

58:10A-1

**LEGISLATIVE HISTORY CHECKLIST**  
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NJSA: 58:10A-1

(Water pollution--  
violations)

**LAWS OF: 1991**

**CHAPTER: 8**

**Bill No:** A3110

**Sponsor(s):** Duch, Cohen and Gill

**Date Introduced:** March 1, 1990

**Committee: Assembly:** Energy & Environment

**Senate:** Environmental Quality

**Amended during passage:** Yes      Amendments during passage  
denoted by asterisks.

**Date of Passage: Assembly:** May 21, 1990

**Senate:** December 6, 1990

**Date of Approval:** January 21, 1991

**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/SLJ**

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[FIRST REPRINT]  
ASSEMBLY, No. 3110

STATE OF NEW JERSEY

INTRODUCED MARCH 1, 1990

By Assemblymen DUCH, COHEN and Gill

1 AN ACT concerning water pollution and supplementing P.L.1977,  
2 c.74 (C.58:10A-1 et seq.).  
3

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

6 1. The Department of Environmental Protection or a delegated  
7 local agency may issue a summons for a violation <sup>1</sup>[for which a  
8 civil action may be brought by the department or the delegated  
9 local agency, as the case may be, pursuant to subsection c. of  
10 section 10] of any provision<sup>1</sup> of P.L.1977, c.74 <sup>1</sup>[(C.58:10A-10)]  
11 (C.58:10A-1 et seq.), including, in the case of a delegated local  
12 agency, a violation of any rule, regulation or pretreatment  
13 standard adopted by a delegated local agency<sup>1</sup> if the amount of  
14 the civil penalty assessed is <sup>1</sup>[\$2,000] \$5,000<sup>1</sup> or less. The  
15 summons shall be enforceable, in accordance with the "penalty  
16 enforcement law," N.J.S.2A:58-1 et seq., in the municipal court  
17 of the territorial jurisdiction in which the violation occurred.  
18 The summons shall be signed and issued by any person authorized  
19 to enforce the provisions of P.L.1977, c.74 (C.58:10A-1 et seq.).  
20 Proceedings before, and appeals from a decision of, a municipal  
21 court shall be in accordance with the Rules Governing the Court  
22 of the State of New Jersey. Of the penalty amount collected  
23 pursuant to an action brought in a municipal court pursuant to  
24 this section, 10% shall be paid to the municipality or  
25 municipalities in which the court retains jurisdiction for use for  
26 court purposes, with the remainder to be retained by the  
27 department or the delegated local agency.

28 <sup>1</sup>["Delegated local agency" means a political subdivision of the  
29 State, or an agency or instrumentality thereof, that owns or  
30 operates a municipal treatment works, and has an industrial  
31 pretreatment program approved by the department.]<sup>1</sup>

32 2. A delegated local agency may, after consultation with a  
33 compliance officer designated by the department<sup>1,1</sup> issue a civil  
34 administrative penalty for any violation <sup>1</sup>[subject to the penalty  
35 provisions of subsection d. of section 10 of P.L.1977, c.74  
36 (C.58:10A-10)] of the provisions of P.L.1977, c.74 (C.58:10A-1 et  
37 seq.), including a violation of any rule, regulation or pretreatment  
38 standard adopted by a delegated local agency<sup>1</sup>, or assess, by civil

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> Assembly AEE committee amendments adopted April 30, 1990.

1 administrative order, any costs recoverable pursuant to  
2 subsection c. of section 10 of <sup>1</sup>[P.L.1977, c.74 (C.58:10A-10)]  
3 that act, including the reasonable costs of investigation and  
4 inspection, and preparing and litigating the case before an  
5 administrative law judge pursuant to this section<sup>1</sup>, except  
6 assessments for compensatory damages and economic benefits.  
7 Notice of the penalty or assessment shall be given to the violator  
8 in writing by the delegated local agency, and payment of the  
9 penalty or assessment shall be due and payable, unless a hearing  
10 is requested in writing by the violator, within 20 days of receipt  
11 of notice. If a hearing is requested, the penalty or assessment  
12 shall be deemed a contested case and shall be submitted to the  
13 Office of Administrative Law for an administrative hearing in  
14 accordance with sections 9 and 10 of P.L.1968, c.410 (C.52:14B-9  
15 and 52:14B-10).

16 <sup>1</sup>["Delegated local agency" means a political subdivision of the  
17 State, or an agency or instrumentality thereof, that owns or  
18 operates a municipal treatment works, and has an industrial  
19 pretreatment program approved by the department.]<sup>1</sup>

20 3. Upon conclusion of an administrative hearing held pursuant  
21 to section 2 of P.L. , c. (C. ) (pending in the  
22 Legislature as this bill), the administrative law judge shall  
23 <sup>1</sup>[adopt] prepare<sup>1</sup> and transmit a recommended report and  
24 decision on the case to the head of the delegated local agency  
25 and to each party of record, as prescribed in subsection c. of  
26 section 10 of P.L.1968, c.410 (C.52:14B-10). The head of the  
27 delegated local agency shall afford each party of record an  
28 opportunity to file exceptions, objections and replies thereto, and  
29 to present arguments, either orally or in writing, as required by  
30 the delegated local agency. After reviewing the record of the  
31 administrative law judge, and any filings received thereon, but  
32 not later than 45 days after receipt of the record and decision,  
33 the head of the delegated local agency shall adopt, reject, or  
34 modify the recommended report and decision. If the head of the  
35 delegated local agency fails to modify or reject the report within  
36 the 45-day period, the decision of the administrative law judge  
37 shall be deemed adopted as the final decision of the head of the  
38 delegated local agency, and the recommended report and decision  
39 shall be made a part of the record in the case. <sup>1</sup>[The head of the  
40 delegated local agency may extend, for good cause, the time  
41 limits established in this section] For good cause shown, and upon  
42 certification by the Director of the Office of Administrative law  
43 and the head of the delegated local agency, the time limits  
44 established herein may be extended<sup>1</sup>.

45 4. <sup>1</sup>[a.]<sup>1</sup> A final decision or order of the head of the delegated  
46 local agency shall be in writing or stated in the record. A final  
47 decision shall include separately stated findings of fact and  
48 conclusions of law, based upon the evidence of record at the

1 hearing of the administrative law judge. Findings of fact shall be  
2 accompanied by a concise and explicit statement of the  
3 underlying facts supporting the findings. A final decision or order  
4 may incorporate by reference any or all of the recommendations  
5 of the administrative law judge.

6 Parties of record shall be notified either by personal service or  
7 by mail of any final decision or order. Upon request, a copy of  
8 the decision or order shall be delivered or mailed forthwith by  
9 registered or certified mail to each party of record and to a  
10 party's attorney of record.

11 A final decision or order shall be effective on the date of  
12 delivery or mailing, whichever is sooner, to the party or parties  
13 of record, or shall be effective on any date thereafter, as the  
14 delegated local agency may provide in the decision or order. The  
15 date of delivery or mailing shall be stamped on the face of the  
16 final decision or order. A final decision or order shall be  
17 considered a final agency action, and shall be appealable in the  
18 same manner as a final agency action of a State department or  
19 agency.

20 <sup>1</sup>[b. A civil administrative penalty imposed pursuant to a final  
21 order:

22 (1) may be collected or enforced by summary proceeding in a  
23 court of competent jurisdiction in accordance with the "penalty  
24 enforcement law," (N.J.S.2A 58-1 et seq.); or

25 (2) shall constitute a debt of the violator, and the civil  
26 administrative penalty may be docketed with the clerk of the  
27 Superior Court, and shall have the same standing as any judgment  
28 docketed pursuant to N.J.S.2A:16-1, except that no lien shall  
29 attach to the real property of a violator who appeals the final  
30 order to the Appellate Division.]<sup>1</sup>

31 <sup>15</sup> a. A person appealing a civil administrative penalty or  
32 assessment levied in accordance with section 2 of P.L. , c.  
33 (C. )(pending in the Legislature as this bill), whether  
34 contested as a contested case pursuant to P.L.1968, c.410  
35 (C.52:14B-1 et seq.) or by appeal to a court of competent  
36 jurisdiction, shall, as a condition of filing the appeal, post with  
37 the delegated local agency a refundable bond, or other security  
38 approved by the delegated local agency, in the amount of the  
39 civil administrative penalty or assessment levied pursuant to a  
40 civil administrative hearing. If the civil administrative penalty  
41 or assessment is upheld in whole or in part, the delegated local  
42 agency shall be entitled to a daily interest charge on the amount  
43 of the judgment amount from the date of the posting of the  
44 security with the commissioner until that amount is paid in full.  
45 The rate of interest shall be that established by the New Jersey  
46 Supreme Court for interest rates on judgments, as set forth in the  
47 Rules Governing the Courts of the State of New Jersey.

48 b. A person who is assessed a civil administrative penalty, or is

1 subject to an assessment levied pursuant to section 2 of P.L. ,  
 2 c. (C. )(pending in the Legislature as this bill), and  
 3 fails to contest or to pay the penalty or assessment, or fails to  
 4 enter into a payment schedule with the delegated local agency  
 5 within 30 days of the date that the penalty or assessment is due  
 6 and owing, shall be subject to an interest charge on the amount of  
 7 the penalty or assessment from the date that the amount was due  
 8 and owing. The rate of interest shall be that authorized pursuant  
 9 to subsection a. of this section.

10 c. Any person who fails to pay a civil administrative penalty  
 11 or assessment, in whole or in part, when due and owing, or who  
 12 fails to agree to a payment schedule therefor, shall be subject to  
 13 the civil penalty provisions of subsection e. of section of  
 14 P.L.1977, c.74 (C.58:10A-10).

15 d. A civil administrative penalty or assessment imposed  
 16 pursuant to a final order:

17 (1) may be collected or enforced by summary proceeding in a  
 18 court of competent jurisdiction in accordance with the "penalty  
 19 enforcement law," (N.J.S.2A 58-1 et seq.); or

20 (2) shall constitute a debt of the violator, and the civil  
 21 administrative penalty may be docketed with the clerk of the  
 22 Superior Court, and shall have the same standing as any judgment  
 23 docketed pursuant to N.J.S.2A:16-1.<sup>1</sup>

24 <sup>1</sup>[5.] 6.<sup>1</sup> The Director of the Office of Administrative Law  
 25 shall establish by regulation adopted pursuant to the  
 26 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
 27 seq.), a schedule of reimbursement for the costs to that office of  
 28 an administrative hearing provided pursuant to <sup>1</sup>[this act] P.L. ,  
 29 c. (C. )(pending in the Legislature as this bill)<sup>1</sup>.  
 30 Reimbursements shall be paid by the delegated local agency, but  
 31 shall be recoverable from the violator by that agency, if the  
 32 prevailing party, along with such other costs as may be  
 33 recoverable for preparing and litigating the case. An assessment  
 34 for hearing costs shall be included in the final decision or order  
 35 issued by the head of the delegated local agency.

36 <sup>1</sup>[6.] 7.<sup>1</sup> This act shall take effect immediately <sup>1</sup>except that  
 37 sections 2 through 5 of this act, inclusive, shall take effect 180  
 38 days following enactment<sup>1</sup>.

39  
40  
41 ENVIRONMENT

42  
43 Authorizes issuance of civil administrative orders or summonses  
44 for certain water pollution violations.

1 same manner as a final agency action of a State department or  
2 agency.

3 b. A civil administrative penalty imposed pursuant to a final  
4 order:

5 (1) may be collected or enforced by summary proceeding in a  
6 court of competent jurisdiction in accordance with the "penalty  
7 enforcement law," (N.J.S.2A 58-1 et seq.); or

8 (2) shall constitute a debt of the violator, and the civil  
9 administrative penalty may be docketed with the clerk of the  
10 Superior Court, and shall have the same standing as any judgment  
11 docketed pursuant to N.J.S.2A:16-1, except that no lien shall  
12 attach to the real property of a violator who appeals the final  
13 order to the Appellate Division.

14 5. The Director of the Office of Administrative Law shall  
15 establish by regulation adopted pursuant to the "Administrative  
16 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a schedule  
17 of reimbursement for the costs to that office of an administrative  
18 hearing provided pursuant to this act. Reimbursements shall be  
19 paid by the delegated local agency, but shall be recoverable from  
20 the violator by that agency, if the prevailing party, along with  
21 such other costs as may be recoverable for preparing and  
22 litigating the case. An assessment for hearing costs shall be  
23 included in the final decision or order issued by the head of the  
24 delegated local agency

25 6. This act shall take effect immediately.

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#### STATEMENT

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30 To expedite prosecutions of minor violations of the "Water  
31 Pollution Control Act," this bill authorizes the Department of  
32 Environmental Protection Agency or a delegated local agency  
33 operating or controlling a municipal treatment works, with an  
34 approved pretreatment program, to issue a summons for a  
35 violation if the amount of the penalty therefor is \$2,000 or less.  
36 The summons shall be enforceable in the municipal court of the  
37 territorial jurisdiction in which the violation occurs.

38 This bill also authorizes a delegated local agency to impose, by  
39 civil administrative order, penalties and certain assessments  
40 against violators of the "Water Pollution Control Act". The bill  
41 would allow a delegated local agency the option of proceeding  
42 against a violator either by a civil action or an administrative  
43 order. A civil administrative order would be appealable to the  
44 Office of Administrative Law in the same manner as other  
45 contested cases. The costs of the administrative hearing shall be  
46 paid by the delegated local agency, but shall be recoverable from  
47 the violator if the local agency is successful. The bill allows a  
48 delegated local agency to impose a lien on the property of the  
49 violator in the amount of the penalty or recovery.

1 Authority to issue civil administrative orders for penalties and  
2 certain assessments would:

3 (1) grant to publicly owned treatment works some of the same  
4 enforcement powers available to the Department of  
5 Environmental Protection;

6 (2) permit delegated local agencies to proceed more  
7 expeditiously against illegal dischargers; and

8 (3) result in more uniform enforcement of the "Water Pollution  
9 Control Act."

10

11

12 ENVIRONMENT

13

14 Authorizes issuance of civil administrative orders or summonses  
15 for certain water pollution violations.

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3110

with committee amendments

STATE OF NEW JERSEY

DATED: APRIL 30, 1990

Assembly Bill No. 3110, with committee amendments, is reported favorably by the Assembly Energy and Environment Committee.

This bill, as amended, authorizes the Department of Environmental Protection or a delegated local agency (that is, a public agency operating or controlling a municipal treatment works with an approved pretreatment program) to issue a summons, enforceable in municipal court, for a violation of the "Water Pollution Control Act" if the amount of the penalty therefor is \$5,000 or less. This bill also authorizes a delegated local agency, by civil administrative order, to impose penalties on, and recover certain costs from, violators of the "Water Pollution Control Act". The effect of the civil administrative procedure provisions is to afford delegated local agencies the option of proceeding against a violator by either a civil action or an administrative order.

A civil administrative order issued by a delegated local agency would be appealable to the Office of Administrative Law in the same manner as contested cases involving State agencies. The costs of the administrative hearing shall be paid by the delegated local agency, but shall be recoverable from the violator if the agency is the prevailing party. A civil administrative penalty shall be a lien enforceable against the property of the violator.

The committee amendments:

(1) increase municipal court jurisdiction from \$2000 to \$5000 for violations of the "Water Pollution Control Act";

(2) require a delegated local agency to post a refundable bond, or other financial security approved by the agency, as a condition for appealing a civil administrative penalty or assessment;

(3) subject a violator who fails to pay a penalty or assessment when due and owing, or to enter into a payment schedule therefor with a delegated local agency, to an interest charge on the delinquent amount from the date it was due and owing; and

(4) authorize the filing of a civil action against a person who fails to pay a civil administrative penalty or assessment, or to enter into a payment schedule therefor with the delegated local agency.

The civil administrative hearing provisions of the bill are similar to those for DEP under the "Water Pollution Control Act," and the proposed "Clean Water Enforcement Act" amendments thereto.



SENATE ENVIRONMENTAL QUALITY COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 3110

STATE OF NEW JERSEY

DATED: SEPTEMBER 24, 1990

The Senate Environmental Quality Committee favorably reports Assembly Bill No. 3110 (1R).

This bill would authorize the Department of Environmental Protection (DEP) or a delegated local agency, which is a public agency operating or controlling a municipal treatment works with an approved pretreatment program, to issue a summons, enforceable in municipal court, for a violation of the "Water Pollution Control Act" if the amount of the penalty therefor is \$5,000 or less. This bill would also authorize a delegated local agency, by civil administrative order, to impose penalties on, and recover certain costs from, violators of the "Water Pollution Control Act." The effect of these provisions is to afford delegated local agencies the option of proceeding against a violator by either a civil action or an administrative order.

A civil administrative order issued by a delegated local agency could be appealed to the Office of Administrative Law in the same manner as contested cases involving State agencies are appealed. The costs of the administrative hearing would be borne by the delegated local agency, but would be recoverable from the violator if the agency prevails. A civil administrative penalty could be a lien enforceable against the property of the violator.

Pursuant to this bill, a delegated local agency would be required to post a refundable bond, or other financial security approved by the agency, as a condition for appealing a civil administrative penalty or assessment. Furthermore, a violator who fails to pay a penalty or enter into a payment schedule with a delegated local agency would be subject to an interest charge on the delinquent amount from the date it was due. Finally, this bill would authorize a delegated local agency to file a civil action against a violator for nonpayment.