

13:1E-9

3/19/87

LEGISLATIVE HISTORY CHECKLIST

**NJSA:** 13:1E-9 (Environmental laws-- violations-- increase penalties)

**Laws Of:** 1986 **CHAPTER 170**

**Bill No:** A1270

**Sponsor(s):** Bennett and Muhler

**Date Introduced:** Pre-filed

**Committee:** **Assembly:** Environmental Ouality  
**Senate:** Energy & Environment

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

**Date of Passage:** **Assembly:** June 16, 1986  
**Senate:** September 29, 1986

**Date of Approval:** December 4, 1986

**Following statements are attached if available:**

**Sponsor statement:** Yes

**Committee statement:** **Assembly** Yes  
**Senate** Yes

**Fiscal Note:** No

**Veto Message:** No

**Message on Signing:** No

**Following were printed:**

**Reports:** No

**Hearings:** No

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170

86  
12-4-86

[SECOND OFFICIAL COPY REPRINT]

**ASSEMBLY, No. 1270**

**STATE OF NEW JERSEY**

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman BENNETT

AN ACT concerning penalties for certain environmental laws, and amending P. L. 1970, c. 39, P. L. 1976, c. 141, and P. L. 1977, c. 74.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 9 of P. L. 1970, c. 39 (C. 13:1E-9) is amended to  
2 read as follows:

3 9. a. All codes, rules and regulations adopted by the department  
4 related to solid waste collection and disposal shall have the force  
5 and effect of law. Such codes, rules and regulations shall be ob-  
6 served throughout the State and shall be enforced by the depart-  
7 ment and by every local board of health, or county health depart-  
8-9 ment, as the case may be.

10 The department and the local board of health, or the county  
11 health department, as the case may be, shall have the right to enter  
12 a solid waste facility at any time in order to determine compliance  
13 with the registration statement and engineering design, and with  
14 the provisions of all applicable laws or rules and regulations  
15 adopted pursuant thereto.

16 The municipal attorney or an attorney retained by a municipality  
17 in which a violation of such laws or rules and regulations adopted  
18 pursuant thereto is alleged to have occurred shall act as counsel to  
19 a local board of health.

20 The county counsel or an attorney retained by a county in which  
21 a violation of such laws or rules and regulations adopted pursuant

**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 printed in italics *thus* is new matter.**

**Matter enclosed in asterisks or stars has been adopted as follows:**

**\*—Assembly committee amendments adopted March 6, 1986.**

**\*\*—Senate committee amendments adopted September 8, 1986.**

22 thereto is alleged to have occurred shall act as counsel to the county  
23 health department.

24 Any county health department may charge and collect from the  
25 owner or operator of any sanitary landfill facility within its juris-  
26 diction such fees for enforcement activities as may be established  
27 by ordinance or resolution adopted by the governing body of any  
28 such county. Such fees shall be established in accordance with a  
29 fee schedule regulation to be adopted by the department, pursuant  
30 to law, within 60 days of the effective date of this amendatory act  
31 and shall be utilized exclusively to fund such enforcement activities.

32 All enforcement activities undertaken by county health depart-  
33 ments pursuant to this subsection shall conform to all applicable  
34 performance and administrative standards adopted pursuant to  
35 section 10 of the "County Environmental Health Act," P. L. 1977,  
36 c. 443 (C. 26:3A2-28).

37 \*b. Whenever the commissioner finds that a person has violated  
38 any provision of P. L. 1970, c. 39 (C. **\*\*[13:1]\*\*** **\*\*13:1E-1\*\***  
39 et seq.), or any rule or regulation adopted, permit issued, or solid  
40 waste management plan adopted pursuant to P. L. 1970, c. 39, he  
40A shall:

41 (1) Issue an order requiring the person found to be in violation  
42 to comply in accordance with subsection c. of this section;

43 (2) Bring a civil action in accordance with subsection d. of this  
44 section;

45 (3) Levy a civil administrative penalty in accordance with sub-  
46 section e. of this section;

47 (4) Bring an action for a civil penalty in accordance with sub-  
48 section f. of this section; or

49 (5) Petition the Attorney General to bring a criminal action in  
50 accordance with subsection g. of this section.

51 Pursuit of any of the remedies specified under this section shall  
52 not preclude the seeking of any other remedy specified.

53 c. Whenever the commissioner finds that a person has violated  
54 any provision of P. L. 1970, c. 39, or any rule or regulation adopted,  
55 permit issued, or solid waste management plan adopted pursuant  
56 to P. L. 1970, c. 39, he may issue an order specifying the provision  
57 or provisions of P. L. 1970, c. 39, or the rule, regulation, per-  
58 mit or solid waste management plan of which the person is in  
59 violation citing the action which constituted the violation, ordering  
60 abatement of the violation, and giving notice to the person of his  
61 right to a hearing on the matters contained in the order. The  
62 ordered party shall have 20 days from receipt of the order within

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63 which to deliver to the commissioner a written request for a hear-  
 64 ing. After the hearing and upon finding that a violation has  
 65 occurred, the commissioner may issue a final order. If no hearing  
 66 is requested, then the order shall become final after the expiration  
 67 of the 20-day period. A request for hearing shall not automatically  
 68 stay the effect of the order.\*

69 \***[b.]**\* *d.*\* The commissioner, a local board of health or county  
 70 health department may institute an action or proceeding in the Su-  
 71 perior Court for injunctive and other relief, including the appoint-  
 72 ment of a receiver for any \***[solid waste collection or disposal**  
 73 **facility or operation, which is established or operated in]**\* viola-  
 74 tion of this act, or of any code, rule or regulation promulgated\*,  
 75 permit issued or solid waste management plan adopted,\* pursuant  
 76 to this act and said court may proceed in the action in a summary  
 77 manner. In any such proceeding the court may grant temporary or  
 78 interlocutory relief notwithstanding the provisions of R. S.  
 79 48:2-24.

80 Such relief may include, singly or in combination:

- 81 (1) A temporary or permanent injunction;
- 82 (2) Assessment of the violator for the costs of any investigation,  
 83 inspection, or monitoring survey which led to the establishment of  
 84 the violation, and for the reasonable costs of preparing and liti-  
 85 gating the case under this subsection.
- 86 (3) Assessment of the violator for any cost incurred by the  
 87 State in removing, correcting or terminating the adverse effects  
 88 upon water and air quality resulting from any violation of any  
 89 provision of this act or any rule, regulation or condition of ap-  
 90 proval for which the action under this subsection may have been  
 91 brought;
- 92 (4) Assessment against the violator of compensatory damages  
 93 for any loss or destruction of wildlife, fish or aquatic life, and for  
 94 any other actual damages caused by any violation of this act or  
 95 any rule, regulation or condition of approval established pursuant  
 96 to this act for which the action under this subsection may have been  
 97 brought. Assessments under this subsection shall be paid to the  
 98 State Treasurer, or to the local board of health, or to the county  
 99 health department, as the case may be, except that compensatory  
 100 damages may be paid by specific order of the court to any persons  
 101 who have been aggrieved by the violation.

102 If a proceeding is instituted by a local board of health or county  
 103 health department, notice thereof shall be served upon the commis-  
 104 sioner in the same manner as if the commissioner were a named

105 party to the action or proceeding. The department may intervene  
106 as a matter of right in any proceeding brought by a local board of  
107 health or county health department.

108 \*e. The commissioner is authorized to assess a civil adminis-  
109 trative penalty of not more than ~~[\$25,000.00]~~ \$50,000.00 for each  
110 violation ~~[and additional penalties of not more than \$2,500.00 for]~~  
111 *provided that* each day during which the violation continues ~~[after~~  
112 *receipt of an order from the department]* *shall constitute an addi-*  
113 *tional, separate and distinct offense. \*\**~~[In assessing penalties~~  
114 *under this section, the department shall adopt regulations which*  
115 *shall consider the operational history of the facility, the severity*  
116 *of the violation, and the steps taken to mitigate or prevent future*  
117 *occurrences and whether the penalty will maintain an appropriate*  
118 *deterrent.]\*\* \*\***The commission shall not assess a civil administra-*  
119 *tive penalty in excess of \$25,000.00 for a single violation, or in*  
120 *excess of \$2,500.00 for each day during which a violation continues,*  
121 *until the department has adopted, pursuant to the "Administrative*  
122 *Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), regulations*  
123 *requiring the commissioner, in assessing a civil administrative*  
124 *penalty, to consider the operational history of the facility at which*  
125 *the violation occurred, the severity of the violation, the measures*  
126 *taken to mitigate or prevent future violations, and whether the*  
127 *penalty will maintain an appropriate deterrent.\*\** No assessment  
128 shall be levied pursuant to this section until after the violator has  
129 been notified by certified mail or personal service. The notice shall  
130 include a reference to the section of the statute, rule, regulation,  
131 order, permit condition or solid waste management plan violated,  
132 a concise statement of the facts alleged to constitute a violation,  
133 a statement of the amount of the civil administrative penalties to  
134 be imposed, and a statement of the party's right to a hearing. The  
135 ordered party shall have 20 calendar days from receipt of the notice  
136 within which to deliver to the commissioner a written request for  
137 a hearing. After the hearing and upon finding that a violation has  
138 occurred, the commissioner may issue a final order after assessing  
139-140 the amount of the fine specified in the notice. If no hearing is  
141 requested, the notice shall become a final order after the expiration  
142 of the 20-day period. Payment of the assessment is due when a  
143 final order is issued or the notice becomes a final order. The author-  
144 ity to levy a civil administrative penalty is in addition to all other  
145 enforcement provisions in P. L. 1970, c. 39, and the payment of  
146 any assessment shall not be deemed to affect the availability of  
147 any other enforcement provisions in connection with the violation

148 for which the assessment is levied. The department may com-  
 149 promise any civil administrative penalty assessed under this section  
 150 in an amount the department determines appropriate.\*

151 \***[c.]**\* *\*f.\** Any person who violates the provisions of this act  
 152 or any code, rule or regulation promulgated pursuant to this act  
 153 shall be liable to a penalty of not more than **[\$25,000.00]** \$50,000.00  
 154 per day to be collected in a civil action commenced by a local board  
 155 of health, a county health department, or the commissioner \***[by**  
 156 a summary proceeding under "the penalty enforcement law"  
 157 (N. J. S. 2A:58-1 et seq.) in the Superior Court or a municipal  
 158 court, all of which shall have jurisdiction to enforce "the penalty  
 159 enforcement law" in connection with this act. If the violation is of  
 160 a continuing nature, each day during which it continues after the  
 161 date given by which the violation must be eliminated in accordance  
 162 with the order of the department shall constitute an additional.  
 163 separate and distinct offense]\*.

164 \***[d.** The department is hereby authorized and empowered to  
 165 compromise and settle any claim for a penalty under this section  
 166 in such amount in the discretion of the department as may appear  
 167 appropriate and equitable under all of the circumstances, including  
 168 a rebate of any such penalty paid up to 90% thereof where such  
 169 person satisfies the department within one year or such other period  
 170 as the department may deem reasonable that such violation has been  
 171 eliminated or removed or that such order or injunction has been  
 172 met or satisfied, as the case may be.]\*

173 \*Any person who violates an administrative order issued pursu-  
 174 ant to subsection c. of this section, or a court order issued pursuant  
 175 to subsection d. of this section, or who fails to pay an administrative  
 176 assessment in full pursuant to subsection e. of this section is subject  
 177 upon order of a court to a civil penalty not to exceed **[\$50,000.00]**  
 178 \$100,000.00 per day of such violation.

179 Each day during which the violation continues constitutes an  
 180 additional, separate and distinct offense. Any penalty imposed  
 181 pursuant to this subsection may be collected with costs in a sum-  
 182 mary proceeding pursuant to "the penalty enforcement law"  
 183 (N. J. S. 2A:58-1 et seq.). The **\*\*[Law Division of the]\*\***  
 184 Superior Court and the municipal court shall have jurisdiction to  
 185 enforce the provisions of "the penalty enforcement law" in connec-  
 186 tion with this act.\*

187 \***[e.]**\* *\*g.\** Any person who knowingly:

188 (1) Transports any hazardous waste to a facility or any other  
 189 place which does not have authorization from the department to  
 190 accept such waste;

191 (2) Generates and causes or permits to be transported any  
192 hazardous waste to a facility or any other place which does  
193 not have authorization from the department to accept such waste;

194 (3) Disposes, treats, stores or transports hazardous waste  
195 without authorization from the department;

196 (4) Makes any false or misleading statement to any person  
197 who prepares any hazardous waste application, label, manifest,  
198 record, report, design or other document required to be submitted  
199 to the department; or

200 (5) Makes any false or misleading statement on any hazardous  
201 waste application, label, manifest, record, report, design or other  
202 document required to be submitted to the department shall, upon  
203 conviction, be guilty of a crime of the third degree and, notwith-  
204 standing the provisions of N. J. S. 2C:43-3, shall be subject to a  
205 fine of not more than ~~[\$25,000.00]~~ \$50,000.00 for the first offense  
206 and not more than ~~[\$50,000.00]~~ \$100,000.00 for the second and each  
207 subsequent offense and resitution, in addition to any other appro-  
208 priate disposition authorized by subsection b. of N. J. S. 2C:43-2.

209 \*~~[f.]~~\* \**h.*\* Any person who recklessly:

210 (1) Transports any hazardous waste to a facility or any other  
211 place which does not have authorization from the department to  
212 accept such waste;

213 (2) Generates and causes or permits to be transported any  
214 hazardous waste to a facility or any other place which does not  
215 have authorization from the department to accept such waste;

216 (3) Disposes, treats, stores or transports hazardous waste with-  
217 out authorization from the department;

218 (4) Makes any false or misleading statement to any person  
219 who prepares any hazardous waste application, label, manifest,  
220 record, report, design or other document required to be submitted  
221 to the department; or

222 (5) Makes any false or misleading statement on any hazardous  
223 waste application, label, manifest, record, report, design or other  
224 document required to be submitted to the department, shall, upon  
225 conviction, be guilty of a crime of the fourth degree.

226 \*~~[g.]~~\* \**i.*\* Any person who, regardless of intent, generates  
227 and causes or permits any hazardous waste to be transported,  
228 transports, or receives transported hazardous waste without com-  
229 pleting and submitting to the department a hazardous waste mani-  
230 fest in accordance with the provisions of this act or any rule or  
231 regulation adopted pursuant hereto shall, upon conviction, be guilty  
232 of a crime of the fourth degree.

233 \***[h.]**\* \*j.\* All conveyances used or intended for use in the will-  
 234 ful discharge, in violation of the provisions of P. L. 1970, c. 39  
 235 (C. 13:1E-1 et seq.), of any solid waste, or hazardous waste as  
 236 defined in P. L. 1976, c. 99 (C. 13:1E-38 et seq.) are subject to  
 237 forfeiture to the State pursuant to the provisions of P. L. 1981,  
 238 c. 387 (C. 13:1K-1 et seq.).

239 \*k. The provisions of N. J. S. 2C:1-6 to the contrary notwith-  
 240 standing, a prosecution for a violation of the provisions of sub-  
 241 section g., subsection h. or subsection i. of this section shall be  
 242 commenced within five years of the date of discovery of the viola-  
 243 tion.\*

1 2. Section 22 of P. L. 1976, c. 141 (C. 58:10-23.11u) is amended  
 2 to read as follows:

3 22. a. Any person who knowingly gives or causes to be given any  
 4 false information as a part of, or in response to, any claim made  
 5 pursuant to this act for cleanup costs, removal costs, direct damages  
 6 or indirect damages resulting from a discharge, or who otherwise  
 7 violates any of the provisions of this act or any rule promulgated  
 8 thereunder shall be liable to a penalty of not more than **[\$25,000.00]**  
 9 *\$50,000.00* for each offense, to be collected in a summary proceeding  
 10 under "the penalty enforcement law" (N. J. S. 2A:58-1 et seq.)  
 11 or in a court of competent jurisdiction wherein injunctive relief  
 12 as been requested. The Superior Court shall have jurisdiction to  
 13 enforce "the penalty enforcement law". If the violation is of a  
 14 continuing nature each day during which it continues shall consti-  
 15 tute an additional, separate and distinct offense.

16 b. If any person violates any of the provisions of this act, the  
 17 department may institute civil action in the Superior Court for  
 18 injunctive relief to prohibit and prevent the continuation of the  
 19 violation or violations and said court may proceed in a summary  
 20 manner.

21 c. All conveyances used or intended for use in the willful dis-  
 22 charge of any hazardous substance are subject to forfeiture to the  
 23 State pursuant to the provisions of P. L. 1981, c. 387 (C. 13:1K-1  
 24 et seq.).

1 3. 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, the commissioner finds that any person is in violation of any  
 5 provision of this act, or any rule, regulation, water quality stan-  
 6 dard, effluent limitation, or permit issued pursuant to this act he  
 7 shall:

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8 (1) Issue an order requiring any such person to comply in ac-  
9 cordance with subsection b. of this section; or

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

12 (3) Levy a civil administrative penalty in accordance with sub-  
13 section d. of this section; or

14 (4) Bring an action for a civil penalty in accordance with sub-  
15 section e. of this section; or

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

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

20 b. Whenever, on the basis of any information available to him,  
21 the commissioner finds that any person is in violation of any pro-  
22 vision of this act, or of any rule, regulation, water quality standard,  
23 effluent limitation or permit issued pursuant to this act, he may  
24 issue an order (1) specifying the provision or provisions of this  
25 act, or the rule, regulation, water quality standard, effluent limi-  
26 tation, or permit of which he is in violation, (2) citing the action  
27 which caused such violation, (3) requiring compliance with such  
28 provision or provisions, and (4) giving notice to the person of his  
29 right to a hearing on the matters contained in the order.

30 c. The commissioner is authorized to commence a civil action in  
31 Superior Court for appropriate relief from any violation of this act  
32 or of a permit issued hereunder. Such relief may include, singly  
33 or in combination:

34 (1) A temporary or permanent injunction;

35 (2) Assessment of the violator for the costs of any investigation,  
36 inspection, or monitoring survey which led to the establishment of  
37 the violation, and for the reasonable costs of preparing and litigat-  
38 ing the case under this subsection;

39 (3) Assessment of the violator for any cost incurred by the  
40 State in removing, correcting or terminating the adverse effects  
41 upon water quality resulting from any unauthorized discharge of  
42 pollutants for which the action under this subsection may have been  
43 brought;

44 (4) Assessment against the violator of compensatory damages  
45 for any loss or destruction of wildlife, fish or aquatic life, and for  
46 any other actual damages caused by an unauthorized discharge.  
47 Assessments under this subsection shall be paid to the State  
48 Treasurer, except that compensatory damages shall be paid by  
49 specific order of the court to any person who have been aggrieved  
50 by the unauthorized discharge;

51 d. The commissioner is authorized to assess a civil penalty of  
 52 not more than ~~[\$5,000.00]~~ ~~\*[\$10,000.00]\*~~ ~~\*\$50,000.00\*~~ for each  
 53 violation and ~~\*[additional penalties of not more than [\$500.00]~~  
 54 ~~[\$1,000.00 for]\*~~ each day during which such violation continues  
 55 ~~\*\*[after receipt of an order from the department]\*\*~~ ~~*shall con-*~~  
 56 ~~*stitute an additional, separate, and distinct offense\**~~. Any amount  
 57 assessed under this subsection shall fall within a range established  
 58 by regulation by the commissioner for violations of similar type,  
 59 seriousness, and duration. No assessment shall be levied pursuant  
 60 to this section until after the discharger has been notified by  
 61 certified mail or personal service. The notice shall include a re-  
 62 ference to the section of the statute, regulation, order or permit  
 63 condition violated; a concise statement of the facts alleged to con-  
 64 stitute a violation; a statement of the amount of the civil penalties  
 65 to be imposed; and statement of the party's right to a hearing.  
 66 The ordered party shall have 20 days from receipt of the notice  
 67 within which to deliver to the commissioner a written request for  
 68 a hearing. After the hearing and upon finding that a violation has  
 69 occurred, the commissioner may issue a final order after assessing  
 70 the amount of the fine specified in the notice. If no hearing is re-  
 71 quested, then the notice shall become a final order after the expira-  
 72 tion of the 20-day period. Payment of the assessment is due when  
 73 a final order is issued or the notice becomes a final order. The  
 74 authority to levy an administrative order is in addition to all other  
 75 enforcement provisions in this act, and the payment of any assess-  
 76 ment shall not be deemed to affect the availability of any other  
 77 enforcement provisions in connection with the violation for which  
 78 the assessment is levied. Any civil penalty assessed under this  
 79 section may be compromised by the commissioner upon the posting  
 80 of a performance bond by the violator, or upon such terms and  
 80A conditions as the commissioner may establish by regulation.

81 e. Any person who violates this act or an administrative order  
 82 issued pursuant to subsection b. or a court order issued pursuant  
 83 to subsection c., or who fails to pay an administrative assessment  
 84 in full pursuant to subsection d. shall be subject upon order of a  
 85 court to a civil penalty not to exceed ~~[\$10,000.00]~~ ~~\*[\$20,000.00]\*~~  
 86 ~~\*\$50,000.00\*~~ per day of such violation, and each day's continuance  
 87 of the violation shall constitute a separate violation. Any penalty  
 88 incurred under this subsection may be recovered with costs in a  
 89 summary proceeding pursuant to "the penalty enforcement law"  
 90 (N. J. S. 2A:58-1 et seq.). The Superior Court shall have jurisdic-  
 91 tion to enforce "the penalty enforcement law" in conjunction with  
 91A this act.

92 f. Any person who willfully or negligently violat  
93 upon conviction, be guilty of a crime of the fourth  
94 be punished by fine of not less than ~~[\$2,500.00]~~ \$5  
95 than ~~[\$25,000.00]~~ \$50,000.00 per day of violation,  
96 ment for not more than one year or by both. P  
97 second offense under this subsection shall be a fine  
98 ~~[\$5,000.00]~~ \$10,000.00 nor more than ~~[\$50,000.00]~~  
99 day of violation, or by imprisonment for not more  
100 or both. Any person who knowingly makes a false statement, repre-  
101 sentation, or certification in any application, record, or other docu-  
102 ment filed or required to be maintained under this act or who falsi-  
103 fies, tampers with or knowingly renders inaccurate, any monitoring  
104 device or method required to be maintained pursuant to this act,  
105 shall upon conviction, be subject to a fine of not more than  
106 ~~[\$10,000.00]~~ \$20,000.00 or by imprisonment for not more than  
107 six months, or by both.

108 g. All conveyances used or intended for use in the willful dis-  
109 charge, in violation of the provisions of P. L. 1977, c. 74 (C.  
110 58:10A-1 et seq.) of any pollutant or toxic pollutant are subject  
111 to forfeiture to the State pursuant to the provisions of P. L. 1981,  
112 c. 387 (C. 13:1K-1 et seq.).

1 4. This act shall take effect immediately.

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105 shall upon conviction, be subject to a fine of not more than  
106 ~~【\$10,000.00】~~ \$20,000.00 or by imprisonment for not more than  
107 six months, or by both.

108 g. All conveyances used or intended for use in the willful dis-  
109 charge, in violation of the provisions of P. L. 1977, c. 74 (C.  
110 58:10A-1 et seq.) of any pollutant or toxic pollutant are subject  
111 to forfeiture to the State pursuant to the provisions of P. L. 1981,  
112 c. 387 (C. 13:1K-1 et seq.).

1 4. This act shall take effect immediately.

#### *Sponsor* STATEMENT

This bill increases the penalties for violations of the "Solid Waste Management Act," P. L. 1970, c. 39 (13:1E-1 et seq.), the "Spill Compensation and Control Act," P. L. 1976, c. 141 (C. 58:10-23.11 et seq.), and the "Water Pollution Control Act," P. L. 1977, c. 74 (C. 58:10A-1 et seq.). By substantially increasing these penalties, it is believed that the occurrence of environmental violations will be reduced.

A 1270 (1986)

ASSEMBLY COMMITTEE ON ENVIRONMENTAL QUALITY

STATEMENT TO

**ASSEMBLY, No. 1270**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: MARCH 3, 1986

The committee favorably released Assembly Bill No. 1270 with amendments.

This bill would increase the penalties for violations of the "Solid Waste Management Act," the "Spill Compensation and Control Act," and the "Water Pollution Control Act." The penalties for the violation of these laws have not changed in a substantial period of time and thus may not now represent the significant deterrent initially intended by the Legislature. By substantially increasing these penalties, it is believed that the incidence of environmental violations will be reduced.

The committee adopted amendments which would bring the language of the bill into conformance with current law and which would raise some of the penalties even more consistent with the doubling of the penalties imposed in most of the provisions of the bill.

The committee further amended the bill to direct the Department of Environmental Protection to take into account mitigating factors and whether the penalty will maintain an appropriate deterrent.

It was the intent of the committee that while it did not desire to impose mandatory minimum penalties, the court should assess at least as stringent penalties as the department requested.

This bill was pre-filed for introduction in the 1986 session pending technical review. As amended, the bill includes the changes required by technical review which has been performed.

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SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1270**

[OFFICIAL COPY REPRINT]

with Senate committee amendments

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**STATE OF NEW JERSEY**

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DATED: SEPTEMBER 8, 1986

The Senate Energy and Environment Committee favorably reports Assembly Bill No. 1270 OCR with Senate Committee amendments.

Assembly Bill No. 1270 OCR would increase the penalties for violations of the "Solid Waste Management Act (P. L. 1970, c. 39), the "Spill Compensation and Control Act" (P. L. 1976, c. 141), and the "Water Pollution Control Act" (P. L. 1977, c. 740).

The increases for violations of the "Solid Waste Management Act" are as follows:

1. The maximum amount of a civil administrative penalty which the Commissioner of the Department of Environmental Protection may assess is increased from \$25,000.00 to \$50,000.00 for each violation. The maximum amount of a civil administrative penalty which may be assessed for each day during which a violation continues is raised from \$2,500.00 to \$50,000.00. The committee amended Assembly Bill No. 1270 OCR to provide that the department may not assess the higher administrative penalties until it has adopted regulations which would require the department, in assessing the increased penalties, to consider the operational history of the facility where the violation occurred, the severity of the violation, the measures taken to mitigate or prevent future violations, and whether the penalty will maintain an appropriate deterrent.

2. The maximum penalty for a violation of the act, or any regulation adopted pursuant to the act, is increased from \$25,000.00 to \$50,000.00.

3. The maximum penalty for a violation of an administrative order issued by the department, a violation of a court order, or failure to pay an administrative assessment is increased from \$50,000.00 to \$100,000.00.

4. The maximum penalty for making a misleading statement on a hazardous waste application or other form is increased from \$25,000.00 to \$50,000.00 for the first offense, and from \$50,000.00 to \$100,000.00 for the second and subsequent offenses.

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The maximum penalty for a violation of the "Spill Compensation and Control Act" is increased from \$25,000.00 to \$50,000.00.

The increases for violations of the "Water Pollution Control Act" are as follows:

1. The maximum amount of a civil penalty which may be assessed by the Commissioner of the Department of Environmental Protection is increased from \$5,000.00 to \$50,000.00. The maximum civil penalty which may be assessed for each day during which a violation continues is increased from \$500.00 to \$50,000.00.

2. The maximum penalty for a violation of an administrative order issued by the department, a violation of a court order, or failure to pay a civil assessment is increased from \$10,000.00 to \$50,000.00.

3. The minimum penalty for a willfull or negligent violation of the act is increased from \$2,500.00 to \$5,000.00 and the maxium penalty from \$25,000.00 to \$50,000.00. The minimum penalty for a second offense is increased from \$5,000.00 to \$10,000.00, the maximum from \$50,000.00 to \$100,000.00. The maximum penalty for making a false statement on any application or record, or for tampering with any monitoring device, is increased from \$10,000.00 to \$20,000.00.

The committee also made purely technical amendments to Assembly Bill No. 1270 OCR.

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