

26:2C-14 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 26:2C-14 et al

(Air pollution violations--
increase penalties)

LAWS OF: 1985

CHAPTER: 12

Bill No: S2480

Sponsor(s): Lesniak

Date Introduced: November 29, 1984

Committee: Assembly: /////

Senate: Energy and Environment

Amended during passage: Yes Substituted for A2977 (not attached since identical to S2480). Amendments during passage denoted by asterisks

Date of Passage: Assembly: Dec. 27, 1984

Senate: Dec. 17, 1984

Date of Approval: January 22, 1985

Following statements are attached if available:

Sponsor statement: Yes Also attached: Senate amendments adopted 12-13-84 (w/ statement)

Committee statement: Assembly No

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clippings (attached):

"Stiff pollution fines enacted, 2 firms face action by DEP", 11-24-84, Star Ledger.

"Anti-emission bill amended, set for vote", 12-14-84, Trenton Times.
(over)

DO NOT REMOVE FROM LIBRARY

Newspaper clippings (continued):

"Tougher fines gain for clean air violators", 12-28-84, Star Ledger.
"Assembly ups fines for air emissions", 12-28-84, Trenton Times.
"NJ toughens fines for polluting the air", 1-24-85, Trenton Times.

1-22-85

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 2480

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 29, 1984

By Senator LESNIAK

Referred to Committee on Energy and Environment

AN ACT to increase the penalties for air pollution violations and amending ***[and supplementing]*** P. L. 1954, c. 212 *and P. L. 1962, c. 215*.

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

1 1. Section 19 of P. L. 1954, c. 212 (C. 26:2C-19) is amended to
2 read as follows:

3 19. *a.* If any person violates any of the provisions of this act or
4 any code, rule, regulation or order promulgated or issued pursuant
5 to the provisions of this act, the department may institute a civil
6 action in **[the Superior Court]** *a court of competent jurisdiction*
7 *for injunctive or any other appropriate relief to prohibit and pre-*
8 *vent such violation or violations and the said court may proceed*
9 *in the action in a summary manner.*

10 *b.* Any person who violates the provisions of this act or any code,
11 rule, regulation or order promulgated or issued pursuant to this
12 act shall be liable to a *civil administrative* penalty of not more than
13 **[\$2,500.00** to be collected in a civil action by a summary pro-
14 ceeding under the penalty enforcement law (N. J. S. 2A:58-1 et
15 seq.) or in any case before a court of competent jurisdiction wherein
16 injunctive relief has been requested] *\$10,000.00 for the first offense,*
17 *not more than \$25,000.00 for the second offense, and not more than*
18 *\$50,000.00 for the third and each subsequent offense.* If the viola-
19 tion is of a continuing nature, each day during which it continues
20 **[after the date given by which the violation must be eliminated in**
21 **accordance with the order of the department]** shall constitute an
22 additional, separate and distinct offense. ***[“Continuing nature”**
23 *means the repetition within one year of a violation wherein the*

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:

*—Senate committee amendments adopted December 6, 1984.

**—Senate amendments adopted December 13, 1984.

24 type of pollutant or the conditions under which the emission occurs
 25 are similar.]* No civil administrative penalty shall be levied except
 26 upon **[a subsequent]** **an** administrative order **[to cease
 27 the violation, issued by the commissioner and sent to the violator by
 28 certified mail or personal service. The order shall include a refer-
 29 ence to the section of the statute, regulation, order, or permit con-
 30 dition violated; the amount of the fine which shall be imposed; a
 31 concise statement of the facts alleged to constitute the violation; and
 32 a statement of the right of the violator to a hearing. The violator
 33 has 20 days from receipt of the notice within which to deliver to the
 34 commissioner a written request for a hearing. Subsequent to the
 35 hearing, if requested, and upon a finding that a violation has oc-
 36 curred, the commissioner may issue a final order to cease the viola-
 37 tion and assessing the amount of the fine specified in the order. If
 38 no hearing is requested, the order is a final order upon the expira-
 39 tion of the 20 day period. Payment of the penalty is due when a
 40 final order is issued or when the order becomes a final order. The
 41 authority to levy a civil administrative penalty is in addition to
 42 all other enforcement provisions in P. L. 1954, c. 212 (C. 26:2C-1
 43 et seq.), and the payment of a civil administrative penalty does not
 43A affect the availability of any other enforcement provision in con-
 43B nection with the violation for which the penalty is levied]** **is-
 43C sued pursuant to section 14 of P. L. 1954, c. 212 (C. 26:2C-14)**.

44 c. The department is hereby authorized and empowered to
 45 compromise and settle any claim for a penalty under this section
 46 in such amount in the discretion of the department as may appear
 47 appropriate and equitable under all of the circumstances[, includ-
 48 ing a rebate of any such penalty paid to the extent of 90% thereof
 49 where such person satisfies the department within one year or such
 50 other period as the department may deem reasonable that such
 51 violation has been eliminated or removed or that such order or
 52 injunction has been met or satisfied, as the case may be, by the
 53 installation of air pollution control apparatus] *[including the post-
 54 ing of a performance bond by the violator.]*

55 d. Any person who violates **[P. L. 1954, c. 212 (C. 26:2C-1 et
 56 seq.), or an administrative order issued pursuant to subsection b. of
 57 this section]** **the provisions of P. L. 1954, c. 212 (C. 26:2C-1 et
 58 seq.) or any code, rule, regulation, or order promulgated or issued
 59 pursuant to that act**, or a court order issued pursuant to subsec-
 60 tion a. of this section, or who fails to pay a civil administrative
 61 penalty in full pursuant to **[subsection b. of this section]** **
 62 **section 9 of P. L. 1962, c. 215 (C. 26:2C-14.1)***, is subject, upon
 63 order of the court, to a civil penalty *of* not *[to exceed]** **more

64 than* \$10,000.00 **[per day]** * [of the violation]* *for the first
 65 offense, **not more than** \$25,000.00 **[per day]** for the second
 66 offense, and not more than \$50,000.00 for the third and each sub-
 67 sequent offense*. If the violation is of a continuing nature, each
 68 day during which the violation continues, or each day in which the
 69 civil administrative penalty **[pursuant to subsection b. of this
 70 section]** is not paid in full, constitutes an additional, separate
 71 and distinct offense. Any penalty imposed under this subsection
 72 may be recovered with costs in a summary proceeding pursuant to
 73 "the penalty enforcement law" (N. J. S. 2A58:1 et seq.). The Law
 74 Division of the Superior Court has jurisdiction to enforce "the
 75 penalty enforcement law."

76 e. A person who **[violates any provision of P. L. 1954, c. 212
 77 (C. 26:2C-1 et seq.) or any code, rule or regulation, or order
 78 adopted pursuant thereto]** **causes a release of air contaminants
 79 in a quantity or concentration which poses a potential threat to
 80 public health, welfare or the environment or which might reasonably
 81 result in citizen complaints** shall immediately notify the depart-
 82 ment **[of the violation]**. A person who fails to so notify the
 83 department is liable to the penalties and procedures prescribed in
 84 this section.

1 *2. (New section) The Department of Environmental Protection
 2 shall, within 120 days of the effective date of this amendatory and
 3 supplementary act and pursuant to the "Administrative Procedure
 4 Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), adopt rules and
 5 regulations to identify circumstances in which the types of pol-
 6 lutants and the conditions under which their emission occurred
 7 would be deemed so similar as to constitute a continuing violation
 8 under subsection b. of section 19 of P. L. 1954, c. 212 (C. 26:2C-19)
 9 and any other regulations necessary to carry out the provisions of
 10 this amendatory and supplementary act.]*

1 *2. Section 14 of P. L. 1954, c. 212 (C. 26:2C-14) is amended to
 2 read as follows:

3 14. Whenever the department has cause to believe that any
 4 person is violating any code, rule or regulation promulgated by
 5 the department, the department shall cause a prompt investigation
 6 to be made in connection therewith.

7 If upon inspection the department discovers a condition which
 8 is in violation of the provisions of this act or any code, rule or
 9 regulation promulgated pursuant thereto, it shall be authorized
 10 to order such violation to cease and to take such steps necessary
 11 to enforce such an order. **[The said order shall state the items
 12 which are in violation and shall provide a reasonable specified time

13 within which the violation must cease.】** ***The order to cease the*
 13A *violation issued by the commissioner and sent to the violator by*
 13B *certified mail or personal service shall include a reference to the*
 13C *section of the statute, regulation, order, or permit condition vio-*
 13D *lated; the amount of the fine which shall be imposed; a concise*
 13E *statement of the facts alleged to constitute the violation; and a*
 13F *statement of the right of the violator to a hearing.***

14 【In any case where no code, rule or regulation has been promul-
 15 gated which sets specific limits for emissions to the atmosphere
 16 of the type discovered and alleged, no order to cease such emis-
 17 sions shall be issued until the holding of a preliminary hearing
 18 thereon which shall be held upon not less than 15 days' notice by
 19 the department to all interested persons.】

20 The person responsible shall make the corrections necessary
 21 to comply with the requirements of this act or code, rule or regu-
 22 lation promulgated pursuant thereto within the time specified in
 23 the order.

24 Nothing herein shall be deemed to prevent the department from
 25 prosecuting any violation of this act or any code, rule or regula-
 26 tion promulgated pursuant thereto notwithstanding that such
 27 violation is corrected in accordance with its order.

1 3. Section 9 of P. L. 1962, c. 215 (C. 26:2C-14.1) is amended to
 2 read as follows:

3 9. Any person aggrieved by an order of the department ******【under
 4 this act may, upon application made within **【15】** 20 days after
 5 notice thereof, be entitled to a hearing before the department which
 6 shall within 30 days thereafter hold a hearing of which at least 15
 7 days written notice shall be given to such persons. Within 30 days
 8 after such hearing the department shall issue an appropriate order
 9 modifying, approving or disapproving its prior order. A copy of
 10 such order shall be served upon all interested parties】** ***has 20*
 11 *days from receipt of the order within which to deliver to the com-*
 12 *missioner a written request for a hearing. Subsequent to the hear-*
 13 *ing, if requested, and upon a finding that a violation has occurred,*
 14 *the commissioner may issue a final order to cease the violation and*
 15 *assessing the amount of the fine specified in the order. If no hear-*
 16 *ing is requested, the order is a final order upon the expiration of*
 17 *the 20 day period. Payment of the penalty is due when a final order*
 18 *is issued or when the order becomes a final order. The authority*
 19 *to levy a civil administrative penalty is in addition to all other en-*
 20 *forcement provisions in P. L. 1954, c. 212 (C. 26:2C-1 et seq.), and*
 21 *the payment of a civil administrative penalty does not affect the*
 22 *availability of any other enforcement provision in connection with*

23 *the violation for which the penalty is levied***. Pending the deter-
 24 mination by the department and upon application therefor the de-
 25 partment may stay the operation of such order upon such terms
 26 and conditions as it may deem proper.*

1 **4. Section 22 of P. L. 1954, c. 212 (C. 26:2C-22) is amended
 2 to read as follows:

3 22. No ordinances of any governing body of a municipality or
 4 county or board of health more stringent than this act or any code
 5 rules or regulations promulgated pursuant thereto shall be super-
 6 seded by this act. Nothing in this act or in any code, rules or
 7 regulations promulgated pursuant thereto shall preclude the right
 8 of any governing body of a municipality or county or board of
 9 health, subject to the approval of the department, to adopt ordi-
 10 nances or regulations more stringent than this act or any code,
 11 rules or regulations promulgated pursuant thereto. *Penalties for*
 12 *violations of ordinances of a governing body of a municipality,*
 13 *county or board of health shall not exceed \$2,500.00.***

1 ***[3.]*** ****[*4.*]**** **5.** This act shall take effect immediately.

66 in a summary proceeding pursuant to "the penalty inforcement
 67 law" (N. J. S. 2A:58-1 et seq.). The Law Division of the Superior
 68 Court has jurisdiction to enforce "the penalty enforcement law."
 69 e. A person who violates any provision of P. L. 1954, c. 212 (C.
 70 26:2C-1 et seq.) or any code, rule or regulation, or order adopted
 71 pursuant thereto shall immediately notify the department of the
 72 violation. A person who fails to so notify the department is liable
 73 to the penalties and procedures prescribed in this section.

1 2. (New section) The Department of Environmental Protection
 2 shall, within 120 days of the effective date of this amendatory and
 3 supplementary act and pursuant to the "Administrative Procedure
 4 Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), adopt rules and
 5 regulations to identify circumstances in which the types of pol-
 6 lutants and the conditions under which their emission occurred
 7 would be deemed so similar as to constitute a continuing violation
 8 under subsection b. of section 19 of P. L. 1954, c. 212 (C. 26:2C-19)
 9 and any other regulations necessary to carry out the provisions of
 10 this amendatory and supplementary act.

1 3. This act shall take effect immediately.

Sponsor
STATEMENT

In recent months there have been several unfortunate accidents resulting in the uncontrolled discharge of pollutants into the air. Under current law, the maximum fine which may be imposed for such uncontrolled emissions is \$2,500.00 for each day during which the violation continues. This level of penalty is insufficient to motivate a maximum effort to minimize or eliminate such occurrences. Accordingly, this bill would substantially raise the penalty for violations of the "Air Pollution Control Act (1954)," P. L. 1954, c. 212 (C. 26:2C-1 et seq.). This bill would permit the Department of Environmental Protection to levy civil administrative penalties thereby expediting collection and would establish a range of penalties of not more than \$10,000.00 for the first offense, not more than \$25,000.00 for the second offense and up to \$50,000.00 for the third and each subsequent offense.

The bill also requires the immediate notification of the department of any violations. The penalty for failure to notify the department would constitute a separate violation and subject the violator to liability to the increased penalties.

Finally the bill redefines "continuing nature" so that frequent violation of the "Air Pollution Control Act" under similar circumstances within a year would constitute second, third and subsequent offenses, and thus require the assessment of greater fines.

S2480(1985)

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 2480

STATE OF NEW JERSEY

DATED: DECEMBER 6, 1984

Under current law, the maximum fine which may be imposed for uncontrolled air emissions is \$2,500.00 for each day during which the violation continues. This bill would substantially raise the penalty for violations of the "Air Pollution Control Act (1954)", P. L. 1954, c. 212 (C. 26:2C-1 et seq.). This bill would permit the Department of Environmental Protection to levy civil administrative penalties of not more than \$10,000.00 for the first offense, not more than \$25,000.00 for the second offense and up to \$50,000.00 for the third and each subsequent offense.

The bill also requires the immediate notification of the department of any violations. The penalty for failure to notify the department would constitute a separate violation and subject the violator to liability to the increased penalties.

The committee amended the bill to provide that the penalties for a violation of an administrative order, or a failure to pay a civil administrative penalty imposed under the act would be identical to the penalties imposed for a violation of the act. The committee also deleted the definition of "continuing nature," removed the requirement that a violator of the act post a performance bond and made other technical amendments to the bill.

SENATE Amendments
PROPOSED BY SENATOR LESNIAK
to

SENATE Bill No. 2480 OCR
SPONSORED BY SENATOR LESNIAK

Amend:

Page	Sec.	Line	
2	1	26-43B	Omit "a subsequent" insert "an" Omit "to cease the violation" Omit lines 27 thorough 43A entirely, on line 43B omit "nection with the violation for which the penalty is levied" and insert "issued pursuant to section 14 of P.L. 1954, c.212 (C.26:2C-14)"
2	1	55-57	After "violates" omit the balance of line 55, omit line 56 entirely, on line 57 omit "section" and insert "the provisions of this act or any code, rule, regulation, or order promulgated or issued pursuant to this act"
2	1	59	Omit "subsection b. of this section" insert "section 9 of P.L. 1962, c.215 (C.26:2C-14.1)"
2	1	61	Omit "per day", after "offense," insert "not more than"
2	1	62	Omit "per day"
3	1	66	Omit "pursuant to subsection b. of this section"
3	1	69-71	After "who" omit the balance of line 69, omit line 70 entirely and on line 71 omit "pursuant thereto" and insert "causes a release of air contaminants in a quantity or concentration which poses a potential threat to public health, welfare or the environment or which might reasonably result in citizen complaints"
3	1	71-72	Omit "of the violation"

SENATE Amendments

PROPOSED BY SENATOR LESNIAK
to

SENATE Bill No. 2480 OCR

SPONSORED BY SENATOR LESNIAK

Amend:

Page	Sec.	Line	
3	2	11-13	<p>After "order." Omit the balance of line 11, omit line 12 entirely, on line 13 omit "within which the violation must cease" insert "The order to cease the violation issued by the commissioner and sent to the violator by certified mail or personal service shall include a reference to the section of the statute, regulation, order, or permit condition violated; the amount of the <u>fine</u> which shall be imposed; a concise statement of the facts alleged to constitute the violation; and a statement of the right of the violator to a hearing"</p>
4	3	3-10	<p>On line 3 omit "under", omit lines 4 thorough 9 entirely, on line 10 omit "such order shall be served upon all interested parties" and insert "has 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. Subsequent to the hearing, if requested, and upon a finding that a violation has occurred, the commissioner may issue a final order to cease the violation and assessing the amount of the fine specified in the order. If no hearing is requested, the order is a final order upon the expiration of the 20 day period. Payment of the penalty is due when a final order is issued or when the order becomes a final order. The authority to levy a civil administrative penalty</p>

SENATE Amendments

PROPOSED BY SENATOR LESNIAK
to

SENATE Bill No. 2480 OCR

SPONSORED BY SENATOR LESNIAK

Amend:

Page	Sec.	Line
4	3	After 13
4	4	1

is in addition to all other enforcement provisions in P.L. 1954, c. 212 (C26:2C-1 et seq.), and the payment of a civil administrative penalty does not affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied"

Insert new section 4. as follows:

"4. Section 22 of P.L. 1954, c. 212 (C.26:2C-22)

is amended to read as follows:

22. No ordinances of any governing body of a municipality or county or board of health more stringent than this act or any code, rules or regulations promulgated pursuant thereto shall be superseded by this act. Nothing in this act or in any code, rules or regulations promulgated pursuant thereto shall preclude the right of any governing body of a municipality or county or board of health, subject to the approval of the department, to adopt ordinances or regulations more stringent than this act or any code, rules or regulations promulgated pursuant thereto. Penalties

for violations of ordinances of a governing body of a municipality, county or board of health shall not exceed \$2,500.00."

Omit "4." insert "5."

STATEMENT

This amendment clarifies the intention of S-2480 that notification of the department is required for emissions of air contaminants that pose a public health threat, not simply for minor deviations from procedures required under the "Air Pollution Control Act (1954)." This amendment also imposes a \$2,500.00 cap on penalties for violation of local ordinances more stringent than the "Air Pollution Control Act (1954)." Finally, this

SENATE Amendments
PROPOSED BY SENATOR LESNIAK
to

SENATE Bill No. 2480 OCR
SPONSORED BY SENATOR LESNIAK

Amend:

Page	Sec.	Line

amendment restructures statutory language
to provide for more orderly administration of
assessing penalties for violation of the
"Air Pollution Control Act (1954).



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001

Contact: PAUL WOLCOTT
609-292-8956

TRENTON, N.J. 08625

Release: WEDNESDAY, JAN. 23, 1985

Governor Thomas H. Kean has signed legislation which substantially increases penalties for violation of the Air Pollution Control Act, and adds new administrative penalties to the civil penalties already set out in the act.

"New Jersey has some of the most stringent environmental regulations of any state in the Nation," Kean said. "With this bill we are making those laws even tougher, and sending a signal that New Jersey will not tolerate actions which pollute the air we breathe."

The bill, S-2480, is sponsored by State Senator Raymond Lesniak, D-Union. It makes the first increases in air pollution penalties since 1967.

The bill sets fines of not more than \$10,000 for the first offense, \$25,000 for the second offense, and \$50,000 for the third and subsequent offenses. The old penalty was \$2,500 per offense.

"Penalties of this severity make it clear that air pollution is considered a very serious violation, and, as well, actually create an incentive to avoid the release of pollutants," the Governor said.

Another provision of the bill allows the Commissioner of the Department of Environmental Protection to directly levy administrative penalties against a violator without first seeking relief in the Superior Court. It also eliminates a 15-day waiting period before a hearing can be held on emissions of contaminants which are not specifically limited by code, rule or regulation.

- more -

S-2480-Air Pollution Control Act

S-1423-Spill Compensation and Control Act

Wednesday, January 23, 1985

Page Two

That provision will allow the Commissioner to act immediately to halt pollution when the materials are not specifically covered by the law.

Where a release of contaminants is in a quantity or concentration which poses a health or environmental threat, or which reasonably might result in citizen complaints, the polluter must immediately notify the DEP.

The Governor also signed S-1423, sponsored by Senator Lesniak, which modifies the lien priority contained in the Spill Compensation and Control Act by placing limits on the applicability of the so-called "super lien." This provision of the law, which places a first priority lien posed by the Spill Fund Administrator on all the property owned by a discharger of hazardous substances, had created problems in clearing property titles.

The amendments rectify that problem by modifying the first priority status of the "super lien" on some residential property, and on property which was not the subject of a clean-up or removal of hazardous substances.

#