

58:10A-10.1

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NJSA: 58:10A-10.1

(Water Pollution  
Control Act--  
amendments)

LAWS OF: 1990

CHAPTER: 28

Bill No: S2188

Sponsor(s): Van Wagner

Date Introduced: Pre-filed

Committee: Assembly: -----

Senate: Revenue, Finance and Appropriations; Environmental  
Quality

Amended during passage: Yes      Amendments during passage  
denoted by asterisks.

Date of Passage: Assembly: April 30, 1990

Senate: April 30, 1990

Date of Approval: May 23, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: Yes

Following were printed:

Reports: No

Hearings: Yes

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974.90 New Jersey. Legislature. Senate. Environmental Quality  
W329 Committee.  
1990a Public hearing on S2188, held 2-13-90.  
Old Bridge, N.J., 1990

J628.1 New Jersey. Public Interest Research Group  
p777 Polluters playground: an investigation of water pollution  
violations in New Jersey. February 19, 1988. Trenton, 1988.

974.90 New Jersey. Legislature. Senate. Committee on Energy and  
W329 Environment.  
1988d Public hearing on S2787 (Clean Water Enforcement Act), held  
10-12-88. Brick, N.J. 1988.

974.90 New Jersey. Legislature. Senate. Special Committee to Study  
p777 Coastal and Ocean Pollution.  
1989n Public hearing on S2787, held 4-5-89. Trenton, 1989.

See newspaper clippings--attached:

**KBG/SLJ**

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senators VAN WAGNER, DALTON and BENNETT

1 AN ACT concerning water pollution control and prevention,  
2 amending and supplementing P.L.1977, c.74, supplementing  
3 P.L.1983, c.230 (C.58:11-64 et seq.), amending P.L.1974, c.169  
4 and P.L.1972, c.42, creating a "Clean Water Enforcement  
5 Fund" and a "Wastewater Treatment Operators' Training  
6 Account" <sup>1</sup>[and making an appropriation]<sup>1</sup>.

7  
8 BE IT ENACTED by the Senate and General Assembly of the  
9 State of New Jersey:

10 1. Section 3 of P.L.1977, c.74 (C.58:10A-3) is amended to read  
11 as follows:

12 3. As used in this act, unless the context clearly requires a  
13 different meaning, the following words and terms shall have the  
14 following meanings:

15 a. "Administrator" means the Administrator of the United  
16 States Environmental Protection Agency or his authorized  
17 representative;

18 b. "Areawide plan" means any plan prepared pursuant to  
19 section 208 of the Federal Act;

20 c. "Commissioner" means the Commissioner of Environmental  
21 Protection or his authorized representative;

22 d. "Department" means the Department of Environmental  
23 Protection;

24 e. "Discharge" means [the] an intentional or unintentional  
25 action or omission resulting in the releasing, spilling, leaking,  
26 pumping, pouring, emitting, emptying, or dumping of a pollutant  
27 into the waters of the State [or], onto land or into wells from  
28 which it might flow or drain into said waters [, and shall include]  
29 or into waters or onto lands outside the jurisdiction of the State,  
30 which pollutant enters the waters of the State. "Discharge"  
31 includes the release of any pollutant into a municipal treatment  
32 works;

33 f. "Effluent limitation" means any restriction on quantities,  
34 quality, rates and concentration of chemical, physical, thermal,  
35 biological, and other constituents of pollutants established by  
36 permit, or imposed as an interim enforcement limit pursuant to  
37 an administrative order, including an administrative consent  
38 order;

39 g. "Federal Act" means the "Federal Water Pollution Control

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SEQ committee amendments adopted March 12, 1990.

<sup>2</sup> Senate SRF committee amendments adopted April 26, 1990.

- 1 Act Amendments of 1972" (Public Law 92-500; 33 U.S.C. 2§2  
2 1251 et seq.);
- 3 h. "Municipal treatment works" means the treatment works of  
4 any municipal, county, or State agency or any agency or  
5 subdivision created by one or more municipal, county or State  
6 governments and the treatment works of any public utility as  
7 defined in R.S.48:2-13;
- 8 i. "National Pollutant Discharge Elimination System" or  
9 "NPDES" means the national system for the issuance of permits  
10 under the Federal Act;
- 11 j. "New Jersey Pollutant Discharge Elimination System" or  
12 "NJPDES" means the New Jersey system for the issuance of  
13 permits under this act;
- 14 k. "Permit" means [an] a NJPDES permit issued pursuant to  
15 section 6 of this act. "Permit" includes a letter of agreement  
16 entered into between a delegated local agency and a user of its  
17 municipal treatment works, setting effluent limitations and other  
18 conditions on the user of the agency's municipal treatment works;
- 19 l. "Person" means any individual, corporation, company,  
20 partnership, firm, association, owner or operator of a treatment  
21 works, political subdivision of this State and any state or  
22 interstate agency. "Person" shall also mean any responsible  
23 corporate official for the purpose of enforcement action under  
24 section 10 of this act;
- 25 m. "Point source" means any discernible, confined and  
26 discrete conveyance, including but not limited to, any pipe, ditch,  
27 channel, tunnel, conduit, well, discrete fissure, container, rolling  
28 stock, concentrated animal feeding operation, or vessel or other  
29 floating craft, from which pollutants are or may be discharged;
- 30 n. "Pollutant" means any dredged spoil, solid waste,  
31 incinerator residue, sewage, garbage, refuse, oil, grease, sewage  
32 sludge, munitions, chemical wastes, biological materials,  
33 radioactive substance, thermal waste, wrecked or discarded  
34 equipment, rock, sand, cellar dirt, and industrial, municipal or  
35 agricultural waste or other residue discharged into the waters of  
36 the State. "Pollutant" includes both hazardous and nonhazardous  
37 pollutants;
- 38 o. "Pretreatment standards" means any restriction on  
39 quantities, quality, rates, or concentrations of pollutants  
40 discharged into municipal or privately owned treatment works  
41 adopted pursuant to P.L.1972, c.42 (C.58:11-49 et seq.);
- 42 p. "Schedule of compliance" means a schedule of remedial  
43 measures including an enforceable sequence of actions or  
44 operations leading to compliance with water quality standards, an  
45 effluent limitation or other limitation, prohibition or standard;
- 46 q. "Substantial modification of a permit" means any  
47 significant change in any effluent limitation, schedule of  
48 compliance, compliance monitoring requirement, or any other  
49 provision in any permit which permits, allows, or requires more or

1 less stringent or more or less timely compliance by the permittee;  
2 r. "Toxic pollutant" means [those pollutants, or combinations]  
3 any pollutant identified pursuant to the <sup>2</sup>[federal act] Federal  
4 Act<sup>2</sup> , or any pollutant or combination of pollutants, including  
5 disease causing agents, which after discharge and upon exposure,  
6 ingestion, inhalation or assimilation into any organism, either  
7 directly or indirectly by ingestion through food chains, will, on  
8 the basis of information available to the commissioner, cause  
9 death, disease, behavioral abnormalities, cancer, genetic  
10 mutations, physiological malfunctions, including malfunctions in  
11 reproduction, or physical deformation, in such organisms or their  
12 offspring;

13 s. "Treatment works" means any device or systems, whether  
14 public or private, used in the storage, treatment, recycling, or  
15 reclamation of municipal or industrial waste of a liquid nature  
16 including intercepting sewers, outfall sewers, sewage collection  
17 systems, cooling towers and ponds, pumping, power and other  
18 equipment and their appurtenances; extensions, improvements,  
19 remodeling, additions, and alterations thereof; elements essential  
20 to provide a reliable recycled supply such as standby treatment  
21 units and clear well facilities; and any other works including sites  
22 for the treatment process or for ultimate disposal of residues  
23 resulting from such treatment. [Additional, "treatment works"  
24 means] "Treatment works" includes any other method or system  
25 for preventing, abating, reducing, storing, treating, separating, or  
26 disposing of pollutants, including storm water runoff, or industrial  
27 waste in combined or separate storm water and sanitary sewer  
28 systems;

29 t. "Waters of the State" means the ocean and its estuaries, all  
30 springs, streams and bodies of surface or ground water, whether  
31 natural or artificial, within the boundaries of this State or subject  
32 to its jurisdiction;

33 u. "Hazardous pollutant" means:

34 (1) Any toxic pollutant;

35 (2) Any substance regulated as a pesticide under the Federal  
36 Insecticide, Fungicide, and Rodenticide Act, Pub.L.92-516  
37 (7 U.S.C. § 136 et seq.);

38 (3) Any substance the use or manufacture of which is  
39 prohibited under the federal Toxic Substances Control Act,  
40 Pub.L.94-469 (15 U.S.C. <sup>2</sup>§<sup>2</sup> 2601 et seq.);

41 (4) Any substance identified as a known carcinogen by the  
42 International Agency for Research on Cancer;

43 (5) Any hazardous waste as designated pursuant to section 3 of  
44 P.L.1981, c.279 (C.13:1E-51) or the "Resource Conservation and  
45 Recovery Act," Pub.L.94-580 (42 U.S.C. § 6901 et seq.); or

46 (6) Any hazardous substance as defined pursuant to section 3  
47 of P.L.1976, c.141 (C.58:10-23.11b.);

48 v. "Serious violation" means an exceedance of an effluent  
49 limitation for a discharge point source set forth in a permit,

1 administrative order, or administrative consent agreement,  
2 including interim enforcement limits, by 20 percent or more for a  
3 hazardous pollutant, or by 40 percent or more for a  
4 <sup>2</sup>[non-hazardous] nonhazardous<sup>2</sup> pollutant, calculated on the  
5 basis of the monthly average for a pollutant for which the  
6 effluent limitation is expressed as a monthly average, or, in the  
7 case of an effluent limitation expressed as a daily maximum and  
8 without a monthly average, on the basis of the monthly average  
9 <sup>1</sup>[maximum]<sup>1</sup> of all <sup>1</sup>maximum<sup>1</sup> daily test results for that  
10 pollutant in any month; in the case of an effluent limitation for a  
11 pollutant that is not measured by mass or concentration, the  
12 department shall prescribe an equivalent exceedance factor  
13 therefor. The department may utilize, on a case-by-case basis, a  
14 more stringent factor of exceedance to determine a serious  
15 violation if the department states the specific reasons therefor,  
16 which may include the potential for harm to human health or the  
17 environment. "Serious violation" shall not include a violation of  
18 a permit limitation for color;

19 w. "Significant noncomplier" means any person who commits a  
20 serious violation for the same hazardous pollutant or the same  
21 nonhazardous pollutant, at the same discharge point source, in  
22 any two months of any six month period, or who exceeds the  
23 monthly average or, in a case of a pollutant for which no monthly  
24 average has been established, the monthly average of the daily  
25 maximums for an effluent limitation for the same pollutant at  
26 the same discharge point source by any amount in any four  
27 months of any six month period, or who fails to submit a  
28 completed discharge monitoring report in any two months of any  
29 six month period. The department may utilize, on a case-by-case  
30 basis, a more stringent frequency or factor of exceedance to  
31 determine a significant noncomplier, if the department states the  
32 specific reasons therefor, which may include the potential for  
33 harm to human health or the environment <sup>2</sup>. A local agency shall  
34 not be deemed a "significant noncomplier" due to an exceedance  
35 of an effluent limitation established in a permit for flow;<sup>2</sup>

36 x. "Local agency" means a political subdivision of the State,  
37 or an agency or instrumentality thereof, that owns or operates a  
38 municipal treatment works;

39 y. "Delegated local agency" means a local agency with an  
40 industrial pretreatment program approved by the department;

41 z. "Upset" means an exceptional incident in which there is  
42 unintentional and temporary noncompliance with an effluent  
43 limitation because of an event beyond the reasonable control of  
44 the permittee, including fire, riot, sabotage, or a flood, storm  
45 event, natural cause, or other act of God, or other similar  
46 circumstance, which is the cause of the violation. "Upset" also  
47 includes noncompliance consequent to the performance of  
48 maintenance operations for which a prior exception has been  
49 granted by the department or a delegated local agency<sup>1</sup>[.];<sup>1</sup>

1 aa. "Bypass" means the anticipated or unanticipated  
2 intentional diversion of waste streams from any portion of a  
3 treatment works;

4 bb. "Major facility" means any facility or activity classified as  
5 such by the Administrator of the United States Environmental  
6 Protection Agency, or his representative, in conjunction with the  
7 department, and includes industrial facilities and municipal  
8 treatment works;

9 cc. "Significant indirect user" means a discharger of industrial  
10 or other pollutants into a municipal treatment works, as defined  
11 by the department, including, but not limited to, industrial  
12 dischargers, but excluding the collection system of a municipal  
13 treatment works<sup>1</sup>[.];

14 dd. "Violation of this act" means a violation of any provisions  
15 of this act, and shall include a violation of any rule or regulation,  
16 water quality standard, effluent limitation or other condition of a  
17 permit, or order adopted, issued, or entered into pursuant to this  
18 act.<sup>1</sup>

19 (cf: P.L.1977, c.74, s.3)

20 2. Section 4 of P.L.1977, c.74 (C.58:10A-4) is amended to read  
21 as follows:

22 4. The commissioner shall have power to prepare, adopt,  
23 amend, repeal and enforce, pursuant to the "Administrative  
24 [Procedures] Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
25 seq.), reasonable codes, rules and regulations to prevent, control  
26 or abate water pollution and to carry out the intent of this act,  
27 either throughout the State or in certain areas of the State  
28 affected by a particular water pollution problem. Such codes,  
29 rules and regulations may include, but shall not be limited to,  
30 provisions concerning:

31 a. The storage of any liquid or solid pollutant in a manner  
32 designed to keep it from entering the waters of the State;

33 b. The prior submission and approval of plans and  
34 specifications for the construction or modification of any  
35 treatment work or part thereof;

36 c. The classification of the surface and ground waters of the  
37 State and the determination of water quality standards for each  
38 such classification;

39 d. The limitation of effluents, including toxic effluents as  
40 indicated herein;

41 e. The determination of pretreatment standards;

42 f. The establishment of user charges and cost recovery  
43 requirements in conformance with the Federal Act;

44 g. The establishment of a civil penalty policy governing the  
45 uniform assessment of civil penalties in accordance with section  
46 10 of P.L.1977, c.74 (C.58:10A-10).

47 (cf: P.L.1977, c.74, s.4)

48 3. Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended to read  
49 as follows:

1       6. a. It shall be unlawful for any person to discharge any  
2 pollutant, except in conformity with a valid New Jersey Pollutant  
3 Discharge Elimination System permit that has been issued by the  
4 commissioner pursuant to this act or a valid National [Pollution]  
5 Pollutant Discharge Elimination System permit issued by the  
6 administrator pursuant to the Federal Act, as the case may be.

7       b. It shall be unlawful for any person to build, install, modify  
8 or operate any facility for the collection, treatment or discharge  
9 of any pollutant, except after approval by the department  
10 pursuant to regulations adopted by the commissioner.

11       c. The commissioner is hereby authorized to grant, deny,  
12 modify, suspend, revoke, and reissue NJPDES permits in  
13 accordance with this act, and with regulations to be adopted by  
14 him. The commissioner may reissue, with or without  
15 modifications, an NPDES permit duly issued by the federal  
16 government as the NJPDES permit required by this act.

17       d. The commissioner may, by regulation, exempt the following  
18 categories of discharge, in whole or in part, from the requirement  
19 of obtaining a permit under this act; provided, however, that an  
20 exemption afforded under this section shall not limit the civil or  
21 criminal liability of any discharger nor exempt any discharger  
22 from approval or permit requirements under any other provision  
23 of law:

24       (1) Additions of sewage, industrial wastes or other materials  
25 into a publicly owned sewage treatment works which is regulated  
26 by pretreatment standards;

27       (2) Discharges of any pollutant from a marine vessel or other  
28 discharges incidental to the normal operation of marine vessels;

29       (3) Discharges from septic tanks, or other individual waste  
30 disposal systems, sanitary landfills, and other means of land  
31 disposal of wastes;

32       (4) Discharges of dredged or fill materials into waters for  
33 which the State could not be authorized to administer the section  
34 404 program under section 404(g) of the "Federal Water Pollution  
35 Control Act Amendments of 1972," as amended by the "Clean  
36 Water Act of 1977" (33 U.S.C. § 1344) and implementing  
37 regulations;

38       (5) Nonpoint source discharges;

39       (6) Uncontrolled nonpoint source discharges composed entirely  
40 of storm water runoff when these discharges are uncontaminated  
41 by any industrial or commercial activity unless these particular  
42 storm water runoff discharges have been identified by the  
43 administrator or the department as a significant contributor of  
44 pollution;

45       (7) Discharges conforming to a national contingency plan for  
46 removal of oil and hazardous substances, published pursuant to  
47 section 311(c)(2) of the Federal Act.

48       e. The commissioner shall not issue any permit for:

49       (1) The discharge of any radiological, chemical or biological



1 warfare agent or high-level radioactive waste into the waters of  
2 this State;

3 (2) Any discharge which the United States Secretary of the  
4 Army, acting through the Chief of Engineers, finds would  
5 substantially impair anchorage or navigation;

6 (3) Any discharge to which the administrator has objected in  
7 writing pursuant to the Federal Act;

8 (4) Any discharge which conflicts with an areawide plan  
9 adopted pursuant to law.

10 f. A permit issued by the department or a delegated local  
11 agency, under this act shall require the permittee:

12 (1) To achieve effluent limitations based upon guidelines or  
13 standards established pursuant to the Federal Act or this act,  
14 together with such further discharge restrictions and safeguards  
15 against unauthorized discharge as may be necessary to meet  
16 water quality standards, areawide plans adopted pursuant to law,  
17 or other legally applicable requirements;

18 (2) Where appropriate, to meet schedules for compliance with  
19 the terms of the permit and interim deadlines for progress or  
20 reports of progress towards compliance;

21 (3) To insure that all discharges are consistent at all times  
22 with the terms and conditions of the permit and that no pollutant  
23 will be discharged more frequently than authorized or at a level  
24 in excess of that which is authorized by the permit;

25 (4) To submit application for a new permit in the event of any  
26 contemplated facility expansion or process modification that  
27 would result in new or increased discharges or, if these would not  
28 violate effluent limitations or other restrictions specified in the  
29 permit, to notify the commissioner, or delegated local agency, of  
30 such new or increased discharges;

31 (5) To install, use and maintain such monitoring equipment and  
32 methods, to sample in accordance with such methods, to maintain  
33 and retain such records of information from monitoring  
34 activities, and to submit to the commissioner, or to the  
35 delegated local agency, [such] reports of monitoring results [as  
36 he may require] for surface waters, as may be stipulated in the  
37 permit, or required by the commissioner or delegated local  
38 agency pursuant to paragraph (9) of this subsection, or as the  
39 commissioner or the delegated local agency may prescribe for  
40 ground water. Significant indirect users, major industrial  
41 dischargers, and local agencies, other than those discharging only  
42 stormwater or noncontact cooling water, shall, however, report  
43 their monitoring results for discharges to surface waters monthly  
44 to the commissioner, or the delegated local agency. Discharge  
45 monitoring reports for discharges to surface waters shall be  
46 signed by the highest ranking official having day-to-day  
47 managerial and operational responsibilities for the discharging  
48 facility, who may, in his absence, authorize another responsible  
49 high ranking official to sign a monthly monitoring report if a

1 report is required to be filed during that period of time. The  
2 highest ranking official shall, however, be liable in all instances  
3 for the accuracy of all the information provided in the monitoring  
4 report; provided, however, that the highest ranking official may  
5 file, within seven days of his return, amendments to the  
6 monitoring report to which he was not a <sup>2</sup>[signator] signatory<sup>2</sup> .  
7 The filing of amendments to a monitoring report in accordance  
8 with this paragraph shall not be considered a late filing of a  
9 report for purposes of subsection d. of section 6 of P.L.<sup>1</sup>1990<sup>1</sup> ,  
10 c. (C. \_\_\_\_\_) (pending in the Legislature as this bill), or for  
11 purposes of determining a significant noncomplier;

12 (6) At all times, to maintain in good working order erate as  
13 effectively as possible, any facilities or systems of control  
14 installed to achieve compliance with the terms and conditions of  
15 the permit;

16 (7) To limit concentrations of heavy metals, pesticides,  
17 organic chemicals and other contaminants in the sludge in  
18 conformance with the land-based sludge management criteria  
19 established by the department in the Statewide Sludge  
20 Management Plan adopted pursuant to the "Solid Waste  
21 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or  
22 established pursuant to the Federal Water Pollution <sup>2</sup>[Contral]  
23 Control<sup>2</sup> Act Amendments of 1972 (33 U.S.C. § 1251 et seq.), or  
24 any regulations adopted pursuant thereto;

25 (8) To report to the department or delegated local agency, as  
26 appropriate, any exceedance of an effluent limitation that causes  
27 injury to persons, or damage to the environment, or poses a  
28 threat to human health or the environment, within two hours of  
29 its occurrence, or of the permittee becoming aware of the  
30 occurrence. Within 24 hours thereof, or of an exceedance, or of  
31 becoming aware of an exceedance, of an effluent limitation for a  
32 toxic pollutant, a permittee shall provide the department or  
33 delegated local agency with such additional information on the  
34 discharge as may be required by the department or delegated  
35 local agency, including an estimate of the danger posed by the  
36 discharge to the environment, whether the discharge is  
37 continuing, and the measures taken, or being taken, to remediate  
38 the problem and any damage to the environment, and to avoid a  
39 repetition of the problem;

40 (9) Notwithstanding the reporting requirements stipulated in a  
41 permit for discharges to surface waters, a permittee shall be  
42 required to file monthly reports with the commissioner or  
43 delegated local agency if the permittee:

44 (a) in any month commits a serious violation or fails to submit  
45 a completed discharge monitoring report and does not contest, or  
46 unsuccessfully contests, the assessment of a civil administrative  
47 penalty therefor; or

48 (b) exceeds an effluent limitation for the same pollutant at  
49 the same discharge point source by any amount for four out of six

1 consecutive months.

2 The commissioner or delegated local agency may restore the  
3 reporting requirements stipulated in the permit if the permittee  
4 has not committed any of the violations identified in this  
5 paragraph for six consecutive months<sup>1</sup>];

6 (10) To report to the department or delegated local agency, as  
7 appropriate, any serious violation within 30 days of the violation,  
8 together with a statement indicating that the permittee  
9 understands the civil administrative penalties required to be  
10 assessed for serious violations, and explaining the nature of the  
11 serious violation and the measures taken to remedy the cause or  
12 prevent a recurrence of the serious violation.<sup>1</sup>

13 g. The commissioner and a local agency shall have a right of  
14 entry to all premises in which a discharge source is or might be  
15 located or in which monitoring equipment or records required by  
16 a permit are kept, for purposes of inspection, sampling, copying  
17 or photographing.

18 h. In addition, any permit issued for a discharge from a  
19 municipal treatment works shall require the permittee:

20 (1) To notify the commissioner or local agency in advance of  
21 the quality and quantity of all new introductions of pollutants  
22 into a facility and of any substantial change in the pollutants  
23 introduced into a facility by an existing user of the facility,  
24 except for such introductions of nonindustrial pollutants as the  
25 commissioner or local agency may exempt from this notification  
26 requirement when ample capacity remains in the facility to  
27 accommodate new inflows. [Such notifications] The notification  
28 shall estimate the effects of [such] the changes on the effluents  
29 to be discharged into the facility.

30 (2) To establish an effective regulatory program, alone or in  
31 conjunction with the operators of sewage collection systems, that  
32 will assure compliance and monitor progress toward compliance  
33 by industrial users of the facilities with user charge and cost  
34 recovery requirements of the Federal Act or State law and  
35 toxicity standards adopted pursuant to this act and pretreatment  
36 standards.

37 (3) As actual flows to the facility approach design flow or  
38 design loading limits, to submit to the commissioner or local  
39 agency for [his] approval, a program which the permittee and the  
40 persons responsible for building and maintaining the contributory  
41 collection system shall pursue in order to prevent overload of the  
42 facilities.

43 i. (1) All [owners of municipal treatment works are hereby  
44 authorized to] local agencies shall prescribe terms and  
45 conditions, consistent with applicable State and federal law, or  
46 requirements adopted pursuant thereto by the department, upon  
47 which pollutants may be introduced into [such] treatment works,  
48 [and to] , and shall have the authority to exercise the same right  
49 of entry, inspection, sampling, and copying, and to impose the

1 same remedies, fines and penalties, and to recover costs and  
2 compensatory damages as authorized pursuant to subsection a. of  
3 section 10 of P.L.1977, c.74 (C.58:10A-10) and section 6 of P.L.  
4 1990<sup>1</sup>, c. (C. ) (pending in the Legislature as this bill), with  
5 respect to users of such works, as are vested in the commissioner  
6 by this act, or by any other provision of State law, except that a  
7 local agency may not impose civil administrative penalties, and  
8 shall petition the county prosecutor or the Attorney General for a  
9 criminal prosecution under that section. Terms and conditions  
10 shall include limits for heavy metals, pesticides, organic  
11 chemicals and other contaminants in industrial wastewater  
12 discharges based upon the attainment of land-based sludge  
13 management criteria established by the department in the  
14 Statewide [Sludge] Sludge Management Plan adopted pursuant to  
15 the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et  
16 seq.) or established pursuant to the Federal Water Pollution  
17 Control Act Amendments of 1972 (33 U.S.C. § 1251 et seq.), or  
18 any regulations adopted pursuant thereto.

19 (2) Of the amount of any penalty assessed and collected  
20 pursuant to an action brought by a local agency in accordance  
21 with section 10 of P.L.1977, c.74 or section 6 of P.L.1990<sup>1</sup>, c.  
22 (C. ) (pending in the Legislature as this bill), 10% shall be  
23 deposited in the "Wastewater Treatment Operators' Training  
24 Account," established in accordance with section 13 of  
25 P.L.1[1989] 1990<sup>1</sup>, c. (C. ) (pending in the Legislature as  
26 this bill), and used to finance the cost of training operators of  
27 municipal treatment works. The remainder shall be used by the  
28 local agency solely for enforcement purposes, and for upgrading  
29 municipal treatment works.

30 j. In reviewing permits submitted in compliance with this act  
31 and in determining conditions under which such permits may be  
32 approved, the commissioner shall encourage the development of  
33 comprehensive regional sewerage planning or facilities, which  
34 serve the needs of the regional community [and which], conform  
35 to the adopted area-wide water quality management plan for that  
36 region, and protect the needs of the regional community for  
37 water quality, aquifer storage, aquifer recharge, and dry weather  
38 based stream flows.

39 k. No permit may be issued, renewed, or modified by the  
40 department or a delegated local agency so as to relax any water  
41 quality standard or effluent limitation until the applicant, or  
42 permit holder, as the case may be, has paid all fees, penalties or  
43 fines due and owing pursuant to P.L.1977, c.74, or has entered  
44 into an agreement with the department establishing a payment  
45 schedule therefor; except that if a penalty or fine is contested,  
46 the applicant or permit holder shall satisfy the provisions of this  
47 section by posting financial security as required pursuant to  
48 paragraph (5) of subsection d. of section 10 of P.L.1977, c.74  
49 (C.58:10A-10). The provisions of this subsection with respect to

1 penalties or fines shall not apply to a local agency contesting a  
2 penalty or fine.

3 1. Each permitted facility or municipal treatment works, other  
4 than one discharging only stormwater or non-contact cooling  
5 water, shall be inspected by the department at least once a year;  
6 except that each permitted facility discharging into the  
7 municipal treatment works of a delegated local agency, other  
8 than a facility discharging only stormwater or non-contact  
9 cooling water, shall be inspected by the delegated local agency at  
10 least once a year. Except as hereinafter provided, an inspection  
11 required under this subsection shall be conducted within six  
12 months following a permittee's submission of an application for a  
13 permit, permit renewal, or, in the case of a new facility or  
14 municipal treatment works, issuance of a permit therefor, except  
15 that if for any reason, a scheduled inspection cannot be made the  
16 inspection shall be rescheduled to be performed within 30 days of  
17 the originally scheduled inspection or, in the case of a temporary  
18 shutdown, of resumed operation. Exemption of stormwater  
19 facilities from the provisions of this paragraph shall not apply to  
20 any permitted facility or municipal treatment works discharging  
21 or receiving stormwater runoff having come into contact with a  
22 hazardous discharge site on the federal National Priorities List  
23 adopted by the United States Environmental Protection Agency  
24 pursuant to the "Comprehensive Environmental Response,  
25 Compensation, and Liability Act," Pub.L.96-510 (42 U.S.C.A. §  
26 9601 et seq.), or any other hazardous discharge site included by  
27 the department on the master list for hazardous discharge site  
28 cleanups adopted pursuant to section 2 of P.L.1982, c.202  
29 (C.58:10-23.16). Inspections shall include:

30 (1) A representative sampling of the effluent for each  
31 permitted facility or municipal treatment works, except that in  
32 the case of facilities or works that are not major facilities or  
33 significant indirect users, sampling pursuant to this paragraph  
34 shall be conducted at least once every three years;

35 (2) An analysis of all collected samples by a State owned and  
36 operated laboratory, or a certified laboratory other than one that  
37 has been or is being used by the permittee, or that is directly or  
38 indirectly owned, operated or managed by the permittee;

39 (3) An evaluation of the maintenance record of the  
40 permittee's treatment equipment;

41 (4) An evaluation of the permittee's sampling techniques;

42 (5) A random check of written summaries of test results,  
43 prepared by the certified laboratory providing the test results,  
44 for the immediately preceding 12-month period, signed by a  
45 responsible official of the certified laboratory, certifying the  
46 accuracy of the test results; and

47 (6) An inspection of the permittee's sample storage facilities  
48 and techniques if the sampling is normally performed by the  
49 permittee.

1     The department may inspect a facility required to be inspected  
2 by a delegated local agency pursuant to this subsection. Nothing  
3 in this subsection shall require the department to conduct more  
4 than one inspection per year.

5     A delegated local agency shall not be required to conduct  
6 annual inspections pursuant to this subsection until <sup>2</sup>[the first day  
7 of the 7th month after the effective date of <sup>1</sup>[this act] P.L. 1990,  
8 c. (C. )(pending in the Legislature as this bill)<sup>1</sup>] January 1,  
9 1992<sup>2</sup>.

10     m. The facility or municipal treatment works of a permittee  
11 identified as a significant noncomplier shall be subject to an  
12 inspection by the department, or the delegated local agency, as  
13 the case may be, which inspection shall be in addition to the  
14 requirements of subsection l. of this section. The inspection shall  
15 be conducted within <sup>1</sup>[30] <sup>60</sup><sup>1</sup> days of <sup>1</sup>[submission] receipt<sup>1</sup> of  
16 the discharge monitoring report that initially results in the  
17 permittee being identified as a significant noncomplier. The  
18 inspection shall include a random check of written summaries of  
19 test results, prepared by the certified laboratory providing the  
20 test results, for the immediately preceding 12-month period,  
21 signed by a responsible official of the certified laboratory,  
22 certifying the accuracy of the test results. A copy of each  
23 summary shall be maintained by the permittee. The inspection  
24 shall be for the purpose of determining compliance. The  
25 department or delegated local agency is required to conduct only  
26 one inspection per year pursuant to this subsection, and is not  
27 required to make an inspection hereunder if an inspection has  
28 been made pursuant to subsection l. of this section within six  
29 months of the period within which an inspection is required to be  
30 conducted under this subsection.

31     n. To assist the commissioner in assessing a municipal  
32 treatment works' NJPDES permit in accordance with paragraph  
33 (3) of subsection b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a  
34 delegated local agency shall perform a complete analysis that  
35 includes a complete priority pollutant analysis of the discharge  
36 from, and inflow to, the municipal treatment works. The analysis  
37 shall be performed by a delegated local agency as often as the  
38 priority pollutant scan is required under the permit, but not less  
39 than once a year, and shall be based upon data acquired in the  
40 priority pollutant scan and from applicable sludge quality analysis  
41 reports. The results of the analysis shall be included in a report  
42 to be attached to the annual report required to be submitted to  
43 the commissioner by the delegated local agency.

44     o. Except as otherwise provided in section 3 of P.L.1963, c.73  
45 (C.47:1A-3), any records, reports or other information obtained  
46 by the commissioner or a local agency pursuant to this section or  
47 section 5 of P.L.1972, c.42 (C.58:11-53), including any  
48 <sup>2</sup>[correspondance] correspondence<sup>2</sup> relating thereto, shall be  
49 available to the public; however, upon a showing satisfactory to

1 the commissioner by any person that the making public of any  
2 recept or information, or a part thereof, other than effluent  
3 data, would divulge methods or processes entitled to protection  
4 as trade secrets, the commissioner or local agency shall consider  
5 such record, report, or information, or part thereof, to be  
6 confidential, and access thereto shall be limited to authorized  
7 officers or employees of the department, the local agency, and  
8 the federal government.

9 (cf: P.L.1988, c.56, s.7)

10 4. Section 7 of P.L.1977, c.74 (C.58:10A-7) is amended to read  
11 as follows:

12 7. a. All permits issued under this act shall be for fixed terms  
13 not to exceed 5 years. Any permittee who wishes to continue  
14 discharging after the expiration date of his permit must file for a  
15 new permit at least 180 days prior to that date.

16 b. (1) The commissioner may modify, suspend, or revoke a  
17 permit in whole or in part during its term for cause, including but  
18 not limited to the following:

19 [(1)] (a) Violation of any term or condition of the permit;

20 [(2)] (b) Obtaining a permit by misrepresentation or failure to  
21 disclose fully all relevant facts[;].

22 [(3)] (2) If a toxic effluent limitation or prohibition, including  
23 any schedule of compliance specified in such effluent limitation  
24 or prohibition, is established under section 307(a) of the Federal  
25 Act for a toxic pollutant which is more stringent than any  
26 limitations upon such pollutant in an existing permit, the  
27 commissioner shall revise or modify the permit in accordance  
28 with the toxic effluent limitation or prohibition and so notify the  
29 permittee.

30 (3) The department shall include in a permit for a delegated  
31 local agency effluent limits for all pollutants listed under the  
32 United States Environmental Protection Agency's Categorical  
33 Pretreatment Standards, adopted pursuant to 33 U.S.C. § 1317,  
34 and such other pollutants for which effluent limits have been  
35 established for a permittee discharging into the municipal  
36 treatment works of the delegated local agency, except those  
37 categorical or other pollutants that the delegated local agency  
38 demonstrates to the department are not discharged above  
39 detectable levels by the municipal treatment works. The  
40 department, by permit, may authorize the use by a delegated  
41 local agency of surrogate parameters for categorical and other  
42 pollutants discharged from a municipal treatment works, except  
43 that if a surrogate parameter is exceeded, the department shall  
44 require effluent limits for each categorical or other pollutant for  
45 which the surrogate parameter was used, for such period of time  
46 as may be determined by the department.

47 c. Notice of every proposed suspension, revocation or renewal,  
48 or substantial modification of a permit and opportunity for public  
49 hearing thereupon, shall be afforded in the same manner as with

1 respect to original permit applications as provided for in this  
2 act. In any event notice of all modifications to a discharge  
3 permit shall be published in the [New Jersey Register] DEP  
4 Bulletin.

5 d. [Every final] A determination [of the commissioner] to  
6 grant, deny, modify, suspend, or revoke a permit shall constitute  
7 [an administrative adjudication] a contested case under the  
8 "Administrative [Procedures] Procedure Act," P.L.1968, c.410  
9 (C.52:14B-1 et seq.)[, which provides the]. The permittee, or any  
10 other person considered a party to the action<sup>2</sup>pursuant to  
11 subsection e. of this section<sup>2</sup>, shall have the opportunity to  
12 contest the [final] determination in [a] an administrative hearing.  
13 <sup>2</sup>[The administrative law judge, or the commissioner, if the  
14 commissioner decides to conduct the hearing, shall find whether a  
15 person other than the permittee is a party to the action. A  
16 person shall be considered to be a party to action only if the  
17 person's objections to the action to grant, deny, modify, suspend,  
18 or revoke a permit were raised by that person in the hearing held  
19 pursuant to section 9 of P.L.1977, c.74 (C.58:10A-9), and relate  
20 to a significant issue of law or fact that is likely to have a  
21 bearing on the determination, or, if no hearing was held, the  
22 objections were raised in a written submission and the objection  
23 relates to a significant issue of law or fact that is likely to have a  
24 bearing on the determination.]

25 e. A person, other than the permittee, seeking to be considered  
26 a party to the action shall submit a request to be so considered to  
27 the commissioner within 30 days of the publication of the notice  
28 of the decision to grant, deny, modify, suspend, or revoke a  
29 permit. The administrative law judge upon referral, or the  
30 commissioner, if the commissioner decides to make the  
31 determination, shall find whether a person other than the  
32 permittee is a party to the action within 30 days of the  
33 submission of the request or the referral to the administrative  
34 law judge. A person shall be deemed a party to the action only if:

35 (1) the person's objections to the action to grant, deny, modify,  
36 suspend, or revoke a permit were raised by that person in the  
37 hearing held pursuant to section 9 of P.L.1977, c.74 (C.58:10A-9),  
38 or, if no hearing was held, the objections were raised in a written  
39 submission;

40 (2) the person demonstrates the existence of a significant issue  
41 of law or fact;

42 (3) the person shows that the significant issue of law or fact is  
43 likely to affect the permit determination;

44 (4) the person can show an interest, including an environmental,  
45 aesthetic, or recreational interest, which is or may be affected  
46 by the permit decision and that the interest fairly can be traced  
47 to the challenged action and is likely to be redressed by a  
48 decision favorable to that person. An organization may contest a  
49 permit decision on behalf of one or more of its members if (a) the



1 organization's member or members could otherwise be a party to  
2 the action in their own right; and (b) the interests the  
3 organization seeks to protect are germane to the organization's  
4 purpose; and

5 (5) the person submits the following information with the  
6 request to be considered a party to the action:

7 (a) a statement of each legal or factual question alleged to be  
8 at issue and its relevance to the permit decision, together with a  
9 designation of the specific factual areas to be adjudicated and  
10 the hearing time estimated to be necessary for adjudication;

11 (b) information supporting the request which shall be submitted  
12 pursuant to adopted rules;

13 (c) the name, mailing address, and telephone number of the  
14 person making the request;

15 (d) a clear and concise factual statement of the nature and  
16 scope of the interest of the requester;

17 (e) the names and addresses of all affected persons whom the  
18 requester represents;

19 (f) a statement by the requester that, upon motion of any party  
20 granted by the hearing officer, or upon order of the hearing  
21 officer sua sponte, the requester shall make available to appear  
22 and testify at the administrative hearing, if granted, the  
23 following: the requester; all affected persons represented by the  
24 requester; and all officers, directors, employees, consultants, and  
25 agents of the requester;

26 (g) specific references to the contested permit conditions, as  
27 well as suggested revised or alternative permit conditions,  
28 including permit denials, which, in the judgment of the requester,  
29 would be required to implement the purposes of P.L.1977, c.74;  
30 and

31 (h) in the case of application of control or treatment  
32 technologies identified in the statement of basis or fact sheet,  
33 identification of the basis for the objection, and the alternative  
34 technologies or combination of technologies which the requester  
35 believes are necessary to meet the requirements of P.L.1977,  
36 c.74.

37 Whenever a person's request to be considered to be a party to  
38 the action is granted, the commissioner or the administrative law  
39 judge, as appropriate, shall identify the permit conditions which  
40 have been contested by the requester and for which an  
41 administrative hearing will be granted. Permit conditions which  
42 are not so contested shall not be affected by, or considered at,  
43 the administrative hearing. All requests by persons seeking to be  
44 considered a party to the action for a particular permit shall be  
45 combined in a single administrative hearing.

46 f. A permittee may contest the determination to grant, deny,  
47 modify, suspend, or revoke a permit in an administrative hearing  
48 pursuant to subsection d. of this section only upon the placement,  
49 in escrow, of money in an amount equal to the permit fee.<sup>2</sup>

50 (cf: P.L.1977, c.74, s.7)

1       5. Section 10 of P.L.1977, c.74 (C.58:10A-10) is amended to  
2 read as follows:

3       10. a. [Whenever, on the basis of any information available to  
4 him,] <sup>1</sup>[Except as otherwise provided in subsections b., c., and d.  
5 of section 6 of P.L. , c. (C. )](pending in the Legislature  
6 as this bill), whenever] Whenever<sup>1</sup> the commissioner finds that  
7 any person is in violation of any provision of this act, [or any rule,  
8 regulation, water quality standard, effluent limitation, or, permit  
9 issued pursuant to this act,] he shall:

10       (1) Issue <sup>1</sup>[a notice of violation or]<sup>1</sup> an order requiring any  
11 such person to comply in accordance with subsection b. of this  
12 section; or

13       (2) Bring a civil action in accordance with subsection c. of this  
14 section; or

15       (3) Levy a civil administrative penalty in accordance with  
16 subsection d. of this section; or

17       (4) Bring an action for a civil penalty in accordance with  
18 subsection e. of this section; or

19       (5) Petition the Attorney General to bring a criminal action in  
20 accordance with subsection f. of this section.

21       Use of any of the remedies specified under this section shall  
22 not preclude use of any other remedy specified.

23       In the case of one or more pollutants for which interim  
24 enforcement limits have been established pursuant to an  
25 administrative order, including an administrative consent order,  
26 by the department or a local agency, the permittee shall be liable  
27 for the enforcement limits stipulated therein.

28       <sup>1</sup>[As used in this section, "violation of the provisions of this  
29 act" or "violation of this act" includes a violation of any rule or  
30 regulation, water quality standard, effluent limitation or other  
31 condition of a permit, or order promulgated, issued, or entered  
32 into pursuant to this act.]<sup>1</sup>

33       b. [Whenever, on the basis of any information available to  
34 him,] <sup>1</sup>[Except as otherwise provided in subsections b., c., and d.  
35 of section 6 of P.L. , c. (C. )](pending in the Legislature  
36 as this bill), whenever] Whenever<sup>1</sup> the commissioner finds that  
37 any person is in violation of any provision of this act, [or of any  
38 rule, regulation, water quality standard, effluent limitation or  
39 permit issued pursuant to this act,] he [may issue] <sup>1</sup>[shall utilize  
40 one or more of the remedies available under subsection a. of this  
41 section. If the commissioner elects to issue a notice of violation,  
42 the commissioner shall, if necessary, determine, within three  
43 months of the date of issuance of the notice, what steps have  
44 been taken to comply with the notice. If the commissioner  
45 determines that the permittee has not taken reasonable steps to  
46 comply with the notice, the commissioner shall] may<sup>1</sup> issue an  
47 order (1) specifying the provision or provisions of this act, or the  
48 rule, regulation, water quality standard, effluent limitation, or  
49 permit of which he is in violation, (2) citing the action which

1 caused such violation, (3) requiring compliance with such  
2 provision or provisions, and (4) giving notice to the person of his  
3 right to a hearing on the matters contained in the order.

4 <sup>1</sup>[Nothing herein shall be construed to limit the authority of the  
5 commissioner to issue an order for a violation without prior  
6 issuance of a notice of violation.]<sup>1</sup>

7 c. The commissioner is authorized to commence a civil action  
8 in Superior Court for appropriate relief for any violation of this  
9 act or of a permit issued hereunder. Such relief may include,  
10 singly or in combination:

11 (1) A temporary or permanent injunction;

12 (2) Assessment of the violator for the reasonable costs of any  
13 investigation, inspection, or monitoring survey which led to the  
14 establishment of the violation, and for the reasonable costs of  
15 preparing and litigating the case under this subsection;

16 (3) Assessment of the violator for any reasonable cost incurred  
17 by the State in removing, correcting or terminating the adverse  
18 effects upon water quality resulting from any unauthorized  
19 discharge of pollutants for which the action under this subsection  
20 may have been brought;

21 (4) Assessment against the violator of compensatory damages  
22 for any loss or destruction of wildlife, fish or aquatic life, or  
23 other natural resources, and for any other actual damages caused  
24 by an unauthorized discharge;

25 (5) Assessment against a violator of the actual amount of any  
26 economic benefits accruing to the violator from a violation.  
27 Economic benefits may include the amount of any savings  
28 realized from avoided capital or noncapital costs resulting from  
29 the violation; the return earned or that may be earned on the  
30 amount of avoided costs; any benefits accruing to the violator as  
31 a result of a competitive market advantage enjoyed by reason of  
32 the violation; or any other benefits resulting from the violation.

33 Assessments under paragraph (4) of this subsection shall be paid  
34 to the State Treasurer, except that compensatory damages shall  
35 be paid by specific order of the court to any persons who have  
36 been aggrieved by the unauthorized discharge. Assessments  
37 pursuant to actions brought by the commissioner under  
38 paragraphs (2), (3) and (5) of this subsection shall be paid to the  
39 "Clean Water Enforcement Fund," established pursuant to section  
40 12 of P.L. , c. (C. ) (pending in the Legislature as this  
41 bill).

42 <sup>1</sup>[Upon an appropriate finding, the commissioner, by  
43 administrative order, may assess a violator for costs authorized  
44 pursuant to paragraphs (2) and (3) of this subsection;]<sup>1</sup>

45 d. (1) (a) The commissioner is authorized to assess, in  
46 accordance with a uniform policy adopted therefor, a civil  
47 administrative penalty of not more than \$50,000.00 for each  
48 violation and each day during which such violation continues shall  
49 constitute an additional, separate, and distinct offense. Any

1 amount assessed under this subsection shall fall within a range  
2 established by regulation by the commissioner for violations of  
3 similar type, seriousness, and duration. The commissioner shall  
4 adopt, by regulation, a uniform assessment of civil penalties  
5 policy <sup>2</sup>[within six months of the effective date of P.L. , c.  
6 (C. ) (pending in the Legislature as this bill)] by January 1,  
7 1992<sup>2</sup>.

8 (b) In adopting rules for a uniform penalty policy for  
9 determining the amount of a penalty to be assessed, the  
10 commissioner shall take into account the type, seriousness,  
11 including extent, toxicity, and frequency of a violation based  
12 upon the harm to public health or the environment resulting from  
13 the violation, the economic benefits from the violation gained by  
14 the violator, the degree of cooperation or recalcitrance of the  
15 violator in remedying the violation, any measures taken by the  
16 violator to avoid a repetition of the violation, any unusual or  
17 extraordinary costs directly or indirectly imposed on the public  
18 by the violation other than costs recoverable pursuant to  
19 paragraph (3) or (4) of subsection c. of this section, and any other  
20 pertinent factors that the commissioner determines measure the  
21 seriousness or frequency of the violation, or conduct of the  
22 violator.

23 <sup>1</sup>(c) In addition to the assessment of a civil administrative  
24 penalty, the commissioner may, by administrative order and upon  
25 an appropriate finding, assess a violator for costs authorized  
26 pursuant to paragraphs (2) and (3) of subsection c. of this  
27 section.<sup>1</sup>

28 (2) No assessment shall be levied pursuant to this <sup>1</sup>[section]  
29 subsection<sup>1</sup> until after the discharger has been notified by  
30 certified mail or personal service. The notice shall include a  
31 reference to the section of the statute, regulation, order or  
32 permit condition violated; a concise statement of the facts  
33 alleged to constitute a violation; a statement of the amount of  
34 the civil penalties to be imposed; and a statement of the party's  
35 right to a hearing. The ordered party shall have 20 days from  
36 receipt of the notice within which to deliver to the commissioner  
37 a written request for a hearing. After the hearing and upon  
38 finding that a violation has occurred, the commissioner may issue  
39 a final order after assessing the amount of the fine specified in  
40 the notice. If no hearing is requested, then the notice shall  
41 become a final order after the expiration of the 20-day period.  
42 Payment of the assessment is due when a final order is issued or  
43 the notice becomes a final order.

44 (3) If a civil administrative penalty imposed pursuant to this  
45 subsection is not paid within 30 days of the date that the penalty  
46 is due and owing, and the penalty is not contested by the person  
47 against whom the penalty has been assessed, or the person fails to  
48 make a payment pursuant to a payment schedule entered into  
49 with the department, an interest charge shall accrue on the

1 amount of the penalty<sup>1</sup> due and owing<sup>1</sup> from the 30th<sup>1</sup> [date] day  
2 after the date on which<sup>1</sup> the penalty was due and owing. The  
3 rate of interest shall be that established by the New Jersey  
4 Supreme Court for interest rates on judgments, as set forth in the  
5 Rules Governing the Courts of the State of New Jersey.

6 (4) The authority to levy<sup>2</sup> [an] a civil<sup>2</sup> administrative [order]  
7 penalty is in addition to all other enforcement provisions in this  
8 act, and the payment of any assessment shall not be deemed to  
9 affect the availability of any other enforcement provisions in  
10 connection with the violation for which the assessment is levied.  
11 Any civil<sup>1</sup> administrative<sup>1</sup> penalty assessed under this section  
12 may be compromised by the commissioner upon the posting of a  
13 performance bond by the violator, or upon such terms and  
14 conditions as the commissioner may establish by regulation,  
15 except that<sup>2</sup> [in the case of a violator other than a local agency]<sup>2</sup>  
16 the amount compromised shall not be more than 50% of the  
17 assessed penalty,<sup>2</sup> [but] and<sup>2</sup> in no instance shall the amount of  
18 that compromised penalty be less than the statutory minimum  
19 amount, if applicable, prescribed in section 6 of P.L.<sup>1</sup>1990<sup>1</sup>, c.  
20 (C. ) (pending in the Legislature as this bill). In the case of a  
21 violator who is a local agency<sup>2</sup> [, for a first<sup>1</sup> [violation]  
22 assessment after the effective date of P.L.1990, c.  
23 (C. ) (pending in the Legislature as this bill)<sup>1</sup> the amount  
24 compromised shall be at the discretion of the department, for a  
25 second violation the amount compromised shall not be more than  
26 75% of the assessed penalty, and for a third and subsequent  
27 violation the amount compromised shall not be more than 50% of  
28 the assessed penalty] that enters into an administrative consent  
29 order, the terms of which require the local agency to take  
30 prescribed measures to comply with its permit, the commissioner  
31 shall have full discretion to compromise the amount of penalties  
32 assessed or due for violations occurring during a period up to 24  
33 months preceding the entering into the administrative consent  
34 order; except that the amount of the compromised penalty may  
35 not be less than the statutory minimum amount, if applicable,  
36 prescribed in section 6 of P.L. 1990, c. (C. ) (pending in the  
37 Legislature as this bill). A civil administrative penalty assessed  
38 against a local agency for a violation of an administrative  
39 consent order may not be compromised by more than 50% of the  
40 assessed penalty<sup>2</sup>. In no instance shall the amount of a  
41 compromised penalty assessed against a local agency be less than  
42 the statutory minimum amount, if applicable, prescribed in  
43 section 6 of P.L. <sup>1</sup>1990<sup>1</sup>, c. (C. ) (pending in the Legislature  
44 as this bill). The <sup>1</sup>[Commissioner] commissioner<sup>1</sup> shall not  
45 compromise the amount of any component of a civil  
46 administrative penalty which represents the economic benefit  
47 gained by the violator from the violation.

48 (5) A person, other than a local agency, appealing a penalty  
49 assessed<sup>1</sup> against that person<sup>1</sup> in accordance with this subsection,

1 whether contested as a contested case pursuant to P.L.1968,  
2 c.410 (C.52:14B-1 et seq.) or by appeal to a court of competent  
3 jurisdiction, shall, as a condition of filing the appeal, post with  
4 the commissioner a refundable bond, or other security approved  
5 by the commissioner, in the amount of the civil administrative  
6 penalty assessed. If the <sup>1</sup>[department is the prevailing party]  
7 department's assessed penalty is upheld in full or in part<sup>1</sup>, the  
8 department shall <sup>1</sup>[also]<sup>1</sup> be entitled to a daily interest charge on  
9 the amount of the judgment from the date of the posting of the  
10 security with the commissioner and until paid in full. The rate of  
11 interest shall be that established by the New Jersey Supreme  
12 Court for interest rates on judgments, as set forth in the Rules  
13 Governing the Courts of the State of New Jersey. <sup>1</sup>In addition, if  
14 the amount of the penalty assessed by the department is upheld in  
15 full in an appeal of the assessment at an administrative hearing  
16 or at a court of competent jurisdiction, the person appealing the  
17 penalty shall reimburse the department for all reasonable costs  
18 incurred by the department in preparing and litigating the  
19 imposition of the assessment, except that no litigation costs shall  
20 be imposed where the appeal ultimately results in a reduction or  
21 elimination of the assessed penalty.<sup>1</sup>

22 (6) A civil administrative penalty imposed pursuant to a final  
23 order:

24 (a) may be collected or enforced by summary proceedings in a  
25 court of competent jurisdiction in accordance with "the penalty  
26 enforcement law," N.J.S.2A:58-1 et seq.; or

27 (b) shall constitute a debt of the violator or discharger and the  
28 civil administrative penalty may be docketed with the clerk of  
29 the Superior Court, and shall have the same standing as any  
30 judgment docketed pursuant to N.J.S.2A:16-1; except that no lien  
31 shall attach to the real property of a violator pursuant to this  
32 subsection if the violator posts a refundable bond or other  
33 security with the commissioner pursuant to an appeal of a final  
34 order to the Appellate Division of the Superior Court. No lien  
35 shall attach to the property of a local agency.

36 (7) The commissioner shall refer to the Attorney General and  
37 the county prosecutor of the county in which the violations  
38 occurred the record of violations of any permittee determined to  
39 be a significant noncomplier.

40 e. Any person who violates this act or an administrative order  
41 issued pursuant to subsection b. or a court order issued pursuant  
42 to subsection c., or who fails to pay [an administrative  
43 assessment] a civil administrative penalty in full pursuant to  
44 subsection d., or to make a payment pursuant to a payment  
45 schedule entered into with the department, shall be subject upon  
46 order of a court to a civil penalty not to exceed \$50,000.00 per  
47 day of such violation, and each day's continuance of the violation  
48 shall constitute a separate violation. Any penalty incurred under  
49 this subsection may be recovered with costs, and, if applicable,

1 interest charges, in a summary proceeding pursuant to "the  
2 penalty enforcement law" (N.J.S.2A:58-1 et seq.). In addition to  
3 any civil penalties, costs or interest charges, the court, in  
4 accordance with paragraph (5) of subsection c. of this section,  
5 may assess against a violator the amount of any actual economic  
6 benefits accruing to the violator from the violation. The Superior  
7 Court shall have jurisdiction to enforce "the penalty enforcement  
8 law" in conjunction with this act.

9 f. [Any person who willfully or negligently violates this act  
10 shall, upon conviction, be guilty of a crime of the fourth degree  
11 and shall be punished by fine of not less than \$5,000.00 nor more  
12 than \$50,000.00 per day of violation, or by imprisonment for not  
13 more than one year, or by both. Punishment for a second offense  
14 under this subsection shall be a fine of not less than \$10,000.00  
15 nor more than \$100,000.00 per day of violation, or by  
16 imprisonment for not more than two years, or both.

17 Any person who knowingly makes a false statement,  
18 representation, or certification in any application, record, or  
19 other document filed or required to be maintained under this act  
20 or who falsifies, tampers with or knowingly renders inaccurate,  
21 any monitoring device or method required to be maintained  
22 pursuant to this act, shall upon conviction, be subject to a fine of  
23 not more than \$20,000.00 or by imprisonment for not more than  
24 six months, or by both] (1)(a) Any person who purposely,  
25 knowingly, or recklessly violates this act, and the violation causes  
26 a significant adverse environmental effect, shall, upon  
27 conviction, be guilty of a crime of the second degree, and shall,  
28 notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,  
29 be subject to a fine of not less than \$25,000 nor more than  
30 \$250,000 per day of violation, or by imprisonment, or by both.

31 (b) As used in this paragraph, a significant adverse  
32 environmental effect exists when an action or omission of the  
33 defendant causes: serious harm or damage to wildlife, freshwater  
34 or saltwater fish, any other aquatic or marine life, water fowl, or  
35 to their habitats, or to livestock, or agricultural crops; serious  
36 harm, or degradation of, any ground or surface waters used for  
37 drinking, agricultural, navigational, recreational, or industrial  
38 purposes; or any other serious articulable harm or damage to, or  
39 degradation of, the lands or waters of the State, including ocean  
40 waters subject to its jurisdiction pursuant to P.L.1988, c.61  
41 (C.58:10A-47 et seq.).

42 (2) Any person who purposely, knowingly, or recklessly violates  
43 this act, including making a false statement, representation, or  
44 certification in any application, record, or other document filed  
45 or required to be maintained under this act, or by falsifying,  
46 tampering with, or rendering inaccurate any monitoring device or  
47 method required to be maintained pursuant to this act, or by  
48 failing to submit a monitoring report, or any portion thereof,  
49 required pursuant to this act, shall, upon conviction, be guilty of

1 a crime of the third degree, and shall, notwithstanding the  
 2 provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine  
 3 of not less than \$5,000 nor more than \$75,000 per day of  
 4 violation, or by imprisonment, or by both.

5 (3) Any person who negligently violates this act, including  
 6 making a false statement, representation, or certification in any  
 7 application, record, or other document filed or required to be  
 8 maintained under this act, or by falsifying, tampering with, or  
 9 rendering inaccurate any monitoring device or method required to  
 10 be maintained pursuant to this act, or by failing to submit a  
 11 discharge monitoring report, or any portion thereof, required  
 12 pursuant to this act, shall, upon conviction, be guilty of a crime  
 13 of the fourth degree, and shall, notwithstanding the provisions of  
 14 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less  
 15 than \$5,000 nor more than \$50,000 per day of violation, or by  
 16 imprisonment, <sup>2</sup>[or]<sup>2</sup> or by both.

17 (4) Any person who purposely or knowingly violates an effluent  
 18 limitation or other condition of a permit, or who discharges  
 19 without a permit, and who knows at that time that he thereby  
 20 places another person in imminent danger of death or serious  
 21 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, shall,  
 22 upon conviction, be guilty of a crime of the first degree, and  
 23 shall, notwithstanding the provisions of subsection a. of  
 24 N.J.S.2C:43-3, be subject of a fine of not less than \$50,000 nor  
 25 more than \$250,000, or, in the case of a corporation, a fine of  
 26 not less than \$200,000 nor more than \$1,000,000, or by  
 27 imprisonment or by both.

28 <sup>1</sup>(5) As used in this subsection, "purposely," "knowingly,"  
 29 "recklessly," and "negligently" shall have the same meaning as  
 30 defined in N.J.S.C:2-2.<sup>1</sup>

31 g. All conveyances used or intended for use in the [willful]  
 32 purposeful or knowing discharge, in violation of the provisions of  
 33 P.L.1977, c.74 (C.58:10A-1 et seq.), of any pollutant or toxic  
 34 pollutant are subject to forfeiture to the State pursuant to the  
 35 provisions of P.L.1981, c.387 (C.13:1K-1 et seq.).

36 h. [The penalty provisions of this section, as amended by  
 37 P.L., c. (C. ) (pending in the Legislature as this bill), and of  
 38 section 6 of that act, shall apply to violations occurring on or  
 39 after the effective date of that act.] The amendatory portions of  
 40 this section, as set forth in P.L.1990, c. (C. )(pending in the  
 41 Legislature as this bill), <sup>2</sup>except for subsection f. of this  
 42 section,<sup>2</sup> shall not apply to violations occurring prior to <sup>2</sup>[the  
 43 enactment of P.L. 1990, c. (C. )(pending in the Legislature as  
 44 this bill).<sup>1</sup>] July 1, 1991.<sup>2</sup>

45 (cf: P.L.1986, c.170, s.3)

46 6. (New section) a. The provisions of section 10 of P.L.1977,  
 47 c.74 (C.58:10A-10), or any rule or regulation adopted pursuant  
 48 thereto to the contrary notwithstanding, the department shall  
 49 assess, with no discretion, a mandatory minimum civil



1 administrative penalty for the violations enumerated in  
2 subsections b., c., and d. of this section.

3 b. The department shall assess a minimum mandatory civil  
4 administrative penalty of \$1,000 against a violator for each  
5 serious violation <sup>1</sup>, which assessment shall be made within six  
6 months of the serious violation<sup>1</sup>.

7 c. The department shall assess a minimum mandatory civil  
8 administrative penalty of \$5,000 against a violator for the  
9 violation that causes the violator to be, or to continue to be, a  
10 significant noncomplier.

11 d. The department shall assess a minimum mandatory civil  
12 administrative penalty of \$100 for each effluent parameter  
13 omitted on a discharge monitoring report required to be  
14 submitted to the department, and each day during which the  
15 effluent parameter information is overdue shall constitute an  
16 additional, separate, and distinct offense, except that in no  
17 instance shall the total civil administrative penalty assessed  
18 pursuant to this subsection exceed \$50,000 per month for any one  
19 discharge monitoring report. The civil administrative penalty  
20 assessed pursuant to this subsection shall accrue as of the fifth  
21 day following the date on which the discharge monitoring report  
22 was due and shall continue to accrue for 30 days. The  
23 commissioner may continue to assess civil administrative  
24 penalties beyond the 30-day period until submission of the  
25 overdue discharge monitoring report or overdue information. A  
26 permittee may contest the assessment of the civil administrative  
27 penalty required to be assessed pursuant to this subsection by  
28 notifying the commissioner in writing, within 30 days of the date  
29 on which the effluent parameter information was required to be  
30 submitted to the department, of the existence of extenuating  
31 circumstances beyond the control of the permittee, including  
32 circumstances that prevented timely submission of the discharge  
33 monitoring report, or portion thereof, or, if the civil  
34 administrative penalty is imposed because of an inadvertent  
35 omission of one or more effluent parameters, the permittee may  
36 submit, without liability for a civil administrative penalty  
37 assessed pursuant to this subsection or subsection c. of this  
38 section, the omitted information within 10 days of receipt by the  
39 permittee of notice of omission of the parameter or parameters.

40 e. If a violator establishes, to the satisfaction of the  
41 department, that a single operational occurrence has resulted in  
42 the simultaneous violation of more than one pollutant parameter,  
43 the department may consider, for purposes of calculating the  
44 mandatory civil administrative penalties to be assessed pursuant  
45 to subsections b. and c. of this section, the violation of the  
46 interrelated permit parameters to be a single violation.

47 f. The requirement <sup>1</sup>[of] that<sup>1</sup> the department <sup>1</sup>[to]<sup>1</sup> assess a  
48 minimum civil administrative penalty pursuant to this section  
49 shall in no way be construed to limit the authority of the

1 department to assess a <sup>1</sup>civil administrative penalty or bring an  
2 action for a civil penalty for a violation at any time after a  
3 violation occurred or to assess a<sup>1</sup> more stringent civil  
4 administrative penalty or civil penalty against a person pursuant  
5 to section 10 of P.L.1977, c.74 (C.58:10A-10).

6 <sup>1</sup>g. The provisions of this section shall not apply to violations  
7 occurring prior to the effective date of this section.<sup>1</sup>

8 7. (New section) a. A person may be entitled to an  
9 affirmative defense to liability for <sup>1</sup>[an] a mandatory<sup>1</sup>  
10 assessment of a civil administrative penalty pursuant to section 6  
11 of P.L. , c. (C. )(pending in the Legislature as this bill) for  
12 a violation of an effluent limitation occurring as a result of an  
13 upset, <sup>1</sup>[or]<sup>1</sup> an anticipated or unanticipated bypass <sup>1</sup>, or a  
14 testing or laboratory error<sup>1</sup>. A person shall be entitled to an  
15 affirmative defense only if, in the determination of the  
16 department or delegated local agency, the person satisfies the  
17 provisions of subsections b., c., <sup>1</sup>[or]<sup>1</sup> e. <sup>1</sup>or f.<sup>1</sup> , as applicable, of  
18 this section.

19 b. A person asserting an upset as an affirmative defense  
20 pursuant to this section, except in the case of an approved  
21 maintenance operation, shall notify the department or the local  
22 agency of an upset within 24 hours of the occurrence, or of  
23 becoming aware of the occurrence, and, within five days thereof,  
24 shall submit written documentation, including properly signed,  
25 contemporaneous operating logs, or other relevant evidence, on  
26 the circumstances of the violation, and demonstrating, as  
27 applicable, that:

28 (1) the upset occurred, including the cause of the upset and, as  
29 necessary, the identity of the person causing the upset, except  
30 that, in the case of a treatment works, the local agency may  
31 certify that despite a good faith effort it is unable to identify the  
32 cause of the upset, or the person causing the upset;

33 (2) the permitted facility was at the time being properly  
34 operated;

35 (3) the person submitted notice of the upset as required  
36 pursuant to this section, or, in the case of an upset resulting from  
37 the performance by the permittee of maintenance operations, the  
38 permittee provided prior notice and received an approval therefor  
39 from, the department or the delegated local agency; and

40 (4) the person complied with any remedial measures required  
41 by the department or delegated local agency.

42 c. A person asserting an unanticipated bypass as an  
43 affirmative defense pursuant to this section shall notify the  
44 department or the local agency of the unanticipated bypass  
45 within 24 hours of its occurrence, and, within five days thereof,  
46 shall submit written documentation, including properly signed,  
47 contemporaneous operating logs, or other relevant evidence, on  
48 the circumstances of the violation, and demonstrating that:

49 (1) the unanticipated bypass occurred, including the

1 circumstances leading to the bypass;

2 (2) the permitted facility was at the time being properly  
3 operated;

4 (3) the person submitted notice of the upset as required  
5 pursuant to this section; and

6 (4) the person complied with any remedial measures required  
7 by the department or delegated local agency;

8 (5) the bypass was unavoidable to prevent loss of life, personal  
9 injury, or severe property damage; and

10 (6) there was no feasible alternative to the bypass such as the  
11 use of auxiliary treatment facilities, retention of untreated  
12 wastes, or maintenance during normal periods of downtime,  
13 except that the provisions of this paragraph shall not apply to a  
14 bypass occurring during normal periods of equipment downtime or  
15 preventive maintenance if, on the basis of the reasonable  
16 engineering judgment of the department or delegated local  
17 agency, back-up equipment should have been installed to avoid  
18 the need for a bypass.

19 d. Nothing contained in subsections b. or c. of this section  
20 shall be construed to limit the requirement to comply with the  
21 provisions of paragraph (8) of subsection f. of section 6 of  
22 P.L.1977, c.74 (C.58: 10A-6).

23 e. A person may assert an anticipated bypass as an affirmative  
24 defense pursuant to this section only if the person provided prior  
25 notice to the department or delegated local agency, if possible,  
26 at least 10 days prior to the date of the bypass, and the  
27 department or delegated local agency approved the by-pass, and  
28 if the person is able to demonstrate that:

29 (1) the bypass was unavoidable to prevent loss of life, personal  
30 injury, or severe property damage; and

31 (2) there was no feasible alternative to the bypass such as the  
32 use of auxiliary treatment facilities, retention of untreated  
33 wastes, or maintenance during normal periods of downtime,  
34 except that the provisions of this paragraph shall not apply to a  
35 bypass occurring during normal periods of equipment downtime or  
36 preventive maintenance if, on the basis of the reasonable  
37 engineering judgment of the department or delegated local  
38 agency, back-up equipment should have been installed to avoid  
39 the need for a bypass.

40 <sup>1</sup>f. A person asserting a testing or laboratory error as an  
41 affirmative defense pursuant to this section shall have the burden  
42 to demonstrate, to the satisfaction of the department, that a  
43 serious violation involving the exceedence of an effluent  
44 limitation was the result of unanticipated test interferences,  
45 sample contamination, analytical defects, or procedural  
46 deficiencies in sampling or other similar circumstances beyond  
47 the control of the permittee.<sup>1</sup>

48 <sup>1</sup>[f.] g.<sup>1</sup> A determination by the department on a claim that a  
49 violation of an effluent limitation was caused by an upset <sup>1</sup>[or] ,<sup>1</sup>

1 a bypass <sup>1</sup>or a testing or laboratory error<sup>1</sup> shall be considered  
2 final agency action on the matter for the purposes of the  
3 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
4 seq.), and shall be subject only to review by a court of competent  
5 jurisdiction.

6 <sup>1</sup>[g.] h.<sup>1</sup> An assertion of an upset <sup>1</sup>[or] , <sup>1</sup>a<sup>1</sup> bypass <sup>1</sup>or a  
7 testing or laboratory error<sup>1</sup> as an affirmative defense pursuant to  
8 this section may not include noncompliance to the extent caused  
9 by operational error, improperly designed treatment facilities,  
10 inadequate treatment facilities, lack of preventive maintenance,  
11 or careless or improper operation.

12 <sup>1</sup>[h.] i.<sup>1</sup> If the department determines, pursuant to the  
13 provisions of this section, that a violation of an effluent  
14 limitation was caused by an upset <sup>1</sup>[or] , <sup>1</sup>a bypass <sup>1</sup>or a testing  
15 or laboratory error<sup>1</sup> , the commissioner shall waive any  
16 <sup>1</sup>mandatory<sup>1</sup> civil administrative penalty required to be assessed  
17 pursuant to section 6 of P.L. , c. (C. )(pending in the  
18 Legislature as this bill), and the violation shall not be considered  
19 a serious violation or violation causing a person to be designated  
20 a significant noncomplier.

21 <sup>1</sup>[i.] j.<sup>1</sup> The affirmative defense for <sup>1</sup>an<sup>1</sup> upset <sup>1</sup>[and] , <sup>1</sup>a<sup>1</sup>  
22 bypass <sup>1</sup>or a testing or laboratory error<sup>1</sup> provided in this section  
23 shall only apply to the imposition of mandatory penalties pursuant  
24 to section 6 of P.L. , c. (C. ) (pending in the Legislature as  
25 this bill) for serious violations and for determining a significant  
26 noncomplier. Nothing in this act shall be construed to limit the  
27 authority of the department, or a delegated local agency, to  
28 adopt regulations or permit conditions that include or do not  
29 include an upset <sup>1</sup>[or] , <sup>1</sup>a<sup>1</sup> bypass <sup>1</sup>or a testing or laboratory  
30 error<sup>1</sup> , using different standards, as a defense for any other  
31 exceedance of an effluent limitation.

32 8. (New section) a. Every schedule of compliance shall  
33 require the permittee to demonstrate to the commissioner the  
34 financial assurance, including the posting of a bond or other  
35 security approved by the commissioner, necessary to carry out  
36 the remedial measures required by the schedule of compliance;  
37 except that a local agency shall not be required to post financial  
38 security as a condition of a schedule of compliance.

39 b. The department or a delegated local agency shall afford an  
40 opportunity to the public to comment on a proposed  
41 administrative consent order prior to final adoption if the  
42 administrative consent order would establish interim enforcement  
43 limits that would relax effluent limitations established in a  
44 permit or a prior administrative order. The department or a  
45 delegated local agency shall provide public notice of the proposed  
46 administrative consent order, and announce the length of the  
47 comment period, which shall be not less than 30 days,  
48 commencing from the date of publication of the notice. A notice  
49 shall also include a summary statement describing the nature of

1 the violation necessitating the administrative consent order and  
2 its terms or conditions; shall specify how additional information  
3 on the administrative consent order may be obtained; and shall  
4 identify to whom written comments are to be submitted. At  
5 least three days prior to publication of the notice, a written  
6 notice, containing the same information to be provided in the  
7 published notice, shall be mailed to the mayor or chief executive  
8 officer and governing body of the municipality and county in  
9 which the violation occurred, and to any other interested persons,  
10 including any other governmental agencies. The department or  
11 delegated local agency shall consider the written comments  
12 received during the comment period prior to final adoption of the  
13 administrative consent order. Not later than the date that final  
14 action is taken on the proposed order, the department or  
15 delegated agency shall notify each person or group having  
16 submitted written comments of the main provisions of the  
17 approved administrative consent order and respond to the  
18 comments received therefrom.

19 c. The commissioner or delegated local agency, on his or its  
20 own initiative or at the request of any person submitting written  
21 comments pursuant to subsection b. of this section, may hold a  
22 public hearing on a proposed administrative order or  
23 administrative consent order, prior to final adoption if the order  
24 would establish interim enforcement limits that would relax for  
25 more than 24 months effluent limitations established in a permit  
26 or a prior administrative order or administrative consent order.  
27 Public notice for the public hearing to be held pursuant to this  
28 subsection shall be published not more than 30 and not less than  
29 15 days prior to the holding of the hearing. The hearing shall be  
30 held in the municipality in which the violation, necessitating the  
31 order, occurred. The department may recover all reasonable  
32 costs directly incurred in scheduling and holding the public  
33 hearing from the person requesting or requiring the interim  
34 enforcement limits.

35 9. (New section) a. On or before March 15, <sup>1</sup>[1991] 1992<sup>1</sup> ,  
36 and annually thereafter, the department shall prepare a report on  
37 implementation and enforcement actions taken during the  
38 preceeding calendar year by the department and delegated local  
39 agencies pursuant to P.L.1977, c.74. Information in the report  
40 shall be compiled so as to distinguish, as applicable: enforcement  
41 actions taken by the department from those of delegated local  
42 agencies; violations of, and enforcement actions against, publicly  
43 owned treatment works from those of, or against, other  
44 permitted facilities; violations of effluent limitations from  
45 reporting violations--including discharging monitoring reports,  
46 compliance schedule progress reports, and pretreatment  
47 reports--and other violations; and violations of effluent  
48 limitations for hazardous pollutants from those for nonhazardous  
49 pollutants. The report shall be transmitted to the Governor, the

1 members of the Legislature, the Assembly Environment Quality  
2 Committee and the Senate Energy and Environment Committee,  
3 or their successors, and to the Office of Legislative Services not  
4 later than March 31 of each year.

5 b. Within 30 days of publication of the report pursuant to this  
6 section, the commissioner shall transmit a written notice to at  
7 least one newspaper in each county, with circulation throughout  
8 that county which shall:

9 (1) Identify the owner, trade name and location of all facilities  
10 listed as significant noncompliers;

11 (2) Identify all of the significant noncompliers who have been  
12 assessed penalties pursuant to section 6 of P.L. , c. (C. )  
13 (pending in the Legislature as this bill), the amount of the  
14 penalties assessed against, and the amount paid by, each  
15 significant noncomplier;

16 (3) Indicate the availability of the annual reports required  
17 under this section, and the address and phone number for securing  
18 copies.

19 10. (New section) a. The annual report provided pursuant to  
20 section 9 of P.L. , c. (C. ) (pending in the Legislature as this  
21 bill) shall include, but need not be limited to, the following  
22 information for the preceding calendar year:

23 (1) the number of facilities permitted by the department or  
24 delegated local agencies pursuant to P.L.1977, c.74 (C.58:10A-1  
25 et seq.) as of the end of the calendar year, by surface water  
26 discharge permits;

27 (2) the number of new permits or permit renewals issued;

28 (3) the number of permit approvals contested by a permittee  
29 or other party;

30 (4) the number of permit modifications, other than permit  
31 renewals;

32 (5) the number of schedules of compliance adopted pursuant to  
33 administrative orders or administrative consent agreements  
34 involving interim enforcement limits that relax permit  
35 limitations;

36 (6) the number of facilities, including publicly owned  
37 treatment works, inspected at least once by the department or  
38 local agencies;

39 (7) the number of enforcement actions resulting from facility  
40 inspections;

41 (8) the number of actual permit violations;

42 (9) the number of actual effluent violations constituting  
43 serious violations, including violations that are being contested;

44 (10) the number of <sup>1</sup>defenses for<sup>1</sup> upsets <sup>1</sup>[or] <sup>1</sup>bypasses <sup>1</sup>or  
45 testing or laboratory errors<sup>1</sup> granted pursuant to section 7 of  
46 P.L. , c. (C. ) (pending in the Legislature as this bill) that  
47 involved a serious violation;

48 (11) the number of permittees qualifying as significant  
49 noncompliers, including permittees contesting such designation;

- 1 (12) the number of unpermitted discharges;
  - 2 (13) the number of pass throughs of pollutants;
  - 3 (14) the number of enforcement orders--administrative and  
4 judicial--issued for violations;
  - 5 (15) the number of violations for which civil penalties or civil  
6 administrative penalties have been assessed;
  - 7 (16) the number of violations of administrative orders or  
8 administrative consent orders, including violations of interim  
9 enforcement limits, or of schedule of compliance milestones for  
10 starting or completing construction, or for failing to attain full  
11 compliance;
  - 12 (17) the number of violations of schedules of compliance  
13 milestones for starting or completing construction, or attaining  
14 full compliance, that are out of compliance by 90 days or more  
15 from the date established in the compliance schedule;
  - 16 (18) the dollar amount of all assessed civil penalties and civil  
17 administrative penalties;
  - 18 (19) the dollar amount of enforcement costs recovered in a  
19 civil action or civil administrative action from a violator;
  - 20 (20) the dollar amount of civil administrative penalties and  
21 civil penalties collected, including penalties for which a penalty  
22 schedule has been agreed to by the violator;
  - 23 (21) The specific purposes for which penalty monies collected  
24 have been expended, displayed in line-item format by type of  
25 expenditure and including, but not limited to, position numbers  
26 and titles funded in whole or in part from these penalty monies;  
27 and
  - 28 (22) the number of criminal actions filed by the Attorney  
29 General or county prosecutors pursuant to section 10 of P.L.1977,  
30 c.74 (C.58:10A-10).
- 31 b. In addition to the information required pursuant to  
32 subsection a. of this section, the report shall:
- 33 (1) list the trade name of each permittee determined to be a  
34 significant noncomplier by the department or delegated local  
35 agency, and the address and permit number of the facility at  
36 which the violations occurred, and provide a brief description and  
37 the date of each violation, and the date that the violation was  
38 resolved, as well as the total number of violations committed by  
39 the permittee during the year;
  - 40 (2) list the trade name of each permittee who is at least six  
41 months behind in the construction phase of a compliance  
42 schedule, as well as the address and permit number of the  
43 facility, and provide a brief description of the conditions violated  
44 and the cause of delay;
  - 45 (3) list the trade name, address and permit number, of each  
46 permittee who has been convicted of criminal conduct pursuant  
47 to subsection f. of section 10 of P.L.1977, c.74 (C.58:10A-10), or  
48 who has had any officer or employee of the convicted thereunder,  
49 and provide a brief description and the date of the violation or

1 violations for which convicted;

2 (4) list the name and location of any local agency that has  
3 failed to file with the department information required by section  
4 11 of P.L. , c. (C. )(pending in the Legislature as this bill);  
5 and

6 (5) provide a summary assessment of the water quality of  
7 surface and ground waters affected by discharges subject to  
8 regulation pursuant to P.L.1977, c.74 <sup>1</sup>to the extent that such  
9 information is not otherwise required to be submitted to the  
10 United States Environmental Protection Agency<sup>1</sup>.

11 c. The department may include in the report any other  
12 information it determines would provide a fuller profile of the  
13 implementation and enforcement of P.L.1977, c.74. The  
14 department shall also include in the report any information that  
15 may be requested, in writing, not later than November 30th of  
16 the preceding year, for inclusion in the annual report, by the  
17 Assembly Environmental Quality Committee or the Senate  
18 <sup>1</sup>[Energy and Environment] Environmental Quality<sup>1</sup> Committee,  
19 or their successors.

20 11. (New section) The department shall adopt guidelines to be  
21 utilized by delegated local agencies, the Attorney General and  
22 county prosecutors in providing information to the department  
23 for inclusion in the report to be prepared in accordance with  
24 section 10 of this act, and prescribing the format in which the  
25 information is to be provided. Every delegated local agency, the  
26 Attorney General, and each county prosecutor shall file with the  
27 department, not later than February 1 of each year, such  
28 information and in such form as may be required by the  
29 department. In the event that information required to be  
30 reported pursuant to this section is also required to be reported  
31 to the department within the immediately preceding 12 month  
32 period pursuant to another law, rule, regulation, or permit  
33 requirement, to the extent that identical information is required  
34 to be reported, the local agency shall be required only to  
35 resubmit the information that was previously reported to the  
36 department.

37 12. (New section) There is created, in the Department of  
38 Environmental Protection, a special nonlapsing fund, to be known  
39 as the "Clean Water Enforcement Fund." Except as otherwise  
40 provided in P.L.1989, c.122, all monies from penalties, fines, or  
41 recoveries of costs or improper economic benefits collected by  
42 the department pursuant to section 10 of P.L.1977, c.74  
43 (C.58:10A-10) on and after the effective date of this section, or  
44 section 6 of P.L. , c. (C. ) (pending in the Legislature as this  
45 bill) shall be deposited in the fund. Unless otherwise specifically  
46 provided by law, monies in the fund shall be utilized exclusively  
47 by the department for enforcement and implementation of the  
48 "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et  
49 seq.) and P.L. , c. (C. ) (pending in the Legislature as this



1 bill). Any unobligated monies in the fund at the end of each  
2 fiscal year or monies not required for enforcement purposes in  
3 the next fiscal year shall be transferred to the <sup>1</sup>["New Jersey  
4 Wastewater Treatment Trust," established pursuant to P.L.1985,  
5 c.334 (C.58:11B-1 et seq.)] "Wastewater Treatment Fund"  
6 established pursuant to subsection a. of section 15 of P.L.1985,  
7 c.329,<sup>1</sup> for use in accordance with the provisions of that act.

8 13. (New section) There is created in the Department of  
9 Environmental Protection a special nonlapsing account, to be  
10 known as the "Wastewater Treatment Operators' Training  
11 Account." Monies deposited in the account shall be used to  
12 provide training, including continuing education, courses for  
13 wastewater treatment operators. A court shall order to be  
14 deposited into the account 10% of the amount of any penalty  
15 assessed and collected in an action brought by a local agency  
16 pursuant to section 10 of P.L.1977, c.74 (C.58:10A-10) or section  
17 6 of P.L. , c. (C. )(pending in the Legislature as this bill), or  
18 by a public entity pursuant to section 7 of P.L.1972, c.42  
19 (C.58:11-55).

20 14. (New section) There is established <sup>2</sup>[, pursuant to  
21 P.L.1983, c.230 (C.58:11-64 et seq.),]<sup>2</sup> in the Department of  
22 Environmental Protection an Advisory Committee on Water  
23 Supply and Wastewater Licensed Operator Training. Committee  
24 members shall be appointed by the commissioner for three-year  
25 terms as follows: four members who shall be representatives of  
26 the department; two members who shall be representatives  
27 selected from a list prepared by the New Jersey Section  
28 American Water Works Association; one member who shall be a  
29 licensed operator; two members of the Water Pollution Control  
30 Association; two members who shall be selected from a list  
31 prepared by the Authorities Association of New Jersey, one of  
32 whom shall be from a water authority, and one from a  
33 wastewater treatment authority; one member who shall be  
34 selected from a list prepared by the New Jersey Business and  
35 Industry Council; three members who shall be selected from a list  
36 prepared by educational institutions in the State conducting  
37 courses in water supply or wastewater treatment operations, or  
38 which conducted an appropriate course in the immediately  
39 preceding academic year, one of whom shall be the Director of  
40 the Office of Continuing Professional Education at Cook College,  
41 the State University of Rutgers; and two members who shall be  
42 selected from environmental groups in the State actively  
43 concerned or involved in water quality or wastewater treatment.  
44 Vacancies shall be filled in the same manner as the original  
45 appointment for the unexpired term.

46 The advisory committee shall meet at least once a year, and  
47 shall organize itself in such manner and hold its meetings in such  
48 places as it deems most suitable. The department shall provide  
49 staff assistance to the advisory committee, to the extent that

1 monies are available therefor.

2 The advisory committee shall advise the department on the  
3 training and licensing of water supply and wastewater treatment  
4 operators and on related matters, or on any other matter referred  
5 to it by the department. The advisory committee shall review  
6 the training programs for, <sup>2</sup>[and]<sup>2</sup> and identify the training needs  
7 of, water supply and wastewater treatment operators, and shall  
8 approve the annual allocations of monies for wastewater  
9 treatment operators' training programs from sums available in  
10 the "Wastewater Treatment Operators' Training Account,"  
11 established pursuant to section 13 of P.L. , c. (C. )  
12 (pending in the Legislature as this bill).

13 15. (New section) a. The department may request that any  
14 person who the department has reason to believe has, or may  
15 have, information relevant to a discharge or potential discharge  
16 of a pollutant, including, but not limited to, any person having  
17 generated, treated, transported, stored, or disposed of the  
18 pollutant, or any person having arranged for the transportation,  
19 storage, treatment or disposal of the pollutant, shall provide,  
20 upon receipt of written notice therefor, the following information  
21 to the department:

22 (1) The nature, extent, source, and location of the discharge,  
23 or potential discharge;

24 (2) Identification of the nature, type, quantity, source, and  
25 location of the pollutant or pollutants;

26 (3) The identity of, and other relevant information concerning,  
27 the generator or transporter of the pollutant, or any other person  
28 subject to liability for the discharge or potential discharge;

29 (4) The ability of any person liable, or potentially liable, for  
30 the discharge, or potential discharge, to pay for, or perform, the  
31 cleanup and removal, including the availability of appropriate  
32 insurance coverage.

33 Information requested by the department shall be provided in  
34 the form and manner prescribed by the department, which may  
35 include documents or information in whatever form stored or  
36 recorded.

37 b. The commissioner may issue subpoenas requiring attendance  
38 and testimony under oath of witnesses before, or the production  
39 of documents or information, in whatever form stored or  
40 recorded, to him or to a representative designated by the  
41 commissioner. Service of a subpoena shall be by certified mail or  
42 personal service. Any person who fails to appear, give testimony,  
43 or produce documents in response to a subpoena issued pursuant  
44 to this subsection, shall be subject to the penalty provisions of  
45 section 10 of P.L.1977, c.74 (C.58:10A-10). Any person who,  
46 having been sworn, knowingly gives false testimony or knowingly  
47 gives false documents or information to the department is guilty  
48 of perjury and is subject to the penalty provisions of section 10 of  
49 P.L.1977, c.74.

1 c. A person receiving a request for information made pursuant  
2 to subsection a. of this section, or to a subpoena issued pursuant  
3 to subsection b. of this section, shall:

4 (1) be required to conduct a diligent search of all documents in  
5 his possession, custody or control, and to make reasonable  
6 inquiries of present and past employees who may have knowledge  
7 or documents relevant thereto;

8 (2) have a continuing obligation to supplement the information  
9 if additional relevant information is discovered, or if it is  
10 determined that the information previously provided was false,  
11 inaccurate or misleading; and

12 (3) grant the department access, at reasonable times, to any  
13 vessel, facility, property or location to inspect and copy all  
14 relevant documents or, at the department's request, copy and  
15 furnish to the department all such documents.

16 d. No person may destroy any records relating to a discharge  
17 or potential discharge to surface water within five years of the  
18 discharge, or to a discharge or potential discharge to ground  
19 water at any time without the prior written permission of the  
20 commissioner.

21 16. Section 4 of P.L.1974, c.169 (C.2A:35A-4) is amended to  
22 read as follows:

23 4. a. Any person may [maintain an] commence a civil action in  
24 a court of competent jurisdiction against any other person [to  
25 enforce, or to restrain the] alleged to be in violation of, any  
26 statute, regulation or ordinance which is designed to prevent or  
27 minimize pollution, impairment or destruction of the  
28 environment. The action may be for injunctive or other equitable  
29 relief to compel compliance with a statute, regulation or  
30 ordinance, or to assess civil penalties for the violation as  
31 provided by law. The action may be commenced upon an  
32 allegation that a person is in violation, either continuously or  
33 intermittently, of a statute, regulation or ordinance, and that  
34 there is a likelihood that the violation will recur in the future.

35 b. Except in those instances where the conduct complained of  
36 constitutes a violation of a statute, regulation or ordinance which  
37 establishes a more specific standard for the control of pollution,  
38 impairment or destruction of the environment, any person may  
39 [maintain an] commence a civil action in any court of competent  
40 jurisdiction for declaratory and equitable relief against any other  
41 person for the protection of the environment, or the interest of  
42 the public therein, from pollution, impairment or destruction.

43 c. The court may, on the motion of any party, or on its own  
44 motion, dismiss any action brought pursuant to this act which on  
45 its face appears to be patently frivolous, harassing or wholly  
46 lacking in merit.

47 (cf: P.L.1974, c.169, s.4)

48 17. Section 10 of P.L.1974, c.169 (C.2A:35A-10) is amended to  
49 read as follows:

1 10. a. In any action under this act the court may in  
2 appropriate cases award to the prevailing party reasonable  
3 counsel and expert witness fees [, but not exceeding a total of  
4 \$10,000.00], but not to exceed a total of \$50,000 in an action  
5 brought against a local agency <sup>1</sup>or the Department of  
6 Environmental Protection<sup>1</sup>, where the prevailing party achieved  
7 reasonable success on the merits. The fees shall be based on the  
8 number of hours reasonably spent and a reasonable hourly rate for  
9 the counsel or expert in the action taking into account the  
10 prevailing rate in the venue of the action and the skill and  
11 experience of the counsel or expert.

12 b. The doctrines of collateral estoppel and res judicata may be  
13 applied by the court to prevent multiplicity of suits.

14 c. An action commenced pursuant to the provisions of this act  
15 may not be dismissed without the express consent of the court in  
16 which the action was filed.

17 <sup>1</sup>d. Except as provided in subsection e. of this section, any  
18 payments made pursuant to a settlement or judgment entered in a  
19 case brought pursuant to this act <sup>2</sup>[may] shall<sup>2</sup> be used to fund  
20 institutions, entities, or activities for purposes consistent with  
21 the purposes and goals of the statute, regulation or ordinance at  
22 issue in the case. <sup>2</sup>No payment of a settlement or judgment shall  
23 be made except upon the submission of a plan to the Court by the  
24 prevailing party specifying the uses for which the payment will be  
25 put, any person or organization that will receive all or part of the  
26 payment, and the dollar amounts to be given to each person or  
27 organization and the dollar amounts allocated for each use.<sup>2</sup>  
28 Recipients of any payments made pursuant to a settlement or  
29 judgment shall report to the Court on the use of such funds.

30 e. Any payments made pursuant to a settlement or judgment  
31 entered in a case brought against a local agency pursuant to this  
32 act to enforce the "Water Pollution Control Act," P.L.1977, c.74  
33 (C.58:10A-1 et seq.) shall be deposited in the "Wastewater  
34 Treatment Fund" established pursuant to subsection a. of section  
35 15 of P.L.1985, c.329.<sup>1</sup>

36 <sup>1</sup>[d.] f.<sup>1</sup> As used in this section "local agency" means a  
37 political subdivision of the State or an agency or instrumentality  
38 thereof, that owns or operates a municipal treatment works;  
39 "treatment works" means any device or systems, whether public  
40 or private, used in the storage, treatment, recycling, or  
41 reclamation of municipal or industrial waste of a liquid nature  
42 including intercepting sewers, outfall sewers, sewage collection  
43 systems, cooling towers and ponds, pumping, power and other  
44 equipment and their appurtenances; extensions, improvements,  
45 remodeling, additions, and alterations thereof; elements essential  
46 to provide a reliable recycled supply such as standby treatment  
47 units and clear well facilities; and any other works including sites  
48 for the treatment process or for ultimate disposal of residues  
49 resulting from such treatment. "Treatment works" includes any

1 other method or system for preventing, abating, reducing,  
2 storing, treating, separating, or disposing of pollutants, including  
3 storm water runoff, or industrial waste in combined or separate  
4 storm water and sanitary sewer systems; and "municipal  
5 treatment works" means the treatment works of any municipal,  
6 county, or State agency or any agency or subdivision created by  
7 one or more municipal, county or State governments and the  
8 treatment works of any public utility as defined in R.S.48:2-13.

9 (cf: P.L.1985, c.531, s.1)

10 18. Section 7 of P.L.1972, c.42 (C.58:11-55) is amended to  
11 read as follows:

12 7. a. Any person, corporation, or municipality who shall  
13 violate any of the provisions of this act or any rules or  
14 regulations promulgated thereunder shall be [liable to a penalty  
15 of not more \$50,000.00] subject to the applicable provisions of  
16 section 10 of P.L.1977, c.74 (C.58:10A-10) and section 6 of  
17 P.L. , c. (C. )(pending in the Legislature as this bill), to be  
18 collected in a civil action by a summary proceeding under "the  
19 penalty enforcement law" (N.J.S.2A:58-1 et seq.), or in any case  
20 before a court of competent jurisdiction wherein injunctive relief  
21 has been requested. The Superior Court shall have jurisdiction to  
22 enforce "the penalty enforcement law". [If the violation is of a  
23 continuing nature each day during which it continues shall  
24 constitute an additional separate and distinct violation.]

25 b. A public entity operating and controlling a public sewage  
26 treatment plant [may] shall, in accordance with subsection a. of  
27 this section, enforce any applicable pretreatment standard  
28 adopted by [the commissioner pursuant to section 3 of P.L.1972,  
29 c.42 (C.58:11-51), or by] the public entity pursuant to section 9 of  
30 P.L.1972, c.42 (C.58:11-57), or [may] shall obtain injunctive relief  
31 against a violation or threatened violation of a pretreatment  
32 standard. A public entity operating and controlling a public  
33 sewage treatment plant with pretreatment standards adopted by  
34 the commissioner pursuant to section 3 of P.L.1972, c.42  
35 (C.58:11-51), may enforce applicable pretreatment standards in  
36 accordance with subsection a. of this section, or obtain injunctive  
37 relief as provided in this subsection. The action shall be brought  
38 in the name of the local public entity. Of the amount of any  
39 penalty assessed and collected pursuant to subsection a. of this  
40 section, 10% shall be deposited in the "Wastewater Treatment  
41 Operators' Training Account," established in accordance with  
42 section 13 of P.L. , c. (C. ) (pending in the Legislature as  
43 this bill), and used to finance the cost of training operators of  
44 public sewage treatment plants. The remainder shall be used by  
45 the local agency solely for enforcement purposes, and for  
46 upgrading treatment works.

47 (cf: P.L.1988, c.170, s.2)

48 219. Section 16 of P.L.1976, c.141 (C.58:10-23.11o) is amended  
49 to read as follows:

1 16. Moneys in the New Jersey Spill Compensation Fund shall  
2 be disbursed by the administrator for the following purposes and  
3 no others:

4 (1) Costs incurred under section 7 of [this act] P.L.1976, c.141  
5 (C.58:10-23.11f) ;

6 (2) Damages as defined in section 8 of [this act] P.L.1976,  
7 c.141 (C.58:10-23.11g) ;

8 (3) Such sums as may be necessary for research on the  
9 prevention and the effects of spills of hazardous substances on  
10 the marine environment and on the development of improved  
11 cleanup and removal operations as may be appropriated by the  
12 Legislature; provided, however, that such sums shall not exceed  
13 the amount of interest which is credited to the fund;

14 (4) Such sums as may be necessary for the boards, general  
15 administration of the fund, equipment and personnel costs of the  
16 department and any other State agency related to the  
17 enforcement of [this act] P.L.1976, c.141 as may be appropriated  
18 by the Legislature;

19 (5) Such sums as may be appropriated by the Legislature for  
20 research and demonstration programs concerning the causes and  
21 abatement of ocean pollution; provided, however, that such sums  
22 shall not exceed the amount of interest which is credited to the  
23 fund;

24 (6) Such sums as may be requested by the commissioner, up to  
25 a limit of \$400,000.00 per year, to cover the costs associated  
26 with the administration of the "Environmental Cleanup  
27 Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et seq.);

28 (7) Costs attributable to the department's obligation to defend  
29 and indemnify a contractor pursuant to subsection a. of section 7  
30 of [this act] P.L.1976, c.141 (C.58:10-23.11f) , subject to the  
31 appropriation by law of monies from the General Fund to the fund  
32 to defray these costs;

33 (8) Administrative costs incurred by the department to  
34 implement the provisions of P.L.1977, c.74 (C.58:10A-1 et seq.),  
35 as amended and supplemented by P.L. , c. (now before the  
36 Legislature as this bill), on a timely basis, except that the  
37 amounts used for this purpose shall not exceed \$2,000,000. Any  
38 moneys disbursed by the department from the fund for this  
39 purpose shall be repaid to the fund in equal amounts from the  
40 penalties collected by the department pursuant to P.L.1977, c.74  
41 and P.L. , c. (C. ) (now before the Legislature as this  
42 bill), in annual installments beginning July 1, 1991 and annually  
43 thereafter until the full amount is repaid according to a schedule  
44 of repayments determined by the State Treasurer.

45 The Treasurer may invest and reinvest any moneys in said fund  
46 in legal obligations of the United States, this State or any of its  
47 political subdivisions. Any income or interest derived from such  
48 investment shall be included in the fund.<sup>2</sup>

49 (cf: P.L.1986, c.59, s.4)

1       <sup>1</sup>[19. There is appropriated from the General Fund to the  
2 Department of Environmental Protection the sum of \$750,000 to  
3 effectuate the purposes of this act.]<sup>1</sup>

4       <sup>2</sup>[19.] <sup>2</sup>20.<sup>2</sup> This act shall take effect <sup>1</sup>[12 months following  
5 enactment] July 1, 1991<sup>1</sup>, except that <sup>1</sup>this<sup>1</sup> section <sup>2</sup>[<sup>1</sup>and  
6 sections 5,<sup>1</sup> 12 <sup>1</sup>, 13, 14, 15, 16, 17, 18 and subsections i. and k.  
7 of section 6 of P.L.1977, c.74 (C.58:10A-6 i; 58:10A-6 k) as  
8 amended by section 3 of this act,<sup>1</sup>] , subsection i. of section 6 of  
9 P.L.1977, c.74 (C.58:10A-6 i.) as amended by section 3 of this  
10 act, subsection f. of P.L.1977, c.74 (C.58:10A-10 f.) as amended  
11 by section 5 of this act, and sections 12, 13 and 19,<sup>2</sup> shall take  
12 effect immediately <sup>2</sup>, and subsections d. and e. of P.L.1977, c.74  
13 (C.58:10A-7 d.; 58:10A-7 e.) as amended by section 4 of this act  
14 shall take effect July 1, 1992<sup>2</sup> . The Department of  
15 Environmental Protection shall take any administrative actions  
16 <sup>2</sup>[prior to the effective date of this act]<sup>2</sup> necessary to implement  
17 the provisions of this <sup>2</sup>act<sup>2</sup> on and after the effective <sup>2</sup>[date]  
18 dates<sup>2</sup>.

19  
20  
21 ENVIRONMENT

22  
23 Provides for stricter enforcement of "Water Pollution Control  
24 Act."

1 public sewage treatment plants. The remainder shall be used by  
2 the local agency solely for enforcement purposes, and for  
3 upgrading treatment works.

4 (cf: P.L.1988, c.170, s.2)

5 19. There is appropriated from the General Fund to the  
6 Department of Environmental Protection the sum of \$750,000 to  
7 effectuate the purposes of this act.

8 20. This act shall take effect 12 months following enactment,  
9 except that section 12 shall take effect immediately. The  
10 Department of Environmental Protection shall take any  
11 administrative actions prior to the effective date of this act  
12 necessary to implement the provisions of this on and after the  
13 effective date.

14

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16

17

S.P. 4-28-83 STATEMENT (1980)

18 This bill would strengthen the enforcement of the State's  
19 water pollution control and prevention program by requiring the  
20 Department of Environmental Protection (DEP) to impose  
21 mandatory minimum penalties for certain violations, by  
22 increasing other enforcement responsibilities of DEP, by  
23 requiring stricter accountability on the part of both public and  
24 private holders of water pollution control permits, by requiring  
25 publicly-owned treatment works to improve their operations,  
26 particularly with respect to monitoring and treating hazardous  
27 pollutants discharged into those works by industries, by providing  
28 for enhanced citizen participation in water pollution prevention  
29 and enforcement activities, and by setting out specific gradations  
30 of penalties for criminal violations of the State's water pollution  
31 laws.

32 The core of the bill consists of amendments and supplementary  
33 sections to the "Water Pollution Control Act," P.L. 1977, c. 74  
34 (C.58:10A-1 et seq.), the State law under which DEP implements  
35 the requirements of the federal Clean Water Act. Under federal  
36 and State law, any person discharging an effluent into the surface  
37 or groundwaters of the State is required to apply for and obtain  
38 from DEP a New Jersey Pollutant Discharge Elimination System  
39 permit.

40 The bill contains a \$750,000 appropriation from the General  
41 Fund to DEP to implement start-up activities related to an  
42 intensified State enforcement effort. The bill also establishes a  
43 "Clean Water Enforcement Fund" as a dedicated and revolving  
44 fund to be the depository of all penalties and fines collected by  
45 DEP under the "Water Pollution Control Act." These monies are  
46 to be used by DEP for enforcement of the act and any excess  
47 monies are to be transferred at the end of each fiscal year to the  
48 "Wastewater Treatment Trust Fund" for use by that fund. The



1 only exception to this dedication is a temporary one created by  
2 the annual appropriations act, P.L.1989, c.122, for the current  
3 fiscal year, by which certain penalty and fine revenues from the  
4 "Water Pollution Control Act" are deposited in the General Fund  
5 or earmarked for support of county environmental health  
6 activities and grants to local environmental commissions.

7 Finally, the bill establishes a "Wastewater Treatment  
8 Operators' Training Account" as a dedicated and revolving  
9 account as the depository of 10% of the penalty monies collected  
10 by local agencies under the "Water Pollution Control Act" and  
11 the pretreatment standards act, P.L.1972, c.42 (C.58:11-49 et  
12 seq.). These monies are for use in the training of wastewater  
13 treatment operators.

14  
15

#### 16 ENVIRONMENT

17

18 Provides for stricter enforcement of "Water Pollution Control  
19 Act," appropriates \$750,000 to DEP.

SENATE ENVIRONMENTAL QUALITY COMMITTEE

STATEMENT TO

SENATE, No. 2188

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 12, 1990

The Senate Environmental Quality Committee favorably reports Senate Bill No. 2188 with Senate Committee amendments.

Senate Bill No. 2188, as amended by the Committee, would strengthen the enforcement of the State's water pollution control and prevention program by requiring the Department of Environmental Protection (DEP) to impose mandatory minimum penalties for certain violations, by increasing other enforcement responsibilities of DEP, by requiring stricter accountability on the part of both public and private holders of water pollution control permits, by requiring publicly-owned treatment works (POTWs) to improve their operations, particularly with respect to monitoring and treating hazardous pollutants discharged into POTWs by industries, by providing for enhanced citizen participation in water pollution prevention and enforcement activities, and by setting out specific gradations of penalties for criminal violations of the State's water pollution laws.

The heart of this bill consists of amendments and supplementary sections to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), the State law under which DEP implements the requirements of the federal Clean Water Act. Under federal and State law, any person discharging an effluent into the surface or groundwaters of the State is required to apply for and obtain from DEP a New Jersey Pollutant Discharge Elimination System (NJPDES) permit. In general, persons required to obtain and comply with a NJPDES permit are either POTWs or industrial dischargers that discharge directly into the State's waters. Most of the large industrial facilities that discharge into the State's larger POTWs are also required to obtain and comply with a permit.

A NJPDES permit constitutes a legally binding agreement between the permittee and DEP under which the permittee is allowed to discharge effluent into the State's waters under specified terms and conditions. Permits range from rather simple to extraordinarily complex scientific and technical documents, but in general a permit sets forth the specific hazardous and nonhazardous pollutants known to be present in a specific effluent stream, the amount or concentration of these pollutants that DEP determines may be discharged without harm to the receiving waters or public health, and the type and number of

tests that must be performed, and the results reported to DEP to determine compliance. The permit system is based on self-reporting; each permittee is required to submit a discharge monitoring report (DMR) to DEP each month reporting the information stipulated in the permit.

Generally, a permit will require a permittee to treat its effluent in such a way as to keep the levels of pollutants contained in its effluent below a figure expressed as a monthly average or a daily maximum. The permit will thus require a permittee to report either the monthly average of its discharges of each pollutant (the average of each test conducted for the pollutant during the month) or the highest level disclosed in the daily tests conducted during the month, or both. Permits may also require particular types of tests (such as bioassay tests which measure the toxicity of an effluent by measuring the ability of certain organisms to live in the effluent for specified periods) tailored to a particular effluent.

#### ESTABLISHMENT OF NEW CATEGORIES OF VIOLATIONS OF WATER POLLUTION CONTROL ACT

Senate Bill No. 2188 would establish two new categories of violation of the "Water Pollution Control Act": a serious violation, and the designation of a permittee as a "significant noncomplier." A permittee falling within either of these categories would be subject to mandatory minimum penalties.

A serious violation would be an exceedence of an effluent limit in a NJPDES permit by 20% or more for a hazardous pollutant and by 40% or more for a nonhazardous pollutant. A serious violation would be calculated on the basis of a reported monthly average, or, for limits for which a monthly average is not required, on the basis of the average of all the test results for daily maximums conducted during the month. For limits not expressed in terms of mass or concentration (such as pH) the department would be required to determine a mathematical equivalent of the 20% and 40% thresholds.

A "significant noncomplier" (SNC) designation would include permit holders guilty of:

1. A serious violation for the same pollutant at the same discharge point source in any two months of any six month period;
2. An exceedence by any percentage of the same monthly average limit in any four months of any six month period; or
3. Failure to submit a complete discharge monitoring report (DMR) in any two months of any six month period.

A permittee designated as an SNC would be subject to mandatory minimum penalties of \$5000 for each violation on the basis of which the permittee was designated an SNC, increased inspections by DEP of the permittee's facility, publication of the

permittee's identity in an annual report prepared by DEP, and notification of the permittee's identity to newspapers by DEP.

MANDATORY MINIMUM CIVIL ADMINISTRATIVE PENALTIES  
TO BE IMPOSED BY DEP

Senate Bill No. 2188 requires DEP to impose, without discretion, mandatory minimum civil administrative penalties against a permittee guilty of a serious violation or who has been determined to be a SNC. This bill would impose a mandatory minimum penalty of \$1000 for each serious violation (to be assessed by DEP within six months of the violation) and \$5000 for each violation that causes a permittee to be designated a significant noncomplier. These mandatory minimum penalties would be imposed on a monthly basis.

In addition, S-2188 would require DEP to impose a mandatory penalty of \$100 per day per effluent limitation for each effluent limitation for which required information is omitted on a DMR. This penalty would be calculated from the 5th day a DMR is due, and may be contested for extenuating circumstances within 30 days. S-2188 caps the amount of \$100 penalties that may be imposed in a single month at \$50,000.

The mandatory minimum civil administrative penalties imposed in this bill do not in any way limit DEP's authority to impose higher penalties, or penalties for violations of the "Water Pollution Control Act" not identified in this bill.

S-2188 also entitles a permittee to claim, as a defense to a penalty for a serious violation or designation as a significant noncomplier, that a permit violation occurred as a result of an "upset," a "bypass," or a testing or laboratory error. An upset refers to an exceptional incident (such as a storm or other natural event beyond the control of a permittee, or scheduled maintenance), and a bypass refers to the anticipated or unanticipated diversion of an effluent stream from a treatment works. If the department determines that a violation of an effluent limitation was the legitimate result of an upset, bypass or testing or laboratory error the permittee would not be subject to the mandatory penalties imposed in this bill or would not be designated a significant noncomplier, as the case may be.

S-2188 also requires that all penalties resulting from DEP enforcement of the "Water Pollution Control Act," and from the imposition of the mandatory penalties established in this bill, be deposited in a "Clean Water Enforcement Fund" established in this bill. The fund would be used by DEP to implement and enforce the State's water pollution control program. Any monies in the fund not needed for DEP's enforcement and implementation would be annually appropriated to the Wastewater Treatment Trust, the monies in which are used for

loans to local government units to upgrade wastewater treatment facilities.

POTWs which impose and collect penalties under the "Water Pollution Control Act" would be authorized to retain 90% of these penalties, and would be required to deposit the remaining 10% of penalty monies in a "Wastewater Treatment Operator's Training Account" established in this bill. This account would be used to provide training and continuing education to wastewater treatment plant operators. S-2188 also establishes in DEP an Advisory Committee on Water Supply and Wastewater Licensed Operator Training, to advise DEP on wastewater and water supply facility operator training issues.

#### NEW DEP ENFORCEMENT RESPONSIBILITIES OR LIMITATIONS ON DEP ENFORCEMENT DISCRETION

Senate Bill No. 2188 also requires DEP to undertake additional water pollution prevention enforcement responsibilities. These new responsibilities would include:

1. The adoption of a uniform penalty assessment policy (based on criteria such as the seriousness of the offense, the economic benefit to the violator of violation, and the cooperation of the violator in remedying the violation);
2. The annual inspection of the treatment facility of each permit holder (excluding stormwater and non-contact cooling water permits);
3. The conducting of an annual representative sampling of all discharge pipes for major treatment facilities; other facilities would be sampled once every three years;
4. The inspection of the treatment facility of a permittee designated as a significant noncomplier within 60 days of designation;
5. The preparation of an annual report containing enforcement data on the State's water pollution program, including POTW initiatives, and the notification to newspapers of the identity of permittees determined to be significant noncompliers or convicted of criminal violations; and
6. A limitation on the amount of assessed penalty that can be reduced to 50% of original assessed penalty, except that with respect to penalties assessed against a POTW, DEP would have full authority to compromise the first penalty, and authority to compromise up to 75% of the second penalty.

#### NEW RESPONSIBILITIES OF ALL NJPDES PERMIT HOLDERS

Senate Bill No. 2188 also imposes new requirements on all holders of NJPDES permits (POTWs, direct industrial dischargers, and industrial dischargers which discharge into a POTW). These new requirements include:

1. The requirement that Discharge Monitoring Reports (DMRs) be signed by the highest ranking official with day-to-day responsibility for the operation of the plant, or in the event of his absence, by a person designated by the official;

2. The requirement to report to DEP (or a delegated POTW) any permit violation of an effluent limitation posing a threat to public health or environment within 2 hours and to provide further information within 24 hours and that reports of a serious violation be accompanied by a statement indicating an understanding of the mandatory penalty provisions of this bill and indicating any measures taken to address the cause of the serious violation;

3. The requirement that all reporting for effluent limitations be conducted on a monthly basis (regardless of the reporting schedule in the permit) upon one serious violation, or upon designation as a SNC;

4. A prohibition of the renewal of a permit containing a reduction in an effluent limitation until all outstanding fines assessed against the permittee are paid; and

5. A requirement that industrial dischargers (not POTWs) post bond as a condition of appealing an administrative penalty or entering into a consent order relaxing permit limits, the bond or financial security to be in the amount of the penalty, or in the amount necessary to carry out the requirements of the order.

6. A requirement that if a permittee appeals a penalty, and the penalty is upheld in full or in part, the permittee is liable for interest charges on the final penalty calculated from the date on which it was assessed, and, if the appeal was upheld in full, the permittee would be liable for DEP's litigation costs.

#### NEW RESPONSIBILITIES OF DELEGATED POTWs

Senate Bill No. 2188 also imposes new responsibilities on delegated POTWs, which are POTWs which have been delegated the authority by DEP to issue NJPDES permits to large industries discharging into the POTW. These permits usually require the industrial discharger to provide some form of treatment to their effluent before discharging it to the POTW, a program referred to as the Pretreatment Program. Under the bill, delegated POTWs would be required to:

1. Inspect the facilities of all permitted dischargers into the system once a year (identical to DEP's responsibility for its permittees);

2. Conduct an annual representative sampling test of all permitted dischargers (identical to DEP's responsibility for its permittees);

3. Conduct an inspection of a permitted discharger which is a significant noncomplier within 60 days of designation as a SNC;

4. Conduct an annual inflow/outflow analysis of the treatment

plant and submit the results to DEP; and

5. Include a limit for all categorical hazardous pollutants (EPA designated) and all hazardous pollutants discharged into the system by permitted dischargers.

#### ENHANCED CITIZEN PARTICIPATION AND ENFORCEMENT CAPABILITY

Senate Bill No. 2188 also would significantly enhance the capability of citizens, environmental groups, and public interest groups to participate in the implementation and enforcement of the State's water pollution control and prevention program. To this end S-2188 amends the 1974 "Environmental Rights Act," P.L.1974, c.169 (C.2A:35A-1 et seq.) to remove the \$10,000 cap on the recovery of legal fees, court costs, and expert witness fees when the successful party achieved some reasonable success on the merits of the case. The "Cap" would be completely removed concerning cases brought against private industrial dischargers, but would be fixed at \$50,000 with regard to cases brought against POTWs and the Department of Environmental Protection. S-2188 would, however, specify that all judgments and payments realized from a citizen's suit must be used to further environmental goals consistent with the statute under which the suit was brought, and also requires persons receiving settlements and judgments to report to the Court on the use of these funds. In addition, the bill requires that all judgments and settlements resulting from citizens' suits against POTWs must be deposited in the "Wastewater Treatment Fund" established pursuant to P.L.1985, c.329, for use in financing improvements to POTWs.

S-2188 would also provide for third party appeal of water pollution permit decisions by DEP on the administrative level. Citizens, environmental groups or public interest groups could appeal a permit decision if the objections to the decision were raised at the hearing level and relate to a significant issue of fact or law and are likely to have an effect on the outcome of the decision, or if an objection was raised in a written submission if no hearing on the permit decision was held.

In addition, this bill would provide for public participation in the adoption of administrative orders which would relax NJPDES permit standards. Before adopting an administrative consent order which would temporarily relax the discharge limits of a permit, DEP would be required to afford the public the right to comment; if the administrative consent order would relax limits for more than 24 months, DEP would be required to hold a public hearing on the order.

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CRIMINAL PENALTIES FOR VIOLATIONS OF  
WATER POLLUTION CONTROL ACT

Senate Bill No. 2188 sets forth specific criminal penalties for criminal violations of the "Water Pollution Control Act." Section 10 of the "Water Pollution Control Act" (C.58:10A-10) currently provides that any person who willfully or negligently violates the act would be guilty of a crime of the 4th degree and liable for a penalty of between \$5000 and 50,000 per day of offense, and for a penalty of between \$10,000 and \$100,000 for a second offense. S-2188 would establish four degrees of penalties for criminal violations, and would provide for specific monetary penalties and jail sentences. A first degree criminal violation would consist of a purposeful or knowing violation which places a person in imminent danger of death or serious injury; a second degree crime would consist of a purposeful, knowing, or reckless violation which causes a significant adverse environmental impact; a third degree crime would consist of a purposeful, knowing or reckless violation; and a fourth degree crime would consist of a negligent violation of the act.

EFFECTIVE DATE

The mandatory civil administrative penalty program established in this bill, as well as all new major responsibilities imposed on both DEP and permit holders would take effect July 1, 1991. Other provisions of the bill, including amendments to DEP's existing enforcement capability (which would apply only to violations occurring after enactment of this bill into law), and the dedication of all penalties and fines collected for water permit violations to the funding of the water pollution control program, would take effect immediately, .

SENATE ENVIRONMENTAL QUALITY  
COMMITTEE AMENDMENTS

The Senate Environmental Quality Committee made the following specific amendments to Senate Bill No. 2188:

1. Permittees would be required to include in their notification to DEP of a serious violation a statement acknowledging the imposition of mandatory civil administrative penalties, and describing the measures taken to address the cause of the serious violation.
2. The time for DEP to conduct inspections of SNC facilities was extended from 30 to 60 days.
3. The requirement that DEP issue a Notice of Violation for each violation was removed.
4. If a permittee appeals a civil administrative penalty and the



amount of the penalty is upheld in full, then the permittee must reimburse DEP for litigation costs, and, if the amount of the penalty was upheld in full or in part, must pay interest on the final penalty from the date on which it was due.

5. DEP may take up to six months to assess a \$1000 mandatory penalty for a serious violation.

6. Testing and lab errors are added to "upsets" and "bypasses" as an affirmative defense to a mandatory penalty.

7. The \$50,000 "CAP" on citizens suits legal fees would be extended to apply to suits against DEP as well as against POTWs.

8. The use of settlements and judgments won by citizens groups under the "Environmental Rights Act" would be monitored by the Court. Settlements or judgments paid by a POTW would be deposited in the "Wastewater Treatment Fund."

9. The appropriation to DEP was removed.

10. The effective date of various sections of the bill was clarified. The mandatory penalty program, as well as all new major responsibilities of DEP and permittees would take effect July 1, 1991. Other provisions, including strengthening amendments to DEP's existing enforcement capability, and dedication of all penalties and fines collected for water permit violations to the water pollution control program, would take effect immediately.

11. The definitions of kinds of culpability in the criminal penalties section of the "Water Pollution Control Act" were linked to definitions in N.J.S.2C:2-2.

This bill was pre-filed for introduction in the 1990 session pending technical review. As reported the bill includes the changes required by technical review which has been performed.

SENATE REVENUE, FINANCE AND APPROPRIATIONS  
COMMITTEE

STATEMENT TO

[FIRST REPRINT]

**SENATE, No. 2188**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: APRIL 26, 1990

The Senate Revenue, Finance and Appropriations Committee favorably reports Senate Bill No. 2188 (1R), with amendments.

Senate Bill No. 2188 (1R), as amended, strengthens the enforcement of the State's water pollution control and prevention program by requiring the Department of Environmental Protection (DEP) to impose mandatory minimum penalties for certain violations, by increasing other enforcement responsibilities of DEP, by requiring stricter accountability on the part of both public and private holders of water pollution control permits, by requiring publicly-owned treatment works (POTWs) to improve their operations, particularly with respect to monitoring and treating hazardous pollutants discharged into POTWs by industries, by providing for enhanced citizen participation in water pollution prevention and enforcement activities, and by setting out specific gradations of penalties for criminal violations of the State's water pollution laws.

The heart of this bill consists of amendments and supplementary sections to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), the State law under which DEP implements the requirements of the federal Clean Water Act. Under federal and State law, any person discharging an effluent into the surface or groundwaters of the State is required to apply for and obtain from DEP a New Jersey Pollutant Discharge Elimination System (NJPDES) permit. In general, persons required to obtain and comply with a NJPDES permit are either POTWs or industrial dischargers that discharge directly into the State's waters. Most of the large industrial facilities that discharge into the State's larger POTWs are also required to obtain and comply with a permit.

A NJPDES permit constitutes a legally binding agreement between the permittee and DEP under which the permittee is allowed to discharge effluent into the State's waters under specified terms and conditions. Permits range from rather simple to extraordinarily complex scientific and technical documents, but in general a permit sets forth the specific hazardous and nonhazardous pollutants known to be present in a specific effluent stream, the amount or concentration of these pollutants that DEP determines may be discharged without harm to the receiving waters or public health, and the type and number of tests that must be performed, and the results reported to DEP to determine compliance. The permit system is based on self-reporting; most permittees are

required to submit a discharge monitoring report (DMR) to DEP each month reporting the information stipulated in the permit.

Generally, a permit will require a permittee to treat its effluent in such a way as to keep the levels of pollutants contained in its effluent below a figure expressed as a monthly average or a daily maximum. The permit will thus require a permittee to report either the monthly average of its discharges of each pollutant (the average of each test conducted for the pollutant during the month) or the highest level disclosed in the daily tests conducted during the month, or both. Permits may also require particular types of tests (such as bioassay tests which measure the toxicity of an effluent by measuring the ability of certain organisms to live in the effluent for specified periods) tailored to a particular effluent.

#### Establishment of New Categories of Violations

This bill establishes two new categories of violation of the "Water Pollution Control Act": a serious violation, and the designation of a permittee as a "significant noncomplier." A permittee falling within either of these categories will be subject to mandatory minimum penalties.

A serious violation is an exceedence of an effluent limit in a NJPDES permit by 20% or more for a hazardous pollutant and by 40% or more for a nonhazardous pollutant. A serious violation is calculated on the basis of a reported monthly average, or, for limits for which a monthly average is not required, on the basis of the average of all the test results for daily maximums conducted during the month. For limits not expressed in terms of mass or concentration (such as pH) the department is required to determine a mathematical equivalent of the 20% and 40% thresholds.

A "significant noncomplier" (SNC) designation includes permit holders guilty of:

1. A serious violation for the same pollutant at the same discharge point source in any two months of any six month period;
2. An exceedence by any percentage of the same monthly average limit in any four months of any six month period; or
3. Failure to submit a complete discharge monitoring report (DMR) in any two months of any six month period.

A permittee who is a POTW would not be designated a significant non complier on the basis of a violation of a permit limitation for flow.

A permittee designated as an SNC will be subject to mandatory minimum penalties of \$5000 for each violation on the basis of which the permittee was designated an SNC, increased inspections by DEP of the permittee's facility, publication of the permittee's identity in an annual report prepared by DEP, and notification of the permittee's identity to newspapers by DEP.

#### Mandatory Minimum Civil Administrative Penalties

This bill requires DEP to impose, without discretion, mandatory minimum civil administrative penalties against a permittee guilty of a serious violation or who has been determined to be a SNC. This bill imposes a mandatory minimum penalty of \$1000 for each serious

violation (to be assessed by DEP within six months of the violation) and \$5000 for each violation that causes a permittee to be designated a significant noncomplier. These mandatory minimum penalties are to be imposed on a monthly basis.

In addition, this bill requires DEP to impose a mandatory penalty of \$100 per day per effluent limitation for each effluent limitation for which required information is omitted on a DMR. This penalty is calculated from the 5th day a DMR is due, and may be contested for extenuating circumstances within 30 days. The bill caps the amount of \$100 penalties that may be imposed in a single month at \$50,000.

The mandatory minimum civil administrative penalties imposed in this bill do not in any way limit DEP's authority to impose higher penalties, or penalties for violations of the "Water Pollution Control Act" not identified in this bill.

The bill also entitles a permittee to claim, as a defense to a penalty for a serious violation or designation as a significant noncomplier, that a permit violation occurred as a result of an "upset," a "bypass," or a testing or laboratory error. An upset refers to an exceptional incident (such as a storm or other natural event beyond the control of a permittee, or scheduled maintenance), and a bypass refers to the anticipated or unanticipated diversion of an effluent stream from a treatment works. If the department determines that a violation of an effluent limitation was the legitimate result of an upset, bypass or testing or laboratory error the permittee is not subject to the mandatory penalties imposed in this bill or will not be designated a significant noncomplier, as the case may be.

This bill also requires that all penalties resulting from DEP enforcement of the "Water Pollution Control Act," and from the imposition of the mandatory penalties established in this bill, be deposited in a "Clean Water Enforcement Fund" established in this bill. The fund is to be used by DEP to implement and enforce the State's water pollution control program. Any monies in the fund not needed for DEP's enforcement and implementation are to be annually appropriated to the Wastewater Treatment Trust, the monies in which are used for loans to local government units to upgrade wastewater treatment facilities.

POTWs which impose and collect penalties under the "Water Pollution Control Act" are authorized to retain 90% of these penalties, and are required to deposit the remaining 10% of penalty monies in a "Wastewater Treatment Operator's Training Account" established in this bill. This account is to be used to provide training and continuing education to wastewater treatment plant operators. The bill also establishes in DEP an Advisory Committee on Water Supply and Wastewater Licensed Operator Training, to advise DEP on wastewater and water supply facility operator training issues.

#### New DEP Enforcement Responsibilities or Limitations on DEP Enforcement Discretion

The bill requires DEP to undertake additional water pollution prevention enforcement responsibilities. These new responsibilities include:

1. The adoption of a uniform penalty assessment policy (based on criteria such as the seriousness of the offense, the economic benefit to the violator of violation, and the cooperation of the violator in remedying the violation);
2. The annual inspection of the treatment facility of each permit holder (excluding stormwater and non-contact cooling water permits);
3. The conducting of an annual representative sampling of all discharge pipes for major treatment facilities; other facilities would be sampled once every three years;
4. The inspection of the treatment facility of a permittee designated as a significant noncomplier within 60 days of designation;
5. The preparation of an annual report containing enforcement data on the State's water pollution program, including POTW initiatives, and the notification to newspapers of the identity of permittees determined to be significant noncompliers or convicted of criminal violations; and
6. A limitation on the amount of assessed penalty that can be reduced to 50% of original assessed penalty, except that with respect to penalties assessed against a POTW which enters into an administrative consent order with DEP to improve the operation of its plant, DEP would have full authority to compromise all penalties for violations occurring in the 24 month period prior to entering into the administrative consent order, but the penalties could not be compromised below the mandatory minimums, as appropriate.

#### New Responsibilities of All NJPDES Permit Holders

The bill imposes new requirements on all holders of NJPDES permits (POTWs, direct industrial dischargers, and industrial dischargers which discharge into a POTW). These new requirements include:

1. The requirement that Discharge Monitoring Reports (DMRs) be signed by the highest ranking official with day-to-day responsibility for the operation of the plant, or in the event of his absence, by a person designated by the official;
2. The requirement to report to DEP (or a delegated POTW) any permit violation of an effluent limitation posing a threat to public health or environment within 2 hours and to provide further information within 24 hours and that reports of a serious violation be accompanied by a statement indicating an understanding of the mandatory penalty provisions of this bill and indicating any measures taken to address the cause of the serious violation;
3. The requirement that all reporting for effluent limitations be conducted on a monthly basis (regardless of the reporting schedule in the permit) upon one serious violation, or upon designation as a SNC;
4. A prohibition of the renewal of a permit containing a reduction in an effluent limitation until all outstanding fines assessed against the permittee are paid;
5. A requirement that industrial dischargers (not POTWs) post bond as a condition of appealing an administrative penalty or entering into a consent order relaxing permit limits, the bond or financial security to be in the amount of the penalty, or in the

amount necessary to carry out the requirements of the order; and

6. A requirement that if a permittee appeals a penalty, and the penalty is upheld in full or in part, the permittee is liable for interest charges on the final penalty calculated from the date on which it was assessed, and, if the appeal was upheld in full, the permittee would be liable for DEP's litigation costs.

#### New Responsibilities of Delegated POTWs

The bill imposes new responsibilities on delegated POTWs, which are POTWs which have been delegated the authority by DEP to issue NJPDES permits to large industries discharging into the POTW. These permits usually require the industrial discharger to provide some form of treatment to their effluent before discharging it to the POTW, a program referred to as the Pretreatment Program. Under the bill, delegated POTWs are required to:

1. Inspect the facilities of all permitted dischargers into the system once a year (identical to DEP's responsibility for its permittees);
2. Conduct an annual representative sampling test of all permitted dischargers (identical to DEP's responsibility for its permittees);
3. Conduct an inspection of a permitted discharger which is a significant noncomplier within 60 days of designation as a SNC;
4. Conduct an annual inflow/outflow analysis of the treatment plant and submit the results to DEP; and
5. Include a limit for all categorical hazardous pollutants (EPA designated) and all hazardous pollutants discharged into the system by permitted dischargers.

#### Enhanced Citizen Participation and Enforcement Capability

The bill significantly enhances the capability of citizens, environmental groups, and public interest groups to participate in the implementation and enforcement of the State's water pollution control and prevention program. To this end, the bill amends the 1974 "Environmental Rights Act," P.L.1974, c.169 (C.2A:35A-1 et seq.) to remove the \$10,000 cap on the recovery of legal fees, court costs, and expert witness fees when the successful party achieved some reasonable success on the merits of the case. The "cap" is completely removed concerning cases brought against private industrial dischargers, but is fixed at \$50,000 with regard to cases brought against POTWs and the Department of Environmental Protection. This bill, however, specifies that all judgments and payments realized from a citizen's suit must be used to further environmental goals consistent with the statute under which the suit was brought, and also requires persons receiving settlements and judgments to submit a plan to the Court outlining the use of these funds prior to receiving these funds, and to report to the Court on the use of these funds after receiving these funds. In addition, the bill requires that all judgments and settlements resulting from citizens' suits against POTWs must be deposited in the "Wastewater Treatment Fund" established pursuant to P.L.1985, c.329, for use in financing improvements to POTWs.

The bill also provides for third party appeal of water pollution permit decisions by DEP on the administrative level. Citizens, environmental groups or public interest groups could appeal a permit decision if the objections to the decision were raised at the hearing level and relate to a significant issue of fact or law and are likely to have an effect on the outcome of the decision, or if an objection was raised in a written submission if no hearing on the permit decision was held. This bill also sets forth specific criteria which a third party must meet to appeal a permit decision.

In addition, this bill provides for public participation in the adoption of administrative orders which would relax NJPDES permit standards. Before adopting an administrative consent order which temporarily relaxes the discharge limits of a permit, DEP is required to afford the public the right to comment; if the administrative consent order relaxes limits for more than 24 months, DEP is required to hold a public hearing on the order.

#### Criminal Penalties for Violations of WATER POLLUTION CONTROL ACT

The bill sets forth specific criminal penalties for criminal violations of the "Water Pollution Control Act." Section 10 of the "Water Pollution Control Act" (C.58:10A-10) currently provides that any person who willfully or negligently violates the act is guilty of a crime of the 4th degree and liable for a penalty of between \$5000 and 50,000 per day of offense, and for a penalty of between \$10,000 and \$100,000 for a second offense. The bill establishes four degrees of penalties for criminal violations, and provides for specific monetary penalties and jail sentences. A first degree criminal violation consists of a purposeful or knowing violation which places a person in imminent danger of death or serious injury; a second degree crime consists of a purposeful, knowing, or reckless violation which causes a significant adverse environmental impact; a third degree crime consists of a purposeful, knowing or reckless violation; and a fourth degree crime consists of a negligent violation of the act.

#### Funding

The bill provides that an amount not to exceed \$2,000,000 from the New Jersey Spill Compensation Fund may be used by DEP for start-up administrative costs. Any money borrowed shall be repaid to the fund from the penalties collected pursuant to this bill in annual installments beginning July 1, 1991.

#### Effective Date

The mandatory civil administrative penalty program established in this bill, as well as all new major responsibilities imposed on both DEP and permit holders takes effect July 1, 1991. The specified criminal penalties provisions, and the dedication of all penalties and fines collected for water permit violations to the funding of the water pollution control program, takes effect immediately. The provisions of the bill providing for third party appeals of permit decisions takes effect July 1, 1992.

### COMMITTEE AMENDMENTS

The Committee made the following amendments:

1. A permittee who is a POTW would not be designated a significant noncomplier on the basis of a violation of a permit limitation for "flow."

2. DEP is granted full authority to compromise penalties imposed against a POTW if the POTW agrees to enter into an administrative consent order providing for an upgrading of the operation of its plant. In this case DEP could compromise the amount of penalties for violations occurring during the 24 month period preceding the entry into the agreement, but the penalties could not be compromised below the \$1000 or \$5000 minimum penalties, as appropriate.

3. Specific criteria are set forth which third parties requesting to appeal a permit decision by DEP must meet before an appeal hearing is granted.

4. A citizens group which wins a settlement or judgement on an action brought to enforce a violation of an environmental statute must submit a plan for the use of the settlement monies to the Court prior to receiving the monies.

5. The effective dates of various sections of the bill was clarified. The mandatory civil administrative penalty program established in this bill, as well as all new major responsibilities imposed on both DEP and permit holders takes effect July 1, 1991. The specified criminal penalties provisions, and the dedication of all penalties and fines collected for water permit violations to the funding of the water pollution control program, takes effect immediately. The provisions of the bill providing for third party appeals of permit decisions takes effect July 1, 1992.

6. A permittee appealing a permit decision by DEP must, as a condition of being granted the appeal, place in escrow the amount of any outstanding permit fees due for the permit.

7. An amount not to exceed \$2,000,000 may be borrowed from the New Jersey Spill Compensation Fund. The amount shall be repaid in annual installments beginning July 1, 1991.

The Committee also made a number of technical amendments to the bill.

### FISCAL IMPACT

This bill contains no appropriation. As amended, the bill permits the DEP to use up to \$2,000,000 from the New Jersey Spill Compensation Fund for start-up administrative costs. Any moneys used shall be repaid from the penalties collected by the department pursuant to this bill. The repayments shall begin July 1, 1991 and be made in annual installments pursuant to a schedule determined by the State Treasurer.





# OFFICE OF THE GOVERNOR

## NEWS RELEASE

CN-001

Contact: EMMA BYRNE  
609-292-8956

TRENTON, N.J. 08625

Release: WED., 5/23/90

### GOVERNOR FLORIO SIGNS TOUGHEST CLEAN WATER BILL IN THE COUNTRY

Standing on the boardwalk in Asbury Park only a few yards from the spot where he announced his candidacy for Governor, Jim Florio today made good on a promise he had made that day and signed into law the nation's toughest water enforcement law. The bill increases the top fine for water pollution to \$250,000 from \$7,500.

"I said then that I wanted to be the Governor who makes sure everyone in New Jersey -- when we turn on the faucet -- gets safe, clean, water to drink. Well, I'm Governor -- and I'm back."

He went on to offer a warning to those who might pollute New Jersey's waters. "No more will you be able to 'throw away and get away'. We won't just pick up your garbage; we'll pick you up too. Your garbage will go to the dump and you'll go to jail."

The law covers industries and sewage treatment plants. It imposes mandatory fines and penalties for violations and, for the first time, clearly defines those violations. Wastewater is a major source of pollution in our streams, rivers, lakes and ocean.

"But," said the Governor, "this law isn't just about pollution and penalties. It's about power. The power of people to unite for their own common interest. The power for everyday people to take on those who would foul our water, because the law gives people the means to do that."

The law forces sewage treatment plant operators to pay more attention to industries who discharge wastewater into their facilities. Sewage plants must now inspect dischargers and periodically do an analysis of incoming pollutants. Industries will begin to feel more pressure not only from these inspections but from a portion of the law which calls for the highest ranking official in the company to sign the monitoring reports. It also requires industries to report within two hours violations which pose a threat to the environment or the public health.

Violators will also face public scrutiny due to a provision in the law which calls for newspapers to be notified by the DEP of the names and locations of all "significant noncompliers."

Fines of up to \$1 million a day for the most severe violations will be set aside in two special accounts which have been created to cover the costs of DEP's enforcement and implementation responsibilities as well as the continued training of treatment plant operators and the upgrading of wastewater treatment plants.

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REMARKS PREPARED FOR DELIVERY BY GOVERNOR JIM FLORIO  
CLEAN WATER ENFORCEMENT ACT BILL SIGNING  
ASBURY PARK, NEW JERSEY  
WEDNESDAY, MAY 23, 1990

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NEARLY 14 MONTHS AGO I CAME TO ASBURY PARK TO MAKE A PROMISE. IT WAS THE DAY I ANNOUNCED I WAS RUNNING FOR GOVERNOR. I SAID I WANTED TO BE THE GOVERNOR WHO MAKES SURE EVERYONE IN NEW JERSEY -- WHEN WE TURN ON THE FAUCET -- GETS SAFE, CLEAN, WATER TO DRINK.

AND I SAID I WANT TO BE THE GOVERNOR WHO MAKES SURE WE CAN ALWAYS ENJOY THE BEAUTY AN INSPIRATION OF THE JERSEY SHORE.

WELL, I'M GOVERNOR -- AND I'M BACK.

NOT TO MAKE PROMISES, BUT TO KEEP THEM. NOT TO CALL FOR TOUGH MEASURES TO FIGHT POLLUTERS -- BUT TO SIGN INTO LAW THE TOUGHEST CLEAN WATER ENFORCEMENT RULES IN THE UNITED STATES.

TO THOSE WHO WOULD POLLUTE OUR WATER LET ME MAKE IT VERY CLEAR: NO MORE EXCUSES. NO MORE "IFS." NO MORE "BUTS." NO MORE WILL YOU BE ABLE TO "THROW AWAY AND GET AWAY."

WE WON'T JUST PICK UP YOUR GARBAGE; WE'LL PICK YOU UP TOO. YOUR GARBAGE WILL GO TO THE DUMP AND YOU'LL GO TO JAIL.

FOR THE REST OF US -- THOSE OF US WHO ARE SERIOUS ABOUT FIGHTING FOR CLEAN WATER -- THIS IS A HAPPY DAY. IT'S A CELEBRATION OF OUR VALUES AND OF THE TENACITY OF THE PEOPLE WHO MADE THIS HAPPEN. PEOPLE LIKE SENATORS, VAN WAGNER, DALTON, AND BENNETT. ASSEMBLYMEN DUCH, SMITH, AND VILLIPIANO.

OTHERS TOO. ACTIVISTS WHO GOT TOGETHER IN THE TRUE SPIRIT OF COMMUNITY. AND GROUPS, LIKE THE NEW JERSEY ENVIRONMENTAL FEDERATION, WHICH JANE REPRESENTS.

THIS LAW ISN'T JUST ABOUT POLLUTION. IT'S ABOUT POWER. THE POWER OF PEOPLE TO UNITE FOR THEIR COMMON INTEREST. THE POWER FOR EVERYDAY PEOPLE TO TAKE ON THOSE WHO WOULD FOUL OUR WATER, BECAUSE THIS LAW GIVES PEOPLE THE MEANS TO DO THAT.

I HOPE WE NEVER HAVE TO USE THE TOUGH PROVISIONS OF THIS LAW. I WANT TREATMENT PLANTS AND WASTE DISCHARGERS TO TAKE IT UPON THEMSELVES TO STOP POLLUTING. I WANT THEM TO UNDERSTAND THAT THE COST OF DOING THE RIGHT THING MIGHT SEEM EXPENSIVE -- BUT IN REALITY, IT'S VERY LITTLE, COMPARED TO THE COSTS OF DOING NOTHING.

BUT, IF THEY DON'T TAKE THE HINT, WE'LL BE READY.

SO IT'S WITH A GREAT DEAL OF SATISFACTION THAT I SIGN THIS BILL INTO LAW.

IN A FEW DAYS, THESE BEACHES WILL BE ALIVE WITH PEOPLE ENJOYING THE WARMTH OF THE SUN AND THE SURGE OF THE WAVES. THE SHORE WILL BE, FOR THEM, WHAT IT HAS BEEN FOR GENERATIONS -- A PLACE TO RELAX IN THE SAND, TO MARVEL AT THE MAJESTY OF THE SEA, TO REFLECT ON THE BEAUTY WE'VE INHERITED.

THE STEP WE TAKE TODAY WILL HELP MAKE THAT POSSIBLE. BUT MORE IMPORTANT, WE'RE SAYING THAT WE ARE READY AND WILLING TO DO WHAT IT TAKES TO MAKE SURE THAT OUR CHILDREN, AND THEIR CHILDREN, WILL ALSO BE ABLE TO COME HERE. THE SHORE WILL REMAIN FOR THEN A VIBRANT, VITAL PLACE -- NOT A DIM MEMORY FROM FADED PHOTOGRAPHS.

TO DO THIS IS OUR DUTY. TO DO LESS WOULD BE OUR SHAME.

THANK YOU.