

13: 1D-125

**LEGISLATIVE HISTORY CHECKLIST**  
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(Environmental regulations--grace period)

**NJSA:** 13:1D-125

**LAWS OF:** 1995 **CHAPTER:** 296

**BILL NO:** A1521

**SPONSOR(S):** Solomon

**DATE INTRODUCED:** March 15, 1994

**COMMITTEE:** **ASSEMBLY** Policy & Rules

**SENATE:** ---

**AMENDED DURING PASSAGE:** Yes Amendments during passage  
Second reprint (AC5) enacted denoted by superscript numbers

**DATE OF PASSAGE:** **ASSEMBLY:** June 27, 1994 Re-enacted 11-30-95

**SENATE:** June 12, 1995 Re-enacted 12-18-95

**DATE OF APPROVAL:** December 22, 1996

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes

**SENATE:** No

**FISCAL NOTE:** Yes

**VETO MESSAGE:** Yes

**MESSAGE ON SIGNING:** Yes

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

KBP:pp

[SECOND REPRINT]

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 1521

STATE OF NEW JERSEY

ADOPTED JUNE 9, 1994

Sponsored by Assemblymen SOLOMON, CORODEMUS, DiGaetano,  
Bagger, DeCroce, Geist, Assemblywoman Heck,  
Assemblymen Bryant, Pascrell, Rocco and Green

1 AN ACT concerning the enforcement of certain environmental  
2 laws and supplementing Title 13 of the Revised Statutes.

3

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

6 1. The Legislature finds and declares that:

7 The Department of Environmental Protection has historically  
8 measured the success of its enforcement programs based upon the  
9 magnitude of penalties imposed, correlating higher penalties with  
10 greater success, and that this paradigm is predicated upon the  
11 belief that the threat or imposition of monetary sanctions is the  
12 sole economic incentive inducing compliance and the dominant  
13 force driving corporate compliance decisions and investments.

14 The economic dynamics of pollution control and waste  
15 management have substantially changed since the inception of  
16 environmental regulatory and enforcement programs; that  
17 considerable market forces now exist which substantially  
18 influence the economics of compliance; that the threat or  
19 imposition of monetary sanctions is no longer the dominant force  
20 driving corporate compliance decisions and investments; and that  
21 the enforcement programs administered by the Department of  
22 Environmental Protection should recognize these changes in the  
23 factors which influence compliance.

24 There are equally effective alternative methods to promote  
25 compliance with environmental laws, such as establishing grace  
26 (compliance) periods, which are especially well-suited for minor  
27 violations that have minimal, if any, effect upon public health,  
28 safety or natural resources, and that the Department of  
29 Environmental Protection affords grace (compliance) periods in  
30 certain regulatory programs for minor violations of  
31 environmental laws, but this policy is not consistently applied  
32 throughout all regulatory programs.

33 <sup>1</sup>[Establishing and employing] Expanding the use of<sup>1</sup> grace  
34 (compliance) periods will promote compliance by allowing those  
35 members of the regulated community who are committed to  
36 working diligently and cooperatively toward compliance, to invest  
37 private capital in pollution control equipment and other measures  
38 which will yield long-term environmental benefits, instead of in

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:

<sup>1</sup> Senate floor amendments adopted March 30, 1995.

<sup>2</sup> Assembly amendments adopted in accordance with Governor's  
recommendations September 18, 1995.

1 costly litigation and the payment of punitive monetary sanctions.  
2 Establishing a policy for the consistent application of grace  
3 (compliance) periods for minor violations is a proper exercise of  
4 the Department of Environmental Protection's <sup>1</sup>[statutory]<sup>1</sup>  
5 enforcement discretion and will enable the Department of  
6 Environmental Protection to more sharply focus limited public  
7 resources on serious violations of environmental law.

8 Establishing and employing grace (compliance) periods for  
9 minor violations will ensure the administration of an effective,  
10 consistent, sensible and fair enforcement program by the  
11 Department of Environmental Protection, and promote the health  
12 and safety of the public and the protection of natural resources.

13 Persons responsible for minor violations of environmental laws  
14 should be afforded a grace (compliance) period, and if the person  
15 responsible for the violation achieves compliance within the  
16 grace period, the Department of Environmental Protection should  
17 refrain from imposing penalties.

18 The economic dynamics of compliance, in combination with an  
19 evolving environmentally-sensitive corporate ethic, have resulted  
20 in the initiation of environmental audits by regulated entities and  
21 the consequent discovery of violations of environmental laws.

22 Environmental enforcement policies should promote and  
23 encourage the initiation of environmental audits, the diligent  
24 remediation of violations so discovered and the immediate and  
25 voluntary disclosure of such violations to the Department of  
26 Environmental Protection.

27 The Department of Environmental Protection should refrain  
28 from imposing monetary sanctions for violations immediately and  
29 voluntarily disclosed, provided certain conditions are met.

30 2. As used in this act:

31 "Department" means the Department of Environmental  
32 Protection.

33 "Environmental law" means the "Water Pollution Control Act,"  
34 P.L.1977, c.74 (C.58:10A-1 et seq.); the "Air Pollution Control  
35 Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.); the "Solid Waste  
36 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.); the  
37 "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et  
38 seq.); the "Toxic Catastrophe Prevention Act," P.L.1985, c.403  
39 (C.13:1K-19 et seq.); the "Worker and Community Right To Know  
40 Act," P.L.1983, c.315 (C.34:5A-1 et al.); the "Comprehensive  
41 Regulated Medical Waste Management Act," P.L.1989, c.34  
42 (C.13:1E-48.1 et seq.); P.L.1986, <sup>2</sup>[c.106] c.102<sup>2</sup> (C.58:10A-21 et  
43 seq.); the "Pollution Prevention Act,<sup>1</sup>" [<sup>1</sup>]<sup>1</sup> P.L.1991, c.235  
44 (C.13:1D-35 et seq.); the "Spill Compensation and Control Act,  
45 "P.L.1976, c.141 <sup>1</sup>[(C.58:10-2 .11 et seq.)] <sup>2</sup>[(C.58:10-2.11 et  
46 seq.)<sup>1</sup>] (C.58:10-23.11 et seq.)<sup>2</sup>; <sup>1</sup>the "Noise Control Act of  
47 1971," P.L.1971, c.418 (C.13:1G-1 et seq.); the "Pesticide  
48 Control Act of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the  
49 "Radiation Protection Act," P.L.1958, c.116 (C.26:2D-1 et seq.);  
50 the "Coastal Area Facility Review Act," P.L.1973, c.185  
51 (C.13:19-1 et seq.); the "Freshwater Wetlands Protection Act,"  
52 P.L.1987, c.156 (C.13:9B-1 et seq.); "The Wetlands Act of 1970,"  
53 P.L.1970, c.272 (C.13:9A-1 et seq.); R.S.12:5-1 et seq.; the  
54 "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50

1 et seq.];<sup>1</sup> any rule or regulation promulgated thereunder<sup>1</sup>[,]; and  
2 any<sup>1</sup> permit issued pursuant thereto. It shall also include any  
3 ordinance adopted by a local government agency to implement or  
4 effectuate the purposes or objectives of an environmental law.

5 "Facility" means the building, equipment and contiguous area  
6 at a single location used for the conduct of business, and which is  
7 regulated pursuant to an environmental law.

8 "Local government agency" means a political subdivision of the  
9 State or any instrumentality thereof, including, but not limited  
10 to, a municipality, county, local board of health, county board of  
11 health, regional health commission, improvement authority,  
12 utility authority or sewerage authority authorized by law to  
13 enforce an environmental law or adopt ordinances implementing  
14 or effectuating the purposes or objectives of an environmental  
15 law.

16 "Minor violation" means any violation which the department,  
17 pursuant to section 5 of this act, has designated as a minor  
18 violation <sup>2</sup>[and which in accordance with the provisions of section  
19 3 of this act may be corrected, or for which compliance may be  
20 achieved within a specified period without the imposition of a  
21 penalty therefor]<sup>2</sup>.

22 "Penalty" means a civil penalty imposed or civil administrative  
23 penalty assessed for a violation of any environmental law or any  
24 rule or regulation adopted pursuant thereto or any permit issued  
25 thereunder.

26 <sup>2</sup>"Person" means any individual, corporation, company,  
27 partnership, firm, association, political subdivision of this State  
28 or any State or interstate agency.<sup>2</sup>

29 3. a. Upon identification of a violation of an environmental  
30 law which, pursuant to section <sup>1</sup>[4] 5<sup>1</sup> of this act, is designated as  
31 a minor violation, the department or a local government agency,  
32 as the case may be, shall issue an order, notice of violation, or  
33 other enforcement document to the person responsible for the  
34 minor violation which: (1) identifies the condition or activity  
35 that constitutes the violation and the specific statute, rule or  
36 regulation, or permit condition violated; and (2) notifies the  
37 person responsible for the violation that a penalty may be  
38 imposed unless the activity or condition constituting the minor  
39 violation is corrected and compliance is achieved within the  
40 period of time specified in the order, notice of violation, or other  
41 enforcement document, as the case may be.

42 b. In each order, notice of violation, or other enforcement  
43 document issued pursuant to subsection a. of this section, the  
44 department or local government agency, as the case may be, shall  
45 provide the person responsible for the minor violation a period of  
46 time to correct that violation and achieve compliance. The  
47 department shall promulgate rules and regulations establishing  
48 the period of time within which each type or category of minor  
49 violation shall be corrected and compliance achieved. The  
50 periods of time established for correction and compliance  
51 pursuant to this subsection shall be no less than <sup>1</sup>[20] 30<sup>1</sup> days or  
52 more than 90 days, based upon the nature and extent of the minor  
53 violation and a reasonable estimate of the time necessary to  
54 achieve compliance; provided, however, the department may

1 establish a special type or category of minor violation which for  
2 public health and safety reasons shall be corrected and  
3 compliance achieved in a period of less than <sup>1</sup>[20] 30<sup>1</sup> days. The  
4 department or local government agency, as the case may be, may  
5 extend <sup>2</sup>for an additional period of time not to exceed 90 days<sup>2</sup>,  
6 in its discretion, the period of time set forth in the order, notice  
7 of violation, or other enforcement document within which the  
8 minor violation is to be corrected and compliance achieved. <sup>2</sup>if  
9 compliance is not achieved during that period due to a lack of  
10 required action by the department or a local government agency,  
11 then the compliance period shall be tolled until the department or  
12 local government agency takes such required action.<sup>2</sup>

13 c. If a person responsible for a minor violation corrects that  
14 violation and achieves compliance within the period of time  
15 specified in the order, notice of violation, or other enforcement  
16 document issued pursuant to subsection a. of this section, the  
17 department or the local government agency, as the case may be,  
18 shall not impose a penalty for that violation. The department or  
19 local government agency, as the case may be, may require the  
20 person responsible for correcting a minor violation or achieving  
21 compliance to submit a written certification, or other  
22 documentation, to verify that compliance has been achieved.

23 d. Nothing in this act shall be construed to limit the authority  
24 of the department or a local government agency to seek damages  
25 or injunctive relief, to initiate or proceed with a criminal  
26 investigation or prosecution, or to obtain any other appropriate  
27 relief that may be available.

28 4. If the person responsible for the minor violation fails to  
29 correct or achieve compliance within the period of time specified  
30 in the order, notice of violation, or other enforcement document,  
31 the department or local government agency, as the case may be,  
32 may impose at its discretion a penalty which is retroactive to the  
33 date on which the order, notice of violation, or other  
34 enforcement document was first issued to the person responsible.

35 5. a. The department shall promulgate rules and regulations  
36 designating specific types or categories of violations within each  
37 regulatory and enforcement program of each environmental law  
38 as minor violations<sup>1</sup>, and subject to the provisions of this act  
39 and non-minor violations<sup>1</sup>. In designating <sup>1</sup>[these]<sup>1</sup> minor  
40 violations, the department shall utilize the criteria set forth in  
41 <sup>2</sup>[subsection b. of]<sup>2</sup> this section. <sup>1</sup>All types or categories of  
42 violations not designated as minor violations shall be designated  
43 as non-minor violations.<sup>1</sup>

44 b. A violation shall be designated by the department as a  
45 minor violation if:

46 (1) The violation is not the result of the purposeful, <sup>2</sup>knowing,<sup>2</sup>  
47 reckless or criminally negligent conduct of the person responsible  
48 for the violation;

49 (2) The violation poses minimal risk to the public health,  
50 safety and natural resources;

51 (3) The violation does not materially and substantially  
52 undermine or impair the goals of the regulatory program;

53 (4) The activity or condition constituting the violation has  
54 existed for less than 12 months prior to the date of discovery by

1 the department or local government agency;

2 (5) <sup>2</sup>(a)<sup>2</sup> The person responsible for the violation has not been  
3 identified in a previous enforcement action by the department or  
4 a local government agency as responsible for a violation of the  
5 same requirement of the same permit within the preceding 12  
6 month period;

7 <sup>2</sup>[or,] (b)<sup>2</sup> in the case of <sup>2</sup>a<sup>2</sup> violation that does not involve a  
8 permit <sup>2</sup>[issued pursuant to an environmental law,] , the person  
9 responsible for the violation has not been identified in a previous  
10 enforcement action by the department or a local government  
11 agency as responsible<sup>2</sup> for the same <sup>1</sup>[or a substantially similar]<sup>1</sup>  
12 <sup>2</sup>or a substantially similar<sup>2</sup> violation at the same facility within  
13 the preceding 12 month period<sup>2</sup>].;

14 (c) in the case of a violation of the "Coastal Area Facility  
15 Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the  
16 "Freshwater Wetlands Protection Act," P.L.1987, c.156  
17 (C.13:9B-1 et seq.); "The Wetlands Act of 1970," P.L.1970, c.272  
18 (C.13:9A-1 et seq.); R.S.12:5-1 et seq.; the "Flood Hazard Area  
19 Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.) or any rule or  
20 regulation promulgated thereunder, or permit issued pursuant  
21 thereto, the person responsible for the violation has not been  
22 identified in a previous enforcement action by the department or  
23 a local government agency as responsible for the same or a  
24 substantially similar violation at the same site or any other site  
25 within the preceeding 12 month period; or

26 (d) in the case of any violation, the person responsible for the  
27 violation has not been identified by the department or a local  
28 government agency as responsible for the same or substantially  
29 similar violations at any time that reasonably indicate a pattern  
30 of illegal conduct and not isolated incidents on the part of the  
31 person responsible<sup>2</sup> <sup>1</sup>], or has been identified by the department  
32 as responsible for violations of a substantially similar nature  
33 which indicate a pattern of illegal conduct on the part of the  
34 person responsible and not isolated incidents]<sup>1</sup> <sup>2</sup>; and<sup>2</sup>

35 (6) The activity or condition constituting the violation is  
36 capable of being corrected and compliance achieved within the  
37 period of time prescribed by the department pursuant to  
38 subsection b. of section 3 of P.L. , c. (C. )(now pending  
39 before the Legislature as this bill).

40 <sup>2</sup>c. Any violation subject to the mandatory assessment of civil  
41 administrative penalties pursuant to section 6 of P.L.1990, c.28  
42 (C.58:10A-10.1) shall not be designated as a minor violation  
43 pursuant to this act.<sup>2</sup>

44 6. Whenever a person responsible for a minor violation  
45 <sup>2</sup>designated as such pursuant to section 5 of this act<sup>2</sup> of an  
46 environmental law voluntarily discloses to the department or  
47 local government agency the existence of that violation, the  
48 department or local government agency, as the case may be, shall  
49 not impose a civil or civil administrative penalty for the  
50 violation; provided the person responsible for the violation fully  
51 discloses all relevant circumstances surrounding the violation  
52 within 30 days of its discovery, immediately ceases any  
53 continuation of the violation, and promptly remedies the violation  
54 and achieves compliance<sup>2</sup>]; and further provided, the person

1 responsible for the violation demonstrates and the department or  
2 local government agency, as the case may be, determines that  
3 the violation is not the result of knowing, purposeful, reckless or  
4 criminally negligent conduct, or is not part of a pattern of illegal  
5 conduct, or the violation did not cause significant harm or a  
6 substantial or imminent risk of harm to public health, safety or  
7 natural resources], in accordance with the timeframes established  
8 pursuant to section 3 of this act<sup>2</sup>.

9 <sup>1</sup>[7. The provisions of this act shall not apply to:

10 a. Any violation that has been designated as a "high priority  
11 violation" by the department and the United States  
12 Environmental Protection Agency pursuant to the federal  
13 "Resource Conservation and Recovery Act," 42 U.S.C. §§6901 et  
14 seq.;

15 b. Any violation subject to the mandatory assessment of civil  
16 administrative penalties pursuant to section 6 of P.L.1990, c.28  
17 (C.58:10A-10.1);

18 c. Any violation that the department determines does not  
19 qualify as an affirmative defense pursuant to section 7 of  
20 P.L.1990, c.28 (C.58:10A-10.2) or section 2 of P.L.1993, c.89  
21 (C.26:2C-19.2); or

22 d. Any violation of a requirement in any environmental law  
23 which requires that a person notify the department of a  
24 discharge, spill, leak, emission, release or other pollution event.]<sup>1</sup>

25 <sup>1</sup>[8.] 7.<sup>1</sup> Prior to the adoption of the rules and regulations  
26 prescribed in subsection a. of section <sup>1</sup>[4] 5<sup>1</sup> of P.L. , c.  
27 (C. )(now pending before the Legislature as this bill), the  
28 department or a local governmental agency, upon the  
29 identification of a violation of an environmental law and upon a  
30 case-by-case basis, may utilize the criteria set forth in  
31 <sup>2</sup>[subsection b. of]<sup>2</sup> section <sup>1</sup>[4] 5<sup>1</sup> of P.L. , c. (C. )(now  
32 pending before the Legislature as this bill) to designate that  
33 violation as a minor violation and determine that the person  
34 responsible for that minor violation is eligible for the relief  
35 available under this act. In any such case, the department or  
36 local government agency, as the case may be, shall specify the  
37 time period <sup>2</sup>which shall not exceed 180 days<sup>2</sup> within which the  
38 responsible person shall correct the violation and achieve  
39 compliance. If compliance is achieved within that specified  
40 period, the department or local government agency shall not  
41 impose a penalty for the violation. <sup>2</sup>If compliance is not  
42 achieved during that period due to a lack of required action by  
43 the department or a local government agency, then the  
44 compliance period shall be tolled until the department or local  
45 government agency takes such required action.<sup>2</sup>

46 <sup>1</sup>[9.] 8.<sup>1</sup> The department shall annually submit to the Governor  
47 and the Legislature a report <sup>1</sup>[on the program established under  
48 the provisions of this act. The report shall include, but not be  
49 limited to, statistics relating to the number and types of minor  
50 violations corrected and for which compliance was achieved, the  
51 number and types of minor violations in which corrections were  
52 not made and compliance not achieved, and a synopsis of the  
53 penalties imposed in those cases where corrections were not  
54 made and compliance was not achieved.] that provides the

- 1 following information on each regulatory and enforcement  
2 program administered pursuant to an environmental law:  
3 a. The number of facilities regulated;  
4 b. The number of inspections performed;  
5 c. The number of minor violations identified, and the number  
6 of facilities responsible therefor;  
7 d. The number of minor violations corrected during a grace  
8 period, and the number of facilities responsible therefor;  
9 e. The number of minor violations not corrected during a grace  
10 period, and the number of facilities responsible therefor;  
11 f. The number of enforcement actions assessing a penalty  
12 initiated for one or more minor violations not corrected during a  
13 grace period;  
14 g. The number of non-minor violations identified, and the  
15 number of facilities responsible therefor; and  
16 h. The number of enforcement actions assessing a penalty  
17 initiated for one or more non-minor violations.<sup>1</sup>

18 Along with the report, the department may submit any  
19 recommendations it may have for any legislation it determines is  
20 necessary.

21 <sup>1</sup>[10.] 9.<sup>1</sup> Within 180 days of the effective date of this act, the  
22 department, in accordance with the provisions of the  
23 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
24 seq.), shall promulgate rules and regulations to effectuate the  
25 purposes of this act. <sup>1</sup>Not less than 60 days prior to the proposed  
26 adoption of any rules or regulations proposed by the department  
27 pursuant to this act, the department shall submit such proposed  
28 rules and regulations to the chairperson of the Senate Legislative  
29 Oversight Committee, or its successor, and the chairperson of the  
30 Assembly Regulatory Oversight Committee, or its successor. The  
31 department shall provide for a comment period of no less than 60  
32 days prior to the adoption of the such proposed rules or  
33 regulations, during which at least one public hearing shall be held  
34 for the purpose of obtaining comments on the proposed rules or  
35 regulations.<sup>1</sup>

36 <sup>1</sup>[11.] 10.<sup>1</sup> This act shall take effect immediately; provided,  
37 however, the relief afforded under this act shall be applicable  
38 only to violations identified on or after the effective date and  
39 further provided, that for the purposes of paragraphs (4) and (5)  
40 of subsection b. of section 5 of this act, the department shall not  
41 consider violations occurring prior to the effective date.

42  
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46 Provides "grace period" for certain environmental violations.



1 4. The department shall, pursuant to the provisions of the  
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
3 seq.), adopt rules and regulations necessary for the  
4 implementation of the provisions of this act.

5 5. This act shall take effect immediately.  
6  
7

8 STATEMENT  
9

10 This legislation is intended to foster a better relationship  
11 between the Department of Environmental Protection (DEP) and  
12 the regulated community by allowing corrective action before the  
13 imposition of fines and penalties.

14 Currently, the DEPE issues notices of violation for violations  
15 of law, rule or regulation pursuant to numerous State laws. This  
16 bill would provide a 30 day "grace period" to persons who violate  
17 certain environmental laws, which are enumerated in the bill's  
18 definition section, and would require the DEP to issue a warning  
19 notice to the violator which would identify the condition or  
20 activity constituting a violation and the action necessary to  
21 correct the violation prior to issuing the notice of violation. In  
22 the event the required corrective action is taken within the 30  
23 day "grace period" then no notice of violation would be issued  
24 and no monetary penalty would be imposed. This "grace period"  
25 would apply only to violations identified in the course of an  
26 inspection of a facility regulated under the environmental laws  
27 defined in the bill. Violations of periodic reporting requirements  
28 would not be affected by the provisions of the bill.

29 The provision in subsection c. of section 2, which indicates that  
30 the failure to take corrective action may result in issuance of a  
31 summons or notice of violation and imposition of penalty, is  
32 intended to allow the DEP discretion in issuing a notice of  
33 violation and imposing a penalty where the person has  
34 substantially complied with the notice or where there are other  
35 mitigating factors.  
36  
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40 Provides "grace period" for certain environmental violations.

ASSEMBLY POLICY AND RULES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 1521

STATE OF NEW JERSEY

DATED: JUNE 9, 1994

The Assembly Policy and Rules Committee favorably reports an Assembly Committee Substitute for Assembly Bill No. 1521.

The substitute authorizes an alternative method to promote compliance with environmental laws by establishing a grace period for persons responsible for minor violations. Under the provisions of the substitute, the enforcing agency, be it the Department of Environmental Protection or a local government agency, would not impose a penalty if the minor violation is corrected and compliance is achieved by the person responsible within a time period prescribed by the department.

The grace period applies to minor violations of "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.); the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.); the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.); the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et seq.); the "Toxic Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.); the "Worker and Community Right To Know Act," P.L.1983, c.315 (C.34:5A-1 et al.); the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et seq.); P.L.1986, c.106 (C.58:10A-21 et seq.); the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35 et seq.); the "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.); any rule or regulation promulgated to effectuate or implement those acts, and any permit issued under them. The grace period also applies to any ordinance adopted by a local government agency to implement or effectuate the purposes or objectives of those acts.

A minor violation is defined as a violation which:

- Is not the result of the purposeful, reckless or criminally negligent conduct of the person responsible;
- Poses only a minimal risk to the public health, safety or natural resources;
- Does not materially and substantially undermine or impair the goals of the regulatory program;
- Has existed for less than 12 months prior to the date of discovery by the department or local government agency; and
- The person responsible for the violation has not been cited by the department in a prior enforcement action (1) for a violation of the same requirement of the same permit within the preceding 12 months, or (2) in the case of a violation which is not related to a permit issued pursuant to an environmental law, for the same or a substantially similar violation at the same facility within the preceding 12 months or (3) for a violation of a substantially similar nature which indicates a pattern of illegal conduct on the part of the person responsible and not isolated incidents.

The substitute specifies that the grace period program does not apply to:

- Any violation designated a "high priority violation" under the federal "Resource Conservation and Recovery Act," 42 U.S.C. §6901 et seq.;
- Any violation subject to a mandatory civil administrative penalty under section 6 of P.L.1990, c.28 (C.58:10A-10.1);
- Any violation that the department determines does not qualify as an affirmative defense under section 7 of P.L.1990, c.28 (C.58:10A-10.2) or section 2 of P.L.1993, c.89 (C.26:2c-19.2); or
- Any violation of an environmental law which requires the department be notified of a discharge, spill, leak, emission, release or other pollution event.

The other major provisions of the substitute include:

- A retroactive proviso which states that if the person responsible for the minor violation fails to correct that violation or achieve compliance within the required time period, the department or the local government agency, as the case may be, may impose a penalty which is retroactive to the date when the order, notice of violation or other enforcement document identifying the violation was first issued.
- A self-disclosure clause which provides that if the person responsible for a violation voluntarily discloses its existence, no penalty may be imposed if the responsible party immediately terminates the violation, promptly remedies the violation and achieves compliance, and demonstrates that the violation was not the result of knowing, purposeful, reckless or criminally negligent conduct, or the violation did not cause significant harm or a substantial or imminent risk of harm to the public health, safety, or natural resources.
- A section authorizing the department and local government agencies to implement an interim grace period program, on a case-by-case basis, for minor violations during the period between the enactment of the substitute and the adoption of the program's operational rules and regulations. The section requires, however, that the granting of any such grace period must be based upon, and be consistent with, the criteria set forth in the substitute.
- A requirement that the department submit annual reports to the governor and the Legislature setting forth the number and type of minor violations corrected and for which compliance was achieved; the number and type of violations which were not corrected and for which compliance was not achieved; and a synopsis of the penalties imposed in those cases where corrections were not made and compliance was not achieved.

Finally, the committee structured the effective date clause to clarify (1) that the grace period applies only to minor violations identified on and after the effective date of the substitute and (2) that the regulated community is afforded a "clean slate" with the enactment of the substitute, and that violations which occurred prior to the effective date of the substitute shall not preclude a regulated party from participating in grace period program established under the substitute.

It is the committee's understanding that the term "person responsible" refers to all regulated parties and, therefore, includes both private entities and public entities. Consequently, the committee believes that the provisions of the substitute apply to, and the relief afforded under it is available to, both private and public entities.

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LEGISLATIVE FISCAL ESTIMATE TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 1521

STATE OF NEW JERSEY

DATED: July 8, 1994

The Assembly Committee Substitute for Assembly Bill No. 1521 of 1994 authorizes an alternative method to promote compliance with environmental laws by establishing a grace period for persons responsible for minor violations. Under the provisions of the committee substitute, the enforcing agency, be it the Department of Environmental Protection and Energy (DEPE) or a local government agency, would not impose a penalty if the minor violation is corrected and compliance is achieved by the person responsible within a time period prescribed by the department.

The Office of Legislative Services cannot estimate the potential loss of revenue from fine assessments under the substitute because the number of violators who may not be subject to such assessments due to the grace period is unknown. However, in programs where fine revenues are appropriated to the department (for operating support) rather than to the General Fund, the impact of any such reductions would probably not be significant because these monies are generally used to cover contingencies or unexpected expenses and are therefore not relied upon to support regular operating budget activities. Conversely, in cases where fine revenues are deposited into the General Fund, such reductions would correspondingly reduce monies available for the State's general obligations.

The substitute could result in increased costs to the DEPE, most notably in programs in which grace periods are not currently provided to the regulated community. In those programs, staff could be required to perform repeat visits beyond those performed under current program guidelines. The amount of increased costs associated with these potential consequences is not possible to determine. It should also be noted that the costs of litigation to the department may be reduced as a result of fewer appeals of penalties imposed.

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.

ASSEMBLY, No. 1521  
STATE OF NEW JERSEY

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INTRODUCED MARCH 15, 1994

By Assemblymen SOLOMON and CORODEMUS

1 AN ACT concerning the enforcement of environmental laws and  
2 supplementing Title 13 of the Revised Statutes.

3

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

6 1. As used in this act:

7 "Department" means the Department of Environmental  
8 Protection;

9 "Environmental law" means the "Water Pollution Control Act,"  
10 P.L.1977, c.74 (C.58:10A-1 et seq.), the "Air Pollution Control  
11 Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), the "Solid Waste  
12 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the  
13 "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et  
14 seq.), the "Toxic Catastrophe Prevention Act," P.L.1985, c.403  
15 (C.13:1K-19 et seq.), the "Worker and Community Right To Know  
16 Act," P.L.1983, c.315 (C.34:5A-1 et al.), the "Comprehensive  
17 Regulated Medical Waste Management Act," P.L.1989, c.34  
18 (C.13:1E-48.1 et seq.), and P.L.1986, c.106 (C.58:10A-21 et seq.);

19 "Facility" means the building, equipment and contiguous area  
20 at a single location used for the conduct of business, and which is  
21 regulated pursuant to an environmental law; and

22 "Penalty" means a penalty, fine, or assessment for a violation  
23 of any environmental law, or rule or regulation adopted pursuant  
24 thereto.

25 2. Upon identification of a violation of an environmental law  
26 for which a penalty may be assessed, the department shall, prior  
27 to issuing a notice of violation, issue a written warning notice to  
28 the person in violation which:

29 a. Identifies the condition or activity which constitutes a  
30 violation and the section of law, rule or regulation being violated;

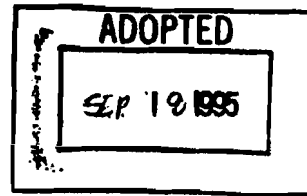
31 b. Specifies the type of action required on the part of the  
32 person in violation to correct the violation; and

33 c. Notifies the person in violation that failure to take the  
34 action required pursuant to subsection b. of this section within 30  
35 days of receipt of the written warning notice may result in the  
36 issuance of a notice of violation and imposition of a penalty.

37 This section shall apply only to violations identified in the  
38 course of an inspection of a facility and shall not apply to  
39 violations of periodic reporting requirements or any other  
40 violations.

41 3. If the corrective action required in subsection b. of section  
42 2 of this act is completed within 30 days of receipt of the written  
43 warning notice then no notice of violation shall be issued and no  
44 penalty shall be imposed for that violation.

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY BILL NO. 1521  
(First Reprint)  
(Corrected Copy)



To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Committee Substitute for Assembly Bill No. 1521 (First Reprint) (Corrected Copy) with my recommendations for reconsideration.

A. Summary of Bill

This bill establishes a grace period for persons responsible for minor violations of environmental laws that have a minimal or no effect upon public health, safety or natural resources. Under this bill, the enforcing agency, either the Department of Environmental Protection (DEP) or a local government agency, would not impose a civil or administrative penalty if the minor violation is corrected and compliance is achieved within the time period prescribed by the DEP or a local government agency. The bill does not apply to criminal prosecutions, and should a person fail to come into compliance during the prescribed period, penalties would be retroactive to the date on which the first notice of violation was issued.

B. Recommended Action

This Administration is dedicated to the goal of achieving a more efficient and effective regulatory process. An important component of regulatory reform is the concept of grace periods codified by this bill, and I commend the Legislature and the bill's sponsors for their efforts. Grace periods benefit both the regulated community and the environment by promoting greater compliance with environmental laws. While I am in full support

of the concept of grace periods, I believe that certain provisions of the bill should be clarified and strengthened to ensure that only minor violations qualify for a grace period, that repeat offenders do not have the opportunity to benefit from the grace period program, and that DEP establish a more definitive period to achieve compliance under this act. I further emphasize, however, that nothing in this act should be construed to limit or curtail the department's traditional exercise of prosecutorial discretion in enforcement matters.

The bill also provides that violations that are the result of purposeful, reckless or criminally negligent conduct shall not be designated as minor violations. In addition to these standards, I recommend that "knowing" conduct be added to this provision.

Therefore, I herewith return Assembly Committee Substitute for Assembly Bill No. 1521 (First Reprint) (Corrected Copy) and recommend that it be amended as follows:

- Page 2, Section 2, Line 39: After "P.L.1986," delete "c.106" and insert "c.102"
- Page 2, Section 2, Line 42: Delete "(C.58:10-2.11 et seq.)" and insert "(C.58:10-23.11 et seq.)"
- Page 3, Section 2, Lines 15-18: After "violation" insert "." and delete in entirety
- Page 3, Section 2, Line 22: After "thereunder." insert "'Person' means any individual, corporation, company, partnership, firm, association, political subdivision of this State"



and any state or interstate agency."

✓ Page 3, Section 3, Line 53:

After "extend" insert "for an additional period of time not to exceed 90 days"

✓ Page 4, Section 3, Line 1:

After "achieved." insert "If compliance is not achieved during that period due to a lack of required action by the department or a local government agency, then the compliance period shall be tolled until the department or local government agency takes such required action."

✓ Page 4, Section 5, Line 30:

Delete "subsection b. of"

✓ Page 4, Section 5, Line 35:

After "purposeful," insert "knowing,"

✓ Page 4, Section 5, Line 45:

After "(5)" insert "(a)"

✓ Page 4, Section 5, Line 49:

Delete "or," insert "(b)"; after "case of" insert "a"

✓ Page 4, Section 5, Line 50:

Delete "issued pursuant to an environmental law," insert ", the person responsible for the violation has not been identified in a previous enforcement action by the department or a local government agency as responsible"; after "the same" insert "or a substantially similar"

✓ Page 4, Section 5, Line 52:

After "period" insert "; (c) in the case of a violation of the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.); "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et

seq.); R.S.12:5-1 et seq.; the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.) or any rule or regulation promulgated thereunder, or permit issued pursuant thereto, the person responsible for the violation has not been identified in a previous enforcement action by the department or a local government agency as responsible for the same or a substantially similar violation at the same site or any other site within the preceding 12 month period; or (d) in the case of any violation, the person responsible for the violation has not been identified by the department or a local government agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible"

✓ Page 5, Section 5, Line 1:

Delete "." and insert "; and"

✓ Page 5, Section 5, Line 6:

After line 6 insert new subsection "c. Any violation subject to the mandatory assessment of civil administrative penalties pursuant to section 6 of P.L.1990, c.28 (C.58:10A-10.1) shall not be designated as a minor violation pursuant to this act."

✓ Page 5, Section 6, Line 7:

After "minor violation" insert "designated as such pursuant to section 5 of this act"

✓ Page 5, Section 6, Lines 16-23:

After "compliance" delete in entirety and insert ", in accordance with the timeframes established pursuant to section 3 of this act."

Page 5, Section 7, Line 46:

Delete "subsection b. of"

Page 5, Section 7, Line 52:

✓ After "period" insert "which shall not exceed 180 days"

Page 6, Section 7, Line 1:

After "violation." insert "If compliance is not achieved during that period due to a lack of required action by the department or a local government agency, then the compliance period shall be tolled until the department or local government agency takes such required action."



Respectfully,

Handwritten signature of Christine Todd Whitman in black ink.

Christine Todd Whitman  
Governor

Attest:

Handwritten signature of Margaret M. Foti in black ink.

Margaret M. Foti  
Chief Counsel to the Governor

A 1521



## OFFICE OF THE GOVERNOR NEWS RELEASE

**CN-001**

**CONTACT:** Jayne Rebovich  
(609) 777-2600

**TRENTON, NJ 08625**

**RELEASE:** Dec. 22, 1995

Gov. Christie Whitman today signed legislation which establishes a grace period for persons responsible for minor violations of environmental laws.

"This legislation promotes compliance at the same time it streamlines the regulatory process. I believe that it strikes the proper balance between business and environmental concerns," said Gov. Whitman. "It provides important safeguards to ensure that we're not letting those who harm the environment off the hook."

Under the bill, A1521/S232, sponsored by Assemblymen Lee Solomon (R-Camden), Steve Corodemus (R-Monmouth) John Rocco (R-Camden), and Senator John Scott (R-Bergen/Essex/Passaic), the enforcing agency, either the Department of Environmental Protection or a local agency, will not impose a civil or administrative penalty if a minor violation is corrected and compliance achieved within the enforcing agency's prescribed time period.

The Governor conditionally vetoed the bill on September 15 to ensure that only minor environmental violations qualify for grace period treatment and to prevent repeat offenders from benefiting from the grace period program. She also included language in the bill that calls on DEP to limit extensions of the 90-day compliance period to no more than an additional 90 days.