

ASSEMBLY, No. 636

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman IMPREVEDUTO

1 AN ACT concerning the enforcement of water pollution violations and
2 amending P.L.1977, c.74.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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

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

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

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

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

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

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

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

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

28 b. Whenever the commissioner finds that any person is in violation
29 of any provision of this act, he may issue an order (1) specifying the
30 provision or provisions of this act, or the rule, regulation, water
31 quality standard, effluent limitation, or permit of which he is in
32 violation, (2) citing the action which caused such violation, (3)

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

Matter underlined thus is new matter.

1 requiring compliance with such provision or provisions, and (4) giving
2 notice to the person of his right to a hearing on the matters contained
3 in the order.

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

8 (1) A temporary or permanent injunction;

9 (2) Assessment of the violator for the reasonable costs of any
10 investigation, inspection, or monitoring survey which led to the
11 establishment of the violation, and for the reasonable costs of
12 preparing and litigating the case under this subsection;

13 (3) Assessment of the violator for any reasonable cost incurred by
14 the State in removing, correcting or terminating the adverse effects
15 upon water quality resulting from any unauthorized discharge of
16 pollutants for which the action under this subsection may have been
17 brought;

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

22 (5) Assessment against a violator of the actual amount of any
23 economic benefits accruing to the violator from a violation. Economic
24 benefits may include the amount of any savings realized from avoided
25 capital or noncapital costs resulting from the violation; the return
26 earned or that may be earned on the amount of avoided costs; any
27 benefits accruing to the violator as a result of a competitive market
28 advantage enjoyed by reason of the violation; or any other benefits
29 resulting from the violation.

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

37 d. (1) (a) The commissioner is authorized to assess, in accordance
38 with a uniform policy adopted therefor, a civil administrative penalty
39 of not more than \$50,000.00 for each violation and each day during
40 which such violation continues shall constitute an additional, separate,
41 and distinct offense. Any amount assessed under this subsection shall
42 fall within a range established by regulation by the commissioner for
43 violations of similar type, seriousness, and duration. The
44 commissioner shall adopt, by regulation, a uniform assessment of civil
45 penalties policy by January 1, 1992.

1 (b) In adopting rules for a uniform penalty policy for determining
2 the amount of a penalty to be assessed, the commissioner shall take
3 into account the type, seriousness, including extent, toxicity, and
4 frequency of a violation based upon the harm to public health or the
5 environment resulting from the violation, the economic benefits from
6 the violation gained by the violator, the degree of cooperation or
7 recalcitrance of the violator in remedying the violation, any measures
8 taken by the violator to avoid a repetition of the violation, any unusual
9 or extraordinary costs directly or indirectly imposed on the public by
10 the violation other than costs recoverable pursuant to paragraph (3) or
11 (4) of subsection c. of this section, and any other pertinent factors that
12 the commissioner determines measure the seriousness or frequency of
13 the violation, or conduct of the violator.

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

18 (2) No assessment shall be levied pursuant to this subsection until
19 after the discharger has been notified by certified mail or personal
20 service. The notice shall include a reference to the section of the
21 statute, regulation, order or permit condition violated; a concise
22 statement of the facts alleged to constitute a violation; a statement of
23 the amount of the civil penalties to be imposed; and a statement of the
24 party's right to a hearing. The ordered party shall have 20 days from
25 receipt of the notice within which to deliver to the commissioner a
26 written request for a hearing. After the hearing and upon finding that
27 a violation has occurred, the commissioner may issue a final order
28 after assessing the amount of the fine specified in the notice. If no
29 hearing is requested, then the notice shall become a final order after
30 the expiration of the 20-day period. Payment of the assessment is due
31 when a final order is issued or the notice becomes a final order.

32 (3) If a civil administrative penalty imposed pursuant to this
33 subsection is not paid within 30 days of the date that the penalty is due
34 and owing, and the penalty is not contested by the person against
35 whom the penalty has been assessed, or the person fails to make a
36 payment pursuant to a payment schedule entered into with the
37 department, an interest charge shall accrue on the amount of the
38 penalty due and owing from the 30th day after the date on which the
39 penalty was due and owing. The rate of interest shall be that
40 established by the New Jersey Supreme Court for interest rates on
41 judgments, as set forth in the Rules Governing the Courts of the State
42 of New Jersey.

43 (4) The authority to levy a civil administrative penalty is in addition
44 to all other enforcement provisions in this act, and the payment of any
45 assessment shall not be deemed to affect the availability of any other
46 enforcement provisions in connection with the violation for which the

1 assessment is levied. Any civil administrative penalty assessed under
2 this section may be compromised by the commissioner, or his
3 designee, upon the posting of a performance bond by the violator, or
4 upon such terms and conditions as the commissioner may establish by
5 regulation, except that the amount compromised shall not be more
6 than 50% of the assessed penalty for any penalty imposed as a final
7 order on or before December 31, 1993 or for which all administrative
8 and judicial appeals have been exhausted on or before December 31,
9 1993, and in no instance shall the amount of that compromised penalty
10 be less than the statutory minimum amount, if applicable, prescribed
11 in section 6 of P.L.1990, c.28 (C.58:10A-10.1). In the case of a
12 violator who is a local agency that enters into an administrative
13 consent order, the terms of which require the local agency to take
14 prescribed measures to comply with its permit, the commissioner, or
15 his designee, shall have full discretion to compromise the amount of
16 penalties assessed or due for violations occurring during a period up
17 to 24 months preceding the entering into the administrative consent
18 order; except that the amount of the compromised penalty may not be
19 less than the statutory minimum amount, if applicable, prescribed in
20 section 6 of P.L.1990, c.28 (C.58:10A-10.1). A civil administrative
21 penalty assessed against a local agency for a violation of an
22 administrative consent order may not be compromised by more than
23 50% of the assessed penalty if that penalty was imposed in a final
24 order on or before December 31, 1993 or for which all administrative
25 and judicial appeals have been exhausted on or before December 31,
26 1993. In no instance shall the amount of a compromised penalty
27 assessed against a local agency be less than the statutory minimum
28 amount, if applicable, prescribed in section 6 of P.L.1990, c.28
29 (C.58:10A-10.1). The commissioner, or his designee, shall not
30 compromise the amount of any component of a civil administrative
31 penalty which represents the economic benefit gained by the violator
32 from the violation if that penalty was imposed in a final order on or
33 before December 31, 1993 or for which all administrative and judicial
34 appeals have been exhausted on or before December 31, 1993.

35 (5) A person, other than a local agency, appealing a penalty
36 assessed against that person in accordance with this subsection,
37 whether contested as a contested case pursuant to P.L.1968, c.410
38 (C.52:14B-1 et seq.) or by appeal to a court of competent jurisdiction,
39 shall, as a condition of filing the appeal, post with the commissioner
40 a refundable bond, or other security approved by the commissioner, in
41 the amount of the civil administrative penalty assessed. If the
42 department's assessed penalty is upheld in full or in part, the
43 department shall be entitled to a daily interest charge on the amount
44 of the judgment from the date of the posting of the security with the
45 commissioner and until paid in full. The rate of interest shall be that
46 established by the New Jersey Supreme Court for interest rates on

1 judgments, as set forth in the Rules Governing the Courts of the State
2 of New Jersey. In addition, if the amount of the penalty assessed by
3 the department is upheld in full in an appeal of the assessment at an
4 administrative hearing or at a court of competent jurisdiction, the
5 person appealing the penalty shall reimburse the department for all
6 reasonable costs incurred by the department in preparing and litigating
7 the imposition of the assessment, except that no litigation costs shall
8 be imposed where the appeal ultimately results in a reduction or
9 elimination of the assessed penalty.

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

11 (a) may be collected or enforced by summary proceedings in a
12 court of competent jurisdiction in accordance with "the penalty
13 enforcement law," N.J.S.2A:58-1 et seq.; or

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

22 (7) The commissioner shall refer to the Attorney General and the
23 county prosecutor of the county in which the violations occurred the
24 record of violations of any permittee determined to be a significant
25 noncomplier.

26 e. Any person who violates this act or an administrative order
27 issued pursuant to subsection b. or a court order issued pursuant to
28 subsection c., or who fails to pay a civil administrative penalty in full
29 pursuant to subsection d., or to make a payment pursuant to a payment
30 schedule entered into with the department, shall be subject upon order
31 of a court to a civil penalty not to exceed \$50,000.00 per day of such
32 violation, and each day's continuance of the violation shall constitute
33 a separate violation. Any penalty incurred under this subsection may
34 be recovered with costs, and, if applicable, interest charges, in a
35 summary proceeding pursuant to "the penalty enforcement law"
36 (N.J.S.2A:58-1 et seq.). In addition to any civil penalties, costs or
37 interest charges, the court, in accordance with paragraph (5) of
38 subsection c. of this section, may assess against a violator the amount
39 of any actual economic benefits accruing to the violator from the
40 violation. The Superior Court shall have jurisdiction to enforce "the
41 penalty enforcement law" in conjunction with this act.

42 f. (1)(a) Any person who purposely, knowingly, or recklessly
43 violates this act, and the violation causes a significant adverse
44 environmental effect, shall, upon conviction, be guilty of a crime of the
45 second degree, and shall, notwithstanding the provisions of subsection
46 a. of N.J.S.2C:43-3, be subject to a fine of not less than \$25,000 nor

1 more than \$250,000 per day of violation, or by imprisonment, or by
2 both.

3 (b) As used in this paragraph, a significant adverse environmental
4 effect exists when an action or omission of the defendant causes:
5 serious harm or damage to wildlife, freshwater or saltwater fish, any
6 other aquatic or marine life, water fowl, or to their habitats, or to
7 livestock, or agricultural crops; serious harm, or degradation of, any
8 ground or surface waters used for drinking, agricultural, navigational,
9 recreational, or industrial purposes; or any other serious articulable
10 harm or damage to, or degradation of, the lands or waters of the State,
11 including ocean waters subject to its jurisdiction pursuant to P.L.1988,
12 c.61 (C.58:10A-47 et seq.).

13 (2) Any person who purposely, knowingly, or recklessly violates
14 this act, including making a false statement, representation, or
15 certification in any application, record, or other document filed or
16 required to be maintained under this act, or by falsifying, tampering
17 with, or rendering inaccurate any monitoring device or method
18 required to be maintained pursuant to this act, or by failing to submit
19 a monitoring report, or any portion thereof, required pursuant to this
20 act, shall, upon conviction, be guilty of a crime of the third degree, and
21 shall, notwithstanding the provisions of subsection b. of
22 N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more
23 than \$75,000 per day of violation, or by imprisonment, or by both.

24 (3) Any person who negligently violates this act, including making
25 a false statement, representation, or certification in any application,
26 record, or other document filed or required to be maintained under this
27 act, or by falsifying, tampering with, or rendering inaccurate any
28 monitoring device or method required to be maintained pursuant to
29 this act, or by failing to submit a discharge monitoring report, or any
30 portion thereof, required pursuant to this act, shall, upon conviction,
31 be guilty of a crime of the fourth degree, and shall, notwithstanding
32 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
33 of not less than \$5,000 nor more than \$50,000 per day of violation, or
34 by imprisonment, or by both.

35 (4) Any person who purposely or knowingly violates an effluent
36 limitation or other condition of a permit, or who discharges without a
37 permit, and who knows at that time that he thereby places another
38 person in imminent danger of death or serious bodily injury, as defined
39 in subsection b. of N.J.S.2C:11-1, shall, upon conviction, be guilty of
40 a crime of the first degree, and shall, notwithstanding the provisions
41 of subsection a. of N.J.S.2C:43-3, be subject of a fine of not less than
42 \$50,000 nor more than \$250,000, or, in the case of a corporation, a
43 fine of not less than \$200,000 nor more than \$1,000,000, or by
44 imprisonment or by both.

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

4 g. All conveyances used or intended for use in the purposeful or
5 knowing discharge, in violation of the provisions of P.L.1977, c.74
6 (C.58:10A-1 et seq.), of any pollutant or toxic pollutant are subject to
7 forfeiture to the State pursuant to the provisions of P.L.1981, c.387
8 (C.13:1K-1 et seq.).

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

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

13
14 2. This act shall take effect immediately.

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17 STATEMENT

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19 This bill would remove the limitations on the Commissioner of
20 Environmental Protection to compromise any civil administrative
21 penalty that was imposed for the violation of the "Water Pollution
22 Control Act." Under amendments adopted to that act in 1990, the
23 authority of the commissioner to compromise penalties was limited to
24 50% of the penalty imposed except that the penalty imposed upon a
25 local agency could be compromised below that amount if the local
26 agency entered into an administrative consent order. The powers
27 given to the commissioner in this bill are the same the commissioner
28 had pursuant to his enforcement powers of every other environmental
29 law.

30 This bill would not eliminate the provision that prevents the
31 commissioner from compromising a penalty below any statutorily
32 mandated minimum amount. The expansion of the commissioner's
33 ability to compromise civil administrative penalties would not apply to
34 penalties that were final on or before December 31, 1993.

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39 _____
39 Allows Commissioner of Environmental Protection to compromise
40 civil administrative penalties imposed pursuant to the Water Pollution
41 Control Act.