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ASSEMBLY, No. 2584

STATE OF NEW JERSEY
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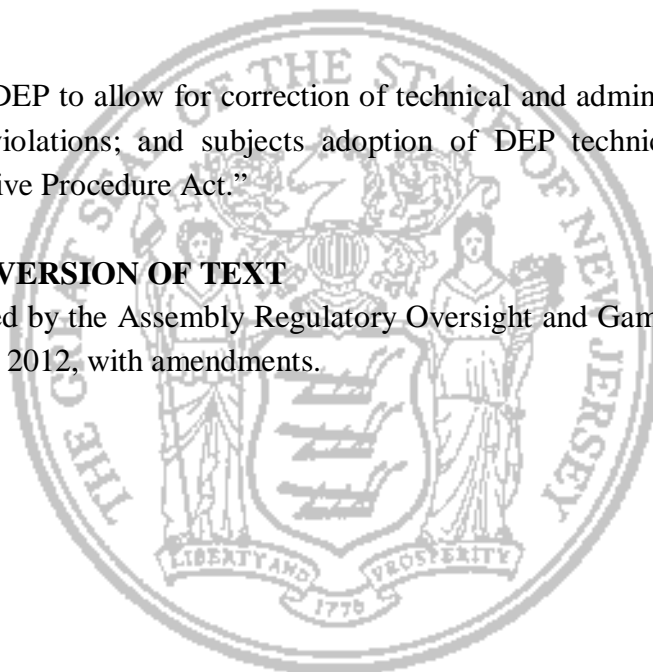
Assemblyman Wilson

SYNOPSIS

Requires DEP to allow for correction of technical and administrative permit application violations; and subjects adoption of DEP technical manuals to "Administrative Procedure Act."

CURRENT VERSION OF TEXT

As reported by the Assembly Regulatory Oversight and Gaming Committee on March 12, 2012, with amendments.



1 AN ACT concerning administrative violations of certain permit
2 application procedures, 'concerning the adoption of technical
3 manuals,¹ and amending P.L.1991, c.422 and P.L.1995, c.296.

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

7
8 1. Section 1 of P.L.1991, c.422 (C.13:1D-111) is amended to
9 read as follows:

10 1. a. Within 12 months of the effective date of this section, the
11 Department of Environmental Protection shall develop a technical
12 manual for each class or category of permit, as established pursuant
13 to section 1 of P.L.1991, c.423 (C.13:1D-105), issued by the
14 department. Each manual shall define the procedural and
15 substantive requirements for the completion of an application for a
16 class or category of permit and the review thereof, and shall clarify
17 departmental policies and interpretations of any laws, rules, and
18 regulations relating to the filing and review of the application.
19 Each technical manual shall also:

20 **[a.]** (1) Provide a detailed summary and explanation of any
21 policy considerations not otherwise identified by law, rule, or
22 regulation that are used in the department's review and
23 consideration of the permit application;

24 **[b.]** (2) Detail and clarify the department's interpretation of any
25 standards or other requirements that do not have a fixed meaning or
26 are not defined by law, rule, or regulation, including, but not limited
27 to, identification or stipulation of state-of-the-art control
28 technologies and best management practices; **[and]**

29 **[c.]** (3) Include any other general information about department
30 policies that would facilitate the preparation by an applicant, and
31 the review by the department, of an application.

32 **[d.]** b. Adoption of a technical manual, or of revisions thereto,
33 shall **[not]** be subject to the notice and publication requirements of
34 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
35 seq.).

36 c. As used in this act:

37 "Permit" shall have the same meaning as in section 1 of
38 P.L.1991,c.421 (C.13:1D-101).

39 (cf: P.L.1991, c.422, s.1)

40

41 2. Section 5 of P.L.1995, c.296 (C.13:1D-129) is amended to
42 read as follows:

43 5. a. The department shall promulgate rules and regulations
44 designating specific types or categories of violations within each

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ARG committee amendments adopted March 12, 2012.

1 regulatory and enforcement program of each environmental law as
2 minor violations and non-minor violations. In designating minor
3 violations, the department shall utilize the criteria set forth in this
4 section. All types or categories of violations not designated as
5 minor violations shall be designated as non-minor violations.

6 b. A violation shall be designated by the department as a minor
7 violation if any of the categories described in paragraph (1), (2), or
8 (3) of this subsection is applicable to the violation :

9 (1) (a) The violation is not the result of the purposeful,
10 knowing, reckless or criminally negligent conduct of the person
11 responsible for the violation;

12 (b) The violation is based on an administrative, technical,
13 clerical, or other non-substantive error or omission in a notice,
14 report, manifest, or document; and

15 (c) The violation is capable of being corrected and compliance
16 achieved within 45 days; or

17 (2) (a) The violation is not the result of the purposeful,
18 knowing, reckless or criminally negligent conduct of the person
19 responsible for the violation;

20 (b) The violation poses **[minimal]** no risk to the public health,
21 safety and natural resources;

22 **[(3)] (c)** The violation does not materially **[and]** or
23 substantially undermine or impair the goals of the regulatory
24 program;

25 **[(4)] (d)** The activity or condition constituting the violation
26 has existed for less than 12 months prior to the date of discovery by
27 the department or local government agency;

28 **[(5) (a)] (e) (i)** The person responsible for the violation has
29 not been identified in a previous enforcement action by the
30 department or a local government agency as responsible for a
31 violation of the same requirement of the same permit within the
32 preceding 12-month period;

33 **[(b)] (ii)** in the case of a violation that does not involve a
34 permit, the person responsible for the violation has not been
35 identified in a previous enforcement action by the department or a
36 local government agency as responsible for the same or a
37 substantially similar violation at the same facility within the
38 preceding 12-month period;

39 **[(c)] (iii)** in the case of a violation of the "Coastal Area Facility
40 Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the "Freshwater
41 Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.);
42 "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.);
43 R.S.12:5-1 et seq.; the "Flood Hazard Area Control Act," P.L.1962,
44 c.19 (C.58:16A-50 et seq.) or any rule or regulation promulgated
45 thereunder, or permit issued pursuant thereto, the person
46 responsible for the violation has not been identified in a previous
47 enforcement action by the department or a local government agency

1 as responsible for the same or a substantially similar violation at the
2 same site or any other site within the preceding 12-month period; or

3 **[(d)] (iv)** in the case of any violation, the person responsible for
4 the violation has not been identified by the department or a local
5 government agency as responsible for the same or substantially
6 similar violations at any time that reasonably indicate a pattern of
7 illegal conduct and not isolated incidents on the part of the person
8 responsible; and

9 **[(6)] (f)** The activity or condition constituting the violation is
10 capable of being corrected and compliance achieved within the
11 period of time prescribed by the department pursuant to subsection
12 b. of section 3 of P.L.1995, c.296 (C.13:1D-127) ; or

13 (3) The violation has not caused any actual harm to the public
14 health, safety, or environment .

15 c. **[(Any)]** Notwithstanding the provisions of any law, rule, or
16 regulation to the contrary, any violation subject to the mandatory
17 assessment of civil administrative penalties pursuant to subsection
18 b., c., or d. of section 6 of P.L.1990, c.28 (C.58:10A-10.1) shall not
19 be designated as a minor violation pursuant to this act.

20 (cf: P.L.1995, c.296, s.5)

21

22 3. Section 6 of P.L.1995, c.296 (C.13:1D-130) is amended to
23 read as follows:

24 6. Whenever a person responsible for a minor violation
25 designated as such pursuant to section 5 of **[(this act)]** P.L.1995,
26 c.296 (C.13:1D-129) of an environmental law voluntarily discloses
27 to the department or local government agency the existence of that
28 violation, the department or local government agency, as the case
29 may be, shall not impose a civil or civil administrative penalty for
30 the violation; provided the person responsible for the violation fully
31 discloses all relevant circumstances surrounding the violation
32 within 30 days of its discovery, immediately ceases any
33 continuation of the violation, and promptly remedies the violation
34 and achieves compliance, in accordance with the timeframes
35 established pursuant to section 3 or 5 of **[(this act)]** P.L.1995, c. 296
36 (C.13:1D-127 or C.13:1D-129).

37 (cf: P.L.1995, c.296, s.6)

38

39 4. This act shall take effect immediately and shall be applicable
40 to violations that are pending on, or committed after, the effective
41 date of this act.