the concerned Board analyst appointed under sub-section (3) of section 53 shall analyse the sample and submit a report in the prescribed form of the result of such analysis in triplicate to the Central Board or the State Board, as the case may be.

(2) On receipt of the report under sub-section (1), one copy of the report shall be sent by the Central Board or the State Board, as the case may be, to the occupier or his agent referred to in section 21, another copy shall be preserved for production before the court in case any legal proceedings are taken against him and the other copy shall be kept by the concerned Board.

(3) Where a sample has been sent for analysis under clause (e) of sub-section (3) or sub-section (4) of section 21 to any laboratory mentioned therein, the government analyst referred to in that sub-section shall analyse the sample and submit a report in the prescribed form of the result of the analysis in triplicate to the Central Board or, as the case may be, the State Board which shall comply with the provisions of sub-section (2).

(4) If there is any inconsistency or discrepancy between, or variation in the results of, the analysis carried out by the laboratory established or recognised by the Central Board or the State Board, as the case may be, and that of the laboratory established or specified under section 51 or section 52, as the case may be, the report of the latter shall prevail.

(5) Any cost incurred in getting any sample analysed at the request of the occupier or his agent shall be payable by such occupier or his agent and in case of default the same shall be recoverable from him as arrears of land revenue or of public demand.

### COMMENTS

This section deals with reports of the result of analysis of the water sample taken under section 21. The concerned laboratory has to submit the report in the prescribed form in triplicate to the Central or State Board, as the case may be. One copy of the report in the prescribed form shall be sent by the Central or State Board to the occupier or his agent. Another copy shall be preserved for production before any court in any legal proceedings. The third copy shall be retained by the Central or State Board. The analysis must be done by a government analyst in the laboratory. In respect of matters covered under s. 21(4) or s. 21(3)(e), sub-s. (4) provides for dealing with inconsistency or discrepancy in the results of the laboratory recognised by the Central Board or State Board and of all the laboratories established under s. 51 or 52. Under sub-s. (5), the cost incurred in analysis of the sample shall be payable by the occupier or his agent. In case of default, the costs are recoverable as arrears of land revenue. When a sample of any water, sewage or trade effluent has been sent for analysis to a laboratory established or recognised by the Central Board, the Central Board analyst appointed under sub-s. (3) of s. 53 shall analyse the sample and submit to the Central Board a report in triplicate in Form X of the result of such analysis. The Central Water Laboratory, shall cause to be analysed any samples of water, sewage or trade effluent received by it from any officer authorised by the Central Board for the purpose, and the findings shall be recorded in a report in triplicate in Form XI. Vide rr. 26 and 27 of the Water (Prevention and Control of Pollution) Rules, 1975

### **23. Power of entry and inspection**

(1) Subject to the provisions of this section, any person empowered by a State Board in this behalf shall have a right at any time to enter, with such assistance as he considers necessary, any place—

- (a) for the purpose of performing any of the functions of the Board entrusted to him;
- (b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder of any notice, order, direction or authorisation served, made, given, or granted under this Act is being or has been complied with;
- (c) for the purpose of examining any plant, record, register, document or any other material object or for conducting a search of any place in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing any such plant, record, register, document or other material object, if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder:

PROVIDED that the right to enter under this sub-section for the inspection of a well shall be exercised only at reasonable hours in a case where such well is situated in any premises used for residential purposes and the water thereof is used exclusively for domestic purposes.

(2) The provisions of the <sup>1</sup>[Code of Criminal Procedure, 1973 (2 of 1974)<sup>2</sup>], or, in relation to the State of Jammu and Kashmir, the provisions of any corresponding law in force in that State, shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a

<sup>1</sup> Substituted for "Code of Criminal Procedure, 1898 (5 of 1898)" by Act 44 of 1978.

<sup>2</sup> Now refer Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS, 2023)(46 of 2023).