

58:10A-48.1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2009 **CHAPTER:** 282

NJSA: 58:10A-48.1 (Increases civil penalties for medical waste violations and intentional ocean pollution)

BILL NO: A3271 (Substituted for S2191)

SPONSOR(S) Milam and Others

DATE INTRODUCED: October 6, 2008

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

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** March 16, 2009

SENATE: January 11, 2010

DATE OF APPROVAL: January 17, 2010

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First reprint of bill enacted)

A3271

SPONSOR'S STATEMENT: (Begins on page 16 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(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 ESTIMATE: Yes

S2191

SPONSOR'S STATEMENT: (Begins on page 16 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes Environment 3-16-09
Budget 6-11-09

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

(continued)

VETO MESSAGE: No

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LAW/RWH

[First Reprint]

ASSEMBLY, No. 3271

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED OCTOBER 6, 2008

Sponsored by:

Assemblyman MATTHEW W. MILAM

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Co-Sponsored by:

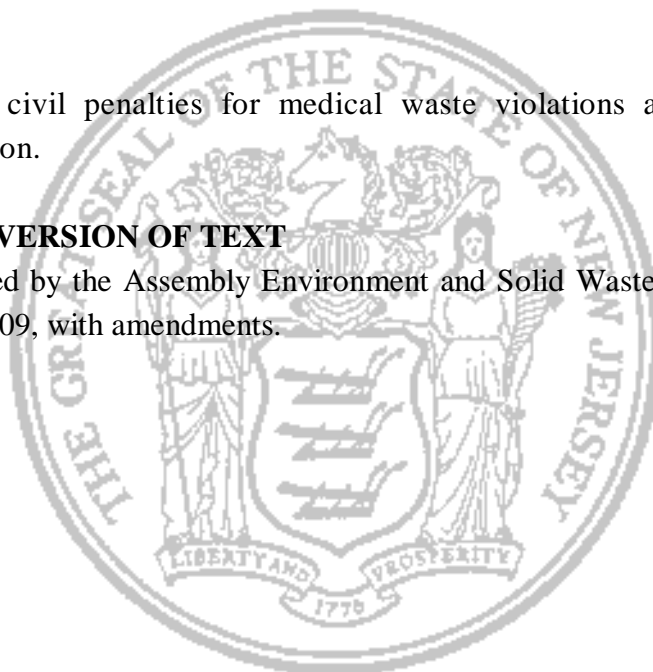
**Assemblywomen Vainieri Huttle, Wagner, Greenstein, Assemblymen
Conaway, Chivukula, Rible, Assemblywoman Angelini, Assemblyman
Connors, Assemblywoman Rodriguez, Senators Van Drew and S.Kean**

SYNOPSIS

Increases civil penalties for medical waste violations and intentional ocean pollution.

CURRENT VERSION OF TEXT

As reported by the Assembly Environment and Solid Waste Committee on March 12, 2009, with amendments.



(Sponsorship Updated As Of: 1/12/2010)

1 AN ACT concerning medical waste and ¹[water and] ocean
2 pollution penalties ¹[and] ¹ amending P.L.1989, c.34,
3 ¹[P.L.1977, c.74, and P.L.1990, c.28,] and supplementing
4 P.L.1988, c.61 (C.58:10A-47 et seq.).
5

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

9 1. Section 20 of P.L.1989, c.34 (C.13:1E-48.20) is amended to
10 read as follows:

11 20. a. This act, and any rule or regulation adopted pursuant
12 thereto, shall be enforced by the departments and by every local
13 board of health, or county health department, as the case may be.

14 The departments and the local board of health, or the county
15 health department, as the case may be, shall have the right to enter
16 the premises of a generator, transporter, or facility at any time in
17 order to determine compliance with this act.

18 The municipal attorney or an attorney retained by a municipality
19 in which a violation of this act is alleged to have occurred shall act
20 as counsel to a local board of health.

21 The county counsel or an attorney retained by a county in which
22 a violation of this act is alleged to have occurred shall act as
23 counsel to the county health department.

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

29 b. Whenever the Commissioner of Environmental Protection or
30 the Commissioner of Health and Senior Services finds that a person
31 has violated this act, or any rule or regulation adopted pursuant
32 thereto, that commissioner shall:

33 (1) issue an order requiring the person found to be in violation
34 to comply in accordance with subsection c. of this section;

35 (2) bring a civil action in accordance with subsection d. of this
36 section;

37 (3) levy a civil administrative penalty in accordance with
38 subsection e. of this section;

39 (4) bring an action for a civil penalty in accordance with
40 subsection f. of this section; or

41 (5) petition the Attorney General to bring a criminal action in
42 accordance with subsections g. through ¹[l.] ¹[k.] ¹j. of this section.

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

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:

¹Assembly AEN committee amendments adopted March 12, 2009.

1 c. Whenever the Commissioner of Environmental Protection or
2 the Commissioner of Health and Senior Services finds that a person
3 has violated this act, or any rule or regulation adopted pursuant
4 thereto, that commissioner may issue an order specifying the
5 provision or provisions of this act, or the rule or regulation adopted
6 pursuant thereto, of which the person is in violation, citing the
7 action that constituted the violation, ordering abatement of the
8 violation, and giving notice to the person of the person's right to a
9 hearing on the matters contained in the order. The ordered party
10 shall have 20 days from receipt of the order within which to deliver
11 to the commissioner a written request for a hearing. After the
12 hearing and upon finding that a violation has occurred, the
13 commissioner may issue a final order. If no hearing is requested,
14 the order shall become final after the expiration of the 20-day
15 period. A request for hearing shall not automatically stay the effect
16 of the order.

17 d. The Commissioner of Environmental Protection, the
18 Commissioner of Health and Senior Services, a local board of
19 health, or a county health department may institute an action or
20 proceeding in the Superior Court for injunctive and other relief,
21 including the appointment of a receiver for any violation of this act,
22 or of any rule or regulation adopted pursuant thereto, and the court
23 may proceed in the action in a summary manner. In any such
24 proceeding the court may grant temporary or interlocutory relief.

25 Such relief may include, singly or in combination:

26 (1) a temporary or permanent injunction;
27 (2) assessment of the violator for the costs of any investigation,
28 inspection, or monitoring survey that led to the establishment of the
29 violation, and for the reasonable costs of preparing and litigating
30 the case under this subsection;

31 (3) assessment of the violator for any cost incurred by the State
32 in removing, correcting, or terminating the adverse effects upon
33 environmental quality or public health resulting from any violation
34 of this act, or any rule or regulation adopted pursuant thereto, for
35 which the action under this subsection may have been brought;

36 **'[and]'**

37 (4) assessment against the violator of compensatory damages for
38 any loss or destruction of wildlife, fish or aquatic life, and for any
39 other actual damages caused by any violation of this act, or any rule
40 or regulation adopted pursuant thereto, for which the action under
41 this subsection may have been brought **'; and'**

42 (5) assessment against the violator of the actual amount of any
43 economic benefits accruing to the violator from a violation.
44 Economic benefits may include the amount of any savings realized
45 from avoided capital or noncapital costs resulting from the
46 violation; the return earned or that may be earned on the amount of
47 avoided costs; any benefits accruing to the violator as a result of a

1 competitive market advantage enjoyed by reason of the violation; or
2 any other benefits resulting from the violation¹ .

3 Assessments under this subsection shall be paid to the State
4 Treasurer, or to the local board of health, or to the county health
5 department, as the case may be, except that compensatory damages
6 may be paid by specific order of the court to any persons who have
7 been aggrieved by the violation.

8 If a proceeding is instituted by a local board of health or county
9 health department, notice thereof shall be served upon the
10 commissioners in the same manner as if the commissioners were
11 named parties to the action or proceeding. Either of the
12 departments may intervene as a matter of right in any proceeding
13 brought by a local board of health or county health department.

14 e. Either of the commissioners, as the case may be, may assess
15 a civil administrative penalty of not more than ~~[\$50,000]~~ \$100,000
16 for each violation. Each day that a violation continues shall
17 constitute an additional, separate, and distinct offense. A
18 commissioner may not assess a civil administrative penalty in
19 excess of \$25,000 for a single violation, or in excess of \$2,500 for
20 each day during which a violation continues, until the departments
21 have respectively adopted, pursuant to the “Administrative
22 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), regulations
23 requiring the appropriate commissioner, in assessing a civil
24 administrative penalty, to consider the operational history of the
25 violator, the severity of the violation, the measures taken to mitigate
26 or prevent further violations, and whether the penalty will maintain
27 an appropriate deterrent. No assessment may be levied pursuant to
28 this section until after the violator has been notified by certified
29 mail or personal service. The notice shall include a reference to the
30 section of the statute, rule, regulation, or order violated, a concise
31 statement of the facts alleged to constitute a violation, a statement
32 of the amount of the civil administrative penalties to be imposed,
33 and a statement of the party's right to a hearing. The ordered party
34 shall have 20 calendar days from receipt of the notice within which
35 to deliver to the appropriate commissioner a written request for a
36 hearing. After the hearing and upon finding that a violation has
37 occurred, that commissioner may issue a final order after assessing
38 the amount of the fine specified in the notice. If no hearing is
39 requested, the notice shall become a final order after the expiration
40 of the 20-day period. Payment of the assessment is due when a
41 final order is issued or the notice becomes a final order. The
42 authority to levy a civil administrative penalty is in addition to all
43 other enforcement provisions in this act, and the payment of any
44 assessment shall not be deemed to affect the availability of any
45 other enforcement provisions in connection with the violation for
46 which the assessment is levied. Each department may compromise
47 any civil administrative penalty assessed under this section in an
48 amount the department determines appropriate.

1 f. A person who violates this act, or any rule or regulation
2 adopted pursuant thereto, shall be liable for a penalty of not more
3 than ~~[\$50,000]~~ \$100,000 per day 'for each violation', to be
4 collected in a civil action commenced by the Commissioner of
5 Environmental Protection, the Commissioner of Health and Senior
6 Services, a local board of health, or a county health department.

7 A person who violates an administrative order issued pursuant to
8 subsection c. of this section, or a court order issued pursuant to
9 subsection d. of this section, or who fails to pay an administrative
10 assessment in full pursuant to subsection e. of this section is subject
11 upon order of a court to a civil penalty not to exceed ~~[\$100,000]~~
12 \$200,000 per day '[of] for' each violation.

13 Of the penalty imposed pursuant to this subsection, 10% or \$250,
14 whichever is greater, shall be paid to the appropriate department
15 from the General Fund if the Attorney General determines that a
16 person is entitled to a reward pursuant to section 24 of this act.

17 Any penalty imposed pursuant to this subsection may be
18 collected, with costs, in a summary proceeding pursuant to ~~["the~~
19 penalty enforcement law" (N.J.S.2A:58-1 et seq.)] the "Penalty
20 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) .
21 The Superior Court and the municipal court shall have jurisdiction
22 to enforce the provisions of ~~["the penalty enforcement law"]~~ the
23 "Penalty Enforcement Law of 1999" in connection with this act.

24 g. A person who purposely or knowingly:

25 (1) disposes or stores regulated medical waste without
26 authorization from either the Department of Environmental
27 Protection or the Department of Health and Senior Services, as
28 appropriate, or in violation of this act, or any rule or regulation
29 adopted pursuant thereto;

30 (2) makes any false or misleading statement to any person who
31 prepares any regulated medical waste application, registration,
32 form, label, certification, manifest, record, report, or other
33 document required by this act, or any rule or regulation adopted
34 pursuant thereto;

35 (3) makes any false or misleading statement on any regulated
36 medical waste application, registration, form, label, certification,
37 manifest, record, report, or other document required by this act, or
38 any rule or regulation adopted pursuant thereto; or

39 (4) fails to properly treat certain types of regulated medical
40 waste designated by the Department of Health and Senior Services
41 in a prescribed manner; shall, upon conviction, be guilty of a crime
42 of the third degree and, notwithstanding the provisions of
43 N.J.S.2C:43-3, shall be subject to a fine of not more than ~~[\$50,000]~~
44 \$100,000 for the first offense, and not more than ~~[\$100,000]~~
45 \$200,000 for each subsequent offense, and restitution, in addition to
46 any other appropriate disposition authorized by subsection b. of
47 N.J.S.2C:43-2.

1 h. A person who recklessly or negligently:

2 (1) disposes or stores regulated medical waste without
3 authorization from either the Department of Environmental
4 Protection or the Department of Health and Senior Services, as
5 appropriate, or in violation of this act, or any rule or regulation
6 adopted pursuant thereto;

7 (2) makes any false or misleading statement to any person who
8 prepares any regulated medical waste application, registration,
9 form, label, certification, manifest, record, report, or other
10 document required by this act, or any rule or regulation adopted
11 pursuant thereto;

12 (3) makes any false or misleading statement on any regulated
13 medical waste application, registration, form, label, certification,
14 manifest, record, report, or other document required by this act, or
15 any rule or regulation adopted pursuant thereto; or

16 (4) fails to properly treat certain types of regulated medical
17 waste designated by the Department of Health and Senior Services
18 in a manner prescribed thereby; shall, upon conviction, be guilty of
19 a crime of the fourth degree.

20 i. A person who, regardless of intent:

21 (1) transports any regulated medical waste to a facility or any
22 other place in the State that does not have authorization from the
23 Department of Environmental Protection [and the Board of Public
24 Utilities] to accept such waste, or in violation of this act, or any
25 rule or regulation adopted pursuant thereto; or

26 (2) transports, or receives transported, regulated medical waste
27 without completing and submitting a manifest in accordance with
28 this act, or any rule or regulation adopted pursuant thereto; shall,
29 upon conviction, be guilty of a crime of the fourth degree.

30 j. A person who purposely, knowingly, or recklessly:

31 (1) generates and causes or permits to be transported any
32 regulated medical waste to a facility or any other place in the State
33 that does not have authorization from the Department of
34 Environmental Protection [and the Board of Public Utilities] to
35 accept such waste, or in violation of this act, or any rule or
36 regulation adopted pursuant thereto; or

37 (2) violates any other provision of this act, or any rule or
38 regulation adopted pursuant thereto, for which no other criminal
39 penalty has been specifically provided for; shall, upon conviction,
40 be guilty of a crime of the fourth degree.

41 k. All conveyances used or intended for use in the willful
42 discharge, in violation of this act, or any rule or regulation adopted
43 pursuant thereto, of regulated medical waste are subject to forfeiture
44 to the State pursuant to P.L.1981, c.387 (C.13:1K-1 et seq.).

45 l. (Deleted by amendment, P.L.1997, c.325.)

46 m. No prosecution for a violation under this act shall be deemed

1 to preclude a prosecution for the violation of any other applicable
2 statute.

3 (cf: P.L.1997, c.325, s.4)

4

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

7 10. a. Whenever the commissioner finds that **[any]** a person is
8 in violation of any provision of this act, **[he]** the commissioner
9 shall:

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

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

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

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

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

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

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

27 b. Whenever the commissioner finds that **[any]** a person is in
28 violation of any provision of this act, **[he]** the commissioner may
29 issue an order (1) specifying the provision or provisions of this act,
30 or the rule, regulation, water quality standard, effluent limitation, or
31 permit of which **[he]** a person is in violation, (2) citing the action
32 which caused such violation, (3) requiring compliance with such
33 provision or provisions, and (4) giving notice to the person of **[his]**
34 the right to a hearing on the matters contained in the order.

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

39 (1) A temporary or permanent injunction;

40 (2) Assessment of the violator for the reasonable costs of any
41 investigation, inspection, or monitoring survey which led to the
42 establishment of the violation, and for the reasonable costs of
43 preparing and litigating the case under this subsection;

44 (3) Assessment of the violator for any reasonable cost incurred
45 by the State in removing, correcting or terminating the adverse
46 effects upon water quality resulting from any unauthorized

1 discharge of pollutants for which the action under this subsection
2 may have been brought;

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

7 (5) Assessment against a violator of the actual amount of any
8 economic benefits accruing to the violator from a violation.
9 Economic benefits may include the amount of any savings realized
10 from avoided capital or noncapital costs resulting from the
11 violation; the return earned or that may be earned on the amount of
12 avoided costs; any benefits accruing to the violator as a result of a
13 competitive market advantage enjoyed by reason of the violation; or
14 any other benefits resulting from the violation.

15 Assessments under paragraph (4) of this subsection shall be paid
16 to the State Treasurer, except that compensatory damages shall be
17 paid by specific order of the court to any persons who have been
18 aggrieved by the unauthorized discharge. Assessments pursuant to
19 actions brought by the commissioner under paragraphs (2), (3), and
20 (5) of this subsection shall be paid to the "Clean Water Enforcement
21 Fund," established pursuant to section 12 of P.L.1990, c.28
22 (C.58:10A-14.4).

23 d. (1) (a) The commissioner is authorized to assess, in
24 accordance with a uniform policy adopted therefor, a civil
25 administrative penalty of not more than ~~[\$50,000.00]~~ \$100,000 for
26 each violation and each day during which such violation continues
27 shall constitute an additional, separate, and distinct offense. Any
28 amount assessed under this subsection shall fall within a range
29 established by regulation by the commissioner for violations of
30 similar type, seriousness, and duration. The commissioner shall
31 adopt, by regulation, a uniform assessment of civil penalties policy
32 by January 1, 1992.

33 (b) In adopting rules for a uniform penalty policy for
34 determining the amount of a penalty to be assessed, the
35 commissioner shall take into account the type, seriousness,
36 including extent, toxicity, and frequency of a violation based upon
37 the harm to public health or the environment resulting from the
38 violation, the economic benefits from the violation gained by the
39 violator, the degree of cooperation or recalcitrance of the violator in
40 remedying the violation, any measures taken by the violator to
41 avoid a repetition of the violation, any unusual or extraordinary
42 costs directly or indirectly imposed on the public by the violation
43 other than costs recoverable pursuant to paragraph (3) or (4) of
44 subsection c. of this section, and any other pertinent factors that the
45 commissioner determines measure the seriousness or frequency of
46 the violation, or conduct of the violator.

47 (c) In addition to the assessment of a civil administrative
48 penalty, the commissioner may, by administrative order and upon

1 an appropriate finding, assess a violator for costs authorized
2 pursuant to paragraphs (2) and (3) of subsection c. of this section.

3 (2) No assessment shall be levied pursuant to this subsection
4 until after the discharger has been notified by certified mail or
5 personal service. The notice shall include a reference to the section
6 of the statute, regulation, order or permit condition violated; a
7 concise statement of the facts alleged to constitute a violation; a
8 statement of the amount of the civil penalties to be imposed; and a
9 statement of the party's right to a hearing. The ordered party shall
10 have 20 days from receipt of the notice within which to deliver to
11 the commissioner a written request for a hearing. After the hearing
12 and upon finding that a violation has occurred, the commissioner
13 may issue a final order after assessing the amount of the fine
14 specified in the notice. If no hearing is requested, then the notice
15 shall become a final order after the expiration of the 20-day period.
16 Payment of the assessment is due when a final order is issued or the
17 notice becomes a final order.

18 (3) If a civil administrative penalty imposed pursuant to this
19 subsection is not paid within 30 days of the date that the penalty is
20 due and owing, and the penalty is not contested by the person
21 against whom the penalty has been assessed, or the person fails to
22 make a payment pursuant to a payment schedule entered into with
23 the department, an interest charge shall accrue on the amount of the
24 penalty due and owing from the 30th day after the date on which the
25 penalty was due and owing. The rate of interest shall be that
26 established by the New Jersey Supreme Court for interest rates on
27 judgments, as set forth in the Rules Governing the Courts of the
28 State of New Jersey.

29 (4) The authority to levy a civil administrative penalty is in
30 addition to all other enforcement provisions in this act, and the
31 payment of any assessment shall not be deemed to affect the
32 availability of any other enforcement provisions in connection with
33 the violation for which the assessment is levied. Any civil
34 administrative penalty assessed under this section may be
35 compromised by the commissioner upon the posting of a
36 performance bond by the violator, or upon such terms and
37 conditions as the commissioner may establish by regulation, except
38 that the amount compromised shall not be more than 50% of the
39 assessed penalty, and in no instance shall the amount of that
40 compromised penalty be less than the statutory minimum amount, if
41 applicable, prescribed in section 6 of P.L.1990, c.28 (C.58:10A-
42 10.1). In the case of a violator who is a local agency that enters into
43 an administrative consent order, the terms of which require the local
44 agency to take prescribed measures to comply with its permit, the
45 commissioner shall have full discretion to compromise the amount
46 of penalties assessed or due for violations occurring during a period
47 up to 24 months preceding the entering into the administrative
48 consent order; except that the amount of the compromised penalty

1 may not be less than the statutory minimum amount, if applicable,
2 prescribed in section 6 of P.L.1990, c.28 (C.58:10A-10.1). A civil
3 administrative penalty assessed against a local agency for a
4 violation of an administrative consent order may not be
5 compromised by more than 50% of the assessed penalty. In no
6 instance shall the amount of a compromised penalty assessed
7 against a local agency be less than the statutory minimum amount,
8 if applicable, prescribed in section 6 of P.L.1990, c.28 (C.58:10A-
9 10.1). The commissioner shall not compromise the amount of any
10 component of a civil administrative penalty which represents the
11 economic benefit gained by the violator from the violation.

12 (5) A person, other than a local agency, appealing a penalty
13 assessed against that person in accordance with this subsection,
14 whether contested as a contested case pursuant to the
15 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
16 seq.) or by appeal to a court of competent jurisdiction, shall, as a
17 condition of filing the appeal, post with the commissioner a
18 refundable bond, or other security approved by the commissioner,
19 in the amount of the civil administrative penalty assessed. If the
20 department's assessed penalty is upheld in full or in part, the
21 department shall be entitled to a daily interest charge on the amount
22 of the judgment from the date of the posting of the security with the
23 commissioner and until paid in full. The rate of interest shall be
24 that established by the New Jersey Supreme Court for interest rates
25 on judgments, as set forth in the Rules Governing the Courts of the
26 State of New Jersey. In addition, if the amount of the penalty
27 assessed by the department is upheld in full in an appeal of the
28 assessment at an administrative hearing or at a court of competent
29 jurisdiction, the person appealing the penalty shall reimburse the
30 department for all reasonable costs incurred by the department in
31 preparing and litigating the imposition of the assessment, except
32 that no litigation costs shall be imposed where the appeal ultimately
33 results in a reduction or elimination of the assessed penalty.

34 (6) A civil administrative penalty imposed pursuant to a final
35 order:

36 (a) may be collected or enforced by summary proceedings in a
37 court of competent jurisdiction in accordance with **["the penalty**
38 **enforcement law,"** N.J.S.2A:58-1 et seq. **]** the “Penalty Enforcement
39 Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.) ; or

40 (b) shall constitute a debt of the violator or discharger and the
41 civil administrative penalty may be docketed with the clerk of the
42 Superior Court, and shall have the same standing as any judgment
43 docketed pursuant to N.J.S.2A:16-1; except that no lien shall attach
44 to the real property of a violator pursuant to this subsection if the
45 violator posts a refundable bond or other security with the
46 commissioner pursuant to an appeal of a final order to the Appellate
47 Division of the Superior Court. No lien shall attach to the property
48 of a local agency.

1 (7) The commissioner shall refer to the Attorney General and
2 the county prosecutor of the county in which the violations occurred
3 the record of violations of any permittee determined to be a
4 significant noncomplier.

5 e. **Any** A person who violates this act or an administrative
6 order issued pursuant to subsection b. or a court order issued
7 pursuant to subsection c., or who fails to pay a civil administrative
8 penalty in full pursuant to subsection d., or to make a payment
9 pursuant to a payment schedule entered into with the department,
10 shall be subject upon order of a court to a civil penalty not to
11 exceed **[\$50,000.00]** \$100,000 per day of such violation, and each
12 day's continuance of the violation shall constitute a separate
13 violation. Any penalty incurred under this subsection may be
14 recovered with costs, and, if applicable, interest charges, in a
15 summary proceeding pursuant to **["the penalty enforcement law"**
16 **(N.J.S.2A:58-1 et seq.)]** the "Penalty Enforcement Law of 1999,"
17 P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any civil
18 penalties, costs or interest charges, the court, in accordance with
19 paragraph (5) of subsection c. of this section, may assess against a
20 violator the amount of any actual economic benefits accruing to the
21 violator from the violation. The Superior Court shall have
22 jurisdiction to enforce **["the penalty enforcement law"]** the
23 "Penalty Enforcement Law of 1999" in conjunction with this act.

24 f. (1)(a) **Any** A person who purposely, knowingly, or
25 recklessly violates this act, and the violation causes a significant
26 adverse environmental effect, shall, upon conviction, be guilty of a
27 crime of the second degree, and shall, notwithstanding the
28 provisions of subsection a. of N.J.S.2C:43-3, be subject to a fine of
29 not less than \$25,000 nor more than \$250,000 per day of violation,
30 or by imprisonment, or by both.

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

42 (2) **Any** A person who purposely, knowingly, or recklessly
43 violates this act, including making a false statement, representation,
44 or certification in any application, record, or other document filed
45 or required to be maintained under this act, or by falsifying,
46 tampering with, or rendering inaccurate any monitoring device or
47 method required to be maintained pursuant to this act, or by failing

1 to submit a monitoring report, or any portion thereof, required
2 pursuant to this act, shall, upon conviction, be guilty of a crime of
3 the third degree, and shall, notwithstanding the provisions of
4 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than
5 \$5,000 nor more than \$75,000 per day of violation, or by
6 imprisonment, or by both.

7 (3) **【Any】** A person who negligently violates this act, including
8 making a false statement, representation, or certification in any
9 application, record, or other document filed or required to be
10 maintained under this act, or by falsifying, tampering with, or
11 rendering inaccurate any monitoring device or method required to
12 be maintained pursuant to this act, or by failing to submit a
13 discharge monitoring report, or any portion thereof, required
14 pursuant to this act, shall, upon conviction, be guilty of a crime of
15 the fourth degree, and shall, notwithstanding the provisions of
16 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than
17 \$5,000 nor more than \$50,000 per day of violation, or by
18 imprisonment, or by both.

19 (4) **【Any】** A person who purposely or knowingly violates an
20 effluent limitation or other condition of a permit, or who discharges
21 without a permit, and who knows at that time that he thereby places
22 another person in imminent danger of death or serious bodily injury,
23 as defined in subsection b. of N.J.S.2C:11-1, shall, upon conviction,
24 be guilty of a crime of the first degree, and shall, notwithstanding
25 the provisions of subsection a. of N.J.S.2C:43-3, be subject of a fine
26 of not less than \$50,000 nor more than \$250,000, or, in the case of a
27 corporation, a fine of not less than \$200,000 nor more than
28 \$1,000,000, or by imprisonment or by both.

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

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

37 h. The amendatory portions of this section, as set forth in
38 P.L.1990, c.28 (C.58:10A-10.1 et al.), except for subsection f. of
39 this section, shall not apply to violations occurring prior to July 1,
40 1991.

41 (cf: P.L.1990, c.28, s.5) **】**¹

42

43 ¹**【**3. Section 6 of P.L.1990, c.28 (C.58:10A-10.1) is amended to
44 read as follows:

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

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

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

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

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

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

46 f. The requirement that the department assess a minimum civil
47 administrative penalty pursuant to this section shall in no way be
48 construed to limit the authority of the department to assess a civil

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

6 g. The provisions of this section shall not apply to violations
7 occurring prior to the effective date of this section.

8 (cf: P.L.1990, c.28, s.6)]¹

9

10 '[4.] 2.' (New section) No person may intentionally dump
11 any material into the ocean waters within the jurisdiction of this
12 State, or into the waters outside the jurisdiction of this State, which
13 material enters the ocean waters within the jurisdiction of this State.

14

15 '[5.] 3.' (New section) a. Whenever the Commissioner of
16 Environmental Protection finds that a person has intentionally
17 dumped material into the ocean waters within the jurisdiction of this
18 State, or into the waters outside the jurisdiction of this State, which
19 material enters the ocean waters within the jurisdiction of this State,
20 the commissioner shall:

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.] b.'
24 of this section;

25 '[3)] (2)' levy a civil administrative penalty in accordance with
26 subsection '[d.] c.' of this section;

27 '[4)] (3)' bring an action for a civil penalty in accordance with
28 subsection '[e.] d.' of this section; or

29 '[5)] (4)' petition the Attorney General to bring a criminal
30 action in accordance with section 3 of P.L.1988, c.61 (C.58:10A-
31 49).

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

34 b. '[Whenever the commissioner finds that a person has
35 violated this section, or any rule or regulation adopted pursuant
36 thereto, that commissioner may issue an order specifying the
37 provision or provisions of this section, or the rule or regulation
38 adopted pursuant thereto, of which the person is in violation, citing
39 the action that constituted the violation, ordering abatement of the
40 violation, and giving notice to the person of the person's right to a
41 hearing on the matters contained in the order. The ordered party
42 shall have 20 days from receipt of the order within which to deliver
43 to the commissioner a written request for a hearing. After the
44 hearing and upon finding that a violation has occurred, the
45 commissioner may issue a final order. If no hearing is requested,
46 the order shall become final after the expiration of the 20-day

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

3 c.]¹ The commissioner may institute an action or proceeding in
4 the Superior Court for injunctive and other relief, including the
5 appointment of a receiver for any violation of ¹[this section]
6 P.L.1988, c.61 (C.58:10A-47 et seq.)¹, or of any rule or regulation
7 adopted pursuant thereto, and the court may proceed in the action in
8 a summary manner. In any such proceeding the court may grant
9 temporary or interlocutory relief.

10 Such relief may include, singly or in combination:

11 (1) a temporary or permanent injunction;

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

16 (3) assessment of the violator for any cost incurred by the State
17 in removing, correcting, or terminating the adverse effects upon
18 environmental quality or public health resulting from any violation
19 of ¹[this section] P.L.1988, c.61 (C.58:10A-47 et seq.)¹, or any
20 rule or regulation adopted pursuant thereto, for which the action
21 under this subsection may have been brought; ¹[and]¹

22 (4) assessment against the violator of compensatory damages for
23 any loss or destruction of wildlife, fish or aquatic life, and for any
24 other actual damages caused by any violation of ¹[this section]
25 P.L.1988, c.61 (C.58:10A-47 et seq.)¹, or any rule or regulation
26 adopted pursuant thereto, for which the action under this subsection
27 may have been brought ¹; and

28 (5) assessment against the violator of the actual amount of any
29 economic benefits accruing to the violator from a violation.
30 Economic benefits may include the amount of any savings realized
31 from avoided capital or noncapital costs resulting from the
32 violation; the return earned or that may be earned on the amount of
33 avoided costs; any benefits accruing to the violator as a result of a
34 competitive market advantage enjoyed by reason of the violation; or
35 any other benefits resulting from the violation¹.

36 Assessments under this subsection shall be paid to the State
37 Treasurer, except that compensatory damages may be paid by
38 specific order of the court to any persons who have been aggrieved
39 by the violation.

40 ¹[d.] c.¹ The commissioner may assess a civil administrative
41 penalty of not more than \$100,000 for each violation. Each day that
42 a violation continues shall constitute an additional, separate, and
43 distinct offense. No assessment may be levied pursuant to this
44 section until after the violator has been notified by certified mail or
45 personal service. The notice shall include a reference to the section
46 of the statute, rule, regulation, or order violated, a concise statement
47 of the facts alleged to constitute a violation, a statement of the

1 amount of the civil administrative penalties to be imposed, and a
2 statement of the party's right to a hearing. The ordered party shall
3 have 20 calendar days from receipt of the notice within which to
4 deliver to the commissioner a written request for a hearing. After
5 the hearing and upon finding that a violation has occurred, the
6 commissioner may issue a final order after assessing the amount of
7 the fine specified in the notice. If no hearing is requested, the
8 notice shall become a final order after the expiration of the 20-day
9 period. Payment of the assessment is due when a final order is
10 issued or the notice becomes a final order. The authority to levy a
11 civil administrative penalty is in addition to all other enforcement
12 provisions in '[this act] P.L.1988, c.61 (C.58:10A-47 et seq.)'¹, and
13 the payment of any assessment shall not be deemed to affect the
14 availability of any other enforcement provisions in connection with
15 the violation for which the assessment is levied.

16 '[e.] d.'¹ A person who violates '[this section] P.L.1988, c.61
17 (C.58:10A-47 et seq.)'¹, or any rule or regulation adopted pursuant
18 thereto, shall be liable for a penalty of not more than \$100,000 per
19 day 'for each violation'¹, to be collected in a civil action
20 commenced by the Commissioner of Environmental Protection.

21 A person who violates '[an administrative order issued pursuant
22 to subsection b. of this section, or]'¹ a court order issued pursuant to
23 subsection '[c.] b.'¹ of this section '[,]'¹ or who fails to pay an
24 administrative assessment in full pursuant to subsection '[d.] c.'¹ of
25 this section is subject upon order of a court to a civil penalty not to
26 exceed \$100,000 per day '[of] for'¹ each violation.

27 Any penalty imposed pursuant to this subsection may be
28 collected, with costs, in a summary proceeding pursuant to the
29 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
30 et seq.). The Superior Court and the municipal court shall have
31 jurisdiction to enforce the provisions of the "Penalty Enforcement
32 Law of 1999" in connection with '[this act] P.L.1988, c.61
33 (C.58:10A-47 et seq.)'¹.

34

35 '[6.] 4.'¹ This act shall take effect immediately.

ASSEMBLY, No. 3271

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED OCTOBER 6, 2008

Sponsored by:

Assemblyman MATTHEW W. MILAM

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Co-Sponsored by:

Assemblywomen Vainieri Huttle and Wagner

SYNOPSIS

Increases civil penalties for medical waste and water and ocean pollution.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/6/2009)

A3271 MILAM, ALBANO

2

1 AN ACT concerning medical waste and water and ocean pollution
2 penalties and amending P.L.1989, c.34, P.L.1977, c.74, and
3 P.L.1990, c.28, and supplementing P.L.1988, c.61 (C.58:10A-47
4 et seq.).

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

8
9 1. Section 20 of P.L.1989, c.34 (C.13:1E-48.20) is amended to
10 read as follows:

11 20. a. This act, and any rule or regulation adopted pursuant
12 thereto, shall be enforced by the departments and by every local
13 board of health, or county health department, as the case may be.

14 The departments and the local board of health, or the county
15 health department, as the case may be, shall have the right to enter
16 the premises of a generator, transporter, or facility at any time in
17 order to determine compliance with this act.

18 The municipal attorney or an attorney retained by a municipality
19 in which a violation of this act is alleged to have occurred shall act
20 as counsel to a local board of health.

21 The county counsel or an attorney retained by a county in which
22 a violation of this act is alleged to have occurred shall act as
23 counsel to the county health department.

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

29 b. Whenever the Commissioner of Environmental Protection or
30 the Commissioner of Health and Senior Services finds that a person
31 has violated this act, or any rule or regulation adopted pursuant
32 thereto, that commissioner shall:

33 (1) issue an order requiring the person found to be in violation to
34 comply in accordance with subsection c. of this section;

35 (2) bring a civil action in accordance with subsection d. of this
36 section;

37 (3) levy a civil administrative penalty in accordance with
38 subsection e. of this section;

39 (4) bring an action for a civil penalty in accordance with
40 subsection f. of this section; or

41 (5) petition the Attorney General to bring a criminal action in
42 accordance with subsections g. through **[l.]** k. of this section.

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

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 c. Whenever the Commissioner of Environmental Protection or
2 the Commissioner of Health and Senior Services finds that a person
3 has violated this act, or any rule or regulation adopted pursuant
4 thereto, that commissioner may issue an order specifying the
5 provision or provisions of this act, or the rule or regulation adopted
6 pursuant thereto, of which the person is in violation, citing the
7 action that constituted the violation, ordering abatement of the
8 violation, and giving notice to the person of the person's right to a
9 hearing on the matters contained in the order. The ordered party
10 shall have 20 days from receipt of the order within which to deliver
11 to the commissioner a written request for a hearing. After the
12 hearing and upon finding that a violation has occurred, the
13 commissioner may issue a final order. If no hearing is requested,
14 the order shall become final after the expiration of the 20-day
15 period. A request for hearing shall not automatically stay the effect
16 of the order.

17 d. The Commissioner of Environmental Protection, the
18 Commissioner of Health and Senior Services, a local board of
19 health, or a county health department may institute an action or
20 proceeding in the Superior Court for injunctive and other relief,
21 including the appointment of a receiver for any violation of this act,
22 or of any rule or regulation adopted pursuant thereto, and the court
23 may proceed in the action in a summary manner. In any such
24 proceeding the court may grant temporary or interlocutory relief.

25 Such relief may include, singly or in combination:

- 26 (1) a temporary or permanent injunction;
27 (2) assessment of the violator for the costs of any investigation,
28 inspection, or monitoring survey that led to the establishment of the
29 violation, and for the reasonable costs of preparing and litigating
30 the case under this subsection;
31 (3) assessment of the violator for any cost incurred by the State
32 in removing, correcting, or terminating the adverse effects upon
33 environmental quality or public health resulting from any violation
34 of this act, or any rule or regulation adopted pursuant thereto, for
35 which the action under this subsection may have been brought; and
36 (4) assessment against the violator of compensatory damages for
37 any loss or destruction of wildlife, fish or aquatic life, and for any
38 other actual damages caused by any violation of this act, or any rule
39 or regulation adopted pursuant thereto, for which the action under
40 this subsection may have been brought.

41 Assessments under this subsection shall be paid to the State
42 Treasurer, or to the local board of health, or to the county health
43 department, as the case may be, except that compensatory damages
44 may be paid by specific order of the court to any persons who have
45 been aggrieved by the violation.

46 If a proceeding is instituted by a local board of health or county
47 health department, notice thereof shall be served upon the
48 commissioners in the same manner as if the commissioners were

1 named parties to the action or proceeding. Either of the departments
2 may intervene as a matter of right in any proceeding brought by a
3 local board of health or county health department.

4 e. Either of the commissioners, as the case may be, may assess
5 a civil administrative penalty of not more than ~~[\$50,000]~~ \$100,000
6 for each violation. Each day that a violation continues shall
7 constitute an additional, separate, and distinct offense. A
8 commissioner may not assess a civil administrative penalty in
9 excess of \$25,000 for a single violation, or in excess of \$2,500 for
10 each day during which a violation continues, until the departments
11 have respectively adopted, pursuant to the "Administrative
12 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), regulations
13 requiring the appropriate commissioner, in assessing a civil
14 administrative penalty, to consider the operational history of the
15 violator, the severity of the violation, the measures taken to mitigate
16 or prevent further violations, and whether the penalty will maintain
17 an appropriate deterrent. No assessment may be levied pursuant to
18 this section until after the violator has been notified by certified
19 mail or personal service. The notice shall include a reference to the
20 section of the statute, rule, regulation, or order violated, a concise
21 statement of the facts alleged to constitute a violation, a statement
22 of the amount of the civil administrative penalties to be imposed,
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 appropriate commissioner a written request for a
26 hearing. After the hearing and upon finding that a violation has
27 occurred, that commissioner may issue a final order after assessing
28 the amount of the fine specified in the notice. If no hearing is
29 requested, the notice shall become a final order after the expiration
30 of the 20-day period. Payment of the assessment is due when a
31 final order is issued or the notice becomes a final order. The
32 authority to levy a civil administrative penalty is in addition to all
33 other enforcement provisions in this act, and the payment of any
34 assessment shall not be deemed to affect the availability of any
35 other enforcement provisions in connection with the violation for
36 which the assessment is levied. Each department may compromise
37 any civil administrative penalty assessed under this section in an
38 amount the department determines appropriate.

39 f. A person who violates this act, or any rule or regulation
40 adopted pursuant thereto, shall be liable for a penalty of not more
41 than ~~[\$50,000]~~ \$100,000 per day, to be collected in a civil action
42 commenced by the Commissioner of Environmental Protection, the
43 Commissioner of Health and Senior Services, a local board of
44 health, or a county health department.

45 A person who violates an administrative order issued pursuant to
46 subsection c. of this section, or a court order issued pursuant to
47 subsection d. of this section, or who fails to pay an administrative
48 assessment in full pursuant to subsection e. of this section is subject

1 upon order of a court to a civil penalty not to exceed **[\$100,000]**
2 \$200,000 per day of each violation.

3 Of the penalty imposed pursuant to this subsection, 10% or \$250,
4 whichever is greater, shall be paid to the appropriate department
5 from the General Fund if the Attorney General determines that a
6 person is entitled to a reward pursuant to section 24 of this act.

7 Any penalty imposed pursuant to this subsection may be
8 collected, with costs, in a summary proceeding pursuant to **["the**
9 **penalty enforcement law" (N.J.S.2A:58-1 et seq.)]** the "Penalty
10 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) .
11 The Superior Court and the municipal court shall have jurisdiction
12 to enforce the provisions of **["the penalty enforcement law"]** the
13 "Penalty Enforcement Law of 1999" in connection with this act.

14 g. A person who purposely or knowingly:

15 (1) disposes or stores regulated medical waste without
16 authorization from either the Department of Environmental
17 Protection or the Department of Health and Senior Services, as
18 appropriate, or in violation of this act, or any rule or regulation
19 adopted pursuant thereto;

20 (2) makes any false or misleading statement to any person who
21 prepares any regulated medical waste application, registration,
22 form, label, certification, manifest, record, report, or other
23 document required by this act, or any rule or regulation adopted
24 pursuant thereto;

25 (3) makes any false or misleading statement on any regulated
26 medical waste application, registration, form, label, certification,
27 manifest, record, report, or other document required by this act, or
28 any rule or regulation adopted pursuant thereto; or

29 (4) fails to properly treat certain types of regulated medical waste
30 designated by the Department of Health and Senior Services in a
31 prescribed manner; shall, upon conviction, be guilty of a crime of
32 the third degree and, notwithstanding the provisions of N.J.S.2C:43-
33 3, shall be subject to a fine of not more than **[\$50,000]** \$100,000
34 for the first offense, and not more than **[\$100,000]** \$200,000 for
35 each subsequent offense, and restitution, in addition to any other
36 appropriate disposition authorized by subsection b. of N.J.S.2C:43-
37 2.

38 h. A person who recklessly or negligently:

39 (1) disposes or stores regulated medical waste without
40 authorization from either the Department of Environmental
41 Protection or the Department of Health and Senior Services, as
42 appropriate, or in violation of this act, or any rule or regulation
43 adopted pursuant thereto;

44 (2) makes any false or misleading statement to any person who
45 prepares any regulated medical waste application, registration,
46 form, label, certification, manifest, record, report, or other

1 document required by this act, or any rule or regulation adopted
2 pursuant thereto;

3 (3) makes any false or misleading statement on any regulated
4 medical waste application, registration, form, label, certification,
5 manifest, record, report, or other document required by this act, or
6 any rule or regulation adopted pursuant thereto; or

7 (4) fails to properly treat certain types of regulated medical waste
8 designated by the Department of Health and Senior Services in a
9 manner prescribed thereby; shall, upon conviction, be guilty of a
10 crime of the fourth degree.

11 i. A person who, regardless of intent:

12 (1) transports any regulated medical waste to a facility or any
13 other place in the State that does not have authorization from the
14 Department of Environmental Protection [and the Board of Public
15 Utilities] to accept such waste, or in violation of this act, or any
16 rule or regulation adopted pursuant thereto; or

17 (2) transports, or receives transported, regulated medical waste
18 without completing and submitting a manifest in accordance with
19 this act, or any rule or regulation adopted pursuant thereto; shall,
20 upon conviction, be guilty of a crime of the fourth degree.

21 j. A person who purposely, knowingly, or recklessly:

22 (1) generates and causes or permits to be transported any
23 regulated medical waste to a facility or any other place in the State
24 that does not have authorization from the Department of
25 Environmental Protection [and the Board of Public Utilities] to
26 accept such waste, or in violation of this act, or any rule or
27 regulation adopted pursuant thereto; or

28 (2) violates any other provision of this act, or any rule or
29 regulation adopted pursuant thereto, for which no other criminal
30 penalty has been specifically provided for; shall, upon conviction,
31 be guilty of a crime of the fourth degree.

32 k. All conveyances used or intended for use in the willful
33 discharge, in violation of this act, or any rule or regulation adopted
34 pursuant thereto, of regulated medical waste are subject to forfeiture
35 to the State pursuant to P.L.1981, c.387 (C.13:1K-1 et seq.).

36 l. (Deleted by amendment, P.L.1997, c.325.)

37 m. No prosecution for a violation under this act shall be deemed
38 to preclude a prosecution for the violation of any other applicable
39 statute.

40 (cf: P.L.1997, c.325, s.4)

41

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

44 10. a. Whenever the commissioner finds that [any] a person is
45 in violation of any provision of this act, [he] the commissioner
46 shall:

- 1 (1) Issue an order requiring any such person to comply in
2 accordance with subsection b. of this section; or
3 (2) Bring a civil action in accordance with subsection c. of this
4 section; or
5 (3) Levy a civil administrative penalty in accordance with
6 subsection d. of this section; or
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 Use of any of the remedies specified under this section shall not
12 preclude use of any other remedy specified.

13 In the case of one or more pollutants for which interim
14 enforcement limits have been established pursuant to an
15 administrative order, including an administrative consent order, by
16 the department or a local agency, the permittee shall be liable for
17 the enforcement limits stipulated therein.

18 b. Whenever the commissioner finds that ~~any~~ a person is in
19 violation of any provision of this act, ~~he~~ the commissioner may
20 issue an order (1) specifying the provision or provisions of this act,
21 or the rule, regulation, water quality standard, effluent limitation, or
22 permit of which ~~he~~ a person is in violation, (2) citing the action
23 which caused such violation, (3) requiring compliance with such
24 provision or provisions, and (4) giving notice to the person of ~~his~~
25 the right to a hearing on the matters contained in the order.

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

- 30 (1) A temporary or permanent injunction;
31 (2) Assessment of the violator for the reasonable costs of any
32 investigation, inspection, or monitoring survey which led to the
33 establishment of the violation, and for the reasonable costs of
34 preparing and litigating the case under this subsection;
35 (3) Assessment of the violator for any reasonable cost incurred
36 by the State in removing, correcting or terminating the adverse
37 effects upon water quality resulting from any unauthorized
38 discharge of pollutants for which the action under this subsection
39 may have been brought;
40 (4) Assessment against the violator of compensatory damages
41 for any loss or destruction of wildlife, fish, or aquatic life, or other
42 natural resources, and for any other actual damages caused by an
43 unauthorized discharge; and
44 (5) Assessment against a violator of the actual amount of any
45 economic benefits accruing to the violator from a violation.
46 Economic benefits may include the amount of any savings realized
47 from avoided capital or noncapital costs resulting from the
48 violation; the return earned or that may be earned on the amount of

1 avoided costs; any benefits accruing to the violator as a result of a
2 competitive market advantage enjoyed by reason of the violation; or
3 any other benefits resulting from the violation.

4 Assessments under paragraph (4) of this subsection shall be paid
5 to the State Treasurer, except that compensatory damages shall be
6 paid by specific order of the court to any persons who have been
7 aggrieved by the unauthorized discharge. Assessments pursuant to
8 actions brought by the commissioner under paragraphs (2), (3) ~~and~~
9 (5) of this subsection shall be paid to the "Clean Water Enforcement
10 Fund," established pursuant to section 12 of P.L.1990, c.28
11 (C.58:10A-14.4).

12 d. (1) (a) The commissioner is authorized to assess, in
13 accordance with a uniform policy adopted therefor, a civil
14 administrative penalty of not more than ~~[\$50,000.00]~~ \$100,000 for
15 each violation and each day during which such violation continues
16 shall constitute an additional, separate, and distinct offense. Any
17 amount assessed under this subsection shall fall within a range
18 established by regulation by the commissioner for violations of
19 similar type, seriousness, and duration. The commissioner shall
20 adopt, by regulation, a uniform assessment of civil penalties policy
21 by January 1, 1992.

22 (b) In adopting rules for a uniform penalty policy for
23 determining the amount of a penalty to be assessed, the
24 commissioner shall take into account the type, seriousness,
25 including extent, toxicity, and frequency of a violation based upon
26 the harm to public health or the environment resulting from the
27 violation, the economic benefits from the violation gained by the
28 violator, the degree of cooperation or recalcitrance of the violator in
29 remedying the violation, any measures taken by the violator to
30 avoid a repetition of the violation, any unusual or extraordinary
31 costs directly or indirectly imposed on the public by the violation
32 other than costs recoverable pursuant to paragraph (3) or (4) of
33 subsection c. of this section, and any other pertinent factors that the
34 commissioner determines measure the seriousness or frequency of
35 the violation, or conduct of the violator.

36 (c) In addition to the assessment of a civil administrative
37 penalty, the commissioner may, by administrative order and upon
38 an appropriate finding, assess a violator for costs authorized
39 pursuant to paragraphs (2) and (3) of subsection c. of this section.

40 (2) No assessment shall be levied pursuant to this subsection
41 until after the discharger has been notified by certified mail or
42 personal service. The notice shall include a reference to the section
43 of the statute, regulation, order or permit condition violated; a
44 concise statement of the facts alleged to constitute a violation; a
45 statement of the amount of the civil penalties to be imposed; and a
46 statement of the party's right to a hearing. The ordered party shall
47 have 20 days from receipt of the notice within which to deliver to
48 the commissioner a written request for a hearing. After the hearing

1 and upon finding that a violation has occurred, the commissioner
2 may issue a final order after assessing the amount of the fine
3 specified in the notice. If no hearing is requested, then the notice
4 shall become a final order after the expiration of the 20-day period.
5 Payment of the assessment is due when a final order is issued or the
6 notice becomes a final order.

7 (3) If a civil administrative penalty imposed pursuant to this
8 subsection is not paid within 30 days of the date that the penalty is
9 due and owing, and the penalty is not contested by the person
10 against whom the penalty has been assessed, or the person fails to
11 make a payment pursuant to a payment schedule entered into with
12 the department, an interest charge shall accrue on the amount of the
13 penalty due and owing from the 30th day after the date on which the
14 penalty was due and owing. The rate of interest shall be that
15 established by the New Jersey Supreme Court for interest rates on
16 judgments, as set forth in the Rules Governing the Courts of the
17 State of New Jersey.

18 (4) The authority to levy a civil administrative penalty is in
19 addition to all other enforcement provisions in this act, and the
20 payment of any assessment shall not be deemed to affect the
21 availability of any other enforcement provisions in connection with
22 the violation for which the assessment is levied. Any civil
23 administrative penalty assessed under this section may be
24 compromised by the commissioner upon the posting of a
25 performance bond by the violator, or upon such terms and
26 conditions as the commissioner may establish by regulation, except
27 that the amount compromised shall not be more than 50% of the
28 assessed penalty, and in no instance shall the amount of that
29 compromised penalty be less than the statutory minimum amount, if
30 applicable, prescribed in section 6 of P.L.1990, c.28 (C.58:10A-
31 10.1). In the case of a violator who is a local agency that enters into
32 an administrative consent order, the terms of which require the local
33 agency to take prescribed measures to comply with its permit, the
34 commissioner shall have full discretion to compromise the amount
35 of penalties assessed or due for violations occurring during a period
36 up to 24 months preceding the entering into the administrative
37 consent order; except that the amount of the compromised penalty
38 may not be less than the statutory minimum amount, if applicable,
39 prescribed in section 6 of P.L.1990, c.28 (C.58:10A-10.1). A civil
40 administrative penalty assessed against a local agency for a
41 violation of an administrative consent order may not be
42 compromised by more than 50% of the assessed penalty. In no
43 instance shall the amount of a compromised penalty assessed
44 against a local agency be less than the statutory minimum amount,
45 if applicable, prescribed in section 6 of P.L.1990, c.28 (C.58:10A-
46 10.1). The commissioner shall not compromise the amount of any
47 component of a civil administrative penalty which represents the
48 economic benefit gained by the violator from the violation.

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

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

25 (a) may be collected or enforced by summary proceedings in a
26 court of competent jurisdiction in accordance with **["the penalty**
27 **enforcement law," N.J.S.2A:58-1 et seq.]** the “Penalty Enforcement
28 Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.) ; or

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

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

42 e. **【Any】** A person who violates this act or an administrative
43 order issued pursuant to subsection b. or a court order issued
44 pursuant to subsection c., or who fails to pay a civil administrative
45 penalty in full pursuant to subsection d., or to make a payment
46 pursuant to a payment schedule entered into with the department,
47 shall be subject upon order of a court to a civil penalty not to
48 exceed **【\$50,000.00】** \$100,000 per day of such violation, and each

1 day's continuance of the violation shall constitute a separate
2 violation. Any penalty incurred under this subsection may be
3 recovered with costs, and, if applicable, interest charges, in a
4 summary proceeding pursuant to **["the penalty enforcement law"**
5 **(N.J.S.2A:58-1 et seq.)**] the "Penalty Enforcement Law of 1999,"
6 P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any civil
7 penalties, costs or interest charges, the court, in accordance with
8 paragraph (5) of subsection c. of this section, may assess against a
9 violator the amount of any actual economic benefits accruing to the
10 violator from the violation. The Superior Court shall have
11 jurisdiction to enforce **["the penalty enforcement law"]** the
12 "Penalty Enforcement Law of 1999" in conjunction with this act.

13 f. (1)(a) **【Any】** A person who purposely, knowingly, or
14 recklessly violates this act, and the violation causes a significant
15 adverse environmental effect, shall, upon conviction, be guilty of a
16 crime of the second degree, and shall, notwithstanding the
17 provisions of subsection a. of N.J.S.2C:43-3, be subject to a fine of
18 not less than \$25,000 nor more than \$250,000 per day of violation,
19 or by imprisonment, or by both.

20 (b) As used in this paragraph, a significant adverse
21 environmental effect exists when an action or omission of the
22 defendant causes: serious harm or damage to wildlife, freshwater or
23 saltwater fish, any other aquatic or marine life, water fowl, or to
24 their habitats, or to livestock, or agricultural crops; serious harm, or
25 degradation of, any ground or surface waters used for drinking,
26 agricultural, navigational, recreational, or industrial purposes; or
27 any other serious articulable harm or damage to, or degradation of,
28 the lands or waters of the State, including ocean waters subject to
29 its jurisdiction pursuant to the "Ocean Dumping Enforcement Act,"
30 P.L.1988, c.61 (C.58:10A-47 et seq.).

31 (2) **【Any】** A person who purposely, knowingly, or recklessly
32 violates this act, including making a false statement, representation,
33 or certification in any application, record, or other document filed
34 or required to be maintained under this act, or by falsifying,
35 tampering with, or rendering inaccurate any monitoring device or
36 method required to be maintained pursuant to this act, or by failing
37 to submit a monitoring report, or any portion thereof, required
38 pursuant to this act, shall, upon conviction, be guilty of a crime of
39 the third degree, and shall, notwithstanding the provisions of
40 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than
41 \$5,000 nor more than \$75,000 per day of violation, or by
42 imprisonment, or by both.

43 (3) **【Any】** A person who negligently violates this act, including
44 making a false statement, representation, or certification in any
45 application, record, or other document filed or required to be
46 maintained under this act, or by falsifying, tampering with, or
47 rendering inaccurate any monitoring device or method required to

1 be maintained pursuant to this act, or by failing to submit a
2 discharge monitoring report, or any portion thereof, required
3 pursuant to this act, shall, upon conviction, be guilty of a crime of
4 the fourth degree, and shall, notwithstanding the provisions of
5 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than
6 \$5,000 nor more than \$50,000 per day of violation, or by
7 imprisonment, or by both.

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

18 (5) As used in this subsection, "purposely," "knowingly,"
19 "recklessly," and "negligently" shall have the same meaning as
20 defined in N.J.S.2C:2-2.

21 g. All conveyances used or intended for use in the purposeful or
22 knowing discharge, in violation of the provisions of the "Water
23 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), of any
24 pollutant or toxic pollutant are subject to forfeiture to the State
25 pursuant to the provisions of P.L.1981, c.387 (C.13:1K-1 et seq.).

26 h. The amendatory portions of this section, as set forth in
27 P.L.1990, c.28 (C.58:10A-10.1 et al.), except for subsection f. of
28 this section, shall not apply to violations occurring prior to July 1,
29 1991.

30 (cf: P.L.1990, c.28, s.5)

31
32 3. Section 6 of P.L.1990, c.28 (C.58:10A-10.1) is amended to
33 read as follows:

34 6. a. The provisions of section 10 of the "Water Pollution
35 Control Act," P.L.1977, c.74 (C.58:10A-10), or any rule or
36 regulation adopted pursuant thereto to the contrary notwithstanding,
37 the department shall assess, with no discretion, a mandatory
38 minimum civil administrative penalty for the violations enumerated
39 in subsections b., c., and d. of this section.

40 b. The department shall assess a minimum mandatory civil
41 administrative penalty of \$1,000 against a violator for each serious
42 violation, which assessment shall be made within six months of the
43 serious violation.

44 c. The department shall assess a minimum mandatory civil
45 administrative penalty of \$5,000 against a violator for the violation
46 that causes the violator to be, or to continue to be, a significant
47 noncomplier.

1 d. The department shall assess a minimum mandatory civil
2 administrative penalty of \$100 for each effluent parameter omitted
3 on a discharge monitoring report required to be submitted to the
4 department, and each day during which the effluent parameter
5 information is overdue shall constitute an additional, separate, and
6 distinct offense, except that in no instance shall the total civil
7 administrative penalty assessed pursuant to this subsection exceed
8 ~~[\$50,000]~~ \$100,000 per month for any one discharge monitoring
9 report. The civil administrative penalty assessed pursuant to this
10 subsection shall accrue as of the fifth day following the date on
11 which the discharge monitoring report was due and shall continue to
12 accrue for 30 days. The commissioner may continue to assess civil
13 administrative penalties beyond the 30-day period until submission
14 of the overdue discharge monitoring report or overdue information.
15 A permittee may contest the assessment of the civil administrative
16 penalty required to be assessed pursuant to this subsection by
17 notifying the commissioner in writing, within 30 days of the date on
18 which the effluent parameter information was required to be
19 submitted to the department, of the existence of extenuating
20 circumstances beyond the control of the permittee, including
21 circumstances that prevented timely submission of the discharge
22 monitoring report, or portion thereof, or, if the civil administrative
23 penalty is imposed because of an inadvertent omission of one or
24 more effluent parameters, the permittee may submit, without
25 liability for a civil administrative penalty assessed pursuant to this
26 subsection or subsection c. of this section, the omitted information
27 within 10 days of receipt by the permittee of notice of omission of
28 the parameter or parameters.

29 e. If a violator establishes, to the satisfaction of the department,
30 that a single operational occurrence has resulted in the simultaneous
31 violation of more than one pollutant parameter, the department may
32 consider, for purposes of calculating the mandatory civil
33 administrative penalties to be assessed pursuant to subsections b.
34 and c. of this section, the violation of the interrelated permit
35 parameters to be a single violation.

36 f. The requirement that the department assess a minimum civil
37 administrative penalty pursuant to this section shall in no way be
38 construed to limit the authority of the department to assess a civil
39 administrative penalty or bring an action for a civil penalty for a
40 violation at any time after a violation occurred or to assess a more
41 stringent civil administrative penalty or civil penalty against a
42 person pursuant to section 10 of the "Water Pollution Control Act,"
43 P.L.1977, c.74 (C.58:10A-10).

44 g. The provisions of this section shall not apply to violations
45 occurring prior to the effective date of this section.
46 (cf: P.L.1990, c.28, s.6)

1 4. (New section) No person may intentionally dump any
2 material into the ocean waters within the jurisdiction of this State,
3 or into the waters outside the jurisdiction of this State, which
4 material enters the ocean waters within the jurisdiction of this State.

5
6 5. (New section) a. Whenever the Commissioner of
7 Environmental Protection finds that a person has intentionally
8 dumped material into the ocean waters within the jurisdiction of this
9 State, or into the waters outside the jurisdiction of this State, which
10 material enters the ocean waters within the jurisdiction of this State,
11 the commissioner shall:

12 (1) issue an order requiring the person found to be in violation to
13 comply in accordance with subsection b. of this section;

14 (2) bring a civil action in accordance with subsection c. of this
15 section;

16 (3) levy a civil administrative penalty in accordance with
17 subsection d. of this section;

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

20 (5) petition the Attorney General to bring a criminal action in
21 accordance with section 3 of P.L.1988, c.61 (C.58:10A-49).

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

24 b. Whenever the commissioner finds that a person has violated
25 this section, or any rule or regulation adopted pursuant thereto, that
26 commissioner may issue an order specifying the provision or
27 provisions of this section, or the rule or regulation adopted pursuant
28 thereto, of which the person is in violation, citing the action that
29 constituted the violation, ordering abatement of the violation, and
30 giving notice to the person of the person's right to a hearing on the
31 matters contained in the order. The ordered party shall have 20
32 days from receipt of the order within which to deliver to the
33 commissioner a written request for a hearing. After the hearing and
34 upon finding that a violation has occurred, the commissioner may
35 issue a final order. If no hearing is requested, the order shall
36 become final after the expiration of the 20-day period. A request
37 for hearing shall not automatically stay the effect of the order.

38 c. The commissioner may institute an action or proceeding in
39 the Superior Court for injunctive and other relief, including the
40 appointment of a receiver for any violation of this section, or of any
41 rule or regulation adopted pursuant thereto, and the court may
42 proceed in the action in a summary manner. In any such proceeding
43 the court may grant temporary or interlocutory relief.

44 Such relief may include, singly or in combination:

45 (1) a temporary or permanent injunction;

46 (2) assessment of the violator for the costs of any investigation,
47 inspection, or monitoring survey that led to the establishment of the

1 violation, and for the reasonable costs of preparing and litigating
2 the case under this subsection;

3 (3) assessment of the violator for any cost incurred by the State
4 in removing, correcting, or terminating the adverse effects upon
5 environmental quality or public health resulting from any violation
6 of this section, or any rule or regulation adopted pursuant thereto,
7 for which the action under this subsection may have been brought;
8 and

9 (4) assessment against the violator of compensatory damages for
10 any loss or destruction of wildlife, fish or aquatic life, and for any
11 other actual damages caused by any violation of this section, or any
12 rule or regulation adopted pursuant thereto, for which the action
13 under this subsection may have been brought.

14 Assessments under this subsection shall be paid to the State
15 Treasurer, except that compensatory damages may be paid by
16 specific order of the court to any persons who have been aggrieved
17 by the violation.

18 d. The commissioner may assess a civil administrative penalty
19 of not more than \$100,000 for each violation. Each day that a
20 violation continues shall constitute an additional, separate, and
21 distinct offense. No assessment may be levied pursuant to this
22 section until after the violator has been notified by certified mail or
23 personal service. The notice shall include a reference to the section
24 of the statute, rule, regulation, or order violated, a concise statement
25 of the facts alleged to constitute a violation, a statement of the
26 amount of the civil administrative penalties to be imposed, and a
27 statement of the party's right to a hearing. The ordered party shall
28 have 20 calendar days from receipt of the notice within which to
29 deliver to the commissioner a written request for a hearing. After
30 the hearing and upon finding that a violation has occurred, the
31 commissioner may issue a final order after assessing the amount of
32 the fine specified in the notice. If no hearing is requested, the
33 notice shall become a final order after the expiration of the 20-day
34 period. Payment of the assessment is due when a final order is
35 issued or the notice becomes a final order. The authority to levy a
36 civil administrative penalty is in addition to all other enforcement
37 provisions in this act, and the payment of any assessment shall not
38 be deemed to affect the availability of any other enforcement
39 provisions in connection with the violation for which the
40 assessment is levied.

41 e. A person who violates this section, or any rule or regulation
42 adopted pursuant thereto, shall be liable for a penalty of not more
43 than \$100,000 per day, to be collected in a civil action commenced
44 by the Commissioner of Environmental Protection.

45 A person who violates an administrative order issued pursuant to
46 subsection b. of this section, or a court order issued pursuant to
47 subsection c. of this section, or who fails to pay an administrative
48 assessment in full pursuant to subsection d. of this section is subject

1 upon order of a court to a civil penalty not to exceed \$100,000 per
2 day of each violation.

3 Any penalty imposed pursuant to this subsection may be
4 collected, with costs, in a summary proceeding pursuant to the
5 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10
6 et seq.). The Superior Court and the municipal court shall have
7 jurisdiction to enforce the provisions of the “Penalty Enforcement
8 Law of 1999” in connection with this act.

9

10 6. This act shall take effect immediately.

11

12

13

STATEMENT

14

15 This bill would increase the civil penalties for medical waste and
16 water and ocean pollution by amending the “Comprehensive
17 Regulated Medical Waste Management Act” and the “Water
18 Pollution Control Act,” and by creating a civil penalty under the
19 “Ocean Dumping Enforcement Act.”

20 Currently under the “Comprehensive Regulated Medical Waste
21 Management Act,” the Commissioner of the Department of
22 Environmental Protection (DEP) or the Commissioner of the
23 Department of Health and Senior Services (DHSS) may assess a
24 civil administrative penalty of not more than \$50,000 for each
25 violation. The amendments in this bill would allow the
26 commissioners to assess a civil administrative penalty of not more
27 than \$100,000 for each violation.

28 Additionally under this law, a person violating it is liable for a
29 civil penalty of not more than \$50,000 and a person who violates an
30 administrative order, or court order, or fails to pay an administrative
31 assessment in full, is subject upon order of a court to a civil penalty
32 of up to \$100,000 per day of each violation. Under this bill, these
33 penalties would become up to \$100,000 and up to \$200,000,
34 respectfully.

35 Furthermore, under current law a person who purposely or
36 knowingly (1) disposes or stores regulated medical waste without
37 authorization from either the DEP or the DHSS; (2) makes any false
38 or misleading statement to any person who prepares any regulated
39 medical waste application, registration, form, label, certification,
40 manifest, record, report, or other document; (3) makes any false or
41 misleading statement on any regulated medical waste application,
42 registration, form, label, certification, manifest, record, report, or
43 other document; or (4) fails to properly treat certain types of
44 regulated medical waste, would be guilty of a crime of the third
45 degree and subject to a fine of not more than \$50,000 for the first
46 offense, and not more than \$100,000 for each subsequent offense.
47 This bill would increase those penalties to up to \$100,000 for the
48 first offense and up to \$200,000 for each subsequent offense.

1 Under the “Water Pollution Control Act,” the Commissioner of
2 DEP may assess a civil administrative penalty of not more than
3 \$50,000 for each violation. Also, a person who violates this law, an
4 administrative order, or a court order, or who fails to pay a civil
5 administrative penalty in full, or to make a payment, is subject upon
6 order of a court to a civil penalty of up to \$50,000 per day of such
7 violation. This bill would increase these penalties to up to
8 \$100,000 for such violations.

9 The “Ocean Dumping Enforcement Act” provides that it is a
10 third degree crime when a person intentionally dumps any material
11 into the ocean waters of this State. This bill would additionally
12 provide that a person who violates that act would be subject to a
13 civil administrative penalty of up to \$100,000 per day as well as a
14 civil penalty of up to \$100,000 per day to be collected in a civil
15 action by the DEP, and that a person who violates an administrative
16 order or a court order, or who fails to pay an administrative
17 assessment in full, would be subject upon order of a court to a civil
18 penalty of up to \$100,000 per day of each violation.

19 In the summer of 2008, a number of New Jersey beaches in
20 Atlantic County, Cape May County, and Ocean County were closed
21 due to medical waste pollution, involving dozens of syringes
22 washing ashore and creating a health and safety hazard. These
23 instances prompted the Attorney General to investigate this crime
24 and post a \$10,000 reward, funded by the New Jersey Clean Water
25 Enforcement Fund, for information concerning those responsible for
26 the improper disposal of medical waste. This bill is necessary
27 because the penalties for violations in the current law are generally
28 outdated and therefore inadequate to act as a proper deterrent to
29 illegal pollution, especially the improper disposal of medical waste.

ASSEMBLY ENVIRONMENT AND SOLID WASTE
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3271

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 12, 2009

The Assembly Environment and Solid Waste Committee reports favorably and with committee amendments Assembly Bill No.3271.

This bill would increase the civil penalties for medical waste and ocean pollution by amending the “Comprehensive Regulated Medical Waste Management Act,” P.L.1989, c.34 (C.13:1E-48.1 et al.), and by creating a civil penalty under the “Ocean Dumping Enforcement Act,” P.L.1988, c.61 (C.58:10A-47 et seq.).

Currently under the “Comprehensive Regulated Medical Waste Management Act,” the Commissioner of the Department of Environmental Protection (DEP) or the Commissioner of the Department of Health and Senior Services (DHSS) may assess a civil administrative penalty of not more than \$50,000 for each violation. This bill would allow the commissioners to assess a civil administrative penalty of not more than \$100,000 for each violation.

In addition, under the “Comprehensive Regulated Medical Waste Management Act,” a person violating that law is liable for a civil penalty of not more than \$50,000, and a person who violates an administrative order, or court order, or fails to pay an administrative assessment in full, is subject upon order of a court to a civil penalty of up to \$100,000 per day for each violation. Under this bill, these penalties would be increased to up to \$100,000 and up to \$200,000 per day for each violation, respectively.

Furthermore, under the “Comprehensive Regulated Medical Waste Management Act,” a person who purposely or knowingly (1) disposes or stores regulated medical waste without authorization from either the DEP or the DHSS; (2) makes any false or misleading statement to any person who prepares any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document; (3) makes any false or misleading statement on any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document; or (4) fails to properly treat certain types of regulated medical waste, is guilty of a crime of the third degree and subject to a fine of not more than

\$50,000 for the first offense, and not more than \$100,000 for each subsequent offense. This bill would increase those penalties to up to \$100,000 for the first offense and up to \$200,000 for each subsequent offense.

Lastly, this bill would expand the penalties provided by the “Ocean Dumping Enforcement Act.” Currently, the “Ocean Dumping Enforcement Act” provides that it is a third degree crime when a person intentionally dumps any material into the ocean waters of this State. This bill would provide that if the DEP Commissioner finds that a person has intentionally dumped material into the ocean waters within the jurisdiction of this State, or into the waters outside the jurisdiction of this State, which material enters the ocean waters within the jurisdiction of this State, the commissioner shall: (1) bring a civil action; (2) levy a civil administrative penalty of not more than \$100,000 for each violation; (3) bring an action for a civil penalty; or (4) petition the Attorney General to bring a criminal action in accordance with section 3 of P.L.1988, c.61 (C.58:10A-49). In addition, under the bill, a person who violates a court order, or who fails to pay an administrative assessment in full, would be subject upon order of a court to a civil penalty of up to \$100,000 per day for each violation.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

1) delete sections 2 and 3 of the bill which would have increased penalties assessed pursuant to the “Water Pollution Control Act;”

2) add a provision that relief granted by the Superior Court in an action or proceeding brought pursuant to the “Comprehensive Regulated Medical Waste Management Act” and the “Ocean Dumping Enforcement Act” may include the assessment against the violator of the actual amount of any economic benefit accruing to the violator from the violation;

3) clarify that the civil penalty assessed pursuant to the “Comprehensive Regulated Medical Waste Management Act” and the “Ocean Dumping Enforcement Act” is per day for each violation;

4) delete the provision which would have authorized the DEP Commissioner to issue an order requiring a person to come into compliance with the “Ocean Dumping Enforcement Act;” and

5) correct statutory references and make technical corrections.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 3271

STATE OF NEW JERSEY 213th LEGISLATURE

DATED: MARCH 30, 2009

SUMMARY

- Synopsis:** Increases civil penalties for medical waste violations and intentional ocean pollution.
- Type of Impact:** Potential revenue increase to the General Fund.
- Agencies Affected:** Department of Environmental Protection and Department of Health and Senior Services

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate - See comments below.		

- The bill increases the civil penalties for medical waste and ocean pollution by amending the “Comprehensive Regulated Medical Waste Management Act” and by creating a civil penalty under the “Ocean Dumping Enforcement Act.”
- For most violations committed under the “Comprehensive Regulated Medical Waste Management Act,” the bill doubles the maximum penalty amounts currently levied.
- The bill creates new penalties under the “Ocean Dumping Enforcement Act” concerning the intentional dumping of any materials into the ocean waters of or adjacent to the State.
- The Office of Legislative Services (OLS) cannot estimate revenue levels that may be generated from the doubling of existing fines, but assumes that any revenues collected from new penalties created under the bill will benefit the General Fund.

BILL DESCRIPTION

Assembly Bill No. 3271 (1R) of 2008 would increase the civil penalties for medical waste and ocean pollution by amending the “Comprehensive Regulated Medical Waste Management Act” P.L.1989, c.34 and by creating a civil penalty under the “Ocean Dumping Enforcement Act,” P.L.1988, c.61. Specifically, under the “Comprehensive Regulated Medical Waste Management Act,” the maximum amounts currently levied per day for civil administrative

penalties (\$50,000), other civil penalties involving violations of the act (\$50,000), and penalties involving violations of an administrative or court order, or failure to pay an administrative assessment in full (\$100,000), would be doubled. Also, the bill provides for an assessment against a violator of the actual amount of any economic benefit accruing to the violator from the violation.

The bill would also double criminal penalties assessed under the “Comprehensive Regulated Medical Waste Management Act” for violations concerning illegal disposal, falsifying medical waste documents or statements, and failure to properly treat certain types of medical waste. These fines are currently up to \$50,000 for the first offense, and up to \$100,000 for each subsequent offense.

Lastly, the bill would expand and upgrade the penalties provided under the “Ocean Dumping Enforcement Act” concerning the intentional dumping of any materials into the ocean waters of or adjacent to the State. The bill authorizes that a civil administrative penalty up to \$100,000 per day may be levied for each violation, and that an action for a civil penalty of up to \$100,000 per day or a petition to the Attorney General to bring a criminal action may be initiated. In addition, a person who violates an administrative order or a court order, or who fails to pay an administrative assessment in full, would be subject under the bill to a civil penalty of up to \$100,000 per day for each violation.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot estimate revenue amounts that may be generated from the doubling of existing fines or from new penalties created under the bill because it is not useful to project the number of future violations based on the number of past violations, especially when a bill of this nature is intended to act as a deterrent to potential violators. However, the OLS notes that few if any fines have been collected under the “Comprehensive Regulated Medical Waste Management Act” over the past 10 years, with annual fine revenues totaling zero dollars to under \$1,000 since FY 2007.

Given this fact, it may be assumed that the doubling of existing fines under the bill is unlikely to increase the level of fine revenues. Any revenues collected from new penalties created by the bill will constitute new revenues for the General Fund, which is the depository for fine revenues collected under the acts cited in the bill. The OLS further notes that these revenues, are or will be used for general State purposes and are not allocated toward specific program operations.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Richard M. Handelman
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

A3271 [1R]

3

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-1 et seq.).

SENATE, No. 2191

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED OCTOBER 6, 2008

Sponsored by:

Senator JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Senator SEAN T. KEAN

District 11 (Monmouth)

SYNOPSIS

Increases civil penalties for medical waste and water and ocean pollution.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/14/2008)

1 AN ACT concerning medical waste and water and ocean pollution
2 penalties and amending P.L.1989, c.34, P.L.1977, c.74, and
3 P.L.1990, c.28, and supplementing P.L.1988, c.61 (C.58:10A-47
4 et seq.).

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

8
9 1. Section 20 of P.L.1989, c.34 (C.13:1E-48.20) is amended to
10 read as follows:

11 20. a. This act, and any rule or regulation adopted pursuant
12 thereto, shall be enforced by the departments and by every local
13 board of health, or county health department, as the case may be.

14 The departments and the local board of health, or the county
15 health department, as the case may be, shall have the right to enter
16 the premises of a generator, transporter, or facility at any time in
17 order to determine compliance with this act.

18 The municipal attorney or an attorney retained by a municipality
19 in which a violation of this act is alleged to have occurred shall act
20 as counsel to a local board of health.

21 The county counsel or an attorney retained by a county in which
22 a violation of this act is alleged to have occurred shall act as
23 counsel to the county health department.

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

29 b. Whenever the Commissioner of Environmental Protection or
30 the Commissioner of Health and Senior Services finds that a person
31 has violated this act, or any rule or regulation adopted pursuant
32 thereto, that commissioner shall:

33 (1) issue an order requiring the person found to be in violation to
34 comply in accordance with subsection c. of this section;

35 (2) bring a civil action in accordance with subsection d. of this
36 section;

37 (3) levy a civil administrative penalty in accordance with
38 subsection e. of this section;

39 (4) bring an action for a civil penalty in accordance with
40 subsection f. of this section; or

41 (5) petition the Attorney General to bring a criminal action in
42 accordance with subsections g. through **[l.]** k. of this section.

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

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 c. Whenever the Commissioner of Environmental Protection or
2 the Commissioner of Health and Senior Services finds that a person
3 has violated this act, or any rule or regulation adopted pursuant
4 thereto, that commissioner may issue an order specifying the
5 provision or provisions of this act, or the rule or regulation adopted
6 pursuant thereto, of which the person is in violation, citing the
7 action that constituted the violation, ordering abatement of the
8 violation, and giving notice to the person of the person's right to a
9 hearing on the matters contained in the order. The ordered party
10 shall have 20 days from receipt of the order within which to deliver
11 to the commissioner a written request for a hearing. After the
12 hearing and upon finding that a violation has occurred, the
13 commissioner may issue a final order. If no hearing is requested,
14 the order shall become final after the expiration of the 20-day
15 period. A request for hearing shall not automatically stay the effect
16 of the order.

17 d. The Commissioner of Environmental Protection, the
18 Commissioner of Health and Senior Services, a local board of
19 health, or a county health department may institute an action or
20 proceeding in the Superior Court for injunctive and other relief,
21 including the appointment of a receiver for any violation of this act,
22 or of any rule or regulation adopted pursuant thereto, and the court
23 may proceed in the action in a summary manner. In any such
24 proceeding the court may grant temporary or interlocutory relief.

25 Such relief may include, singly or in combination:

26 (1) a temporary or permanent injunction;

27 (2) assessment of the violator for the costs of any investigation,
28 inspection, or monitoring survey that led to the establishment of the
29 violation, and for the reasonable costs of preparing and litigating
30 the case under this subsection;

31 (3) assessment of the violator for any cost incurred by the State
32 in removing, correcting, or terminating the adverse effects upon
33 environmental quality or public health resulting from any violation
34 of this act, or any rule or regulation adopted pursuant thereto, for
35 which the action under this subsection may have been brought; and

36 (4) assessment against the violator of compensatory damages for
37 any loss or destruction of wildlife, fish or aquatic life, and for any
38 other actual damages caused by any violation of this act, or any rule
39 or regulation adopted pursuant thereto, for which the action under
40 this subsection may have been brought.

41 Assessments under this subsection shall be paid to the State
42 Treasurer, or to the local board of health, or to the county health
43 department, as the case may be, except that compensatory damages
44 may be paid by specific order of the court to any persons who have
45 been aggrieved by the violation.

46 If a proceeding is instituted by a local board of health or county
47 health department, notice thereof shall be served upon the
48 commissioners in the same manner as if the commissioners were

1 named parties to the action or proceeding. Either of the departments
2 may intervene as a matter of right in any proceeding brought by a
3 local board of health or county health department.

4 e. Either of the commissioners, as the case may be, may assess
5 a civil administrative penalty of not more than ~~[\$50,000]~~ \$100,000
6 for each violation. Each day that a violation continues shall
7 constitute an additional, separate, and distinct offense. A
8 commissioner may not assess a civil administrative penalty in
9 excess of \$25,000 for a single violation, or in excess of \$2,500 for
10 each day during which a violation continues, until the departments
11 have respectively adopted, pursuant to the “Administrative
12 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), regulations
13 requiring the appropriate commissioner, in assessing a civil
14 administrative penalty, to consider the operational history of the
15 violator, the severity of the violation, the measures taken to mitigate
16 or prevent further violations, and whether the penalty will maintain
17 an appropriate deterrent. No assessment may be levied pursuant to
18 this section until after the violator has been notified by certified
19 mail or personal service. The notice shall include a reference to the
20 section of the statute, rule, regulation, or order violated, a concise
21 statement of the facts alleged to constitute a violation, a statement
22 of the amount of the civil administrative penalties to be imposed,
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 appropriate commissioner a written request for a
26 hearing. After the hearing and upon finding that a violation has
27 occurred, that commissioner may issue a final order after assessing
28 the amount of the fine specified in the notice. If no hearing is
29 requested, the notice shall become a final order after the expiration
30 of the 20-day period. Payment of the assessment is due when a
31 final order is issued or the notice becomes a final order. The
32 authority to levy a civil administrative penalty is in addition to all
33 other enforcement provisions in this act, and the payment of any
34 assessment shall not be deemed to affect the availability of any
35 other enforcement provisions in connection with the violation for
36 which the assessment is levied. Each department may compromise
37 any civil administrative penalty assessed under this section in an
38 amount the department determines appropriate.

39 f. A person who violates this act, or any rule or regulation
40 adopted pursuant thereto, shall be liable for a penalty of not more
41 than ~~[\$50,000]~~ \$100,000 per day, to be collected in a civil action
42 commenced by the Commissioner of Environmental Protection, the
43 Commissioner of Health and Senior Services, a local board of
44 health, or a county health department.

45 A person who violates an administrative order issued pursuant to
46 subsection c. of this section, or a court order issued pursuant to
47 subsection d. of this section, or who fails to pay an administrative
48 assessment in full pursuant to subsection e. of this section is subject

1 upon order of a court to a civil penalty not to exceed **[\$100,000]**
2 \$200,000 per day of each violation.

3 Of the penalty imposed pursuant to this subsection, 10% or \$250,
4 whichever is greater, shall be paid to the appropriate department
5 from the General Fund if the Attorney General determines that a
6 person is entitled to a reward pursuant to section 24 of this act.

7 Any penalty imposed pursuant to this subsection may be
8 collected, with costs, in a summary proceeding pursuant to **["the**
9 **penalty enforcement law"** (N.J.S.2A:58-1 et seq.)] the "Penalty
10 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) .
11 The Superior Court and the municipal court shall have jurisdiction
12 to enforce the provisions of **["the penalty enforcement law"]** the
13 "Penalty Enforcement Law of 1999" in connection with this act.

14 g. A person who purposely or knowingly:

15 (1) disposes or stores regulated medical waste without
16 authorization from either the Department of Environmental
17 Protection or the Department of Health and Senior Services, as
18 appropriate, or in violation of this act, or any rule or regulation
19 adopted pursuant thereto;

20 (2) makes any false or misleading statement to any person who
21 prepares any regulated medical waste application, registration,
22 form, label, certification, manifest, record, report, or other
23 document required by this act, or any rule or regulation adopted
24 pursuant thereto;

25 (3) makes any false or misleading statement on any regulated
26 medical waste application, registration, form, label, certification,
27 manifest, record, report, or other document required by this act, or
28 any rule or regulation adopted pursuant thereto; or

29 (4) fails to properly treat certain types of regulated medical waste
30 designated by the Department of Health and Senior Services in a
31 prescribed manner; shall, upon conviction, be guilty of a crime of
32 the third degree and, notwithstanding the provisions of N.J.S.2C:43-
33 3, shall be subject to a fine of not more than **[\$50,000]** \$100,000
34 for the first offense, and not more than **[\$100,000]** \$200,000
35 for each subsequent offense, and restitution, in addition to any other
36 appropriate disposition authorized by subsection b. of N.J.S.2C:43-
37 2.

38 h. A person who recklessly or negligently:

39 (1) disposes or stores regulated medical waste without
40 authorization from either the Department of Environmental
41 Protection or the Department of Health and Senior Services, as
42 appropriate, or in violation of this act, or any rule or regulation
43 adopted pursuant thereto;

44 (2) makes any false or misleading statement to any person who
45 prepares any regulated medical waste application, registration,
46 form, label, certification, manifest, record, report, or other

1 document required by this act, or any rule or regulation adopted
2 pursuant thereto;

3 (3) makes any false or misleading statement on any regulated
4 medical waste application, registration, form, label, certification,
5 manifest, record, report, or other document required by this act, or
6 any rule or regulation adopted pursuant thereto; or

7 (4) fails to properly treat certain types of regulated medical waste
8 designated by the Department of Health and Senior Services in a
9 manner prescribed thereby; shall, upon conviction, be guilty of a
10 crime of the fourth degree.

11 i. A person who, regardless of intent:

12 (1) transports any regulated medical waste to a facility or any
13 other place in the State that does not have authorization from the
14 Department of Environmental Protection [and the Board of Public
15 Utilities] to accept such waste, or in violation of this act, or any
16 rule or regulation adopted pursuant thereto; or

17 (2) transports, or receives transported, regulated medical waste
18 without completing and submitting a manifest in accordance with
19 this act, or any rule or regulation adopted pursuant thereto; shall,
20 upon conviction, be guilty of a crime of the fourth degree.

21 j. A person who purposely, knowingly, or recklessly:

22 (1) generates and causes or permits to be transported any
23 regulated medical waste to a facility or any other place in the State
24 that does not have authorization from the Department of
25 Environmental Protection [and the Board of Public Utilities] to
26 accept such waste, or in violation of this act, or any rule or
27 regulation adopted pursuant thereto; or

28 (2) violates any other provision of this act, or any rule or
29 regulation adopted pursuant thereto, for which no other criminal
30 penalty has been specifically provided for; shall, upon conviction,
31 be guilty of a crime of the fourth degree.

32 k. All conveyances used or intended for use in the willful
33 discharge, in violation of this act, or any rule or regulation adopted
34 pursuant thereto, of regulated medical waste are subject to forfeiture
35 to the State pursuant to P.L.1981, c.387 (C.13:1K-1 et seq.).

36 l. (Deleted by amendment, P.L.1997, c.325.)

37 m. No prosecution for a violation under this act shall be deemed
38 to preclude a prosecution for the violation of any other applicable
39 statute.

40 (cf: P.L.1997, c.325, s.4)

41

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

44 10. a. Whenever the commissioner finds that [any] a person is
45 in violation of any provision of this act, [he] the commissioner
46 shall:

- 1 (1) Issue an order requiring any such person to comply in
2 accordance with subsection b. of this section; or
- 3 (2) Bring a civil action in accordance with subsection c. of this
4 section; or
- 5 (3) Levy a civil administrative penalty in accordance with
6 subsection d. of this section; or
- 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 Use of any of the remedies specified under this section shall not
12 preclude use of any other remedy specified.

13 In the case of one or more pollutants for which interim
14 enforcement limits have been established pursuant to an
15 administrative order, including an administrative consent order, by
16 the department or a local agency, the permittee shall be liable for
17 the enforcement limits stipulated therein.

18 b. Whenever the commissioner finds that **[any]** a person is in
19 violation of any provision of this act, **[he]** the commissioner may
20 issue an order (1) specifying the provision or provisions of this act,
21 or the rule, regulation, water quality standard, effluent limitation, or
22 permit of which **[he]** a person is in violation, (2) citing the action
23 which caused such violation, (3) requiring compliance with such
24 provision or provisions, and (4) giving notice to the person of **[his]**
25 the right to a hearing on the matters contained in the order.

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

- 30 (1) A temporary or permanent injunction;
- 31 (2) Assessment of the violator for the reasonable costs of any
32 investigation, inspection, or monitoring survey which led to the
33 establishment of the violation, and for the reasonable costs of
34 preparing and litigating the case under this subsection;
- 35 (3) Assessment of the violator for any reasonable cost incurred
36 by the State in removing, correcting or terminating the adverse
37 effects upon water quality resulting from any unauthorized
38 discharge of pollutants for which the action under this subsection
39 may have been brought;
- 40 (4) Assessment against the violator of compensatory damages
41 for any loss or destruction of wildlife, fish, or aquatic life, or other
42 natural resources, and for any other actual damages caused by an
43 unauthorized discharge; and
- 44 (5) Assessment against a violator of the actual amount of any
45 economic benefits accruing to the violator from a violation.
46 Economic benefits may include the amount of any savings realized
47 from avoided capital or noncapital costs resulting from the
48 violation; the return earned or that may be earned on the amount of

1 avoided costs; any benefits accruing to the violator as a result of a
2 competitive market advantage enjoyed by reason of the violation; or
3 any other benefits resulting from the violation.

4 Assessments under paragraph (4) of this subsection shall be paid
5 to the State Treasurer, except that compensatory damages shall be
6 paid by specific order of the court to any persons who have been
7 aggrieved by the unauthorized discharge. Assessments pursuant to
8 actions brought by the commissioner under paragraphs (2), (3) and
9 (5) of this subsection shall be paid to the "Clean Water Enforcement
10 Fund," established pursuant to section 12 of P.L.1990, c.28
11 (C.58:10A-14.4).

12 d. (1) (a) The commissioner is authorized to assess, in
13 accordance with a uniform policy adopted therefor, a civil
14 administrative penalty of not more than ~~[\$50,000.00]~~ \$100,000 for
15 each violation and each day during which such violation continues
16 shall constitute an additional, separate, and distinct offense. Any
17 amount assessed under this subsection shall fall within a range
18 established by regulation by the commissioner for violations of
19 similar type, seriousness, and duration. The commissioner shall
20 adopt, by regulation, a uniform assessment of civil penalties policy
21 by January 1, 1992.

22 (b) In adopting rules for a uniform penalty policy for
23 determining the amount of a penalty to be assessed, the
24 commissioner shall take into account the type, seriousness,
25 including extent, toxicity, and frequency of a violation based upon
26 the harm to public health or the environment resulting from the
27 violation, the economic benefits from the violation gained by the
28 violator, the degree of cooperation or recalcitrance of the violator in
29 remedying the violation, any measures taken by the violator to
30 avoid a repetition of the violation, any unusual or extraordinary
31 costs directly or indirectly imposed on the public by the violation
32 other than costs recoverable pursuant to paragraph (3) or (4) of
33 subsection c. of this section, and any other pertinent factors that the
34 commissioner determines measure the seriousness or frequency of
35 the violation, or conduct of the violator.

36 (c) In addition to the assessment of a civil administrative
37 penalty, the commissioner may, by administrative order and upon
38 an appropriate finding, assess a violator for costs authorized
39 pursuant to paragraphs (2) and (3) of subsection c. of this section.

40 (2) No assessment shall be levied pursuant to this subsection
41 until after the discharger has been notified by certified mail or
42 personal service. The notice shall include a reference to the section
43 of the statute, regulation, order or permit condition violated; a
44 concise statement of the facts alleged to constitute a violation; a
45 statement of the amount of the civil penalties to be imposed; and a
46 statement of the party's right to a hearing. The ordered party shall
47 have 20 days from receipt of the notice within which to deliver to
48 the commissioner a written request for a hearing. After the hearing

1 and upon finding that a violation has occurred, the commissioner
2 may issue a final order after assessing the amount of the fine
3 specified in the notice. If no hearing is requested, then the notice
4 shall become a final order after the expiration of the 20-day period.
5 Payment of the assessment is due when a final order is issued or the
6 notice becomes a final order.

7 (3) If a civil administrative penalty imposed pursuant to this
8 subsection is not paid within 30 days of the date that the penalty is
9 due and owing, and the penalty is not contested by the person
10 against whom the penalty has been assessed, or the person fails to
11 make a payment pursuant to a payment schedule entered into with
12 the department, an interest charge shall accrue on the amount of the
13 penalty due and owing from the 30th day after the date on which the
14 penalty was due and owing. The rate of interest shall be that
15 established by the New Jersey Supreme Court for interest rates on
16 judgments, as set forth in the Rules Governing the Courts of the
17 State of New Jersey.

18 (4) The authority to levy a civil administrative penalty is in
19 addition to all other enforcement provisions in this act, and the
20 payment of any assessment shall not be deemed to affect the
21 availability of any other enforcement provisions in connection with
22 the violation for which the assessment is levied. Any civil
23 administrative penalty assessed under this section may be
24 compromised by the commissioner upon the posting of a
25 performance bond by the violator, or upon such terms and
26 conditions as the commissioner may establish by regulation, except
27 that the amount compromised shall not be more than 50% of the
28 assessed penalty, and in no instance shall the amount of that
29 compromised penalty be less than the statutory minimum amount, if
30 applicable, prescribed in section 6 of P.L.1990, c.28 (C.58:10A-
31 10.1). In the case of a violator who is a local agency that enters into
32 an administrative consent order, the terms of which require the local
33 agency to take prescribed measures to comply with its permit, the
34 commissioner shall have full discretion to compromise the amount
35 of penalties assessed or due for violations occurring during a period
36 up to 24 months preceding the entering into the administrative
37 consent order; except that the amount of the compromised penalty
38 may not be less than the statutory minimum amount, if applicable,
39 prescribed in section 6 of P.L.1990, c.28 (C.58:10A-10.1). A civil
40 administrative penalty assessed against a local agency for a
41 violation of an administrative consent order may not be
42 compromised by more than 50% of the assessed penalty. In no
43 instance shall the amount of a compromised penalty assessed
44 against a local agency be less than the statutory minimum amount,
45 if applicable, prescribed in section 6 of P.L.1990, c.28 (C.58:10A-
46 10.1). The commissioner shall not compromise the amount of any
47 component of a civil administrative penalty which represents the
48 economic benefit gained by the violator from the violation.

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

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

25 (a) may be collected or enforced by summary proceedings in a
26 court of competent jurisdiction in accordance with **["the penalty**
27 **enforcement law," N.J.S.2A:58-1 et seq.]** the “Penalty Enforcement
28 Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.) ; or

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

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

42 e. **[Any]** A person who violates this act or an administrative
43 order issued pursuant to subsection b. or a court order issued
44 pursuant to subsection c., or who fails to pay a civil administrative
45 penalty in full pursuant to subsection d., or to make a payment
46 pursuant to a payment schedule entered into with the department,
47 shall be subject upon order of a court to a civil penalty not to
48 exceed **[\$50,000.00]** \$100,000 per day of such violation, and each

1 day's continuance of the violation shall constitute a separate
2 violation. Any penalty incurred under this subsection may be
3 recovered with costs, and, if applicable, interest charges, in a
4 summary proceeding pursuant to **["the penalty enforcement law"**
5 **(N.J.S.2A:58-1 et seq.)**] the "Penalty Enforcement Law of 1999,"
6 P.L.1999, c.274 (C.2A:58-10 et seq.) . In addition to any civil
7 penalties, costs or interest charges, the court, in accordance with
8 paragraph (5) of subsection c. of this section, may assess against a
9 violator the amount of any actual economic benefits accruing to the
10 violator from the violation. The Superior Court shall have
11 jurisdiction to enforce **["the penalty enforcement law"]** the
12 "Penalty Enforcement Law of 1999" in conjunction with this act.

13 f. (1)(a) **【Any】** A person who purposely, knowingly, or
14 recklessly violates this act, and the violation causes a significant
15 adverse environmental effect, shall, upon conviction, be guilty of a
16 crime of the second degree, and shall, notwithstanding the
17 provisions of subsection a. of N.J.S.2C:43-3, be subject to a fine of
18 not less than \$25,000 nor more than \$250,000 per day of violation,
19 or by imprisonment, or by both.

20 (b) As used in this paragraph, a significant adverse
21 environmental effect exists when an action or omission of the
22 defendant causes: serious harm or damage to wildlife, freshwater or
23 saltwater fish, any other aquatic or marine life, water fowl, or to
24 their habitats, or to livestock, or agricultural crops; serious harm, or
25 degradation of, any ground or surface waters used for drinking,
26 agricultural, navigational, recreational, or industrial purposes; or
27 any other serious articulable harm or damage to, or degradation of,
28 the lands or waters of the State, including ocean waters subject to
29 its jurisdiction pursuant to the "Ocean Dumping Enforcement Act,"
30 P.L.1988, c.61 (C.58:10A-47 et seq.).

31 (2) **【Any】** A person who purposely, knowingly, or recklessly
32 violates this act, including making a false statement, representation,
33 or certification in any application, record, or other document filed
34 or required to be maintained under this act, or by falsifying,
35 tampering with, or rendering inaccurate any monitoring device or
36 method required to be maintained pursuant to this act, or by failing
37 to submit a monitoring report, or any portion thereof, required
38 pursuant to this act, shall, upon conviction, be guilty of a crime of
39 the third degree, and shall, notwithstanding the provisions of
40 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than
41 \$5,000 nor more than \$75,000 per day of violation, or by
42 imprisonment, or by both.

43 (3) **【Any】** A person who negligently violates this act, including
44 making a false statement, representation, or certification in any
45 application, record, or other document filed or required to be
46 maintained under this act, or by falsifying, tampering with, or
47 rendering inaccurate any monitoring device or method required to

1 be maintained pursuant to this act, or by failing to submit a
2 discharge monitoring report, or any portion thereof, required
3 pursuant to this act, shall, upon conviction, be guilty of a crime of
4 the fourth degree, and shall, notwithstanding the provisions of
5 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than
6 \$5,000 nor more than \$50,000 per day of violation, or by
7 imprisonment, or by both.

8 (4) **【Any】** A person who purposely or knowingly violates an
9 effluent limitation or other condition of a permit, or who discharges
10 without a permit, and who knows at that time that he thereby places
11 another person in imminent danger of death or serious bodily injury,
12 as defined in subsection b. of N.J.S.2C:11-1, shall, upon conviction,
13 be guilty of a crime of the first degree, and shall, notwithstanding
14 the provisions of subsection a. of N.J.S.2C:43-3, be subject of a fine
15 of not less than \$50,000 nor more than \$250,000, or, in the case of a
16 corporation, a fine of not less than \$200,000 nor more than
17 \$1,000,000, or by imprisonment or by both.

18 (5) As used in this subsection, "purposely," "knowingly,"
19 "recklessly," and "negligently" shall have the same meaning as
20 defined in N.J.S.2C:2-2.

21 g. All conveyances used or intended for use in the purposeful or
22 knowing discharge, in violation of the provisions of the "Water
23 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), of any
24 pollutant or toxic pollutant are subject to forfeiture to the State
25 pursuant to the provisions of P.L.1981, c.387 (C.13:1K-1 et seq.).

26 h. The amendatory portions of this section, as set forth in
27 P.L.1990, c.28 (C.58:10A-10.1 et al.), except for subsection f. of
28 this section, shall not apply to violations occurring prior to July 1,
29 1991.

30 (cf: P.L.1990, c.28, s.5)

31

32 3. Section 6 of P.L.1990, c.28 (C.58:10A-10.1) is amended to
33 read as follows:

34 6. a. The provisions of section 10 of the "Water Pollution
35 Control Act," P.L.1977, c.74 (C.58:10A-10), or any rule or
36 regulation adopted pursuant thereto to the contrary notwithstanding,
37 the department shall assess, with no discretion, a mandatory
38 minimum civil administrative penalty for the violations enumerated
39 in subsections b., c., and d. of this section.

40 b. The department shall assess a minimum mandatory civil
41 administrative penalty of \$1,000 against a violator for each serious
42 violation, which assessment shall be made within six months of the
43 serious violation.

44 c. The department shall assess a minimum mandatory civil
45 administrative penalty of \$5,000 against a violator for the violation
46 that causes the violator to be, or to continue to be, a significant
47 noncomplier.

1 d. The department shall assess a minimum mandatory civil
2 administrative penalty of \$100 for each effluent parameter omitted
3 on a discharge monitoring report required to be submitted to the
4 department, and each day during which the effluent parameter
5 information is overdue shall constitute an additional, separate, and
6 distinct offense, except that in no instance shall the total civil
7 administrative penalty assessed pursuant to this subsection exceed
8 ~~[\$50,000]~~ \$100,000 per month for any one discharge monitoring
9 report. The civil administrative penalty assessed pursuant to this
10 subsection shall accrue as of the fifth day following the date on
11 which the discharge monitoring report was due and shall continue to
12 accrue for 30 days. The commissioner may continue to assess civil
13 administrative penalties beyond the 30-day period until submission
14 of the overdue discharge monitoring report or overdue information.
15 A permittee may contest the assessment of the civil administrative
16 penalty required to be assessed pursuant to this subsection by
17 notifying the commissioner in writing, within 30 days of the date on
18 which the effluent parameter information was required to be
19 submitted to the department, of the existence of extenuating
20 circumstances beyond the control of the permittee, including
21 circumstances that prevented timely submission of the discharge
22 monitoring report, or portion thereof, or, if the civil administrative
23 penalty is imposed because of an inadvertent omission of one or
24 more effluent parameters, the permittee may submit, without
25 liability for a civil administrative penalty assessed pursuant to this
26 subsection or subsection c. of this section, the omitted information
27 within 10 days of receipt by the permittee of notice of omission of
28 the parameter or parameters.

29 e. If a violator establishes, to the satisfaction of the department,
30 that a single operational occurrence has resulted in the simultaneous
31 violation of more than one pollutant parameter, the department may
32 consider, for purposes of calculating the mandatory civil
33 administrative penalties to be assessed pursuant to subsections b.
34 and c. of this section, the violation of the interrelated permit
35 parameters to be a single violation.

36 f. The requirement that the department assess a minimum civil
37 administrative penalty pursuant to this section shall in no way be
38 construed to limit the authority of the department to assess a civil
39 administrative penalty or bring an action for a civil penalty for a
40 violation at any time after a violation occurred or to assess a more
41 stringent civil administrative penalty or civil penalty against a
42 person pursuant to section 10 of the "Water Pollution Control Act,"
43 P.L.1977, c.74 (C.58:10A-10).

44 g. The provisions of this section shall not apply to violations
45 occurring prior to the effective date of this section.
46 (cf: P.L.1990, c.28, s.6)

1 4. (New section) No person may intentionally dump any
2 material into the ocean waters within the jurisdiction of this State,
3 or into the waters outside the jurisdiction of this State, which
4 material enters the ocean waters within the jurisdiction of this State.

5
6 5. (New section) a. Whenever the Commissioner of
7 Environmental Protection finds that a person has intentionally
8 dumped material into the ocean waters within the jurisdiction of this
9 State, or into the waters outside the jurisdiction of this State, which
10 material enters the ocean waters within the jurisdiction of this State,
11 the commissioner shall:

12 (1) issue an order requiring the person found to be in violation to
13 comply in accordance with subsection b. of this section;

14 (2) bring a civil action in accordance with subsection c. of this
15 section;

16 (3) levy a civil administrative penalty in accordance with
17 subsection d. of this section;

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

20 (5) petition the Attorney General to bring a criminal action in
21 accordance with section 3 of P.L.1988, c.61 (C.58:10A-49).

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

24 b. Whenever the commissioner finds that a person has violated
25 this section, or any rule or regulation adopted pursuant thereto, that
26 commissioner may issue an order specifying the provision or
27 provisions of this section, or the rule or regulation adopted pursuant
28 thereto, of which the person is in violation, citing the action that
29 constituted the violation, ordering abatement of the violation, and
30 giving notice to the person of the person's right to a hearing on the
31 matters contained in the order. The ordered party shall have 20
32 days from receipt of the order within which to deliver to the
33 commissioner a written request for a hearing. After the hearing and
34 upon finding that a violation has occurred, the commissioner may
35 issue a final order. If no hearing is requested, the order shall
36 become final after the expiration of the 20-day period. A request
37 for hearing shall not automatically stay the effect of the order.

38 c. The commissioner may institute an action or proceeding in
39 the Superior Court for injunctive and other relief, including the
40 appointment of a receiver for any violation of this section, or of any
41 rule or regulation adopted pursuant thereto, and the court may
42 proceed in the action in a summary manner. In any such proceeding
43 the court may grant temporary or interlocutory relief.

44 Such relief may include, singly or in combination:

45 (1) a temporary or permanent injunction;

46 (2) assessment of the violator for the costs of any investigation,
47 inspection, or monitoring survey that led to the establishment of the

1 violation, and for the reasonable costs of preparing and litigating
2 the case under this subsection;

3 (3) assessment of the violator for any cost incurred by the State
4 in removing, correcting, or terminating the adverse effects upon
5 environmental quality or public health resulting from any violation
6 of this section, or any rule or regulation adopted pursuant thereto,
7 for which the action under this subsection may have been brought;
8 and

9 (4) assessment against the violator of compensatory damages for
10 any loss or destruction of wildlife, fish or aquatic life, and for any
11 other actual damages caused by any violation of this section, or any
12 rule or regulation adopted pursuant thereto, for which the action
13 under this subsection may have been brought.

14 Assessments under this subsection shall be paid to the State
15 Treasurer, except that compensatory damages may be paid by
16 specific order of the court to any persons who have been aggrieved
17 by the violation.

18 d. The commissioner may assess a civil administrative penalty
19 of not more than \$100,000 for each violation. Each day that a
20 violation continues shall constitute an additional, separate, and
21 distinct offense. No assessment may be levied pursuant to this
22 section until after the violator has been notified by certified mail or
23 personal service. The notice shall include a reference to the section
24 of the statute, rule, regulation, or order violated, a concise statement
25 of the facts alleged to constitute a violation, a statement of the
26 amount of the civil administrative penalties to be imposed, and a
27 statement of the party's right to a hearing. The ordered party shall
28 have 20 calendar days from receipt of the notice within which to
29 deliver to the commissioner a written request for a hearing. After
30 the hearing and upon finding that a violation has occurred, the
31 commissioner may issue a final order after assessing the amount of
32 the fine specified in the notice. If no hearing is requested, the
33 notice shall become a final order after the expiration of the 20-day
34 period. Payment of the assessment is due when a final order is
35 issued or the notice becomes a final order. The authority to levy a
36 civil administrative penalty is in addition to all other enforcement
37 provisions in this act, and the payment of any assessment shall not
38 be deemed to affect the availability of any other enforcement
39 provisions in connection with the violation for which the
40 assessment is levied.

41 e. A person who violates this section, or any rule or regulation
42 adopted pursuant thereto, shall be liable for a penalty of not more
43 than \$100,000 per day, to be collected in a civil action commenced
44 by the Commissioner of Environmental Protection.

45 A person who violates an administrative order issued pursuant to
46 subsection b. of this section, or a court order issued pursuant to
47 subsection c. of this section, or who fails to pay an administrative
48 assessment in full pursuant to subsection d. of this section is subject

1 upon order of a court to a civil penalty not to exceed \$100,000 per
2 day of each violation.

3 Any penalty imposed pursuant to this subsection may be
4 collected, with costs, in a summary proceeding pursuant to the
5 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10
6 et seq.). The Superior Court and the municipal court shall have
7 jurisdiction to enforce the provisions of the “Penalty Enforcement
8 Law of 1999” in connection with this act.

9

10 6. This act shall take effect immediately.

11

12

13

STATEMENT

14

15 This bill would increase the civil penalties for medical waste and
16 water and ocean pollution by amending the “Comprehensive
17 Regulated Medical Waste Management Act” and the “Water
18 Pollution Control Act,” and by creating a civil penalty under the
19 “Ocean Dumping Enforcement Act.”

20 Currently under the “Comprehensive Regulated Medical Waste
21 Management Act,” the Commissioner of the Department of
22 Environmental Protection (DEP) or the Commissioner of the
23 Department of Health and Senior Services (DHSS) may assess a
24 civil administrative penalty of not more than \$50,000 for each
25 violation. The amendments in this bill would allow the
26 commissioners to assess a civil administrative penalty of not more
27 than \$100,000 for each violation.

28 Additionally under this law, a person violating it is liable for a
29 civil penalty of not more than \$50,000 and a person who violates an
30 administrative order, or court order, or fails to pay an administrative
31 assessment in full, is subject upon order of a court to a civil penalty
32 of up to \$100,000 per day of each violation. Under this bill, these
33 penalties would become up to \$100,000 and up to \$200,000,
34 respectfully.

35 Furthermore, under current law a person who purposely or
36 knowingly (1) disposes or stores regulated medical waste without
37 authorization from either the DEP or the DHSS; (2) makes any false
38 or misleading statement to any person who prepares any regulated
39 medical waste application, registration, form, label, certification,
40 manifest, record, report, or other document; (3) makes any false or
41 misleading statement on any regulated medical waste application,
42 registration, form, label, certification, manifest, record, report, or
43 other document; or (4) fails to properly treat certain types of
44 regulated medical waste, would be guilty of a crime of the third
45 degree and subject to a fine of not more than \$50,000 for the first
46 offense, and not more than \$100,000 for each subsequent offense.
47 This bill would increase those penalties to up to \$100,000 for the
48 first offense and up to \$200,000 for each subsequent offense.

1 Under the “Water Pollution Control Act,” the Commissioner of
2 DEP may assess a civil administrative penalty of not more than
3 \$50,000 for each violation. Also, a person who violates this law, an
4 administrative order, or a court order, or who fails to pay a civil
5 administrative penalty in full, or to make a payment, is subject upon
6 order of a court to a civil penalty of up to \$50,000 per day of such
7 violation. This bill would increase these penalties to up to
8 \$100,000 for such violations.

9 The “Ocean Dumping Enforcement Act” provides that it is a
10 third degree crime when a person intentionally dumps any material
11 into the ocean waters of this State. This bill would additionally
12 provide that a person who violates that act would be subject to a
13 civil administrative penalty of up to \$100,000 per day as well as a
14 civil penalty of up to \$100,000 per day to be collected in a civil
15 action by the DEP, and that a person who violates an administrative
16 order or a court order, or who fails to pay an administrative
17 assessment in full, would be subject upon order of a court to a civil
18 penalty of up to \$100,000 per day of each violation.

19 In the summer of 2008, a number of New Jersey beaches in
20 Atlantic County, Cape May County, and Ocean County were closed
21 due to medical waste pollution, involving dozens of syringes
22 washing ashore and creating a health and safety hazard. These
23 instances prompted the Attorney General to investigate this crime
24 and post a \$10,000 reward, funded by the New Jersey Clean Water
25 Enforcement Fund, for information concerning those responsible for
26 the improper disposal of medical waste. This bill is necessary
27 because the penalties for violations in the current law are generally
28 outdated and therefore inadequate to act as a proper deterrent to
29 illegal pollution, especially the improper disposal of medical waste.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 2191

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 16, 2009

The Senate Environment Committee reports favorably Senate Bill No. 2191 with committee amendments.

Senate Bill No. 2191 would increase the civil penalties for medical waste and ocean pollution by amending the “Comprehensive Regulated Medical Waste Management Act,” P.L.1989, c.34 (C.13:1E-48.1 et al.), and by creating a civil penalty under the “Ocean Dumping Enforcement Act,” P.L.1988, c.61 (C.58:10A-47 et seq.).

Currently under the “Comprehensive Regulated Medical Waste Management Act,” the Commissioner of the Department of Environmental Protection (DEP) or the Commissioner of the Department of Health and Senior Services (DHSS) may assess a civil administrative penalty of not more than \$50,000 for each violation. This bill would allow the commissioners to assess a civil administrative penalty of not more than \$100,000 for each violation.

In addition, under the “Comprehensive Regulated Medical Waste Management Act,” a person violating that law is liable for a civil penalty of not more than \$50,000, and a person who violates an administrative order, or court order, or fails to pay an administrative assessment in full, is subject upon order of a court to a civil penalty of up to \$100,000 per day for each violation. Under this bill, these penalties would be increased to up to \$100,000 and up to \$200,000 per day for each violation, respectively.

Furthermore, under the “Comprehensive Regulated Medical Waste Management Act,” a person who purposely or knowingly (1) disposes or stores regulated medical waste without authorization from either the DEP or the DHSS; (2) makes any false or misleading statement to any person who prepares any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document; (3) makes any false or misleading statement on any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document; or (4) fails to properly treat certain types of regulated medical waste, is guilty of a crime of the third degree and subject to a fine of not more than \$50,000 for the first offense, and not more than \$100,000 for each subsequent offense. This bill would increase those penalties to up to

\$100,000 for the first offense and up to \$200,000 for each subsequent offense.

Lastly, this bill would expand the penalties provided by the “Ocean Dumping Enforcement Act.” Currently, the “Ocean Dumping Enforcement Act” provides that it is a third degree crime when a person intentionally dumps any material into the ocean waters of this State. This bill would provide that if the DEP Commissioner finds that a person has intentionally dumped material into the ocean waters within the jurisdiction of this State, or into the waters outside the jurisdiction of this State, which material enters the ocean waters within the jurisdiction of this State, the commissioner shall: (1) bring a civil action; (2) levy a civil administrative penalty of not more than \$100,000 for each violation; (3) bring an action for a civil penalty; or (4) petition the Attorney General to bring a criminal action in accordance with section 3 of P.L.1988, c.61 (C.58:10A-49). In addition, under the bill, a person who violates a court order, or who fails to pay an administrative assessment in full, would be subject upon order of a court to a civil penalty of up to \$100,000 per day for each violation.

As amended and reported by the Committee, this bill is identical to Assembly Bill No. 3271 (1R) of 2008.

The committee amendments to the bill:

1) delete sections 2 and 3 of the bill which would have increased penalties assessed pursuant to the “Water Pollution Control Act;”

2) add a provision that relief granted by the Superior Court in an action or proceeding brought pursuant to the “Comprehensive Regulated Medical Waste Management Act” and the “Ocean Dumping Enforcement Act” may include the assessment against the violator of the actual amount of any economic benefit accruing to the violator from the violation;

3) clarify that the civil penalty assessed pursuant to the “Comprehensive Regulated Medical Waste Management Act” and the “Ocean Dumping Enforcement Act” is per day for each violation;

4) delete the provision which would have authorized the DEP Commissioner to issue an order requiring a person to come into compliance with the “Ocean Dumping Enforcement Act;” and

5) correct statutory references and make technical corrections.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2191

STATE OF NEW JERSEY

DATED: JUNE 11, 2009

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2191 (1R).

This bill would increase the civil penalties for medical waste and ocean pollution by amending the “Comprehensive Regulated Medical Waste Management Act,” P.L.1989, c.34 (C.13:1E-48.1 et al.), and by creating a civil penalty under the “Ocean Dumping Enforcement Act,” P.L.1988, c.61 (C.58:10A-47 et seq.).

Currently under the “Comprehensive Regulated Medical Waste Management Act,” the Commissioner of the Department of Environmental Protection (DEP) or the Commissioner of the Department of Health and Senior Services (DHSS) may assess a civil administrative penalty of not more than \$50,000 for each violation. This bill would allow the commissioners to assess a civil administrative penalty of not more than \$100,000 for each violation.

In addition, under the “Comprehensive Regulated Medical Waste Management Act,” a person violating that law is liable for a civil penalty of not more than \$50,000, and a person who violates an administrative order, or court order, or fails to pay an administrative assessment in full, is subject upon order of a court to a civil penalty of up to \$100,000 per day for each violation. Under this bill, these penalties would be increased to up to \$100,000 and up to \$200,000 per day for each violation, respectively.

Furthermore, under the “Comprehensive Regulated Medical Waste Management Act,” a person who purposely or knowingly (1) disposes or stores regulated medical waste without authorization from either the DEP or the DHSS; (2) makes any false or misleading statement to any person who prepares any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document; (3) makes any false or misleading statement on any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document; or (4) fails to properly treat certain types of regulated medical waste, is guilty of a crime of the third degree and subject to a fine of not more than \$50,000 for the first offense, and not more than \$100,000 for each subsequent offense. This bill would increase those penalties to up to

\$100,000 for the first offense and up to \$200,000 for each subsequent offense.

Lastly, this bill would expand the penalties provided by the “Ocean Dumping Enforcement Act.” Currently, the “Ocean Dumping Enforcement Act” provides that it is a third degree crime when a person intentionally dumps any material into the ocean waters of this State. This bill would provide that if the DEP Commissioner finds that a person has intentionally dumped material into the ocean waters within the jurisdiction of this State, or into the waters outside the jurisdiction of this State, which material enters the ocean waters within the jurisdiction of this State, the commissioner shall: (1) bring a civil action; (2) levy a civil administrative penalty of not more than \$100,000 for each violation; (3) bring an action for a civil penalty; or (4) petition the Attorney General to bring a criminal action in accordance with section 3 of P.L.1988, c.61 (C.58:10A-49). In addition, under the bill, a person who violates a court order, or who fails to pay an administrative assessment in full, would be subject upon order of a court to a civil penalty of up to \$100,000 per day for each violation.

FISCAL IMPACT:

The Office of Legislative Services cannot estimate revenue amounts that may be generated from the doubling of existing fines or from new penalties created under the bill because it is not useful to project the number of future violations based on the number of past violations, especially when a bill of this nature is intended to act as a deterrent to potential violators. However, few if any fines have been collected under the “Comprehensive Regulated Medical Waste Management Act” over the past 10 years, with annual fine revenues totaling zero dollars to under \$1,000 since FY 2007.

It may be assumed that the doubling of existing fines under the bill is unlikely to increase the level of fine revenues. Any revenues collected from new penalties created by the bill will constitute new revenues for the General Fund, which is the depository for fine revenues collected under the acts cited in the bill. These revenues are or will be used for general State purposes and are not allocated toward specific program operations.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2191 STATE OF NEW JERSEY 213th LEGISLATURE

DATED: JUNE 11, 2009

SUMMARY

- Synopsis:** Increases civil penalties for medical waste violations and intentional ocean pollution.
- Type of Impact:** Potential revenue increase to the General Fund.
- Agencies Affected:** Department of Environmental Protection and Department of Health and Senior Services

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate - See comments below		

- The bill increases the civil penalties for medical waste and ocean pollution by amending the “Comprehensive Regulated Medical Waste Management Act” and by creating a civil penalty under the “Ocean Dumping Enforcement Act.”
- For most violations committed under the “Comprehensive Regulated Medical Waste Management Act,” the bill doubles the maximum penalty amounts currently levied.
- The bill creates new penalties under the “Ocean Dumping Enforcement Act” concerning the intentional dumping of any materials into the ocean waters of or adjacent to the State.
- The Office of Legislative Services (OLS) cannot estimate revenue levels that may be generated from the doubling of existing fines, but assumes that any revenues collected from new penalties created under the bill will benefit the General Fund.

BILL DESCRIPTION

Senate Bill No. 2191 (1R) of 2008 would increase the civil penalties for medical waste and ocean pollution by amending the “Comprehensive Regulated Medical Waste Management Act” P.L.1989, c.34 and by creating a civil penalty under the “Ocean Dumping Enforcement Act,”

P.L.1988, c.61. Specifically, under the “Comprehensive Regulated Medical Waste Management Act,” the maximum amounts currently levied per day for civil administrative penalties (\$50,000), other civil penalties involving violations of the act (\$50,000), and penalties involving violations of an administrative or court order, or failure to pay an administrative assessment in full (\$100,000), would be doubled. Also, the bill provides for an assessment against a violator of the actual amount of any economic benefit accruing to the violator from the violation.

The bill would also double criminal penalties assessed under the “Comprehensive Regulated Medical Waste Management Act” for violations concerning illegal disposal, falsifying medical waste documents or statements, and failure to properly treat certain types of medical waste. These fines are currently up to \$50,000 for the first offense, and up to \$100,000 for each subsequent offense.

Lastly, the bill would expand and upgrade the penalties provided under the “Ocean Dumping Enforcement Act” concerning the intentional dumping of any materials into the ocean waters of or adjacent to the State. The bill authorizes that a civil administrative penalty up to \$100,000 per day may be levied for each violation, and that an action for a civil penalty of up to \$100,000 per day or a petition to the Attorney General to bring a criminal action may be initiated. In addition, a person who violates an administrative order or a court order, or who fails to pay an administrative assessment in full, would be subject under the bill to a civil penalty of up to \$100,000 per day for each violation.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot estimate revenue amounts that may be generated from the doubling of existing fines or from new penalties created under the bill because it is not useful to predict the number of future violations based on the number of past violations, especially when a bill of this nature is intended to act as a deterrent to potential violators. However, the OLS notes that few if any fines have been collected under the “Comprehensive Regulated Medical Waste Management Act” over the past 10 years, with annual fine revenues totaling zero dollars to under \$1,000 since FY 2007.

Given this fact, it may be assumed that the doubling of existing fines under the bill is unlikely to increase the level of fine revenues. Any revenues collected from new penalties created by the bill will constitute new revenues for the General Fund, which is the depository for fine revenues collected under the acts cited in the bill. The OLS further notes that these revenues are or will be used for general State purposes and are therefore not allocated toward specific program operations.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Richard M. Handelman
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C. 52:13B-1 et seq.).