

13:1D-9

LEGISLATIVE HISTORY CHECKLIST

NJSA: 13:1D-9

(DEP-Trade secrets)

LAWS OF: 1984

CHAPTER: 5

Bill No: S1041 (S3386)

Sponsor(s): Cardinale

Date Introduced: January 23, 1984

Committee: Assembly: -----

Senate: -----

Amended during passage: Yes Substituted for A1046 (not attached since identical to S1041)

Date of Passage: Assembly: January 30, 1984

Senate: January 23, 1984

Date of Approval: February 22, 1984

Following statements are attached if available:

Sponsor statement: Yes Also attached: Assembly amendments, adopted 1-30-84 (with statement)

Committee statement: Assembly No

Senate No

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

Federal Resource Conservation and Recovery Act: Pub. L. 94-580:  
40 CFR 2, 40 CFR 271

[OFFICIAL COPY REPRINT]

SENATE, No. 1041

STATE OF NEW JERSEY

INTRODUCED JANUARY 23, 1984

By Senator CARDINALE

(Without Reference)

AN ACT concerning State administration, implementation and enforcement of environmental laws, rules, regulations and orders, and amending P. L. 1970, c. 33.

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

1 1. Section 12 of P. L. 1970, c. 33 (C. 13:1D-9) is amended to  
2 read as follows:

3 12. The department shall formulate comprehensive policies for  
4 the conservation of the natural resources of the State, the promo-  
5 tion of environmental protection and the prevention of pollution  
6 of the environment of the State. The department shall in addition  
7 to the powers and duties vested in it by this act or by any other  
8 law have the power to:

9 a. Conduct and supervise research programs for the purpose of  
10 determining the causes, effects and hazards to the environment and  
11 its ecology;

12 b. Conduct and supervise Statewide programs of education in-  
13 cluding the preparation and distribution of information relating  
14 to conservation, environmental protection and ecology;

15 c. Require the registration of persons engaged in operations  
16 which may result in pollution of the environment and the filing of  
17 reports by them containing such information as the department  
18 may prescribe to be filed relative to pollution of the environment,  
19 all in accordance with applicable codes, rules or regulations estab-  
20 lished by the department;

21 d. Enter and inspect any building or place for the purpose of  
22 investigating an actual or suspected source of pollution of 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:

\*—Assembly amendment adopted January 30, 1984.

23 environment and ascertaining compliance or noncompliance with  
24 any code, rules and regulations of the department. Any informa-  
25 tion relating to secret processes concerning methods of manufacture  
26 or production obtained in the course of such inspection, investiga-  
27 tion or determination, shall be kept confidential [and shall not be  
28 admissible in evidence in any court or in any other proceeding  
29 except before the department as herein defined], *except this*  
30 *information shall be available to the department for use, when*  
31 *relevant, in any administrative or judicial proceedings undertaken*  
32 *to administer, implement, and enforce State environmental law, but*  
33 *shall remain subject only to those confidentiality protections*  
34 *otherwise afforded by federal law \*and by the specific State environ-*  
35 *mental laws and regulations that the department is administering,*  
36 *implementing and enforcing in that particular case or instance\*.*  
37 *In addition, this information shall be available upon request to the*  
38 *United States Government for use in administering, implementing,*  
39 *and enforcing federal environmental law, but shall remain subject*  
40 *to the confidentiality protection afforded by federal law.* If samples  
40A are taken for analysis, a duplicate of the analytical report shall be  
40B furnished promptly to the person suspected of causing pollution of  
40C the environment;

41 e. Receive or initiate complaints of pollution of the environment,  
42 including thermal pollution, hold hearings in connection therewith  
43 and institute legal proceedings for the prevention of pollution of  
44 the environment and abatement of nuisances in connection there-  
45 with and shall have the authority to seek and obtain injunctive relief  
46 and the recovery of fines and penalties in summary proceedings  
47 in the Superior Court;

48 f. Prepare, administer and supervise Statewide, regional and  
49 local programs of conservation and environmental protection,  
50 giving due regard for the ecology of the varied areas of the State  
51 and the relationship thereof to the environment, and in connection  
52 therewith prepare and make available to appropriate agencies in  
53 the State technical information concerning conservation and  
54 environmental protection, cooperate with the Commissioner of  
55 Health in the preparation and distribution of environmental protec-  
56 tion and health bulletins for the purpose of educating the public,  
57 and cooperate with the Commissioner of Health in the preparation  
58 of a program of environmental protection;

59 g. Encourage, direct and aid in coordinating State, regional and  
60 local plans and programs concerning conservation and environ-  
61 mental protection in accordance with a unified Statewide plan which  
62 shall be formulated, approved and supervised by the department.

63 In reviewing such plans and programs and in determining condi-  
64 tions under which such plans may be approved, the department  
65 shall give due consideration to the development of a comprehensive  
66 ecological and environmental plan in order to be assured insofar  
67 as is practicable that all proposed plans and programs shall con-  
68 form to reasonably contemplated conservation and environmental  
69 protection plans for the State and the varied areas thereof;

70 h. Administer or supervise programs of conservation and en-  
71 vironmental protection, prescribe the minimum qualifications of  
72 all [pesons] *persons* engaged in official environmental protection  
73 work, and encourage and aid in coordinating local environmental  
74 protection services;

75 i. Establish and maintain adequate bacteriological, radiological  
76 and chemical laboratories with such expert assistance and such  
77 facilities as are necessary for routine examinations and analyses,  
78 and for original investigations and research in matters affecting  
79 the environment and ecology;

80 j. Administer or supervise a program of industrial planning for  
81 environmental protection; encourage industrial plants in the State  
82 to undertake environmental and ecological engineering programs,  
83 and cooperate with the State Departments of Health, Labor, and  
84 Commerce and Economic Development in formulating rules and  
85 regulations concerning industrial sanitary conditions;

86 k. Supervise sanitary engineering facilities and projects within  
87 the State, authority for which is now or may hereafter be vested by  
88 law in the department, and shall, in the exercise of such supervi-  
89 sion, make and enforce rules and regulations concerning plans and  
90 specifications, or either, for the construction, improvement, altera-  
91 tion or operation of all public water supplies, all public bathing  
92 places, [land fill] *landfill* operations and of sewerage systems and  
93 disposal plants for treatment of sewage, wastes and other deleter-  
94 ious matter, liquid, solid or gaseous, require all such plans as  
95 specifications, or either, to be first approved by it before any work  
96 thereunder shall be commenced, inspect all such projects during  
97 the progress thereof and enforce compliance with such approved  
98 plans and specifications;

99 l. Undertake programs of research and development for the  
100 purpose of determining the most efficient, sanitary and economical  
101 ways of collecting, disposing or utilizing of solid waste;

102 m. Construct and operate, on an experimental basis, incinerators  
103 or other facilities for the disposal of solid waste, provide the  
104 various municipalities and counties of this State, the Board of  
105 Public Utilities, and the Division of Local Government Services in

106 the Department of Community Affairs with statistical data on  
107 costs and methods of solid waste collection, disposal and utilization;

108 n. Enforce the State air pollution, water pollution, conservation,  
109 environmental protection, waste and refuse disposal laws, rules  
110 and regulations, including the making and signing of a complaint  
111 and summons for their violation by serving the summons upon the  
112 violator and thereafter filing the complaint promptly with a court  
113 having jurisdiction;

114 o. Acquire by purchase, grant, contract or condemnation, title  
115 to real property, for the purpose of demonstrating new methods  
116 and techniques for the collection or disposal of solid waste;

117 p. Purchase, operate and maintain, pursuant to the provisions  
118 of this act, any facility, site, laboratory, equipment or machinery  
119 necessary to the performance of its duties pursuant to this act;

120 q. Contract with any other public agency or corporation incorpo-  
121 rated under the laws of this or any other state for the performance  
122 of any function under this act;

123 r. With the approval of the Governor, cooperate with, apply for,  
124 receive and expend funds from, the federal government, the State  
125 Government, or any county or municipal government or from any  
126 public or private sources for any of the objects of this act;

127 s. Make annual and such other reports as it may deem proper to  
128 the Governor and the Legislature evaluating the demonstrations  
129 conducted during each calendar year;

130 t. Keep complete and accurate minutes of all hearings held  
131 before the commissioner or any member of the department pur-  
132 suant to the provisions of this act. All such minutes shall be  
133 retained in a permanent record, and shall be available for public  
134 inspection at all times during the office hours of the department;

135 u. Require any person subject to a lawful order of the depart-  
136 ment which provides for a period of time during which such person  
137 subject to the order is permitted to correct a violation, to post a  
138 performance bond or other security with the department in such  
139 form and amount as shall be determined by the department. Such  
140 bond need not be for the full amount of the estimated cost to correct  
141 the violation but may be in such amount as will tend to insure good  
142 faith compliance with said order. The department shall not require  
143 such a bond or security from any public body, agency or authority.  
144 In the event of a failure to meet the schedule prescribed by the  
145 department, the sum named in the bond or other security shall be  
146 forfeited unless the department shall find that the failure is excus-  
147 able in whole or in part for [a] good cause shown in which case the  
148 department shall determine what amount of said bond or security,

149 if any, is a reasonable forfeiture under the circumstances. Any  
150 amount so forfeited shall be utilized by the department for the  
151 correction of the violation or violations, or for any other action  
152 required to insure compliance with the order.

1     2. This act shall take effect immediately.

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## STATEMENT

This bill would allow the Department of Environmental Protection to use information related to secret processes obtained during an inspection of a facility in administrative or judicial proceedings to enforce State environmental laws. In addition, this bill would permit the department to share this information with United States government agencies for use in enforcing federal environmental laws. Any information so shared with the United States Government would be protected by federal trade secret law.

Currently, the Department of Environmental Protection is prohibited by State law under section 12 of P. L. 1970, c. 33 (C. 13:1D-9) from using trade secrets gained in the course of an inspection in enforcement proceedings and from providing such information to federal agencies. By permitting the sharing of this information, this bill would remove the necessity of duplicate inspections by the New Jersey Department and, for instance, the U. S. Environmental Protection Agency, and would promote the coordinated enforcement of State and federal environmental laws. In addition, this bill would make State law compatible with federal regulations adopted pursuant to the federal Resource Conservation and Recovery Act, and thus permit the State to have full authority over enforcing RCRA regulations.

The bill provides that any proprietary information would remain confidential to all but enforcement and administrative personnel for use in the performance of their duties.

S104T(1984)

Assembly Amendments

to

Senate Bill No. 1041 (TYPED CC)

ADOPTED

Amend: JAN 30 1984

Proposed Assemblyman Hollenbeck  
1/30/84

Sponsored by Senator Cardinale

Page	Sec.	Line
2	1	34

After "law" insert "and by the specific State environmental laws and regulations that the department is administering, implementing and enforcing in that particular case or instance"

STATEMENT

This amendment would require that, where applicable, State environmental laws which protected certain trade secrets of private industry would continue to protect those trade secrets when the Department of Environmental Protection was administering, implementing and enforcing those laws.