

26:2C-9.3

LEGISLATIVE HISTORY CHECKLIST
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(Air & water pollution control
equipment--installation)

NJSA: 26:2C-9.3

LAWS OF: 1994 **CHAPTER:** 101

BILL NO: A899

SPONSOR(S): Ogden

DATE INTRODUCED: January 27, 1994

COMMITTEE: **ASSEMBLY:** Environment
SENATE: Natural Resources

AMENDED DURING PASSAGE: Yes Assembly Committee substitute
for A899, 441 & 1116 enacted

DATE OF PASSAGE: **ASSEMBLY:** March 15, 1994
SENATE: June 27, 1994

DATE OF APPROVAL: August 11, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

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

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

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[FIRST REPRINT]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 899, 441, and 1116

STATE OF NEW JERSEY

Sponsored by Assemblymen DiGAETANO, IMPREVEDUTO,
Assemblywoman OGDEN, Assemblymen Bagger, Bateman,
DeCroce, Geist, Assemblywoman Heck,
Assemblymen Solomon, Bryant, Pascrell, Romano and Doria

ADOPTED MARCH 7, 1994

1 AN ACT concerning certain pollution control equipment and
2 pollution prevention strategies, and supplementing P.L.1954,
3 c.212 (C.26:2C-1 et seq.) and P.L.1977, c.74 (C.58:10A-1 et
4 seq.).
5

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

8 1. The Legislature finds and declares that to enhance and
9 improve the quality of the environment and to protect and foster
10 the public health of the citizens of New Jersey it is altogether
11 fitting and proper to allow private entities who, pursuant to law,
12 have applied for a permit for the purpose of constructing,
13 installing, maintaining or operating pollution control equipment
14 or devices or for the purpose of ¹[making] implementing¹
15 pollution prevention process modifications to commence with
16 that construction, installation, maintenance or operation or to
17 ¹[undertake] implement¹ those modifications while the
18 Department of Environmental Protection ¹[and Energy]¹ is
19 reviewing the permit application; and that authorizing such
20 pre-approval actions ¹[is necessary due to the inordinately
21 lengthy period of time often taken by the Department of
22 Environmental Protection and Energy in reviewing permit
23 applications that consequently delays] will lead to¹ the
24 environmental benefits that would result from the timely
25 construction, installation, maintenance and operation of pollution
26 control equipment or devices and the prompt implementation of
27 pollution prevention ¹[strategies] process modifications¹.

28 The Legislature therefore determines that it is within the
29 public interest to allow private entities who have applied for
30 permits to construct, install, maintain or operate pollution
31 control equipment or devices or for permits to implement
32 pollution prevention ¹[strategies] process modifications¹ to
33 undertake such construction, installation, maintenance or
34 operation or to ¹[initiate] implement¹ such ¹[strategies] process
35 modifications¹ while the department is reviewing their permit
36 application, but with the clear and full understanding that they
37 assume all risks for their actions.

38 2. Except where specifically prohibited under the federal

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEN committee amendments adopted June 20, 1994.

1 "Clean Air Act" (42 U.S.C. §7401 et seq.) pursuant to (a) 42
2 U.S.C. §7502 for new or modified major stationary sources; (b) 42
3 U.S.C. §7475 for major emitting facilities; (c) 42 U.S.C. §7411 for
4 new or modified stationary sources; (d) 42 U.S.C. §7412 for the
5 construction, reconstruction, or modification of any major source
6 of hazardous air pollutants; or (e) any other such federal
7 requirement, any private entity who has submitted to the
8 Department of Environmental Protection ¹[and Energy]¹,
9 pursuant to the "Air Pollution Control Act (1954)," P.L.1954,
10 c.212 (C.26:2C-1 et seq.), an application for a permit to
11 construct, install, maintain or operate pollution control
12 equipment or devices or to implement pollution prevention
13 ¹[strategies] process modifications¹ may construct, install,
14 maintain and operate such equipment or devices or implement
15 such pollution prevention ¹[strategies at his own risk] process
16 modifications¹ during the pendency of the permit application
17 review process. ¹A private entity intending to take action
18 authorized pursuant to this section during the pendency of the
19 permit application review process shall notify the department of
20 the intent to undertake the action seven days prior to the
21 commencement of the action. The prior notification may be
22 made by certified mail or in a manner acceptable to the
23 department.¹

24 Nothing in this ¹[act] section¹ shall be construed to limit the
25 department's discretion in establishing construction ¹,
26 installation, maintenance,¹ and operating standards for such
27 equipment or devices, or in otherwise reviewing the permit
28 application, nor shall the costs incurred by the applicant for the
29 construction, installation, maintenance or operation of such
30 equipment or devices or the implementation of pollution
31 prevention ¹[strategies] process modifications¹ during the
32 pendency of the permit application review process be used by an
33 applicant as grounds for an appeal of the department's decision
34 on the permit application. If the department determines that any
35 pollution control equipment or devices or pollution prevention
36 ¹[strategies] process modifications¹ constructed, installed,
37 maintained or implemented during the pendency of the permit
38 application review process are ¹[inappropriate or require
39 modification] not consistent with applicable federal and State
40 laws, rules, or regulations¹, the department and the applicant
41 shall enter into an agreement containing a schedule setting forth
42 a date certain on which the applicant shall modify, replace or
43 cease the operation of the pollution control equipment or devices
44 or implementation of the pollution prevention ¹[strategies]
45 process modifications¹. If the department and the applicant shall
46 fail to enter into an agreement, the department may issue a
47 schedule setting forth a date certain on which the applicant shall
48 comply.

49 ¹Failure of the applicant to comply with the schedule setting
50 forth a date for compliance shall constitute a violation of
51 P.L.1954, c.212 (C.26:2C-1 et seq.), and shall subject the
52 applicant to penalties as prescribed by that act. A person who
53 constructs, installs, maintains, or operates pollution control
54 equipment or devices or who implements pollution prevention

1 process modifications that the department determines are not
 2 consistent with applicable federal or State laws, rules, or
 3 regulations, shall not be subject to civil or criminal penalties for
 4 that inconsistent action as long as the person's actions do not
 5 result in (1) the emission of an air contaminant that was not
 6 previously being emitted or that was not authorized to be emitted
 7 by the person's permit or certificate; or (2) an exceedance of any
 8 applicable air contaminant emission level in the permit or
 9 certificate.

10 Nothing in this section shall be construed to authorize the
 11 emission of an air contaminant not otherwise authorized to be
 12 emitted under a permit or certificate or the emission of an air
 13 contaminant at a level in excess of the air contaminant emission
 14 limitations contained in the permit or certificate. The provisions
 15 of this section shall not be construed to authorize or permit any
 16 construction, installation, maintenance, or operation which would
 17 result in any new air contaminant emissions but shall only apply
 18 to existing sources of air contaminant emissions.¹

19 As used in this ¹[act,] section:¹

20 ¹(1)¹ "private entity" ¹[shall mean] means¹ any private
 21 individual, corporation, company, partnership, firm, association,
 22 owner or operator ¹[. It] but¹ shall not include, and the provisions
 23 of this ¹[act] section¹ shall not apply to, any municipal, county,
 24 or State agency or authority ¹[;] or to¹ any agency, authority or
 25 subdivision created by one or more municipal, county or State
 26 governments; ¹[or any agency defined as a public utility in
 27 ^{R.S.48:2-13]}

28 (2) "pollution prevention process modifications" mean any
 29 physical or operational change to a process which reduces air
 30 contaminant emissions to the environment¹.

31 3. The Legislature finds and declares that to enhance and
 32 improve the quality of the environment and to protect and foster
 33 the public health of the citizens of New Jersey it is altogether
 34 fitting and proper to allow private entities who, pursuant to law,
 35 have applied for a permit for the purpose of ¹[constructing]
 36 building,¹ installing, maintaining or operating ¹[pollution control
 37 equipment or devices] any facility for the collection, treatment
 38 or discharge of any pollutant¹ or for the purpose of ¹[making]
 39 implementing¹ pollution prevention process modifications to
 40 commence with that ¹[construction] building¹, installation,
 41 maintenance or operation or to ¹[undertake] implement¹ those
 42 modifications while the Department of Environmental Protection
 43 ¹[and Energy]¹ is reviewing the permit application; and that
 44 authorizing such pre-approval actions ¹[is necessary due to the
 45 inordinately lengthy period of time often taken by the
 46 Department of Environmental Protection and Energy in reviewing
 47 permit applications that consequently delays] would lead to¹ the
 48 environmental benefits that would result from the timely
 49 ¹[construction] building¹, installation, maintenance and operation
 50 of ¹[pollution control equipment or devices] facilities¹ and the
 51 prompt implementation of pollution prevention ¹[strategies]
 52 process modifications¹.

53 The Legislature therefore determines that it is within the
 54 public interest to allow private entities who have applied for

1 permits to ¹[construct] build¹, install, maintain or operate
2 ¹[pollution control equipment or devices] any facility for the
3 collection, treatment or discharge of any pollutant¹ or for
4 permits to implement pollution prevention ¹[strategies] process
5 modifications¹ to undertake such ¹[construction] building¹,
6 installation, maintenance or operation or to ¹[initiate]
7 implement¹ such ¹[strategies] process modifications¹ while the
8 department is reviewing their permit application, but with the
9 clear and full understanding that they assume all risks for their
10 actions.

11 4. Except where specifically prohibited under the "Federal
12 Water Pollution Control Act Amendments of 1972" (33 U.S.C.
13 §1251 et seq.) or any other such federal requirement, any private
14 entity who has submitted to the Department of Environmental
15 Protection ¹[and Energy]¹, pursuant to the "Water Pollution
16 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), an application
17 for a permit to ¹[construct] build¹, install, maintain or operate
18 ¹[pollution control equipment or devices] any facility for the
19 collection, treatment or discharge of any pollutant¹ or to
20 implement pollution prevention ¹[strategies] process
21 modifications¹ may ¹[construct] build¹, install, maintain and
22 operate such ¹[equipment or devices] facilities¹ or implement
23 such pollution prevention ¹[strategies at his own risk] process
24 modifications¹ during the pendency of the permit application
25 review process. ¹A private entity intending to take action
26 authorized pursuant to this section during the pendency of the
27 permit application review process shall notify the department of
28 the intent to undertake the action seven days prior to the
29 commencement of the action. The prior notification may be
30 made by certified mail or in a manner acceptable to the
31 department.¹

32 Nothing in this ¹[act] section¹ shall be construed to limit the
33 department's discretion in establishing ¹[construction] building,
34 installation, maintenance¹ and operating standards for such
35 ¹[equipment or devices] facilities¹, or in otherwise reviewing the
36 permit application, nor shall the costs incurred by the applicant
37 for the ¹[construction] building¹, installation, maintenance or
38 operation of such ¹[equipment or devices] facilities¹ or the
39 implementation of pollution prevention ¹[strategies] process
40 modifications¹ during the pendency of the permit application
41 review process be used by an applicant as grounds for an appeal
42 of the department's decision on the permit application. If the
43 department determines that any ¹[pollution control equipment or
44 ^{devices] facilities¹ or pollution prevention ¹[strategies}
45 ^{constructed] process modifications, built¹, installed, maintained}
46 or implemented during the pendency of the permit application
47 review process are ¹[inappropriate or require modification] not
48 consistent with applicable federal and State laws, rules, or
49 regulations¹, the department and the applicant shall enter into an
50 agreement containing a schedule setting forth a date certain on
51 which the applicant shall modify, replace or cease the operation
52 of the ¹[pollution control equipment or devices] facilities¹ or
53 implementation of the pollution prevention ¹[strategies] process
54 modifications¹. If the department and the applicant shall fail to

1 enter into an agreement, the department may issue a schedule
2 setting forth a date certain on which the applicant shall comply.

3 ¹Failure of the applicant to comply with the schedule setting
4 forth a date for compliance shall constitute a violation of
5 P.L.1977, c.74 (C.58:10A-1 et seq.), and shall subject the
6 applicant to penalties as prescribed in that act. A person who
7 builds, installs, maintains, or operates any facility for the
8 collection, treatment, or discharge of pollutants or who
9 implements pollution prevention process modifications in a
10 manner which the department determines is not consistent with
11 applicable federal or State laws, rules, or regulations, shall not be
12 subject to civil or criminal penalties for that inconsistent action
13 as long as the person's actions did not result in (1) the discharge
14 of a pollutant which was not authorized to be discharged by the
15 person's permit or (2) an exceedance of any applicable discharge
16 parameter in the permit.

17 Nothing in this section shall be construed to authorize a person
18 to discharge a pollutant not otherwise authorized to be
19 discharged by a permit held by that person or to discharge a
20 pollutant at a level in excess of the discharge parameters
21 contained in the permit.¹

22 The provisions of this section shall not be construed to
23 authorize or permit any ¹[at risk construction] building¹,
24 installation, maintenance, or operation which would result in any
25 new source of discharge ¹but shall only apply to facilities for
26 existing permitted sources of discharges¹.

27 As used in this ¹[act.] section:¹

28 ¹(1)¹ "private entity" ¹[shall mean] means¹ any private
29 individual, corporation, company, partnership, firm, association,
30 owner or operator ¹[. It] but¹ shall not include, and the provisions
31 of this ¹[act] section¹ shall not apply to, any municipal, county,
32 or State agency or authority ¹[;] or to¹ any agency, authority or
33 subdivision created by one or more municipal, county or State
34 governments; ¹[or any agency defined as a public utility in
35 ^{R.S.48:2-13]}

36 (2) "pollution prevention process modifications" means any
37 physical or operational change to a process which reduces water
38 pollution discharges to the environment¹.

39 5. This act shall take effect immediately.
40
41
42

43
44 _____
45 Allows certain applicants to install or operate pollution control
46 equipment during permit review process under certain
circumstances.

[CORRECTED COPY]

ASSEMBLY, No. 441

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblyman IMPREVEDUTO

1 AN ACT concerning certain pollution control equipment and
2 pollution prevention strategies, and supplementing Title 13 of
3 the Revised Statutes.

4

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

7 1. The Legislature finds and declares that it is in the interest
8 of the environment and the public health of the citizens of New
9 Jersey to permit persons who have applied for a permit to install
10 and operate pollution control equipment or devices pursuant to
11 the various environmental statutes to construct or install such
12 pollution control equipment or devices or make pollution
13 prevention process modifications at their own risk during the
14 pendency of the review of the permit application; and that the
15 lengthy period of time often taken by the Department of
16 Environmental Protection and Energy in reviewing permit
17 applications delays the environmental benefits which would result
18 from the timely installation and operation of pollution control
19 equipment or devices and implementation of pollution prevention
20 strategies;

21 The Legislature therefore determines that it is in the public
22 interest to allow persons who have applied for permits to install
23 or operate pollution control equipment or devices or to
24 implement pollution prevention strategies to install or operate
25 such equipment or devices or to implement such pollution
26 prevention strategies at their own risk during the pendency of the
27 review of the permit application.

28 2. The provisions of any other law, or any rule or regulation
29 adopted pursuant thereto, to the contrary notwithstanding, any
30 person who has submitted to the Department of Environmental
31 Protection and Energy, pursuant to an environmental statute, an
32 application for a permit to install and operate pollution control
33 equipment or devices or to implement pollution prevention
34 strategies may install and operate such equipment or devices or
35 implement such pollution prevention strategies at his own risk
36 during the pendency of the permit application review process.
37 Nothing in this act shall be construed to limit the department's
38 discretion in establishing operating standards for such equipment
39 or devices, or in otherwise reviewing the permit application, nor
40 may the installation or operation of such equipment or devices or
41 the implementation of pollution prevention strategies during the
42 pendency of the permit application review process be used by an
43 applicant as grounds for an appeal of the department's decision
44 on the permit application. If the department determines that any
45 pollution control equipment or devices or pollution prevention

1 strategies installed or implemented during the pendency of the
2 permit application review process are inappropriate or require
3 modification, the applicant shall immediately cease operation of
4 the pollution control equipment or devices or implementation of
5 the pollution prevention strategies until the department's
6 objections are satisfied.

7 As used in this act, "environmental statute" means the "Water
8 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), the
9 "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et
10 seq.), or the "Solid Waste Management Act," P.L.1970, c.39
11 (C.13:1E-1 et seq.).

12 3. This act shall take effect immediately.
13
14

15 STATEMENT

16
17 This bill would permit persons who have applied for permits to
18 install or operate pollution control equipment or devices or to
19 implement pollution prevention strategies to install or operate
20 such equipment or devices or to implement such pollution
21 prevention strategies at their own risk during the pendency of the
22 review of the permit application. Any such actions on the part of
23 the permit applicant, however, would have no legal bearing on the
24 Department of Environmental Protection and Energy's actions on
25 the permit application, and could not be used by the applicant to
26 appeal the department's decision.
27
28

29 _____
30
31 Allows permit applicants to install or operate pollution control
32 equipment during permit review process.

ASSEMBLY, No. 1116
STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

INTRODUCED JANUARY 27, 1994

By Assemblywoman OGDEN

1 AN ACT concerning air and water pollution, amending and
2 supplementing P.L.1954, c.212, and amending P.L.1977, c.74.

3

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

6 1. (New section) a. The Department of Environmental
7 Protection may not require, pursuant to section 13 of P.L.1967,
8 c.106 (C.26:2C-9.2), an application be filed or an approval be
9 issued prior to a person constructing, installing, or altering any
10 equipment or control apparatus except as otherwise provided in
11 this section. The department shall require an application be filed
12 or an approval be issued prior to a person constructing, installing,
13 or altering any equipment or control apparatus where such filing
14 or approval is specifically required pursuant to the federal "Clean
15 Air Act" pursuant to:

16 (1) 42 U.S.C. §7502 for new or modified major stationary
17 sources;

18 (2) 42 U.S.C. §7475 for major emitting facilities;

19 (3) 42 U.S.C. §7411 for new or modified stationary sources; or

20 (4) 42 U.S.C. §7412 for the construction, reconstruction, or
21 modification of any major source of hazardous air pollutants.

22 b. Nothing in this section shall be construed to limit the
23 authority of the department to require an approval before any
24 equipment or control apparatus may be used.

25 c. Nothing in this section shall be construed to limit the
26 authority of the department to set any emission limitation,
27 technology standard, monitoring requirement, document
28 submission, condition of operating, or other requirement relating
29 to the protection of air quality that the department has been
30 authorized to adopt pursuant to the provisions of P.L.1954, c.212
31 (C.26:2C-1 et seq.), or pursuant to any other law.

32 2. (New section) As soon as practicable after the date of
33 enactment of this act, the Department of Environmental
34 Protection shall submit to the United States Environmental
35 Protection Agency a revised state implementation plan pursuant
36 to 42 U.S.C. §7410, which revised plan shall reflect the changes
37 to the State "Air Pollution Control Act (1954)," P.L.1954, c.212
38 (C.26:2C-1 et seq.), provided in section 1 of P.L. , c.
39 (C.)(now before the Legislature as this bill).

40 3. Section 13 of P.L.1967, c.106 (C.26:2C-9.2) is amended to
41 read as follows:

42 13. (a) [No] Except as limited by section 1 of P.L. , c.

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.)(now before the Legislature as this bill), no person shall
2 construct, install or alter any equipment or control apparatus, in
3 other than a one or 2-family dwelling or a dwelling of 6 or less
4 family units one of which is owner-occupied, until an application
5 including plans and specifications has been filed with the
6 department and an installation or alteration permit issued by the
7 department, in accordance with any codes, rules and regulations
8 of the department except that subject to any such codes, rules
9 and regulations the department may dispense with the filing of
10 applications, plans and specifications. Information relating to
11 secret processes or methods of manufacture or production is
12 exempted from the plans and specifications and other pertinent
13 information to which the department is entitled under this
14 section.

15 (b) No person shall use or cause to be used any such new or
16 altered equipment or control apparatus for which an installation
17 or alteration permit is required or issued until an operating
18 certificate or operating permit has been issued by the department.

19 (c) No operating certificate or operating permit or renewal
20 thereof, required by this act, shall be issued by the department
21 unless the applicant shows to the satisfaction of the department
22 that the equipment is designed to operate without causing a
23 violation of any provision of this act or of any codes, rules and
24 regulations promulgated thereunder and that, except in the case
25 of a renewal certificate, the equipment incorporates advances in
26 the art of air pollution control developed for the kind and amount
27 of air contaminant emitted by the applicant's equipment.

28 (1) Before an operating certificate or operating permit or any
29 renewal thereof is issued, the department may require the
30 applicant to conduct such tests as are necessary in the opinion of
31 the department to determine the kind or amount of the air
32 contaminant emitted from the equipment or whether the
33 equipment or fuel or the operation of the equipment is in
34 violation of any of the provisions of this act or of any codes, rules
35 and regulations promulgated thereunder. Such tests shall be
36 made at the expense of the applicant and shall be conducted in a
37 manner approved by the department and the test results shall be
38 reviewed and professionally certified.

39 (2) An operating certificate or operating permit or any renewal
40 thereof shall be valid for a period of 5 years from the date of
41 issuance, unless sooner revoked by order of the department, and
42 may be renewed upon application to the department.

43 (3) Upon receipt of an application for the issuance of an
44 operating certificate or operating permit or any renewal thereof,
45 the department, in its discretion, may issue a temporary
46 operating certificate valid for a period not to exceed 90 days.

47 (cf: P.L.1967, c.106, s.13)

48 4. Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended to read
49 as follows:

50 6. 6. a. It shall be unlawful for any person to discharge any
51 pollutant, except in conformity with a valid New Jersey Pollutant
52 Discharge Elimination System permit that has been issued by the
53 commissioner pursuant to this act or a valid National Pollutant
54 Discharge Elimination System permit issued by the administrator

1 pursuant to the Federal Act, as the case may be.

2 b. [It shall be unlawful for any] Any person [to] may build,
3 install, or modify [or operate] any facility for the collection,
4 treatment or discharge of any pollutant, [except after approval
5 by the department pursuant to regulations adopted by the
6 commissioner] prior to being issued a permit pursuant to
7 subsection a. of this section, but no person may operate any such
8 facility without having received that permit.

9 c. The commissioner is hereby authorized to grant, deny,
10 modify, suspend, revoke, and reissue NJPDES permits in
11 accordance with this act, and with regulations to be adopted by
12 him. The commissioner may reissue, with or without
13 modifications, an NPDES permit duly issued by the federal
14 government as the NJPDES permit required by this act.

15 d. The commissioner may, by regulation, exempt the following
16 categories of discharge, in whole or in part, from the requirement
17 of obtaining a permit under this act; provided, however, that an
18 exemption afforded under this section shall not limit the civil or
19 criminal liability of any discharger nor exempt any discharger
20 from approval or permit requirements under any other provision
21 of law:

22 (1) Additions of sewage, industrial wastes or other materials
23 into a publicly owned sewage treatment works which is regulated
24 by pretreatment standards;

25 (2) Discharges of any pollutant from a marine vessel or other
26 discharges incidental to the normal operation of marine vessels;

27 (3) Discharges from septic tanks, or other individual waste
28 disposal systems, sanitary landfills, and other means of land
29 disposal of wastes;

30 (4) Discharges of dredged or fill materials into waters for
31 which the State could not be authorized to administer the section
32 404 program under section 404(g) of the "Federal Water Pollution
33 Control Act Amendments of 1972," as amended by the "Clean
34 Water Act of 1977" (33 U.S.C. § 1344) and implementing
35 regulations;

36 (5) Nonpoint source discharges;

37 (6) Uncontrolled nonpoint source discharges composed entirely
38 of storm water runoff when these discharges are uncontaminated
39 by any industrial or commercial activity unless these particular
40 storm water runoff discharges have been identified by the
41 administrator or the department as a significant contributor of
42 pollution;

43 (7) Discharges conforming to a national contingency plan for
44 removal of oil and hazardous substances, published pursuant to
45 section 311(c)(2) of the Federal Act.

46 e. The commissioner shall not issue any permit for:

47 (1) The discharge of any radiological, chemical or biological
48 warfare agent or high-level radioactive waste into the waters of
49 this State;

50 (2) Any discharge which the United States Secretary of the
51 Army, acting through the Chief of Engineers, finds would
52 substantially impair anchorage or navigation;

53 (3) Any discharge to which the administrator has objected in
54 writing pursuant to the Federal Act;

1 (4) Any discharge which conflicts with an areawide plan
2 adopted pursuant to law.

3 f. A permit issued by the department or a delegated local
4 agency, under this act shall require the permittee:

5 (1) To achieve effluent limitations based upon guidelines or
6 standards established pursuant to the Federal Act or this act,
7 together with such further discharge restrictions and safeguards
8 against unauthorized discharge as may be necessary to meet
9 water quality standards, areawide plans adopted pursuant to law,
10 or other legally applicable requirements;

11 (2) Where appropriate, to meet schedules for compliance with
12 the terms of the permit and interim deadlines for progress or
13 reports of progress towards compliance;

14 (3) To insure that all discharges are consistent at all times
15 with the terms and conditions of the permit and that no pollutant
16 will be discharged more frequently than authorized or at a level
17 in excess of that which is authorized by the permit;

18 (4) To submit application for a new permit in the event of any
19 contemplated facility expansion or process modification that
20 would result in new or increased discharges or, if these would not
21 violate effluent limitations or other restrictions specified in the
22 permit, to notify the commissioner, or delegated local agency, of
23 such new or increased discharges;

24 (5) To install, use and maintain such monitoring equipment and
25 methods, to sample in accordance with such methods, to maintain
26 and retain such records of information from monitoring
27 activities, and to submit to the commissioner, or to the delegated
28 local agency, reports of monitoring results for surface waters, as
29 may be stipulated in the permit, or required by the commissioner
30 or delegated local agency pursuant to paragraph (9) of this
31 subsection, or as the commissioner or the delegated local agency
32 may prescribe for ground water. Significant indirect users, major
33 industrial dischargers, and local agencies, other than those
34 discharging only stormwater or noncontact cooling water, shall,
35 however, report their monitoring results for discharges to surface
36 waters monthly to the commissioner, or the delegated local
37 agency. Discharge monitoring reports for discharges to surface
38 waters shall be signed by the highest ranking official having
39 day-to-day managerial and operational responsibilities for the
40 discharging facility, who may, in his absence, authorize another
41 responsible high ranking official to sign a monthly monitoring
42 report if a report is required to be filed during that period of
43 time. The highest ranking official shall, however, be liable in all
44 instances for the accuracy of all the information provided in the
45 monitoring report; provided, however, that the highest ranking
46 official may file, within seven days of his return, amendments to
47 the monitoring report to which he was not a signatory. The
48 highest ranking official having day-to-day managerial and
49 operational responsibilities for the discharging facility of a local
50 agency shall be the highest ranking licensed operator of the
51 municipal treatment works in those instances where a licensed
52 operator is required by law to operate the facility. In those
53 instances where a local agency has contracted with another
54 entity to operate a municipal treatment works, the highest

1 ranking official who signs the discharge monitoring report shall
2 be an employee of the contract operator and not of the local
3 agency. Notwithstanding that an employee of a contract operator
4 is the official who signs the discharge monitoring report, the
5 local agency, as the permittee, shall remain liable for compliance
6 with all permit conditions. In those instances where the highest
7 ranking official having day-to-day managerial and operational
8 responsibilities for a discharging facility of a local agency does
9 not have the responsibility to authorize capital expenditures and
10 hire personnel, a person having that responsibility, or a person
11 designated by that person, shall submit to the department, along
12 with the discharge monitoring report, a certification that that
13 person has received and reviewed the discharge monitoring
14 report. The person submitting the certification to the
15 department shall not be liable for the accuracy of the
16 information on the discharge monitoring report due to the
17 submittal of the certification. Whenever a local agency has
18 contracted with another entity to operate the municipal
19 treatment works, the person submitting the certification shall be
20 an employee of the permittee and not of the contract operator.
21 The filing of amendments to a monitoring report in accordance
22 with this paragraph shall not be considered a late filing of a
23 report for purposes of subsection d. of section 6 of P.L.1990, c.28
24 (C.58:10A-10.1), or for purposes of determining a significant
25 noncomplier;

26 (6) At all times, to maintain in good working order and operate
27 as effectively as possible, any facilities or systems of control
28 installed to achieve compliance with the terms and conditions of
29 the permit;

30 (7) To limit concentrations of heavy metal, pesticides, organic
31 chemicals and other contaminants in the sludge in conformance
32 with the land-based sludge management criteria established by
33 the department in the Statewide Sludge Management Plan
34 adopted pursuant to the "Solid Waste Management Act,"
35 P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the
36 Federal Water Pollution Control Act Amendments of 1972 (33
37 U.S.C. § 1251 et seq.), or any regulations adopted pursuant
38 thereto;

39 (8) To report to the department or delegated local agency, as
40 appropriate, any exceedance of an effluent limitation that causes
41 injury to persons, or damage to the environment, or poses a
42 threat to human health or the environment, within two hours of
43 its occurrence, or of the permittee becoming aware of the
44 occurrence. Within 24 hours thereof, or of an exceedance, or of
45 becoming aware of an exceedance, of an effluent limitation for a
46 toxic pollutant, a permittee shall provide the department or
47 delegated local agency with such additional information on the
48 discharge as may be required by the department or delegated
49 local agency, including an estimate of the danger posed by the
50 discharge to the environment, whether the discharge is
51 continuing, and the measures taken, or being taken, to remediate
52 the problem and any damage to the environment, and to avoid a
53 repetition of the problem;

54 (9) Notwithstanding the reporting requirements stipulated in a

1 permit for discharges to surface waters, a permittee shall be
2 required to file monthly reports with the commissioner or
3 delegated local agency if the permittee:

4 (a) in any month commits a serious violation or fails to submit
5 a completed discharge monitoring report and does not contest, or
6 unsuccessfully contests, the assessment of a civil administrative
7 penalty therefor; or

8 (b) exceeds an effluent limitation for the same pollutant at the
9 same discharge point source by any amount for four out of six
10 consecutive months.

11 The commissioner or delegated local agency may restore the
12 reporting requirements stipulated in the permit if the permittee
13 has not committed any of the violations identified in this
14 paragraph for six consecutive months;

15 (10) To report to the department or delegated local agency, as
16 appropriate, any serious violation within 30 days of the violation,
17 together with a statement indicating that the permittee
18 understands the civil administrative penalties required to be
19 assessed for serious violations, and explaining the nature of the
20 serious violation and the measures taken to remedy the cause or
21 prevent a recurrence of the serious violation.

22 g. The commissioner and a local agency shall have a right of
23 entry to all premises in which a discharge source is or might be
24 located or in which monitoring equipment or records required by
25 a permit are kept, for purposes of inspection, sampling, copying
26 or photographing.

27 h. In addition, any permit issued for a discharge from a
28 municipal treatment works shall require the permittee:

29 (1) To notify the commissioner or local agency in advance of
30 the quality and quantity of all new introductions of pollutants
31 into a facility and of any substantial change in the pollutants
32 introduced into a facility by an existing user of the facility,
33 except for such introductions of nonindustrial pollutants as the
34 commissioner or local agency may exempt from this notification
35 requirement when ample capacity remains in the facility to
36 accommodate new inflows. The notification shall estimate the
37 effects of the changes on the effluents to be discharged into the
38 facility.

39 (2) To establish an effective regulatory program, alone or in
40 conjunction with the operators of sewage collection systems, that
41 will assure compliance and monitor progress toward compliance
42 by industrial users of the facilities with user charge and cost
43 recovery requirements of the Federal Act or State law and
44 toxicity standards adopted pursuant to this act and pretreatment
45 standards.

46 (3) As actual flows to the facility approach design flow or
47 design loading limits, to submit to the commissioner or local
48 agency for approval, a program which the permittee and the
49 persons responsible for building and maintaining the contributory
50 collection system shall pursue in order to prevent overload of the
51 facilities.

52 i. (1) All local agencies shall prescribe terms and conditions,
53 consistent with applicable State and federal law, or requirements
54 adopted pursuant thereto by the department, upon which

1 pollutants may be introduced into treatment works, and shall
2 have the authority to exercise the same right of entry,
3 inspection, sampling, and copying, and to impose the same
4 remedies, fines and penalties, and to recover costs and
5 compensatory damages as authorized pursuant to subsection a. of
6 section 10 of P.L.1977, c.74 (C.58:10A-10) and section 6 of
7 P.L.1990, c.28 (C.58:10A-10.1), with respect to users of such
8 works, as are vested in the commissioner by this act, or by any
9 other provision of State law, except that a local agency, except
10 as provided in P.L.1991, c.8 (C.58:10-10.4 et seq.), may not
11 impose civil administrative penalties, and shall petition the
12 county prosecutor or the Attorney General for a criminal
13 prosecution under that section. Terms and conditions shall include
14 limits for heavy metals, pesticides, organic chemicals and other
15 contaminants in industrial wastewater discharges based upon the
16 attainment of land-based sludge management criteria established
17 by the department in the Statewide Sludge Management Plan
18 adopted pursuant to the "Solid Waste Management Act,"
19 P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the
20 Federal Water Pollution Control Act Amendments of 1972 (33
21 U.S.C. § 1251 et seq.), or any regulations adopted pursuant
22 thereto.

23 (2) Of the amount of any penalty assessed and collected
24 pursuant to an action brought by a local agency in accordance
25 with section 10 of P.L.1977, c.74 or section 6 of P.L.1990, c.28
26 (C.58:10A-10.1), 10% shall be deposited in the "Wastewater
27 Treatment Operators' Training Account," established in
28 accordance with section 13 of P.L.1990, c.28 (C.58:10A-14.5),
29 and used to finance the cost of training operators of municipal
30 treatment works. The remainder shall be used by the local
31 agency solely for enforcement purposes, and for upgrading
32 municipal treatment works.

33 j. In reviewing permits submitted in compliance with this act
34 and in determining conditions under which such permits may be
35 approved, the commissioner shall encourage the development of
36 comprehensive regional sewerage planning or facilities, which
37 serve the needs of the regional community, conform to the
38 adopted area-wide water quality management plan for that
39 region, and protect the needs of the regional community for
40 water quality, aquifer storage, aquifer recharge, and dry weather
41 based stream flows.

42 k. No permit may be issued, renewed, or modified by the
43 department or a delegated local agency so as to relax any water
44 quality standard or effluent limitation until the applicant, or
45 permit holder, as the case may be, has paid all fees, penalties or
46 fines due and owing pursuant to P.L.1977, c.74, or has entered
47 into an agreement with the department establishing a payment
48 schedule therefor; except that if a penalty or fine is contested,
49 the applicant or permit holder shall satisfy the provisions of this
50 section by posting financial security as required pursuant to
51 paragraph (5) of subsection d. of section 10 of P.L.1977, c.74
52 (C.58:10A-10). The provisions of this subsection with respect to
53 penalties or fines shall not apply to a local agency contesting a
54 penalty or fine.

1 l. Each permitted facility or municipal treatment works, other
2 than one discharging only stormwater or non-contact cooling
3 water, shall be inspected by the department at least once a year;
4 except that each permitted facility discharging into the
5 municipal treatment works of a delegated local agency, other
6 than a facility discharging only stormwater or non-contact
7 cooling water, shall be inspected by the delegated local agency at
8 least once a year. Except as hereinafter provided, an inspection
9 required under this subsection shall be conducted within six
10 months following a permittee's submission of an application for a
11 permit, permit renewal, or, in the case of a new facility or
12 municipal treatment works, issuance of a permit therefor, except
13 that if for any reason, a scheduled inspection cannot be made the
14 inspection shall be rescheduled to be performed within 30 days of
15 the originally scheduled inspection or, in the case of a temporary
16 shutdown, of resumed operation. Exemption of stormwater
17 facilities from the provisions of this subsection shall not apply to
18 any permitted facility or municipal treatment works discharging
19 or receiving stormwater runoff having come into contact with a
20 hazardous discharge site on the federal National Priorities List
21 adopted by the United States Environmental Protection Agency
22 pursuant to the "Comprehensive Environmental Response,
23 Compensation, and Liability Act," Pub.L.96-510 (42 U.S.C.A. §
24 9601 et seq.), or any other hazardous discharge site included by
25 the department on the master list for hazardous discharge site
26 cleanups adopted pursuant to section 2 of P.L.1982, c.202
27 (C.58:10-23.16). Inspections shall include:

28 (1) A representative sampling of the effluent for each
29 permitted facility or municipal treatment works, except that in
30 the case of facilities or works that are not major facilities or
31 significant indirect users, sampling pursuant to this paragraph
32 shall be conducted at least once every three years;

33 (2) An analysis of all collected samples by a State owned and
34 operated laboratory, or a certified laboratory other than one that
35 has been or is being used by the permittee, or that is directly or
36 indirectly owned, operated or managed by the permittee;

37 (3) An evaluation of the maintenance record of the
38 permittee's treatment equipment;

39 (4) An evaluation of the permittee's sampling techniques;

40 (5) A random check of written summaries of test results,
41 prepared by the certified laboratory providing the test results,
42 for the immediately preceding 12-month period, signed by a
43 responsible official of the certified laboratory, certifying the
44 accuracy of the test results; and

45 (6) An inspection of the permittee's sample storage facilities
46 and techniques if the sampling is normally performed by the
47 permittee.

48 The department may inspect a facility required to be inspected
49 by a delegated local agency pursuant to this subsection. Nothing
50 in this subsection shall require the department to conduct more
51 than one inspection per year.

52 m. The facility or municipal treatment works of a permittee
53 identified as a significant noncomplier shall be subject to an
54 inspection by the department, or the delegated local agency, as

1 the case may be, which inspection shall be in addition to the
2 requirements of subsection l. of this section. The inspection shall
3 be conducted within 60 days of receipt of the discharge
4 monitoring report that initially results in the permittee being
5 identified as a significant noncomplier. The inspection shall
6 include a random check of written summaries of test results,
7 prepared by the certified laboratory providing the test results,
8 for the immediately preceding 12-month period, signed by a
9 responsible official of the certified laboratory, certifying the
10 accuracy of the test results. A copy of each summary shall be
11 maintained by the permittee. The inspection shall be for the
12 purpose of determining compliance. The department or delegated
13 local agency is required to conduct only one inspection per year
14 pursuant to this subsection, and is not required to make an
15 inspection hereunder if an inspection has been made pursuant to
16 subsection l. of this section within six months of the period within
17 which an inspection is required to be conducted under this
18 subsection.

19 n. To assist the commissioner in assessing a municipal
20 treatment works' NJPDES permit in accordance with paragraph
21 (3) of subsection b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a
22 delegated local agency shall perform a complete analysis that
23 includes a complete priority pollutant analysis of the discharge
24 from, and inflow to, the municipal treatment works. The analysis
25 shall be performed by a delegated local agency as often as the
26 priority pollutant scan is required under the permit, but not less
27 than once a year, and shall be based upon data acquired in the
28 priority pollutant scan and from applicable sludge quality analysis
29 reports. The results of the analysis shall be included in a report
30 to be attached to the annual report required to be submitted to
31 the commissioner by the delegated local agency.

32 o. Except as otherwise provided in section 3 of P.L.1963, c.73
33 (C.47:1A-3), any records, reports or other information obtained
34 by the commissioner or a local agency pursuant to this section or
35 section 5 of P.L.1972, c.42 (C.58:11-53), including any
36 correspondence relating thereto, shall be available to the public;
37 however, upon a showing satisfactory to the commissioner by any
38 person that the making public of any record, report or
39 information, or a part thereof, other than effluent data, would
40 divulge methods or processes entitled to protection as trade
41 secrets, the commissioner or local agency shall consider such
42 record, report, or information, or part thereof, to be confidential,
43 and access thereto shall be limited to authorized officers or
44 employees of the department, the local agency, and the federal
45 government.

46 (cf: P.L.1993, c.23, s.1)

47 5. This act shall take effect immediately.

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STATEMENT

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52 This bill would allow persons to construct or install, at their
53 own risk, equipment or facilities that will be subject to either the
54 "Water Pollution Control Act" or the "Air Pollution Control Act

1 (1954)." Those persons will have to obtain permits before the
2 equipment or facilities may discharge pollutants or otherwise be
3 used, but this bill allows them to construct or install the
4 equipment or facilities prior to that time.

5 In 1991 the Legislature enacted P.L.1991, c.422 (C.13:1D-111
6 et seq.) that required the Department of Environmental
7 Protection to adopt technical manuals so that perspective
8 permittees would know the substantive requirements for
9 obtaining a permit, including those to discharge air or water
10 pollutants. Because of this law, and other developments that
11 have made permit compliance more predictable, and because
12 there is a need to modify the permit approval process so that it is
13 easier and quicker for the regulated community to comply, this
14 bill would change the requirements that department approvals be
15 obtained prior to any equipment or facilities being constructed or
16 installed. Nothing would prevent a person from seeking to obtain
17 departmental approval prior to construction or alteration if they
18 do not want to take the risk of being denied the permit.

19 Nothing in this bill would weaken or change any substantive
20 requirement relating to the discharge of any air or water
21 pollutant, nor would this bill be in conflict with any federal law.
22 The bill specifically provides that preconstruction permits must
23 be obtained pursuant to those specific provisions of the federal
24 Clean Air Act that mandate those permits. The federal Clean
25 Water Act does not contain any provisions relating to
26 preconstruction permits.

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31 Allows construction of certain facilities and equipment relating
32 to air and water discharges without need to obtain permit from
33 DEPE.

ASSEMBLY, No. 899

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblyman DiGAETANO

1 AN ACT concerning certain pollution control equipment and
2 pollution prevention strategies, and supplementing Title 13 of
3 the Revised Statutes.

4

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

7 1. The Legislature finds and declares that to enhance and
8 improve the quality of the environment and to protect and foster
9 the public health of the citizens of New Jersey it is altogether
10 fitting and proper to allow persons who, pursuant to law, have
11 applied for a permit for the purpose of constructing, installing or
12 operating pollution control equipment or devices or for the
13 purpose of making pollution prevention process modifications to
14 commence with that construction, installation, or operation or to
15 undertake those modifications while the Department of
16 Environmental Protection and Energy is reviewing the permit
17 application; and that authorizing such pre-approval actions is
18 necessary due to the inordinately lengthy period of time often
19 taken by the Department of Environmental Protection and Energy
20 in reviewing permit applications that consequently delays the
21 environmental benefits which would result from the timely
22 construction, installation and operation of pollution control
23 equipment or devices and the prompt implementation of pollution
24 prevention strategies;

25 The Legislature therefore determines that it is within the
26 public interest to allow persons who have applied for permits to
27 construct, install, or operate pollution control equipment or
28 devices or for permits to implement pollution prevention
29 strategies to undertake such construction, installation, or
30 operation or to initiate such strategies while the department is
31 reviewing their permit application, but with the clear and full
32 understanding that they assume all risks for their actions.

33 2. The provisions of any other law, or any rule or regulation
34 adopted pursuant thereto, to the contrary notwithstanding, any
35 person who has submitted to the Department of Environmental
36 Protection and Energy, pursuant to an environmental statute, an
37 application for a permit to install and operate pollution control
38 equipment or devices or to implement pollution prevention
39 strategies may install and operate such equipment or devices or
40 implement such pollution prevention strategies at his own risk
41 during the pendency of the permit application review process.
42 Nothing in this act shall be construed to limit the department's
43 discretion in establishing operating standards for such equipment
44 or devices, or in otherwise reviewing the permit application, nor

1 may the installation or operation of such equipment or devices or
2 the implementation of pollution prevention strategies during the
3 pendency of the permit application review process be used by an
4 applicant as grounds for an appeal of the department's decision
5 on the permit application. If the department determines that any
6 pollution control equipment or devices or pollution prevention
7 strategies installed or implemented during the pendency of the
8 permit application review process are inappropriate or require
9 modification, the department and the applicant shall enter into
10 an agreement containing a schedule setting forth a date certain
11 on which the applicant shall cease the operation of the pollution
12 control equipment or devices or implementation of the pollution
13 prevention strategies until the department's objections are
14 satisfied.

15 As used in this act, "environmental statute" means the "Water
16 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), the
17 "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1
18 et seq.), or the "Solid Waste Management Act," P.L.1970, c.39
19 (C.13:1E-1 et seq.).

20 3. This act shall take effect immediately.

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STATEMENT

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25 This bill permits persons who have applied for permits to install
26 or operate pollution control equipment or devices, or to
27 implement pollution prevention strategies, to install or operate
28 those devices or equipment, or to implement those strategies,
29 during the period while the Department of Environmental
30 Protection and Energy is reviewing their permit application. The
31 bill clearly stipulates, however, that any action an applicant
32 undertakes during the review period is at his own risk. Those
33 actions on the part of an applicant are to have no effect on the
34 department's consideration of the application. They are to have
35 no legal bearing and may not be used by the applicant to appeal
36 the department's action on any application.

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41 _____
42 Allows permit applicants to install or operate pollution control
equipment during permit review process.

ASSEMBLY POLICY AND RULES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 899, 441, and 1116

STATE OF NEW JERSEY

DATED: MARCH 7, 1994

The Assembly Policy and Rules Committee reports favorably an Assembly Committee Substitute for Assembly Bills Nos. 899, 441, and 1116.

This substitute supplements the "Air Pollution Control Act" (P.L.1954, c.212; C.26:2C-1 et seq.) and the "Water Pollution Control Act" (P.L.1977, c.74; C.58:10A-1 et seq.) to permit, under certain circumstances, private entities to construct, install, maintain and operate certain pollution control equipment or devices or implement any pollution prevention strategy while the Department of Environmental Protection and Energy (DEPE) is in the process of reviewing that entity's permit application.

Under the provisions of the substitute, a private entity that has applied for a permit to construct, install, maintain or operate pollution control equipment, devices or facility would be permitted, at its own risk, to construct, install, maintain or operate the equipment, device or facilities while the DEPE was reviewing its application. It is important to note, however, that this permission to act during the application review period applies only to activities involving State mandated permits. The provisions of the substitute do not apply if the permit in question is one that is mandated by the federal "Clean Air Act" (42 U.S.C. 7401 et seq.), the "Federal Water Pollution Control Act Amendments of 1972" (33 U.S.C. 1251 et seq.) or any other applicable federal statute. The authority to construct, install, maintain or operate "at risk" as provided in this substitute is limited to activities that improve the quality of the environment and protect and foster the public health of the citizens of New Jersey.

It is the committee's intent that the "at risk" authority granted under the substitute should not apply, or in anyway be construed to apply, to any construction, installation, maintenance or operation that would result in any new source of discharge or emission. The "at risk" authority to construct, install, maintain and operate is to apply solely to existing systems.

The substitute clearly indicates that any action taken by an applicant while the DEPE is reviewing its application is an "at risk" activity. The actions on the part of an applicant, including the cost that applicant incurred, are to have no effect on the DEPE's

consideration of the application. Furthermore, these actions are to have no legal bearing and may not be used by the applicant to appeal the DEPE's action on any application. Finally, if the DEPE determines that any pollution control equipment or devices or any pollution prevention strategy

installed or implemented during an application review, as permitted under this substitute, are inappropriate or require modification, the DEPE and the applicant are to enter into an agreement containing a schedule setting forth a date certain on which the applicant is either to modify or cease the operation of the pollution control equipment or devices or the implementation of the pollution prevention strategy until the DEPE's objections are satisfied. If the department and the applicant fail to enter into an agreement, the department is empowered to issue a schedule setting forth a date certain on which the applicant must comply.

It is the committee's intent that the provisions of the substitute apply only to private entities. The authority to proceed "at risk" afforded under the substitute is not available to any municipal, county, or State agency or authority; any agency, authority or subdivision created by one or more municipal, county or State governments; or any agency defined as a public utility in R.S.48:2-13.

SENATE ENVIRONMENT COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 899, 441 and 1116

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 20, 1994

The Senate Environment Committee favorably reports Assembly Bill No. 899, 441, and 1116 (ACS) with committee amendments.

This bill, as amended, would supplement the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.) and the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) to permit, under certain circumstances, private entities to construct, install, maintain and operate pollution control equipment or devices or implement a pollution prevention process modification while the Department of Environmental Protection is reviewing the permit application. A private entity that has applied for a permit to construct, install, maintain or operate pollution control equipment, devices or pollution prevention process modifications would be permitted, at its own risk, to construct, install, maintain or operate the equipment, device or process while the department was reviewing its application. The provisions of the bill do not apply if the at risk activity requires a permit under the federal "Clean Air Act" (42 U.S.C. §7401 et seq.), the "Federal Water Pollution Control Act Amendments of 1972" (33 U.S.C. §1251 et seq.) or any other federal requirement.

If the department determines that the pollution control equipment or devices or any pollution prevention process modification installed or implemented at risk during an application review, as permitted under this bill, are inconsistent with applicable laws, or rules or regulations, the department and the applicant are to enter into an agreement containing a schedule setting forth a date certain on which the applicant is comply with the applicable laws, rules, or regulations. If the department and the applicant fail to enter into an agreement, the department is empowered to issue a schedule setting forth a date certain on which the applicant must comply.

The provisions of the bill apply only to private entities. The authority to proceed "at risk" afforded under the bill is not available to any municipal, county, or State agency or authority; or any agency, authority or subdivision created by one or more municipal, county or State governments.

The actions on the part of an applicant, including the cost that applicant incurred, are to have no effect on the department's consideration of the application. Furthermore, those actions are to have no legal bearing and may not be used by the applicant to appeal the department's action on any application.

The committee amendments:

(1) clarify that the provisions relating to air permits do not apply to new sources;

(2) provides that no penalties will be assessed for actions

authorized under this bill unless new pollutants are emitted or discharged or permit limits are exceeded;

(3) clarify that the department may require modifications or the replacement of the equipment if it finds the actions are not consistent with applicable federal or State laws, rules, or regulations;

(4) require notification be sent to the department seven days prior to undertaking an "at risk" activity;

(5) provide that the bill would apply to investor owned public utilities;

(6) define "pollution prevention process modification;" and

(7) make various technical changes to the bill.