

12:5-6

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2007 **CHAPTER:** 246

NJSA: 12:5-6 (Updates enforcement provisions of various environmental laws in a uniform manner)

BILL NO: S2650 (Substituted for A4287)

SPONSOR(S) Vitale and Others

DATE INTRODUCED: May 14, 2007

COMMITTEE: **ASSEMBLY:** Environment and Solid Waste

SENATE: Environment

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 13, 2007

SENATE: December 17, 2007

DATE OF APPROVAL: January 4, 2008

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Second reprint enacted)

S2650

[SPONSOR'S STATEMENT](#): (Begins on page 47 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

[SENATE:](#) [Yes](#)

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: No

A4287

[SPONSOR'S STATEMENT](#): (Begins on page 47 of original bill) [Yes](#)

COMMITTEE STATEMENT: [ASSEMBLY:](#) [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH 5/29/08

P.L. 2007, CHAPTER 246, *approved January 4, 2008*
Senate, No. 2650 (*Second Reprint*)

1 AN ACT concerning the enforcement of the State's environmental
2 laws, and amending parts of the statutory law.

3
4 BE IT ENACTED by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. R.S.12:5-6 is amended to read as follows:

8 12:5-6. a. Any development or improvement enumerated in
9 R.S.12:5-3 and in P.L.1975, c.232 (C.13:1D-29 et seq.) or included
10 within any rule or regulation adopted pursuant thereto, which is
11 commenced or executed without first obtaining approval, or
12 contrary to the conditions of approval, as provided in R.S.12:5-3
13 and in P.L.1975, c.232 (C.13:1D-29 et seq.), or ¹**[of]** any rule or
14 regulation adopted, or permit or order issued pursuant thereto, shall
15 be deemed to be a ¹**[purpresture, a public nuisance and a]**
16 violation under this section **[and shall be abated in the name of the**
17 **State by one or more of the following actions:**

18 (1) The issuance of an administrative order by the
19 Commissioner of the Department of Environmental Protection
20 specifying that there has been a violation of the provisions of this
21 section, or any applicable rule, regulation or permit; setting forth
22 the facts forming the basis for the issuance of the order; and
23 specifying the course of action necessary to correct the violation;

24 (2) The commencement of a civil action by the commissioner in
25 Superior Court for injunctive or other appropriate relief;

26 (3) The levying of an administrative penalty by the
27 commissioner in accordance with subsection b. of this section.

28 b. The commissioner is authorized to assess an administrative
29 penalty of not more than \$1,000.00 for each violation of this
30 section, and is authorized to assess additional penalties of not more
31 than \$100.00 for each day during which this violation continues
32 after receipt of an administrative order from the department
33 pursuant to paragraph (1) of subsection a. of this section. Prior to
34 the assessment of a penalty under this subsection, the property
35 owner or person committing the violation shall be notified by
36 certified mail or personal service that a penalty is being assessed.
37 The notice shall include a reference to the section of the law,
38 regulation, or permit condition violated; a concise statement of the
39 facts alleged to constitute the violation; a statement of the amount
40 of the administrative penalty assessed and a statement of the party's
41 right to an administrative hearing.

42 c. The party shall have 21 days from receipt of the notice
43 within which to deliver to the commissioner a written request for a

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:

¹**Senate SEN committee amendments adopted June 14, 2007.**

²**Assembly AEN committee amendments adopted December 6, 2007.**

1 hearing. This request shall specify in detail the statements
2 contested by the party. If no hearing is requested, then after the
3 expiration of the 21-day period the commissioner shall issue a final
4 order assessing the penalty specified in the notice. The penalty is
5 due when the final order is issued.

6 d. If a hearing is requested, it shall be held within 30 days of
7 the date on which the request is received by the commissioner. If a
8 violation is found to have occurred, the commissioner may issue a
9 final order assessing not more than the amount of the penalty
10 specified in the notice. The penalty is due when the final order is
11 issued.

12 e. Any penalty imposed pursuant to this section may be
13 enforced as provided for in "the penalty enforcement law" (N.J.S.
14 2A:58-1 et seq.).

15 b. Whenever, on the basis of available information, the
16 commissioner finds that a person is in violation of any provision of
17 '[R.S.2:5-3]' R.S.12:5-3' or P.L.1975, c.232 (C.13:1D-29 et seq.),
18 or '[of]' any rule or regulation adopted, or permit or order issued
19 pursuant thereto, the commissioner may:

20 (1) Issue an order requiring any such person to comply in
21 accordance with subsection c. of this section; or

22 (2) Bring a civil action in accordance with subsection d. of this
23 section; or

24 (3) Levy a civil administrative penalty in accordance with
25 subsection e. of this section; or

26 (4) Bring an action for a civil penalty in accordance with
27 subsection f. of this section; or

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

30 Recourse to any of the remedies available under this section shall
31 not preclude recourse to any of the other remedies.

32 c. Whenever, on the basis of available information, the
33 commissioner finds a person in violation of any provision of
34 R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or '[of]' any
35 rule or regulation adopted, or permit or order issued pursuant
36 thereto, the commissioner may issue an order: (1) specifying the
37 provision or provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-
38 29 et seq.), or the rule, regulation, permit or order of which the
39 person is in violation; (2) citing the action which constituted the
40 violation; (3) requiring compliance with the provision or provisions
41 violated; (4) requiring the restoration ²[of the area which is the site
42 of] to address any adverse effects resulting from² the violation; and
43 (5) providing notice to the person of the right to a hearing on the
44 matters contained in the order.

45 d. The commissioner is authorized to institute a civil action in
46 Superior Court for appropriate relief from any violation of any
47 provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or

1 any rule or regulation adopted, or permit or order issued pursuant
2 thereto. Such relief may include, singly or in combination:

3 (1) A temporary or permanent injunction;

4 (2) ²[Assessment of the violator for the] Recovery of²
5 'reasonable' costs of any investigation, inspection, or monitoring
6 survey which led to the discovery of the violation, and for the
7 reasonable costs of preparing and bringing ²[legal] a civil² action
8 ²commenced² under this subsection;

9 (3) ²[Assessment of the violator for ¹[any] the] Recovery of²
10 reasonable¹ costs incurred by the State in removing, correcting, or
11 terminating the adverse effects resulting from any ²[unauthorized
12 regulated activity] violation² for which ²[legal] a civil² action ²has
13 been commenced and brought² under this subsection ²[may have
14 been brought]²;

15 (4) ²[Assessment against the violator for] Recovery of²
16 compensatory damages for any loss or destruction of ²[public]
17 natural² resources, including but not limited to, wildlife, fish,
18 aquatic life, habitat, plants, or historic or archeological resources,
19 and for any other actual damages caused by ²[an unauthorized
20 regulated activity] any violation for which a civil action has been
21 commenced and brought under this subsection². ²[Assessments]
22 Recovery of damages and costs² under this subsection shall be paid
23 to the ¹["Cooperative Coastal Monitoring, Restoration and
24 Enforcement Fund" established pursuant to section 18 of P.L.1973,
25 c.185 (C.13:19-18), except that compensatory damages to privately
26 held resources shall be paid by specific order of the court to any
27 persons who have been aggrieved by the unauthorized regulated
28 activity] State Treasurer¹;

29 (5) ²[A requirement that] An order requiring² the violator
30 restore the site of the violation to the maximum extent practicable
31 and feasible or, in the event that restoration of the site of the
32 violation is not practicable or feasible, provide for off-site
33 restoration alternatives as approved by the department.

34 e. The commissioner is authorized to assess a civil
35 administrative penalty of not more than ¹[\$50,000] ²[\$35,000¹]
36 \$25,000² for each violation of the provisions of R.S.12:5-3 or
37 P.L.1975, c.232 (C.13:1D-29 et seq.), or ¹[of]¹ any rule or
38 regulation adopted, or permit or order issued pursuant thereto, and
39 each day during which each violation continues shall constitute an
40 additional, separate, and distinct offense. Any amount assessed
41 under this subsection shall fall within a range established by
42 regulation by the commissioner for violations of similar type,
43 seriousness, ²[¹actual harm to the environment,¹ and]² duration
44 ²and conduct² ; provided, however, that prior to the adoption of the
45 regulation, the commissioner may, on a case-by-case basis, assess

1 civil administrative penalties up to a maximum of \$25,000 per day
2 for each violation, utilizing the criteria set forth herein. In
3 ²[adopting rules and regulations establishing the amount of any
4 penalty to be assessed] addition to any administrative penalty
5 assessed under this subsection and notwithstanding the \$25,000
6 maximum penalty set forth above², the commissioner may ²[take
7 into account the] assess any² economic benefits from the violation
8 gained by the violator. Prior to assessment of ²a² penalty under this
9 subsection, the property owner or person committing the violation
10 shall be notified by certified mail or personal service that the
11 penalty is being assessed. The notice shall identify the section of
12 the statute, regulation, or order or permit condition violated; recite
13 the facts alleged to constitute a violation; state the ²basis for the²
14 amount of the civil penalties to be ²[imposed] assessed;² and
15 affirm the rights of the alleged violator to a hearing. The ordered
16 party shall have ¹[20] 35¹ days from receipt of the notice within
17 which to deliver to the commissioner a written request for a hearing
18 ¹[setting forth its factual and legal defenses, arguments and
19 issues]¹. ²[¹If a hearing is requested, it shall be held within 30
20 days of the date on which the request is received by the
21 commissioner.¹]² After the hearing and upon finding that a
22 violation has occurred, the commissioner may issue a final order
23 after assessing the amount of the fine specified in the notice. If no
24 hearing is requested, the notice shall become a final order after the
25 expiration of the ¹[20-day] 35-day¹ period. Payment of the
26 assessment is due when a final order is issued or the notice becomes
27 a final order. The authority to levy an administrative order is in
28 addition to all other enforcement provisions in R.S.12:5-3 or
29 P.L.1975, c.232 (C.13:1D-29 et seq.), and the payment of any
30 assessment shall not be deemed to affect the availability of any
31 other enforcement provisions in connection with the violation for
32 which the assessment is levied. The department may compromise
33 any civil administrative penalty assessed under this section in an
34 amount and with conditions the department determines appropriate.
35 A civil administrative penalty assessed, including any portion
36 thereof required to be paid pursuant to a payment schedule
37 approved by the department, which is not paid within 90 days of the
38 date that payment of the penalty is due, shall be subject to an
39 interest charge on the amount of the penalty, or portion thereof,
40 which shall accrue as of the date payment is due. If the penalty is
41 contested, no additional interest charge shall accrue on the amount
42 of the penalty until ²90 days² after the date on which a final order is
43 issued. Interest charges assessed and collectible pursuant to this
44 subsection shall be based on the rate of interest on judgments
45 provided in the New Jersey Rules of Court. ²[For the purposes of
46 this subsection, the date that a penalty is due is the date that written
47 notice of the penalty is received by the person responsible for

1 payment thereof, or such later date as may be specified in the
2 notice.]²

3 f. A person who violates any provision of R.S.12:5-3 or
4 P.L.1975, c.232 (C.13:1D-29 et seq.), or '[of]'¹ any rule or
5 regulation adopted, or permit or order issued pursuant thereto, or an
6 administrative order issued pursuant to subsection c. of this section,
7 or a court order issued pursuant to subsection d. of this section, or
8 who fails to pay a civil administrative ²[assessment] penalty² in
9 full pursuant to subsection e. of this section, or who fails to make a
10 payment pursuant to a penalty payment schedule entered into with
11 the department, or who 'knowingly' makes any false or misleading
12 statement on any application, record, report, or other document
13 required to be submitted to the department, shall be subject, upon
14 order of a court, to a civil penalty not to exceed '[\$50,000]
15 ²[\$35,000¹] \$25,000² per day of the violation, and each day during
16 which the violation continues shall constitute an additional,
17 separate, and distinct offense. Any civil penalty imposed pursuant
18 to this subsection may be collected with costs in a summary
19 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
20 P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties,
21 costs or interest charges, the court may assess against the violator
22 the amount of ²[actual]² economic benefit accruing to the violator
23 from the violation.

24 g. A person who purposely, knowingly or recklessly violates any
25 provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or
26 '[of]'¹ any rule or regulation adopted, or permit or order issued
27 pursuant thereto, shall be guilty, upon conviction, of a crime of the
28 third degree and shall, notwithstanding the provisions of subsection
29 b. of N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor
30 more than \$50,000 per day of violation, or by imprisonment, or
31 both. ¹[A person who negligently violates any provision of
32 R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule
33 or regulation adopted, or permit or order issued pursuant thereto,
34 shall be guilty, upon conviction, of a crime of the fourth degree and
35 shall, notwithstanding the provisions of subsection b. of
36 N.J.S.2C:43-3, be subject to a fine of not less than \$2,500 nor more
37 than \$25,000 per day of violation, or by imprisonment, or both.]¹

38 A person who ²purposely,² knowingly ²or recklessly² makes a false
39 statement, representation, or certification in any application, record,
40 or other document filed or required to be maintained under any
41 provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or
42 '[of]'¹ any rule or regulation adopted, or permit or order issued
43 pursuant thereto, or who falsifies, tampers with or ²purposely,²
44 knowingly ²or recklessly² renders inaccurate, any monitoring
45 device or method required to be maintained pursuant to R.S.12:5-3
46 or P.L.1975, c.232 (C.13:1D-29 et seq.), or '[of]'¹ any rule or

1 regulation adopted, or permit or order issued pursuant thereto, shall
2 be guilty, upon conviction, of a crime of the third degree and shall,
3 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
4 subject to a fine of not more than \$50,000 per day of violation, or
5 by imprisonment, or both.

6 h. ¹[In addition to the penalties prescribed in this section, a
7 notice of violation of any provision of R.S.12:5-3 or P.L.1975,
8 c.232 (C.13:1D-29 et seq.), or of any rule or regulation adopted, or
9 permit or order issued pursuant thereto, shall be recorded on the
10 deed of the property wherein the violation occurred, on order of the
11 commissioner, by the clerk or register of deeds and mortgages of
12 the county wherein the affected property is located and with the
13 clerk of the Superior Court and shall remain attached thereto until
14 such time as the violation has been remedied and the commissioner
15 orders the notice of violation removed. Any fees or other charges
16 that are assessed by either the clerk or register of deeds and
17 mortgages of the county wherein the affected property is located or
18 by the department for the recording of the notice of violation on the
19 deed required pursuant to this subsection shall be paid by the owner
20 of the affected property or person committing the violation and the
21 commissioner shall not order the notice of violation removed until
22 such time as these fees are paid in full.

23 i.]¹ ²[If the violation is one in which the department has
24 determined that the restoration of the site to its pre-violation
25 condition would increase the harm to the environment or public
26 safety, the department may issue an "after the fact" permit for the
27 regulated activity that has already occurred; provided that
28 assessment against the violator for costs or damages enumerated in
29 subsection ¹[c.] d.¹ of this section has been made, an opportunity
30 has been afforded for public hearing and comment, and the reasons
31 for the issuance of the "after the fact" permit are published in the
32 New Jersey Register and in a newspaper of general circulation in
33 the geographical area of the violation. Any person violating an
34 "after the fact" permit issued pursuant to this subsection shall be
35 subject to the provisions of this section.

36 ¹[j.] i.¹]² Each applicant or permittee shall provide, upon the
37 request of the department, any information the department requires
38 to determine compliance with the provisions of R.S.12:5-3 or
39 P.L.1975, c.232 (C.13:1D-29 et seq.), or ¹[of]¹ any rule or
40 regulation adopted, or permit or order issued pursuant thereto.

41 (cf: P.L.1985, c.125, s.1)

42
43 2. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read
44 as follows:

45 12. The department shall formulate comprehensive policies for
46 the conservation of the natural resources of the State, the promotion
47 of environmental protection and the prevention of pollution of the

- 1 environment of the State. The department shall in addition to the
2 powers and duties vested in it by this act or by any other law have
3 the power to:
- 4 a. Conduct and supervise research programs for the purpose of
5 determining the causes, effects and hazards to the environment and
6 its ecology;
- 7 b. Conduct and supervise Statewide programs of education,
8 including the preparation and distribution of information relating to
9 conservation, environmental protection and ecology;
- 10 c. Require the registration of persons engaged in operations
11 which may result in pollution of the environment and the filing of
12 reports by them containing such information as the department may
13 prescribe to be filed relative to pollution of the environment, all in
14 accordance with applicable codes, rules or regulations established
15 by the department;
- 16 d. Enter and inspect any property, facility, building, premises,
17 site or place for the purpose of investigating an actual or suspected
18 source of pollution of the environment and conducting inspections,
19 collecting samples, copying or photocopying documents or records,
20 and for otherwise ascertaining compliance or noncompliance with
21 any laws, ²permits, orders,² codes, rules and regulations of the
22 department. Any information relating to secret processes
23 concerning methods of manufacture or production, obtained in the
24 course of such inspection, investigation or determination, shall be
25 kept confidential, except this information shall be available to the
26 department for use, when relevant, in any administrative or judicial
27 proceedings undertaken to administer, implement, and enforce State
28 environmental law, but shall remain subject only to those
29 confidentiality protections otherwise afforded by federal law and by
30 the specific State environmental laws and regulations that the
31 department is administering, implementing and enforcing in that
32 particular case or instance. In addition, this information shall be
33 available upon request to the United States Government for use in
34 administering, implementing, and enforcing federal environmental
35 law, but shall remain subject to the confidentiality protection
36 afforded by federal law. If samples are taken for analysis, a
37 duplicate of the analytical report shall be furnished promptly to the
38 person suspected of causing pollution of the environment;
- 39 e. Receive or initiate complaints of pollution of the
40 environment, including thermal pollution, hold hearings in
41 connection therewith and institute legal proceedings for the
42 prevention of pollution of the environment and abatement of
43 nuisances in connection therewith and shall have the authority to
44 seek and obtain injunctive relief and the recovery of fines and
45 penalties in ²**[summary proceedings in the Superior Court]** a court
46 of competent jurisdiction²;
- 47 f. Prepare, administer and supervise Statewide, regional and
48 local programs of conservation and environmental protection,

1 giving due regard for the ecology of the varied areas of the State
2 and the relationship thereof to the environment, and in connection
3 therewith prepare and make available to appropriate agencies in the
4 State technical information concerning conservation and
5 environmental protection, cooperate with the Commissioner of
6 Health and Senior Services in the preparation and distribution of
7 environmental protection and health bulletins for the purpose of
8 educating the public, and cooperate with the Commissioner of
9 Health and Senior Services in the preparation of a program of
10 environmental protection;

11 g. Encourage, direct and aid in coordinating State, regional and
12 local plans and programs concerning conservation and
13 environmental protection in accordance with a unified Statewide
14 plan which shall be formulated, approved and supervised by the
15 department. In reviewing such plans and programs and in
16 determining conditions under which such plans may be approved,
17 the department shall give due consideration to the development of a
18 comprehensive ecological and environmental plan in order to be
19 assured insofar as is practicable that all proposed plans and
20 programs shall conform to reasonably contemplated conservation
21 and environmental protection plans for the State and the varied
22 areas thereof;

23 h. Administer or supervise programs of conservation and
24 environmental protection, prescribe the minimum qualifications of
25 all persons engaged in official environmental protection work, and
26 encourage and aid in coordinating local environmental protection
27 services;

28 i. Establish and maintain adequate bacteriological, radiological
29 and chemical laboratories with such expert assistance and such
30 facilities as are necessary for routine examinations and analyses,
31 and for original investigations and research in matters affecting the
32 environment and ecology;

33 j. Administer or supervise a program of industrial planning for
34 environmental protection; encourage industrial plants in the State to
35 undertake environmental and ecological engineering programs; and
36 cooperate with the State Departments of Health and Senior
37 Services, Labor, and Commerce and Economic Development in
38 formulating rules and regulations concerning industrial sanitary
39 conditions;

40 k. Supervise sanitary engineering facilities and projects within
41 the State, authority for which is now or may hereafter be vested by
42 law in the department, and shall, in the exercise of such supervision,
43 make and enforce rules and regulations concerning plans and
44 specifications, or either, for the construction, improvement,
45 alteration or operation of all public water supplies, all public
46 bathing places, landfill operations and of sewerage systems and
47 disposal plants for treatment of sewage, wastes and other
48 deleterious matter, liquid, solid or gaseous, require all such plans or

- 1 specifications, or either, to be first approved by it before any work
2 thereunder shall be commenced, inspect all such projects during the
3 progress thereof and enforce compliance with such approved plans
4 and specifications;
- 5 l. Undertake programs of research and development for the
6 purpose of determining the most efficient, sanitary and economical
7 ways of collecting, disposing, recycling or utilizing of solid waste;
- 8 m. Construct and operate, on an experimental basis, incinerators
9 or other facilities for the disposal of solid waste, provide the various
10 municipalities and counties of this State, **the Board of Public**
11 **Utilities,** and the Division of Local Government Services in the
12 Department of Community Affairs with statistical data on costs and
13 methods of solid waste collection, disposal and utilization;
- 14 n. Enforce the State air pollution, water pollution,
15 conservation, environmental protection, solid and hazardous waste
16 **and refuse disposal** management laws, rules and regulations,
17 including the making and signing of a complaint and summons for
18 their violation by serving the summons upon the violator and
19 thereafter filing the complaint promptly with a court having
20 jurisdiction;
- 21 o. Acquire by purchase, grant, contract or condemnation, title
22 to real property, for the purpose of demonstrating new methods and
23 techniques for the collection or disposal of solid waste;
- 24 p. Purchase, operate and maintain, pursuant to the provisions of
25 this act, any facility, site, laboratory, equipment or machinery
26 necessary to the performance of its duties pursuant to this act;
- 27 q. Contract with any other public agency or corporation
28 incorporated under the laws of this or any other state for the
29 performance of any function under this act;
- 30 r. With the approval of the Governor, cooperate with, apply
31 for, receive and expend funds from, the federal government, the
32 State Government, or any county or municipal government or from
33 any public or private sources for any of the objects of this act;
- 34 s. Make annual and such other reports as it may deem proper to
35 the Governor and the Legislature, evaluating the demonstrations
36 conducted during each calendar year;
- 37 t. Keep complete and accurate minutes of all hearings held
38 before the commissioner or any member of the department pursuant
39 to the provisions of this act. All such minutes shall be retained in a
40 permanent record, and shall be available for public inspection at all
41 times during the office hours of the department;
- 42 u. Require any person subject to a lawful order of the
43 department, which provides for a period of time during which such
44 person subject to the order is permitted to correct a violation, to
45 post a performance bond or other security with the department in
46 such form and amount as shall be determined by the department.
47 Such bond need not be for the full amount of the estimated cost to
48 correct the violation but may be in such amount as will tend to

1 insure good faith compliance with said order. The department shall
2 not require such a bond or security from any public body, agency or
3 authority. In the event of a failure to meet the schedule prescribed
4 by the department, the sum named in the bond or other security
5 shall be forfeited unless the department shall find that the failure is
6 excusable in whole or in part for good cause shown, in which case
7 the department shall determine what amount of said bond or
8 security, if any, is a reasonable forfeiture under the circumstances.
9 Any amount so forfeited shall be utilized by the department for the
10 correction of the violation or violations, or for any other action
11 required to insure compliance with the order; and

12 v. Encourage and aid in coordinating State, regional and local
13 plans, efforts and programs concerning the remediation and reuse of
14 former industrial or commercial properties that are currently
15 underutilized or abandoned and at which there has been, or is
16 perceived to have been, a discharge, or threat of a discharge, of a
17 contaminant. For the purposes of this subsection, "underutilized
18 property" shall not include properties undergoing a reasonably
19 timely remediation or redevelopment process.

20 (cf: P.L.1997, c.278, s.26)

21

22 3. Section 10 of P.L.1971, c.176 (C.13:1F-10) is amended to
23 read as follows:

24 10. **【If any person violates any of the provisions of this act or**
25 **any rule, regulation or order promulgated pursuant to the provisions**
26 **of this act, the department may institute a civil action in a court of**
27 **competent jurisdiction for injunctive relief to prohibit and prevent**
28 **such violation or violations and the said court may proceed in the**
29 **action in a summary manner.**

30 Any person who violates the provisions of this act or any rule,
31 regulation or order promulgated pursuant to this act shall be liable
32 to a penalty of not more than \$3,000.00 for each offense, to be
33 collected in a civil action by a summary proceeding under "the
34 penalty enforcement law" (N.J.S.2A:58-1 et seq.) or in any case
35 before a court of competent jurisdiction wherein injunctive relief
36 has been requested. The Superior Court shall have jurisdiction to
37 enforce said penalty enforcement law. If the violation is of a
38 continuing nature, each day during which it continues shall
39 constitute an additional, separate and distinct offense.

40 The department is hereby authorized and empowered to
41 compromise and settle any claim for a penalty under this section in
42 such amount in the discretion of the department as may appear
43 appropriate and equitable under all of the circumstances.】

44 a. Whenever, on the basis of available information, the
45 commissioner finds that a person is in violation ¹【of】²of² the
46 provisions of P.L.1971, c.176 (C.13:1F-1 et seq.), or ²【of】² any
47 rule or regulation adopted, or permit or order issued pursuant
48 thereto, the commissioner may:

1 (1) Issue an administrative enforcement order in accordance with
2 subsection b. of this section requiring the person to comply;

3 (2) Bring a civil action in accordance with subsection c. of this
4 section;

5 (3) Levy a civil administrative penalty in accordance with
6 subsection d. of this section;

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

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

11 The exercise of any of the remedies provided in this section shall
12 not preclude recourse to any other remedy so provided.

13 b. Whenever, on the basis of available information, the
14 commissioner finds that a person is in violation of any provision of
15 P.L1971, c.176, or ¹['of'] any rule or regulation adopted, or permit
16 or order issued pursuant thereto, the commissioner may issue an
17 administrative enforcement order: (1) specifying the provision or
18 provisions of P.L1971, c.176, or of the rule, regulation, permit or
19 order of which the person is in violation; (2) citing the action that
20 constituted the violation; (3) requiring compliance with the
21 provision or provisions violated; and (4) giving notice to the person
22 of ²[an] a² right to a hearing on the matters contained in the order.

23 c. The commissioner is authorized to commence a civil action in
24 Superior Court for appropriate relief from a violation of the
25 provisions of P.L1971, c.176, or ¹['of'] any rule or regulation
26 adopted, or permit or order issued pursuant thereto. This relief may
27 include, singly or in combination:

28 (1) A temporary or permanent injunction;

29 (2) ²[Assessment of the violator for the] Recovery of²
30 ¹reasonable¹ costs of any investigation, inspection, sampling or
31 monitoring survey that led to the discovery of the violation, and for
32 the reasonable costs of preparing and bringing ²[legal] a civil²
33 action ²commenced² under this subsection;

34 (3) ²[Assessment of the violator for ¹[any] the] Recovery of²
35 reasonable¹ costs incurred by the State in removing, correcting, or
36 terminating the adverse effects resulting from any violation of
37 P.L1971, c.176, or ¹['of'] any rule or regulation adopted, or permit
38 or order issued pursuant thereto, for which legal action under this
39 subsection may have been brought;

40 (4) ²[A requirement that] An order requiring² the violator
41 restore the site of the violation to the maximum extent practicable
42 and feasible or, in the event that restoration of the site of the
43 violation is not practicable or feasible, provide for off-site
44 restoration alternatives as approved by the department.

45 (5) ²[Assessment against the violator for] Recovery of²
46 compensatory damages for any loss or destruction of ²[public]
47 natural² resources, including but not limited to, wildlife, fish,

1 aquatic life, habitat, plants, or historic or archeological resources,
2 and for any other actual damages caused by ²[an unauthorized
3 regulated activity] any violation for which a civil action has been
4 commenced and brought under this subsection². ²[Assessments]
5 Recovery of damages and costs² under this subsection shall be paid
6 to the ¹["Environmental Services Fund," established pursuant to
7 section 5 of P.L.1975, c.232 (C.13:1D-33), except that
8 compensatory damages to privately held resources shall be paid by
9 specific order of the court to any persons who have been aggrieved
10 by the unauthorized regulated activity] State Treasurer¹.

11 d. The commissioner is authorized to assess a civil
12 administrative penalty of not more than ¹["\$50,000] ²["\$35,000¹
13 \$25,000² for each violation of the provisions of P.L1971, c.176, or
14 ¹["of] any rule or regulation adopted, or permit or order issued
15 pursuant thereto, and each day during which each violation
16 continues shall constitute an additional, separate, and distinct
17 offense. Any amount assessed under this subsection shall fall within
18 a range established by regulation by the commissioner for violations
19 of similar type, seriousness, ²["actual harm to the environment,¹
20 and]² duration ²and conduct²; provided, however, that prior to the
21 adoption of the regulation, the commissioner may, on a case-by-
22 case basis, assess civil administrative penalties up to a maximum of
23 \$25,000 per day for each violation, utilizing the criteria set forth
24 herein. In ²[adopting rules and regulations establishing the amount
25 of any penalty to be assessed,] addition to any administrative
26 penalty assessed under this subsection and notwithstanding the
27 \$25,000 maximum penalty set forth above, ² the commissioner may
28 ²[take into account the] assess any² economic benefits from the
29 violation gained by the violator. Prior to assessment of ²a² penalty
30 under this subsection, the property owner or person committing the
31 violation shall be notified by certified mail or personal service that
32 the penalty is being assessed. The notice shall include: a reference
33 to the section of the statute, regulation, or order or permit condition
34 violated; recite the facts alleged to constitute a violation; state the
35 ²basis for the² amount of the civil penalties to be ²[imposed]
36 assessed²; and affirm the rights of the alleged violator to a hearing.
37 The ordered party shall have ¹["20] ¹35 calendar days from receipt
38 of the notice within which to deliver to the commissioner a written
39 request for a hearing ¹[setting forth its factual and legal defenses,
40 arguments and issues]¹. After the hearing and upon finding that a
41 violation has occurred, the commissioner may issue a final order
42 after assessing the amount of the fine specified in the notice. If no
43 hearing is requested, the notice shall become a final order after the
44 expiration of the ¹["20-day] ¹35-day period. Payment of the
45 assessment is due when a final order is issued or the notice becomes
46 a final order. The authority to levy an administrative order is in

1 addition to all other enforcement provisions in P.L.1971, c.176, or of
2 any rule or regulation adopted, or permit or order issued pursuant
3 thereto, and the payment of any assessment shall not be deemed to
4 affect the availability of any other enforcement provisions in
5 connection with the violation for which the assessment is levied.
6 The department may compromise any civil administrative penalty
7 assessed under this section in an amount and with conditions the
8 department determines appropriate. A civil administrative penalty
9 assessed, including a portion thereof required to be paid pursuant to
10 a payment schedule approved by the department, which is not paid
11 within 90 days of the date that payment of the penalty is due, shall
12 be subject to an interest charge on the amount of the penalty, or
13 portion thereof, which shall accrue as of the date payment is due. If
14 the penalty is contested, no additional interest charge shall accrue
15 on the amount of the penalty until ²90 days² after the date on which
16 a final order is issued. Interest charges assessed and collectible
17 pursuant to this subsection shall be based on the rate of interest on
18 judgments provided in the New Jersey Rules of Court. ²[For the
19 purposes of this subsection, the date that a penalty is due is the date
20 that written notice of the penalty is received by the person
21 responsible for payment thereof, or such later date as may be
22 specified in the notice.]²

23 e. Any person who violates the provisions of P.L.1971, c.176, or
24 '[of]' any rule or regulation adopted, or permit or order issued
25 pursuant thereto, or violates an administrative enforcement order
26 issued pursuant to subsection b. of this section, or a court order
27 issued pursuant to subsection c. of this section, or who fails to pay
28 in full a civil administrative penalty levied pursuant to subsection d.
29 of this section. or who fails to make a payment pursuant to a penalty
30 payment schedule entered into with the department, or who
31 'knowingly' makes any false or misleading statement on any
32 application, record, report, or other document required to be
33 submitted to the department, shall be subject, upon order of a court,
34 to a civil penalty not to exceed ¹[\$50,000] ²[\$35,000¹] \$25,000²
35 for each day during which the violation continues. Any civil
36 penalty imposed pursuant to this subsection may be collected, and
37 any costs incurred in connection therewith may be recovered, in a
38 summary proceeding pursuant to the "Penalty Enforcement Law of
39 1999," P.L.1999, c.274 (C.2A: 58-10 et seq.). In addition to any
40 penalties, costs or interest charges, the court may assess against the
41 violation the amount of ²[actual]² economic benefit accruing to the
42 violation from the violation. The Superior Court shall have
43 jurisdiction to enforce the "Penalty Enforcement Law of ²[1999].]
44 1999."²

45 f. A person who purposely, knowingly or recklessly violates any
46 provision of P.L.1971, c.176, or '[of]' any rule or regulation
47 adopted, or permit or order issued pursuant thereto, shall be guilty,

1 upon conviction, of a crime of the third degree and shall,
2 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
3 subject to a fine of not less than \$5,000 nor more than \$50,000 per
4 day of violation, or by imprisonment, or both. ¹ [A person who
5 negligently violates any provision of P.L1971, c.176, or of any rule
6 or regulation adopted, or permit or order issued pursuant thereto,
7 shall be guilty, upon conviction, of a crime of the fourth degree and
8 shall, notwithstanding the provisions of subsection b. of
9 N.J.S.2C:43-3, be subject to a fine of not less than \$2,500 nor more
10 than \$25,000 per day of violation, or by imprisonment, or both.]¹

11 A person who ²purposely,² knowingly ²or recklessly² makes a false
12 statement, representation, or certification in any application, record,
13 or other document filed or required to be maintained under any
14 provision of P.L1971, c.176, or ¹[of]¹ any rule or regulation
15 adopted, or permit or order issued pursuant thereto, or who falsifies,
16 tampers with or ²purposely,² knowingly ²or recklessly² renders
17 inaccurate, any monitoring device or method required to be
18 maintained pursuant to P.L1971, c.176, or ¹[of]¹ any rule or
19 regulation adopted, or permit or order issued pursuant thereto, shall
20 be guilty, upon conviction, of a crime of the third degree and shall,
21 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
22 subject to a fine of not more than \$50,000 per day of violation, or
23 by imprisonment, or both.

24 g. Each applicant, permittee or licensee shall provide, upon the
25 request of the department, any information the department requires
26 to determine compliance with the provisions of P.L1971, c.176.

27 (cf: P.L.1991, c.91, s.222)

28

29 4. Section 9 of P.L.1970, c.272 (C.13:9A-9) is amended to read
30 as follows:

31 9. **9. [Any person who violates any order by the commissioner, or**
32 **violates any of the provisions of this act, shall be liable to the State**
33 **for the cost of restoration of the affected wetland to its condition**
34 **prior to such violation insofar as that is possible, and shall be**
35 **punished by a fine of not more than \$1,000.00, to be collected in**
36 **accordance with the provisions of the Penalty Enforcement Law**
37 **(N.J.S.2A:58-1 et seq.).]**

38 a. Whenever, on the basis of available information, the
39 commissioner finds that a person is in violation of any provision of
40 P.L.1970, c.272, or ¹[of]¹ any rule or regulation adopted, or permit
41 or order issued pursuant thereto, the commissioner may:

42 (1) Issue an administrative enforcement order requiring any such
43 person to comply in accordance with subsection b. of this section;
44 or

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

- 1 (3) Levy a civil administrative penalty in accordance with
2 subsection d. of this section; or
- 3 (4) Bring an action for a civil penalty in accordance with
4 subsection e. of this section; or
- 5 (5) Petition the Attorney General to bring a criminal action in
6 accordance with subsection f. of this section.
- 7 Recourse to any of the remedies available under this section shall
8 not preclude recourse to any of the other remedies.
- 9 b. Whenever, on the basis of available information, the
10 commissioner finds a person in violation of any provision of
11 P.L.1970, c.272, or ¹[of] any rule or regulation adopted, or permit
12 or order issued pursuant thereto, the commissioner may issue an
13 administrative enforcement order: (1) specifying the provision or
14 provisions of P.L.1970, c.272, or ¹[of] the rule, regulation, permit
15 or order of which the person is in violation; (2) citing the action
16 which constituted the violation; (3) requiring compliance with the
17 provision or provisions violated; (4) requiring the restoration ²[of
18 the] to address any adverse effects upon a coastal² wetland ²[which
19 is the site of] resulting from² the violation; and (5) providing notice
20 to the person of the right to a hearing on the matters contained in
21 the administrative enforcement order.
- 22 c. The commissioner is authorized to institute a civil action in
23 Superior Court for appropriate relief from any violation of any
24 provision of P.L.1970, c.272, or ¹[of] any rule or regulation
25 adopted, or permit or order issued pursuant thereto. Such relief
26 may include, singly or in combination:
- 27 (1) A temporary or permanent injunction;
- 28 (2) ²[Assessment of the violator for the] Recovery of²
29 ¹reasonable¹ costs of any investigation, inspection, or monitoring
30 survey which led to the discovery of the violation, and for the
31 reasonable costs of preparing and bringing ²[legal] a civil² action
32 ²commenced² under this subsection;
- 33 (3) ²[Assessment of the violator for ¹[any] the] Recovery of²
34 reasonable¹ costs incurred by the State in removing, correcting, or
35 terminating the adverse effects upon ²[the] a coastal² wetland
36 resulting from any violation ²[of the provisions of P.L.1970, c.272,
37 or ¹[of] any rule or regulation adopted, or permit or order issued
38 pursuant thereto,]² for which ²[legal action under this subsection
39 may have been brought] a civil action has been commenced and
40 brought under this subsection²;
- 41 (4) ²[Assessment against the violator for] Recovery of²
42 compensatory damages for any loss or destruction of ²[public]
43 natural² resources, including but not limited to, wildlife, fish,
44 aquatic life, habitat, plants, or historic or archeological resources,
45 and for any other actual damages caused by ²[a violation of any
46 provision of P.L.1970, c.272, or ¹[of] any rule or regulation

1 adopted, or permit or order issued pursuant thereto. Assessments]
2 any violation for which a civil action has been commenced and
3 brought under this subsection. Recovery of damages and costs
4 ordered² under this subsection shall be paid to the ¹[Wetlands
5 Mitigation Bank established pursuant to section 14 of P.L.1987,
6 c.156 (C.13:9B-14), except that compensatory damages to privately
7 held resources shall be paid by specific order of the court to any
8 persons who have been aggrieved by a violation of any provision of
9 P.L.1970, c.272, or of any rule or regulation adopted, or permit or
10 order issued pursuant thereto.] State Treasurer¹;

11 (5) ²[A requirement that] An order requiring² the violator
12 restore the site of the violation to the maximum extent practicable
13 and feasible or, in the event that restoration of the site of the
14 violation is not practicable or feasible, provide for off-site
15 restoration alternatives as approved by the department.

16 d. The commissioner is authorized to assess a civil
17 administrative penalty of not more than ¹[\$50,000] ²[\$35,000¹
18 \$25,000² for each violation of the provisions of P.L.1970, c.272, or
19 ¹[of] any rule or regulation adopted, or permit or order issued
20 pursuant thereto, and each day during which each violation
21 continues shall constitute an additional, separate and distinct
22 offense. Any amount assessed under this subsection shall fall within
23 a range established by regulation by the commissioner for violations
24 of similar type, seriousness, ²[actual harm to the environment,¹
25 and]² duration ²and conduct²; provided, however, that prior to the
26 adoption of the regulation, the commissioner may, on a case-by-
27 case basis, assess civil administrative penalties up to a maximum of
28 \$25,000 per day for each violation, utilizing the criteria set forth
29 herein. In ²[adopting rules and regulations establishing the amount
30 of any penalty to be assessed,] addition to any administrative
31 penalty assessed under this subsection and notwithstanding the
32 \$25,000 maximum penalty set forth above, ² the commissioner may
33 ²[take into account the] assess any² economic benefits from the
34 violation gained by the violator. Prior to assessment of ²a² penalty
35 under this subsection, the property owner or person committing the
36 violation shall be notified by certified mail or personal service that
37 the penalty is being assessed. The notice shall include a reference to
38 the section of the statute, regulation, order or permit condition
39 violated; recite the facts alleged to constitute a violation; state the
40 ²basis for the² amount of the civil penalties to be ²[imposed]
41 assessed²; and affirm the rights of the alleged violator to a hearing.
42 The ordered party shall have ¹[20] 35¹ calendar days from receipt
43 of the notice within which to deliver to the commissioner a written
44 request for a hearing ¹[setting forth its factual and legal defenses,
45 arguments and issues]¹. After the hearing and upon finding that a
46 violation has occurred, the commissioner may issue a final

1 administrative enforcement order after assessing the amount of the
2 fine specified in the notice. If no hearing is requested, the notice
3 shall become a final administrative enforcement order after the
4 expiration of the ¹['20-day'] 35-day¹ period. Payment of the
5 assessment is due when a final administrative enforcement order is
6 issued or the notice becomes a final administrative enforcement
7 order. The authority to levy a civil administrative order is in
8 addition to all other enforcement provisions in P.L.1970, c.272, and
9 the payment of any assessment shall not be deemed to affect the
10 availability of any other enforcement provisions in connection with
11 the violation for which the assessment is levied. The department
12 may compromise any civil administrative penalty assessed under
13 this section in an amount and with conditions the department
14 determines appropriate. A civil administrative penalty assessed,
15 including a portion thereof required to be paid pursuant to a
16 payment schedule approved by the department, which is not paid
17 within 90 days of the date that payment of the penalty is due, shall
18 be subject to an interest charge on the amount of the penalty, or
19 portion thereof, which shall accrue as of the date payment is due. If
20 the penalty is contested, no additional interest charge shall accrue
21 on the amount of the penalty until ²90 days² after the date on which
22 a final order is issued. Interest charges assessed and collectible
23 pursuant to this subsection shall be based on the rate of interest on
24 judgments provided in the New Jersey Rules of Court. ²['For the
25 purposes of this subsection, the date that a penalty is due is the date
26 that written notice of the penalty is received by the person
27 responsible for payment thereof, or a later date as may be specified
28 in the notice.】²

29 e. A person who violates any provision of P.L.1970, c.272, or
30 ¹['of'] any rule or regulation adopted, or permit or order issued
31 pursuant thereto, or an administrative order issued pursuant to
32 subsection b. of this section, or a court order issued pursuant to
33 subsection c. of this section, who fails to pay a civil administrative
34 ²['assessment'] penalty² in full pursuant to subsection d. of this
35 section, or who fails to make a payment pursuant to a penalty
36 payment schedule entered into with the department, or who
37 ¹['knowingly'] makes any false or misleading statement on any
38 application, record, report, or other document required to be
39 submitted to the department, shall be subject, upon order of a court,
40 to a civil penalty not to exceed ¹['\$50,000'] ²['\$35,000'] \$25,000²
41 per day of the violation, and each day during which the violation
42 continues shall constitute an additional, separate, and distinct
43 offense. Any civil penalty imposed pursuant to this subsection may
44 be collected with costs in a summary proceeding pursuant to the
45 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A: 58-10
46 et seq.). In addition to any penalties, costs or interest charges, the
47 court may assess against the violator the amount of ²['actual']²

1 economic benefit accruing to the violator from the violation. The
2 Superior Court shall have jurisdiction to enforce the "Penalty
3 Enforcement Law of ²[1999".] 1999."²

4 f. A person who purposely, knowingly or recklessly violates any
5 provision of P.L.1970, c.272, or ¹[of]¹ any rule or regulation
6 adopted, or permit or order issued pursuant thereto, shall be guilty,
7 upon conviction, of a crime of the third degree and shall,
8 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
9 subject to a fine of not less than \$5,000 nor more than \$50,000 per
10 day of violation, or by imprisonment, or both. ¹[A person who
11 negligently violates any provision of P.L.1970, c.272, or of any rule
12 or regulation adopted, or permit or order issued pursuant thereto,
13 shall be guilty, upon conviction, of a crime of the fourth degree and
14 shall, notwithstanding the provisions of subsection b. of
15 N.J.S.2C:43-3, be subject to a fine of not less than \$2,500 nor more
16 than \$25,000 per day of violation, or by imprisonment, or both.]¹ A
17 person who ²purposely,² knowingly ²or recklessly² makes a false
18 statement, representation, or certification in any application, record,
19 or other document filed or required to be maintained under any
20 provision of P.L.1970, c.272, or ¹[of]¹ any rule or regulation
21 adopted, or permit or order issued pursuant thereto, or who falsifies,
22 tampers with or ²purposely,² knowingly ²or recklessly² renders
23 inaccurate, any monitoring device or method required to be
24 maintained pursuant to P.L.1970, c.272, or ¹[of]¹ any rule or
25 regulation adopted, or permit or order issued pursuant thereto, shall
26 be guilty, upon conviction, of a crime of the third degree and shall,
27 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
28 subject to a fine of not more than \$50,000 per day of violation, or
29 by imprisonment, or both.

30 g. ¹[In addition to the penalties prescribed in this section, a
31 notice of violation of any provision of P.L.1970, c.272, or of any
32 rule or regulation adopted, or permit or order issued pursuant
33 thereto, shall be recorded on the deed of the property wherein the
34 violation occurred, on order of the commissioner, by the clerk or
35 register of deeds and mortgages of the county wherein the affected
36 property is located and with the clerk of the Superior Court and
37 shall remain attached thereto until such time as the violation has
38 been remedied and the commissioner orders the notice of violation
39 removed. Any fees or other charges that are assessed by either the
40 clerk or register of deeds and mortgages of the county wherein the
41 affected property is located or the department for the recording of
42 the notice of violation on the deed required pursuant to this
43 subsection shall be paid by the owner of the affected property or
44 person committing the violation. The notice of violation may be
45 removed upon payment in full or upon meeting other conditions set
46 forth by the commissioner.

1 h.]¹ ²[If the violation is one in which the department has
 2 determined that the restoration of the site to its pre-violation
 3 condition would increase the harm to the wetland or its ecology, the
 4 department may issue an "after the fact" permit for the regulated
 5 activity that has already occurred; provided that assessment against
 6 the violator for costs or damages enumerated in subsection c. of this
 7 section has been made, the creation or restoration of wetlands
 8 resources at another site has been required of the violator, an
 9 opportunity has been afforded for public hearing and comment, and
 10 the reasons for the issuance of the "after the fact" permit are
 11 published in the New Jersey Register and in a newspaper of general
 12 circulation in the geographical area of the violation. Any person
 13 violating an "after the fact" permit issued pursuant to this
 14 subsection shall be subject to the provisions of this section.

15 '[i.] h.' The burden of proof and degree of knowledge or intent
 16 required to establish a violation of any provision of P.L.1970,
 17 c.272, or '[of]' any rule or regulation adopted, or permit or order
 18 issued pursuant thereto, shall be no greater than the burden of proof
 19 or degree of knowledge or intent which the United States
 20 Environmental Protection Agency must meet in establishing a
 21 violation of the Federal Act or implementing regulations.

22 '[j.] i.' The department shall establish and implement a program
 23 designed to facilitate public participation in the enforcement of
 24 P.L.1970, c.272, or '[of]' any rule or regulation adopted, or permit
 25 or order issued pursuant thereto, which complies with the
 26 requirements of the Federal Act and implementing regulations.

27 '[k.] j.' The department shall make available without restriction
 28 any information obtained or used in the implementation of P.L.1970,
 29 c.272 to the United States Environmental Protection Agency upon a
 30 request therefor.

31 '[l.] k.'² Each applicant or permittee shall provide, upon the
 32 request of the department, any information the department requires
 33 to determine compliance with the provisions of P.L.1970, c.272, or
 34 '[of]' any rule or regulation adopted, or permit or order issued
 35 pursuant thereto.

36 (cf: P.L.1970, c. 72, s.9)

37

38 5. Section 21 of P.L.1987, c.156 (C.13:9B-21) is amended to
 39 read as follows:

40 21. a. Whenever, on the basis of available information, the
 41 commissioner finds that a person is in violation of any provision of
 42 **[this act] P.L.1987, c.156, or '[of]' any rule or regulation adopted,**
 43 **or permit or order issued[,]** pursuant **[to this act] thereto,** the
 44 commissioner may:

45 (1) Issue an order requiring any such person to comply in
 46 accordance with subsection b. of this section; or

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

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

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

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

9 Recourse to any of the remedies available under this section shall
10 not preclude recourse to any of the other remedies.

11 b. Whenever, on the basis of available information, the
12 commissioner finds a person in violation of any provision of **[this**
13 **act]** P.L.1987, c.156, or ¹**[of]** any rule or regulation adopted, or
14 permit or order issued¹, pursuant **[to this act]** thereto, the
15 commissioner may issue an order: (1) specifying the provision or
16 provisions of **[this act]** P.L.1987, c.156, or the rule, regulation,
17 permit or order of which **[he]** the person is in violation; (2) citing
18 the action which constituted the violation; (3) requiring compliance
19 with the provision or provisions violated; (4) requiring the
20 restoration ²**[of]** to address any adverse effects upon² the
21 freshwater wetland or transition area ²**[which is the site of the]**
22 resulting from any² violation; and (5) providing notice to the person
23 of **[his]** the right to a hearing on the matters contained in the order.

24 c. The commissioner is authorized to institute a civil action in
25 Superior Court for appropriate relief from any violation of any
26 provisions of **[this act]** P.L.1987, c.156, or ¹**[of]** any rule or
27 regulation adopted, or permit or order issued¹, pursuant **[to this**
28 **act]** thereto. Such relief may include, singly or in combination:

29 (1) A temporary or permanent injunction;

30 (2) ²**[Assessment of the violator for the]** Recovery of²
31 reasonable¹ costs of any investigation, inspection, or monitoring
32 survey which led to the **[establishment]** discovery of the violation,
33 and for the reasonable costs of preparing and bringing ²**[legal]** a
34 civil² action ²commenced² under this subsection;

35 (3) ²**[Assessment of the violator for** ¹**[any]** the] Recovery of²
36 reasonable¹ costs incurred by the State in removing, correcting, or
37 terminating the adverse effects upon the freshwater wetland ²or
38 transition area² resulting from any ²**[unauthorized regulated activity**
39 **for which legal action under this subsection may have been**
40 **brought]** violation for which a civil action has been commenced
41 and brought under this subsection²;

42 (4) ²**[Assessment against the violator for]** Recovery of²
43 compensatory damages for any loss or destruction of ²**[public]**
44 natural² resources, including but not limited to, wildlife, fish **[or],**
45 aquatic life, habitat, plants, or historic or archeological resources,

1 and for any other actual damages caused by ²[an unauthorized
 2 regulated activity] any violation for which a civil action has been
 3 commenced and brought under this subsection². ²[Assessments]
 4 Recovery of damages and costs² under this subsection shall be paid
 5 to the [State Treasurer] ¹[Wetlands Mitigation Bank established
 6 pursuant to section 14 of P.L.1987, c.156 (C.13:9B-14), except that
 7 compensatory damages to privately held resources shall be paid by
 8 specific order of the court to any persons who have been aggrieved
 9 by the unauthorized regulated activity] State Treasurer¹;

10 (5) ²[A requirement that] An order requiring² the violator
 11 restore the site of the violation to ²[te] the² maximum extent
 12 practicable and feasible or, in the event that restoration of the site of
 13 the violation is not practicable or feasible, provide for off-site
 14 restoration alternatives as approved by the department.

15 d. The commissioner is authorized to assess a civil
 16 administrative penalty of not more than [\$10,000.00] ¹[\$50,000]
 17 ²[\$35,000¹] \$25,000² for each violation of the provisions of
 18 P.L.1987, c.156, or ¹[of]¹ any rule or regulation adopted, or permit
 19 or order issued pursuant thereto, and each day during which each
 20 violation continues shall constitute an additional, separate, and
 21 distinct offense. Any amount assessed under this subsection shall
 22 fall within a range established by regulation by the commissioner
 23 for violations of similar type, seriousness, ²[¹actual harm to the
 24 environment,¹ and]² duration ²and conduct²; provided, however,
 25 that prior to the adoption of the regulation, the commissioner may,
 26 on a case-by-case basis, assess civil administrative penalties up to a
 27 maximum of \$25,000 per day for each violation, utilizing the
 28 criteria set forth herein. In ²[adopting rules and regulations
 29 establishing the amount of any penalty to be assessed,] addition to
 30 any administrative penalty assessed under this subsection and
 31 notwithstanding the \$25,000 maximum penalty set forth above,² the
 32 commissioner may ²[take into account the] assess any² economic
 33 benefits from the violation gained by the violator. Prior to ²the²
 34 assessment of ²a² penalty under this subsection, the property owner
 35 or person committing the violation shall be notified by certified
 36 mail or personal service that the penalty is being assessed. [No
 37 assessment shall be levied pursuant to this section until after the
 38 party has been notified by certified mail or personal service.] The
 39 notice shall identify the section of the statute, regulation, or order or
 40 permit condition violated; recite the facts alleged to constitute a
 41 violation; state the ²basis for the² amount of the civil penalties to be
 42 ²[imposed] assessed²; and affirm the rights of the alleged violator
 43 to a hearing. The ordered party shall have ¹[20] 35¹ days from
 44 receipt of the notice within which to deliver to the commissioner a
 45 written request for a hearing ¹[setting forth its factual and legal

1 defenses, arguments, and issues]¹. After the hearing and upon
2 finding that a violation has occurred, the commissioner may issue a
3 final order after assessing the amount of the fine specified in the
4 notice. If no hearing is requested, the notice shall become a final
5 order after the expiration of the '[20-day] 35-day' period.
6 Payment of the assessment is due when a final order is issued or the
7 notice becomes a final order. The authority to levy an
8 administrative order is in addition to all other enforcement
9 provisions in [this act] P.L.1987, c.156, and the payment of any
10 assessment shall not be deemed to affect the availability of any
11 other enforcement provisions in connection with the violation for
12 which the assessment is levied. [Any civil administrative penalty
13 assessed under this section may be compromised by the
14 commissioner upon the posting of a performance bond by the
15 violator, or upon such terms and conditions as the commissioner
16 may establish by regulation.] The department may compromise
17 any civil administrative penalty assessed under this section in an
18 amount and with conditions the department determines appropriate.
19 A civil administrative penalty assessed, including any portion
20 thereof required to be paid pursuant to a payment schedule
21 approved by the department, which is not paid within 90 days of the
22 date that payment of the penalty is due, shall be subject to an
23 interest charge on the amount of the penalty, or portion thereof,
24 which shall accrue as of the date payment is due. If the penalty is
25 contested, interest shall accrue on the amount of the penalty
26 commencing on the date a final order is issued. Interest charges
27 assessed and collectible pursuant to this subsection shall be based
28 on the rate of interest on judgments provided in the New Jersey
29 Rules of Court. For the purposes of this subsection, the date that a
30 penalty is due is the date that written notice of the penalty is
31 received by the person responsible for payment thereof, or a later
32 date as may be specified in the notice.

33 e. A person who violates [this act] any provision of P.L.1987,
34 c.156, or '[of]' any rule or regulation adopted, or permit or order
35 issued pursuant thereto, or an administrative order issued pursuant
36 to subsection b. of this section, or a court order issued pursuant to
37 subsection c. of this section, or who fails to pay a civil
38 administrative ²[assessment] penalty² in full pursuant to subsection
39 d. of this section, or who fails to make a payment pursuant to a
40 penalty payment schedule entered into with the department, or who
41 'knowingly' makes any false or misleading statement on any
42 application, record, report, or other document required to be
43 submitted to the department, shall be subject, upon order of a court,
44 to a civil penalty not to exceed [\$10,000.00] '[\$50,000]
45 ²[\$35,000¹] \$25,000² per day of [such] the violation, and each day
46 during which the violation continues shall constitute an additional,
47 separate, and distinct offense. Any civil penalty imposed pursuant

1 to this subsection may be collected with costs in a summary
2 proceeding pursuant to ~~["the penalty enforcement law" (N.J.S.
3 2A:58-1 et seq.)]~~ the "Penalty Enforcement Law of 1999,"
4 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall
5 have jurisdiction to enforce ~~["the penalty enforcement law"]~~ the
6 "Penalty Enforcement Law of 1999" in conjunction with this act.

7 f. A person who ~~[willfully or negligently]~~ purposely, knowingly
8 or recklessly violates ~~[this act]~~ any provision of P.L.1987, c.156, or
9 '[of]' any rule or regulation adopted, or permit or order issued
10 pursuant thereto, shall be guilty, upon conviction, of a crime of the
11 ~~[fourth]~~ third degree and shall, notwithstanding the provisions of
12 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than
13 ~~[\$2,500.00]~~ \$5,000 nor more than ~~[\$25,000.00]~~ \$50,000 per day of
14 violation, or by imprisonment, or both. ~~[A second offense under~~
15 ~~this subsection shall subject the violator to a fine of not less than~~
16 ~~\$5,000.00 nor more than \$50,000.00 per day of violation.]~~ '[A
17 person who negligently violates any provision of P.L.1987, c.156,
18 or of any rule or regulation adopted, or permit or order issued
19 pursuant thereto, shall be guilty, upon conviction, of a crime of the
20 fourth degree and shall, notwithstanding the provisions of
21 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than
22 \$2,500 nor more than \$25,000 per day of violation, or by
23 imprisonment, or both.]' A person who ²purposely, ²knowingly ²or
24 recklessly² makes a false statement, representation, or certification
25 in any application, record, or other document filed or required to be
26 maintained under ~~[this act]~~ any provision of P.L.1987, c.156, or
27 '[of]' any rule or regulation adopted, or permit or order issued
28 pursuant thereto, or who falsifies, tampers with or ²purposely,²
29 knowingly ²or recklessly² renders inaccurate, any monitoring device
30 or method required to be maintained pursuant to ~~[this act]~~
31 P.L.1987, c.156, shall be guilty, upon conviction, of a crime of the
32 third degree and shall, notwithstanding the provisions of subsection
33 b. of N.J.S.2C:43-3, be subject to a fine of not more than
34 ~~[\$10,000.00]~~ \$50,000 per day of violation, or by imprisonment, or
35 both.

36 g. In addition to the penalties prescribed in this section, ¹the
37 commissioner may record¹ a notice ¹[of] for a¹ violation of ~~[this~~
38 ~~act]~~ any provision of P.L.1987, c.156, or ¹[of]' any rule or
39 regulation adopted, or permit or order issued pursuant thereto,
40 ¹which¹ shall be recorded on the deed of the property wherein the
41 violation occurred, on order of the commissioner, by the clerk or
42 register of deeds and mortgages of the county wherein the affected
43 property is located ¹[and with the clerk of the Superior Court]¹ and
44 shall remain attached thereto until such time as the violation has
45 been remedied and the commissioner orders the notice of violation
46 removed. Any fees or other charges that are assessed against the

1 department by either the clerk or register of deeds and mortgages of
2 the county wherein the affected property is located for the recording
3 of the notice of violation on the deed required pursuant to this
4 subsection shall be paid by the owner of the affected property or the
5 person committing the violation. The ²commissioner shall
6 immediately order the² notice ²[of violation may be]² removed
7 ²once the violation is remedied or² upon ²[payment in full or upon
8 meeting]² other conditions set forth by the commissioner.

9 h. If the violation is one in which the department has determined
10 that the restoration of the site to its **[previolation]** pre-violation
11 condition would increase the harm to the freshwater wetland or its
12 ecology, the department may issue an "after the fact" permit for the
13 regulated activity that has already occurred; provided that
14 ²[assessment against the violator for] any recovery of² costs or
15 damages ²[enumerated in] ordered pursuant to² subsection c. of
16 this section ²[has been made] have been satisfied², the creation or
17 restoration of freshwater wetlands resources at another site has been
18 required of the violator, an opportunity has been afforded for public
19 hearing and comment, and the reasons for the issuance of the "after
20 the fact" permit are published in the New Jersey Register and in a
21 newspaper of general circulation in the geographical area of the
22 violation. Any person violating an "after the fact" permit issued
23 pursuant to this subsection shall be subject to the provisions of this
24 section.

25 i. The burden of proof and degree of knowledge or intent
26 required to establish a violation of **[this act]** any provision of
27 P.L.1987, c.156, or ¹[of]¹ any rule or regulation adopted, or permit
28 or order issued pursuant thereto, shall be no greater than the burden
29 of proof or degree of knowledge or intent which the United States
30 Environmental Protection Agency must meet in establishing a
31 violation of the Federal Act or implementing regulations.

32 j. The department shall establish and implement a program
33 designed to facilitate public participation in the enforcement of
34 **[this act]** the provisions of P.L.1987, c.156, or ¹[of]¹ any rule or
35 regulation adopted, or permit or order issued pursuant thereto,
36 which complies with the requirements of the Federal Act and
37 implementing regulations.

38 k. The department shall make available without restriction any
39 information obtained or used in the implementation of **[this act]**
40 P.L.1987, c.156 to the United States Environmental Protection
41 Agency upon a request therefor.

42 l. **[The department may require an applicant or permittee to**
43 provide any information the department requires to determine
44 compliance with the provisions of this act] Each applicant or
45 permittee shall provide, upon the request of the department, any
46 information the department requires to determine compliance with
47 the provisions of P.L.1987, c.156.

1 m. The department shall have the authority to enter any
2 property, facility, premises or site for the purpose of conducting
3 inspections, sampling of soil or water, copying or photocopying
4 documents or records, and for otherwise determining compliance
5 with the provisions of **[this act]** P.L.1987, c.156.

6 (cf: P.L.1987, c.156, s.21)

7
8 6. Section 18 of P.L.1973, c.185 (C.13:19-18) is amended to
9 read as follows:

10 18. a. Whenever, on the basis of available information, the
11 department finds that a person has violated any provision of
12 P.L.1973, c.185 (C.13:19-1 et seq.), or ¹**[of]**¹ any rule or regulation
13 adopted, [rule,] or permit[,] or order **[adopted or]** issued by the
14 department pursuant thereto, the department may:

15 (1) Issue an order requiring the person found to be in violation
16 to comply in accordance with subsection b. of this section;

17 (2) Bring a civil action in accordance with subsection c. of this
18 section;

19 (3) Levy a civil administrative penalty in accordance with
20 subsection d. of this section; **[or]**

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

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

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

27 b. Whenever, on the basis of available information, the
28 department finds that a person has violated any provision of
29 P.L.1973, c.185, or ¹**[of]**¹ any rule or regulation **[or rule]** adopted,
30 or permit or order issued¹**[,]** by the department pursuant **[to that**
31 **act]** thereto, the department may issue an order: (1) specifying the
32 provision or provisions of the act, regulation, rule, permit, or order
33 of which the person is in violation[,]; (2) citing the action which
34 constituted the violation[,ordering abatement of the violation, and
35 giving]; (3) requiring compliance with the provision or provisions
36 violated; (4) requiring the restoration ²**[of the area which is the site**
37 **of]** to address any adverse effects resulting from ²the violation; and
38 (5) providing notice to the person of **[his]** the right to a hearing on
39 the matters contained in the order. The ordered party shall have
40 ¹**[20]** ¹35 days from receipt of the order within which to deliver to
41 the department a written request for a hearing ¹**[setting forth its**
42 **factual and legal defenses, arguments and issues]**¹. After the
43 hearing and upon finding that a violation has occurred, the
44 department may issue a final order. If no hearing is requested, then
45 the order shall become final after the expiration of the ¹**[20-day]**

1 35-day¹ period. A request for hearing shall not automatically stay
2 the effect of the order.

3 c. The department may institute ~~an~~ a civil action ~~or~~
4 ~~proceeding~~ in the Superior Court for ~~injunctive and other~~
5 appropriate relief, including the appointment of a receiver, ~~for~~
6 from any violation of any provision of P.L.1973, c.185, or ¹~~of~~
7 any rule or regulation ~~or rule~~ adopted, or permit or order
8 issued~~,]~~ by the department pursuant ~~to that act~~ thereto, and the
9 court may proceed in the action in a summary manner.

10 Such relief may include, singly or in combination:

11 (1) A temporary or permanent injunction;

12 (2) ²~~Assessment of the violator for the~~ Recovery of²
13 reasonable¹ costs of any investigation, inspection, or monitoring
14 survey which led to the discovery of the violation, and for the
15 reasonable costs of preparing and bringing ²~~legal~~ a civil² action
16 commenced² under this subsection;

17 (3) ²~~Assessment of the violator for~~ ¹~~any~~ the Recovery of²
18 reasonable¹ ²~~cost~~ costs² incurred by the department in removing,
19 correcting or terminating the adverse effects upon the land or upon
20 water or air quality resulting from any violation of any provision of
21 P.L.1973, c.185, or ¹~~of~~ any rule or regulation ~~or rule~~ adopted,
22 or permit or order issued~~,]~~ by the department pursuant ~~to that~~
23 act thereto, for which ²~~the~~ a civil² action ²has been commenced
24 and brought² under this subsection ²~~may have been brought~~²;

25 (4) ²~~Assessment against the violator for~~ Recovery of²
26 compensatory damages for any loss or destruction of ²~~public~~
27 natural² resources, including but not limited to, wildlife, fish,
28 aquatic life, habitat, plants, or historic or archeological resources,
29 and for any other actual damages caused by a violation of the
30 provisions of P.L1973, c.185 ²for which a civil action has been
31 commenced and brought under this subsection² . Assessments
32 under this subsection shall be paid to the ¹~~“Cooperative Coastal~~
33 Monitoring, Restoration and Enforcement Fund” established
34 pursuant to subsection j. of this section, except that compensatory
35 damages to privately held resources shall be paid by specific order
36 of the court to any persons who have been aggrieved by the
37 violation of the provisions of P.L1973, c.185 State Treasurer¹;

38 (5) ²~~A requirement that~~ An order requiring² the violator
39 restore the site of the violation to the maximum extent practicable
40 and feasible or, in the event that restoration of the site of the
41 violation is not practicable or feasible, provide for off-site
42 restoration alternatives as approved by the department.

43 d. The department is authorized to assess~~, in accordance with a~~
44 uniform policy adopted therefor, a civil administrative penalty of
45 not more than ~~[\$25,000]~~ ¹~~[\$50,000]~~ ²~~[\$35,000]~~ ¹ \$25,000² for

1 each violation of the provisions of P.L.1973, c.185, or ¹~~of~~ ¹ any
2 rule or regulation adopted, or permit or order issued pursuant
3 thereto, and each day during which each violation continues shall
4 constitute an additional, separate and distinct offense. [No
5 assessment may be levied pursuant to this subsection until after the
6 violator has been notified by certified mail, personal service or any
7 other means authorized under the New Jersey Rules of Court.] Any
8 amount assessed under this subsection shall fall within a range
9 established by regulation by the commissioner for violations of
10 similar type, seriousness, ²~~actual harm to the environment,~~ ¹~~and~~ ²
11 duration ², and conduct²; provided, however, that prior to the
12 adoption of the regulation, the commissioner may, on a case-by-
13 case basis, assess civil administrative penalties up to a maximum of
14 \$25,000 per day for each violation, utilizing the criteria set forth
15 herein. In ²~~adopting rules and regulations establishing the amount~~
16 of any penalty to be assessed] addition to any administrative
17 penalty assessed under this subsection and notwithstanding the
18 \$25,000 maximum penalty set forth above², the commissioner may
19 ²~~take into account the~~ assess any² economic benefits from the
20 violation gained by the violator. Prior to assessment of ²~~a~~ ² penalty
21 under this subsection, the property owner or person committing the
22 violation shall be notified by certified mail or personal service that
23 the penalty is being assessed. The notice shall include a reference
24 to the section or provision of P.L.1973, c.185, the regulation, rule,
25 permit, or order issued by the department pursuant to that act that
26 has been violated, a concise statement of the facts alleged to
27 constitute a violation, a statement of the ²~~basis for the~~ ² amount of
28 the civil administrative penalties to be ²~~imposed~~ assessed²,
29 including any interest that may accrue thereon if the penalty is not
30 paid when due, and a statement of the party's right to a hearing.
31 The ordered party shall have ¹~~20~~ ¹ 35 calendar days from receipt
32 of the notice within which to deliver to the department a written
33 request for a hearing ¹~~setting forth its factual and legal defenses,~~
34 arguments and issues¹. After the hearing and upon finding that a
35 violation has occurred, the department may issue a final order after
36 assessing the amount of the fine specified in the notice. If no
37 hearing is requested, the notice shall become a final order after the
38 expiration of the ¹~~20-day~~ ¹ 35-day period. Payment of the
39 assessment is due when a final order is issued or the notice becomes
40 a final order. The department may compromise any civil
41 administrative penalty assessed under this section in an amount and
42 with conditions the department determines appropriate. A civil
43 administrative penalty assessed, including a portion thereof required
44 to be paid pursuant to a payment schedule approved by the
45 department, which is not paid within ~~30~~ 90 days of the date that
46 payment of the penalty is due, shall be subject to an interest charge

1 on the amount of the penalty, or portion thereof, which shall accrue
2 as of the date payment is due. If the penalty is contested, no
3 additional interest charge shall accrue on the amount of the penalty
4 until after the date on which a final order is issued.

5 Interest charges assessed and collectible pursuant to this
6 subsection shall be based on the rate of interest on judgments
7 provided in the New Jersey Rules of Court. For the purposes of this
8 subsection, the date that a penalty is due is the date that written
9 notice of the penalty is received by the person responsible for
10 payment thereof, or **[such]** a later date as may be specified in the
11 notice.

12 e. Any person who violates the provisions of P.L.1973, c.185, or
13 **'[of]'** any rule or regulation adopted pursuant thereto, or any
14 permit or order issued by the department pursuant to that act, or an
15 administrative order issued pursuant to subsection b. of this section,
16 or a court order issued pursuant to subsection c. of this section, or
17 who fails to pay a civil administrative penalty in full pursuant to
18 subsection d. of this section, or who fails to make a payment
19 pursuant to a penalty payment schedule entered into with the
20 department, or who 'knowingly' makes any false or misleading
21 statement on any application, record, report, or other document
22 required to be submitted to the department, shall be subject, upon
23 order of a court, to a civil penalty of not more than **[\$25,000]**
24 **'[\$50,000]'** **[\$35,000]** **\$25,000**² for each violation, and each day
25 during which a violation continues shall constitute an additional,
26 separate, and distinct offense.

27 Any penalty established pursuant to this subsection may be
28 imposed and collected with costs in a summary proceeding pursuant
29 to **["the penalty enforcement law," N.J.S.2A:58-1 et seq. The**
30 **Superior Court and the municipal court shall have jurisdiction to**
31 **enforce the provisions of "the penalty enforcement law" in**
32 **connection with this act.]** the "Penalty Enforcement Law of 1999,"
33 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall
34 have jurisdiction to enforce the "Penalty Enforcement Law of 1999"
35 in conjunction with this act. In addition to any penalties, costs or
36 interest charges, the court may assess against the violator the
37 amount of ²**[actual]**² economic benefit accruing to the violator
38 from the violation.

39 f. A person who purposely, knowingly or recklessly violates any
40 provision of P.L.1973, c.185, or 'of]' any rule or regulation
41 adopted, or permit or issued pursuant thereto, shall be guilty, upon
42 conviction, of a crime of the third degree and shall, notwithstanding
43 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
44 of not less than \$5,000 nor more than \$50,000 per day of violation,
45 or by imprisonment, or both. 'A person who negligently violates
46 any provision of P.L.1973, c.185, or of any rule or regulation
47 adopted, or permit or order issued pursuant thereto, shall be guilty,

1 upon conviction, of a crime of the fourth degree and shall,
2 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
3 subject to a fine of not less than \$2,500 nor more than \$25,000 per
4 day of violation, or by imprisonment, or both.】¹ A person who
5 ²purposely,² knowingly ², or recklessly² makes a false statement,
6 representation, or certification in any application, record, or other
7 document filed or required to be maintained under any provision of
8 P.L1973, c.185, or ¹【of】¹ any rule or regulation adopted pursuant
9 thereto, or who falsifies, tampers with or ²purposely,² knowingly ²,
10 or recklessly² renders inaccurate, any monitoring device or method
11 required to be maintained pursuant to P.L1973, c.185, or ¹【of】¹ any
12 rule or regulation adopted, or permit or order issued pursuant
13 thereto, shall be guilty, upon conviction, of a crime of the third
14 degree and shall, notwithstanding the provisions of subsection b. of
15 N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day
16 of violation, or by imprisonment, or both.

17 g. ¹【In addition to the penalties prescribed in this section, a
18 notice of violation of P.L1973, c.185, or of any rule or regulation
19 adopted, or permit or order issued pursuant thereto, shall be
20 recorded on the deed of the property wherein the violation occurred,
21 on order of the commissioner, by the clerk or register of deeds and
22 mortgages of the county wherein the affected property is located
23 and with the clerk of the Superior Court and shall remain attached
24 thereto until such time as the violation has been remedied and the
25 commissioner orders the notice of violation removed. Any fees or
26 other charges that are assessed by either the clerk or register of
27 deeds and mortgages of the county wherein the affected property is
28 located or the department for the recording of the notice of violation
29 on the deed required pursuant to this subsection shall be paid by the
30 owner of the affected property or the person committing the
31 violation. The notice of violation may be removed upon payment in
32 full or upon meeting other conditions set forth by the commissioner.

33 h.】¹ ²【 If the violation is one in which the department has
34 determined that the restoration of the site to its pre-violation
35 condition would increase the harm to the waters of the state or its
36 ecology, the department may issue an "after the fact" permit for the
37 regulated activity that has already occurred; provided that
38 assessment against the violator for costs or damages enumerated in
39 subsection c. of this section has been made, an opportunity has been
40 afforded for public hearing and comment, and the reasons for the
41 issuance of the "after the fact" permit are published in the New
42 Jersey Register and in a newspaper of general circulation in the
43 geographical area of the violation. Any person violating an "after
44 the fact" permit issued pursuant to this subsection shall be subject
45 to the provisions of this section.

46 ¹【i.】 h.】² Each applicant or permittee shall provide, upon the
47 request of the department, any information the department requires

1 to determine compliance with the provisions of P.L.1973, c.185, or
 2 '[of]' any rule or regulation adopted, or permit or order issued
 3 pursuant thereto.

4 '[i.] 2[i.] h.² There is created in the department a special
 5 nonlapsing fund, to be known as the "Cooperative Coastal
 6 Monitoring, Restoration and Enforcement Fund." Except as
 7 otherwise provided in this section, all monies from penalties, fines,
 8 or recoveries of costs collected by the department pursuant to this
 9 section on and after the effective date of this section, shall be
 10 deposited in the fund. Interest earned on monies deposited in the
 11 fund shall be credited to the fund. Unless otherwise specifically
 12 provided by law, monies in the fund shall be utilized by the
 13 department for the cost of coastal restoration projects and providing
 14 aircraft overflights for coastal monitoring, surveillance and
 15 enforcement activities conducted by the department and for the cost
 16 of administering P.L.1973, c.185 (C.13:19-1 et seq.). The
 17 department shall submit annually to the Legislature a report which
 18 provides an accounting of all monies deposited in the fund and the
 19 purposes for which monies in the fund are disbursed.
 20 (cf: P.L.1993, c.190, s.16)

21
 22 7. Section 10 of P.L.1973, c.309 (C.23:2A-10) is amended to
 23 read as follows:

24 10. a. **【If any person violates any of the provisions of this act or**
 25 **any rule, regulation or order adopted or issued pursuant to the**
 26 **provisions of this act, the department may institute a civil action in**
 27 **a court of competent jurisdiction for injunctive relief to prohibit and**
 28 **prevent such violation or violations and the court may proceed in**
 29 **the action in a summary manner】** Whenever, on the basis of
 30 available information, the commissioner finds that a person is in
 31 violation of the provisions of P.L.1973, c.309, or '[of]' any rule or
 32 regulation adopted, or permit or order issued pursuant thereto, the
 33 commissioner may:

34 (1) Issue an order in accordance with subsection b. of this section
 35 requiring the person to comply;

36 (2) Bring a civil action in accordance with subsection c. of this
 37 section;

38 (3) Levy a civil administrative penalty in accordance with
 39 subsection d. of this section;

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

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

44 The exercise of any of the remedies provided in this section shall
 45 not preclude recourse to any other remedy so provided.

46 b. **【Any person who violates the provisions of this act or any**
 47 **rule, regulation or order adopted or issued pursuant to this act shall**

1 be liable to a civil penalty of not less than \$250 and not more than
 2 \$5,000 for each offense, to be collected in a civil action by a
 3 summary proceeding under "the penalty enforcement law"
 4 (N.J.S.2A:58-1 et seq.) or in any case before a court of competent
 5 jurisdiction wherein injunctive relief has been requested. Civil
 6 penalties recovered for violations hereof shall be remitted as
 7 provided in R.S.23:10-19. The Superior Court and municipal court
 8 shall have jurisdiction to enforce "the penalty enforcement law."

9 If the violation is of a continuing nature, each day during which
 10 it continues shall constitute an additional, separate and distinct
 11 offense. Whenever, on the basis of available information, the
 12 commissioner finds that a person is in violation of any provision of
 13 P.L.1973, c.309, or ¹[of] any rule or regulation adopted, or permit
 14 or order issued pursuant thereto, the commissioner may issue an
 15 order: (1) specifying the provision or provisions of P.L.1973, c.309,
 16 or the rule or regulation, or order or permit issued pursuant thereto,
 17 of which the person is in violation; (2) citing the action that
 18 constituted the violation; (3) requiring compliance with the
 19 provision of P.L.1973, c.309, the rule or regulation, or order or
 20 permit issued pursuant thereto, of which the person is in violation;
 21 (4) requiring the restoration ²[of the site of] to address any adverse
 22 effects resulting from² the violation ²[to the maximum extent
 23 practicable and feasible]² ; and (5) giving notice to the person of a
 24 right to a hearing on the matters contained in the order.

25 c. The [department] commissioner is hereby authorized and
 26 empowered to [compromise and settle any claim for a penalty
 27 under this section in such amount in the discretion of the
 28 department as may appear appropriate and equitable under all of the
 29 circumstances.] commence a civil action in Superior Court for
 30 appropriate relief from a violation of the provisions of P.L.1973,
 31 c.309, or ¹[of] any rule or regulation adopted, or any permit or
 32 order issued pursuant thereto. This relief may include, singly or in
 33 combination:

34 (1) A temporary or permanent injunction;

35 (2) ²[Assessment of the violator for the] Recovery of²
 36 ¹reasonable¹ costs of any investigation, inspection, sampling or
 37 monitoring survey that led to the discovery of the violation, and for
 38 the reasonable costs of preparing and bringing ²[legal] a civil²
 39 action ²commenced² under this subsection;

40 (3) ²[Assessment of the violator for ¹[any] the] Recovery of²
 41 reasonable¹ costs incurred by the State in removing, correcting, or
 42 terminating the adverse effects resulting from any violation of
 43 P.L.1973, c.309 for which ²[legal] a civil² action ²has been
 44 commenced and brought² under this subsection ²[may have been
 45 brought] ²;

1 (4) ²[Assessment against the violator for] Recovery of²
2 compensatory damages for any loss or destruction of ²[public]
3 natural² resources, including but not limited to, wildlife, fish,
4 aquatic life, habitat, plants, or historic or archeological resources,
5 and for any other actual damages caused by ²[a] any² violation ²for
6 which a civil action has been commenced and brought under this
7 subsection². Assessments under this subsection shall be paid to the
8 ¹["Endangered and Nongame Species of Wildlife Conservation
9 Fund," established pursuant to section 1 of P.L.1981, c.170,
10 (C.54A:9-25.2), except that compensatory damages to privately
11 held resources shall be paid by specific order of the court to any
12 persons who have been aggrieved by the unauthorized regulated
13 activity] ²[State Treasurer¹] "Endangered and Nongame Species of
14 Wildlife Conservation Fund," established pursuant to section 1 of
15 P.L.1981, c.170, (C.54A:9-25.2), except that compensatory
16 damages to privately held resources shall be paid by specific order
17 of the court to any persons who have been aggrieved by the
18 unauthorized regulated activity²;

19 (5) ²[A requirement that] An order requiring² the violator
20 restore the site of the violation to the maximum extent practicable
21 and feasible or, in the event that restoration of the site of the
22 violation is not practicable or feasible, provide for off-site
23 restoration alternatives as approved by the department.

24 d. The commissioner is authorized to assess a civil
25 administrative penalty of not more than ¹[\$50,000] ²[\$35,000¹]
26 \$25,000² for each violation of the provisions of P.L.1973, c.309,
27 and each day during which each violation continues shall constitute
28 an additional, separate, and distinct offense. Any amount assessed
29 under this subsection shall fall within a range established by
30 regulation by the commissioner for violations of similar type,
31 seriousness, ²[¹actual harm to the environment,¹ and]² duration ²,
32 and conduct²; provided, however, that prior to the adoption of the
33 regulation, the commissioner may, on a case-by-case basis, assess
34 civil administrative penalties up to a maximum of \$25,000 per day
35 for each violation, utilizing the criteria set forth herein. In
36 ²[adopting rules and regulations establishing the amount of any
37 penalty to be assessed,] addition to any administrative penalty to be
38 assessed under this subsection, and notwithstanding the \$25,000
39 maximum penalty set forth above,² the commissioner may ²[take
40 into account the] assess any² economic benefits from the violation
41 gained by the violator. Prior to assessment of ²a² penalty under this
42 subsection, the property owner or person committing the violation
43 shall be notified by certified mail or personal service that the
44 penalty is being assessed. The notice shall include ²[:]² a reference
45 to the section of the statute, regulation, or order or permit condition
46 violated; recite the facts alleged to constitute a violation; state the

1 ²basis for the² amount of the civil penalties to be ²[imposed]
2 assessed² ; and affirm the rights of the alleged violator to a hearing.
3 The ordered party shall have ¹[20] 35¹ calendar days from receipt
4 of the notice within which to deliver to the commissioner a written
5 request for a hearing ¹[setting forth its factual and legal defenses,
6 arguments and issues]¹. After the hearing and upon finding that a
7 violation has occurred, the commissioner may issue a final order
8 after assessing the amount of the fine specified in the notice. If no
9 hearing is requested, the notice shall become a final order after the
10 expiration of the ¹[20-day] 35-day¹ period. Payment of the
11 assessment is due when a final order is issued or the notice becomes
12 a final order. The authority to levy an administrative order is in
13 addition to all other enforcement provisions in P.L.1973, c.309, and
14 the payment of any assessment shall not be deemed to affect the
15 availability of any other enforcement provisions in connection with
16 the violation for which the assessment is levied. The department
17 may compromise any civil administrative penalty assessed under
18 this section in an amount and with conditions the department
19 determines appropriate. A civil administrative penalty assessed,
20 including a portion thereof required to be paid pursuant to a
21 payment schedule approved by the department, which is not paid
22 within 90 days of the date that payment of the penalty is due, shall
23 be subject to an interest charge on the amount of the penalty, or
24 portion thereof, which shall accrue as of the date payment is due. If
25 the penalty is contested, no additional interest charge shall accrue
26 on the amount of the penalty until after the date on which a final
27 order is issued. Interest charges assessed and collectible pursuant to
28 this subsection shall be based on the rate of interest on judgments
29 provided in the New Jersey Rules of Court. ²[For the purposes of
30 this subsection, the date that a penalty is due is the date that written
31 notice of the penalty is received by the person responsible for
32 payment thereof, or a later date as may be specified in the notice.]²

33 e. Any person who violates any provision of P.L.1973, c.309, or
34 ¹[of]¹ any rule or regulation adopted, or permit or order issued
35 pursuant thereto, or an order issued pursuant to subsection b. of this
36 section, or a court order issued pursuant to subsection c. of this
37 section, or who fails to pay in full a civil administrative penalty
38 levied pursuant to subsection d. of this section, or who fails to make
39 a payment pursuant to a penalty payment schedule entered into with
40 the department, or who ¹knowingly¹ makes any false or misleading
41 statement on any application, record, report, or other document
42 required to be submitted to the department, shall be subject, upon
43 order of a court, to a civil penalty not to exceed ¹[\$50,000]
44 ²[\$35,000¹] \$25,000² for each day during which the violation
45 continues. Any civil penalty imposed pursuant to this subsection
46 may be collected with costs in a summary proceeding pursuant to
47 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-

1 10 et seq.). In addition to any penalties, costs or interest charges,
2 the court may assess against the violator the amount of ²[actual]²
3 economic benefit accruing to the violator from the violation. The
4 Superior Court ²and municipal courts² shall have jurisdiction to
5 enforce the "Penalty Enforcement Law of 1999."

6 f. A person who purposely, knowingly or recklessly violates any
7 provision of P.L.1973, c.309, or ¹[of]¹ any rule or regulations
8 adopted, or permit or order issued pursuant thereto, shall be guilty,
9 upon conviction, of a crime of the third degree and shall,
10 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
11 subject to a fine of not less than \$5,000 nor more than \$50,000 per
12 day of violation, or by imprisonment, or both. ¹[A person who
13 negligently violates any provision of P.L.1973, c.309, or of any rule
14 or regulation adopted, or permit or order issued pursuant thereto,
15 shall be guilty, upon conviction, of a crime of the fourth degree and
16 shall, notwithstanding the provisions of subsection b. of
17 N.J.S.2C:43-3, be subject to a fine of not less than \$2,500 nor more
18 than \$25,000 per day of violation, or by imprisonment, or both.]¹

19 A person who ²purposely,² knowingly ², or recklessly² makes a
20 false statement, representation, or certification in any application,
21 record, or other document filed or required to be maintained under
22 any provision of P.L.1973, c.309, or ¹[of]¹ any rule or regulation
23 adopted, or permit or order issued pursuant thereto, or who falsifies,
24 tampers with or ²purposely,² knowingly ², or recklessly² renders
25 inaccurate, any monitoring device or method required to be
26 maintained pursuant to P.L.1973, c.309, or ¹[of]¹ any rule or
27 regulation adopted, or permit or order issued pursuant thereto, shall
28 be guilty, upon conviction, of a crime of the third degree and shall,
29 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
30 subject to a fine of not more than \$50,000 per day of violation, or
31 by imprisonment, or both.

32 g. ¹[In addition to the penalties prescribed in this section, a
33 notice of violation of any provision of P.L.1973, c.309, or of any
34 rule or regulation adopted, or permit or order issued pursuant
35 thereto, shall be recorded on the deed of the property wherein the
36 violation occurred, on order of the commissioner, by the clerk or
37 register of deeds and mortgages of the county wherein the affected
38 property is located and with the clerk of the Superior Court and
39 shall remain attached thereto until such time as the violation has
40 been remedied and the commissioner orders the notice of violation
41 removed. Any fees or other charges that are assessed by either the
42 clerk or register of deeds and mortgages of the county wherein the
43 affected property is located or the department for the recording of
44 the notice of violation on the deed required pursuant to this
45 subsection shall be paid by the owner of the affected property the or
46 person committing the violation and the commissioner shall not

1 order the notice of violation removed until such time as these fees
2 are paid in full.

3 h.]¹ ²All penalties collected pursuant to this section shall be
4 deposited in the "Endangered and Nongame Species of Wildlife
5 Conservation Fund," established pursuant to section 1 of P.L.1981,
6 c.170, (C.54A:9-25.2), and kept separate from other receipts
7 deposited therein, and appropriated to the department for the
8 purposes outlined in that fund.

9 h.² Each applicant or permittee, upon the request of the
10 department, shall provide any information the department or the
11 commissioner requires to determine compliance with any provision
12 of P.L.1973, c.309, or of any rule or regulation adopted, or permit
13 or order issued pursuant thereto.

14 (cf: P.L.1995, c.411, s.1)

15

16 8. Section 16 of P.L.1981, c.262 (C.58:1A-16) is amended to
17 read as follows:

18 16. **[If any person violates]** a. Whenever, on the basis of
19 available information, the commissioner finds that a person is in
20 violation of any of the provisions of [this act] P.L.1981, c.262, or
21 '[of]' any rule[,] or regulation adopted, or permit or order
22 [adopted or] issued pursuant [to the provisions of this act,] thereto,
23 the [department may institute a civil action in a court of competent
24 jurisdiction for injunctive relief to enforce said provisions and to
25 prohibit and prevent that violation and the court may proceed in the
26 action in a summary manner. Any person who violates the
27 provisions of this act or any rule, regulation or order adopted or
28 issued pursuant to this act shall be liable to a civil administrative
29 penalty of not more than \$5,000.00 for each offense to be imposed
30 by the department pursuant to standards adopted in regulations; or a
31 civil penalty of not more than \$5,000.00 for each offense, to be
32 collected in a civil action by a summary proceeding under "the
33 penalty enforcement law" (N.J.S.2A:58-1 et seq.) or in any case
34 before a court of competent jurisdiction wherein injunctive relief
35 has been requested. The Superior Court shall have jurisdiction to
36 enforce the penalty enforcement law. If the violation is of a
37 continuing nature, each day during which it continues shall
38 constitute an additional, separate and distinct offense. The
39 department is authorized to compromise and settle any claim for a
40 penalty under this section in such amount in the discretion of the
41 department as may appear appropriate and equitable under all of the
42 circumstances.] commissioner may:

43 (1) Issue an order in accordance with subsection b. of this
44 section requiring the person to comply;

45 (2) Bring a civil action in accordance with subsection c. of this
46 section;

- 1 (3) Levy a civil administrative penalty in accordance with
2 subsection d. of this section;
- 3 (4) Bring an action for a civil penalty in accordance with
4 subsection e. of this section; or
- 5 (5) Petition the Attorney General to bring a criminal action in
6 accordance with subsection f. of this section.
- 7 The exercise of any of the remedies provided in this section shall
8 not preclude recourse to any other remedy so provided.
- 9 b. Whenever, on the basis of available information, the
10 commissioner finds that a person is in violation of any of the
11 provisions of P.L.1981, c.262, or '[of]' any rule or regulation
12 adopted, or permit or order issued pursuant thereto, the
13 commissioner may issue an order: (1) specifying the provision or
14 provisions of P.L.1981, c.262, or '[of]' the rule or regulation
15 adopted, or order or permit issued pursuant thereto, of which the
16 person is in violation; (2) citing the action that constituted the
17 violation; (3) requiring compliance with the provision of P.L.1981,
18 c.262, or '[of]' the rule or regulation adopted, or order or permit
19 issued pursuant thereto, of which the person is in violation; (4)
20 requiring the restoration ²[of the site of] to address any adverse
21 effects resulting from² the violation ²[to the maximum extent
22 practicable and feasible]²; and (5) giving notice to the person of a
23 right to a hearing on the matters contained in the order.
- 24 c. The commissioner is authorized to commence a civil action in
25 Superior Court for appropriate relief from a violation of the
26 provisions of P.L.1981, c.262, or '[of]' any rule or regulation
27 adopted, or permit or order issued pursuant thereto. This relief may
28 include, singly or in combination:
- 29 (1) A temporary or permanent injunction;
- 30 (2) ²[Assessment of the violator for the] Recovery of²
31 'reasonable'¹ costs of any investigation, inspection, sampling or
32 monitoring survey that led to the discovery of the violation, and for
33 the reasonable costs of preparing and bringing ²[legal] a civil²
34 action ²commenced² under this subsection;
- 35 (3) ²[Assessment of the violator for '[any] the] Recovery of²
36 reasonable¹ costs incurred by the State in removing, correcting, or
37 terminating the adverse effects resulting from any violation of
38 P.L.1981, c.262 for which ²[legal] a civil² action ²has been
39 commenced and brought² under this subsection ²[may have been
40 brought]²;
- 41 (4) ²[A requirement that the violator restore the site of the
42 violation to the maximum extent practicable and feasible or, in the
43 event that restoration of the site of the violation is not practicable or
44 feasible, provide for off-site restoration alternatives as approved by
45 the department] An order requiring the restoration of any adverse

1 effects resulting from any unauthorized regulated activity for which
2 a civil action is commenced under this subsection² .

3 d. The commissioner is authorized to assess a civil
4 administrative penalty of not more than ¹[\$50,000] ²[\$35,000¹]
5 \$25,000² for each violation of the provisions of P.L.1981, c.262, or
6 ¹[of] any rule or regulation adopted, or permit or order issued
7 pursuant thereto, and each day during which each violation
8 continues shall constitute an additional, separate, and distinct
9 offense. Any amount assessed under this subsection shall fall
10 within a range established by regulation by the commissioner for
11 violations of similar type, seriousness, ²[¹actual harm to the
12 environment, ¹ and] ² duration ², and conduct² ; provided, however,
13 that prior to the adoption of the regulation, the commissioner may,
14 on a case-by-case basis, assess civil administrative penalties up to a
15 maximum of \$25,000 per day for each violation, utilizing the
16 criteria set forth herein. In ²[adopting rules and regulations
17 establishing the amount of any penalty to be assessed] addition to
18 any administrative penalty assessed under this subsection and
19 notwithstanding the \$25,000 maximum penalty set forth above² ,
20 the commissioner may ²[take into account the] assess any²
21 economic benefits from the violation gained by the violator. Prior
22 to assessment of ²a² penalty under this subsection, the property
23 owner or person committing the violation shall be notified by
24 certified mail or personal service that the penalty is being assessed.
25 The notice shall include ²[:]² a reference to the section of the
26 statute, regulation, or order or permit condition violated; recite the
27 facts alleged to constitute a violation; state the ²basis for the²
28 amount of the civil penalties to be ²[imposed] assessed²; and
29 affirm the rights of the alleged violator to a hearing. The ordered
30 party shall have ¹[[20] 35¹ calendar days from receipt of the notice
31 within which to deliver to the commissioner a written request for a
32 hearing ¹[setting forth its factual and legal defenses, arguments and
33 issues]¹. After the hearing and upon finding that a violation has
34 occurred, the commissioner may issue a final order after assessing
35 the amount of the fine specified in the notice. If no hearing is
36 requested, the notice shall become a final order after the expiration
37 of the ¹[[20-day] 35-day¹ period. Payment of the assessment is due
38 when a final order is issued or the notice becomes a final order.
39 The authority to levy an administrative order is in addition to all
40 other enforcement provisions in P.L.1981, c.262, and the payment
41 of any assessment shall not be deemed to affect the availability of
42 any other enforcement provisions in connection with the violation
43 for which the assessment is levied. The department may
44 compromise any civil administrative penalty assessed under this
45 section in an amount and with conditions the department determines
46 appropriate. A civil administrative penalty assessed, including a

1 portion thereof required to be paid pursuant to a payment schedule
2 approved by the department, which is not paid within 90 days of the
3 date that payment of the penalty is due, shall be subject to an
4 interest charge on the amount of the penalty, or portion thereof,
5 which shall accrue as of the date payment is due. If the penalty is
6 contested, no additional interest charge shall accrue on the amount
7 of the penalty until after the date on which a final order is issued.
8 Interest charges assessed and collectible pursuant to this subsection
9 shall be based on the rate of interest on judgments provided in the
10 New Jersey Rules of Court. ²【For the purposes of this subsection,
11 the date that a penalty is due is the date that written notice of the
12 penalty is received by the person responsible for payment thereof,
13 or such later date as may be specified in the notice.】²

14 e. Any person who violates any provision of P.L.1981, c.262, or
15 '【of】' any rule or regulation adopted, or permit or order issued
16 pursuant thereto, or an order issued pursuant to subsection b. of this
17 section, or a court order issued pursuant to subsection c. of this
18 section, or who fails to pay in full a civil administrative penalty
19 levied pursuant to subsection d. of this section, or who fails to make
20 a payment pursuant to a penalty payment schedule entered into with
21 the department, or who 'knowingly' makes any false or misleading
22 statement on any application, record, report, or other document
23 required to be submitted to the department, shall be subject, upon
24 order of a court, to a civil penalty not to exceed '¹【\$50,000】
25 ²【\$35,000¹】 \$25,000² for each day during which the violation
26 continues. Any civil penalty imposed pursuant to this subsection
27 may be collected with costs in a summary proceeding pursuant to
28 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-
29 10 et seq.). In addition to any penalties, costs or interest charges,
30 the court may assess against the violator the amount of ²【actual】²
31 economic benefit accruing to the violator from the violation. The
32 Superior Court shall have jurisdiction to enforce the provisions of
33 the "Penalty Enforcement Law of 1999" in connection with this act.

34 f. A person who purposely, knowingly or recklessly violates any
35 provision of P.L.1981, c.262, or '【of】' any rule or regulation
36 adopted, or permit or order issued pursuant thereto, shall be guilty,
37 upon conviction, of a crime of the third degree and shall,
38 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
39 subject to a fine of not less than \$5,000 nor more than \$50,000 per
40 day of violation, or by imprisonment, or both. ¹【A person who
41 negligently violates any provision of P.L.1981, c.262, or of any rule
42 or regulation adopted, or permit or order issued pursuant thereto,
43 shall be guilty, upon conviction, of a crime of the fourth degree and
44 shall, notwithstanding the provisions of subsection b. of
45 N.J.S.2C:43-3, be subject to a fine of not less than \$2,500 nor more
46 than \$25,000 per day of violation, or by imprisonment, or both.】¹
47 A person who ²purposely,² knowingly ², or recklessly² makes a

1 false statement, representation, or certification in any application,
2 record, or other document filed or required to be maintained under
3 any provision of P.L.1981, c.262, or '[of]' any rule or regulation
4 adopted, or permit or order issued pursuant thereto, or who falsifies,
5 tampers with or ²purposely, ² knowingly ², or recklessly² renders
6 inaccurate, any monitoring device or method required to be
7 maintained pursuant to the provisions of P.L.1981, c.262, or '[of]'
8 any rule or regulation adopted, or permit or order issued pursuant
9 thereto, shall be guilty, upon conviction, of a crime of the third
10 degree and shall, notwithstanding the provisions of subsection b. of
11 N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day
12 of violation, or by imprisonment, or both.

13 g. '[In addition to the penalties prescribed in this section, a
14 notice of violation of any provision of P.L.1981, c.262 shall be
15 recorded on the deed of the property wherein the violation occurred,
16 on order of the commissioner, by the clerk or register of deeds and
17 mortgages of the county wherein the affected property is located
18 and with the clerk of the Superior Court and shall remain attached
19 thereto until such time as the violation has been remedied and the
20 commissioner orders the notice of violation removed. Any fees or
21 other charges that are assessed by either the clerk or register of
22 deeds and mortgages of the county wherein the affected property is
23 located or the department for the recording of the notice of violation
24 on the deed required pursuant to this subsection shall be paid by the
25 owner of the affected property or the person committing the
26 violation and the commissioner shall not order the notice of
27 violation removed until such time as these fees are paid in full.

28 h.]' Each applicant or permittee shall provide, upon the request
29 of the department, any information the department requires to
30 determine compliance with the provisions of P.L.1981, c.262, or
31 '[of]' any rule or regulation adopted, or permit or order issued
32 pursuant thereto.

33 (cf: P.L.1991, c.91, s.527)

34

35 9. R.S.58:4-6 is amended to read as follows:

36 58:4-6. a. Whenever, on the basis of available information, the
37 Commissioner of Environmental Protection finds that a person has
38 violated any provision of the "Safe Dam Act," P.L.1981, c.249
39 (C.58:4-8.1 et seq.), or '[of]' any rule[,] or regulation adopted,
40 permit or order issued pursuant thereto, the commissioner may:

41 (1) Issue an order requiring any such person to comply in
42 accordance with subsection b. of this section; or

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

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

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

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

5 Recourse to any of the remedies available under this section shall
6 not preclude recourse to any of the other remedies prescribed in this
7 section or by any other applicable law.

8 b. Whenever, on the basis of available information, the
9 commissioner finds a person in violation of any provision of
10 P.L.1981, c.249, or ¹~~of~~ any rule~~,~~ or regulation adopted, or
11 permit or order issued pursuant thereto, the commissioner may issue
12 an administrative order: (1) specifying the provision or provisions
13 of the law, rule, regulation, permit or order, of which the person is
14 in violation; (2) citing the action which constituted the violation; (3)
15 requiring compliance with the provision or provisions violated; (4)
16 requiring the restoration of the area which is the site of the
17 violation; and (5) providing notice to the person of the right to a
18 hearing on the matters contained in the order.

19 c. The commissioner is authorized to institute a civil action in
20 Superior Court for appropriate relief from any violation of any
21 provision of P.L.1981, c.249, or ¹~~of~~ any rule~~,~~ or regulation
22 adopted, or permit or order issued pursuant thereto. Such relief
23 may include, singly or in combination:

24 (1) A temporary or permanent injunction, including an order or
25 judgment as will effectually secure the persons interested from
26 danger of loss from the breaking of a dam. The court may proceed
27 in the action in a summary manner or otherwise;

28 (2) ²~~Assessment of the violator for~~ Recovery of² the
29 ¹~~reasonable~~ costs of any investigation, inspection, or monitoring
30 survey which led to the ~~establishment~~ discovery of the violation,
31 and for the reasonable costs of preparing and bringing ²~~legal~~ a
32 civil² action ²~~commenced~~² under this subsection;

33 (3) ²~~Assessment of the violator for~~ ¹~~any~~ ~~the~~ Recovery of²
34 reasonable¹ costs incurred by the State in removing, correcting, or
35 terminating the adverse effects resulting from any violation for
36 which ²~~legal~~ a civil² action ²~~has been commenced and brought~~²
37 under this subsection ²~~may have been brought~~²;

38 (4) ²~~Assessment against the violator for~~ Recovery of²
39 compensatory damages for any loss or destruction of ²~~public~~
40 natural² resources, including but not limited to, wildlife, fish ~~or~~,
41 aquatic life, habitat, plants, or historic or archeological resources,
42 and for any other actual damages caused by a violation ²~~for which a~~
43 civil action has been commenced and brought under this
44 subsection². Assessments under this subsection shall be paid to the
45 ¹~~Environmental Services Fund,~~ established pursuant to section 5
46 of P.L.1975, c.232 (C.13:1D-33), and kept separate from other

1 receipts deposited therein, and appropriated to the department for
2 the removal of dams in the State, except that compensatory
3 damages to privately held resources shall be paid by specific order
4 of the court to any persons who have been aggrieved by the
5 unauthorized regulated activity.] ²[State Treasurer¹
6 "Environmental Services Fund," established pursuant to section 5 of
7 P.L.1975, c.232 (C.13:1D-33), and kept separate from other receipts
8 deposited therein, and appropriated to the department for the
9 removal of dams in the State, except that compensatory damages to
10 privately held resources shall be paid by specific order of the court
11 to any persons who have been aggrieved by the unauthorized
12 regulated activity²;

13 (5) ²[A requirement that] An order requiring² the violator
14 restore the site of the violation to the maximum extent practicable
15 and feasible or, in the event that restoration of the site of the
16 violation is not practicable or feasible, provide for off-site
17 restoration alternatives as approved by the department.

18 d. The commissioner is authorized to assess a civil
19 administrative penalty of [up to \$25,000] not more than
20 '[\$50,000] ²[\$35,000¹] \$25,000² for each violation of any
21 provision of P.L.1981, c.249, or ¹[of]¹ any rule[,] or regulation
22 adopted, or permit or order issued pursuant thereto, and each day
23 during which each violation continues shall constitute an additional,
24 separate, and distinct offense. Any amount assessed under this
25 subsection shall fall within a range established by regulation by the
26 commissioner for violations of similar type, seriousness, ²¹actual
27 harm to the environment,¹ and]² duration ², and conduct² ;
28 provided, however, that prior to adoption of the regulation, the
29 commissioner may, on a case-by-case basis, assess civil
30 administrative penalties up to a maximum of \$25,000 per day for
31 each violation, utilizing the criteria set forth herein. In ²²[adopting
32 rules and regulations establishing the amount of any penalty to be
33 assessed,] addition to any administrative penalty to be assessed
34 under this subsection, and notwithstanding the \$25,000 maximum
35 penalty set forth above,² the commissioner may ²²[take into account
36 the] assess any² economic benefits from the violation gained by the
37 violator. [No assessment shall be levied pursuant to this section
38 until after the party has been notified by certified mail or personal
39 service.] Prior to assessment of ²a² penalty under this subsection,
40 the property owner or person committing the violation shall be
41 notified by certified mail or personal service that the penalty is
42 being assessed. The notice shall: (1) identify the section of the law,
43 rule, regulation, permit or order violated; (2) recite the facts alleged
44 to constitute a violation; (3) state the ²basis for the² amount of the
45 civil penalties to be ²[imposed] assessed²; and (4) affirm the rights
46 of the alleged violator to a hearing. The ordered party shall have

1 '~~20~~ 35' days from receipt of the notice within which to deliver to
2 the commissioner a written request for a hearing '~~setting forth its~~
3 ~~factual and legal defenses, arguments and issues~~'. After the
4 hearing and upon finding that a violation has occurred, the
5 commissioner may issue a final order specifying the amount of the
6 fine imposed. If no hearing is requested, the notice shall become
7 final after the expiration of the '~~20-day~~ 35-day' period. Payment
8 of the assessment is due when a final order is issued or the notice
9 becomes a final order. The authority to levy an administrative
10 penalty is in addition to all other enforcement provisions in this act
11 and in any other applicable law, rule, or regulation, and the payment
12 of any assessment shall not be deemed to affect the availability of
13 any other enforcement provisions in connection with the violation
14 for which the assessment is levied. ~~Any civil administrative~~
15 ~~penalty assessed under this section may be compromised by the~~
16 ~~commissioner upon the posting of a performance bond by the~~
17 ~~violator, or upon such terms and conditions as the commissioner~~
18 ~~may establish by regulation.~~ The department may compromise
19 any civil administrative penalty assessed under this section in an
20 amount and with conditions the department determines appropriate.
21 A civil administrative penalty assessed, including a portion thereof
22 required to be paid pursuant to a payment schedule approved by the
23 department, which is not paid within 90 days of the date that
24 payment of the penalty is due, shall be subject to an interest charge
25 on the amount of the penalty, or portion thereof, which shall accrue
26 as of the date payment is due. If the penalty is contested, no
27 additional interest charge shall accrue on the amount of the penalty
28 until after the date on which a final order is issued. Interest charges
29 assessed and collectible pursuant to this subsection shall be based
30 on the rate of interest on judgments provided in the New Jersey
31 Rules of Court. ²For the purposes of this subsection, the date that
32 a penalty is due is the date that written notice of the penalty is
33 received by the person responsible for payment thereof, or such
34 later date as may be specified in the notice.²

35 e. A person who violates any provision of P.L.1981, c.249 or
36 '~~of~~' any rule[,] or regulation adopted, or permit or order issued
37 pursuant thereto, or an administrative order issued pursuant to
38 subsection b. of this section, or a court order issued pursuant to
39 subsection c. of this section, or who fails to pay a civil
40 administrative penalty in full pursuant to subsection d. of this
41 section, or who fails to make a payment pursuant to a penalty
42 payment schedule entered into with the department, or who
43 'knowingly' makes any false or misleading statement on any
44 application, record, report, or other document required to be
45 submitted to the department, shall be subject, upon order of a court,
46 to a civil penalty not to exceed ~~\$10,000~~ '~~\$50,000~~ ²~~\$35,000~~'
47 \$25,000² per day of [such] the violation, and each day during

1 which the violation continues shall constitute an additional,
2 separate, and distinct offense. Any civil penalty imposed pursuant
3 to this subsection may be collected with costs in a summary
4 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
5 P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties,
6 costs or interest charges, the court may assess against the violator
7 the amount of ²[actual]² economic benefit accruing to the violator
8 from the violation. The Superior Court and the municipal court
9 shall have jurisdiction to enforce the provisions of the "Penalty
10 Enforcement Law of 1999" in connection with this section.

11 f. A person who purposely, knowingly or recklessly violates any
12 provision of P.L.1981, c.249, or ¹[of]¹ any rule[,] or regulation
13 adopted, or permit or order issued pursuant thereto, shall be guilty,
14 upon conviction, of a crime of the ~~fourth~~ third degree and,
15 notwithstanding any provision of N.J.S.2C:43-3 to the contrary,
16 shall be subject to a fine of not less than ~~[\$2,500]~~ \$5,000 nor more
17 than ~~[\$25,000]~~ \$50,000 per day of violation, or by imprisonment,
18 or both, in addition to any other applicable penalties and provisions
19 under Title 2C of the New Jersey Statutes. ~~[A second or~~
20 ~~subsequent offense under this subsection shall subject the violator~~
21 ~~to a fine]~~ ¹[A person who negligently violates any provision of
22 P.L.1981, c.249, or of any rule or regulation adopted, or permit or
23 order issued pursuant thereto, shall be guilty, upon conviction, of a
24 crime of the fourth degree and shall, notwithstanding any provision
25 of N.J.S.2C:43-3 to the contrary, be subject to a fine of not less than
26 [\$5,000] \$2,500 nor more than [\$50,000] \$25,000 per day of
27 violation, or by imprisonment, or both, in addition to any other
28 applicable penalties and provisions under Title 2C of the New
29 Jersey Statutes.]¹ A person who ²purposely,² knowingly ², or
30 recklessly² makes a false statement, representation, or certification
31 in any application, record, or other document filed or required to be
32 maintained under the provisions of P.L.1981, c.249, or ¹[of]¹ any
33 rule or regulation adopted, or permit or order issued pursuant
34 thereto, or who falsifies, tampers with or ²purposely,² knowingly ²,
35 or recklessly² renders inaccurate, any monitoring device or method
36 required to be maintained pursuant to the provisions of P.L.1981,
37 c.249, or of any rule or regulation adopted, or permit or order issued
38 pursuant thereto, shall be guilty, upon conviction, of a crime of the
39 ~~fourth~~ third degree and, notwithstanding any provision of
40 N.J.S.2C:43-3 to the contrary, shall be subject to a fine of not more
41 than ~~[\$10,000]~~ \$50,000, or by imprisonment, or both, in addition to
42 any other applicable penalties and provisions under Title 2C of the
43 New Jersey Statutes.

44 g. In addition to the penalties prescribed in this section, ¹the
45 commissioner may record¹ a notice ¹[of] for a¹ violation of any
46 provision of P.L.1981, c.249, or ¹[of]¹ any rule[,] or regulation

1 adopted, or permit or order issued pursuant thereto, ¹which¹ shall be
2 recorded on the deed of the property wherein the violation occurred,
3 on order of the commissioner, by the clerk or register of deeds and
4 mortgages of the county wherein the affected property is located
5 ¹[and with the clerk of the Superior Court]¹ and shall remain
6 attached thereto until such time as the violation has been remedied
7 and the commissioner orders the notice of violation removed. Any
8 fees or other charges that are assessed by either the clerk or register
9 of deeds and mortgages of the county wherein the affected property
10 is located or the department for the recording of the notice of
11 violation on the deed required pursuant to this subsection shall be
12 paid by the owner of the affected property or the person committing
13 the violation ²[and the] The² commissioner shall ²[not]
14 immediately² order the notice ²[of violation]² removed ²[until such
15 time as these fees are paid in full] once the violation is remedied or
16 upon conditions set by the commissioner².

17 h. ~~Each~~ owner or person
18 having control of a reservoir or dam ~~to~~ shall provide, upon
19 request of the department, any information the department requires
20 to determine compliance with any provision of P.L.1981, c.249, or
21 ¹[of]¹ any rule~~,~~ or regulation adopted, or permit or order issued
22 pursuant thereto.

23 i. ~~Any person who knowingly, recklessly, or negligently makes~~
24 ~~a false statement, representation or certification in any application,~~
25 ~~record, or other document filed or required to be maintained under~~
26 ~~the provisions of P.L.1981, c.249, shall be in violation of the act~~
27 ~~and shall be subject to the penalties assessed pursuant to~~
28 ~~subsections d. and e. of this section.] (Deleted by amendment,~~
29 ~~P.L. , c.) (pending before the Legislature as this bill)~~

30 j. All penalties collected pursuant to this section or sums
31 collected pursuant to R.S.58:4-5 shall be deposited in the
32 "Environmental Services Fund," established pursuant to section 5 of
33 P.L.1975, c.232 (C.13:1D-33), and kept separate from other receipts
34 deposited therein, and appropriated to the department for the
35 removal of dams in the State.

36 k. The department shall have the authority to enter any property,
37 facility, premises, or site for the purpose of conducting inspections
38 to determine the condition of any dam, or to conduct inspections of
39 ordered repairs or to otherwise determine compliance with the
40 provisions of P.L.1981, c.249.

41 (cf: P.L.2005, c.228, s.2)

42
43 10. Section 12 of P.L.1972, c.185 (C.58:16A-63) is amended to
44 read as follows:

45 12. ~~Any person who knowingly violates a provision of this~~
46 ~~act or a rule, regulation or order adopted pursuant to this act shall~~
47 ~~be subject to a penalty of not more than \$2,500.00 for each offense~~

1 and any person who otherwise violates a provision of this act shall
2 be subject to a penalty of not more than \$1,500.00 for each offense,
3 both to be collected by the department in a summary proceeding
4 under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.), and in
5 any court of competent jurisdiction wherein injunctive relief has
6 been requested. The Superior Court shall have jurisdiction to
7 enforce said penalty enforcement law. If the violation is of a
8 continuing nature each day which it continues shall constitute an
9 additional, separate and distinct offense. The department is hereby
10 authorized and empowered to compromise and settle any claim for a
11 penalty under this section in such amount in the discretion of the
12 department as may appear appropriate and equitable under all of the
13 circumstances. All moneys recovered in any such action, together
14 with the costs recovered therein, shall be paid to the Environmental
15 Services Fund.

16 (b) If any person violates any of the provisions of this act or any
17 rule or regulation promulgated pursuant to the provisions of this act,
18 the department may institute an action in a court of competent
19 jurisdiction for injunctive relief to prohibit and prevent such
20 violation or violations and the said court may proceed in the action
21 in a summary manner.】 a. Whenever, on the basis of available
22 information, the commissioner finds that a person is in violation of
23 any provision of the "Flood Hazard Area Control Act," P.L.1962,
24 c.19 (C.58:16A-50 et seq.), P.L.1972, c.185, P.L.1977, c.385 or
25 P.L.1979, c.359, or any rule or regulation adopted, or permit or
26 order issued pursuant thereto, the commissioner may:

27 (1) Issue an administrative enforcement order requiring any such
28 person to comply in accordance with subsection b. of this section;

29 (2) Bring a civil action in accordance with subsection c. of this
30 section;

31 (3) Levy a civil administrative penalty in accordance with
32 subsection d. of this section;

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

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

37 Recourse to any of the remedies available under this section shall
38 not preclude recourse to any of the other remedies.

39 b. Whenever, on the basis of available information, the
40 commissioner finds that a person is in violation of any provision of
41 P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979,
42 c.359, or any rule or regulation adopted, or permit or order issued
43 pursuant thereto, the commissioner may issue an administrative
44 enforcement order: (1) specifying the provision or provisions of
45 P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979,
46 c.359, or any rule or regulation adopted, or permit or order issued
47 pursuant thereto, of which the person is in violation; (2) citing the
48 action which constituted the violation; (3) requiring compliance

1 with the provision or provisions violated; (4) requiring the
2 restoration of the area which is the site of the violation; and (5)
3 providing notice to the person of the right to a hearing on the
4 matters contained in the administrative enforcement order.

5 c. The commissioner is authorized to institute a civil action in
6 Superior Court for appropriate relief from any violation of the
7 provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
8 P.L.1979, c.359, or any rule or regulation adopted, or permit or
9 order issued pursuant thereto. Such relief may include, singly or in
10 combination:

11 (1) A temporary or permanent injunction;

12 (2) ²[Assessment of the violator for the] Recovery of²
13 ¹reasonable¹ costs of any investigation, inspection, or monitoring
14 survey which led to the discovery of the violation, and for the
15 reasonable costs of preparing and bringing ²[legal] a civil² action
16 ²commenced² under this subsection;

17 (3) ²[Assessment of the violator for ¹[any] the] Recovery of²
18 reasonable¹ costs incurred by the State in removing, correcting, or
19 terminating the adverse effects resulting from any violation of the
20 provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
21 P.L.1979, c.359, or any rule or regulation adopted, or permit or
22 order issued pursuant thereto, for which ²[legal] a civil² action
23 ²has been commended and brought² under this subsection ²[may
24 have been brought]²;

25 (4) ²[Assessment against the violator for] Recovery of²
26 compensatory damages for any loss or destruction of ²[public]
27 natural² resources, including but not limited to, wildlife, fish,
28 aquatic life, habitat, plants, or historic or archeological resources,
29 and for any other actual damages caused by a violation of the
30 provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
31 P.L.1979, c.359, or any rule or regulation adopted, or permit or
32 order issued pursuant thereto ²for which a civil action has be
33 commenced and brought under this subsection² . Assessments
34 under this subsection shall be paid to the ¹[Wetlands Mitigation
35 Bank established pursuant to section 14 of P.L.1987, c.156
36 (C.13:9B-14), except that compensatory damages to privately held
37 resources shall be paid by specific order of the court to any persons
38 who have been aggrieved by a violation of any provision of
39 P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979,
40 c.359, or any rule or regulation adopted, or permit or order issued
41 pursuant thereto.] State Treasurer¹;

42 (5) ²[A requirement that] An order requiring² the violator
43 restore the site of the violation to the maximum extent practicable
44 and feasible or, in the event that restoration of the site of the
45 violation is not practicable or feasible, provide for off-site
46 restoration alternatives as approved by the department.

1 d. The commissioner is authorized to assess a civil
2 administrative penalty of not more than ¹[\$50,000] ²[\$35,000¹
3 \$25,000² for each violation of the provisions of P.L.1962, c.19,
4 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or
5 regulation adopted, or permit or order issued pursuant thereto, and
6 each day during which each violation continues shall constitute an
7 additional, separate and distinct offense. Any amount assessed
8 under this subsection shall fall within a range established by
9 regulation by the commissioner for violations of similar type,
10 seriousness, ²['actual harm to the environment,' and]² duration ²,
11 and conduct² ; provided, however, that prior to the adoption of the
12 regulation, the commissioner may, on a case-by-case basis, assess
13 civil administrative penalties up to a maximum of \$25,000 per day
14 for each violation, utilizing the criteria set forth herein. In
15 ²[adopting rules and regulations establishing the amount of any
16 penalty to be assessed,] addition to any administrative penalty
17 assessed under this subsection, and notwithstanding the \$25,000
18 maximum penalty set forth above, ² the commissioner may ²[take
19 into account the] assess any² economic benefits from the violation
20 gained by the violator. Prior to assessment of ²a² penalty under this
21 subsection, the property owner or person committing the violation
22 shall be notified by certified mail or personal service that the
23 penalty is being assessed. The notice shall include a reference to
24 the section of the statute, regulation, order or permit condition
25 violated; recite the facts alleged to constitute a violation; state the
26 ²basis for the² amount of the civil penalties to be
27 ²[imposed]assessed²; and affirm the rights of the alleged violator
28 to a hearing. The ordered party shall have ¹[20] 35¹ calendar days
29 from receipt of the notice within which to deliver to the
30 commissioner a written request for a hearing ¹[setting forth its
31 factual and legal defenses, arguments and issues]¹. After the
32 hearing and upon finding that a violation has occurred, the
33 commissioner may issue a final administrative enforcement order
34 after assessing the amount of the fine specified in the notice. If no
35 hearing is requested, the notice shall become a final administrative
36 enforcement order after the expiration of the ¹[20-day] 35-day¹
37 period. Payment of the assessment is due when a final
38 administrative enforcement order is issued or the notice becomes a
39 final administrative enforcement order. The authority to levy a civil
40 administrative order is in addition to all other enforcement
41 provisions in P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
42 P.L.1979, c.359, or any rule or regulation adopted, or permit or
43 order issued pursuant thereto, and the payment of any assessment
44 shall not be deemed to affect the availability of any other
45 enforcement provisions in connection with the violation for which
46 the assessment is levied. The department may compromise any

1 civil administrative penalty assessed under this section in an
2 amount and with conditions the department determines appropriate.
3 A civil administrative penalty assessed, including a portion thereof
4 required to be paid pursuant to a payment schedule approved by the
5 department, which is not paid within 90 days of the date that
6 payment of the penalty is due, shall be subject to an interest charge
7 on the amount of the penalty, or portion thereof, which shall accrue
8 as of the date payment is due. If the penalty is contested, no
9 additional interest charge shall accrue on the amount of the penalty
10 until after the date on which a final order is issued. Interest charges
11 assessed and collectible pursuant to this subsection shall be based
12 on the rate of interest on judgments provided in the New Jersey
13 Rules of Court. ²[For the purposes of this subsection, the date that
14 a penalty is due is the date that written notice of the penalty is
15 received by the person responsible for payment thereof, or a later
16 date as may be specified in the notice.]²

17 e. A person who violates any provision of P.L.1962, c.19,
18 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or ¹[of] any
19 rule or regulation adopted, or permit or order issued pursuant
20 thereto, or an administrative order issued pursuant to subsection b.
21 of this section, or a court order issued pursuant to subsection c. of
22 this section, or who fails to pay a civil administrative ²[assessment]
23 penalty² in full pursuant to subsection d. of this section, or who
24 fails to make a payment pursuant to a penalty payment schedule
25 entered into with the department, or who ¹knowingly¹ makes any
26 false or misleading statement on any application, record, report, or
27 other document required to be submitted to the department, shall be
28 subject, upon order of a court, to a civil penalty not to exceed
29 ¹[\$50,000] ²[\$35,000¹] \$25,000² per day of the violation, and
30 each day during which the violation continues shall constitute an
31 additional, separate, and distinct offense. Any civil penalty
32 imposed pursuant to this subsection may be collected with costs in a
33 summary proceeding pursuant to the "Penalty Enforcement Law of
34 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any
35 penalties, costs or interest charges, the court may assess against the
36 violator the amount of ²[actual]² economic benefit accruing to the
37 violator from the violation. The Superior Court shall have
38 jurisdiction to enforce the provisions of the "Penalty Enforcement
39 Law of 1999" in connection with this act.

40 f. A person who purposely, knowingly or recklessly violates any
41 provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
42 P.L.1979, c.359, or ¹[of] any rule or regulation adopted, or permit
43 or order issued pursuant thereto, shall be guilty, upon conviction, of
44 a crime of the third degree and shall, notwithstanding the provisions
45 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less
46 than \$5,000 nor more than \$50,000 per day of violation, or by
47 imprisonment, or both. ¹[A person who negligently violates any

1 provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
2 P.L.1979, c.359, or of any rule or regulation adopted, or permit or
3 order issued pursuant thereto, shall be guilty, upon conviction, of a
4 crime of the fourth degree and shall, notwithstanding the provisions
5 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less
6 than \$2,500 nor more than \$25,000 per day of violation, or by
7 imprisonment, or both.]¹ A person who ²purposely,² knowingly ²,
8 or recklessly² makes a false statement, representation, or
9 certification in any application, record, or other document filed or
10 required to be maintained under any provision of P.L.1962, c.19,
11 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or ¹["of"]¹ any
12 rule or regulation adopted, or permit or order issued pursuant
13 thereto, or who falsifies, tampers with or ²purposely,² knowingly ²,
14 or recklessly² renders inaccurate, any monitoring device or method
15 required to be maintained pursuant to P.L.1962, c.19, P.L.1972,
16 c.185, P.L.1977, c.385 or P.L.1979, c.359, or ¹["of"]¹ any rule or
17 regulation adopted, or permit or order issued pursuant thereto, shall
18 be guilty, upon conviction, of a crime of the third degree and shall,
19 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
20 subject to a fine of not more than \$50,000 per day of violation, or
21 by imprisonment, or both.

22 g. In addition to the penalties prescribed in this section, ¹the
23 commissioner may record¹ a notice ¹["of"]¹ for a¹ violation of any
24 provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
25 P.L.1979, c.359, or ¹["of"]¹ any rule or regulation adopted, or permit
26 or order issued pursuant thereto, ¹which¹ shall be recorded on the
27 deed of the property wherein the violation occurred, on order of the
28 commissioner, by the clerk or register of deeds and mortgages of
29 the county wherein the affected property is located ¹["and with the
30 clerk of the Superior Court"]¹ and shall remain attached thereto until
31 such time as the violation has been remedied and the commissioner
32 orders the notice of violation removed. Any fees or other charges
33 that are assessed by either the clerk or register of deeds and
34 mortgages of the county wherein the affected property is located or
35 the department for the recording of the notice of violation on the
36 deed required pursuant to this ²["paragraph"]² subsection² shall be
37 paid by the owner of the affected property or person committing the
38 violation. ²["The notice of violation may be removed upon payment
39 in full or upon meeting other conditions set forth by the
40 commissioner."] The commissioner shall immediately order the
41 notice removed once the violation is remedied or upon conditions
42 set forth by the commissioner.²

43 h. ²["If the violation is one in which the department has
44 determined that the restoration of the site to its pre-violation
45 condition would increase the harm to the waters of the State or its
46 ecology, the department may issue an "after the fact" permit for the

1 regulated activity that has already occurred; provided that
2 assessment against the violator for costs or damages enumerated in
3 subsection c. of this section has been made, an opportunity has been
4 afforded for public hearing and comment, and the reasons for the
5 issuance of the "after the fact" permit are published in the New
6 Jersey Register and in a newspaper of general circulation in the
7 geographical area of the violation. Any person violating an "after
8 the fact" permit issued pursuant to this subsection shall be subject
9 to the provisions of this section.

10 i.]² Each applicant or permittee shall provide, upon the request
11 of the department, any information the department requires to
12 determine compliance with the provisions of P.L.1962, c.19,
13 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or '[of]' any
14 rule or regulation adopted, or permit or order issued pursuant
15 thereto.

16 (cf: P.L.1991, c.91, s.532)

17
18 ¹¹ Section 10 of P.L.1977, c.224 (C.58:12A-10) is amended to
19 read as follows:

20 10. a. **【If any person violates any of the provisions of this act or**
21 **any rule, regulation or order promulgated or issued pursuant to the**
22 **provisions of this act, the department may institute a civil action in**
23 **a court of competent jurisdiction for injunctive or any other**
24 **appropriate relief to prohibit and prevent such violation or**
25 **violations, and the said court may proceed in the action in a**
26 **summary manner.】** Whenever, on the basis of available
27 information, the commissioner finds that a person is in violation of
28 any provision of the "Safe Drinking Water Act," P.L.1977, c.224
29 (C.58:12A-1 et seq.), or any rule or regulation adopted, or permit or
30 order issued pursuant thereto, the commissioner may:

31 (1) Issue an administrative enforcement order requiring any such
32 person to comply in accordance with subsection b. of this section;

33 (2) Bring a civil action in accordance with subsection c. of this
34 section;

35 (3) Levy a civil administrative penalty in accordance with
36 subsection d. of this section;

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

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

41 Recourse to any of the remedies available under this section shall
42 not preclude recourse to any of the other remedies.

43 b. **【Any person who violates the provisions of this act or any**
44 **rule, regulation or order promulgated pursuant to this act shall be**
45 **liable to a civil administrative penalty of not more than \$5,000.00**
46 **for the first offense, not less than \$5,000.00 nor more than**
47 **\$10,000.00 for the second offense, and up to \$25,000.00 for the**

1 third and each subsequent offense, to be collected in a civil action
2 by a summary proceeding under "the penalty enforcement law"
3 (N.J.S.2A:58-1 et seq.), or in any case before a court of competent
4 jurisdiction wherein injunctive relief had been requested. If the
5 violation is of a continuing nature, each day during which it
6 continues subsequent to receipt of an order to cease the violation
7 shall constitute an additional, separate and distinct offense. No civil
8 administrative penalty shall be levied, except subsequent to the
9 notification of the violator by certified mail or personal service. The
10 notice shall include a reference to the section of the statute,
11 regulation, order or permit condition violated; a concise statement
12 of the facts alleged to constitute the violation; a statement of the
13 amount of the civil penalties to be imposed; and a statement of the
14 violator's right to a hearing. The violator shall have 20 days from
15 receipt of the notice within which to deliver to the commissioner a
16 written request for a hearing. Subsequent to the hearing and upon a
17 finding that a violation has occurred, the commissioner may issue a
18 final order after assessing the amount of the fine specified in the
19 notice. If no hearing is requested, the notice shall become a final
20 order upon the expiration of the 20-day period. Payment of the
21 penalty is due when a final order is issued or when the notice
22 becomes a final order. The authority to levy a civil administrative
23 penalty is in addition to all other enforcement provisions in this act,
24 and the payment of a civil administrative penalty shall not be
25 deemed to affect the availability of any other enforcement provision
26 in connection with the violation for which the penalty is levied.】

27 Whenever, on the basis of available information, the commissioner
28 finds that a person is in violation of any provision of P.L.1977,
29 c.224, or any rule or regulation adopted, or permit or order issued
30 pursuant thereto, the commissioner may issue an administrative
31 enforcement order: (1) specifying the provision or provisions of
32 P.L.1977, c.224, or any rule or regulation adopted, or permit or
33 order issued pursuant thereto, of which the person is in violation;
34 (2) citing the action which constituted the violation; (3) requiring
35 compliance with the provision or provisions violated; (4) requiring
36 the restoration of the area which is the site of the violation; and (5)
37 providing notice to the person of the right to a hearing on the
38 matters contained in the administrative enforcement order.

39 c. The 【department】 commissioner is 【hereby authorized and
40 empowered to compromise and settle any claim for a penalty under
41 this section in such amount in the discretion of the department as
42 may appear appropriate and equitable under all of the
43 circumstances, including the posting of a performance bond by the
44 violator.】 authorized to institute a civil action in Superior Court for
45 appropriate relief from any violation of the provisions of P.L.1977,
46 c.224, or any rule or regulation adopted, or permit or order issued
47 pursuant thereto. Such relief may include, singly or in combination:

48 (1) A temporary or permanent injunction;

1 (2) ²[Assessment of the violator for the] Recovery of²
2 reasonable costs of any investigation, inspection, or monitoring
3 survey which led to the discovery of the violation, and for the
4 reasonable costs of preparing and bringing ²[legal] a civil² action
5 ²commenced² under this subsection:

6 (3) ²[Assessment of the violator for the] Recovery of²
7 reasonable costs incurred by the State in removing, correcting, or
8 terminating the adverse effects resulting from any violation of the
9 provisions of P.L.1977, c.224, or any rule or regulation adopted, or
10 permit or order issued pursuant thereto, for which ²[legal] a civil²
11 action ²has been commenced and brought² under this subsection
12 ²[may have been brought]²:

13 (4) ²[A requirement that] An order requiring² the violator
14 restore the site of the violation to the maximum extent practicable
15 and feasible or, in the event that restoration of the site of the
16 violation is not practicable or feasible, provide for off-site
17 restoration alternatives as approved by the department.

18 d. [Any person who violates this act, or an administrative order
19 issued pursuant to subsection b. of this section, or a court order
20 issued pursuant to subsection a. of this section, or who fails to pay a
21 civil administrative penalty in full pursuant to subsection b. of this
22 section shall be subject, upon order of the court, to a civil penalty
23 not to exceed \$10,000.00 per day of the violation, and each day's
24 continuance of the violation shall constitute a separate and distinct
25 violation. Any penalty imposed under this subsection may be
26 recovered with costs in a summary proceeding pursuant to "the
27 penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Superior
28 Court shall have jurisdiction to enforce "the penalty enforcement
29 law."] The commissioner is authorized to assess a civil
30 administrative penalty of not more than ²[\$35,000] \$25,000² for
31 each violation of the provisions of P.L.1977, c.224, or any rule or
32 regulation adopted, or permit or order issued pursuant thereto, and
33 each day during which each violation continues shall constitute an
34 additional, separate and distinct offense. Any amount assessed
35 under this subsection shall fall within a range established by
36 regulation by the commissioner for violations of similar type,
37 seriousness, ²[actual harm to the environment, and]² duration ²and
38 conduct²; provided, however, that prior to the adoption of the
39 regulation, the commissioner may, on a case-by-case basis, assess
40 civil administrative penalties up to a maximum of \$25,000 per day
41 for each violation, utilizing the criteria set forth herein. In
42 ²[adopting rules and regulations establishing the amount of any
43 penalty to be assessed,] addition to any administrative penalty
44 assessed under this subsection, and notwithstanding the \$25,000
45 maximum penalty set forth above, ² the commissioner may ²[take
46 into account the] assess any² economic benefits from the violation

1 gained by the violator. Prior to assessment of ²a² penalty under this
2 subsection, the property owner or person committing the violation
3 shall be notified by certified mail or personal service that the
4 penalty is being assessed. The notice shall include a reference to
5 the section of the statute, regulation, order or permit condition
6 violated; recite the facts alleged to constitute a violation; state the
7 ²basis for the² amount of the civil penalties to be ²[imposed]
8 assessed²; and affirm the rights of the alleged violator to a hearing.
9 The ordered party shall have 35 calendar days from receipt of the
10 notice within which to deliver to the commissioner a written request
11 for a hearing. After the hearing and upon finding that a violation
12 has occurred, the commissioner may issue a final administrative
13 enforcement order after assessing the amount of the fine specified
14 in the notice. If no hearing is requested, the notice shall become a
15 final administrative enforcement order after the expiration of the
16 35-day period. Payment of the assessment is due when a final
17 administrative enforcement order is issued or the notice becomes a
18 final administrative enforcement order. The authority to levy a civil
19 administrative order is in addition to all other enforcement
20 provisions in P.L.1977, c.224, or any rule or regulation adopted, or
21 permit or order issued pursuant thereto, and the payment of any
22 assessment shall not be deemed to affect the availability of any
23 other enforcement provisions in connection with the violation for
24 which the assessment is levied. The department may compromise
25 any civil administrative penalty assessed under this section in an
26 amount and with conditions the department determines appropriate.
27 A civil administrative penalty assessed, including a portion thereof
28 required to be paid pursuant to a payment schedule approved by the
29 department, which is not paid within 90 days of the date that
30 payment of the penalty is due, shall be subject to an interest charge
31 on the amount of the penalty, or portion thereof, which shall accrue
32 as of the date payment is due. If the penalty is contested, no
33 additional interest charge shall accrue on the amount of the penalty
34 until after the date on which a final order is issued. Interest charges
35 assessed and collectible pursuant to this subsection shall be based
36 on the rate of interest on judgments provided in the New Jersey
37 Rules of Court. ²[For the purposes of this subsection, the date that
38 a penalty is due is the date that written notice of the penalty is
39 received by the person responsible for payment thereof, or a later
40 date as may be specified in the notice.]²

41 e. A person who violates any provision of P.L.1977, c.224, or
42 any rule or regulation adopted, or permit or order issued pursuant
43 thereto, or an administrative order issued pursuant to subsection b.
44 of this section, or a court order issued pursuant to subsection c. of
45 this section, or who fails to pay a civil administrative ²[assessment]
46 penalty² in full pursuant to subsection d. of this section, or who
47 fails to make a payment pursuant to a penalty payment schedule

1 entered into with the department, or who knowingly makes any
2 false or misleading statement on any application, record, report, or
3 other document required to be submitted to the department, shall be
4 subject, upon order of a court, to a civil penalty not to exceed
5 \$35,000 per day of the violation, and each day during which the
6 violation continues shall constitute an additional, separate, and
7 distinct offense. Any civil penalty imposed pursuant to this
8 subsection may be collected with costs in a summary proceeding
9 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
10 c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or
11 interest charges, the court may assess against the violator the
12 amount of ²[actual]² economic benefit accruing to the violator
13 from the violation. The Superior Court shall have jurisdiction to
14 enforce the provisions of the "Penalty Enforcement Law of 1999" in
15 connection with this act.

16 f. A person who purposely, knowingly or recklessly violates any
17 provision of P.L.1977, c.224, or any rule or regulation adopted, or
18 permit or order issued pursuant thereto, shall be guilty, upon
19 conviction, of a crime of the third degree and shall, notwithstanding
20 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
21 of not less than \$5,000 nor more than \$50,000 per day of violation,
22 or by imprisonment, or both. A person who ²purposely,² knowingly
23 ², or recklessly² makes a false statement, representation, or
24 certification in any application, record, or other document filed or
25 required to be maintained under any provision of P.L.1977, c.224,
26 or any rule or regulation adopted, or permit or order issued pursuant
27 thereto, or who falsifies, tampers with or ²purposely,² knowingly ²,
28 or recklessly² renders inaccurate, any monitoring device or method
29 required to be maintained pursuant to P.L.1977, c.224, or any rule
30 or regulation adopted, or permit or order issued pursuant thereto,
31 shall be guilty, upon conviction, of a crime of the third degree and
32 shall, notwithstanding the provisions of subsection b. of
33 N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day
34 of violation, or by imprisonment, or both.

35 g. ²[If the violation is one in which the department has
36 determined that the restoration of the site to its pre-violation
37 condition would increase the harm to the waters of the State or its
38 ecology, the department may issue an "after the fact" permit for the
39 regulated activity that has already occurred; provided that
40 assessment against the violator for costs or damages enumerated in
41 subsection c. of this section has been made, an opportunity has been
42 afforded for public hearing and comment, and the reasons for the
43 issuance of the "after the fact" permit are published in the New
44 Jersey Register and in a newspaper of general circulation in the
45 geographical area of the violation. Any person violating an "after
46 the fact" permit issued pursuant to this subsection shall be subject
47 to the provisions of this section.

1 h. The burden of proof and degree of knowledge or intent
2 required to establish a violation of any provision of P.L.1977,
3 c.224, or any rule or regulation adopted, or permit or order issued
4 pursuant thereto, shall be no greater than the burden of proof or
5 degree of knowledge or intent which the United States
6 Environmental Protection Agency must meet in establishing a
7 violation of the Federal act or implementing regulations.

8 i. The department shall establish and implement a program
9 designed to facilitate public participation in the enforcement of
10 P.L.1977, c.224, or any rule or regulation adopted, or permit or
11 order issued pursuant thereto, which complies with the requirements
12 of the Federal act and implementing regulations.

13 j. The department shall make available without restriction any
14 information obtained or used in the implementation of P.L.1977,
15 c.224 to the United States Environmental Protection Agency upon a
16 request therefor.

17 k.]² Each applicant or permittee shall provide, upon the request
18 of the department, any information the department requires to
19 determine compliance with the provisions of P.L.1977, c.224, or
20 any rule or regulation adopted, or permit or order issued pursuant
21 thereto.

22 (cf: P.L.1991, c.91, s.531)¹

23

24 ¹[11.] 12.¹ This act shall take effect immediately.

25

26

27

28

29 Updates enforcement provisions of various environmental laws
30 in a uniform manner.

SENATE, No. 2650

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MAY 14, 2007

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator BARBARA BUONO

District 18 (Middlesex)

SYNOPSIS

Updates enforcement provisions of various environmental laws in a uniform manner.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the enforcement of the State's environmental
2 laws, and amending parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. R.S.12:5-6 is amended to read as follows:

8 12:5-6. a. Any development or improvement enumerated in
9 R.S.12:5-3 and in P.L.1975, c.232 (C.13:1D-29 et seq.) or included
10 within any rule or regulation adopted pursuant thereto, which is
11 commenced or executed without first obtaining approval, or
12 contrary to the conditions of approval, as provided in R.S.12:5-3
13 and in P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule or
14 regulation adopted, or permit or order issued pursuant thereto, shall
15 be deemed to be a purpresture, a public nuisance and a violation
16 under this section [and shall be abated in the name of the State by
17 one or more of the following actions:

18 (1) The issuance of an administrative order by the
19 Commissioner of the Department of Environmental Protection
20 specifying that there has been a violation of the provisions of this
21 section, or any applicable rule, regulation or permit; setting forth
22 the facts forming the basis for the issuance of the order; and
23 specifying the course of action necessary to correct the violation;

24 (2) The commencement of a civil action by the commissioner in
25 Superior Court for injunctive or other appropriate relief;

26 (3) The levying of an administrative penalty by the
27 commissioner in accordance with subsection b. of this section.

28 b. The commissioner is authorized to assess an administrative
29 penalty of not more than \$1,000.00 for each violation of this
30 section, and is authorized to assess additional penalties of not more
31 than \$100.00 for each day during which this violation continues
32 after receipt of an administrative order from the department
33 pursuant to paragraph (1) of subsection a. of this section. Prior to
34 the assessment of a penalty under this subsection, the property
35 owner or person committing the violation shall be notified by
36 certified mail or personal service that a penalty is being assessed.
37 The notice shall include a reference to the section of the law,
38 regulation, or permit condition violated; a concise statement of the
39 facts alleged to constitute the violation; a statement of the amount
40 of the administrative penalty assessed and a statement of the party's
41 right to an administrative hearing.

42 c. The party shall have 21 days from receipt of the notice
43 within which to deliver to the commissioner a written request for a
44 hearing. This request shall specify in detail the statements
45 contested by the party. If no hearing is requested, then after 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 underlined thus is new matter.

1 expiration of the 21-day period the commissioner shall issue a final
2 order assessing the penalty specified in the notice. The penalty is
3 due when the final order is issued.

4 d. If a hearing is requested, it shall be held within 30 days of
5 the date on which the request is received by the commissioner. If a
6 violation is found to have occurred, the commissioner may issue a
7 final order assessing not more than the amount of the penalty
8 specified in the notice. The penalty is due when the final order is
9 issued.

10 e. Any penalty imposed pursuant to this section may be
11 enforced as provided for in "the penalty enforcement law" (N.J.S.
12 2A:58-1 et seq.)].

13 b. Whenever, on the basis of available information, the
14 commissioner finds that a person is in violation of any provision of
15 R.S.2:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule or
16 regulation adopted, or permit or order issued pursuant thereto, the
17 commissioner may:

18 (1) Issue an order requiring any such person to comply in
19 accordance with subsection c. of this section; or

20 (2) Bring a civil action in accordance with subsection d. of this
21 section; or

22 (3) Levy a civil administrative penalty in accordance with
23 subsection e. of this section; or

24 (4) Bring an action for a civil penalty in accordance with
25 subsection f. of this section; or

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

28 Recourse to any of the remedies available under this section shall
29 not preclude recourse to any of the other remedies.

30 c. Whenever, on the basis of available information, the
31 commissioner finds a person in violation of any provision of
32 R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule
33 or regulation adopted, or permit or order issued pursuant thereto,
34 the commissioner may issue an order: (1) specifying the provision
35 or provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.),
36 or the rule, regulation, permit or order of which the person is in
37 violation; (2) citing the action which constituted the violation; (3)
38 requiring compliance with the provision or provisions violated; (4)
39 requiring the restoration of the area which is the site of the
40 violation; and (5) providing notice to the person of the right to a
41 hearing on the matters contained in the order.

42 d. The commissioner is authorized to institute a civil action in
43 Superior Court for appropriate relief from any violation of any
44 provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or
45 any rule or regulation adopted, or permit or order issued pursuant
46 thereto. Such relief may include, singly or in combination:

47 (1) A temporary or permanent injunction;

1 (2) Assessment of the violator for the costs of any investigation,
2 inspection, or monitoring survey which led to the discovery of the
3 violation, and for the reasonable costs of preparing and bringing
4 legal action under this subsection;

5 (3) Assessment of the violator for any costs incurred by the State
6 in removing, correcting, or terminating the adverse effects resulting
7 from any unauthorized regulated activity for which legal action
8 under this subsection may have been brought;

9 (4) Assessment against the violator for compensatory damages
10 for any loss or destruction of public resources, including but not
11 limited to, wildlife, fish, aquatic life, habitat, plants, or historic or
12 archeological resources, and for any other actual damages caused by
13 an unauthorized regulated activity. Assessments under this
14 subsection shall be paid to the “Cooperative Coastal Monitoring,
15 Restoration and Enforcement Fund” established pursuant to section
16 18 of P.L.1973, c.185 (C.13:19-18), except that compensatory
17 damages to privately held resources shall be paid by specific order
18 of the court to any persons who have been aggrieved by the
19 unauthorized regulated activity;

20 (5) A requirement that the violator restore the site of the
21 violation to the maximum extent practicable and feasible or, in the
22 event that restoration of the site of the violation is not practicable or
23 feasible, provide for off-site restoration alternatives as approved by
24 the department.

25 e. The commissioner is authorized to assess a civil
26 administrative penalty of not more than \$50,000 for each violation
27 of the provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et
28 seq.), or of any rule or regulation adopted, or permit or order issued
29 pursuant thereto, and each day during which each violation
30 continues shall constitute an additional, separate, and distinct
31 offense. Any amount assessed under this subsection shall fall
32 within a range established by regulation by the commissioner for
33 violations of similar type, seriousness, and duration; provided,
34 however, that prior to the adoption of the regulation, the
35 commissioner may, on a case-by-case basis, assess civil
36 administrative penalties up to a maximum of \$25,000 per day for
37 each violation, utilizing the criteria set forth herein. In adopting
38 rules and regulations establishing the amount of any penalty to be
39 assessed, the commissioner may take into account the economic
40 benefits from the violation gained by the violator. Prior to
41 assessment of penalty under this subsection, the property owner or
42 person committing the violation shall be notified by certified mail
43 or personal service that the penalty is being assessed. The notice
44 shall identify the section of the statute, regulation, or order or
45 permit condition violated; recite the facts alleged to constitute a
46 violation; state the amount of the civil penalties to be imposed; and
47 affirm the rights of the alleged violator to a hearing. The ordered
48 party shall have 20 days from receipt of the notice within which to

1 deliver to the commissioner a written request for a hearing setting
2 forth its factual and legal defenses, arguments and issues. After the
3 hearing and upon finding that a violation has occurred, the
4 commissioner may issue a final order after assessing the amount of
5 the fine specified in the notice. If no hearing is requested, the
6 notice shall become a final order after the expiration of the 20-day
7 period. Payment of the assessment is due when a final order is
8 issued or the notice becomes a final order. The authority to levy an
9 administrative order is in addition to all other enforcement
10 provisions in R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.),
11 and the payment of any assessment shall not be deemed to affect the
12 availability of any other enforcement provisions in connection with
13 the violation for which the assessment is levied. The department
14 may compromise any civil administrative penalty assessed under
15 this section in an amount and with conditions the department
16 determines appropriate. A civil administrative penalty assessed,
17 including any portion thereof required to be paid pursuant to a
18 payment schedule approved by the department, which is not paid
19 within 90 days of the date that payment of the penalty is due, shall
20 be subject to an interest charge on the amount of the penalty, or
21 portion thereof, which shall accrue as of the date payment is due. If
22 the penalty is contested, no additional interest charge shall accrue
23 on the amount of the penalty until after the date on which a final
24 order is issued. Interest charges assessed and collectible pursuant to
25 this subsection shall be based on the rate of interest on judgments
26 provided in the New Jersey Rules of Court. For the purposes of this
27 subsection, the date that a penalty is due is the date that written
28 notice of the penalty is received by the person responsible for
29 payment thereof, or such later date as may be specified in the
30 notice.

31 f. A person who violates any provision of R.S.12:5-3 or
32 P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule or regulation
33 adopted, or permit or order issued pursuant thereto, or an
34 administrative order issued pursuant to subsection c. of this section,
35 or a court order issued pursuant to subsection d. of this section, or
36 who fails to pay a civil administrative assessment in full pursuant to
37 subsection e. of this section, or who fails to make a payment
38 pursuant to a penalty payment schedule entered into with the
39 department, or who makes any false or misleading statement on any
40 application, record, report, or other document required to be
41 submitted to the department, shall be subject, upon order of a court,
42 to a civil penalty not to exceed \$50,000 per day of the violation, and
43 each day during which the violation continues shall constitute an
44 additional, separate, and distinct offense. Any civil penalty
45 imposed pursuant to this subsection may be collected with costs in a
46 summary proceeding pursuant to the "Penalty Enforcement Law of
47 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any
48 penalties, costs or interest charges, the court may assess against the

1 violator the amount of actual economic benefit accruing to the
2 violator from the violation.

3 g. A person who purposely, knowingly or recklessly violates any
4 provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or
5 of any rule or regulation adopted, or permit or order issued pursuant
6 thereto, shall be guilty, upon conviction, of a crime of the third
7 degree and shall, notwithstanding the provisions of subsection b. of
8 N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more
9 than \$50,000 per day of violation, or by imprisonment, or both. A
10 person who negligently violates any provision of R.S.12:5-3 or
11 P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule or regulation
12 adopted, or permit or order issued pursuant thereto, shall be guilty,
13 upon conviction, of a crime of the fourth degree and shall,
14 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
15 subject to a fine of not less than \$2,500 nor more than \$25,000 per
16 day of violation, or by imprisonment, or both. A person who
17 knowingly makes a false statement, representation, or certification
18 in any application, record, or other document filed or required to be
19 maintained under any provision of R.S.12:5-3 or P.L.1975, c.232
20 (C.13:1D-29 et seq.), or of any rule or regulation adopted, or permit
21 or order issued pursuant thereto, or who falsifies, tampers with or
22 knowingly renders inaccurate, any monitoring device or method
23 required to be maintained pursuant to R.S.12:5-3 or P.L.1975, c.232
24 (C.13:1D-29 et seq.), or of any rule or regulation adopted, or permit
25 or order issued pursuant thereto, shall be guilty, upon conviction, of
26 a crime of the third degree and shall, notwithstanding the provisions
27 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more
28 than \$50,000 per day of violation, or by imprisonment, or both.

29 h. In addition to the penalties prescribed in this section, a notice
30 of violation of any provision of R.S.12:5-3 or P.L.1975, c.232
31 (C.13:1D-29 et seq.), or of any rule or regulation adopted, or permit
32 or order issued pursuant thereto, shall be recorded on the deed of
33 the property wherein the violation occurred, on order of the
34 commissioner, by the clerk or register of deeds and mortgages of
35 the county wherein the affected property is located and with the
36 clerk of the Superior Court and shall remain attached thereto until
37 such time as the violation has been remedied and the commissioner
38 orders the notice of violation removed. Any fees or other charges
39 that are assessed by either the clerk or register of deeds and
40 mortgages of the county wherein the affected property is located or
41 by the department for the recording of the notice of violation on the
42 deed required pursuant to this subsection shall be paid by the owner
43 of the affected property or person committing the violation and the
44 commissioner shall not order the notice of violation removed until
45 such time as these fees are paid in full.

46 i. If the violation is one in which the department has determined
47 that the restoration of the site to its pre-violation condition would
48 increase the harm to the environment or public safety, the

1 department may issue an "after the fact" permit for the regulated
2 activity that has already occurred; provided that assessment against
3 the violator for costs or damages enumerated in subsection c. of this
4 section has been made, an opportunity has been afforded for public
5 hearing and comment, and the reasons for the issuance of the "after
6 the fact" permit are published in the New Jersey Register and in a
7 newspaper of general circulation in the geographical area of the
8 violation. Any person violating an "after the fact" permit issued
9 pursuant to this subsection shall be subject to the provisions of this
10 section.

11 j. Each applicant or permittee shall provide, upon the request of
12 the department, any information the department requires to
13 determine compliance with the provisions of R.S.12:5-3 or
14 P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule or regulation
15 adopted, or permit or order issued pursuant thereto.

16 (cf: P.L.1985, c.125, s.1)

17

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

20 12. The department shall formulate comprehensive policies for
21 the conservation of the natural resources of the State, the promotion
22 of environmental protection and the prevention of pollution of the
23 environment of the State. The department shall in addition to the
24 powers and duties vested in it by this act or by any other law have
25 the power to:

26 a. Conduct and supervise research programs for the purpose of
27 determining the causes, effects and hazards to the environment and
28 its ecology;

29 b. Conduct and supervise Statewide programs of education,
30 including the preparation and distribution of information relating to
31 conservation, environmental protection and ecology;

32 c. Require the registration of persons engaged in operations
33 which may result in pollution of the environment and the filing of
34 reports by them containing such information as the department may
35 prescribe to be filed relative to pollution of the environment, all in
36 accordance with applicable codes, rules or regulations established
37 by the department;

38 d. Enter and inspect any property, facility, building, premises,
39 site or place for the purpose of investigating an actual or suspected
40 source of pollution of the environment and conducting inspections,
41 collecting samples, copying or photocopying documents or records,
42 and for otherwise ascertaining compliance or noncompliance with
43 any laws, codes, rules and regulations of the department. Any
44 information relating to secret processes concerning methods of
45 manufacture or production, obtained in the course of such
46 inspection, investigation or determination, shall be kept
47 confidential, except this information shall be available to the
48 department for use, when relevant, in any administrative or judicial

1 proceedings undertaken to administer, implement, and enforce State
2 environmental law, but shall remain subject only to those
3 confidentiality protections otherwise afforded by federal law and by
4 the specific State environmental laws and regulations that the
5 department is administering, implementing and enforcing in that
6 particular case or instance. In addition, this information shall be
7 available upon request to the United States Government for use in
8 administering, implementing, and enforcing federal environmental
9 law, but shall remain subject to the confidentiality protection
10 afforded by federal law. If samples are taken for analysis, a
11 duplicate of the analytical report shall be furnished promptly to the
12 person suspected of causing pollution of the environment;

13 e. Receive or initiate complaints of pollution of the
14 environment, including thermal pollution, hold hearings in
15 connection therewith and institute legal proceedings for the
16 prevention of pollution of the environment and abatement of
17 nuisances in connection therewith and shall have the authority to
18 seek and obtain injunctive relief and the recovery of fines and
19 penalties in summary proceedings in the Superior Court;

20 f. Prepare, administer and supervise Statewide, regional and
21 local programs of conservation and environmental protection,
22 giving due regard for the ecology of the varied areas of the State
23 and the relationship thereof to the environment, and in connection
24 therewith prepare and make available to appropriate agencies in the
25 State technical information concerning conservation and
26 environmental protection, cooperate with the Commissioner of
27 Health and Senior Services in the preparation and distribution of
28 environmental protection and health bulletins for the purpose of
29 educating the public, and cooperate with the Commissioner of
30 Health and Senior Services in the preparation of a program of
31 environmental protection;

32 g. Encourage, direct and aid in coordinating State, regional and
33 local plans and programs concerning conservation and
34 environmental protection in accordance with a unified Statewide
35 plan which shall be formulated, approved and supervised by the
36 department. In reviewing such plans and programs and in
37 determining conditions under which such plans may be approved,
38 the department shall give due consideration to the development of a
39 comprehensive ecological and environmental plan in order to be
40 assured insofar as is practicable that all proposed plans and
41 programs shall conform to reasonably contemplated conservation
42 and environmental protection plans for the State and the varied
43 areas thereof;

44 h. Administer or supervise programs of conservation and
45 environmental protection, prescribe the minimum qualifications of
46 all persons engaged in official environmental protection work, and
47 encourage and aid in coordinating local environmental protection
48 services;

- 1 i. Establish and maintain adequate bacteriological, radiological
2 and chemical laboratories with such expert assistance and such
3 facilities as are necessary for routine examinations and analyses,
4 and for original investigations and research in matters affecting the
5 environment and ecology;
- 6 j. Administer or supervise a program of industrial planning for
7 environmental protection; encourage industrial plants in the State to
8 undertake environmental and ecological engineering programs; and
9 cooperate with the State Departments of Health and Senior
10 Services, Labor, and Commerce and Economic Development in
11 formulating rules and regulations concerning industrial sanitary
12 conditions;
- 13 k. Supervise sanitary engineering facilities and projects within
14 the State, authority for which is now or may hereafter be vested by
15 law in the department, and shall, in the exercise of such supervision,
16 make and enforce rules and regulations concerning plans and
17 specifications, or either, for the construction, improvement,
18 alteration or operation of all public water supplies, all public
19 bathing places, landfill operations and of sewerage systems and
20 disposal plants for treatment of sewage, wastes and other
21 deleterious matter, liquid, solid or gaseous, require all such plans or
22 specifications, or either, to be first approved by it before any work
23 thereunder shall be commenced, inspect all such projects during the
24 progress thereof and enforce compliance with such approved plans
25 and specifications;
- 26 l. Undertake programs of research and development for the
27 purpose of determining the most efficient, sanitary and economical
28 ways of collecting, disposing, recycling or utilizing of solid waste;
- 29 m. Construct and operate, on an experimental basis, incinerators
30 or other facilities for the disposal of solid waste, provide the various
31 municipalities and counties of this State, **[the Board of Public**
32 **Utilities,]** and the Division of Local Government Services in the
33 Department of Community Affairs with statistical data on costs and
34 methods of solid waste collection, disposal and utilization;
- 35 n. Enforce the State air pollution, water pollution,
36 conservation, environmental protection, solid and hazardous waste
37 **[and refuse disposal]** management laws, rules and regulations,
38 including the making and signing of a complaint and summons for
39 their violation by serving the summons upon the violator and
40 thereafter filing the complaint promptly with a court having
41 jurisdiction;
- 42 o. Acquire by purchase, grant, contract or condemnation, title
43 to real property, for the purpose of demonstrating new methods and
44 techniques for the collection or disposal of solid waste;
- 45 p. Purchase, operate and maintain, pursuant to the provisions of
46 this act, any facility, site, laboratory, equipment or machinery
47 necessary to the performance of its duties pursuant to this act;

1 q. Contract with any other public agency or corporation
2 incorporated under the laws of this or any other state for the
3 performance of any function under this act;

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

8 s. Make annual and such other reports as it may deem proper to
9 the Governor and the Legislature, evaluating the demonstrations
10 conducted during each calendar year;

11 t. Keep complete and accurate minutes of all hearings held
12 before the commissioner or any member of the department pursuant
13 to the provisions of this act. All such minutes shall be retained in a
14 permanent record, and shall be available for public inspection at all
15 times during the office hours of the department;

16 u. Require any person subject to a lawful order of the
17 department, which provides for a period of time during which such
18 person subject to the order is permitted to correct a violation, to
19 post a performance bond or other security with the department in
20 such form and amount as shall be determined by the department.
21 Such bond need not be for the full amount of the estimated cost to
22 correct the violation but may be in such amount as will tend to
23 insure good faith compliance with said order. The department shall
24 not require such a bond or security from any public body, agency or
25 authority. In the event of a failure to meet the schedule prescribed
26 by the department, the sum named in the bond or other security
27 shall be forfeited unless the department shall find that the failure is
28 excusable in whole or in part for good cause shown, in which case
29 the department shall determine what amount of said bond or
30 security, if any, is a reasonable forfeiture under the circumstances.
31 Any amount so forfeited shall be utilized by the department for the
32 correction of the violation or violations, or for any other action
33 required to insure compliance with the order; and

34 v. Encourage and aid in coordinating State, regional and local
35 plans, efforts and programs concerning the remediation and reuse of
36 former industrial or commercial properties that are currently
37 underutilized or abandoned and at which there has been, or is
38 perceived to have been, a discharge, or threat of a discharge, of a
39 contaminant. For the purposes of this subsection, "underutilized
40 property" shall not include properties undergoing a reasonably
41 timely remediation or redevelopment process.

42 (cf: P.L.1997, c.278, s.26)

43
44 3. Section 10 of P.L.1971, c.176 (C.13:1F-10) is amended to
45 read as follows:

46 10. **【**If any person violates any of the provisions of this act or
47 any rule, regulation or order promulgated pursuant to the provisions
48 of this act, the department may institute a civil action in a court of

1 competent jurisdiction for injunctive relief to prohibit and prevent
2 such violation or violations and the said court may proceed in the
3 action in a summary manner.

4 Any person who violates the provisions of this act or any rule,
5 regulation or order promulgated pursuant to this act shall be liable
6 to a penalty of not more than \$3,000.00 for each offense, to be
7 collected in a civil action by a summary proceeding under "the
8 penalty enforcement law" (N.J.S.2A:58-1 et seq.) or in any case
9 before a court of competent jurisdiction wherein injunctive relief
10 has been requested. The Superior Court shall have jurisdiction to
11 enforce said penalty enforcement law. If the violation is of a
12 continuing nature, each day during which it continues shall
13 constitute an additional, separate and distinct offense.

14 The department is hereby authorized and empowered to
15 compromise and settle any claim for a penalty under this section in
16 such amount in the discretion of the department as may appear
17 appropriate and equitable under all of the circumstances.】

18 a. Whenever, on the basis of available information, the
19 commissioner finds that a person is in violation of the provisions of
20 P.L.1971, c.176 (C.13:1F-1 et seq.), or of any rule or regulation
21 adopted, or permit or order issued pursuant thereto, the
22 commissioner may:

23 (1) Issue an administrative enforcement order in accordance with
24 subsection b. of this section requiring the person to comply;

25 (2) Bring a civil action in accordance with subsection c. of this
26 section;

27 (3) Levy a civil administrative penalty in accordance with
28 subsection d. of this section;

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

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

33 The exercise of any of the remedies provided in this section shall
34 not preclude recourse to any other remedy so provided.

35 b. Whenever, on the basis of available information, the
36 commissioner finds that a person is in violation of any provision of
37 P.L.1971, c.176, or of any rule or regulation adopted, or permit or
38 order issued pursuant thereto, the commissioner may issue an
39 administrative enforcement order: (1) specifying the provision or
40 provisions of P.L.1971, c.176, or of the rule, regulation, permit or
41 order of which the person is in violation; (2) citing the action that
42 constituted the violation; (3) requiring compliance with the
43 provision or provisions violated; and (4) giving notice to the person
44 of an right to a hearing on the matters contained in the order.

45 c. The commissioner is authorized to commence a civil action in
46 Superior Court for appropriate relief from a violation of the
47 provisions of P.L.1971, c.176, or of any rule or regulation adopted,

1 or permit or order issued pursuant thereto. This relief may include,
2 singly or in combination:

3 (1) A temporary or permanent injunction;

4 (2) Assessment of the violator for the costs of any investigation,
5 inspection, sampling or monitoring survey that led to the discovery
6 of the violation, and for the reasonable costs of preparing and
7 bringing legal action under this subsection;

8 (3) Assessment of the violator for any costs incurred by the State
9 in removing, correcting, or terminating the adverse effects resulting
10 from any violation of P.L.1971, c.176, or of any rule or regulation
11 adopted, or permit or order issued pursuant thereto, for which legal
12 action under this subsection may have been brought;

13 (4) A requirement that the violator restore the site of the
14 violation to the maximum extent practicable and feasible or, in the
15 event that restoration of the site of the violation is not practicable or
16 feasible, provide for off-site restoration alternatives as approved by
17 the department.

18 (5) Assessment against the violator for compensatory damages
19 for any loss or destruction of public resources, including but not
20 limited to, wildlife, fish, aquatic life, habitat, plants, or historic or
21 archeological resources, and for any other actual damages caused by
22 an unauthorized regulated activity. Assessments under this
23 subsection shall be paid to the "Environmental Services Fund,"
24 established pursuant to section 5 of P.L.1975, c.232 (C.13:1D-33),
25 except that compensatory damages to privately held resources shall
26 be paid by specific order of the court to any persons who have been
27 aggrieved by the unauthorized regulated activity.

28 d. The commissioner is authorized to assess a civil
29 administrative penalty of not more than \$ 50,000 for each violation
30 of the provisions of P.L.1971, c.176, or of any rule or regulation
31 adopted, or permit or order issued pursuant thereto, and each day
32 during which each violation continues shall constitute an additional,
33 separate, and distinct offense. Any amount assessed under this
34 subsection shall fall within a range established by regulation by the
35 commissioner for violations of similar type, seriousness, and
36 duration; provided, however, that prior to the adoption of the
37 regulation, the commissioner may, on a case-by-case basis, assess
38 civil administrative penalties up to a maximum of \$25,000 per day
39 for each violation, utilizing the criteria set forth herein. In adopting
40 rules and regulations establishing the amount of any penalty to be
41 assessed, the commissioner may take into account the economic
42 benefits from the violation gained by the violator. Prior to
43 assessment of penalty under this subsection, the property owner or
44 person committing the violation shall be notified by certified mail
45 or personal service that the penalty is being assessed. The notice
46 shall include: a reference to the section of the statute, regulation, or
47 order or permit condition violated; recite the facts alleged to
48 constitute a violation; state the amount of the civil penalties to be

1 imposed; and affirm the rights of the alleged violator to a hearing.
2 The ordered party shall have 20 calendar days from receipt of the
3 notice within which to deliver to the commissioner a written request
4 for a hearing setting forth its factual and legal defenses, arguments
5 and issues. After the hearing and upon finding that a violation has
6 occurred, the commissioner may issue a final order after assessing
7 the amount of the fine specified in the notice. If no hearing is
8 requested, the notice shall become a final order after the expiration
9 of the 20-day period. Payment of the assessment is due when a
10 final order is issued or the notice becomes a final order. The
11 authority to levy an administrative order is in addition to all other
12 enforcement provisions in P.L1971, c.176, or of any rule or
13 regulation adopted, or permit or order issued pursuant thereto, and
14 the payment of any assessment shall not be deemed to affect the
15 availability of any other enforcement provisions in connection with
16 the violation for which the assessment is levied. The department
17 may compromise any civil administrative penalty assessed under
18 this section in an amount and with conditions the department
19 determines appropriate. A civil administrative penalty assessed,
20 including a portion thereof required to be paid pursuant to a
21 payment schedule approved by the department, which is not paid
22 within 90 days of the date that payment of the penalty is due, shall
23 be subject to an interest charge on the amount of the penalty, or
24 portion thereof, which shall accrue as of the date payment is due. If
25 the penalty is contested, no additional interest charge shall accrue
26 on the amount of the penalty until after the date on which a final
27 order is issued. Interest charges assessed and collectible pursuant to
28 this subsection shall be based on the rate of interest on judgments
29 provided in the New Jersey Rules of Court. For the purposes of this
30 subsection, the date that a penalty is due is the date that written
31 notice of the penalty is received by the person responsible for
32 payment thereof, or such later date as may be specified in the
33 notice.

34 e. Any person who violates the provisions of P.L1971, c.176, or
35 of any rule or regulation adopted, or permit or order issued pursuant
36 thereto, or violates an administrative enforcement order issued
37 pursuant to subsection b. of this section, or a court order issued
38 pursuant to subsection c. of this section, or who fails to pay in full a
39 civil administrative penalty levied pursuant to subsection d. of this
40 section, or who fails to make a payment pursuant to a penalty
41 payment schedule entered into with the department, or who makes
42 any false or misleading statement on any application, record, report,
43 or other document required to be submitted to the department, shall
44 be subject, upon order of a court, to a civil penalty not to exceed
45 \$50,000 for each day during which the violation continues. Any
46 civil penalty imposed pursuant to this subsection may be collected,
47 and any costs incurred in connection therewith may be recovered, in
48 a summary proceeding pursuant to the "Penalty Enforcement Law

1 of 1999," P.L.1999, c.274 (C.2A: 58-10 et seq.). In addition to any
2 penalties, costs or interest charges, the court may assess against the
3 violation the amount of actual economic benefit accruing to the
4 violation. The Superior Court shall have
5 jurisdiction to enforce the "Penalty Enforcement Law of 1999".

6 f. A person who purposely, knowingly or recklessly violates any
7 provision of P.L.1971, c.176, or of any rule or regulation adopted, or
8 permit or order issued pursuant thereto, shall be guilty, upon
9 conviction, of a crime of the third degree and shall, notwithstanding
10 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
11 of not less than \$5,000 nor more than \$50,000 per day of violation,
12 or by imprisonment, or both. A person who negligently violates
13 any provision of P.L.1971, c.176, or of any rule or regulation
14 adopted, or permit or order issued pursuant thereto, shall be guilty,
15 upon conviction, of a crime of the fourth degree and shall,
16 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
17 subject to a fine of not less than \$2,500 nor more than \$25,000 per
18 day of violation, or by imprisonment, or both. A person who
19 knowingly makes a false statement, representation, or certification
20 in any application, record, or other document filed or required to be
21 maintained under any provision of P.L.1971, c.176, or of any rule or
22 regulation adopted, or permit or order issued pursuant thereto, or
23 who falsifies, tampers with or knowingly renders inaccurate, any
24 monitoring device or method required to be maintained pursuant to
25 P.L.1971, c.176, or of any rule or regulation adopted, or permit or
26 order issued pursuant thereto, shall be guilty, upon conviction, of a
27 crime of the third degree and shall, notwithstanding the provisions
28 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more
29 than \$50,000 per day of violation, or by imprisonment, or both.

30 g. Each applicant, permittee or licensee shall provide, upon the
31 request of the department, any information the department requires
32 to determine compliance with the provisions of P.L.1971, c.176.

33 (cf: P.L.1991, c.91, s.222)

34
35 4. Section 9 of P.L.1970, c.272 (C.13:9A-9) is amended to read
36 as follows:

37 9. **【Any person who violates any order by the commissioner, or**
38 **violates any of the provisions of this act, shall be liable to the State**
39 **for the cost of restoration of the affected wetland to its condition**
40 **prior to such violation insofar as that is possible, and shall be**
41 **punished by a fine of not more than \$1,000.00, to be collected in**
42 **accordance with the provisions of the Penalty Enforcement Law**
43 **(N.J.S.2A:58-1 et seq.).】** a. Whenever, on the basis of available
44 information, the commissioner finds that a person is in violation of
45 any provision of P.L.1970, c.272, or of any rule or regulation
46 adopted, or permit or order issued pursuant thereto, the
47 commissioner may:

- 1 (1) Issue an administrative enforcement order requiring any such
2 person to comply in accordance with subsection b. of this section;
3 or
4 (2) Bring a civil action in accordance with subsection c. of this
5 section; or
6 (3) Levy a civil administrative penalty in accordance with
7 subsection d. of this section; or
8 (4) Bring an action for a civil penalty in accordance with
9 subsection e. of this section; or
10 (5) Petition the Attorney General to bring a criminal action in
11 accordance with subsection f. of this section.

12 Recourse to any of the remedies available under this section shall
13 not preclude recourse to any of the other remedies.

14 b. Whenever, on the basis of available information, the
15 commissioner finds a person in violation of any provision of
16 P.L.1970, c.272, or of any rule or regulation adopted, or permit or
17 order issued pursuant thereto, the commissioner may issue an
18 administrative enforcement order: (1) specifying the provision or
19 provisions of P.L.1970, c.272, or of the rule, regulation, permit or
20 order of which the person is in violation; (2) citing the action which
21 constituted the violation; (3) requiring compliance with the
22 provision or provisions violated; (4) requiring the restoration of the
23 wetland which is the site of the violation; and (5) providing notice
24 to the person of the right to a hearing on the matters contained in
25 the administrative enforcement order.

26 c. The commissioner is authorized to institute a civil action in
27 Superior Court for appropriate relief from any violation of any
28 provision of P.L.1970, c.272, or of any rule or regulation adopted,
29 or permit or order issued pursuant thereto. Such relief may include,
30 singly or in combination:

- 31 (1) A temporary or permanent injunction;
32 (2) Assessment of the violator for the costs of any investigation,
33 inspection, or monitoring survey which led to the discovery of the
34 violation, and for the reasonable costs of preparing and bringing
35 legal action under this subsection;
36 (3) Assessment of the violator for any costs incurred by the State
37 in removing, correcting, or terminating the adverse effects upon the
38 wetland resulting from any violation of the provisions of P.L.1970,
39 c.272, or of any rule or regulation adopted, or permit or order issued
40 pursuant thereto, for which legal action under this subsection may
41 have been brought;
42 (4) Assessment against the violator for compensatory damages
43 for any loss or destruction of public resources, including but not
44 limited to, wildlife, fish, aquatic life, habitat, plants, or historic or
45 archeological resources, and for any other actual damages caused by
46 a violation of any provision of P.L.1970, c.272, or of any rule or
47 regulation adopted, or permit or order issued pursuant thereto.
48 Assessments under this subsection shall be paid to the Wetlands

1 Mitigation Bank established pursuant to section 14 of P.L.1987,
2 c.156 (C.13:9B-14), except that compensatory damages to privately
3 held resources shall be paid by specific order of the court to any
4 persons who have been aggrieved by a violation of any provision of
5 P.L.1970, c.272, or of any rule or regulation adopted, or permit or
6 order issued pursuant thereto;

7 (5) A requirement that the violator restore the site of the
8 violation to the maximum extent practicable and feasible or, in the
9 event that restoration of the site of the violation is not practicable or
10 feasible, provide for off-site restoration alternatives as approved by
11 the department.

12 d. The commissioner is authorized to assess a civil
13 administrative penalty of not more than \$50,000 for each violation
14 of the provisions of P.L.1970, c.272, or of any rule or regulation
15 adopted, or permit or order issued pursuant thereto, and each day
16 during which each violation continues shall constitute an additional,
17 separate and distinct offense. Any amount assessed under this
18 subsection shall fall within a range established by regulation by the
19 commissioner for violations of similar type, seriousness, and
20 duration; provided, however, that prior to the adoption of the
21 regulation, the commissioner may, on a case-by-case basis, assess
22 civil administrative penalties up to a maximum of \$25,000 per day
23 for each violation, utilizing the criteria set forth herein. In adopting
24 rules and regulations establishing the amount of any penalty to be
25 assessed, the commissioner may take into account the economic
26 benefits from the violation gained by the violator. Prior to
27 assessment of penalty under this subsection, the property owner or
28 person committing the violation shall be notified by certified mail
29 or personal service that the penalty is being assessed. The notice
30 shall include a reference to the section of the statute, regulation,
31 order or permit condition violated; recite the facts alleged to
32 constitute a violation; state the amount of the civil penalties to be
33 imposed; and affirm the rights of the alleged violator to a hearing.
34 The ordered party shall have 20 calendar days from receipt of the
35 notice within which to deliver to the commissioner a written request
36 for a hearing setting forth its factual and legal defenses, arguments
37 and issues. After the hearing and upon finding that a violation has
38 occurred, the commissioner may issue a final administrative
39 enforcement order after assessing the amount of the fine specified
40 in the notice. If no hearing is requested, the notice shall become a
41 final administrative enforcement order after the expiration of the
42 20-day period. Payment of the assessment is due when a final
43 administrative enforcement order is issued or the notice becomes a
44 final administrative enforcement order. The authority to levy a civil
45 administrative order is in addition to all other enforcement
46 provisions in P.L.1970, c.272, and the payment of any assessment
47 shall not be deemed to affect the availability of any other
48 enforcement provisions in connection with the violation for which

1 the assessment is levied. The department may compromise any
2 civil administrative penalty assessed under this section in an
3 amount and with conditions the department determines appropriate.
4 A civil administrative penalty assessed, including a portion thereof
5 required to be paid pursuant to a payment schedule approved by the
6 department, which is not paid within 90 days of the date that
7 payment of the penalty is due, shall be subject to an interest charge
8 on the amount of the penalty, or portion thereof, which shall accrue
9 as of the date payment is due. If the penalty is contested, no
10 additional interest charge shall accrue on the amount of the penalty
11 until after the date on which a final order is issued. Interest charges
12 assessed and collectible pursuant to this subsection shall be based
13 on the rate of interest on judgments provided in the New Jersey
14 Rules of Court. For the purposes of this subsection, the date that a
15 penalty is due is the date that written notice of the penalty is
16 received by the person responsible for payment thereof, or a later
17 date as may be specified in the notice.

18 e. A person who violates any provision of P.L.1970, c.272, or of
19 any rule or regulation adopted, or permit or order issued pursuant
20 thereto, or an administrative order issued pursuant to subsection b.
21 of this section, or a court order issued pursuant to subsection c. of
22 this section, who fails to pay a civil administrative assessment in
23 full pursuant to subsection d. of this section, or who fails to make a
24 payment pursuant to a penalty payment schedule entered into with
25 the department, or who makes any false or misleading statement on
26 any application, record, report, or other document required to be
27 submitted to the department, shall be subject, upon order of a court,
28 to a civil penalty not to exceed \$50,000 per day of the violation, and
29 each day during which the violation continues shall constitute an
30 additional, separate, and distinct offense. Any civil penalty
31 imposed pursuant to this subsection may be collected with costs in a
32 summary proceeding pursuant to the "Penalty Enforcement Law of
33 1999," P.L.1999, c.274 (C.2A: 58-10 et seq.). In addition to any
34 penalties, costs or interest charges, the court may assess against the
35 violation the amount of actual economic benefit accruing to the
36 violation from the violation. The Superior Court shall have
37 jurisdiction to enforce the "Penalty Enforcement Law of 1999".

38 f. A person who purposely, knowingly or recklessly violates any
39 provision of P.L.1970, c.272, or of any rule or regulation adopted,
40 or permit or order issued pursuant thereto, shall be guilty, upon
41 conviction, of a crime of the third degree and shall, notwithstanding
42 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
43 of not less than \$5,000 nor more than \$50,000 per day of violation,
44 or by imprisonment, or both. A person who negligently violates
45 any provision of P.L.1970, c.272, or of any rule or regulation
46 adopted, or permit or order issued pursuant thereto, shall be guilty,
47 upon conviction, of a crime of the fourth degree and shall,
48 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be

1 subject to a fine of not less than \$2,500 nor more than \$25,000 per
2 day of violation, or by imprisonment, or both. A person who
3 knowingly makes a false statement, representation, or certification
4 in any application, record, or other document filed or required to be
5 maintained under any provision of P.L.1970, c.272, or of any rule
6 or regulation adopted, or permit or order issued pursuant thereto, or
7 who falsifies, tampers with or knowingly renders inaccurate, any
8 monitoring device or method required to be maintained pursuant to
9 P.L.1970, c.272, or of any rule or regulation adopted, or permit or
10 order issued pursuant thereto, shall be guilty, upon conviction, of a
11 crime of the third degree and shall, notwithstanding the provisions
12 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more
13 than \$50,000 per day of violation, or by imprisonment, or both.

14 g. In addition to the penalties prescribed in this section, a notice
15 of violation of any provision of P.L.1970, c.272, or of any rule or
16 regulation adopted, or permit or order issued pursuant thereto, shall
17 be recorded on the deed of the property wherein the violation
18 occurred, on order of the commissioner, by the clerk or register of
19 deeds and mortgages of the county wherein the affected property is
20 located and with the clerk of the Superior Court and shall remain
21 attached thereto until such time as the violation has been remedied
22 and the commissioner orders the notice of violation removed. Any
23 fees or other charges that are assessed by either the clerk or register
24 of deeds and mortgages of the county wherein the affected property
25 is located or the department for the recording of the notice of
26 violation on the deed required pursuant to this subsection shall be
27 paid by the owner of the affected property or person committing the
28 violation. The notice of violation may be removed upon payment in
29 full or upon meeting other conditions set forth by the commissioner.

30 h. If the violation is one in which the department has determined
31 that the restoration of the site to its pre-violation condition would
32 increase the harm to the wetland or its ecology, the department may
33 issue an "after the fact" permit for the regulated activity that has
34 already occurred; provided that assessment against the violator for
35 costs or damages enumerated in subsection c. of this section has
36 been made, the creation or restoration of wetlands resources at
37 another site has been required of the violator, an opportunity has
38 been afforded for public hearing and comment, and the reasons for
39 the issuance of the "after the fact" permit are published in the New
40 Jersey Register and in a newspaper of general circulation in the
41 geographical area of the violation. Any person violating an "after
42 the fact" permit issued pursuant to this subsection shall be subject
43 to the provisions of this section.

44 i. The burden of proof and degree of knowledge or intent
45 required to establish a violation of any provision of P.L.1970,
46 c.272, or of any rule or regulation adopted, or permit or order issued
47 pursuant thereto, shall be no greater than the burden of proof or
48 degree of knowledge or intent which the United States

1 Environmental Protection Agency must meet in establishing a
2 violation of the Federal Act or implementing regulations.

3 j. The department shall establish and implement a program
4 designed to facilitate public participation in the enforcement of
5 P.L.1970, c.272, or of any rule or regulation adopted, or permit or
6 order issued pursuant thereto, which complies with the requirements
7 of the Federal Act and implementing regulations.

8 k. The department shall make available without restriction any
9 information obtained or used in the implementation of P.L.1970,
10 c.272 to the United States Environmental Protection Agency upon a
11 request therefor.

12 l. Each applicant or permittee shall provide, upon the request of
13 the department, any information the department requires to
14 determine compliance with the provisions of P.L.1970, c.272, or of
15 any rule or regulation adopted, or permit or order issued pursuant
16 thereto.

17 (cf: P.L.1970, c. 72, s.9)

18

19 5. Section 21 of P.L.1987, c.156 (C.13:9B-21) is amended to
20 read as follows:

21 21. a. Whenever, on the basis of available information, the
22 commissioner finds that a person is in violation of any provision of
23 **[this act] P.L.1987, c.156,** or of any rule or regulation adopted, or
24 permit or order issued~~[,]~~ pursuant **[to this act]** thereto, the
25 commissioner may:

26 (1) Issue an order requiring any such person to comply in
27 accordance with subsection b. of this section; or

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

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

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

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

36 Recourse to any of the remedies available under this section
37 shall not preclude recourse to any of the other remedies.

38 b. Whenever, on the basis of available information, the
39 commissioner finds a person in violation of any provision of **[this**
40 **act] P.L.1987, c.156,** or of any rule or regulation adopted, or permit
41 or order issued~~[,]~~ pursuant **[to this act]** thereto, the commissioner
42 may issue an order: (1) specifying the provision or provisions of
43 **[this act] P.L.1987, c.156,** or the rule, regulation, permit or order of
44 which **[he]** the person is in violation; (2) citing the action which
45 constituted the violation; (3) requiring compliance with the
46 provision or provisions violated; (4) requiring the restoration of the
47 freshwater wetland or transition area which is the site of the

1 violation; and (5) providing notice to the person of **his** the right
2 to a hearing on the matters contained in the order.

3 c. The commissioner is authorized to institute a civil action in
4 Superior Court for appropriate relief from any violation of any
5 provisions of **this act** P.L.1987, c.156, or of any rule or regulation
6 adopted, or permit or order issued[,] pursuant **to this act** thereto.
7 Such relief may include, singly or in combination:

8 (1) A temporary or permanent injunction;

9 (2) Assessment of the violator for the costs of any investigation,
10 inspection, or monitoring survey which led to the **establishment**
11 discovery of the violation, and for the reasonable costs of preparing
12 and bringing legal action under this subsection;

13 (3) Assessment of the violator for any costs incurred by the
14 State in removing, correcting, or terminating the adverse effects
15 upon the freshwater wetland resulting from any unauthorized
16 regulated activity for which legal action under this subsection may
17 have been brought;

18 (4) Assessment against the violator for compensatory damages
19 for any loss or destruction of public resources, including but not
20 limited to, wildlife, fish [or], aquatic life, habitat, plants, or historic
21 or archeological resources, and for any other actual damages caused
22 by an unauthorized regulated activity. Assessments under this
23 subsection shall be paid to the **State Treasurer** Wetlands
24 Mitigation Bank established pursuant to section 14 of P.L.1987,
25 c.156 (C.13:9B-14), except that compensatory damages to privately
26 held resources shall be paid by specific order of the court to any
27 persons who have been aggrieved by the unauthorized regulated
28 activity;

29 (5) A requirement that the violator restore the site of the
30 violation to the maximum extent practicable and feasible or, in the
31 event that restoration of the site of the violation is not practicable or
32 feasible, provide for off-site restoration alternatives as approved by
33 the department.

34 d. The commissioner is authorized to assess a civil
35 administrative penalty of not more than **\$10,000.00** \$50,000 for
36 each violation of the provisions of P.L.1987, c.156, or of any rule or
37 regulation adopted, or permit or order issued pursuant thereto, and
38 each day during which each violation continues shall constitute an
39 additional, separate, and distinct offense. Any amount assessed
40 under this subsection shall fall within a range established by
41 regulation by the commissioner for violations of similar type,
42 seriousness, and duration; provided, however, that prior to the
43 adoption of the regulation, the commissioner may, on a case-by-
44 case basis, assess civil administrative penalties up to a maximum of
45 \$25,000 per day for each violation, utilizing the criteria set forth
46 herein. In adopting rules and regulations establishing the amount of
47 any penalty to be assessed, the commissioner may take into account

1 the economic benefits from the violation gained by the violator.
2 Prior to assessment of penalty under this subsection, the property
3 owner or person committing the violation shall be notified by
4 certified mail or personal service that the penalty is being assessed.
5 **【No assessment shall be levied pursuant to this section until after**
6 **the party has been notified by certified mail or personal service.】**
7 The notice shall identify the section of the statute, regulation, or
8 order or permit condition violated; recite the facts alleged to
9 constitute a violation; state the amount of the civil penalties to be
10 imposed; and affirm the rights of the alleged violator to a hearing.
11 The ordered party shall have 20 days from receipt of the notice
12 within which to deliver to the commissioner a written request for a
13 hearing setting forth its factual and legal defenses, arguments, and
14 issues. After the hearing and upon finding that a violation has
15 occurred, the commissioner may issue a final order after assessing
16 the amount of the fine specified in the notice. If no hearing is
17 requested, the notice shall become a final order after the expiration
18 of the 20-day period. Payment of the assessment is due when a
19 final order is issued or the notice becomes a final order. The
20 authority to levy an administrative order is in addition to all other
21 enforcement provisions in **【this act】** P.L.1987, c.156, and the
22 payment of any assessment shall not be deemed to affect the
23 availability of any other enforcement provisions in connection with
24 the violation for which the assessment is levied. **【Any civil**
25 **administrative penalty assessed under this section may be**
26 **compromised by the commissioner upon the posting of a**
27 **performance bond by the violator, or upon such terms and**
28 **conditions as the commissioner may establish by regulation.】** The
29 department may compromise any civil administrative penalty
30 assessed under this section in an amount and with conditions the
31 department determines appropriate. A civil administrative penalty
32 assessed, including any portion thereof required to be paid pursuant
33 to a payment schedule approved by the department, which is not
34 paid within 90 days of the date that payment of the penalty is due,
35 shall be subject to an interest charge on the amount of the penalty,
36 or portion thereof, which shall accrue as of the date payment is due.
37 If the penalty is contested, interest shall accrue on the amount of the
38 penalty commencing on the date a final order is issued. Interest
39 charges assessed and collectible pursuant to this subsection shall be
40 based on the rate of interest on judgments provided in the New
41 Jersey Rules of Court. For the purposes of this subsection, the date
42 that a penalty is due is the date that written notice of the penalty is
43 received by the person responsible for payment thereof, or a later
44 date as may be specified in the notice.

45 e. A person who violates **【this act】** any provision of P.L.1987,
46 c.156, or of any rule or regulation adopted, or permit or order issued
47 pursuant thereto, or an administrative order issued pursuant to

1 subsection b. of this section, or a court order issued pursuant to
2 subsection c. of this section, or who fails to pay a civil
3 administrative assessment in full pursuant to subsection d. of this
4 section, or who fails to make a payment pursuant to a penalty
5 payment schedule entered into with the department, or who makes
6 any false or misleading statement on any application, record, report,
7 or other document required to be submitted to the department, shall
8 be subject, upon order of a court, to a civil penalty not to exceed
9 **[\$10,000.00] \$50,000** per day of **[such] the** violation, and each day
10 during which the violation continues shall constitute an additional,
11 separate, and distinct offense. Any civil penalty imposed pursuant
12 to this subsection may be collected with costs in a summary
13 proceeding pursuant to **["the penalty enforcement law" (N.J.S.**
14 **2A:58-1 et seq.)] the "Penalty Enforcement Law of 1999,"**
15 **P.L.1999, c.274 (C.2A:58-10 et seq.).** The Superior Court shall
16 have jurisdiction to enforce **["the penalty enforcement law"] the**
17 **"Penalty Enforcement Law of 1999"** in conjunction with this act.

18 f. A person who **[willfully or negligently] purposely, knowingly**
19 **or recklessly** violates **[this act] any provision of P.L.1987, c.156, or**
20 **of any rule or regulation adopted, or permit or order issued pursuant**
21 **thereto**, shall be guilty, upon conviction, of a crime of the **[fourth]**
22 **third** degree and shall, notwithstanding the provisions of subsection
23 b. of N.J.S.2C:43-3, be subject to a fine of not less than
24 **[\$2,500.00] \$5,000** nor more than **[\$25,000.00] \$50,000** per day of
25 violation, or by imprisonment, or both. **[A second offense under**
26 **this subsection shall subject the violator to a fine of not less than**
27 **\$5,000.00 nor more than \$50,000.00 per day of violation.] A person**
28 **who negligently** violates any provision of P.L.1987, c.156, or of any
29 rule or regulation adopted, or permit or order issued pursuant
30 thereto, shall be guilty, upon conviction, of a crime of the fourth
31 degree and shall, notwithstanding the provisions of subsection b. of
32 N.J.S.2C:43-3, be subject to a fine of not less than \$2,500 nor more
33 than \$25,000 per day of violation, or by imprisonment, or both. A
34 person who knowingly makes a false statement, representation, or
35 certification in any application, record, or other document filed or
36 required to be maintained under **[this act] any provision of**
37 **P.L.1987, c.156, or of any rule or regulation adopted, or permit or**
38 **order issued pursuant thereto**, or who falsifies, tampers with or
39 knowingly renders inaccurate, any monitoring device or method
40 required to be maintained pursuant to **[this act] P.L.1987, c.156,**
41 shall be guilty, upon conviction, of a crime of the third degree and
42 shall, notwithstanding the provisions of subsection b. of
43 N.J.S.2C:43-3, be subject to a fine of not more than **[\$10,000.00]**
44 **\$50,000** per day of violation, or by imprisonment, or both.

45 g. In addition to the penalties prescribed in this section, a notice
46 of violation of **[this act] any provision of P.L.1987, c.156, or of**
47 **any rule or regulation adopted, or permit or order issued pursuant**

1 thereto, shall be recorded on the deed of the property wherein the
2 violation occurred, on order of the commissioner, by the clerk or
3 register of deeds and mortgages of the county wherein the affected
4 property is located and with the clerk of the Superior Court and
5 shall remain attached thereto until such time as the violation has
6 been remedied and the commissioner orders the notice of violation
7 removed. Any fees or other charges that are assessed against the
8 department by either the clerk or register of deeds and mortgages of
9 the county wherein the affected property is located for the recording
10 of the notice of violation on the deed required pursuant to this
11 subsection shall be paid by the owner of the affected property or the
12 person committing the violation. The notice of violation may be
13 removed upon payment in full or upon meeting other conditions set
14 forth by the commissioner.

15 h. If the violation is one in which the department has
16 determined that the restoration of the site to its **【previolation】** pre-
17 violation condition would increase the harm to the freshwater
18 wetland or its ecology, the department may issue an "after the fact"
19 permit for the regulated activity that has already occurred; provided
20 that assessment against the violator for costs or damages
21 enumerated in subsection c. of this section has been made, the
22 creation or restoration of freshwater wetlands resources at another
23 site has been required of the violator, an opportunity has been
24 afforded for public hearing and comment, and the reasons for the
25 issuance of the "after the fact" permit are published in the New
26 Jersey Register and in a newspaper of general circulation in the
27 geographical area of the violation. Any person violating an "after
28 the fact" permit issued pursuant to this subsection shall be subject
29 to the provisions of this section.

30 i. The burden of proof and degree of knowledge or intent
31 required to establish a violation of **【this act】** any provision of
32 P.L.1987, c.156, or of any rule or regulation adopted, or permit or
33 order issued pursuant thereto, shall be no greater than the burden of
34 proof or degree of knowledge or intent which the United States
35 Environmental Protection Agency must meet in establishing a
36 violation of the Federal Act or implementing regulations.

37 j. The department shall establish and implement a program
38 designed to facilitate public participation in the enforcement of
39 **【this act】** the provisions of P.L.1987, c.156, or of any rule or
40 regulation adopted, or permit or order issued pursuant thereto,
41 which complies with the requirements of the Federal Act and
42 implementing regulations.

43 k. The department shall make available without restriction any
44 information obtained or used in the implementation of **【this act】**
45 P.L.1987, c.156 to the United States Environmental Protection
46 Agency upon a request therefor.

1 l. **【The department may require an applicant or permittee to**
2 provide any information the department requires to determine
3 compliance with the provisions of this act**】** Each applicant or
4 permittee shall provide, upon the request of the department, any
5 information the department requires to determine compliance with
6 the provisions of P.L.1987, c.156.

7 m. The department shall have the authority to enter any
8 property, facility, premises or site for the purpose of conducting
9 inspections, sampling of soil or water, copying or photocopying
10 documents or records, and for otherwise determining compliance
11 with the provisions of **【this act】** P.L.1987, c.156.

12 (cf: P.L.1987, c.156, s.21)

13
14 6. Section 18 of P.L.1973, c.185 (C.13:19-18) is amended to
15 read as follows:

16 18. a. Whenever, on the basis of available information, the
17 department finds that a person has violated any provision of
18 P.L.1973, c.185 (C.13:19-1 et seq.), or of any rule or regulation
19 adopted, 【rule,】 or permit【,】 or order 【adopted or】 issued by the
20 department pursuant thereto, the department may:

21 (1) Issue an order requiring the person found to be in violation
22 to comply in accordance with subsection b. of this section;

23 (2) Bring a civil action in accordance with subsection c. of this
24 section;

25 (3) Levy a civil administrative penalty in accordance with
26 subsection d. of this section; **【or】**

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

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

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

33 b. Whenever, on the basis of available information, the
34 department finds that a person has violated any provision of
35 P.L.1973, c.185, or of any rule or regulation 【or rule】 adopted, or
36 permit or order issued**【,】** by the department pursuant **【to that act】**
37 thereto, the department may issue an order: (1) specifying the
38 provision or provisions of the act, regulation, rule, permit, or order
39 of which the person is in violation【,】; (2) citing the action which
40 constituted the violation【,ordering abatement of the violation, and
41 giving】; (3) requiring compliance with the provision or provisions
42 violated; (4) requiring the restoration of the area which is the site of
43 the violation; and (5) providing notice to the person of **【his】** the
44 right to a hearing on the matters contained in the order. The
45 ordered party shall have 20 days from receipt of the order within
46 which to deliver to the department a written request for a hearing
47 setting forth its factual and legal defenses, arguments and issues.

1 After the hearing and upon finding that a violation has occurred, the
2 department may issue a final order. If no hearing is requested, then
3 the order shall become final after the expiration of the 20-day
4 period. A request for hearing shall not automatically stay the effect
5 of the order.

6 c. The department may institute ~~an~~ a civil action ~~or~~
7 ~~proceeding~~ in the Superior Court for ~~injunctive and other~~
8 appropriate relief, including the appointment of a receiver, ~~for~~
9 from any violation of any provision of P.L.1973, c.185, or of any
10 rule or regulation ~~or rule~~ adopted, or permit or order issued~~,]~~ by
11 the department pursuant ~~to that act~~ thereto, and the court may
12 proceed in the action in a summary manner.

13 Such relief may include, singly or in combination:

14 (1) A temporary or permanent injunction;

15 (2) Assessment of the violator for the costs of any investigation,
16 inspection, or monitoring survey which led to the discovery of the
17 violation, and for the reasonable costs of preparing and bringing
18 legal action under this subsection;

19 (3) Assessment of the violator for any cost incurred by the
20 department in removing, correcting or terminating the adverse
21 effects upon the land or upon water or air quality resulting from any
22 violation of any provision of P.L.1973, c.185, or of any rule or
23 regulation ~~or rule~~ adopted, or permit or order issued~~,]~~ by the
24 department pursuant ~~to that act~~ thereto, for which the action
25 under this subsection may have been brought;

26 (4) Assessment against the violator for compensatory damages
27 for any loss or destruction of public resources, including but not
28 limited to, wildlife, fish, aquatic life, habitat, plants, or historic or
29 archeological resources, and for any other actual damages caused by
30 a violation of the provisions of P.L.1973, c.185. Assessments under
31 this subsection shall be paid to the “Cooperative Coastal
32 Monitoring, Restoration and Enforcement Fund” established
33 pursuant to subsection j. of this section, except that compensatory
34 damages to privately held resources shall be paid by specific order
35 of the court to any persons who have been aggrieved by the
36 violation of the provisions of P.L.1973, c.185;

37 (5) A requirement that the violator restore the site of the
38 violation to the maximum extent practicable and feasible or, in the
39 event that restoration of the site of the violation is not practicable or
40 feasible, provide for off-site restoration alternatives as approved by
41 the department.

42 d. The department is authorized to assess~~,~~ in accordance with a
43 uniform policy adopted therefor,~~]~~ a civil administrative penalty of
44 not more than ~~[\$25,000]~~ \$50,000 for each violation of the
45 provisions of P.L.1973, c.185, or of any rule or regulation adopted,
46 or permit or order issued pursuant thereto, and each day during
47 which each violation continues shall constitute an additional,

1 separate and distinct offense. **【**No assessment may be levied
2 pursuant to this subsection until after the violator has been notified
3 by certified mail, personal service or any other means authorized
4 under the New Jersey Rules of Court.**】** Any amount assessed under
5 this subsection shall fall within a range established by regulation by
6 the commissioner for violations of similar type, seriousness, and
7 duration; provided, however, that prior to the adoption of the
8 regulation, the commissioner may, on a case-by-case basis, assess
9 civil administrative penalties up to a maximum of \$25,000 per day
10 for each violation, utilizing the criteria set forth herein. In adopting
11 rules and regulations establishing the amount of any penalty to be
12 assessed, the commissioner may take into account the economic
13 benefits from the violation gained by the violator. Prior to
14 assessment of penalty under this subsection, the property owner or
15 person committing the violation shall be notified by certified mail
16 or personal service that the penalty is being assessed. The notice
17 shall include a reference to the section or provision of P.L.1973,
18 c.185, the regulation, rule, permit, or order issued by the department
19 pursuant to that act that has been violated, a concise statement of
20 the facts alleged to constitute a violation, a statement of the amount
21 of the civil administrative penalties to be imposed, including any
22 interest that may accrue thereon if the penalty is not paid when due,
23 and a statement of the party's right to a hearing. The ordered party
24 shall have 20 calendar days from receipt of the notice within which
25 to deliver to the department a written request for a hearing setting
26 forth its factual and legal defenses, arguments and issues. After the
27 hearing and upon finding that a violation has occurred, the
28 department may issue a final order after assessing the amount of the
29 fine specified in the notice. If no hearing is requested, the notice
30 shall become a final order after the expiration of the 20-day period.
31 Payment of the assessment is due when a final order is issued or the
32 notice becomes a final order. The department may compromise any
33 civil administrative penalty assessed under this section in an
34 amount and with conditions the department determines appropriate.
35 A civil administrative penalty assessed, including a portion thereof
36 required to be paid pursuant to a payment schedule approved by the
37 department, which is not paid within **【30】** 90 days of the date that
38 payment of the penalty is due, shall be subject to an interest charge
39 on the amount of the penalty, or portion thereof, which shall accrue
40 as of the date payment is due. If the penalty is contested, no
41 additional interest charge shall accrue on the amount of the penalty
42 until after the date on which a final order is issued.

43 Interest charges assessed and collectible pursuant to this
44 subsection shall be based on the rate of interest on judgments
45 provided in the New Jersey Rules of Court. For the purposes of this
46 subsection, the date that a penalty is due is the date that written
47 notice of the penalty is received by the person responsible for

1 payment thereof, or **[such]** a later date as may be specified in the
2 notice.

3 e. Any person who violates the provisions of P.L.1973, c.185, or
4 of any rule or regulation adopted pursuant thereto, or any permit or
5 order issued by the department pursuant to that act, or an
6 administrative order issued pursuant to subsection b. of this section,
7 or a court order issued pursuant to subsection c. of this section, or
8 who fails to pay a civil administrative penalty in full pursuant to
9 subsection d. of this section, or who fails to make a payment
10 pursuant to a penalty payment schedule entered into with the
11 department, or who makes any false or misleading statement on any
12 application, record, report, or other document required to be
13 submitted to the department, shall be subject, upon order of a court,
14 to a civil penalty of not more than **[\$25,000]** \$50,000 for each
15 violation, and each day during which a violation continues shall
16 constitute an additional, separate, and distinct offense.

17 Any penalty established pursuant to this subsection may be
18 imposed and collected with costs in a summary proceeding pursuant
19 to **["the penalty enforcement law,"** N.J.S.2A:58-1 et seq. The
20 Superior Court and the municipal court shall have jurisdiction to
21 enforce the provisions of "the penalty enforcement law" in
22 connection with this act.] the "Penalty Enforcement Law of 1999,"
23 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall
24 have jurisdiction to enforce the "Penalty Enforcement Law of 1999"
25 in conjunction with this act. In addition to any penalties, costs or
26 interest charges, the court may assess against the violator the
27 amount of actual economic benefit accruing to the violator from the
28 violation.

29 f. A person who purposely, knowingly or recklessly violates any
30 provision of P.L.1973, c.185, or of any rule or regulation adopted, or
31 permit or issued pursuant thereto, shall be guilty, upon conviction,
32 of a crime of the third degree and shall, notwithstanding the
33 provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of
34 not less than \$5,000 nor more than \$50,000 per day of violation, or
35 by imprisonment, or both. A person who negligently violates any
36 provision of P.L.1973, c.185, or of any rule or regulation adopted, or
37 permit or order issued pursuant thereto, shall be guilty, upon
38 conviction, of a crime of the fourth degree and shall,
39 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
40 subject to a fine of not less than \$2,500 nor more than \$25,000 per
41 day of violation, or by imprisonment, or both. A person who
42 knowingly makes a false statement, representation, or certification
43 in any application, record, or other document filed or required to be
44 maintained under any provision of P.L.1973, c.185, or of any rule or
45 regulation adopted pursuant thereto, or who falsifies, tampers with
46 or knowingly renders inaccurate, any monitoring device or method
47 required to be maintained pursuant to P.L.1973, c.185, or of any rule
48 or regulation adopted, or permit or order issued pursuant thereto,

1 shall be guilty, upon conviction, of a crime of the third degree and
2 shall, notwithstanding the provisions of subsection b. of
3 N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day
4 of violation, or by imprisonment, or both.

5 g. In addition to the penalties prescribed in this section, a notice
6 of violation of P.L1973, c.185, or of any rule or regulation adopted,
7 or permit or order issued pursuant thereto, shall be recorded on the
8 deed of the property wherein the violation occurred, on order of the
9 commissioner, by the clerk or register of deeds and mortgages of
10 the county wherein the affected property is located and with the
11 clerk of the Superior Court and shall remain attached thereto until
12 such time as the violation has been remedied and the commissioner
13 orders the notice of violation removed. Any fees or other charges
14 that are assessed by either the clerk or register of deeds and
15 mortgages of the county wherein the affected property is located or
16 the department for the recording of the notice of violation on the
17 deed required pursuant to this subsection shall be paid by the owner
18 of the affected property or the person committing the violation. The
19 notice of violation may be removed upon payment in full or upon
20 meeting other conditions set forth by the commissioner.

21 h. If the violation is one in which the department has determined
22 that the restoration of the site to its pre-violation condition would
23 increase the harm to the waters of the state or its ecology, the
24 department may issue an "after the fact" permit for the regulated
25 activity that has already occurred; provided that assessment against
26 the violator for costs or damages enumerated in subsection c. of this
27 section has been made, an opportunity has been afforded for public
28 hearing and comment, and the reasons for the issuance of the "after
29 the fact" permit are published in the New Jersey Register and in a
30 newspaper of general circulation in the geographical area of the
31 violation. Any person violating an "after the fact" permit issued
32 pursuant to this subsection shall be subject to the provisions of this
33 section.

34 i. Each applicant or permittee shall provide, upon the request of
35 the department, any information the department requires to
36 determine compliance with the provisions of P.L1973, c.185, or of
37 any rule or regulation adopted, or permit or order issued pursuant
38 thereto.

39 j. There is created in the department a special nonlapsing fund,
40 to be known as the "Cooperative Coastal Monitoring, Restoration
41 and Enforcement Fund." Except as otherwise provided in this
42 section, all monies from penalties, fines, or recoveries of costs
43 collected by the department pursuant to this section on and after the
44 effective date of this section, shall be deposited in the fund. Interest
45 earned on monies deposited in the fund shall be credited to the
46 fund. Unless otherwise specifically provided by law, monies in the
47 fund shall be utilized by the department for the cost of coastal
48 restoration projects and providing aircraft overflights for coastal

1 monitoring, surveillance and enforcement activities conducted by
2 the department and for the cost of administering P.L.1973, c.185
3 (C.13:19-1 et seq.). The department shall submit annually to the
4 Legislature a report which provides an accounting of all monies
5 deposited in the fund and the purposes for which monies in the fund
6 are disbursed.

7 (cf: P.L.1993, c.190, s.16)

8

9 7. Section 10 of P.L.1973, c.309 (C.23:2A-10) is amended to
10 read as follows:

11 10. a. **【If any person violates any of the provisions of this act or**
12 **any rule, regulation or order adopted or issued pursuant to the**
13 **provisions of this act, the department may institute a civil action in**
14 **a court of competent jurisdiction for injunctive relief to prohibit and**
15 **prevent such violation or violations and the court may proceed in**
16 **the action in a summary manner】** Whenever, on the basis of
17 available information, the commissioner finds that a person is in
18 violation of the provisions of P.L.1973, c.309, or of any rule or
19 regulation adopted, or permit or order issued pursuant thereto, the
20 commissioner may:

21 (1) Issue an order in accordance with subsection b. of this section
22 requiring the person to comply;

23 (2) Bring a civil action in accordance with subsection c. of this
24 section;

25 (3) Levy a civil administrative penalty in accordance with
26 subsection d. of this section;

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

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

31 The exercise of any of the remedies provided in this section shall
32 not preclude recourse to any other remedy so provided.

33 b. **【Any person who violates the provisions of this act or any**
34 **rule, regulation or order adopted or issued pursuant to this act shall**
35 **be liable to a civil penalty of not less than \$250 and not more than**
36 **\$5,000 for each offense, to be collected in a civil action by a**
37 **summary proceeding under "the penalty enforcement law"**
38 **(N.J.S.2A:58-1 et seq.) or in any case before a court of competent**
39 **jurisdiction wherein injunctive relief has been requested. Civil**
40 **penalties recovered for violations hereof shall be remitted as**
41 **provided in R.S.23:10-19. The Superior Court and municipal court**
42 **shall have jurisdiction to enforce "the penalty enforcement law."**

43 **If the violation is of a continuing nature, each day during which**
44 **it continues shall constitute an additional, separate and distinct**
45 **offense.】** Whenever, on the basis of available information, the
46 commissioner finds that a person is in violation of any provision of
47 P.L.1973, c.309, or of any rule or regulation adopted, or permit or
48 order issued pursuant thereto, the commissioner may issue an order:

1 (1) specifying the provision or provisions of P.L.1973, c.309, or the
2 rule or regulation, or order or permit issued pursuant thereto, of
3 which the person is in violation; (2) citing the action that
4 constituted the violation; (3) requiring compliance with the
5 provision of P.L.1973, c.309, the rule or regulation, or order or
6 permit issued pursuant thereto, of which the person is in violation;
7 (4) requiring the restoration of the site of the violation to the
8 maximum extent practicable and feasible; and (5) giving notice to
9 the person of a right to a hearing on the matters contained in the
10 order.

11 c. The **[department]** commissioner is hereby authorized and
12 empowered to **[compromise and settle any claim for a penalty**
13 **under this section in such amount in the discretion of the**
14 **department as may appear appropriate and equitable under all of the**
15 **circumstances.]** commence a civil action in Superior Court for
16 appropriate relief from a violation of the provisions of P.L.1973,
17 c.309, or of any rule or regulation adopted, or any permit or order
18 issued pursuant thereto. This relief may include, singly or in
19 combination:

20 (1) A temporary or permanent injunction;

21 (2) Assessment of the violator for the costs of any investigation,
22 inspection, sampling or monitoring survey that led to the discovery
23 of the violation, and for the reasonable costs of preparing and
24 bringing legal action under this subsection;

25 (3) Assessment of the violator for any costs incurred by the State
26 in removing, correcting, or terminating the adverse effects resulting
27 from any violation of P.L.1973, c.309 for which legal action under
28 this subsection may have been brought;

29 (4) Assessment against the violator for compensatory damages
30 for any loss or destruction of public resources, including but not
31 limited to, wildlife, fish, aquatic life, habitat, plants, or historic or
32 archeological resources, and for any other actual damages caused by
33 a violation. Assessments under this subsection shall be paid to the
34 "Endangered and Nongame Species of Wildlife Conservation
35 Fund," established pursuant to section 1 of P.L.1981, c.170,
36 (C.54A:9-25.2), except that compensatory damages to privately
37 held resources shall be paid by specific order of the court to any
38 persons who have been aggrieved by the unauthorized regulated
39 activity;

40 (5) A requirement that the violator restore the site of the
41 violation to the maximum extent practicable and feasible or, in the
42 event that restoration of the site of the violation is not practicable or
43 feasible, provide for off-site restoration alternatives as approved by
44 the department.

45 d. The commissioner is authorized to assess a civil
46 administrative penalty of not more than \$ 50,000 for each violation
47 of the provisions of P.L.1973, c.309, and each day during which
48 each violation continues shall constitute an additional, separate, and

1 distinct offense. Any amount assessed under this subsection shall
2 fall within a range established by regulation by the commissioner
3 for violations of similar type, seriousness, and duration; provided,
4 however, that prior to the adoption of the regulation, the
5 commissioner may, on a case-by-case basis, assess civil
6 administrative penalties up to a maximum of \$25,000 per day for
7 each violation, utilizing the criteria set forth herein. In adopting
8 rules and regulations establishing the amount of any penalty to be
9 assessed, the commissioner may take into account the economic
10 benefits from the violation gained by the violator. Prior to
11 assessment of penalty under this subsection, the property owner or
12 person committing the violation shall be notified by certified mail
13 or personal service that the penalty is being assessed. The notice
14 shall include: a reference to the section of the statute, regulation, or
15 order or permit condition violated; recite the facts alleged to
16 constitute a violation; state the amount of the civil penalties to be
17 imposed; and affirm the rights of the alleged violator to a hearing.
18 The ordered party shall have 20 calendar days from receipt of the
19 notice within which to deliver to the commissioner a written request
20 for a hearing setting forth its factual and legal defenses, arguments
21 and issues. After the hearing and upon finding that a violation has
22 occurred, the commissioner may issue a final order after assessing
23 the amount of the fine specified in the notice. If no hearing is
24 requested, the notice shall become a final order after the expiration
25 of the 20-day period. Payment of the assessment is due when a final
26 order is issued or the notice becomes a final order. The authority to
27 levy an administrative order is in addition to all other enforcement
28 provisions in P.L.1973, c.309, and the payment of any assessment
29 shall not be deemed to affect the availability of any other
30 enforcement provisions in connection with the violation for which
31 the assessment is levied. The department may compromise any civil
32 administrative penalty assessed under this section in an amount and
33 with conditions the department determines appropriate. A civil
34 administrative penalty assessed, including a portion thereof required
35 to be paid pursuant to a payment schedule approved by the
36 department, which is not paid within 90 days of the date that
37 payment of the penalty is due, shall be subject to an interest charge
38 on the amount of the penalty, or portion thereof, which shall accrue
39 as of the date payment is due. If the penalty is contested, no
40 additional interest charge shall accrue on the amount of the penalty
41 until after the date on which a final order is issued. Interest charges
42 assessed and collectible pursuant to this subsection shall be based
43 on the rate of interest on judgments provided in the New Jersey
44 Rules of Court. For the purposes of this subsection, the date that a
45 penalty is due is the date that written notice of the penalty is
46 received by the person responsible for payment thereof, or a later
47 date as may be specified in the notice.

1 e. Any person who violates any provision of P.L.1973, c.309, or
2 of any rule or regulation adopted, or permit or order issued pursuant
3 thereto, or an order issued pursuant to subsection b. of this section,
4 or a court order issued pursuant to subsection c. of this section, or
5 who fails to pay in full a civil administrative penalty levied
6 pursuant to subsection d. of this section, or who fails to make a
7 payment pursuant to a penalty payment schedule entered into with
8 the department, or who makes any false or misleading statement on
9 any application, record, report, or other document required to be
10 submitted to the department, shall be subject, upon order of a court,
11 to a civil penalty not to exceed \$50,000 for each day during which
12 the violation continues. Any civil penalty imposed pursuant to this
13 subsection may be collected with costs in a summary proceeding
14 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
15 c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or
16 interest charges, the court may assess against the violator the
17 amount of actual economic benefit accruing to the violator from the
18 violation. The Superior Court shall have jurisdiction to enforce the
19 "Penalty Enforcement Law of 1999."

20 f. A person who purposely, knowingly or recklessly violates any
21 provision of P.L.1973, c.309, or of any rule or regulations adopted,
22 or permit or order issued pursuant thereto, shall be guilty, upon
23 conviction, of a crime of the third degree and shall, notwithstanding
24 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
25 of not less than \$5,000 nor more than \$50,000 per day of violation,
26 or by imprisonment, or both. A person who negligently violates
27 any provision of P.L.1973, c.309, or of any rule or regulation
28 adopted, or permit or order issued pursuant thereto, shall be guilty,
29 upon conviction, of a crime of the fourth degree and shall,
30 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
31 subject to a fine of not less than \$2,500 nor more than \$25,000 per
32 day of violation, or by imprisonment, or both. A person who
33 knowingly makes a false statement, representation, or certification
34 in any application, record, or other document filed or required to be
35 maintained under any provision of P.L.1973, c.309, or of any rule
36 or regulation adopted, or permit or order issued pursuant thereto, or
37 who falsifies, tampers with or knowingly renders inaccurate, any
38 monitoring device or method required to be maintained pursuant to
39 P.L.1973, c.309, or of any rule or regulation adopted, or permit or
40 order issued pursuant thereto, shall be guilty, upon conviction, of a
41 crime of the third degree and shall, notwithstanding the provisions
42 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more
43 than \$50,000 per day of violation, or by imprisonment, or both.

44 g. In addition to the penalties prescribed in this section, a notice
45 of violation of any provision of P.L.1973, c.309, or of any rule or
46 regulation adopted, or permit or order issued pursuant thereto, shall
47 be recorded on the deed of the property wherein the violation
48 occurred, on order of the commissioner, by the clerk or register of

1 deeds and mortgages of the county wherein the affected property is
2 located and with the clerk of the Superior Court and shall remain
3 attached thereto until such time as the violation has been remedied
4 and the commissioner orders the notice of violation removed. Any
5 fees or other charges that are assessed by either the clerk or register
6 of deeds and mortgages of the county wherein the affected property
7 is located or the department for the recording of the notice of
8 violation on the deed required pursuant to this subsection shall be
9 paid by the owner of the affected property the or person committing
10 the violation and the commissioner shall not order the notice of
11 violation removed until such time as these fees are paid in full.

12 h. Each applicant or permittee, upon the request of the
13 department, shall provide any information the department or the
14 commissioner requires to determine compliance with any provision
15 of P.L.1973, c.309, or of any rule or regulation adopted, or permit
16 or order issued pursuant thereto.

17 (cf: P.L.1995, c.411)

18

19 8. Section 16 of P.L.1981, c.262 (C.58:1A-16) is amended to
20 read as follows:

21 16. **【If any person violates】** a. Whenever, on the basis of
22 available information, the commissioner finds that a person is in
23 violation of any of the provisions of 【this act】 P.L.1981, c.262, or
24 of any rule【,】 or regulation adopted, or permit or order 【adopted
25 or】 issued pursuant 【to the provisions of this act,】 thereto, the
26 **【department may institute a civil action in a court of competent**
27 **jurisdiction for injunctive relief to enforce said provisions and to**
28 **prohibit and prevent that violation and the court may proceed in the**
29 **action in a summary manner. Any person who violates the**
30 **provisions of this act or any rule, regulation or order adopted or**
31 **issued pursuant to this act shall be liable to a civil administrative**
32 **penalty of not more than \$5,000.00 for each offense to be imposed**
33 **by the department pursuant to standards adopted in regulations; or a**
34 **civil penalty of not more than \$5,000.00 for each offense, to be**
35 **collected in a civil action by a summary proceeding under "the**
36 **penalty enforcement law" (N.J.S.2A:58-1 et seq.) or in any case**
37 **before a court of competent jurisdiction wherein injunctive relief**
38 **has been requested. The Superior Court shall have jurisdiction to**
39 **enforce the penalty enforcement law. If the violation is of a**
40 **continuing nature, each day during which it continues shall**
41 **constitute an additional, separate and distinct offense. The**
42 **department is authorized to compromise and settle any claim for a**
43 **penalty under this section in such amount in the discretion of the**
44 **department as may appear appropriate and equitable under all of the**
45 **circumstances.】 commissioner may:**

46 (1) Issue an order in accordance with subsection b. of this
47 section requiring the person to comply;

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

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

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

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

9 The exercise of any of the remedies provided in this section shall
10 not preclude recourse to any other remedy so provided.

11 b. Whenever, on the basis of available information, the
12 commissioner finds that a person is in violation of any of the
13 provisions of P.L.1981, c.262, or of any rule or regulation adopted,
14 or permit or order issued pursuant thereto, the commissioner may
15 issue an order: (1) specifying the provision or provisions of
16 P.L.1981, c.262, or of the rule or regulation adopted, or order or
17 permit issued pursuant thereto, of which the person is in violation;
18 (2) citing the action that constituted the violation; (3) requiring
19 compliance with the provision of P.L.1981, c.262, or of the rule or
20 regulation adopted, or order or permit issued pursuant thereto, of
21 which the person is in violation; (4) requiring the restoration of the
22 site of the violation to the maximum extent practicable and feasible;
23 and (5) giving notice to the person of a right to a hearing on the
24 matters contained in the order.

25 c. The commissioner is authorized to commence a civil action in
26 Superior Court for appropriate relief from a violation of the
27 provisions of P.L.1981, c.262, or of any rule or regulation adopted,
28 or permit or order issued pursuant thereto. This relief may include,
29 singly or in combination:

30 (1) A temporary or permanent injunction;

31 (2) Assessment of the violator for the costs of any investigation,
32 inspection, sampling or monitoring survey that led to the discovery
33 of the violation, and for the reasonable costs of preparing and
34 bringing legal action under this subsection;

35 (3) Assessment of the violator for any costs incurred by the
36 State in removing, correcting, or terminating the adverse effects
37 resulting from any violation of P.L.1981, c.262 for which legal
38 action under this subsection may have been brought;

39 (4) A requirement that the violator restore the site of the
40 violation to the maximum extent practicable and feasible or, in the
41 event that restoration of the site of the violation is not practicable or
42 feasible, provide for off-site restoration alternatives as approved by
43 the department.

44 d. The commissioner is authorized to assess a civil
45 administrative penalty of not more than \$ 50,000 for each violation
46 of the provisions of P.L.1981, c.262, or of any rule or regulation
47 adopted, or permit or order issued pursuant thereto, and each day
48 during which each violation continues shall constitute an additional,

1 separate, and distinct offense. Any amount assessed under this
2 subsection shall fall within a range established by regulation by the
3 commissioner for violations of similar type, seriousness, and
4 duration; provided, however, that prior to the adoption of the
5 regulation, the commissioner may, on a case-by-case basis, assess
6 civil administrative penalties up to a maximum of \$25,000 per day
7 for each violation, utilizing the criteria set forth herein. In adopting
8 rules and regulations establishing the amount of any penalty to be
9 assessed, the commissioner may take into account the economic
10 benefits from the violation gained by the violator. Prior to
11 assessment of penalty under this subsection, the property owner or
12 person committing the violation shall be notified by certified mail
13 or personal service that the penalty is being assessed. The notice
14 shall include: a reference to the section of the statute, regulation, or
15 order or permit condition violated; recite the facts alleged to
16 constitute a violation; state the amount of the civil penalties to be
17 imposed; and affirm the rights of the alleged violator to a hearing.
18 The ordered party shall have 20 calendar days from receipt of the
19 notice within which to deliver to the commissioner a written request
20 for a hearing setting forth its factual and legal defenses, arguments
21 and issues. After the hearing and upon finding that a violation has
22 occurred, the commissioner may issue a final order after assessing
23 the amount of the fine specified in the notice. If no hearing is
24 requested, the notice shall become a final order after the expiration
25 of the 20-day period. Payment of the assessment is due when a
26 final order is issued or the notice becomes a final order. The
27 authority to levy an administrative order is in addition to all other
28 enforcement provisions in P.L.1981, c.262, and the payment of any
29 assessment shall not be deemed to affect the availability of any
30 other enforcement provisions in connection with the violation for
31 which the assessment is levied. The department may compromise
32 any civil administrative penalty assessed under this section in an
33 amount and with conditions the department determines appropriate.
34 A civil administrative penalty assessed, including a portion thereof
35 required to be paid pursuant to a payment schedule approved by the
36 department, which is not paid within 90 days of the date that
37 payment of the penalty is due, shall be subject to an interest charge
38 on the amount of the penalty, or portion thereof, which shall accrue
39 as of the date payment is due. If the penalty is contested, no
40 additional interest charge shall accrue on the amount of the penalty
41 until after the date on which a final order is issued. Interest charges
42 assessed and collectible pursuant to this subsection shall be based
43 on the rate of interest on judgments provided in the New Jersey
44 Rules of Court. For the purposes of this subsection, the date that a
45 penalty is due is the date that written notice of the penalty is
46 received by the person responsible for payment thereof, or such
47 later date as may be specified in the notice.

1 e. Any person who violates any provision of P.L.1981, c.262, or
2 of any rule or regulation adopted, or permit or order issued pursuant
3 thereto, or an order issued pursuant to subsection b. of this section,
4 or a court order issued pursuant to subsection c. of this section, or
5 who fails to pay in full a civil administrative penalty levied
6 pursuant to subsection d. of this section, or who fails to make a
7 payment pursuant to a penalty payment schedule entered into with
8 the department, or who makes any false or misleading statement on
9 any application, record, report, or other document required to be
10 submitted to the department, shall be subject, upon order of a court,
11 to a civil penalty not to exceed \$ 50,000 for each day during which
12 the violation continues. Any civil penalty imposed pursuant to this
13 subsection may be collected with costs in a summary proceeding
14 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
15 c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or
16 interest charges, the court may assess against the violator the
17 amount of actual economic benefit accruing to the violator from the
18 violation. The Superior Court shall have jurisdiction to enforce the
19 provisions of the "Penalty Enforcement Law of 1999" in connection
20 with this act.

21 f. A person who purposely, knowingly or recklessly violates any
22 provision of P.L.1981, c.262, or of any rule or regulation adopted,
23 or permit or order issued pursuant thereto, shall be guilty, upon
24 conviction, of a crime of the third degree and shall, notwithstanding
25 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
26 of not less than \$5,000 nor more than \$50,000 per day of violation,
27 or by imprisonment, or both. A person who negligently violates
28 any provision of P.L.1981, c.262, or of any rule or regulation
29 adopted, or permit or order issued pursuant thereto, shall be guilty,
30 upon conviction, of a crime of the fourth degree and shall,
31 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
32 subject to a fine of not less than \$2,500 nor more than \$25,000 per
33 day of violation, or by imprisonment, or both. A person who
34 knowingly makes a false statement, representation, or certification
35 in any application, record, or other document filed or required to be
36 maintained under any provision of P.L.1981, c.262, or of any rule
37 or regulation adopted, or permit or order issued pursuant thereto, or
38 who falsifies, tampers with or knowingly renders inaccurate, any
39 monitoring device or method required to be maintained pursuant to
40 the provisions of P.L.1981, c.262, or of any rule or regulation
41 adopted, or permit or order issued pursuant thereto, shall be guilty,
42 upon conviction, of a crime of the third degree and shall,
43 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
44 subject to a fine of not more than \$50,000 per day of violation, or
45 by imprisonment, or both.

46 g. In addition to the penalties prescribed in this section, a notice
47 of violation of any provision of P.L.1981, c.262 shall be recorded
48 on the deed of the property wherein the violation occurred, on order

1 of the commissioner, by the clerk or register of deeds and
2 mortgages of the county wherein the affected property is located
3 and with the clerk of the Superior Court and shall remain attached
4 thereto until such time as the violation has been remedied and the
5 commissioner orders the notice of violation removed. Any fees or
6 other charges that are assessed by either the clerk or register of
7 deeds and mortgages of the county wherein the affected property is
8 located or the department for the recording of the notice of violation
9 on the deed required pursuant to this subsection shall be paid by the
10 owner of the affected property or the person committing the
11 violation and the commissioner shall not order the notice of
12 violation removed until such time as these fees are paid in full.

13 h. Each applicant or permittee shall provide, upon the request of
14 the department, any information the department requires to
15 determine compliance with the provisions of P.L.1981, c.262, or of
16 any rule or regulation adopted, or permit or order issued pursuant
17 thereto.

18 (cf: P.L.1991, c.91, s.527)

19

20 9. R.S.58:4-6 is amended to read as follows:

21 58:4-6. a. Whenever, on the basis of available information, the
22 Commissioner of Environmental Protection finds that a person has
23 violated any provision of the "Safe Dam Act," P.L.1981, c.249
24 (C.58:4-8.1 et seq.), or of any rule[,] or regulation adopted, or
25 permit or order issued pursuant thereto, the commissioner may:

26 (1) Issue an order requiring any such person to comply in
27 accordance with subsection b. of this section; or

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

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

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

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

36 Recourse to any of the remedies available under this section shall
37 not preclude recourse to any of the other remedies prescribed in this
38 section or by any other applicable law.

39 b. Whenever, on the basis of available information, the
40 commissioner finds a person in violation of any provision of
41 P.L.1981, c.249, or of any rule[,] or regulation adopted, or permit
42 or order issued pursuant thereto, the commissioner may issue an
43 administrative order: (1) specifying the provision or provisions of
44 the law, rule, regulation, permit or order, of which the person is in
45 violation; (2) citing the action which constituted the violation; (3)
46 requiring compliance with the provision or provisions violated; (4)
47 requiring the restoration of the area which is the site of the

1 violation; and (5) providing notice to the person of the right to a
2 hearing on the matters contained in the order.

3 c. The commissioner is authorized to institute a civil action in
4 Superior Court for appropriate relief from any violation of any
5 provision of P.L.1981, c.249, or of any rule[,] or regulation
6 adopted, or permit or order issued pursuant thereto. Such relief
7 may include, singly or in combination:

8 (1) A temporary or permanent injunction, including an order or
9 judgment as will effectually secure the persons interested from
10 danger of loss from the breaking of a dam. The court may proceed
11 in the action in a summary manner or otherwise;

12 (2) Assessment of the violator for the costs of any investigation,
13 inspection, or monitoring survey which led to the **[establishment]**
14 discovery of the violation, and for the reasonable costs of preparing
15 and bringing legal action under this subsection;

16 (3) Assessment of the violator for any costs incurred by the
17 State in removing, correcting, or terminating the adverse effects
18 resulting from any violation for which legal action under this
19 subsection may have been brought;

20 (4) Assessment against the violator for compensatory damages
21 for any loss or destruction of public resources, including but not
22 limited to, wildlife, fish [or], aquatic life, habitat, plants, or historic
23 or archeological resources, and for any other actual damages caused
24 by a violation. Assessments under this subsection shall be paid to
25 the "Environmental Services Fund," established pursuant to section
26 5 of P.L.1975, c.232 (C.13:1D-33), and kept separate from other
27 receipts deposited therein, and appropriated to the department for
28 the removal of dams in the State, except that compensatory
29 damages to privately held resources shall be paid by specific order
30 of the court to any persons who have been aggrieved by the
31 unauthorized regulated activity;

32 (5) A requirement that the violator restore the site of the
33 violation to the maximum extent practicable and feasible or, in the
34 event that restoration of the site of the violation is not practicable or
35 feasible, provide for off-site restoration alternatives as approved by
36 the department.

37 d. The commissioner is authorized to assess a civil
38 administrative penalty of **[up to \$25,000]** not more than \$50,000
39 for each violation of any provision of P.L.1981, c.249, or of any
40 rule[,] or regulation adopted, or permit or order issued pursuant
41 thereto, and each day during which each violation continues shall
42 constitute an additional, separate, and distinct offense. Any amount
43 assessed under this subsection shall fall within a range established
44 by regulation by the commissioner for violations of similar type,
45 seriousness, and duration; provided, however, that prior to adoption
46 of the regulation, the commissioner may, on a case-by-case basis,
47 assess civil administrative penalties up to a maximum of \$25,000

1 per day for each violation, utilizing the criteria set forth herein. In
2 adopting rules and regulations establishing the amount of any
3 penalty to be assessed, the commissioner may take into account the
4 economic benefits from the violation gained by the violator. **[No**
5 **assessment shall be levied pursuant to this section until after the**
6 **party has been notified by certified mail or personal service.]** Prior
7 to assessment of penalty under this subsection, the property owner
8 or person committing the violation shall be notified by certified
9 mail or personal service that the penalty is being assessed. The
10 notice shall: (1) identify the section of the law, rule, regulation,
11 permit or order violated; (2) recite the facts alleged to constitute a
12 violation; (3) state the amount of the civil penalties to be imposed;
13 and (4) affirm the rights of the alleged violator to a hearing. The
14 ordered party shall have 20 days from receipt of the notice within
15 which to deliver to the commissioner a written request for a hearing
16 setting forth its factual and legal defenses, arguments and issues.
17 After the hearing and upon finding that a violation has occurred, the
18 commissioner may issue a final order specifying the amount of the
19 fine imposed. If no hearing is requested, the notice shall become
20 final after the expiration of the 20-day period. Payment of the
21 assessment is due when a final order is issued or the notice becomes
22 a final order. The authority to levy an administrative penalty is in
23 addition to all other enforcement provisions in this act and in any
24 other applicable law, rule, or regulation, and the payment of any
25 assessment shall not be deemed to affect the availability of any
26 other enforcement provisions in connection with the violation for
27 which the assessment is levied. **[Any civil administrative penalty**
28 **assessed under this section may be compromised by the**
29 **commissioner upon the posting of a performance bond by the**
30 **violator, or upon such terms and conditions as the commissioner**
31 **may establish by regulation.]** The department may compromise
32 any civil administrative penalty assessed under this section in an
33 amount and with conditions the department determines appropriate.
34 A civil administrative penalty assessed, including a portion thereof
35 required to be paid pursuant to a payment schedule approved by the
36 department, which is not paid within 90 days of the date that
37 payment of the penalty is due, shall be subject to an interest charge
38 on the amount of the penalty, or portion thereof, which shall accrue
39 as of the date payment is due. If the penalty is contested, no
40 additional interest charge shall accrue on the amount of the penalty
41 until after the date on which a final order is issued. Interest charges
42 assessed and collectible pursuant to this subsection shall be based
43 on the rate of interest on judgments provided in the New Jersey
44 Rules of Court. For the purposes of this subsection, the date that a
45 penalty is due is the date that written notice of the penalty is
46 received by the person responsible for payment thereof, or such
47 later date as may be specified in the notice.

1 e. A person who violates any provision of P.L.1981, c.249 or of
2 any rule[,] or regulation adopted, or permit or order issued
3 pursuant thereto, or an administrative order issued pursuant to
4 subsection b. of this section, or a court order issued pursuant to
5 subsection c. of this section, or who fails to pay a civil
6 administrative penalty in full pursuant to subsection d. of this
7 section, or who fails to make a payment pursuant to a penalty
8 payment schedule entered into with the department, or who makes
9 any false or misleading statement on any application, record, report,
10 or other document required to be submitted to the department, shall
11 be subject, upon order of a court, to a civil penalty not to exceed
12 ~~[\$10,000]~~ \$50,000 per day of ~~[such]~~ the violation, and each day
13 during which the violation continues shall constitute an additional,
14 separate, and distinct offense. Any civil penalty imposed pursuant
15 to this subsection may be collected with costs in a summary
16 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
17 P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties,
18 costs or interest charges, the court may assess against the violator
19 the amount of actual economic benefit accruing to the violator from
20 the violation. The Superior Court and the municipal court shall
21 have jurisdiction to enforce the provisions of the "Penalty
22 Enforcement Law of 1999" in connection with this section.

23 f. A person who purposely, knowingly or recklessly violates any
24 provision of P.L.1981, c.249, or of any rule[,] or regulation
25 adopted, or permit or order issued pursuant thereto, shall be guilty,
26 upon conviction, of a crime of the ~~[fourth]~~ third degree and,
27 notwithstanding any provision of N.J.S.2C:43-3 to the contrary,
28 shall be subject to a fine of not less than ~~[\$2,500]~~ \$5,000 nor more
29 than ~~[\$25,000]~~ \$50,000 per day of violation, or by imprisonment,
30 or both, in addition to any other applicable penalties and provisions
31 under Title 2C of the New Jersey Statutes. ~~[A second or~~
32 ~~subsequent offense under this subsection shall subject the violator~~
33 ~~to a fine]~~ A person who negligently violates any provision of
34 P.L.1981, c.249, or of any rule or regulation adopted, or permit or
35 order issued pursuant thereto, shall be guilty, upon conviction, of a
36 crime of the fourth degree and shall, notwithstanding any provision
37 of N.J.S.2C:43-3 to the contrary, be subject to a fine of not less than
38 ~~[\$5,000]~~ \$2,500 nor more than ~~[\$50,000]~~ \$25,000 per day of
39 violation, or by imprisonment, or both, in addition to any other
40 applicable penalties and provisions under Title 2C of the New
41 Jersey Statutes. A person who knowingly makes a false statement,
42 representation, or certification in any application, record, or other
43 document filed or required to be maintained under the provisions of
44 P.L.1981, c.249, or of any rule or regulation adopted, or permit or
45 order issued pursuant thereto, or who falsifies, tampers with or
46 knowingly renders inaccurate, any monitoring device or method
47 required to be maintained pursuant to the provisions of P.L.1981,

1 c.249, or of any rule or regulation adopted, or permit or order issued
2 pursuant thereto, shall be guilty, upon conviction, of a crime of the
3 **【fourth】** third degree and, notwithstanding any provision of
4 N.J.S.2C:43-3 to the contrary, shall be subject to a fine of not more
5 than **【\$10,000】** \$50,000, or by imprisonment, or both, in addition to
6 any other applicable penalties and provisions under Title 2C of the
7 New Jersey Statutes.

8 g. In addition to the penalties prescribed in this section, a notice
9 of violation of any provision of P.L.1981, c.249, or of any rule【,】
10 or regulation adopted, or permit or order issued pursuant thereto,
11 shall be recorded on the deed of the property wherein the violation
12 occurred, on order of the commissioner, by the clerk or register of
13 deeds and mortgages of the county wherein the affected property is
14 located and with the clerk of the Superior Court and shall remain
15 attached thereto until such time as the violation has been remedied
16 and the commissioner orders the notice of violation removed. Any
17 fees or other charges that are assessed by either the clerk or register
18 of deeds and mortgages of the county wherein the affected property
19 is located or the department for the recording of the notice of
20 violation on the deed required pursuant to this subsection shall be
21 paid by the owner of the affected property or the person committing
22 the violation and the commissioner shall not order the notice of
23 violation removed until such time as these fees are paid in full.

24 h. **【The department may require an】** Each owner or person
25 having control of a reservoir or dam **【to】** shall provide, upon
26 request of the department, any information the department requires
27 to determine compliance with any provision of P.L.1981, c.249, or
28 of any rule【,】 or regulation adopted, or permit or order issued
29 pursuant thereto.

30 i. **【Any person who knowingly, recklessly, or negligently makes**
31 **a false statement, representation or certification in any application,**
32 **record, or other document filed or required to be maintained under**
33 **the provisions of P.L.1981, c.249, shall be in violation of the act**
34 **and shall be subject to the penalties assessed pursuant to**
35 **subsections d. and e. of this section.】** (Deleted by amendment,
36 P.L. , c.)

37 j. All penalties collected pursuant to this section or sums
38 collected pursuant to R.S.58:4-5 shall be deposited in the
39 "Environmental Services Fund," established pursuant to section 5 of
40 P.L.1975, c.232 (C.13:1D-33), and kept separate from other receipts
41 deposited therein, and appropriated to the department for the
42 removal of dams in the State.

43 k. The department shall have the authority to enter any property,
44 facility, premises, or site for the purpose of conducting inspections
45 to determine the condition of any dam, or to conduct inspections of
46 ordered repairs or to otherwise determine compliance with the

1 provisions of P.L.1981, c.249.

2 (cf: P.L.2005, c.228, s.2)

3

4 10. Section 12 of P.L.1972, c.185 (C.58:16A-63) is amended to
5 read as follows:

6 12. [(a) Any person who knowingly violates a provision of this
7 act or a rule, regulation or order adopted pursuant to this act shall
8 be subject to a penalty of not more than \$2,500.00 for each offense
9 and any person who otherwise violates a provision of this act shall
10 be subject to a penalty of not more than \$1,500.00 for each offense,
11 both to be collected by the department in a summary proceeding
12 under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.), and in
13 any court of competent jurisdiction wherein injunctive relief has
14 been requested. The Superior Court shall have jurisdiction to
15 enforce said penalty enforcement law. If the violation is of a
16 continuing nature each day which it continues shall constitute an
17 additional, separate and distinct offense. The department is hereby
18 authorized and empowered to compromise and settle any claim for a
19 penalty under this section in such amount in the discretion of the
20 department as may appear appropriate and equitable under all of the
21 circumstances. All moneys recovered in any such action, together
22 with the costs recovered therein, shall be paid to the Environmental
23 Services Fund.

24 (b) If any person violates any of the provisions of this act or any
25 rule or regulation promulgated pursuant to the provisions of this act,
26 the department may institute an action in a court of competent
27 jurisdiction for injunctive relief to prohibit and prevent such
28 violation or violations and the said court may proceed in the action
29 in a summary manner.] a. Whenever, on the basis of available
30 information, the commissioner finds that a person is in violation of
31 any provision of the "Flood Hazard Area Control Act," P.L.1962,
32 c.19 (C.58:16A-50 et seq.), P.L.1972, c.185, P.L.1977, c.385 or
33 P.L.1979, c.359, or any rule or regulation adopted, or permit or
34 order issued pursuant thereto, the commissioner may:

35 (1) Issue an administrative enforcement order requiring any such
36 person to comply in accordance with subsection b. of this section;

37 (2) Bring a civil action in accordance with subsection c. of this
38 section;

39 (3) Levy a civil administrative penalty in accordance with
40 subsection d. of this section;

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

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

45 Recourse to any of the remedies available under this section shall
46 not preclude recourse to any of the other remedies.

47 b. Whenever, on the basis of available information, the
48 commissioner finds that a person is in violation of any provision of

1 P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979,
2 c.359, or any rule or regulation adopted, or permit or order issued
3 pursuant thereto, the commissioner may issue an administrative
4 enforcement order: (1) specifying the provision or provisions of
5 P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979,
6 c.359, or any rule or regulation adopted, or permit or order issued
7 pursuant thereto, of which the person is in violation; (2) citing the
8 action which constituted the violation; (3) requiring compliance
9 with the provision or provisions violated; (4) requiring the
10 restoration of the area which is the site of the violation; and (5)
11 providing notice to the person of the right to a hearing on the
12 matters contained in the administrative enforcement order.

13 c. The commissioner is authorized to institute a civil action in
14 Superior Court for appropriate relief from any violation of the
15 provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
16 P.L.1979, c.359, or any rule or regulation adopted, or permit or
17 order issued pursuant thereto. Such relief may include, singly or in
18 combination:

19 (1) A temporary or permanent injunction;

20 (2) Assessment of the violator for the costs of any investigation,
21 inspection, or monitoring survey which led to the discovery of the
22 violation, and for the reasonable costs of preparing and bringing
23 legal action under this subsection;

24 (3) Assessment of the violator for any costs incurred by the
25 State in removing, correcting, or terminating the adverse effects
26 resulting from any violation of the provisions of P.L.1962, c.19,
27 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or
28 regulation adopted, or permit or order issued pursuant thereto, for
29 which legal action under this subsection may have been brought;

30 (4) Assessment against the violator for compensatory damages
31 for any loss or destruction of public resources, including but not
32 limited to, wildlife, fish, aquatic life, habitat, plants, or historic or
33 archeological resources, and for any other actual damages caused by
34 a violation of the provisions of P.L.1962, c.19, P.L.1972, c.185,
35 P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation
36 adopted, or permit or order issued pursuant thereto. Assessments
37 under this subsection shall be paid to the Wetlands Mitigation Bank
38 established pursuant to section 14 of P.L.1987, c.156 (C.13:9B-14),
39 except that compensatory damages to privately held resources shall
40 be paid by specific order of the court to any persons who have been
41 aggrieved by a violation of any provision of P.L.1962, c.19,
42 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or
43 regulation adopted, or permit or order issued pursuant thereto;

44 (5) A requirement that the violator restore the site of the
45 violation to the maximum extent practicable and feasible or, in the
46 event that restoration of the site of the violation is not practicable or
47 feasible, provide for off-site restoration alternatives as approved by
48 the department.

1 d. The commissioner is authorized to assess a civil
2 administrative penalty of not more than \$50,000 for each violation
3 of the provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977,
4 c.385 or P.L.1979, c.359, or any rule or regulation adopted, or
5 permit or order issued pursuant thereto, and each day during which
6 each violation continues shall constitute an additional, separate and
7 distinct offense. Any amount assessed under this subsection shall
8 fall within a range established by regulation by the commissioner
9 for violations of similar type, seriousness, and duration; provided,
10 however, that prior to the adoption of the regulation, the
11 commissioner may, on a case-by-case basis, assess civil
12 administrative penalties up to a maximum of \$25,000 per day for
13 each violation, utilizing the criteria set forth herein. In adopting
14 rules and regulations establishing the amount of any penalty to be
15 assessed, the commissioner may take into account the economic
16 benefits from the violation gained by the violator. Prior to
17 assessment of penalty under this subsection, the property owner or
18 person committing the violation shall be notified by certified mail
19 or personal service that the penalty is being assessed. The notice
20 shall include a reference to the section of the statute, regulation,
21 order or permit condition violated; recite the facts alleged to
22 constitute a violation; state the amount of the civil penalties to be
23 imposed; and affirm the rights of the alleged violator to a hearing.
24 The ordered party shall have 20 calendar days from receipt of the
25 notice within which to deliver to the commissioner a written request
26 for a hearing setting forth its factual and legal defenses, arguments
27 and issues. After the hearing and upon finding that a violation has
28 occurred, the commissioner may issue a final administrative
29 enforcement order after assessing the amount of the fine specified
30 in the notice. If no hearing is requested, the notice shall become a
31 final administrative enforcement order after the expiration of the
32 20-day period. Payment of the assessment is due when a final
33 administrative enforcement order is issued or the notice becomes a
34 final administrative enforcement order. The authority to levy a civil
35 administrative order is in addition to all other enforcement
36 provisions in P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
37 P.L.1979, c.359, or any rule or regulation adopted, or permit or
38 order issued pursuant thereto, and the payment of any assessment
39 shall not be deemed to affect the availability of any other
40 enforcement provisions in connection with the violation for which
41 the assessment is levied. The department may compromise any
42 civil administrative penalty assessed under this section in an
43 amount and with conditions the department determines appropriate.
44 A civil administrative penalty assessed, including a portion thereof
45 required to be paid pursuant to a payment schedule approved by the
46 department, which is not paid within 90 days of the date that
47 payment of the penalty is due, shall be subject to an interest charge
48 on the amount of the penalty, or portion thereof, which shall accrue

1 as of the date payment is due. If the penalty is contested, no
2 additional interest charge shall accrue on the amount of the penalty
3 until after the date on which a final order is issued. Interest charges
4 assessed and collectible pursuant to this subsection shall be based
5 on the rate of interest on judgments provided in the New Jersey
6 Rules of Court. For the purposes of this subsection, the date that a
7 penalty is due is the date that written notice of the penalty is
8 received by the person responsible for payment thereof, or a later
9 date as may be specified in the notice.

10 e. A person who violates any provision of P.L.1962, c.19,
11 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or of any rule
12 or regulation adopted, or permit or order issued pursuant thereto, or
13 an administrative order issued pursuant to subsection b. of this
14 section, or a court order issued pursuant to subsection c. of this
15 section, or who fails to pay a civil administrative assessment in full
16 pursuant to subsection d. of this section, or who fails to make a
17 payment pursuant to a penalty payment schedule entered into with
18 the department, or who makes any false or misleading statement on
19 any application, record, report, or other document required to be
20 submitted to the department, shall be subject, upon order of a court,
21 to a civil penalty not to exceed \$50,000 per day of the violation, and
22 each day during which the violation continues shall constitute an
23 additional, separate, and distinct offense. Any civil penalty
24 imposed pursuant to this subsection may be collected with costs in a
25 summary proceeding pursuant to the "Penalty Enforcement Law of
26 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any
27 penalties, costs or interest charges, the court may assess against the
28 violator the amount of actual economic benefit accruing to the
29 violator from the violation. The Superior Court shall have
30 jurisdiction to enforce the provisions of the "Penalty Enforcement
31 Law of 1999" in connection with this act.

32 f. A person who purposely, knowingly or recklessly violates any
33 provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
34 P.L.1979, c.359, or of any rule or regulation adopted, or permit or
35 order issued pursuant thereto, shall be guilty, upon conviction, of a
36 crime of the third degree and shall, notwithstanding the provisions
37 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less
38 than \$5,000 nor more than \$50,000 per day of violation, or by
39 imprisonment, or both. A person who negligently violates any
40 provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
41 P.L.1979, c.359, or of any rule or regulation adopted, or permit or
42 order issued pursuant thereto, shall be guilty, upon conviction, of a
43 crime of the fourth degree and shall, notwithstanding the provisions
44 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less
45 than \$2,500 nor more than \$25,000 per day of violation, or by
46 imprisonment, or both. A person who knowingly makes a false
47 statement, representation, or certification in any application, record,
48 or other document filed or required to be maintained under any

1 provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
2 P.L.1979, c.359, or of any rule or regulation adopted, or permit or
3 order issued pursuant thereto, or who falsifies, tampers with or
4 knowingly renders inaccurate, any monitoring device or method
5 required to be maintained pursuant to P.L.1962, c.19, P.L.1972,
6 c.185, P.L.1977, c.385 or P.L.1979, c.359, or of any rule or
7 regulation adopted, or permit or order issued pursuant thereto, shall
8 be guilty, upon conviction, of a crime of the third degree and shall,
9 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
10 subject to a fine of not more than \$50,000 per day of violation, or
11 by imprisonment, or both.

12 g. In addition to the penalties prescribed in this section, a notice
13 of violation of any provision of P.L.1962, c.19, P.L.1972, c.185,
14 P.L.1977, c.385 or P.L.1979, c.359, or of any rule or regulation
15 adopted, or permit or order issued pursuant thereto, shall be
16 recorded on the deed of the property wherein the violation occurred,
17 on order of the commissioner, by the clerk or register of deeds and
18 mortgages of the county wherein the affected property is located
19 and with the clerk of the Superior Court and shall remain attached
20 thereto until such time as the violation has been remedied and the
21 commissioner orders the notice of violation removed. Any fees or
22 other charges that are assessed by either the clerk or register of
23 deeds and mortgages of the county wherein the affected property is
24 located or the department for the recording of the notice of violation
25 on the deed required pursuant to this paragraph shall be paid by the
26 owner of the affected property or person committing the violation.
27 The notice of violation may be removed upon payment in full or
28 upon meeting other conditions set forth by the commissioner.

29 h. If the violation is one in which the department has determined
30 that the restoration of the site to its pre-violation condition would
31 increase the harm to the waters of the State or its ecology, the
32 department may issue an "after the fact" permit for the regulated
33 activity that has already occurred; provided that assessment against
34 the violator for costs or damages enumerated in subsection c. of this
35 section has been made, an opportunity has been afforded for public
36 hearing and comment, and the reasons for the issuance of the "after
37 the fact" permit are published in the New Jersey Register and in a
38 newspaper of general circulation in the geographical area of the
39 violation. Any person violating an "after the fact" permit issued
40 pursuant to this subsection shall be subject to the provisions of this
41 section.

42 i. Each applicant or permittee shall provide, upon the request of
43 the department, any information the department requires to
44 determine compliance with the provisions of P.L.1962, c.19,
45 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or of any rule
46 or regulation adopted, or permit or order issued pursuant thereto.
47 (cf: P.L.1991, c.91, s.532)

1 11. This act shall take effect immediately.

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STATEMENT

5

6 This bill is intended to be known as the "New Jersey
7 Environmental Enforcement Enhancement Act."

8 The sponsor of the bill finds that it is in the public interest that
9 any parties responsible for polluting, contaminating, despoiling or
10 improperly managing the State's land, water, wildlife or air be held
11 fully accountable for their actions and for any cleanup, restoration
12 or mitigation required to address the consequences of those actions.

13 The sponsor further finds that the provisions of every
14 environmental law should adequately deter any person from
15 violating these laws; that the enforcement of all environmental laws
16 should be consistently and fairly applied; that these environmental
17 laws each contain appropriate authorities to initiate and pursue
18 enforcement actions against those who do violate these laws; that,
19 despite the need for strong enforcement provisions, there are a
20 number of environmental laws that have not been updated in over
21 twenty years and therefore do not meet these requirements; and that,
22 as a result of inadequate enforcement provisions contained in
23 certain environmental laws, the citizens of the State often bear the
24 burdens of the effects of pollution either through adverse impacts to
25 the environment or to public health and safety.

26 The sponsor therefore determines that it is in the public interest
27 to update provisions of a number of environmental laws – namely,
28 the "Freshwater Wetlands Protection Act," P.L.1987, c.156
29 (C.13:9B-1 et seq.); the "Wetlands Act of 1970," P.L.1970, c.272
30 (C.13:9A-1 et seq.); P.L.1985, c.125 (C.12:5-1 et seq.), commonly
31 known as the "Waterfront Development Act;" the "Coastal Area
32 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the
33 "Flood Hazard Area Control Act," P.L.1962, c1.9 (C.58:16A-50 et
34 seq.); the "Pesticide Control Act of 1971," P.L.1971, c.176
35 (C.13:1F-1 et seq.); the "Water Supply Management Act,"
36 P.L.1981, c.262 (C.58:1A-1 et seq.), the "Safe Dam Act," P.L.1981,
37 c.249 (C.58:4-8.1 et seq.); and the "Endangered and Nongame
38 Species Conservation Act," P.L.1973, c.309 (C.23:2A-1 et seq.) –
39 to ensure that enforcement of these environmental laws is
40 consistently applied; and that there is accorded adequate authority
41 and sufficient penalty levels to firmly and fairly enforce all of these
42 laws in a streamlined and cost-effective manner.

43 The bill would update provisions of a number of environmental
44 laws to ensure that enforcement is consistently and fairly applied
45 regardless of the type of infraction committed or pollution or
46 environmental problem caused. The bill would ensure that the
47 Department of Environmental Protection and its delegated agencies
48 are accorded adequate authority and sufficient penalty levels to

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48

- 1 firmly and fairly enforce all environmental laws in a streamlined
- 2 and cost-effective manner.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

[First Reprint]
SENATE, No. 2650

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 6, 2007

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Senate Bill No. 2650 (1R).

This bill would update provisions of a number of environmental laws to provide enforcement language that is consistent across the environmental statutes. The bill would ensure that the Department of Environmental Protection (DEP) and its delegated agencies are accorded consistent authority and penalty levels to enforce all environmental laws in a uniform manner.

The bill would update the penalty and enforcement provisions of the following environmental laws:

(1) R.S.12:5-1 et seq., commonly known as the "Waterfront Development Act";

(2) the "Pesticide Control Act of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.);

(3) "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.);

(4) the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.);

(5) the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.);

(6) "The Endangered and Nongame Species Conservation Act," P.L.1973, c.309 (C.23:2A-1 et seq.);

(7) the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.);

(8) the "Safe Dam Act," P.L.1981, c.249 (C.58:4-8.1 et seq.);

(9) the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.); and

(10) the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

As reported by the committee, this bill is identical to the Assembly Committee Substitute for Assembly Bill No. 4287 as reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

1) reduce the maximum civil administrative and civil penalties from \$35,000 to \$25,000;

2) revise the criteria concerning assessment of civil administrative penalties to provide the amount assessed shall fall within a range established by the commissioner by regulation for violations of similar type, seriousness, duration, and conduct, and delete consideration of actual harm to the environment;

3) provide that a statement of the basis for the amount of civil penalties to be assessed be included in a penalty notice;

4) provide that, notwithstanding the \$25,000 maximum penalty, the commissioner may assess any economic benefits from the violation gained by the violator;

5) revise the types of relief the commissioner may seek in a civil action, including providing that the commissioner may institute a civil action for the recovery of compensatory damages for any loss or destruction of "natural resources" as opposed to "public resources";

6) provide that if a penalty is contested, interest shall not accrue until 90 days after the date on which a final order is issued;

7) clarify that criminal penalties would apply to persons who "purposely, knowingly or recklessly" make a false or misleading statement to the Department of Environmental Protection, rather than to a person who "knowingly" makes such a statement;

8) restore language in section 7 and section 9 of the bill to transmit natural resource damage amounts to specific funds administered by the DEP;

9) provide that all penalties collected for violations of "The Endangered and Nongame Species Conservation Act" be deposited into the "Endangered and Nongame Species of Wildlife Conservation Fund";

10) delete provisions in sections 4, 6, 10, and 11 concerning "after the fact" permit requirements when restoration would increase harm to the environment; and

11) make technical changes to the bill.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 2650

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 2007

The Senate Environment Committee reports favorably Senate Bill No. 2650 with committee amendments.

As amended, Senate Bill No. 2650 would update provisions of a number of environmental laws to ensure that enforcement is consistently and fairly applied regardless of the type of infraction committed or pollution or environmental problem caused. The bill would ensure that the Department of Environmental Protection (DEP) and its delegated agencies are accorded adequate authority and sufficient penalty levels to firmly and fairly enforce all environmental laws in a uniform manner.

The bill would update the penalty and enforcement provisions of the following environmental laws:

- (1) R.S.12:5-1 et seq., commonly known as the "Waterfront Development Act";
- (2) the "Pesticide Control Act of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.);
- (3) "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.);
- (4) the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.);
- (5) the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.);
- (6) "The Endangered and Nongame Species Conservation Act," P.L.1973, c.309 (C.23:2A-1 et seq.);
- (7) the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.);
- (8) the "Safe Dam Act," P.L.1981, c.249 (C.58:4-8.1 et seq.);
- (9) the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.); and
- (10) the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

1) delete the deed notice requirements from the bill, except in the “Flood Hazard Area Control Act,” the “Freshwater Wetlands Protection Act,” and the “Safe Dam Act,” and clarify that the recording of a notice for a violation of one of these acts is permissive, i.e., at the discretion of the Commissioner of DEP;

2) add the “Safe Drinking Water Act” to the environmental laws covered under the bill;

3) reduce the new maximum civil administrative and civil penalties from \$50,000 to \$35,000;

4) delete the fourth degree criminal penalty for negligent violations of any of the environmental statutes covered under the bill;

5) delete the language transmitting natural resources damage amounts to specific funds administered by the DEP; these amounts would now be submitted to the State Treasurer for deposit into the General Fund;

6) delete language authorizing the court to order the payment of compensatory damages to any persons who have been aggrieved by unauthorized regulated activity affecting privately held natural resources;

7) clarify that only persons who “knowingly” make a false or misleading statement to the DEP would be subject to a civil penalty of up to \$35,000;

8) clarify that DEP may only assess violators for “reasonable” costs;

9) clarify that in assessing a civil administrative penalty, the amount assessed by the Commissioner of DEP must fall within a range established by regulation for violations of similar type, seriousness, “actual harm to the environment,” and duration;

10) increase the number of days an ordered party has from receipt of a notice of violation to request a hearing from 20 to 35 days; and

11) make several technical changes to the bill.

It is the understanding of the committee that the language used throughout the amended bill authorizing the DEP to make an “assessment of the violator for the reasonable costs of preparing and bringing legal action” is consistent with the court’s opinion in State, Department of Environmental Protection v. Standard Tank Cleaning Corp., 284 N.J. Super. 381 (App. Div. 1995), which ruled that attorney’s fees were not recoverable as “legal costs” to be assessed against the violator of an environmental statute, rule or regulation, permit or order. Rather, such “legal costs” refer solely to the fees of outside experts and other general litigation expenses.

ASSEMBLY, No. 4287

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MAY 17, 2007

Sponsored by:

Assemblyman JOHN S. WISNIEWSKI

District 19 (Middlesex)

Assemblyman JOSEPH VAS

District 19 (Middlesex)

SYNOPSIS

Updates enforcement provisions of various environmental laws in a uniform manner.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the enforcement of the State's environmental
2 laws, and amending parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. R.S.12:5-6 is amended to read as follows:

8 12:5-6. a. Any development or improvement enumerated in
9 R.S.12:5-3 and in P.L.1975, c.232 (C.13:1D-29 et seq.) or included
10 within any rule or regulation adopted pursuant thereto, which is
11 commenced or executed without first obtaining approval, or
12 contrary to the conditions of approval, as provided in R.S.12:5-3
13 and in P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule or
14 regulation adopted, or permit or order issued pursuant thereto, shall
15 be deemed to be a purpresture, a public nuisance and a violation
16 under this section [and shall be abated in the name of the State by
17 one or more of the following actions:

18 (1) The issuance of an administrative order by the Commissioner
19 of the Department of Environmental Protection specifying that there
20 has been a violation of the provisions of this section, or any
21 applicable rule, regulation or permit; setting forth the facts forming
22 the basis for the issuance of the order; and specifying the course of
23 action necessary to correct the violation;

24 (2) The commencement of a civil action by the commissioner in
25 Superior Court for injunctive or other appropriate relief;

26 (3) The levying of an administrative penalty by the
27 commissioner in accordance with subsection b. of this section.

28 b. The commissioner is authorized to assess an administrative
29 penalty of not more than \$1,000.00 for each violation of this
30 section, and is authorized to assess additional penalties of not more
31 than \$100.00 for each day during which this violation continues
32 after receipt of an administrative order from the department
33 pursuant to paragraph (1) of subsection a. of this section. Prior to
34 the assessment of a penalty under this subsection, the property
35 owner or person committing the violation shall be notified by
36 certified mail or personal service that a penalty is being assessed.
37 The notice shall include a reference to the section of the law,
38 regulation, or permit condition violated; a concise statement of the
39 facts alleged to constitute the violation; a statement of the amount
40 of the administrative penalty assessed and a statement of the party's
41 right to an administrative hearing.

42 c. The party shall have 21 days from receipt of the notice within
43 which to deliver to the commissioner a written request for a
44 hearing. This request shall specify in detail the statements
45 contested by the party. If no hearing is requested, then after 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 underlined thus is new matter.

1 expiration of the 21-day period the commissioner shall issue a final
2 order assessing the penalty specified in the notice. The penalty is
3 due when the final order is issued.

4 d. If a hearing is requested, it shall be held within 30 days of the
5 date on which the request is received by the commissioner. If a
6 violation is found to have occurred, the commissioner may issue a
7 final order assessing not more than the amount of the penalty
8 specified in the notice. The penalty is due when the final order is
9 issued.

10 e. Any penalty imposed pursuant to this section may be enforced
11 as provided for in "the penalty enforcement law" (N.J.S. 2A:58-1 et
12 seq.)].

13 b. Whenever, on the basis of available information, the
14 commissioner finds that a person is in violation of any provision of
15 R.S.2:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule or
16 regulation adopted, or permit or order issued pursuant thereto, the
17 commissioner may:

18 (1) Issue an order requiring any such person to comply in
19 accordance with subsection c. of this section; or

20 (2) Bring a civil action in accordance with subsection d. of this
21 section; or

22 (3) Levy a civil administrative penalty in accordance with
23 subsection e. of this section; or

24 (4) Bring an action for a civil penalty in accordance with
25 subsection f. of this section; or

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

28 Recourse to any of the remedies available under this section shall
29 not preclude recourse to any of the other remedies.

30 c. Whenever, on the basis of available information, the
31 commissioner finds a person in violation of any provision of
32 R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule
33 or regulation adopted, or permit or order issued pursuant thereto,
34 the commissioner may issue an order: (1) specifying the provision
35 or provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.),
36 or the rule, regulation, permit or order of which the person is in
37 violation; (2) citing the action which constituted the violation; (3)
38 requiring compliance with the provision or provisions violated; (4)
39 requiring the restoration of the area which is the site of the
40 violation; and (5) providing notice to the person of the right to a
41 hearing on the matters contained in the order.

42 d. The commissioner is authorized to institute a civil action in
43 Superior Court for appropriate relief from any violation of any
44 provisions of R.S.12:5-3 or P.L.1975, c.232 (C. 13:1D-29 et seq.),
45 or any rule or regulation adopted, or permit or order issued pursuant
46 thereto. Such relief may include, singly or in combination:

47 (1) A temporary or permanent injunction;

1 (2) Assessment of the violator for the costs of any investigation,
2 inspection, or monitoring survey which led to the discovery of the
3 violation, and for the reasonable costs of preparing and bringing
4 legal action under this subsection;

5 (3) Assessment of the violator for any costs incurred by the State
6 in removing, correcting, or terminating the adverse effects resulting
7 from any unauthorized regulated activity for which legal action
8 under this subsection may have been brought;

9 (4) Assessment against the violator for compensatory damages
10 for any loss or destruction of public resources, including but not
11 limited to, wildlife, fish, aquatic life, habitat, plants, or historic or
12 archeological resources, and for any other actual damages caused by
13 an unauthorized regulated activity. Assessments under this
14 subsection shall be paid to the “Cooperative Coastal Monitoring,
15 Restoration and Enforcement Fund” established pursuant to section
16 18 of P.L.1973, c.185 (C.13:19-18), except that compensatory
17 damages to privately held resources shall be paid by specific order
18 of the court to any persons who have been aggrieved by the
19 unauthorized regulated activity;

20 (5) A requirement that the violator restore the site of the
21 violation to the maximum extent practicable and feasible or, in the
22 event that restoration of the site of the violation is not practicable or
23 feasible, provide for off-site restoration alternatives as approved by
24 the department.

25 e. The commissioner is authorized to assess a civil
26 administrative penalty of not more than \$50,000 for each violation
27 of the provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et
28 seq.), or of any rule or regulation adopted, or permit or order issued
29 pursuant thereto, and each day during which each violation
30 continues shall constitute an additional, separate, and distinct
31 offense. Any amount assessed under this subsection shall fall
32 within a range established by regulation by the commissioner for
33 violations of similar type, seriousness, and duration; provided,
34 however, that prior to the adoption of the regulation, the
35 commissioner may, on a case-by-case basis, assess civil
36 administrative penalties up to a maximum of \$25,000 per day for
37 each violation, utilizing the criteria set forth herein. In adopting
38 rules and regulations establishing the amount of any penalty to be
39 assessed, the commissioner may take into account the economic
40 benefits from the violation gained by the violator. Prior to
41 assessment of penalty under this subsection, the property owner or
42 person committing the violation shall be notified by certified mail
43 or personal service that the penalty is being assessed. The notice
44 shall identify the section of the statute, regulation, or order or
45 permit condition violated; recite the facts alleged to constitute a
46 violation; state the amount of the civil penalties to be imposed; and
47 affirm the rights of the alleged violator to a hearing. The ordered
48 party shall have 20 days from receipt of the notice within which to

1 deliver to the commissioner a written request for a hearing setting
2 forth its factual and legal defenses, arguments and issues. After the
3 hearing and upon finding that a violation has occurred, the
4 commissioner may issue a final order after assessing the amount of
5 the fine specified in the notice. If no hearing is requested, the
6 notice shall become a final order after the expiration of the 20-day
7 period. Payment of the assessment is due when a final order is
8 issued or the notice becomes a final order. The authority to levy an
9 administrative order is in addition to all other enforcement
10 provisions in R.S.12:5-3 or P.L.1975, c. 232 (C. 13:1D-29 et seq.),
11 and the payment of any assessment shall not be deemed to affect the
12 availability of any other enforcement provisions in connection with
13 the violation for which the assessment is levied. The department
14 may compromise any civil administrative penalty assessed under
15 this section in an amount and with conditions the department
16 determines appropriate. A civil administrative penalty assessed,
17 including any portion thereof required to be paid pursuant to a
18 payment schedule approved by the department, which is not paid
19 within 90 days of the date that payment of the penalty is due, shall
20 be subject to an interest charge on the amount of the penalty, or
21 portion thereof, which shall accrue as of the date payment is due. If
22 the penalty is contested, no additional interest charge shall accrue
23 on the amount of the penalty until after the date on which a final
24 order is issued. Interest charges assessed and collectible pursuant to
25 this subsection shall be based on the rate of interest on judgments
26 provided in the New Jersey Rules of Court. For the purposes of this
27 subsection, the date that a penalty is due is the date that written
28 notice of the penalty is received by the person responsible for
29 payment thereof, or such later date as may be specified in the
30 notice.

31 f. A person who violates any provision of R.S.12:5-3 or
32 P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule or regulation
33 adopted, or permit or order issued pursuant thereto, or an
34 administrative order issued pursuant to subsection c. of this section,
35 or a court order issued pursuant to subsection d. of this section, or
36 who fails to pay a civil administrative assessment in full pursuant to
37 subsection e. of this section, or who fails to make a payment
38 pursuant to a penalty payment schedule entered into with the
39 department, or who makes any false or misleading statement on any
40 application, record, report, or other document required to be
41 submitted to the department, shall be subject, upon order of a court,
42 to a civil penalty not to exceed \$50,000 per day of the violation, and
43 each day during which the violation continues shall constitute an
44 additional, separate, and distinct offense. Any civil penalty
45 imposed pursuant to this subsection may be collected with costs in a
46 summary proceeding pursuant to the "Penalty Enforcement Law of
47 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any
48 penalties, costs or interest charges, the court may assess against the

1 violator the amount of actual economic benefit accruing to the
2 violator from the violation.

3 g. A person who purposely, knowingly or recklessly violates any
4 provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or
5 of any rule or regulation adopted, or permit or order issued pursuant
6 thereto, shall be guilty, upon conviction, of a crime of the third
7 degree and shall, notwithstanding the provisions of subsection b. of
8 N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more
9 than \$50,000 per day of violation, or by imprisonment, or both. A
10 person who negligently violates any provision of R.S.12:5-3 or
11 P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule or regulation
12 adopted, or permit or order issued pursuant thereto, shall be guilty,
13 upon conviction, of a crime of the fourth degree and shall,
14 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
15 subject to a fine of not less than \$2,500 nor more than \$25,000 per
16 day of violation, or by imprisonment, or both. A person who
17 knowingly makes a false statement, representation, or certification
18 in any application, record, or other document filed or required to be
19 maintained under any provision of R.S.12:5-3 or P.L.1975, c.232
20 (C.13:1D-29 et seq.), or of any rule or regulation adopted, or permit
21 or order issued pursuant thereto, or who falsifies, tampers with or
22 knowingly renders inaccurate, any monitoring device or method
23 required to be maintained pursuant to R.S.12:5-3 or P.L.1975, c.232
24 (C.13:1D-29 et seq.), or of any rule or regulation adopted, or permit
25 or order issued pursuant thereto, shall be guilty, upon conviction, of
26 a crime of the third degree and shall, notwithstanding the provisions
27 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more
28 than \$50,000 per day of violation, or by imprisonment, or both.

29 h. In addition to the penalties prescribed in this section, a notice
30 of violation of any provision of R.S.12:5-3 or P.L.1975, c.232
31 (C.13:1D-29 et seq.), or of any rule or regulation adopted, or permit
32 or order issued pursuant thereto, shall be recorded on the deed of
33 the property wherein the violation occurred, on order of the
34 commissioner, by the clerk or register of deeds and mortgages of
35 the county wherein the affected property is located and with the
36 clerk of the Superior Court and shall remain attached thereto until
37 such time as the violation has been remedied and the commissioner
38 orders the notice of violation removed. Any fees or other charges
39 that are assessed by either the clerk or register of deeds and
40 mortgages of the county wherein the affected property is located or
41 by the department for the recording of the notice of violation on the
42 deed required pursuant to this subsection shall be paid by the owner
43 of the affected property or person committing the violation and the
44 commissioner shall not order the notice of violation removed until
45 such time as these fees are paid in full.

46 i. If the violation is one in which the department has determined
47 that the restoration of the site to its pre-violation condition would
48 increase the harm to the environment or public safety, the

1 department may issue an "after the fact" permit for the regulated
2 activity that has already occurred; provided that assessment against
3 the violator for costs or damages enumerated in subsection c. of this
4 section has been made, an opportunity has been afforded for public
5 hearing and comment, and the reasons for the issuance of the "after
6 the fact" permit are published in the New Jersey Register and in a
7 newspaper of general circulation in the geographical area of the
8 violation. Any person violating an "after the fact" permit issued
9 pursuant to this subsection shall be subject to the provisions of this
10 section.

11 j. Each applicant or permittee shall provide, upon the request of
12 the department, any information the department requires to
13 determine compliance with the provisions of R.S.12:5-3 or
14 P.L.1975, c.232 (C.13:1D-29 et seq.), or of any rule or regulation
15 adopted, or permit or order issued pursuant thereto.

16 (cf: P.L.1985, c.125, s.1)

17

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

20 12. The department shall formulate comprehensive policies for
21 the conservation of the natural resources of the State, the promotion
22 of environmental protection and the prevention of pollution of the
23 environment of the State. The department shall in addition to the
24 powers and duties vested in it by this act or by any other law have
25 the power to:

26 a. Conduct and supervise research programs for the purpose of
27 determining the causes, effects and hazards to the environment and
28 its ecology;

29 b. Conduct and supervise Statewide programs of education,
30 including the preparation and distribution of information relating to
31 conservation, environmental protection and ecology;

32 c. Require the registration of persons engaged in operations
33 which may result in pollution of the environment and the filing of
34 reports by them containing such information as the department may
35 prescribe to be filed relative to pollution of the environment, all in
36 accordance with applicable codes, rules or regulations established
37 by the department;

38 d. Enter and inspect any property, facility, building, premises,
39 site or place for the purpose of investigating an actual or suspected
40 source of pollution of the environment and conducting inspections,
41 collecting samples, copying or photocopying documents or records,
42 and for otherwise ascertaining compliance or noncompliance with
43 any laws, codes, rules and regulations of the department. Any
44 information relating to secret processes concerning methods of
45 manufacture or production, obtained in the course of such
46 inspection, investigation or determination, shall be kept
47 confidential, except this information shall be available to the
48 department for use, when relevant, in any administrative or judicial

1 proceedings undertaken to administer, implement, and enforce State
2 environmental law, but shall remain subject only to those
3 confidentiality protections otherwise afforded by federal law and by
4 the specific State environmental laws and regulations that the
5 department is administering, implementing and enforcing in that
6 particular case or instance. In addition, this information shall be
7 available upon request to the United States Government for use in
8 administering, implementing, and enforcing federal environmental
9 law, but shall remain subject to the confidentiality protection
10 afforded by federal law. If samples are taken for analysis, a
11 duplicate of the analytical report shall be furnished promptly to the
12 person suspected of causing pollution of the environment;

13 e. Receive or initiate complaints of pollution of the
14 environment, including thermal pollution, hold hearings in
15 connection therewith and institute legal proceedings for the
16 prevention of pollution of the environment and abatement of
17 nuisances in connection therewith and shall have the authority to
18 seek and obtain injunctive relief and the recovery of fines and
19 penalties in summary proceedings in the Superior Court;

20 f. Prepare, administer and supervise Statewide, regional and
21 local programs of conservation and environmental protection,
22 giving due regard for the ecology of the varied areas of the State
23 and the relationship thereof to the environment, and in connection
24 therewith prepare and make available to appropriate agencies in the
25 State technical information concerning conservation and
26 environmental protection, cooperate with the Commissioner of
27 Health and Senior Services in the preparation and distribution of
28 environmental protection and health bulletins for the purpose of
29 educating the public, and cooperate with the Commissioner of
30 Health and Senior Services in the preparation of a program of
31 environmental protection;

32 g. Encourage, direct and aid in coordinating State, regional and
33 local plans and programs concerning conservation and
34 environmental protection in accordance with a unified Statewide
35 plan which shall be formulated, approved and supervised by the
36 department. In reviewing such plans and programs and in
37 determining conditions under which such plans may be approved,
38 the department shall give due consideration to the development of a
39 comprehensive ecological and environmental plan in order to be
40 assured insofar as is practicable that all proposed plans and
41 programs shall conform to reasonably contemplated conservation
42 and environmental protection plans for the State and the varied
43 areas thereof;

44 h. Administer or supervise programs of conservation and
45 environmental protection, prescribe the minimum qualifications of
46 all persons engaged in official environmental protection work, and
47 encourage and aid in coordinating local environmental protection
48 services;

- 1 i. Establish and maintain adequate bacteriological, radiological
2 and chemical laboratories with such expert assistance and such
3 facilities as are necessary for routine examinations and analyses,
4 and for original investigations and research in matters affecting the
5 environment and ecology;
- 6 j. Administer or supervise a program of industrial planning for
7 environmental protection; encourage industrial plants in the State to
8 undertake environmental and ecological engineering programs; and
9 cooperate with the State Departments of Health and Senior
10 Services, Labor, and Commerce and Economic Development in
11 formulating rules and regulations concerning industrial sanitary
12 conditions;
- 13 k. Supervise sanitary engineering facilities and projects within
14 the State, authority for which is now or may hereafter be vested by
15 law in the department, and shall, in the exercise of such supervision,
16 make and enforce rules and regulations concerning plans and
17 specifications, or either, for the construction, improvement,
18 alteration or operation of all public water supplies, all public
19 bathing places, landfill operations and of sewerage systems and
20 disposal plants for treatment of sewage, wastes and other
21 deleterious matter, liquid, solid or gaseous, require all such plans or
22 specifications, or either, to be first approved by it before any work
23 thereunder shall be commenced, inspect all such projects during the
24 progress thereof and enforce compliance with such approved plans
25 and specifications;
- 26 l. Undertake programs of research and development for the
27 purpose of determining the most efficient, sanitary and economical
28 ways of collecting, disposing, recycling or utilizing of solid waste;
- 29 m. Construct and operate, on an experimental basis, incinerators
30 or other facilities for the disposal of solid waste, provide the various
31 municipalities and counties of this State, **[the Board of Public**
32 **Utilities,]** and the Division of Local Government Services in the
33 Department of Community Affairs with statistical data on costs and
34 methods of solid waste collection, disposal and utilization;
- 35 n. Enforce the State air pollution, water pollution,
36 conservation, environmental protection, solid and hazardous waste
37 **[and refuse disposal]** management laws, rules and regulations,
38 including the making and signing of a complaint and summons for
39 their violation by serving the summons upon the violator and
40 thereafter filing the complaint promptly with a court having
41 jurisdiction;
- 42 o. Acquire by purchase, grant, contract or condemnation, title
43 to real property, for the purpose of demonstrating new methods and
44 techniques for the collection or disposal of solid waste;
- 45 p. Purchase, operate and maintain, pursuant to the provisions of
46 this act, any facility, site, laboratory, equipment or machinery
47 necessary to the performance of its duties pursuant to this act;

1 q. Contract with any other public agency or corporation
2 incorporated under the laws of this or any other state for the
3 performance of any function under this act;

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

8 s. Make annual and such other reports as it may deem proper to
9 the Governor and the Legislature, evaluating the demonstrations
10 conducted during each calendar year;

11 t. Keep complete and accurate minutes of all hearings held
12 before the commissioner or any member of the department pursuant
13 to the provisions of this act. All such minutes shall be retained in a
14 permanent record, and shall be available for public inspection at all
15 times during the office hours of the department;

16 u. Require any person subject to a lawful order of the
17 department, which provides for a period of time during which such
18 person subject to the order is permitted to correct a violation, to
19 post a performance bond or other security with the department in
20 such form and amount as shall be determined by the department.
21 Such bond need not be for the full amount of the estimated cost to
22 correct the violation but may be in such amount as will tend to
23 insure good faith compliance with said order. The department shall
24 not require such a bond or security from any public body, agency or
25 authority. In the event of a failure to meet the schedule prescribed
26 by the department, the sum named in the bond or other security
27 shall be forfeited unless the department shall find that the failure is
28 excusable in whole or in part for good cause shown, in which case
29 the department shall determine what amount of said bond or
30 security, if any, is a reasonable forfeiture under the circumstances.
31 Any amount so forfeited shall be utilized by the department for the
32 correction of the violation or violations, or for any other action
33 required to insure compliance with the order; and

34 v. Encourage and aid in coordinating State, regional and local
35 plans, efforts and programs concerning the remediation and reuse of
36 former industrial or commercial properties that are currently
37 underutilized or abandoned and at which there has been, or is
38 perceived to have been, a discharge, or threat of a discharge, of a
39 contaminant. For the purposes of this subsection, "underutilized
40 property" shall not include properties undergoing a reasonably
41 timely remediation or redevelopment process.

42 (cf: P.L.1997, c.278, s.26)

43

44 3. Section 10 of P.L.1971, c.176 (C.13:1F-10) is amended to
45 read as follows:

46 10. **【**If any person violates any of the provisions of this act or
47 any rule, regulation or order promulgated pursuant to the provisions
48 of this act, the department may institute a civil action in a court of

1 competent jurisdiction for injunctive relief to prohibit and prevent
2 such violation or violations and the said court may proceed in the
3 action in a summary manner.

4 Any person who violates the provisions of this act or any rule,
5 regulation or order promulgated pursuant to this act shall be liable
6 to a penalty of not more than \$3,000.00 for each offense, to be
7 collected in a civil action by a summary proceeding under "the
8 penalty enforcement law" (N.J.S.2A:58-1 et seq.) or in any case
9 before a court of competent jurisdiction wherein injunctive relief
10 has been requested. The Superior Court shall have jurisdiction to
11 enforce said penalty enforcement law. If the violation is of a
12 continuing nature, each day during which it continues shall
13 constitute an additional, separate and distinct offense.

14 The department is hereby authorized and empowered to
15 compromise and settle any claim for a penalty under this section in
16 such amount in the discretion of the department as may appear
17 appropriate and equitable under all of the circumstances.】

18 a. Whenever, on the basis of available information, the
19 commissioner finds that a person is in violation of the provisions of
20 P.L.1971, c.176 (C.13:1F-1 et seq.), or of any rule or regulation
21 adopted, or permit or order issued pursuant thereto, the
22 commissioner may:

23 (1) Issue an administrative enforcement order in accordance with
24 subsection b. of this section requiring the person to comply;

25 (2) Bring a civil action in accordance with subsection c. of this
26 section;

27 (3) Levy a civil administrative penalty in accordance with
28 subsection d. of this section;

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

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

33 The exercise of any of the remedies provided in this section shall
34 not preclude recourse to any other remedy so provided.

35 b. Whenever, on the basis of available information, the
36 commissioner finds that a person is in violation of any provision of
37 P.L.1971, c.176, or of any rule or regulation adopted, or permit or
38 order issued pursuant thereto, the commissioner may issue an
39 administrative enforcement order: (1) specifying the provision or
40 provisions of P.L.1971, c.176, or of the rule, regulation, permit or
41 order of which the person is in violation; (2) citing the action that
42 constituted the violation; (3) requiring compliance with the
43 provision or provisions violated; and (4) giving notice to the person
44 of an right to a hearing on the matters contained in the order.

45 c. The commissioner is authorized to commence a civil action in
46 Superior Court for appropriate relief from a violation of the
47 provisions of P.L.1971, c.176, or of any rule or regulation adopted,

1 or permit or order issued pursuant thereto. This relief may include,
2 singly or in combination:

3 (1) A temporary or permanent injunction;

4 (2) Assessment of the violator for the costs of any investigation,
5 inspection, sampling or monitoring survey that led to the discovery
6 of the violation, and for the reasonable costs of preparing and
7 bringing legal action under this subsection;

8 (3) Assessment of the violator for any costs incurred by the State
9 in removing, correcting, or terminating the adverse effects resulting
10 from any violation of P.L1971, c.176, or of any rule or regulation
11 adopted, or permit or order issued pursuant thereto, for which legal
12 action under this subsection may have been brought;

13 (4) A requirement that the violator restore the site of the
14 violation to the maximum extent practicable and feasible or, in the
15 event that restoration of the site of the violation is not practicable or
16 feasible, provide for off-site restoration alternatives as approved by
17 the department.

18 (5) Assessment against the violator for compensatory damages
19 for any loss or destruction of public resources, including but not
20 limited to, wildlife, fish, aquatic life, habitat, plants, or historic or
21 archeological resources, and for any other actual damages caused by
22 an unauthorized regulated activity. Assessments under this
23 subsection shall be paid to the "Environmental Services Fund,"
24 established pursuant to section 5 of P.L.1975, c.232 (C.13:1D-33),
25 except that compensatory damages to privately held resources shall
26 be paid by specific order of the court to any persons who have been
27 aggrieved by the unauthorized regulated activity.

28 d. The commissioner is authorized to assess a civil
29 administrative penalty of not more than \$ 50,000 for each violation
30 of the provisions of P.L1971, c.176, or of any rule or regulation
31 adopted, or permit or order issued pursuant thereto, and each day
32 during which each violation continues shall constitute an additional,
33 separate, and distinct offense. Any amount assessed under this
34 subsection shall fall within a range established by regulation by the
35 commissioner for violations of similar type, seriousness, and
36 duration; provided, however, that prior to the adoption of the
37 regulation, the commissioner may, on a case-by-case basis, assess
38 civil administrative penalties up to a maximum of \$25,000 per day
39 for each violation, utilizing the criteria set forth herein. In adopting
40 rules and regulations establishing the amount of any penalty to be
41 assessed, the commissioner may take into account the economic
42 benefits from the violation gained by the violator. Prior to
43 assessment of penalty under this subsection, the property owner or
44 person committing the violation shall be notified by certified mail
45 or personal service that the penalty is being assessed. The notice
46 shall include: a reference to the section of the statute, regulation, or
47 order or permit condition violated; recite the facts alleged to
48 constitute a violation; state the amount of the civil penalties to be

1 imposed; and affirm the rights of the alleged violator to a hearing.
2 The ordered party shall have 20 calendar days from receipt of the
3 notice within which to deliver to the commissioner a written request
4 for a hearing setting forth its factual and legal defenses, arguments
5 and issues. After the hearing and upon finding that a violation has
6 occurred, the commissioner may issue a final order after assessing
7 the amount of the fine specified in the notice. If no hearing is
8 requested, the notice shall become a final order after the expiration
9 of the 20-day period. Payment of the assessment is due when a
10 final order is issued or the notice becomes a final order. The
11 authority to levy an administrative order is in addition to all other
12 enforcement provisions in P.L1971, c.176, or of any rule or
13 regulation adopted, or permit or order issued pursuant thereto, and
14 the payment of any assessment shall not be deemed to affect the
15 availability of any other enforcement provisions in connection with
16 the violation for which the assessment is levied. The department
17 may compromise any civil administrative penalty assessed under
18 this section in an amount and with conditions the department
19 determines appropriate. A civil administrative penalty assessed,
20 including a portion thereof required to be paid pursuant to a
21 payment schedule approved by the department, which is not paid
22 within 90 days of the date that payment of the penalty is due, shall
23 be subject to an interest charge on the amount of the penalty, or
24 portion thereof, which shall accrue as of the date payment is due. If
25 the penalty is contested, no additional interest charge shall accrue
26 on the amount of the penalty until after the date on which a final
27 order is issued. Interest charges assessed and collectible pursuant to
28 this subsection shall be based on the rate of interest on judgments
29 provided in the New Jersey Rules of Court. For the purposes of this
30 subsection, the date that a penalty is due is the date that written
31 notice of the penalty is received by the person responsible for
32 payment thereof, or such later date as may be specified in the
33 notice.

34 e. Any person who violates the provisions of P.L1971, c.176, or
35 of any rule or regulation adopted, or permit or order issued pursuant
36 thereto, or violates an administrative enforcement order issued
37 pursuant to subsection b. of this section, or a court order issued
38 pursuant to subsection c. of this section, or who fails to pay in full a
39 civil administrative penalty levied pursuant to subsection d. of this
40 section, or who fails to make a payment pursuant to a penalty
41 payment schedule entered into with the department, or who makes
42 any false or misleading statement on any application, record, report,
43 or other document required to be submitted to the department, shall
44 be subject, upon order of a court, to a civil penalty not to exceed
45 \$50,000 for each day during which the violation continues. Any
46 civil penalty imposed pursuant to this subsection may be collected,
47 and any costs incurred in connection therewith may be recovered, in
48 a summary proceeding pursuant to the "Penalty Enforcement Law

1 of 1999," P.L.1999, c.274 (C.2A: 58-10 et seq.). In addition to any
2 penalties, costs or interest charges, the court may assess against the
3 violation the amount of actual economic benefit accruing to the
4 violation. The Superior Court shall have
5 jurisdiction to enforce the "Penalty Enforcement Law of 1999".

6 f. A person who purposely, knowingly or recklessly violates any
7 provision of P.L.1971, c.176, or of any rule or regulation adopted, or
8 permit or order issued pursuant thereto, shall be guilty, upon
9 conviction, of a crime of the third degree and shall, notwithstanding
10 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
11 of not less than \$5,000 nor more than \$50,000 per day of violation,
12 or by imprisonment, or both. A person who negligently violates
13 any provision of P.L.1971, c.176, or of any rule or regulation
14 adopted, or permit or order issued pursuant thereto, shall be guilty,
15 upon conviction, of a crime of the fourth degree and shall,
16 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
17 subject to a fine of not less than \$2,500 nor more than \$25,000 per
18 day of violation, or by imprisonment, or both. A person who
19 knowingly makes a false statement, representation, or certification
20 in any application, record, or other document filed or required to be
21 maintained under any provision of P.L.1971, c.176, or of any rule or
22 regulation adopted, or permit or order issued pursuant thereto, or
23 who falsifies, tampers with or knowingly renders inaccurate, any
24 monitoring device or method required to be maintained pursuant to
25 P.L.1971, c.176, or of any rule or regulation adopted, or permit or
26 order issued pursuant thereto, shall be guilty, upon conviction, of a
27 crime of the third degree and shall, notwithstanding the provisions
28 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more
29 than \$50,000 per day of violation, or by imprisonment, or both.

30 g. Each applicant, permittee or licensee shall provide, upon the
31 request of the department, any information the department requires
32 to determine compliance with the provisions of P.L.1971, c.176.

33 (cf: P.L.1991, c.91, s.222)

34
35 4. Section 9 of P.L.1970, c.272 (C.13:9A-9) is amended to read
36 as follows:

37 9. **【Any person who violates any order by the commissioner, or**
38 **violates any of the provisions of this act, shall be liable to the State**
39 **for the cost of restoration of the affected wetland to its condition**
40 **prior to such violation insofar as that is possible, and shall be**
41 **punished by a fine of not more than \$1,000.00, to be collected in**
42 **accordance with the provisions of the Penalty Enforcement Law**
43 **(N.J.S.2A:58-1 et seq.).】** a. Whenever, on the basis of available
44 information, the commissioner finds that a person is in violation of
45 any provision of P.L.1970, c.272, or of any rule or regulation
46 adopted, or permit or order issued pursuant thereto, the
47 commissioner may:

- 1 (1) Issue an administrative enforcement order requiring any such
2 person to comply in accordance with subsection b. of this section;
3 or
4 (2) Bring a civil action in accordance with subsection c. of this
5 section; or
6 (3) Levy a civil administrative penalty in accordance with
7 subsection d. of this section; or
8 (4) Bring an action for a civil penalty in accordance with
9 subsection e. of this section; or
10 (5) Petition the Attorney General to bring a criminal action in
11 accordance with subsection f. of this section.

12 Recourse to any of the remedies available under this section shall
13 not preclude recourse to any of the other remedies.

14 b. Whenever, on the basis of available information, the
15 commissioner finds a person in violation of any provision of
16 P.L.1970, c.272, or of any rule or regulation adopted, or permit or
17 order issued pursuant thereto, the commissioner may issue an
18 administrative enforcement order: (1) specifying the provision or
19 provisions of P.L.1970, c.272, or of the rule, regulation, permit or
20 order of which the person is in violation; (2) citing the action which
21 constituted the violation; (3) requiring compliance with the
22 provision or provisions violated; (4) requiring the restoration of the
23 wetland which is the site of the violation; and (5) providing notice
24 to the person of the right to a hearing on the matters contained in
25 the administrative enforcement order.

26 c. The commissioner is authorized to institute a civil action in
27 Superior Court for appropriate relief from any violation of any
28 provision of P.L.1970, c.272, or of any rule or regulation adopted,
29 or permit or order issued pursuant thereto. Such relief may include,
30 singly or in combination:

- 31 (1) A temporary or permanent injunction;
32 (2) Assessment of the violator for the costs of any investigation,
33 inspection, or monitoring survey which led to the discovery of the
34 violation, and for the reasonable costs of preparing and bringing
35 legal action under this subsection;
36 (3) Assessment of the violator for any costs incurred by the State
37 in removing, correcting, or terminating the adverse effects upon the
38 wetland resulting from any violation of the provisions of P.L.1970,
39 c.272, or of any rule or regulation adopted, or permit or order issued
40 pursuant thereto, for which legal action under this subsection may
41 have been brought;
42 (4) Assessment against the violator for compensatory damages
43 for any loss or destruction of public resources, including but not
44 limited to, wildlife, fish, aquatic life, habitat, plants, or historic or
45 archeological resources, and for any other actual damages caused by
46 a violation of any provision of P.L.1970, c.272, or of any rule or
47 regulation adopted, or permit or order issued pursuant thereto.
48 Assessments under this subsection shall be paid to the Wetlands

1 Mitigation Bank established pursuant to section 14 of P.L.1987,
2 c.156 (C.13:9B-14), except that compensatory damages to privately
3 held resources shall be paid by specific order of the court to any
4 persons who have been aggrieved by a violation of any provision of
5 P.L.1970, c.272, or of any rule or regulation adopted, or permit or
6 order issued pursuant thereto;

7 (5) A requirement that the violator restore the site of the
8 violation to the maximum extent practicable and feasible or, in the
9 event that restoration of the site of the violation is not practicable or
10 feasible, provide for off-site restoration alternatives as approved by
11 the department.

12 d. The commissioner is authorized to assess a civil
13 administrative penalty of not more than \$50,000 for each violation
14 of the provisions of P.L.1970, c.272, or of any rule or regulation
15 adopted, or permit or order issued pursuant thereto, and each day
16 during which each violation continues shall constitute an additional,
17 separate and distinct offense. Any amount assessed under this
18 subsection shall fall within a range established by regulation by the
19 commissioner for violations of similar type, seriousness, and
20 duration; provided, however, that prior to the adoption of the
21 regulation, the commissioner may, on a case-by-case basis, assess
22 civil administrative penalties up to a maximum of \$25,000 per day
23 for each violation, utilizing the criteria set forth herein. In adopting
24 rules and regulations establishing the amount of any penalty to be
25 assessed, the commissioner may take into account the economic
26 benefits from the violation gained by the violator. Prior to
27 assessment of penalty under this subsection, the property owner or
28 person committing the violation shall be notified by certified mail
29 or personal service that the penalty is being assessed. The notice
30 shall include a reference to the section of the statute, regulation,
31 order or permit condition violated; recite the facts alleged to
32 constitute a violation; state the amount of the civil penalties to be
33 imposed; and affirm the rights of the alleged violator to a hearing.
34 The ordered party shall have 20 calendar days from receipt of the
35 notice within which to deliver to the commissioner a written request
36 for a hearing setting forth its factual and legal defenses, arguments
37 and issues. After the hearing and upon finding that a violation has
38 occurred, the commissioner may issue a final administrative
39 enforcement order after assessing the amount of the fine specified
40 in the notice. If no hearing is requested, the notice shall become a
41 final administrative enforcement order after the expiration of the
42 20-day period. Payment of the assessment is due when a final
43 administrative enforcement order is issued or the notice becomes a
44 final administrative enforcement order. The authority to levy a civil
45 administrative order is in addition to all other enforcement
46 provisions in P.L.1970, c.272, and the payment of any assessment
47 shall not be deemed to affect the availability of any other
48 enforcement provisions in connection with the violation for which

1 the assessment is levied. The department may compromise any
2 civil administrative penalty assessed under this section in an
3 amount and with conditions the department determines appropriate.
4 A civil administrative penalty assessed, including a portion thereof
5 required to be paid pursuant to a payment schedule approved by the
6 department, which is not paid within 90 days of the date that
7 payment of the penalty is due, shall be subject to an interest charge
8 on the amount of the penalty, or portion thereof, which shall accrue
9 as of the date payment is due. If the penalty is contested, no
10 additional interest charge shall accrue on the amount of the penalty
11 until after the date on which a final order is issued. Interest charges
12 assessed and collectible pursuant to this subsection shall be based
13 on the rate of interest on judgments provided in the New Jersey
14 Rules of Court. For the purposes of this subsection, the date that a
15 penalty is due is the date that written notice of the penalty is
16 received by the person responsible for payment thereof, or a later
17 date as may be specified in the notice.

18 e. A person who violates any provision of P.L.1970, c.272, or of
19 any rule or regulation adopted, or permit or order issued pursuant
20 thereto, or an administrative order issued pursuant to subsection b.
21 of this section, or a court order issued pursuant to subsection c. of
22 this section, who fails to pay a civil administrative assessment in
23 full pursuant to subsection d. of this section, or who fails to make a
24 payment pursuant to a penalty payment schedule entered into with
25 the department, or who makes any false or misleading statement on
26 any application, record, report, or other document required to be
27 submitted to the department, shall be subject, upon order of a court,
28 to a civil penalty not to exceed \$50,000 per day of the violation, and
29 each day during which the violation continues shall constitute an
30 additional, separate, and distinct offense. Any civil penalty
31 imposed pursuant to this subsection may be collected with costs in a
32 summary proceeding pursuant to the "Penalty Enforcement Law of
33 1999," P.L.1999, c.274 (C.2A: 58-10 et seq.). In addition to any
34 penalties, costs or interest charges, the court may assess against the
35 violation the amount of actual economic benefit accruing to the
36 violation from the violation. The Superior Court shall have
37 jurisdiction to enforce the "Penalty Enforcement Law of 1999".

38 f. A person who purposely, knowingly or recklessly violates any
39 provision of P.L.1970, c.272, or of any rule or regulation adopted,
40 or permit or order issued pursuant thereto, shall be guilty, upon
41 conviction, of a crime of the third degree and shall, notwithstanding
42 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
43 of not less than \$5,000 nor more than \$50,000 per day of violation,
44 or by imprisonment, or both. A person who negligently violates
45 any provision of P.L.1970, c.272, or of any rule or regulation
46 adopted, or permit or order issued pursuant thereto, shall be guilty,
47 upon conviction, of a crime of the fourth degree and shall,
48 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be

1 subject to a fine of not less than \$2,500 nor more than \$25,000 per
2 day of violation, or by imprisonment, or both. A person who
3 knowingly makes a false statement, representation, or certification
4 in any application, record, or other document filed or required to be
5 maintained under any provision of P.L.1970, c.272, or of any rule
6 or regulation adopted, or permit or order issued pursuant thereto, or
7 who falsifies, tampers with or knowingly renders inaccurate, any
8 monitoring device or method required to be maintained pursuant to
9 P.L.1970, c.272, or of any rule or regulation adopted, or permit or
10 order issued pursuant thereto, shall be guilty, upon conviction, of a
11 crime of the third degree and shall, notwithstanding the provisions
12 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more
13 than \$50,000 per day of violation, or by imprisonment, or both.

14 g. In addition to the penalties prescribed in this section, a notice
15 of violation of any provision of P.L.1970, c.272, or of any rule or
16 regulation adopted, or permit or order issued pursuant thereto, shall
17 be recorded on the deed of the property wherein the violation
18 occurred, on order of the commissioner, by the clerk or register of
19 deeds and mortgages of the county wherein the affected property is
20 located and with the clerk of the Superior Court and shall remain
21 attached thereto until such time as the violation has been remedied
22 and the commissioner orders the notice of violation removed. Any
23 fees or other charges that are assessed by either the clerk or register
24 of deeds and mortgages of the county wherein the affected property
25 is located or the department for the recording of the notice of
26 violation on the deed required pursuant to this subsection shall be
27 paid by the owner of the affected property or person committing the
28 violation. The notice of violation may be removed upon payment in
29 full or upon meeting other conditions set forth by the commissioner.

30 h. If the violation is one in which the department has determined
31 that the restoration of the site to its pre-violation condition would
32 increase the harm to the wetland or its ecology, the department may
33 issue an "after the fact" permit for the regulated activity that has
34 already occurred; provided that assessment against the violator for
35 costs or damages enumerated in subsection c. of this section has
36 been made, the creation or restoration of wetlands resources at
37 another site has been required of the violator, an opportunity has
38 been afforded for public hearing and comment, and the reasons for
39 the issuance of the "after the fact" permit are published in the New
40 Jersey Register and in a newspaper of general circulation in the
41 geographical area of the violation. Any person violating an "after
42 the fact" permit issued pursuant to this subsection shall be subject
43 to the provisions of this section.

44 i. The burden of proof and degree of knowledge or intent
45 required to establish a violation of any provision of P.L.1970,
46 c.272, or of any rule or regulation adopted, or permit or order issued
47 pursuant thereto, shall be no greater than the burden of proof or
48 degree of knowledge or intent which the United States

1 Environmental Protection Agency must meet in establishing a
2 violation of the Federal Act or implementing regulations.

3 j. The department shall establish and implement a program
4 designed to facilitate public participation in the enforcement of
5 P.L.1970, c.272, or of any rule or regulation adopted, or permit or
6 order issued pursuant thereto, which complies with the requirements
7 of the Federal Act and implementing regulations.

8 k. The department shall make available without restriction any
9 information obtained or used in the implementation of P.L.1970,
10 c.272 to the United States Environmental Protection Agency upon a
11 request therefor.

12 l. Each applicant or permittee shall provide, upon the request of
13 the department, any information the department requires to
14 determine compliance with the provisions of P.L.1970, c.272, or of
15 any rule or regulation adopted, or permit or order issued pursuant
16 thereto.

17 (cf: P.L.1970, c. 72, s.9)

18

19 5. Section 21 of P.L.1987, c.156 (C.13:9B-21) is amended to
20 read as follows:

21 21. a. Whenever, on the basis of available information, the
22 commissioner finds that a person is in violation of any provision of
23 **[this act] P.L.1987, c.156,** or of any rule or regulation adopted, or
24 permit or order issued~~[,]~~ pursuant **[to this act]** thereto, the
25 commissioner may:

26 (1) Issue an order requiring any such person to comply in
27 accordance with subsection b. of this section; or

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

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

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

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

36 Recourse to any of the remedies available under this section shall
37 not preclude recourse to any of the other remedies.

38 b. Whenever, on the basis of available information, the
39 commissioner finds a person in violation of any provision of **[this**
40 **act] P.L.1987, c.156,** or of any rule or regulation adopted, or permit
41 or order issued~~[,]~~ pursuant **[to this act]** thereto, the commissioner
42 may issue an order: (1) specifying the provision or provisions of
43 **[this act] P.L.1987, c.156,** or the rule, regulation, permit or order of
44 which **[he]** the person is in violation; (2) citing the action which
45 constituted the violation; (3) requiring compliance with the
46 provision or provisions violated; (4) requiring the restoration of the
47 freshwater wetland or transition area which is the site of the

1 violation; and (5) providing notice to the person of ~~his~~ the right
2 to a hearing on the matters contained in the order.

3 c. The commissioner is authorized to institute a civil action in
4 Superior Court for appropriate relief from any violation of any
5 provisions of ~~this act~~ P.L.1987, c.156, or of any rule or regulation
6 adopted, or permit or order issued[,] pursuant ~~to this act~~ thereto.
7 Such relief may include, singly or in combination:

8 (1) A temporary or permanent injunction;

9 (2) Assessment of the violator for the costs of any investigation,
10 inspection, or monitoring survey which led to the ~~establishment~~
11 discovery of the violation, and for the reasonable costs of preparing
12 and bringing legal action under this subsection;

13 (3) Assessment of the violator for any costs incurred by the
14 State in removing, correcting, or terminating the adverse effects
15 upon the freshwater wetland resulting from any unauthorized
16 regulated activity for which legal action under this subsection may
17 have been brought;

18 (4) Assessment against the violator for compensatory damages
19 for any loss or destruction of public resources, including but not
20 limited to, wildlife, fish [or], aquatic life, habitat, plants, or historic
21 or archeological resources, and for any other actual damages caused
22 by an unauthorized regulated activity. Assessments under this
23 subsection shall be paid to the ~~State Treasurer~~ Wetlands
24 Mitigation Bank established pursuant to section 14 of P.L.1987,
25 c.156 (C.13:9B-14), except that compensatory damages to privately
26 held resources shall be paid by specific order of the court to any
27 persons who have been aggrieved by the unauthorized regulated
28 activity;

29 (5) A requirement that the violator restore the site of the
30 violation to the maximum extent practicable and feasible or, in the
31 event that restoration of the site of the violation is not practicable or
32 feasible, provide for off-site restoration alternatives as approved by
33 the department.

34 d. The commissioner is authorized to assess a civil
35 administrative penalty of not more than ~~\$10,000.00~~ \$50,000 for
36 each violation of the provisions of P.L.1987, c.156, or of any rule or
37 regulation adopted, or permit or order issued pursuant thereto, and
38 each day during which each violation continues shall constitute an
39 additional, separate, and distinct offense. Any amount assessed
40 under this subsection shall fall within a range established by
41 regulation by the commissioner for violations of similar type,
42 seriousness, and duration; provided, however, that prior to the
43 adoption of the regulation, the commissioner may, on a case-by-
44 case basis, assess civil administrative penalties up to a maximum of
45 \$25,000 per day for each violation, utilizing the criteria set forth
46 herein. In adopting rules and regulations establishing the amount of
47 any penalty to be assessed, the commissioner may take into account

1 the economic benefits from the violation gained by the violator.
2 Prior to assessment of penalty under this subsection, the property
3 owner or person committing the violation shall be notified by
4 certified mail or personal service that the penalty is being assessed.
5 **【No assessment shall be levied pursuant to this section until after**
6 **the party has been notified by certified mail or personal service.】**
7 The notice shall identify the section of the statute, regulation, or
8 order or permit condition violated; recite the facts alleged to
9 constitute a violation; state the amount of the civil penalties to be
10 imposed; and affirm the rights of the alleged violator to a hearing.
11 The ordered party shall have 20 days from receipt of the notice
12 within which to deliver to the commissioner a written request for a
13 hearing setting forth its factual and legal defenses, arguments, and
14 issues. After the hearing and upon finding that a violation has
15 occurred, the commissioner may issue a final order after assessing
16 the amount of the fine specified in the notice. If no hearing is
17 requested, the notice shall become a final order after the expiration
18 of the 20-day period. Payment of the assessment is due when a
19 final order is issued or the notice becomes a final order. The
20 authority to levy an administrative order is in addition to all other
21 enforcement provisions in **【this act】** P.L.1987, c.156, and the
22 payment of any assessment shall not be deemed to affect the
23 availability of any other enforcement provisions in connection with
24 the violation for which the assessment is levied. **【Any civil**
25 **administrative penalty assessed under this section may be**
26 **compromised by the commissioner upon the posting of a**
27 **performance bond by the violator, or upon such terms and**
28 **conditions as the commissioner may establish by regulation.】** The
29 department may compromise any civil administrative penalty
30 assessed under this section in an amount and with conditions the
31 department determines appropriate. A civil administrative penalty
32 assessed, including any portion thereof required to be paid pursuant
33 to a payment schedule approved by the department, which is not
34 paid within 90 days of the date that payment of the penalty is due,
35 shall be subject to an interest charge on the amount of the penalty,
36 or portion thereof, which shall accrue as of the date payment is due.
37 If the penalty is contested, interest shall accrue on the amount of the
38 penalty commencing on the date a final order is issued. Interest
39 charges assessed and collectible pursuant to this subsection shall be
40 based on the rate of interest on judgments provided in the New
41 Jersey Rules of Court. For the purposes of this subsection, the date
42 that a penalty is due is the date that written notice of the penalty is
43 received by the person responsible for payment thereof, or a later
44 date as may be specified in the notice.

45 e. A person who violates **【this act】** any provision of P.L.1987,
46 c.156, or of any rule or regulation adopted, or permit or order issued
47 pursuant thereto, or an administrative order issued pursuant to

1 subsection b. of this section, or a court order issued pursuant to
2 subsection c. of this section, or who fails to pay a civil
3 administrative assessment in full pursuant to subsection d. of this
4 section, or who fails to make a payment pursuant to a penalty
5 payment schedule entered into with the department, or who makes
6 any false or misleading statement on any application, record, report,
7 or other document required to be submitted to the department, shall
8 be subject, upon order of a court, to a civil penalty not to exceed
9 **[\$10,000.00] \$50,000** per day of **[such]** the violation, and each day
10 during which the violation continues shall constitute an additional,
11 separate, and distinct offense. Any civil penalty imposed pursuant
12 to this subsection may be collected with costs in a summary
13 proceeding pursuant to **["the penalty enforcement law" (N.J.S.**
14 **2A:58-1 et seq.)]** the "Penalty Enforcement Law of 1999,"
15 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall
16 have jurisdiction to enforce **["the penalty enforcement law"]** the
17 "Penalty Enforcement Law of 1999" in conjunction with this act.

18 f. A person who **[willfully or negligently]** purposely, knowingly
19 or recklessly violates [this act] any provision of P.L.1987, c.156, or
20 of any rule or regulation adopted, or permit or order issued pursuant
21 thereto, shall be guilty, upon conviction, of a crime of the **[fourth]**
22 third degree and shall, notwithstanding the provisions of subsection
23 b. of N.J.S.2C:43-3, be subject to a fine of not less than
24 **[\$2,500.00] \$5,000** nor more than **[\$25,000.00] \$50,000** per day of
25 violation, or by imprisonment, or both. **[A second offense under**
26 **this subsection shall subject the violator to a fine of not less than**
27 **\$5,000.00 nor more than \$50,000.00 per day of violation.]** A person
28 who negligently violates any provision of P.L.1987, c.156, or of any
29 rule or regulation adopted, or permit or order issued pursuant
30 thereto, shall be guilty, upon conviction, of a crime of the fourth
31 degree and shall, notwithstanding the provisions of subsection b. of
32 N.J.S.2C:43-3, be subject to a fine of not less than \$2,500 nor more
33 than \$25,000 per day of violation, or by imprisonment, or both. A
34 person who knowingly makes a false statement, representation, or
35 certification in any application, record, or other document filed or
36 required to be maintained under **[this act]** any provision of
37 P.L.1987, c.156, or of any rule or regulation adopted, or permit or
38 order issued pursuant thereto, or who falsifies, tampers with or
39 knowingly renders inaccurate, any monitoring device or method
40 required to be maintained pursuant to **[this act]** P.L.1987, c.156,
41 shall be guilty, upon conviction, of a crime of the third degree and
42 shall, notwithstanding the provisions of subsection b. of
43 N.J.S.2C:43-3, be subject to a fine of not more than **[\$10,000.00]**
44 **\$50,000** per day of violation, or by imprisonment, or both.

45 g. In addition to the penalties prescribed in this section, a notice
46 of violation of **[this act]** any provision of P.L.1987, c.156, or of
47 any rule or regulation adopted, or permit or order issued pursuant

1 thereto, shall be recorded on the deed of the property wherein the
2 violation occurred, on order of the commissioner, by the clerk or
3 register of deeds and mortgages of the county wherein the affected
4 property is located and with the clerk of the Superior Court and
5 shall remain attached thereto until such time as the violation has
6 been remedied and the commissioner orders the notice of violation
7 removed. Any fees or other charges that are assessed against the
8 department by either the clerk or register of deeds and mortgages of
9 the county wherein the affected property is located for the recording
10 of the notice of violation on the deed required pursuant to this
11 subsection shall be paid by the owner of the affected property or the
12 person committing the violation. The notice of violation may be
13 removed upon payment in full or upon meeting other conditions set
14 forth by the commissioner.

15 h. If the violation is one in which the department has determined
16 that the restoration of the site to its **【previolation】** pre-violation
17 condition would increase the harm to the freshwater wetland or its
18 ecology, the department may issue an "after the fact" permit for the
19 regulated activity that has already occurred; provided that
20 assessment against the violator for costs or damages enumerated in
21 subsection c. of this section has been made, the creation or
22 restoration of freshwater wetlands resources at another site has been
23 required of the violator, an opportunity has been afforded for public
24 hearing and comment, and the reasons for the issuance of the "after
25 the fact" permit are published in the New Jersey Register and in a
26 newspaper of general circulation in the geographical area of the
27 violation. Any person violating an "after the fact" permit issued
28 pursuant to this subsection shall be subject to the provisions of this
29 section.

30 i. The burden of proof and degree of knowledge or intent
31 required to establish a violation of **【this act】** any provision of
32 P.L.1987, c.156, or of any rule or regulation adopted, or permit or
33 order issued pursuant thereto, shall be no greater than the burden of
34 proof or degree of knowledge or intent which the United States
35 Environmental Protection Agency must meet in establishing a
36 violation of the Federal Act or implementing regulations.

37 j. The department shall establish and implement a program
38 designed to facilitate public participation in the enforcement of
39 **【this act】** the provisions of P.L.1987, c.156, or of any rule or
40 regulation adopted, or permit or order issued pursuant thereto,
41 which complies with the requirements of the Federal Act and
42 implementing regulations.

43 k. The department shall make available without restriction any
44 information obtained or used in the implementation of **【this act】**
45 P.L.1987, c.156 to the United States Environmental Protection
46 Agency upon a request therefor.

1 l. **【The department may require an applicant or permittee to**
2 **provide any information the department requires to determine**
3 **compliance with the provisions of this act】** Each applicant or
4 permittee shall provide, upon the request of the department, any
5 information the department requires to determine compliance with
6 the provisions of P.L.1987, c.156.

7 m. The department shall have the authority to enter any
8 property, facility, premises or site for the purpose of conducting
9 inspections, sampling of soil or water, copying or photocopying
10 documents or records, and for otherwise determining compliance
11 with the provisions of **【this act】** P.L.1987, c.156.

12 (cf: P.L.1987, c.156, s.21)

13
14 6. Section 18 of P.L.1973, c.185 (C.13:19-18) is amended to
15 read as follows:

16 18. a. Whenever, on the basis of available information, the
17 department finds that a person has violated any provision of
18 P.L.1973, c.185 (C.13:19-1 et seq.), or of any rule or regulation
19 adopted, 【rule,】 or permit【,】 or order 【adopted or】 issued by the
20 department pursuant thereto, the department may:

21 (1) Issue an order requiring the person found to be in violation
22 to comply in accordance with subsection b. of this section;

23 (2) Bring a civil action in accordance with subsection c. of this
24 section;

25 (3) Levy a civil administrative penalty in accordance with
26 subsection d. of this section; **【or】**

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

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

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

33 b. Whenever, on the basis of available information, the
34 department finds that a person has violated any provision of
35 P.L.1973, c.185, or of any rule or regulation 【or rule】 adopted, or
36 permit or order issued~~【,】~~ by the department pursuant **【to that act】**
37 thereto, the department may issue an order: (1) specifying the
38 provision or provisions of the act, regulation, rule, permit, or order
39 of which the person is in violation【,】; (2) citing the action which
40 constituted the violation【,ordering abatement of the violation, and
41 giving】; (3) requiring compliance with the provision or provisions
42 violated; (4) requiring the restoration of the area which is the site of
43 the violation; and (5) providing notice to the person of **【his】** the
44 right to a hearing on the matters contained in the order. The
45 ordered party shall have 20 days from receipt of the order within
46 which to deliver to the department a written request for a hearing
47 setting forth its factual and legal defenses, arguments and issues.

1 After the hearing and upon finding that a violation has occurred, the
2 department may issue a final order. If no hearing is requested, then
3 the order shall become final after the expiration of the 20-day
4 period. A request for hearing shall not automatically stay the effect
5 of the order.

6 c. The department may institute ~~an~~ a civil action ~~or~~
7 ~~proceeding~~ in the Superior Court for ~~injunctive and other~~
8 appropriate relief, including the appointment of a receiver, ~~for~~
9 from any violation of any provision of P.L.1973, c.185, or of any
10 rule or regulation ~~or rule~~ adopted, or permit or order issued~~,]~~ by
11 the department pursuant ~~to that act~~ thereto, and the court may
12 proceed in the action in a summary manner.

13 Such relief may include, singly or in combination:

14 (1) A temporary or permanent injunction;

15 (2) Assessment of the violator for the costs of any investigation,
16 inspection, or monitoring survey which led to the discovery of the
17 violation, and for the reasonable costs of preparing and bringing
18 legal action under this subsection;

19 (3) Assessment of the violator for any cost incurred by the
20 department in removing, correcting or terminating the adverse
21 effects upon the land or upon water or air quality resulting from any
22 violation of any provision of P.L.1973, c.185, or of any rule or
23 regulation ~~or rule~~ adopted, or permit or order issued~~,]~~ by the
24 department pursuant ~~to that act~~ thereto, for which the action
25 under this subsection may have been brought;

26 (4) Assessment against the violator for compensatory damages
27 for any loss or destruction of public resources, including but not
28 limited to, wildlife, fish, aquatic life, habitat, plants, or historic or
29 archeological resources, and for any other actual damages caused by
30 a violation of the provisions of P.L.1973, c.185. Assessments under
31 this subsection shall be paid to the “Cooperative Coastal
32 Monitoring, Restoration and Enforcement Fund” established
33 pursuant to subsection j. of this section, except that compensatory
34 damages to privately held resources shall be paid by specific order
35 of the court to any persons who have been aggrieved by the
36 violation of the provisions of P.L.1973, c.185;

37 (5) A requirement that the violator restore the site of the
38 violation to the maximum extent practicable and feasible or, in the
39 event that restoration of the site of the violation is not practicable or
40 feasible, provide for off-site restoration alternatives as approved by
41 the department.

42 d. The department is authorized to assess~~,~~ in accordance with a
43 uniform policy adopted therefor,~~]~~ a civil administrative penalty of
44 not more than ~~[\$25,000]~~ \$50,000 for each violation of the
45 provisions of P.L.1973, c.185, or of any rule or regulation adopted,
46 or permit or order issued pursuant thereto, and each day during
47 which each violation continues shall constitute an additional,

1 separate and distinct offense. **【No assessment may be levied**
2 **pursuant to this subsection until after the violator has been notified**
3 **by certified mail, personal service or any other means authorized**
4 **under the New Jersey Rules of Court.】** Any amount assessed under
5 this subsection shall fall within a range established by regulation by
6 the commissioner for violations of similar type, seriousness, and
7 duration; provided, however, that prior to the adoption of the
8 regulation, the commissioner may, on a case-by-case basis, assess
9 civil administrative penalties up to a maximum of \$25,000 per day
10 for each violation, utilizing the criteria set forth herein. In adopting
11 rules and regulations establishing the amount of any penalty to be
12 assessed, the commissioner may take into account the economic
13 benefits from the violation gained by the violator. Prior to
14 assessment of penalty under this subsection, the property owner or
15 person committing the violation shall be notified by certified mail
16 or personal service that the penalty is being assessed. The notice
17 shall include a reference to the section or provision of P.L.1973,
18 c.185, the regulation, rule, permit, or order issued by the department
19 pursuant to that act that has been violated, a concise statement of
20 the facts alleged to constitute a violation, a statement of the amount
21 of the civil administrative penalties to be imposed, including any
22 interest that may accrue thereon if the penalty is not paid when due,
23 and a statement of the party's right to a hearing. The ordered party
24 shall have 20 calendar days from receipt of the notice within which
25 to deliver to the department a written request for a hearing setting
26 forth its factual and legal defenses, arguments and issues. After the
27 hearing and upon finding that a violation has occurred, the
28 department may issue a final order after assessing the amount of the
29 fine specified in the notice. If no hearing is requested, the notice
30 shall become a final order after the expiration of the 20-day period.
31 Payment of the assessment is due when a final order is issued or the
32 notice becomes a final order. The department may compromise any
33 civil administrative penalty assessed under this section in an
34 amount and with conditions the department determines appropriate.
35 A civil administrative penalty assessed, including a portion thereof
36 required to be paid pursuant to a payment schedule approved by the
37 department, which is not paid within **【30】** 90 days of the date that
38 payment of the penalty is due, shall be subject to an interest charge
39 on the amount of the penalty, or portion thereof, which shall accrue
40 as of the date payment is due. If the penalty is contested, no
41 additional interest charge shall accrue on the amount of the penalty
42 until after the date on which a final order is issued.

43 Interest charges assessed and collectible pursuant to this
44 subsection shall be based on the rate of interest on judgments
45 provided in the New Jersey Rules of Court. For the purposes of this
46 subsection, the date that a penalty is due is the date that written
47 notice of the penalty is received by the person responsible for

1 payment thereof, or **[such]** a later date as may be specified in the
2 notice.

3 e. Any person who violates the provisions of P.L.1973, c.185, or
4 of any rule or regulation adopted pursuant thereto, or any permit or
5 order issued by the department pursuant to that act, or an
6 administrative order issued pursuant to subsection b. of this section,
7 or a court order issued pursuant to subsection c. of this section, or
8 who fails to pay a civil administrative penalty in full pursuant to
9 subsection d. of this section, or who fails to make a payment
10 pursuant to a penalty payment schedule entered into with the
11 department, or who makes any false or misleading statement on any
12 application, record, report, or other document required to be
13 submitted to the department, shall be subject, upon order of a court,
14 to a civil penalty of not more than **[\$25,000]** \$50,000 for each
15 violation, and each day during which a violation continues shall
16 constitute an additional, separate, and distinct offense.

17 Any penalty established pursuant to this subsection may be
18 imposed and collected with costs in a summary proceeding pursuant
19 to **["the penalty enforcement law,"** N.J.S.2A:58-1 et seq. The
20 Superior Court and the municipal court shall have jurisdiction to
21 enforce the provisions of "the penalty enforcement law" in
22 connection with this act.] the "Penalty Enforcement Law of 1999,"
23 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall
24 have jurisdiction to enforce the "Penalty Enforcement Law of 1999"
25 in conjunction with this act. In addition to any penalties, costs or
26 interest charges, the court may assess against the violator the
27 amount of actual economic benefit accruing to the violator from the
28 violation.

29 f. A person who purposely, knowingly or recklessly violates any
30 provision of P.L.1973, c.185, or of any rule or regulation adopted, or
31 permit or issued pursuant thereto, shall be guilty, upon conviction,
32 of a crime of the third degree and shall, notwithstanding the
33 provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of
34 not less than \$5,000 nor more than \$50,000 per day of violation, or
35 by imprisonment, or both. A person who negligently violates any
36 provision of P.L.1973, c.185, or of any rule or regulation adopted, or
37 permit or order issued pursuant thereto, shall be guilty, upon
38 conviction, of a crime of the fourth degree and shall,
39 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
40 subject to a fine of not less than \$2,500 nor more than \$25,000 per
41 day of violation, or by imprisonment, or both. A person who
42 knowingly makes a false statement, representation, or certification
43 in any application, record, or other document filed or required to be
44 maintained under any provision of P.L.1973, c.185, or of any rule or
45 regulation adopted pursuant thereto, or who falsifies, tampers with
46 or knowingly renders inaccurate, any monitoring device or method
47 required to be maintained pursuant to P.L.1973, c.185, or of any rule
48 or regulation adopted, or permit or order issued pursuant thereto,

1 shall be guilty, upon conviction, of a crime of the third degree and
2 shall, notwithstanding the provisions of subsection b. of
3 N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day
4 of violation, or by imprisonment, or both.

5 g. In addition to the penalties prescribed in this section, a notice
6 of violation of P.L1973, c.185, or of any rule or regulation adopted,
7 or permit or order issued pursuant thereto, shall be recorded on the
8 deed of the property wherein the violation occurred, on order of the
9 commissioner, by the clerk or register of deeds and mortgages of
10 the county wherein the affected property is located and with the
11 clerk of the Superior Court and shall remain attached thereto until
12 such time as the violation has been remedied and the commissioner
13 orders the notice of violation removed. Any fees or other charges
14 that are assessed by either the clerk or register of deeds and
15 mortgages of the county wherein the affected property is located or
16 the department for the recording of the notice of violation on the
17 deed required pursuant to this subsection shall be paid by the owner
18 of the affected property or the person committing the violation. The
19 notice of violation may be removed upon payment in full or upon
20 meeting other conditions set forth by the commissioner.

21 h. If the violation is one in which the department has determined
22 that the restoration of the site to its pre-violation condition would
23 increase the harm to the waters of the state or its ecology, the
24 department may issue an "after the fact" permit for the regulated
25 activity that has already occurred; provided that assessment against
26 the violator for costs or damages enumerated in subsection c. of this
27 section has been made, an opportunity has been afforded for public
28 hearing and comment, and the reasons for the issuance of the "after
29 the fact" permit are published in the New Jersey Register and in a
30 newspaper of general circulation in the geographical area of the
31 violation. Any person violating an "after the fact" permit issued
32 pursuant to this subsection shall be subject to the provisions of this
33 section.

34 i. Each applicant or permittee shall provide, upon the request of
35 the department, any information the department requires to
36 determine compliance with the provisions of P.L1973, c.185, or of
37 any rule or regulation adopted, or permit or order issued pursuant
38 thereto.

39 j. There is created in the department a special nonlapsing fund,
40 to be known as the "Cooperative Coastal Monitoring, Restoration
41 and Enforcement Fund." Except as otherwise provided in this
42 section, all monies from penalties, fines, or recoveries of costs
43 collected by the department pursuant to this section on and after the
44 effective date of this section, shall be deposited in the fund. Interest
45 earned on monies deposited in the fund shall be credited to the
46 fund. Unless otherwise specifically provided by law, monies in the
47 fund shall be utilized by the department for the cost of coastal
48 restoration projects and providing aircraft overflights for coastal

1 monitoring, surveillance and enforcement activities conducted by
2 the department and for the cost of administering P.L.1973, c.185
3 (C.13:19-1 et seq.). The department shall submit annually to the
4 Legislature a report which provides an accounting of all monies
5 deposited in the fund and the purposes for which monies in the fund
6 are disbursed.
7 (cf: P.L.1993, c.190, s.16)

8
9 7. Section 10 of P.L.1973, c.309 (C.23:2A-10) is amended to
10 read as follows:

11 10. a. **【If any person violates any of the provisions of this act or**
12 **any rule, regulation or order adopted or issued pursuant to the**
13 **provisions of this act, the department may institute a civil action in**
14 **a court of competent jurisdiction for injunctive relief to prohibit and**
15 **prevent such violation or violations and the court may proceed in**
16 **the action in a summary manner】** Whenever, on the basis of
17 available information, the commissioner finds that a person is in
18 violation of the provisions of P.L.1973, c.309, or of any rule or
19 regulation adopted, or permit or order issued pursuant thereto, the
20 commissioner may:

21 (1) Issue an order in accordance with subsection b. of this section
22 requiring the person to comply;

23 (2) Bring a civil action in accordance with subsection c. of this
24 section;

25 (3) Levy a civil administrative penalty in accordance with
26 subsection d. of this section;

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

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

31 The exercise of any of the remedies provided in this section shall
32 not preclude recourse to any other remedy so provided.

33 b. **【Any person who violates the provisions of this act or any**
34 **rule, regulation or order adopted or issued pursuant to this act shall**
35 **be liable to a civil penalty of not less than \$250 and not more than**
36 **\$5,000 for each offense, to be collected in a civil action by a**
37 **summary proceeding under "the penalty enforcement law"**
38 **(N.J.S.2A:58-1 et seq.) or in any case before a court of competent**
39 **jurisdiction wherein injunctive relief has been requested. Civil**
40 **penalties recovered for violations hereof shall be remitted as**
41 **provided in R.S.23:10-19. The Superior Court and municipal court**
42 **shall have jurisdiction to enforce "the penalty enforcement law."**

43 **If the violation is of a continuing nature, each day during which**
44 **it continues shall constitute an additional, separate and distinct**
45 **offense.】** Whenever, on the basis of available information, the
46 commissioner finds that a person is in violation of any provision of
47 P.L.1973, c.309, or of any rule or regulation adopted, or permit or
48 order issued pursuant thereto, the commissioner may issue an order:

1 (1) specifying the provision or provisions of P.L.1973, c.309, or the
2 rule or regulation, or order or permit issued pursuant thereto, of
3 which the person is in violation; (2) citing the action that
4 constituted the violation; (3) requiring compliance with the
5 provision of P.L.1973, c.309, the rule or regulation, or order or
6 permit issued pursuant thereto, of which the person is in violation;
7 (4) requiring the restoration of the site of the violation to the
8 maximum extent practicable and feasible; and (5) giving notice to
9 the person of a right to a hearing on the matters contained in the
10 order.

11 c. The **department** commissioner is hereby authorized and
12 empowered to **compromise and settle any claim for a penalty**
13 **under this section in such amount in the discretion of the**
14 **department as may appear appropriate and equitable under all of the**
15 **circumstances.] commence a civil action in Superior Court for**
16 **appropriate relief from a violation of the provisions of P.L.1973,**
17 **c.309, or of any rule or regulation adopted, or any permit or order**
18 **issued pursuant thereto. This relief may include, singly or in**
19 **combination:**

20 (1) A temporary or permanent injunction;

21 (2) Assessment of the violator for the costs of any investigation,
22 inspection, sampling or monitoring survey that led to the discovery
23 of the violation, and for the reasonable costs of preparing and
24 bringing legal action under this subsection;

25 (3) Assessment of the violator for any costs incurred by the State
26 in removing, correcting, or terminating the adverse effects resulting
27 from any violation of P.L.1973, c.309 for which legal action under
28 this subsection may have been brought;

29 (4) Assessment against the violator for compensatory damages
30 for any loss or destruction of public resources, including but not
31 limited to, wildlife, fish, aquatic life, habitat, plants, or historic or
32 archeological resources, and for any other actual damages caused by
33 a violation. Assessments under this subsection shall be paid to the
34 "Endangered and Nongame Species of Wildlife Conservation
35 Fund," established pursuant to section 1 of P.L.1981, c.170,
36 (C.54A:9-25.2), except that compensatory damages to privately
37 held resources shall be paid by specific order of the court to any
38 persons who have been aggrieved by the unauthorized regulated
39 activity;

40 (5) A requirement that the violator restore the site of the
41 violation to the maximum extent practicable and feasible or, in the
42 event that restoration of the site of the violation is not practicable or
43 feasible, provide for off-site restoration alternatives as approved by
44 the department.

45 d. The commissioner is authorized to assess a civil
46 administrative penalty of not more than \$ 50,000 for each violation
47 of the provisions of P.L.1973, c.309, and each day during which
48 each violation continues shall constitute an additional, separate, and

1 distinct offense. Any amount assessed under this subsection shall
2 fall within a range established by regulation by the commissioner
3 for violations of similar type, seriousness, and duration; provided,
4 however, that prior to the adoption of the regulation, the
5 commissioner may, on a case-by-case basis, assess civil
6 administrative penalties up to a maximum of \$25,000 per day for
7 each violation, utilizing the criteria set forth herein. In adopting
8 rules and regulations establishing the amount of any penalty to be
9 assessed, the commissioner may take into account the economic
10 benefits from the violation gained by the violator. Prior to
11 assessment of penalty under this subsection, the property owner or
12 person committing the violation shall be notified by certified mail
13 or personal service that the penalty is being assessed. The notice
14 shall include: a reference to the section of the statute, regulation, or
15 order or permit condition violated; recite the facts alleged to
16 constitute a violation; state the amount of the civil penalties to be
17 imposed; and affirm the rights of the alleged violator to a hearing.
18 The ordered party shall have 20 calendar days from receipt of the
19 notice within which to deliver to the commissioner a written request
20 for a hearing setting forth its factual and legal defenses, arguments
21 and issues. After the hearing and upon finding that a violation has
22 occurred, the commissioner may issue a final order after assessing
23 the amount of the fine specified in the notice. If no hearing is
24 requested, the notice shall become a final order after the expiration
25 of the 20-day period. Payment of the assessment is due when a final
26 order is issued or the notice becomes a final order. The authority to
27 levy an administrative order is in addition to all other enforcement
28 provisions in P.L.1973, c.309, and the payment of any assessment
29 shall not be deemed to affect the availability of any other
30 enforcement provisions in connection with the violation for which
31 the assessment is levied. The department may compromise any civil
32 administrative penalty assessed under this section in an amount and
33 with conditions the department determines appropriate. A civil
34 administrative penalty assessed, including a portion thereof required
35 to be paid pursuant to a payment schedule approved by the
36 department, which is not paid within 90 days of the date that
37 payment of the penalty is due, shall be subject to an interest charge
38 on the amount of the penalty, or portion thereof, which shall accrue
39 as of the date payment is due. If the penalty is contested, no
40 additional interest charge shall accrue on the amount of the penalty
41 until after the date on which a final order is issued. Interest charges
42 assessed and collectible pursuant to this subsection shall be based
43 on the rate of interest on judgments provided in the New Jersey
44 Rules of Court. For the purposes of this subsection, the date that a
45 penalty is due is the date that written notice of the penalty is
46 received by the person responsible for payment thereof, or a later
47 date as may be specified in the notice.

1 e. Any person who violates any provision of P.L.1973, c.309, or
2 of any rule or regulation adopted, or permit or order issued pursuant
3 thereto, or an order issued pursuant to subsection b. of this section,
4 or a court order issued pursuant to subsection c. of this section, or
5 who fails to pay in full a civil administrative penalty levied
6 pursuant to subsection d. of this section, or who fails to make a
7 payment pursuant to a penalty payment schedule entered into with
8 the department, or who makes any false or misleading statement on
9 any application, record, report, or other document required to be
10 submitted to the department, shall be subject, upon order of a court,
11 to a civil penalty not to exceed \$50,000 for each day during which
12 the violation continues. Any civil penalty imposed pursuant to this
13 subsection may be collected with costs in a summary proceeding
14 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
15 c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or
16 interest charges, the court may assess against the violator the
17 amount of actual economic benefit accruing to the violator from the
18 violation. The Superior Court shall have jurisdiction to enforce the
19 "Penalty Enforcement Law of 1999."

20 f. A person who purposely, knowingly or recklessly violates any
21 provision of P.L.1973, c.309, or of any rule or regulations adopted,
22 or permit or order issued pursuant thereto, shall be guilty, upon
23 conviction, of a crime of the third degree and shall, notwithstanding
24 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
25 of not less than \$5,000 nor more than \$50,000 per day of violation,
26 or by imprisonment, or both. A person who negligently violates
27 any provision of P.L.1973, c.309, or of any rule or regulation
28 adopted, or permit or order issued pursuant thereto, shall be guilty,
29 upon conviction, of a crime of the fourth degree and shall,
30 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
31 subject to a fine of not less than \$2,500 nor more than \$25,000 per
32 day of violation, or by imprisonment, or both. A person who
33 knowingly makes a false statement, representation, or certification
34 in any application, record, or other document filed or required to be
35 maintained under any provision of P.L.1973, c.309, or of any rule
36 or regulation adopted, or permit or order issued pursuant thereto, or
37 who falsifies, tampers with or knowingly renders inaccurate, any
38 monitoring device or method required to be maintained pursuant to
39 P.L.1973, c.309, or of any rule or regulation adopted, or permit or
40 order issued pursuant thereto, shall be guilty, upon conviction, of a
41 crime of the third degree and shall, notwithstanding the provisions
42 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more
43 than \$50,000 per day of violation, or by imprisonment, or both.

44 g. In addition to the penalties prescribed in this section, a notice
45 of violation of any provision of P.L.1973, c.309, or of any rule or
46 regulation adopted, or permit or order issued pursuant thereto, shall
47 be recorded on the deed of the property wherein the violation
48 occurred, on order of the commissioner, by the clerk or register of

1 deeds and mortgages of the county wherein the affected property is
2 located and with the clerk of the Superior Court and shall remain
3 attached thereto until such time as the violation has been remedied
4 and the commissioner orders the notice of violation removed. Any
5 fees or other charges that are assessed by either the clerk or register
6 of deeds and mortgages of the county wherein the affected property
7 is located or the department for the recording of the notice of
8 violation on the deed required pursuant to this subsection shall be
9 paid by the owner of the affected property the or person committing
10 the violation and the commissioner shall not order the notice of
11 violation removed until such time as these fees are paid in full.

12 h. Each applicant or permittee, upon the request of the
13 department, shall provide any information the department or the
14 commissioner requires to determine compliance with any provision
15 of P.L.1973, c.309, or of any rule or regulation adopted, or permit
16 or order issued pursuant thereto.

17 (cf: P.L.1995, c.411)

18

19 8. Section 16 of P.L.1981, c.262 (C.58:1A-16) is amended to
20 read as follows:

21 16. **【If any person violates】** a. Whenever, on the basis of
22 available information, the commissioner finds that a person is in
23 violation of any of the provisions of 【this act】 P.L.1981, c.262, or
24 of any rule【,】 or regulation adopted, or permit or order 【adopted
25 or】 issued pursuant 【to the provisions of this act,】 thereto, the
26 **【department may institute a civil action in a court of competent**
27 **jurisdiction for injunctive relief to enforce said provisions and to**
28 **prohibit and prevent that violation and the court may proceed in the**
29 **action in a summary manner. Any person who violates the**
30 **provisions of this act or any rule, regulation or order adopted or**
31 **issued pursuant to this act shall be liable to a civil administrative**
32 **penalty of not more than \$5,000.00 for each offense to be imposed**
33 **by the department pursuant to standards adopted in regulations; or a**
34 **civil penalty of not more than \$5,000.00 for each offense, to be**
35 **collected in a civil action by a summary proceeding under "the**
36 **penalty enforcement law" (N.J.S.2A:58-1 et seq.) or in any case**
37 **before a court of competent jurisdiction wherein injunctive relief**
38 **has been requested. The Superior Court shall have jurisdiction to**
39 **enforce the penalty enforcement law. If the violation is of a**
40 **continuing nature, each day during which it continues shall**
41 **constitute an additional, separate and distinct offense. The**
42 **department is authorized to compromise and settle any claim for a**
43 **penalty under this section in such amount in the discretion of the**
44 **department as may appear appropriate and equitable under all of the**
45 **circumstances.】 commissioner may:**

46 (1) Issue an order in accordance with subsection b. of this
47 section requiring the person to comply;

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

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

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

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

9 The exercise of any of the remedies provided in this section shall
10 not preclude recourse to any other remedy so provided.

11 b. Whenever, on the basis of available information, the
12 commissioner finds that a person is in violation of any of the
13 provisions of P.L.1981, c.262, or of any rule or regulation adopted,
14 or permit or order issued pursuant thereto, the commissioner may
15 issue an order: (1) specifying the provision or provisions of
16 P.L.1981, c.262, or of the rule or regulation adopted, or order or
17 permit issued pursuant thereto, of which the person is in violation;
18 (2) citing the action that constituted the violation; (3) requiring
19 compliance with the provision of P.L.1981, c.262, or of the rule or
20 regulation adopted, or order or permit issued pursuant thereto, of
21 which the person is in violation; (4) requiring the restoration of the
22 site of the violation to the maximum extent practicable and feasible;
23 and (5) giving notice to the person of a right to a hearing on the
24 matters contained in the order.

25 c. The commissioner is authorized to commence a civil action in
26 Superior Court for appropriate relief from a violation of the
27 provisions of P.L.1981, c.262, or of any rule or regulation adopted,
28 or permit or order issued pursuant thereto. This relief may include,
29 singly or in combination:

30 (1) A temporary or permanent injunction;

31 (2) Assessment of the violator for the costs of any investigation,
32 inspection, sampling or monitoring survey that led to the discovery
33 of the violation, and for the reasonable costs of preparing and
34 bringing legal action under this subsection;

35 (3) Assessment of the violator for any costs incurred by the
36 State in removing, correcting, or terminating the adverse effects
37 resulting from any violation of P.L.1981, c.262 for which legal
38 action under this subsection may have been brought;

39 (4) A requirement that the violator restore the site of the
40 violation to the maximum extent practicable and feasible or, in the
41 event that restoration of the site of the violation is not practicable or
42 feasible, provide for off-site restoration alternatives as approved by
43 the department.

44 d. The commissioner is authorized to assess a civil
45 administrative penalty of not more than \$ 50,000 for each violation
46 of the provisions of P.L.1981, c.262, or of any rule or regulation
47 adopted, or permit or order issued pursuant thereto, and each day
48 during which each violation continues shall constitute an additional,

1 separate, and distinct offense. Any amount assessed under this
2 subsection shall fall within a range established by regulation by the
3 commissioner for violations of similar type, seriousness, and
4 duration; provided, however, that prior to the adoption of the
5 regulation, the commissioner may, on a case-by-case basis, assess
6 civil administrative penalties up to a maximum of \$25,000 per day
7 for each violation, utilizing the criteria set forth herein. In adopting
8 rules and regulations establishing the amount of any penalty to be
9 assessed, the commissioner may take into account the economic
10 benefits from the violation gained by the violator. Prior to
11 assessment of penalty under this subsection, the property owner or
12 person committing the violation shall be notified by certified mail
13 or personal service that the penalty is being assessed. The notice
14 shall include: a reference to the section of the statute, regulation, or
15 order or permit condition violated; recite the facts alleged to
16 constitute a violation; state the amount of the civil penalties to be
17 imposed; and affirm the rights of the alleged violator to a hearing.
18 The ordered party shall have 20 calendar days from receipt of the
19 notice within which to deliver to the commissioner a written request
20 for a hearing setting forth its factual and legal defenses, arguments
21 and issues. After the hearing and upon finding that a violation has
22 occurred, the commissioner may issue a final order after assessing
23 the amount of the fine specified in the notice. If no hearing is
24 requested, the notice shall become a final order after the expiration
25 of the 20-day period. Payment of the assessment is due when a
26 final order is issued or the notice becomes a final order. The
27 authority to levy an administrative order is in addition to all other
28 enforcement provisions in P.L.1981, c.262, and the payment of any
29 assessment shall not be deemed to affect the availability of any
30 other enforcement provisions in connection with the violation for
31 which the assessment is levied. The department may compromise
32 any civil administrative penalty assessed under this section in an
33 amount and with conditions the department determines appropriate.
34 A civil administrative penalty assessed, including a portion thereof
35 required to be paid pursuant to a payment schedule approved by the
36 department, which is not paid within 90 days of the date that
37 payment of the penalty is due, shall be subject to an interest charge
38 on the amount of the penalty, or portion thereof, which shall accrue
39 as of the date payment is due. If the penalty is contested, no
40 additional interest charge shall accrue on the amount of the penalty
41 until after the date on which a final order is issued. Interest charges
42 assessed and collectible pursuant to this subsection shall be based
43 on the rate of interest on judgments provided in the New Jersey
44 Rules of Court. For the purposes of this subsection, the date that a
45 penalty is due is the date that written notice of the penalty is
46 received by the person responsible for payment thereof, or such
47 later date as may be specified in the notice.

1 e. Any person who violates any provision of P.L.1981, c.262, or
2 of any rule or regulation adopted, or permit or order issued pursuant
3 thereto, or an order issued pursuant to subsection b. of this section,
4 or a court order issued pursuant to subsection c. of this section, or
5 who fails to pay in full a civil administrative penalty levied
6 pursuant to subsection d. of this section, or who fails to make a
7 payment pursuant to a penalty payment schedule entered into with
8 the department, or who makes any false or misleading statement on
9 any application, record, report, or other document required to be
10 submitted to the department, shall be subject, upon order of a court,
11 to a civil penalty not to exceed \$ 50,000 for each day during which
12 the violation continues. Any civil penalty imposed pursuant to this
13 subsection may be collected with costs in a summary proceeding
14 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999,
15 c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or
16 interest charges, the court may assess against the violator the
17 amount of actual economic benefit accruing to the violator from the
18 violation. The Superior Court shall have jurisdiction to enforce the
19 provisions of the "Penalty Enforcement Law of 1999" in connection
20 with this act.

21 f. A person who purposely, knowingly or recklessly violates any
22 provision of P.L.1981, c.262, or of any rule or regulation adopted,
23 or permit or order issued pursuant thereto, shall be guilty, upon
24 conviction, of a crime of the third degree and shall, notwithstanding
25 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
26 of not less than \$5,000 nor more than \$50,000 per day of violation,
27 or by imprisonment, or both. A person who negligently violates
28 any provision of P.L.1981, c.262, or of any rule or regulation
29 adopted, or permit or order issued pursuant thereto, shall be guilty,
30 upon conviction, of a crime of the fourth degree and shall,
31 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
32 subject to a fine of not less than \$2,500 nor more than \$25,000 per
33 day of violation, or by imprisonment, or both. A person who
34 knowingly makes a false statement, representation, or certification
35 in any application, record, or other document filed or required to be
36 maintained under any provision of P.L.1981, c.262, or of any rule
37 or regulation adopted, or permit or order issued pursuant thereto, or
38 who falsifies, tampers with or knowingly renders inaccurate, any
39 monitoring device or method required to be maintained pursuant to
40 the provisions of P.L.1981, c.262, or of any rule or regulation
41 adopted, or permit or order issued pursuant thereto, shall be guilty,
42 upon conviction, of a crime of the third degree and shall,
43 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
44 subject to a fine of not more than \$50,000 per day of violation, or
45 by imprisonment, or both.

46 g. In addition to the penalties prescribed in this section, a notice
47 of violation of any provision of P.L.1981, c.262 shall be recorded
48 on the deed of the property wherein the violation occurred, on order

1 of the commissioner, by the clerk or register of deeds and
2 mortgages of the county wherein the affected property is located
3 and with the clerk of the Superior Court and shall remain attached
4 thereto until such time as the violation has been remedied and the
5 commissioner orders the notice of violation removed. Any fees or
6 other charges that are assessed by either the clerk or register of
7 deeds and mortgages of the county wherein the affected property is
8 located or the department for the recording of the notice of violation
9 on the deed required pursuant to this subsection shall be paid by the
10 owner of the affected property or the person committing the
11 violation and the commissioner shall not order the notice of
12 violation removed until such time as these fees are paid in full.

13 h. Each applicant or permittee shall provide, upon the request of
14 the department, any information the department requires to
15 determine compliance with the provisions of P.L.1981, c.262, or of
16 any rule or regulation adopted, or permit or order issued pursuant
17 thereto.

18 (cf: P.L.1991, c.91, s.527)

19

20 9. R.S.58:4-6 is amended to read as follows:

21 58:4-6. a. Whenever, on the basis of available information, the
22 Commissioner of Environmental Protection finds that a person has
23 violated any provision of the "Safe Dam Act," P.L.1981, c.249
24 (C.58:4-8.1 et seq.), or of any rule[,] or regulation adopted, or
25 permit or order issued pursuant thereto, the commissioner may:

26 (1) Issue an order requiring any such person to comply in
27 accordance with subsection b. of this section; or

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

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

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

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

36 Recourse to any of the remedies available under this section shall
37 not preclude recourse to any of the other remedies prescribed in this
38 section or by any other applicable law.

39 b. Whenever, on the basis of available information, the
40 commissioner finds a person in violation of any provision of
41 P.L.1981, c.249, or of any rule[,] or regulation adopted, or permit
42 or order issued pursuant thereto, the commissioner may issue an
43 administrative order: (1) specifying the provision or provisions of
44 the law, rule, regulation, permit or order, of which the person is in
45 violation; (2) citing the action which constituted the violation; (3)
46 requiring compliance with the provision or provisions violated; (4)
47 requiring the restoration of the area which is the site of the

1 violation; and (5) providing notice to the person of the right to a
2 hearing on the matters contained in the order.

3 c. The commissioner is authorized to institute a civil action in
4 Superior Court for appropriate relief from any violation of any
5 provision of P.L.1981, c.249, or of any rule[,] or regulation
6 adopted, or permit or order issued pursuant thereto. Such relief
7 may include, singly or in combination:

8 (1) A temporary or permanent injunction, including an order or
9 judgment as will effectually secure the persons interested from
10 danger of loss from the breaking of a dam. The court may proceed
11 in the action in a summary manner or otherwise;

12 (2) Assessment of the violator for the costs of any investigation,
13 inspection, or monitoring survey which led to the **[establishment]**
14 discovery of the violation, and for the reasonable costs of preparing
15 and bringing legal action under this subsection;

16 (3) Assessment of the violator for any costs incurred by the
17 State in removing, correcting, or terminating the adverse effects
18 resulting from any violation for which legal action under this
19 subsection may have been brought;

20 (4) Assessment against the violator for compensatory damages
21 for any loss or destruction of public resources, including but not
22 limited to, wildlife, fish [or], aquatic life, habitat, plants, or historic
23 or archeological resources, and for any other actual damages caused
24 by a violation. Assessments under this subsection shall be paid to
25 the "Environmental Services Fund," established pursuant to section
26 5 of P.L.1975, c.232 (C.13:1D-33), and kept separate from other
27 receipts deposited therein, and appropriated to the department for
28 the removal of dams in the State, except that compensatory
29 damages to privately held resources shall be paid by specific order
30 of the court to any persons who have been aggrieved by the
31 unauthorized regulated activity;

32 (5) A requirement that the violator restore the site of the
33 violation to the maximum extent practicable and feasible or, in the
34 event that restoration of the site of the violation is not practicable or
35 feasible, provide for off-site restoration alternatives as approved by
36 the department.

37 d. The commissioner is authorized to assess a civil
38 administrative penalty of **[up to \$25,000]** not more than \$50,000
39 for each violation of any provision of P.L.1981, c.249, or of any
40 rule[,] or regulation adopted, or permit or order issued pursuant
41 thereto, and each day during which each violation continues shall
42 constitute an additional, separate, and distinct offense. Any amount
43 assessed under this subsection shall fall within a range established
44 by regulation by the commissioner for violations of similar type,
45 seriousness, and duration; provided, however, that prior to adoption
46 of the regulation, the commissioner may, on a case-by-case basis,
47 assess civil administrative penalties up to a maximum of \$25,000

1 per day for each violation, utilizing the criteria set forth herein. In
2 adopting rules and regulations establishing the amount of any
3 penalty to be assessed, the commissioner may take into account the
4 economic benefits from the violation gained by the violator. **【No**
5 **assessment shall be levied pursuant to this section until after the**
6 **party has been notified by certified mail or personal service.】** Prior
7 to assessment of penalty under this subsection, the property owner
8 or person committing the violation shall be notified by certified
9 mail or personal service that the penalty is being assessed. The
10 notice shall: (1) identify the section of the law, rule, regulation,
11 permit or order violated; (2) recite the facts alleged to constitute a
12 violation; (3) state the amount of the civil penalties to be imposed;
13 and (4) affirm the rights of the alleged violator to a hearing. The
14 ordered party shall have 20 days from receipt of the notice within
15 which to deliver to the commissioner a written request for a hearing
16 setting forth its factual and legal defenses, arguments and issues.
17 After the hearing and upon finding that a violation has occurred, the
18 commissioner may issue a final order specifying the amount of the
19 fine imposed. If no hearing is requested, the notice shall become
20 final after the expiration of the 20-day period. Payment of the
21 assessment is due when a final order is issued or the notice becomes
22 a final order. The authority to levy an administrative penalty is in
23 addition to all other enforcement provisions in this act and in any
24 other applicable law, rule, or regulation, and the payment of any
25 assessment shall not be deemed to affect the availability of any
26 other enforcement provisions in connection with the violation for
27 which the assessment is levied. **【Any civil administrative penalty**
28 **assessed under this section may be compromised by the**
29 **commissioner upon the posting of a performance bond by the**
30 **violator, or upon such terms and conditions as the commissioner**
31 **may establish by regulation.】** The department may compromise
32 any civil administrative penalty assessed under this section in an
33 amount and with conditions the department determines appropriate.
34 A civil administrative penalty assessed, including a portion thereof
35 required to be paid pursuant to a payment schedule approved by the
36 department, which is not paid within 90 days of the date that
37 payment of the penalty is due, shall be subject to an interest charge
38 on the amount of the penalty, or portion thereof, which shall accrue
39 as of the date payment is due. If the penalty is contested, no
40 additional interest charge shall accrue on the amount of the penalty
41 until after the date on which a final order is issued. Interest charges
42 assessed and collectible pursuant to this subsection shall be based
43 on the rate of interest on judgments provided in the New Jersey
44 Rules of Court. For the purposes of this subsection, the date that a
45 penalty is due is the date that written notice of the penalty is
46 received by the person responsible for payment thereof, or such
47 later date as may be specified in the notice.

1 e. A person who violates any provision of P.L.1981, c.249 or of
2 any rule[,] or regulation adopted, or permit or order issued
3 pursuant thereto, or an administrative order issued pursuant to
4 subsection b. of this section, or a court order issued pursuant to
5 subsection c. of this section, or who fails to pay a civil
6 administrative penalty in full pursuant to subsection d. of this
7 section, or who fails to make a payment pursuant to a penalty
8 payment schedule entered into with the department, or who makes
9 any false or misleading statement on any application, record, report,
10 or other document required to be submitted to the department, shall
11 be subject, upon order of a court, to a civil penalty not to exceed
12 ~~[\$10,000]~~ \$50,000 per day of ~~[such]~~ the violation, and each day
13 during which the violation continues shall constitute an additional,
14 separate, and distinct offense. Any civil penalty imposed pursuant
15 to this subsection may be collected with costs in a summary
16 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
17 P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties,
18 costs or interest charges, the court may assess against the violator
19 the amount of actual economic benefit accruing to the violator from
20 the violation. The Superior Court and the municipal court shall
21 have jurisdiction to enforce the provisions of the "Penalty
22 Enforcement Law of 1999" in connection with this section.

23 f. A person who purposely, knowingly or recklessly violates any
24 provision of P.L.1981, c.249, or of any rule[,] or regulation
25 adopted, or permit or order issued pursuant thereto, shall be guilty,
26 upon conviction, of a crime of the ~~[fourth]~~ third degree and,
27 notwithstanding any provision of N.J.S.2C:43-3 to the contrary,
28 shall be subject to a fine of not less than ~~[\$2,500]~~ \$5,000 nor more
29 than ~~[\$25,000]~~ \$50,000 per day of violation, or by imprisonment,
30 or both, in addition to any other applicable penalties and provisions
31 under Title 2C of the New Jersey Statutes. ~~[A second or~~
32 ~~subsequent offense under this subsection shall subject the violator~~
33 ~~to a fine]~~ A person who negligently violates any provision of
34 P.L.1981, c.249, or of any rule or regulation adopted, or permit or
35 order issued pursuant thereto, shall be guilty, upon conviction, of a
36 crime of the fourth degree and shall, notwithstanding any provision
37 of N.J.S.2C:43-3 to the contrary, be subject to a fine of not less than
38 ~~[\$5,000]~~ \$2,500 nor more than ~~[\$50,000]~~ \$25,000 per day of
39 violation, or by imprisonment, or both, in addition to any other
40 applicable penalties and provisions under Title 2C of the New
41 Jersey Statutes. A person who knowingly makes a false statement,
42 representation, or certification in any application, record, or other
43 document filed or required to be maintained under the provisions of
44 P.L.1981, c.249, or of any rule or regulation adopted, or permit or
45 order issued pursuant thereto, or who falsifies, tampers with or
46 knowingly renders inaccurate, any monitoring device or method
47 required to be maintained pursuant to the provisions of P.L.1981,

1 c.249, or of any rule or regulation adopted, or permit or order issued
2 pursuant thereto, shall be guilty, upon conviction, of a crime of the
3 **【fourth】** third degree and, notwithstanding any provision of
4 N.J.S.2C:43-3 to the contrary, shall be subject to a fine of not more
5 than **【\$10,000】** \$50,000, or by imprisonment, or both, in addition to
6 any other applicable penalties and provisions under Title 2C of the
7 New Jersey Statutes.

8 g. In addition to the penalties prescribed in this section, a notice
9 of violation of any provision of P.L.1981, c.249, or of any rule【,】
10 or regulation adopted, or permit or order issued pursuant thereto,
11 shall be recorded on the deed of the property wherein the violation
12 occurred, on order of the commissioner, by the clerk or register of
13 deeds and mortgages of the county wherein the affected property is
14 located and with the clerk of the Superior Court and shall remain
15 attached thereto until such time as the violation has been remedied
16 and the commissioner orders the notice of violation removed. Any
17 fees or other charges that are assessed by either the clerk or register
18 of deeds and mortgages of the county wherein the affected property
19 is located or the department for the recording of the notice of
20 violation on the deed required pursuant to this subsection shall be
21 paid by the owner of the affected property or the person committing
22 the violation and the commissioner shall not order the notice of
23 violation removed until such time as these fees are paid in full.

24 h. **【The department may require an】** Each owner or person
25 having control of a reservoir or dam **【to】** shall provide, upon
26 request of the department, any information the department requires
27 to determine compliance with any provision of P.L.1981, c.249, or
28 of any rule【,】 or regulation adopted, or permit or order issued
29 pursuant thereto.

30 i. **【Any person who knowingly, recklessly, or negligently makes**
31 **a false statement, representation or certification in any application,**
32 **record, or other document filed or required to be maintained under**
33 **the provisions of P.L.1981, c.249, shall be in violation of the act**
34 **and shall be subject to the penalties assessed pursuant to**
35 **subsections d. and e. of this section.】** (Deleted by amendment,
36 P.L. , c.)

37 j. All penalties collected pursuant to this section or sums
38 collected pursuant to R.S.58:4-5 shall be deposited in the
39 "Environmental Services Fund," established pursuant to section 5 of
40 P.L.1975, c.232 (C.13:1D-33), and kept separate from other receipts
41 deposited therein, and appropriated to the department for the
42 removal of dams in the State.

43 k. The department shall have the authority to enter any property,
44 facility, premises, or site for the purpose of conducting inspections
45 to determine the condition of any dam, or to conduct inspections of
46 ordered repairs or to otherwise determine compliance with the

1 provisions of P.L.1981, c.249.
2 (cf: P.L.2005, c.228, s.2)

3

4 10. Section 12 of P.L.1972, c.185 (C.58:16A-63) is amended to
5 read as follows:

6 12. [(a) Any person who knowingly violates a provision of this
7 act or a rule, regulation or order adopted pursuant to this act shall
8 be subject to a penalty of not more than \$2,500.00 for each offense
9 and any person who otherwise violates a provision of this act shall
10 be subject to a penalty of not more than \$1,500.00 for each offense,
11 both to be collected by the department in a summary proceeding
12 under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.), and in
13 any court of competent jurisdiction wherein injunctive relief has
14 been requested. The Superior Court shall have jurisdiction to
15 enforce said penalty enforcement law. If the violation is of a
16 continuing nature each day which it continues shall constitute an
17 additional, separate and distinct offense. The department is hereby
18 authorized and empowered to compromise and settle any claim for a
19 penalty under this section in such amount in the discretion of the
20 department as may appear appropriate and equitable under all of the
21 circumstances. All moneys recovered in any such action, together
22 with the costs recovered therein, shall be paid to the Environmental
23 Services Fund.

24 (b) If any person violates any of the provisions of this act or any
25 rule or regulation promulgated pursuant to the provisions of this act,
26 the department may institute an action in a court of competent
27 jurisdiction for injunctive relief to prohibit and prevent such
28 violation or violations and the said court may proceed in the action
29 in a summary manner.] a. Whenever, on the basis of available
30 information, the commissioner finds that a person is in violation of
31 any provision of the "Flood Hazard Area Control Act," P.L.1962,
32 c.19 (C.58:16A-50 et seq.), P.L.1972, c.185, P.L.1977, c.385 or
33 P.L.1979, c.359, or any rule or regulation adopted, or permit or
34 order issued pursuant thereto, the commissioner may:

35 (1) Issue an administrative enforcement order requiring any such
36 person to comply in accordance with subsection b. of this section;

37 (2) Bring a civil action in accordance with subsection c. of this
38 section;

39 (3) Levy a civil administrative penalty in accordance with
40 subsection d. of this section;

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

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

45 Recourse to any of the remedies available under this section shall
46 not preclude recourse to any of the other remedies.

47 b. Whenever, on the basis of available information, the
48 commissioner finds that a person is in violation of any provision of

1 P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979,
2 c.359, or any rule or regulation adopted, or permit or order issued
3 pursuant thereto, the commissioner may issue an administrative
4 enforcement order: (1) specifying the provision or provisions of
5 P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979,
6 c.359, or any rule or regulation adopted, or permit or order issued
7 pursuant thereto, of which the person is in violation; (2) citing the
8 action which constituted the violation; (3) requiring compliance
9 with the provision or provisions violated; (4) requiring the
10 restoration of the area which is the site of the violation; and (5)
11 providing notice to the person of the right to a hearing on the
12 matters contained in the administrative enforcement order.

13 c. The commissioner is authorized to institute a civil action in
14 Superior Court for appropriate relief from any violation of the
15 provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
16 P.L.1979, c.359, or any rule or regulation adopted, or permit or
17 order issued pursuant thereto. Such relief may include, singly or in
18 combination:

19 (1) A temporary or permanent injunction;

20 (2) Assessment of the violator for the costs of any investigation,
21 inspection, or monitoring survey which led to the discovery of the
22 violation, and for the reasonable costs of preparing and bringing
23 legal action under this subsection;

24 (3) Assessment of the violator for any costs incurred by the
25 State in removing, correcting, or terminating the adverse effects
26 resulting from any violation of the provisions of P.L.1962, c.19,
27 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or
28 regulation adopted, or permit or order issued pursuant thereto, for
29 which legal action under this subsection may have been brought;

30 (4) Assessment against the violator for compensatory damages
31 for any loss or destruction of public resources, including but not
32 limited to, wildlife, fish, aquatic life, habitat, plants, or historic or
33 archeological resources, and for any other actual damages caused by
34 a violation of the provisions of P.L.1962, c.19, P.L.1972, c.185,
35 P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation
36 adopted, or permit or order issued pursuant thereto. Assessments
37 under this subsection shall be paid to the Wetlands Mitigation Bank
38 established pursuant to section 14 of P.L.1987, c.156 (C.13:9B-14),
39 except that compensatory damages to privately held resources shall
40 be paid by specific order of the court to any persons who have been
41 aggrieved by a violation of any provision of P.L.1962, c.19,
42 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or
43 regulation adopted, or permit or order issued pursuant thereto;

44 (5) A requirement that the violator restore the site of the
45 violation to the maximum extent practicable and feasible or, in the
46 event that restoration of the site of the violation is not practicable or
47 feasible, provide for off-site restoration alternatives as approved by
48 the department.

1 d. The commissioner is authorized to assess a civil
2 administrative penalty of not more than \$50,000 for each violation
3 of the provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977,
4 c.385 or P.L.1979, c.359, or any rule or regulation adopted, or
5 permit or order issued pursuant thereto, and each day during which
6 each violation continues shall constitute an additional, separate and
7 distinct offense. Any amount assessed under this subsection shall
8 fall within a range established by regulation by the commissioner
9 for violations of similar type, seriousness, and duration; provided,
10 however, that prior to the adoption of the regulation, the
11 commissioner may, on a case-by-case basis, assess civil
12 administrative penalties up to a maximum of \$25,000 per day for
13 each violation, utilizing the criteria set forth herein. In adopting
14 rules and regulations establishing the amount of any penalty to be
15 assessed, the commissioner may take into account the economic
16 benefits from the violation gained by the violator. Prior to
17 assessment of penalty under this subsection, the property owner or
18 person committing the violation shall be notified by certified mail
19 or personal service that the penalty is being assessed. The notice
20 shall include a reference to the section of the statute, regulation,
21 order or permit condition violated; recite the facts alleged to
22 constitute a violation; state the amount of the civil penalties to be
23 imposed; and affirm the rights of the alleged violator to a hearing.
24 The ordered party shall have 20 calendar days from receipt of the
25 notice within which to deliver to the commissioner a written request
26 for a hearing setting forth its factual and legal defenses, arguments
27 and issues. After the hearing and upon finding that a violation has
28 occurred, the commissioner may issue a final administrative
29 enforcement order after assessing the amount of the fine specified
30 in the notice. If no hearing is requested, the notice shall become a
31 final administrative enforcement order after the expiration of the
32 20-day period. Payment of the assessment is due when a final
33 administrative enforcement order is issued or the notice becomes a
34 final administrative enforcement order. The authority to levy a civil
35 administrative order is in addition to all other enforcement
36 provisions in P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
37 P.L.1979, c.359, or any rule or regulation adopted, or permit or
38 order issued pursuant thereto, and the payment of any assessment
39 shall not be deemed to affect the availability of any other
40 enforcement provisions in connection with the violation for which
41 the assessment is levied. The department may compromise any
42 civil administrative penalty assessed under this section in an
43 amount and with conditions the department determines appropriate.
44 A civil administrative penalty assessed, including a portion thereof
45 required to be paid pursuant to a payment schedule approved by the
46 department, which is not paid within 90 days of the date that
47 payment of the penalty is due, shall be subject to an interest charge
48 on the amount of the penalty, or portion thereof, which shall accrue

1 as of the date payment is due. If the penalty is contested, no
2 additional interest charge shall accrue on the amount of the penalty
3 until after the date on which a final order is issued. Interest charges
4 assessed and collectible pursuant to this subsection shall be based
5 on the rate of interest on judgments provided in the New Jersey
6 Rules of Court. For the purposes of this subsection, the date that a
7 penalty is due is the date that written notice of the penalty is
8 received by the person responsible for payment thereof, or a later
9 date as may be specified in the notice.

10 e. A person who violates any provision of P.L.1962, c.19,
11 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or of any rule
12 or regulation adopted, or permit or order issued pursuant thereto, or
13 an administrative order issued pursuant to subsection b. of this
14 section, or a court order issued pursuant to subsection c. of this
15 section, or who fails to pay a civil administrative assessment in full
16 pursuant to subsection d. of this section, or who fails to make a
17 payment pursuant to a penalty payment schedule entered into with
18 the department, or who makes any false or misleading statement on
19 any application, record, report, or other document required to be
20 submitted to the department, shall be subject, upon order of a court,
21 to a civil penalty not to exceed \$50,000 per day of the violation, and
22 each day during which the violation continues shall constitute an
23 additional, separate, and distinct offense. Any civil penalty
24 imposed pursuant to this subsection may be collected with costs in a
25 summary proceeding pursuant to the "Penalty Enforcement Law of
26 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any
27 penalties, costs or interest charges, the court may assess against the
28 violator the amount of actual economic benefit accruing to the
29 violator from the violation. The Superior Court shall have
30 jurisdiction to enforce the provisions of the "Penalty Enforcement
31 Law of 1999" in connection with this act.

32 f. A person who purposely, knowingly or recklessly violates any
33 provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
34 P.L.1979, c.359, or of any rule or regulation adopted, or permit or
35 order issued pursuant thereto, shall be guilty, upon conviction, of a
36 crime of the third degree and shall, notwithstanding the provisions
37 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less
38 than \$5,000 nor more than \$50,000 per day of violation, or by
39 imprisonment, or both. A person who negligently violates any
40 provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
41 P.L.1979, c.359, or of any rule or regulation adopted, or permit or
42 order issued pursuant thereto, shall be guilty, upon conviction, of a
43 crime of the fourth degree and shall, notwithstanding the provisions
44 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less
45 than \$2,500 nor more than \$25,000 per day of violation, or by
46 imprisonment, or both. A person who knowingly makes a false
47 statement, representation, or certification in any application, record,
48 or other document filed or required to be maintained under any

1 provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
2 P.L.1979, c.359, or of any rule or regulation adopted, or permit or
3 order issued pursuant thereto, or who falsifies, tampers with or
4 knowingly renders inaccurate, any monitoring device or method
5 required to be maintained pursuant to P.L.1962, c.19, P.L.1972,
6 c.185, P.L.1977, c.385 or P.L.1979, c.359, or of any rule or
7 regulation adopted, or permit or order issued pursuant thereto, shall
8 be guilty, upon conviction, of a crime of the third degree and shall,
9 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
10 subject to a fine of not more than \$50,000 per day of violation, or
11 by imprisonment, or both.

12 g. In addition to the penalties prescribed in this section, a notice
13 of violation of any provision of P.L.1962, c.19, P.L.1972, c.185,
14 P.L.1977, c.385 or P.L.1979, c.359, or of any rule or regulation
15 adopted, or permit or order issued pursuant thereto, shall be
16 recorded on the deed of the property wherein the violation occurred,
17 on order of the commissioner, by the clerk or register of deeds and
18 mortgages of the county wherein the affected property is located
19 and with the clerk of the Superior Court and shall remain attached
20 thereto until such time as the violation has been remedied and the
21 commissioner orders the notice of violation removed. Any fees or
22 other charges that are assessed by either the clerk or register of
23 deeds and mortgages of the county wherein the affected property is
24 located or the department for the recording of the notice of violation
25 on the deed required pursuant to this paragraph shall be paid by the
26 owner of the affected property or person committing the violation.
27 The notice of violation may be removed upon payment in full or
28 upon meeting other conditions set forth by the commissioner.

29 h. If the violation is one in which the department has determined
30 that the restoration of the site to its pre-violation condition would
31 increase the harm to the waters of the State or its ecology, the
32 department may issue an "after the fact" permit for the regulated
33 activity that has already occurred; provided that assessment against
34 the violator for costs or damages enumerated in subsection c. of this
35 section has been made, an opportunity has been afforded for public
36 hearing and comment, and the reasons for the issuance of the "after
37 the fact" permit are published in the New Jersey Register and in a
38 newspaper of general circulation in the geographical area of the
39 violation. Any person violating an "after the fact" permit issued
40 pursuant to this subsection shall be subject to the provisions of this
41 section.

42 i. Each applicant or permittee shall provide, upon the request of
43 the department, any information the department requires to
44 determine compliance with the provisions of P.L.1962, c.19,
45 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or of any rule
46 or regulation adopted, or permit or order issued pursuant thereto.
47 (cf: P.L.1991, c.91, s.532)

1 11. This act shall take effect immediately.

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STATEMENT

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6 This bill is intended to be known as the "New Jersey
7 Environmental Enforcement Enhancement Act."

8 The sponsor of the bill finds that it is in the public interest that
9 any parties responsible for polluting, contaminating, despoiling or
10 improperly managing the State's land, water, wildlife or air be held
11 fully accountable for their actions and for any cleanup, restoration
12 or mitigation required to address the consequences of those actions.

13 The sponsor further finds that the provisions of every
14 environmental law should adequately deter any person from
15 violating these laws; that the enforcement of all environmental laws
16 should be consistently and fairly applied; that these environmental
17 laws each contain appropriate authorities to initiate and pursue
18 enforcement actions against those who do violate these laws; that,
19 despite the need for strong enforcement provisions, there are a
20 number of environmental laws that have not been updated in over
21 twenty years and therefore do not meet these requirements; and that,
22 as a result of inadequate enforcement provisions contained in
23 certain environmental laws, the citizens of the State often bear the
24 burdens of the effects of pollution either through adverse impacts to
25 the environment or to public health and safety.

26 The sponsor therefore determines that it is in the public interest
27 to update provisions of a number of environmental laws – namely,
28 the "Freshwater Wetlands Protection Act," P.L.1987, c.156
29 (C.13:9B-1 et seq.); the "Wetlands Act of 1970," P.L.1970, c.272
30 (C.13:9A-1 et seq.); P.L.1985, c.125 (C.12:5-1 et seq.), commonly
31 known as the "Waterfront Development Act;" the "Coastal Area
32 Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the
33 "Flood Hazard Area Control Act," P.L.1962, c1.9 (C.58:16A-50 et
34 seq.); the "Pesticide Control Act of 1971," P.L.1971, c.176
35 (C.13:1F-1 et seq.); the "Water Supply Management Act,"
36 P.L.1981, c.262 (C.58:1A-1 et seq.), the "Safe Dam Act," P.L.1981,
37 c.249 (C.58:4-8.1 et seq.); and the "Endangered and Nongame
38 Species Conservation Act," P.L.1973, c.309 (C.23:2A-1 et seq.) –
39 to ensure that enforcement of these environmental laws is
40 consistently applied; and that there is accorded adequate authority
41 and sufficient penalty levels to firmly and fairly enforce all of these
42 laws in a streamlined and cost-effective manner.

43 The bill would update provisions of a number of environmental
44 laws to ensure that enforcement is consistently and fairly applied
45 regardless of the type of infraction committed or pollution or
46 environmental problem caused. The bill would ensure that the
47 Department of Environmental Protection and its delegated agencies

- 1 are accorded adequate authority and sufficient penalty levels to
- 2 firmly and fairly enforce all environmental laws in a streamlined
- 3 and cost-effective manner.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 4287

STATE OF NEW JERSEY

DATED: DECEMBER 6, 2007

The Assembly Environment and Solid Waste Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 4287.

This substitute bill would update provisions of a number of environmental laws to provide enforcement language that is consistent across the environmental statutes. The bill would ensure that the Department of Environmental Protection and its delegated agencies are accorded consistent authority and penalty levels to enforce all environmental laws in a uniform manner.

The substitute bill would update the penalty and enforcement provisions of the following environmental laws:

- (1) R.S.12:5-1 et seq., commonly known as the "Waterfront Development Act";
- (2) the "Pesticide Control Act of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.);
- (3) "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.);
- (4) the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.);
- (5) the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.);
- (6) "The Endangered and Nongame Species Conservation Act," P.L.1973, c.309 (C.23:2A-1 et seq.);
- (7) the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.);
- (8) the "Safe Dam Act," P.L.1981, c.249 (C.58:4-8.1 et seq.);
- (9) the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.); and
- (10) the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

As reported by the committee, this bill is identical to Senate Bill No. 2650 (1R) as amended and reported by the committee.