

ASSEMBLY, No. 711

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman R. SMITH

1 AN ACT concerning the publication of violations of certain
2 environmental statutes, amending P.L.1970, c.39, P.L.1971, c.176,
3 P.L.1983, c.330, P.L.1984, c.210, P.L.1970, c.272, P.L.1987,
4 c.156, P.L.1973, c.185, P.L.1954, c.212, P.L.1983, c.315,
5 P.L.1977, c.224, P.L.1972, c.185, P.L.1976, c.141, and P.L.1985,
6 c.403, and making an appropriation.

7

8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10

11 1. Section 9 of P.L.1970, c.39 (C.13:1E-9) is amended to read as
12 follows:

13 9. a. All codes, rules and regulations adopted by the department
14 related to solid waste collection and disposal shall have the force and
15 effect of law. These codes, rules and regulations shall be observed
16 throughout the State and shall be enforced by the department and by
17 every local board of health, or county health department, as the case
18 may be.

19 The department and the local board of health, or the county health
20 department, as the case may be, shall have the right to enter a solid
21 waste facility at any time in order to determine compliance with the
22 registration statement and engineering design required pursuant to
23 section 5 of P.L.1970, c.39 (C.13:1E-5), and with the provisions of all
24 applicable laws or rules and regulations adopted pursuant thereto.

25 The municipal attorney or an attorney retained by a municipality in
26 which a violation of such laws or rules and regulations adopted
27 pursuant thereto is alleged to have occurred shall act as counsel to a
28 local board of health.

29 The county counsel or an attorney retained by a county in which a
30 violation of such laws or rules and regulations adopted pursuant
31 thereto is alleged to have occurred shall act as counsel to the county
32 health department.

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 Any county health department may charge and collect from the
2 owner or operator of any sanitary landfill facility within its jurisdiction
3 such fees for enforcement activities as may be established by ordinance
4 or resolution adopted by the governing body of any such county.
5 ~~[Such]~~ The fees shall be established in accordance with a fee schedule
6 regulation ~~[to be]~~ adopted by the department, pursuant to law, ~~[within~~
7 ~~60 days of the effective date of the amendatory act]~~ and shall be
8 utilized exclusively to fund such enforcement activities.

9 All enforcement activities undertaken by county health departments
10 pursuant to this subsection shall conform to all applicable performance
11 and administrative standards adopted pursuant to section 10 of the
12 "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-28).

13 b. Whenever the commissioner finds that a person has violated any
14 provision of P.L.1970, c.39 (C.13:1E-1 et seq.), or any rule or
15 regulation adopted, permit issued, or district solid waste management
16 plan adopted pursuant to P.L.1970, c.39, he shall:

17 (1) Issue an order requiring the person found to be in violation to
18 comply in accordance with subsection c. of this section;

19 (2) Bring a civil action in accordance with subsection d. of this
20 section;

21 (3) Levy a civil administrative penalty in accordance with
22 subsection e. of this section;

23 (4) Bring an action for a civil penalty in accordance with
24 subsection f. of this section; or

25 (5) Petition the Attorney General to bring a criminal action in
26 accordance with ~~[subsection]~~ subsections g., h. or i. of this section.

27 [Pursuit of any of the remedies specified under this section shall not
28 preclude the seeking of any other remedy specified.]

29 c. Whenever the commissioner finds that a person has violated any
30 provision of P.L.1970, c.39, or any rule or regulation adopted, permit
31 issued, or district solid waste management plan adopted pursuant to
32 P.L.1970, c.39, he may issue an order specifying the provision or
33 provisions of P.L.1970, c.39, or the rule, regulation, permit or district
34 solid waste management plan of which the person is in violation, citing
35 the action which constituted the violation, ordering abatement of the
36 violation, and giving notice to the person of his right to a hearing on
37 the matters contained in the order. The ordered party shall have 20
38 calendar days from receipt of the order within which to deliver to the
39 commissioner a written request for a hearing. [After the hearing and
40 upon finding that a violation has occurred, the commissioner may issue
41 a final order. If no hearing is requested, then the order shall become
42 final after the expiration of the 20 day period.] Such order shall be
43 effective upon receipt and any person to whom such order is directed
44 shall comply with the order immediately. A request for hearing shall
45 not automatically stay the effect of the order.

46 d. The commissioner, a local board of health or county health

1 department may institute an action or proceeding in the Superior Court
2 for injunctive and other relief, including the appointment of a receiver
3 for any violation of this act, or of any code, rule or regulation
4 [promulgated] adopted, permit issued [or], district solid waste
5 management plan adopted or order issued pursuant to this act and said
6 court may proceed in the action in a summary manner. In any such
7 proceeding the court may grant temporary or interlocutory relief,
8 notwithstanding the provisions of R.S.48:2-24.

9 Such relief may include, singly or in combination:

10 (1) A temporary or permanent injunction;

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

15 (3) Assessment of the violator for any cost incurred by the State in
16 removing, correcting or terminating the adverse effects upon water
17 and air quality resulting from any violation of any provision of this act
18 or any rule, regulation or condition of approval for which the action
19 under this subsection may have been brought;

20 (4) Assessment against the violator of compensatory damages for
21 any loss or destruction of wildlife, fish or aquatic life, and for any
22 other actual damages caused by any violation of this act or any rule,
23 regulation or condition of approval established pursuant to this act for
24 which the action under this subsection may have been brought.
25 Assessments under this subsection shall be paid to the State Treasurer,
26 or to the local board of health, or to the county health department, as
27 the case may be, except that compensatory damages may be paid by
28 specific order of the court to any persons who have been aggrieved by
29 the violation.

30 If a proceeding is instituted by a local board of health or county
31 health department, notice thereof shall be served upon the
32 commissioner in the same manner as if the commissioner were a named
33 party to the action or proceeding. The department may intervene as a
34 matter of right in any proceeding brought by a local board of health or
35 county health department.

36 e. The commissioner is authorized to assess a civil administrative
37 penalty of not more than \$50,000.00 for each violation provided that
38 each day during which the violation continues shall constitute an
39 additional, separate and distinct offense. The commission shall not
40 assess a civil administrative penalty in excess of \$25,000.00 for a
41 single violation, or in excess of \$2,500.00 for each day during which
42 a violation continues, until the department has adopted, pursuant to
43 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.), regulations requiring the commissioner, in assessing a civil
45 administrative penalty, to consider the operational history of the solid
46 waste facility at which the violation occurred, the severity of the

1 violation, the measures taken to mitigate or prevent further violations,
2 and whether the penalty will maintain an appropriate deterrent. No
3 assessment shall be levied pursuant to this section until after the
4 violator has been notified by certified mail or personal service. The
5 notice shall include a reference to the section of the statute, rule,
6 regulation, order, permit condition or district solid waste management
7 plan violated, a concise statement of the facts alleged to constitute a
8 violation, a statement of the amount of the civil administrative
9 penalties to be imposed, and a statement of the party's right to a
10 hearing. The ordered party shall have 20 calendar days from receipt
11 of the notice within which to deliver to the commissioner a written
12 request for a hearing. After the hearing and upon finding that a
13 violation has occurred, the commissioner may issue a final order after
14 assessing the amount of the fine specified in the notice. If no hearing
15 is requested, the notice shall become a final order after the expiration
16 of the 20-day period. Payment of the assessment is due when a final
17 order is issued or the notice becomes a final order. The authority to
18 levy a civil administrative penalty is in addition to all other
19 enforcement provisions in P.L.1970, c.39, and the payment of any
20 assessment shall not be deemed to affect the availability of any other
21 enforcement provisions in connection with the violation for which the
22 assessment is levied. The department may compromise any civil
23 administrative penalty assessed under this section in an amount the
24 department determines appropriate.

25 f. Any person who violates the provisions of [this act] P.L.1970,
26 c.39, or any code, rule or regulation [promulgated] adopted pursuant
27 [to this act] thereto shall be liable to a penalty of not more than
28 \$50,000.00 per day, to be collected in a civil action commenced by a
29 local board of health, a county health department, or the
30 commissioner.

31 Any person who violates an administrative order issued pursuant to
32 subsection c. of this section, or a court order issued pursuant to
33 subsection d. of this section, or who fails to pay an administrative
34 assessment in full pursuant to subsection e. of this section is subject
35 upon order of a court to a civil penalty not to exceed \$100,000.00 per
36 day of such violations.

37 Of the penalty imposed pursuant to this subsection, 10% or
38 \$250.00, whichever is greater, shall be paid to the department from the
39 General Fund if the Attorney General determines that a person is
40 entitled to a reward pursuant to section 2 of P.L.1987, c.158
41 (C.13:1E-9.2).

42 Any penalty imposed pursuant to this subsection may be collected
43 with costs in a summary proceeding pursuant to "the penalty
44 enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court and
45 the municipal court shall have jurisdiction to enforce the provisions of
46 "the penalty enforcement law" in connection with this act.

- 1 g. Any person who knowingly:
- 2 (1) Transports any hazardous waste to a facility or any other place
3 which does not have authorization from the department to accept such
4 waste;
- 5 (2) Generates and causes or permits to be transported any
6 hazardous waste to a facility or any other place which does not have
7 authorization from the department to accept such waste;
- 8 (3) Disposes, treats, stores or transports hazardous waste without
9 authorization from the department;
- 10 (4) Makes any false or misleading statement to any person who
11 prepares any hazardous waste application, label, manifest, record,
12 report, design or other document required to be submitted to the
13 department; or
- 14 (5) Makes any false or misleading statement on any hazardous
15 waste application, label, manifest, record, report, design or other
16 document required to be submitted to the department shall, upon
17 conviction, be guilty of a crime of the third degree and,
18 notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a
19 fine of not more than \$50,000.00 for the first offense and not more
20 than \$100,000.00 for the second and each subsequent offense and
21 restitution, in addition to any other appropriate disposition authorized
22 by subsection b. of N.J.S.2C:43-2.
- 23 h. Any person who recklessly:
- 24 (1) Transports any hazardous waste to a facility or any other place
25 which does not have authorization from the department to accept such
26 waste;
- 27 (2) Generates and causes or permits to be transported any
28 hazardous waste to a facility or any other place which does not have
29 authorization from the department to accept such waste;
- 30 (3) Disposes, treats, stores or transports hazardous waste without
31 authorization from the department;
- 32 (4) Makes any false or misleading statement to any person who
33 prepares any hazardous waste application, label, manifest, record,
34 report, design or other document required to be submitted to the
35 department; or
- 36 (5) Makes any false or misleading statement on any hazardous
37 waste application, label, manifest, record, report, design or other
38 document required to be submitted to the department, shall, upon
39 conviction, be guilty of a crime of the fourth degree.
- 40 i. Any person who, regardless of intent, generates and causes or
41 permits any hazardous waste to be transported, transports, or receives
42 transported hazardous waste without completing and submitting to the
43 department a hazardous waste manifest in accordance with the
44 provisions of this act or any rule or regulation adopted pursuant hereto
45 shall, upon conviction, be guilty of a crime of the fourth degree.
- 46 j. All conveyances used or intended for use in the willful discharge,

1 in violation of the provisions of P.L.1970, c.39 (C.13:1E-1 et seq.), of
2 any solid waste, or hazardous waste as defined in P.L.1976, c.99
3 (C.13:1E-38 et seq.) are subject to forfeiture to the State pursuant to
4 the provisions of P.L.1981, c.387 (C.13:1K-1 et seq.).

5 k. The provisions of N.J.S.2C:1-6 to the contrary notwithstanding,
6 a prosecution for a violation of the provisions of subsection g.,
7 subsection h. or subsection i. of this section shall be commenced
8 within five years of the date of discovery of the violation.

9 l. Pursuit of any remedy specified in this section shall not preclude
10 the pursuit of any other remedy provided by any other law.
11 Administrative and judicial remedies provided in this section may be
12 pursued simultaneously.

13 m. Any person who violates the provisions of this act, or any rule
14 or regulation adopted pursuant thereto, shall publish, in at least two
15 newspapers in general circulation in the area where the violation
16 occurred, a notice of the violation. The notice shall include the name
17 and address of the person violating the provisions of this act, or any
18 rule or regulation adopted pursuant thereto, the specific provision of
19 this law, or any rule or regulation adopted pursuant thereto violated,
20 a brief description of the violation, and any fines or penalties paid or
21 agreed to by the person violating this law or any rule or regulation
22 adopted pursuant thereto. The notice shall be printed in a size and
23 format and in a section of the newspaper, as specified by the
24 department, so as to be prominently visible. This notice requirement
25 shall apply only to violations the fine for which exceeds \$2,000, for
26 which the alleged violator has exhausted, or has chosen not to pursue,
27 the available appeal process. Notice shall be published within 45 days
28 from the date of assessment of, or agreement to, the fine or, in the
29 case of an appeal, the rendering of a final decision on the appeal.

30 (cf: P.L.1990, c.70, s.1)

31
32 2. Section 10 of P.L.1971, c.176 (C.13:1F-10) is amended to read
33 as follows:

34 10. If any person violates any of the provisions of this act or any
35 rule, regulation or order promulgated pursuant to the provisions of
36 this act, the department may institute a civil action in a court of
37 competent jurisdiction for injunctive relief to prohibit and prevent such
38 violation or violations and the said court may proceed in the action in
39 a summary manner.

40 Any person who violates the provisions of this act or any rule,
41 regulation or order promulgated pursuant to this act shall be liable to
42 a penalty of not more than \$3,000.00 for each offense, to be collected
43 in a civil action by a summary proceeding under "the penalty
44 enforcement law" (N.J.S.2A:58-1 et seq.) or in any case before a court
45 of competent jurisdiction wherein injunctive relief has been requested.
46 The Superior Court shall have jurisdiction to enforce said penalty

1 enforcement law. If the violation is of a continuing nature, each day
2 during which it continues shall constitute an additional, separate and
3 distinct offense.

4 Any person who violates the provisions of this act, or any rule or
5 regulation adopted pursuant thereto, shall publish, in at least two
6 newspapers in general circulation in the area where the violation
7 occurred, a notice of the violation. The notice shall include the name
8 and address of the person violating the provisions of this act, or any
9 rule or regulation adopted pursuant thereto, the specific provision of
10 this law, or any rule or regulation adopted pursuant thereto violated,
11 a brief description of the violation, and any fines or penalties paid or
12 agreed to by the person violating this law or any rule or regulation
13 adopted pursuant thereto. The notice shall be printed in a size and
14 format and in a section of the newspaper, as specified by the
15 department, so as to be prominently visible. This notice required shall
16 apply only to violation the fine for which exceeds \$2,000, for which
17 the alleged violator has exhausted, or has chosen not to pursue, the
18 available appeal process. Notice shall be published within 45 days
19 from the date of assessment of, or agreement to, the fine or, in the
20 case of an appeal, the rendering of a final decision on the appeal.

21 The department is hereby authorized and empowered to
22 compromise and settle any claim for a penalty under this section in
23 such amount in the discretion of the department as may appear
24 appropriate and equitable under all of the circumstances.

25 (cf: P.L.1991, c.91, s.222)

26

27 3. Section 8 of P.L.1983, c.330 (C.13:1K-13) is amended to read
28 as follows:

29 8. a. Failure of the transferor to comply with any of the provisions
30 of this act is grounds for voiding the sale or transfer of an industrial
31 establishment or any real property utilized in connection therewith by
32 the transferee, entitles the transferee to recover damages from the
33 transferor, and renders the owner or operator of the industrial
34 establishment strictly liable, without regard to fault, for all cleanup and
35 removal costs and for all direct and indirect damages resulting from
36 the failure to implement the cleanup plan.

37 b. Failure to submit a negative declaration, or cleanup plan
38 pursuant to the provisions of section 4 of this act is grounds for
39 voiding the sale by the department.

40 c. Any person who knowingly gives or causes to be given any false
41 information or who fails to comply with the provisions of this act is
42 liable for a penalty of not more than \$25,000.00 for each offense. If
43 the violation is of a continuing nature, each day during which it
44 continues shall constitute an additional and separate offense. Penalties
45 shall be collected in a civil action by a summary proceeding under "the
46 penalty enforcement law" (N.J.S.2A:58-1 et seq.). Any officer or

1 management official of an industrial establishment who knowingly
2 directs or authorizes the violation of any provisions of this act shall be
3 personally liable for the penalties established in this subsection.

4 d. Any person who violates the provisions of this act, or any rule
5 or regulation adopted pursuant thereto, shall publish, in at least two
6 newspapers in general circulation in the area where the violation
7 occurred, a notice of the violation. The notice shall include the name
8 and address of the person violating the provisions of this act, or any
9 rule or regulation adopted pursuant thereto, the specific provision of
10 this law, or any rule or regulation adopted pursuant thereto violated,
11 a brief description of the violation, and any fines or penalties paid or
12 agreed to by the person violating this law or any rule or regulation
13 adopted pursuant thereto. The notice shall be printed in a size and
14 format and in a section of the newspaper, as specified by the
15 department, so as to be prominently visible. This notice requirement
16 shall apply only to violations the fine for which exceeds \$2,000, for
17 which the alleged violator has exhausted, or has chosen not to pursue,
18 the available appeal process. Notice shall be published within 45 days
19 from the date of assessment of, or agreement to, the fine or, in the
20 case of an appeal, the rendering of a final decision on the appeal.
21 (cf: P.L.1983, c.330, s.8)

22
23 4. Section 2 of P.L.1984, c.210 (C.13:1K-16) is amended to read
24 as follows:

25 2. a. An owner or operator of an industrial establishment, or real
26 property which once was the site of an industrial establishment who
27 knows or suspects the occurrence of any hazardous discharge on-site,
28 above or below ground at the industrial establishment or real property
29 shall, within 10 days of obtaining any information leading to this
30 knowledge or suspicion, make an inspection thereof and file a written
31 report concerning this hazardous discharge with the governing body
32 of the municipality in which the industrial establishment or real
33 property is located and the local board of health. The report shall
34 include: the types and quantity of hazardous substances involved in
35 the hazardous discharge if known; the location of the hazardous
36 discharge; and any actions taken by the owner or operator of the
37 industrial establishment to contain the hazardous substance.

38 b. A person who fails to make a report required pursuant to this
39 section knowingly gives or causes to be given any false information in
40 any such report, or otherwise violates the provisions of this section, or
41 any rule or regulation adopted pursuant thereto, is liable to a penalty
42 of not more than \$50,000.00, to be collected in a summary proceeding
43 under "the penalty enforcement law," N.J.S.2A:58-1 et seq., or in a
44 court of competent jurisdiction wherein injunctive relief has been
45 requested. The Superior Court shall have jurisdiction to enforce "the
46 penalty enforcement law." If the violation is of a continuing nature

1 each day during which it continues shall constitute an additional,
2 separate and distinct offense.

3 c. If any person violates any of the provisions of this section, the
4 Department of Environmental Protection, the governing body of the
5 municipality or the local health department may institute a civil action
6 in the Superior Court for injunctive relief to prohibit and prevent the
7 continuation of the violation and the court may proceed in a summary
8 manner.

9 d. Any person reporting a hazardous discharge pursuant to the
10 provisions of this section shall not, by this report, incur liability for the
11 cleanup of the hazardous discharge. The provisions of this subsection
12 shall not affect a person's liability for the cleanup of a hazardous
13 discharge under any other law, rule, or regulation.

14 e. Any person who violates the provisions of this act, or any rule
15 or regulation adopted pursuant thereto, shall publish, in at least two
16 newspapers in general circulation in the area where the violation
17 occurred, a notice of the violation. The notice shall include the name
18 and address of the person violating the provisions of this act, or any
19 rule or regulation adopted pursuant thereto, the specific provision of
20 this law, or any rule or regulation adopted pursuant thereto violated,
21 a brief description of the violation, and any fines or penalties paid or
22 agreed to by the person violating this law or any rule or regulation
23 adopted pursuant thereto. The notice shall be printed in a size and
24 format and in a section of the newspaper, as specified by the
25 department, so as to be prominently visible. This notice requirement
26 shall apply only to violations the fine for which exceeds \$2,000, for
27 which the alleged violator has exhausted, or has chosen not to pursue,
28 the available appeal process. Notice shall be published within 45 days
29 from the date of assessment of, or agreement to, the fine or, in the
30 case of an appeal, the rendering of a final decision on the appeal.

31 (cf: P.L.1984, c.210, s.2)

32

33 5. Section 9 of P.L.1970, c.272 (C.13:9A-9) is amended to read as
34 follows:

35 9. a. Any person who violates any order by the commissioner, or
36 violates any of the provisions of this act, shall be liable to the State for
37 the cost of restoration of the affected wetland to its condition prior to
38 such violation insofar as that is possible, and shall be punished by a
39 fine of not more than \$1,000.00, to be collected in accordance with
40 the provisions of [the Penalty Enforcement Law] "the penalty
41 enforcement law" (N.J.S.2A:58-1 et seq.).

42 b. Any person who violates the provisions of this act, or any rule
43 or regulation adopted pursuant thereto, shall publish, in at least two
44 newspapers in general circulation in the area where the violation
45 occurred, a notice of the violation. The notice shall include the name
46 and address of the person violating the provisions of this act, or any

1 rule or regulation adopted pursuant thereto, the specific provision of
2 this law, or any rule or regulation adopted pursuant thereto violated,
3 a brief description of the violation, and any fines or penalties paid or
4 agreed to by the person violating this law or any rule or regulation
5 adopted pursuant thereto. The notice shall be printed in a size and
6 format and in a section of the newspaper, as specified by the
7 department, so as to be prominently visible. This notice requirement
8 shall apply only to violations the fine imposed for which exceeds
9 \$2,000, for which the alleged violator has exhausted, or has chosen
10 not to pursue, the available appeal process. Notice shall be published
11 within 45 days from the date of assessment of, or agreement to, the
12 fine or, in the case of an appeal, the rendering of a final decision on the
13 appeal.

14 (cf: P.L.1970, c.272, s.9)

15

16 6. Section 21 of P.L.1987, c.156 (C.13:9B-21) is amended to read
17 as follows:

18 21. a. Whenever, on the basis of available information, the
19 commissioner finds that a person is in violation of any provision of this
20 act, or any rule or regulation adopted, or permit or order issued,
21 pursuant to this act, the commissioner may:

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

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

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

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

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

32 Recourse to any of the remedies available under this section shall
33 not preclude recourse to any of the other remedies.

34 b. Whenever, on the basis of available information, the
35 commissioner finds a person in violation of any provision of this act,
36 or of any rule or regulation adopted, or permit or order issued,
37 pursuant to this act, the commissioner may issue an order: (1)
38 specifying the provision or provisions of this act, or the rule,
39 regulation, permit or order of which he is in violation; (2) citing the
40 action which constituted the violation; (3) requiring compliance with
41 the provision or provisions violated; (4) requiring the restoration of
42 the freshwater wetland or transition area which is the site of the
43 violation; and (5) providing notice to the person of his right to a
44 hearing on the matters contained in the order.

45 c. The commissioner is authorized to institute a civil action in
46 Superior Court for appropriate relief from any violation of any

1 provisions of this act, or any rule or regulation adopted, or permit or
2 order issued, pursuant to this act. Such relief may include, singly or
3 in combination:

- 4 (1) A temporary or permanent injunction;
- 5 (2) Assessment of the violator for the costs of any investigation,
6 inspection, or monitoring survey which led to the establishment of the
7 violation, and for the reasonable costs of preparing and bringing legal
8 action under this subsection;
- 9 (3) Assessment of the violator for any costs incurred by the State
10 in removing, correcting, or terminating the adverse effects upon the
11 freshwater wetland resulting from any unauthorized regulated activity
12 for which legal action under this subsection may have been brought;
- 13 (4) Assessment against the violator for compensatory damages for
14 any loss or destruction of wildlife, fish or aquatic life, and for any
15 other actual damages caused by an unauthorized regulated activity.
16 Assessments under this subsection shall be paid to the State Treasurer,
17 except that compensatory damages shall be paid by specific order of
18 the court to any persons who have been aggrieved by the unauthorized
19 regulated activity;
- 20 (5) A requirement that the violator restore the site of the violation
21 to the maximum extent practicable and feasible.

22 d. The commissioner is authorized to assess a civil administrative
23 penalty of not more than \$10,000.00 for each violation, and each day
24 during which each violation continues shall constitute an additional,
25 separate, and distinct offense. Any amount assessed under this
26 subsection shall fall within a range established by regulation by the
27 commissioner for violations of similar type, seriousness, and duration.
28 No assessment shall be levied pursuant to this section until after the
29 party has been notified by certified mail or personal service. The
30 notice shall identify the section of the statute, regulation, or order or
31 permit condition violated; recite the facts alleged to constitute a
32 violation; state the amount of the civil penalties to be imposed; and
33 affirm the rights of the alleged violator to a hearing. The ordered
34 party shall have 20 days from receipt of the notice within which to
35 deliver to the commissioner a written request for a hearing. After the
36 hearing and upon finding that a violation has occurred, the
37 commissioner may issue a final order after assessing the amount of the
38 fine specified in the notice. If no hearing is requested, the notice shall
39 become a final order after the expiration of the 20-day period.
40 Payment of the assessment is due when a final order is issued or the
41 notice becomes a final order. The authority to levy an administrative
42 order is in addition to all other enforcement provisions in this act, and
43 the payment of any assessment shall not be deemed to affect the
44 availability of any other enforcement provisions in connection with the
45 violation for which the assessment is levied. Any civil administrative
46 penalty assessed under this section may be compromised by the

1 commissioner upon the posting of a performance bond by the violator,
2 or upon such terms and conditions as the commissioner may establish
3 by regulation.

4 e. A person who violates this act, an administrative order issued
5 pursuant to subsection b., or a court order issued pursuant to
6 subsection c., or who fails to pay a civil administrative assessment in
7 full pursuant to subsection d., shall be subject, upon order of a court,
8 to a civil penalty not to exceed \$10,000.00 per day of such violation,
9 and each day during which the violation continues shall constitute an
10 additional, separate, and distinct offense. Any civil penalty imposed
11 pursuant to this subsection may be collected with costs in a summary
12 proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1
13 et seq.). The Superior Court shall have jurisdiction to enforce "the
14 penalty enforcement law" in conjunction with this act.

15 f. A person who willfully or negligently violates this act shall be
16 guilty, upon conviction, of a crime of the fourth degree and shall be
17 subject to a fine of not less than \$2,500.00 nor more than \$25,000.00
18 per day of violation. A second offense under this subsection shall
19 subject the violator to a fine of not less than \$5,000.00 nor more than
20 \$50,000.00 per day of violation. A person who knowingly makes a
21 false statement, representation, or certification in any application,
22 record, or other document filed or required to be maintained under this
23 act, or who falsifies, tampers with or knowingly renders inaccurate,
24 any monitoring device or method required to be maintained pursuant
25 to this act, shall, upon conviction, be subject to a fine of not more than
26 \$10,000.00.

27 g. In addition to the penalties prescribed in this section, a notice of
28 violation of this act shall be recorded on the deed of the property
29 wherein the violation occurred, on order of the commissioner, by the
30 clerk or register of deeds and mortgages of the county wherein the
31 affected property is located and with the clerk of the Superior Court
32 and shall remain attached thereto until such time as the violation has
33 been remedied and the commissioner orders the notice of violation
34 removed.

35 h. If the violation is one in which the department has determined
36 that the restoration of the site to its pre-violation condition would
37 increase the harm to the freshwater wetland or its ecology, the
38 department may issue an "after the fact" permit for the regulated
39 activity that has already occurred; provided that assessment against the
40 violator for costs or damages enumerated in subsection c. of this
41 section have been made, the creation or restoration of freshwater
42 wetlands resources at another site has been required of the violator, an
43 opportunity has been afforded for public hearing and comment, and the
44 reasons for the issuance of the "after the fact" permit are published in
45 the New Jersey Register and in a newspaper of general circulation in
46 the geographical area of the violation. Any person violating an "after

1 the fact" permit issued pursuant to this subsection shall be subject to
2 the provisions of this section.

3 i. The burden of proof and degrees of knowledge or intent required
4 to establish a violation of this act shall be no greater than the burden
5 of proof or degree of knowledge or intent which the United States
6 Environmental Protection Agency must meet in establishing a violation
7 of the Federal Act or impelmenting regulations.

8 j. The department shall establish and implement a program
9 designed to facilitate public participation in the enforcement of this act
10 which complies with the requirements of the Federal Act and
11 implementing regulations.

12 k. The department shall make available without restriction any
13 information obtained or used in the implementation of this act to the
14 United States Environmental Protection Agency upon a request
15 therefor.

16 l. The department may require an applicant or permittee to provide
17 any information the department requires to determine compliance with
18 the provisions of this act.

19 m. The department shall have the authority to enter any property,
20 facility, premises or site for the purpose of conducting inspections,
21 sampling of soil or water, copying or photocopying documents or
22 records, and for otherwise determining compliance with the provisions
23 of this act.

24 n. Any person who violates the provisions of this act, or any rule
25 or regulation adopted pursuant thereto, shall publish, in at least two
26 newspapers in general circulation in the area where the violation
27 occurred, a notice of the violation. The notice shall include the name
28 and address of the person violating the provisions of this act, or any
29 rule or regulation adopted pursuant thereto, the specific provision of
30 this law, or any rule or regulation adopted pursuant thereto violated,
31 a brief description of the violation, and any fines or penalties paid or
32 agreed to by the person violating this law or any rule or regulation
33 adopted pursuant thereto. The notice shall be printed in a size and
34 format and in a section of the newspaper, as specified by the
35 department, so as to be prominently visible. This notice requirement
36 shall apply only to violations the fine for which exceeds \$2,000, for
37 which the alleged violator has exhausted, or has chosen not to pursue,
38 the available appeal process. Notice shall be published within 45 days
39 from the date of assessment of, or agreement to, the fine or, in the
40 case of an appeal, the rendering of a final decision on the appeal.

41 (cf: P.L.1987, c.156, s.21)

42

43 7. Section 18 of P.L.1973, c.185 (C.13:19-18) is amended to read
44 as follows:

45 18. a. If any person violates any of the provisions of this act, rule,
46 regulation or order promulgated or issued pursuant to the provisions

1 of this act, the department may institute a civil action in the Superior
2 Court for injunctive relief to prohibit and prevent such violation or
3 violations and said court may proceed in a summary manner. Any
4 person who violates any of the provisions of this act, rule, regulation
5 or order promulgated or issued pursuant to this act shall be liable to
6 a penalty of not more than \$3,000.00 to be collected in a summary
7 proceeding or in any case before a court of competent jurisdiction
8 wherein injunctive relief has been requested. If the violation is of a
9 continuing nature, each day during which it continues shall constitute
10 an additional, separate and distinct offense. The department is hereby
11 authorized and empowered to compromise and settle any claim for a
12 penalty under this section in such amount in the discretion of the
13 department as may appear appropriate and equitable under the
14 circumstances.

15 b. Any person who violates the provisions of this act, or any rule
16 or regulation adopted pursuant thereto, shall publish, in at least two
17 newspapers in general circulation in the area where the violation
18 occurred, a notice of the violation. The notice shall include the name
19 and address of the person violating the provisions of this act, or any
20 rule or regulation adopted pursuant thereto, the specific provision of
21 this law, or any rule or regulation adopted pursuant thereto violated,
22 a brief description of the violation, and any fines or penalties paid or
23 agreed to by the person violating this law or any rule or regulation
24 adopted pursuant thereto. The notice shall be printed in a size and
25 format and in a section of the newspaper, as specified by the
26 department, so as to be prominently visible. This notice requirement
27 shall apply only to violations the fine imposed for which exceeds
28 \$2,000, for which the alleged violator has exhausted, or has chosen
29 not to pursue, the available appeal process. Notice shall be published
30 within 45 days from the date of assessment of, or agreement to, the
31 fine or, in the case of an appeal, the rendering of a final decision on the
32 appeal.

33 (cf: P.L.1973, c.185, s.18)

34

35 8. Section 19 of P.L.1954, c.212 (C.26:2C-19) is amended to read
36 as follows:

37 19. a. If any person violates any of the provisions of this act or
38 any code, rule, regulation or order promulgated or issued pursuant to
39 the provisions of this act, the department may institute a civil action
40 in a court of competent jurisdiction for injunctive or any other
41 appropriate relief to prohibit and prevent such violation or violations
42 and the said court may proceed in the action in a summary manner.

43 b. Any person who violates the provisions of this act or any code,
44 rule, regulation or order promulgated or issued pursuant to this act
45 shall be liable to a civil administrative penalty of not more than
46 \$10,000.00 for the first offense, not more than \$25,000.00 for the

1 second offense, and not more than \$50,000.00 for the third and each
2 subsequent offense. If the violation is of a continuing nature, each day
3 during which it continues shall constitute an additional, separate and
4 distinct offense. No civil administrative penalty shall be levied except
5 upon an administrative order issued pursuant to section 14 of
6 P.L.1954, c.212 (C.26:2C-14).

7 c. The department is hereby authorized and empowered to
8 compromise and settle any claim for a penalty under this section in
9 such amount in the discretion of the department as may appear
10 appropriate and equitable under all of the circumstances.

11 d. Any person who violates the provisions of P.L.1954, c.212
12 (C.26:2C-1 et seq.) or any code, rule, regulation, or order
13 promulgated or issued pursuant to that act, or a court order issued
14 pursuant to subsection a. of this section, or who fails to pay a civil
15 administrative penalty in full pursuant to section 9 of P.L.1962, c.215
16 (C.26:2C-14.1), is subject, upon order of the court, to a civil penalty
17 of not more than \$10,000.00 for the first offense, not more than
18 \$25,000.00 for the second offense, and not more than \$50,000.00 for
19 the third and each subsequent offense. If the violation is of a
20 continuing nature, each day during which the violation continues, or
21 each day in which the civil administrative penalty is not paid in full,
22 constitutes an additional, separate and distinct offense. Any penalty
23 imposed under this subsection may be recovered with costs in a
24 summary proceeding pursuant to "the penalty enforcement law"
25 (N.J.S.2A:58-1 et seq.). The Law Division of the Superior Court has
26 jurisdiction to enforce "the penalty enforcement law."

27 e. A person who causes a release of air contaminants in a quantity
28 or concentration which poses a potential threat to public health,
29 welfare or the environment or which might reasonably result in citizen
30 complaints shall immediately notify the department. A person who
31 fails to so notify the department is liable to the penalties and
32 procedures prescribed in this section.

33 f. Any person who:

34 (1) purposely or knowingly violates the provisions of P.L.1954,
35 c.212 (C.26:2C-1 et seq.), or any code, rule, regulation, administrative
36 order, or court order promulgated or issued pursuant thereto, is guilty
37 of a crime of the third degree;

38 (2) recklessly violates the provisions of P.L.1954, c.212
39 (C.26:2C-1 et seq.), or any code, rule, regulation, administrative
40 order, or court order promulgated or issued pursuant thereto, is guilty
41 of a crime of the fourth degree.

42 g. Any person who violates the provisions of this act, or any rule
43 or regulation adopted pursuant thereto, shall publish, in at least two
44 newspapers in general circulation in the area where the violation
45 occurred, a notice of the violation. The notice shall include the name
46 and address of the person violating the provisions of this act, or any

1 rule or regulation adopted pursuant thereto, the specific provision of
2 this law, or any rule or regulation adopted pursuant thereto violated,
3 a brief description of the violation, and any fines or penalties paid or
4 agreed to by the person violating this law or any rule or regulation
5 adopted pursuant thereto. The notice shall be printed in a size and
6 format and in a section of the newspaper, as specified by the
7 department, so as to be prominently visible. This notice requirement
8 shall apply only to violations the fine for which exceeds \$2,000, for
9 which the alleged violator has exhausted, or has chosen not to pursue,
10 the available appeal process. Notice shall be published within 45 days
11 from the date of assessment of, or agreement to, the fine or, in the
12 case of an appeal, the rendering of a final decision on the appeal.

13 (cf: P.L.1989, c.333, s.1)

14

15 9. Section 33 of P.L.1983, c.315 (C.34:5A-31) is amended to read
16 as follows:

17 33. a. Whenever, on the basis of information available to him, the
18 Commissioner of Environmental Protection finds that an employer is
19 in violation of subsection b. of section 7, or of subsection b. or c. of
20 section 9 of this act, or any rule and regulation adopted pursuant
21 thereto, or the Commissioner of Health finds that an employer is in
22 violation of subsection a. of section 7, or of section 10, 11, 12, 13, or
23 14 of this act, or any rule and regulation adopted pursuant thereto, the
24 Commissioner of Environmental Protection, or the Commissioner of
25 Health, as the case may be, shall:

26 (1) Issue an order in accordance with subsection b. of this section
27 requiring the employer to comply;

28 (2) Bring a civil action in accordance with subsection c. of this
29 section;

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

32 (4) Bring an action for a civil penalty in accordance with
33 subsection e. of this section.

34 The exercise of any of the remedies provided in this section shall
35 not preclude recourse to any other remedy so provided.

36 b. Whenever, on the basis of information available to him, the
37 Commissioner of Environmental Protection finds that an employer is
38 in violation of subsection b. of section 7, or of subsection b. or c. of
39 section 9 of this act or any rule or regulation adopted pursuant
40 thereto, or the Commissioner of Health finds that an employer is in
41 violation of subsection a. of section 7, or of section 10, 11, 12, 13, or
42 14 of this act, or any rule or regulation adopted pursuant thereto, the
43 Commissioner of Environmental Protection or the Commissioner of
44 Health, as the case may be, may issue an order (1) specifying the
45 provision or provisions of this act, or the rule or regulation adopted
46 pursuant thereto of which the employer is in violation; (2) citing the

1 action which caused the violation; (3) requiring compliance with the
2 provision of this act or the rules and regulations adopted pursuant
3 thereto of which he is in violation; and (4) giving notice to the
4 employer of his right to a hearing on the matters contained in the
5 order.

6 c. The Commissioner of Environmental Protection or the
7 Commissioner of Health, as appropriate, is authorized to commence
8 a civil action in Superior Court for appropriate relief from a violation
9 of this act. This relief may include an assessment against the violator
10 for the costs of any investigation, inspection, or monitoring survey
11 which led to the discovery and establishment of the violation, and for
12 the reasonable costs of preparing and litigating the case under this
13 subsection.

14 d. The Commissioner of Environmental Protection or the
15 Commissioner of Health, as appropriate, is authorized to impose a civil
16 administrative penalty of not more than \$2,500.00 for each violation
17 and additional penalties of not more than \$1,000.00 for each day
18 during which a violation continues after receipt of an order from the
19 commissioner to cease the violation. Any amount imposed under this
20 subsection shall fall within a range established by regulation by the
21 commissioner for violations of similar type, seriousness, and duration.
22 No civil administrative penalty shall be imposed until after the
23 employer has been notified by certified mail or personal service. The
24 notice shall include a reference to the section of the act, rule,
25 regulation or order violated; a concise statement of the facts alleged
26 to constitute a violation; a statement of the amount of the civil
27 administrative penalties to be imposed; and a statement of the
28 employer's right to a hearing. The employer shall have 20 days from
29 receipt of the notice within which to deliver to the commissioner a
30 written request for a hearing. Subsequent to the hearing and upon
31 finding that a violation has occurred, the commissioner may issue a
32 final order after imposing the amount of the fine specified in the
33 notice. If no hearing is requested, the notice shall become a final order
34 upon the expiration of the 20-day period. Payment of the penalty is
35 due when a final order is issued or when the notice becomes a final
36 order. The authority to levy a civil administrative penalty is in addition
37 to all other enforcement provisions in this act, and the payment of a
38 civil administrative penalty shall not be deemed to affect the
39 availability of any other enforcement provision in connection with the
40 violation for which the penalty is levied. A civil administrative penalty
41 imposed under this section may be compromised by the commissioner
42 upon the posting of a performance bond by the employer, or upon
43 terms and conditions the commissioner may establish by regulation.

44 e. An employer who violates this act, an order issued pursuant to
45 subsection b. of this section, or a court order issued pursuant to
46 subsection c. of this section, or who fails to pay in full a civil

1 administrative penalty levied pursuant to subsection d. of this section,
2 shall be subject, upon order of a court, to a civil penalty not to exceed
3 \$2,500.00 for each day during which the violation continues. An
4 employer who willfully or knowingly violates this act, or who willfully
5 or knowingly makes a false statement, representation, or certification
6 in any document filed or required to be maintained under this act, or
7 who falsifies, tampers with, or knowingly renders inaccurate any
8 monitoring device required to be maintained pursuant to this act, is
9 subject upon order of a court, to a civil penalty of not less than
10 \$10,000.00, nor more than \$5,000.00 per day of violation. Any penalty
11 imposed pursuant to this subsection may be collected, and any costs
12 incurred in connection therewith may be recovered, in a summary
13 proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1
14 et seq.). The Superior Court shall have jurisdiction to enforce "the
15 penalty enforcement law."

16 f. Any person who violates the provisions of this act, or any rule or
17 regulation adopted pursuant thereto, shall publish, in at least two
18 newspapers in general circulation in the area where the violation
19 occurred, a notice of the violation. The notice shall include the name
20 and address of the person violating the provisions of this act, or any
21 rule or regulation adopted pursuant thereto, the specific provision of
22 this law, or any rule or regulation adopted pursuant thereto violated,
23 a brief description of the violation, and any fines or penalties paid or
24 agreed to by the person violating this law or any rule or regulation
25 adopted pursuant thereto. The notice shall be printed in a size and
26 format and in a section of the newspaper, as specified by the
27 department, so as to be prominently visible. This notice requirement
28 shall apply only to violations the fine for which exceeds \$2,000, for
29 which the alleged violator has exhausted, or has chosen not to pursue,
30 the available appeal process. Notice shall be published within 45 days
31 from the date of assessment of, or agreement to, the fine or, in the
32 case of an appeal, the rendering of a final decision on the appeal.
33 (cf: P.L.1991, c.91, s.345)

34
35 10. Section 10 of P.L.1977, c.224 (C.58:12A-10) is amended to
36 read as follows:

37 10. a. If any person violates any of the provisions of this act or any
38 rule, regulation or order promulgated or issued pursuant to the
39 provisions of this act, the department may institute a civil action in a
40 court of competent jurisdiction for injunctive or any other appropriate
41 relief to prohibit and prevent such violation or violations, and the said
42 court may proceed in the action in a summary manner.

43 b. Any person who violates the provisions of this act or any rule,
44 regulation or order promulgated pursuant to this act shall be liable to
45 a civil administrative penalty of not more than \$5,000.00 for the first
46 offense, not less than \$5,000.00 nor more than \$10,000.00 for the

1 second offense, and up to \$25,000.00 for the third and each
2 subsequent offense, to be collected in a civil action by a summary
3 proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et
4 seq.), or in any case before a court of competent jurisdiction wherein
5 injunctive relief had been requested. If the violation is of a continuing
6 nature, each day during which it continues subsequent to receipt of an
7 order to cease the violation shall constitute an additional, separate and
8 distinct offense. No civil administrative penalty shall be levied, except
9 subsequent to the notification of the violator by certified mail or
10 personal service. The notice shall include a reference to the section of
11 the statute, regulation, order or permit condition violated; a concise
12 statement of the facts alleged to constitute the violation; a statement
13 of the amount of the civil penalties to be imposed; and a statement of
14 the violator's right to a hearing. The violator shall have 20 days from
15 receipt of the notice within which to deliver to the commissioner a
16 written request for a hearing. Subsequent to the hearing and upon a
17 finding that a violation has occurred, the commissioner may issue a
18 final order after assessing the amount of the fine specified in the
19 notice. If no hearing is requested, the notice shall become a final order
20 upon the expiration of the 20-day period. Payment of the penalty is
21 due when a final order is issued or when the notice becomes a final
22 order. The authority to levy a civil administrative penalty is in addition
23 to all other enforcement provisions in this act, and the payment of a
24 civil administrative penalty shall not be deemed to affect the
25 availability of any other enforcement provision in connection with the
26 violation for which the penalty is levied.

27 c. The department is hereby authorized and empowered to
28 compromise and settle any claim for a penalty under this section in
29 such amount in the discretion of the department as may appear
30 appropriate and equitable under all of the circumstances, including the
31 posting of a performance bond by the violator.

32 d. Any person who violates this act, or an administrative order
33 issued pursuant to subsection b. of this section, or a court order issued
34 pursuant to subsection a. of this section, or who fails to pay a civil
35 administrative penalty in full pursuant to subsection b. of this section
36 shall be subject, upon order of the court, to a civil penalty not to
37 exceed \$10,000.00 per day of the violation, and each day's
38 continuance of the violation shall constitute a separate and distinct
39 violation. Any penalty imposed under this subsection may be recovered
40 with costs in a summary proceeding pursuant to "the penalty
41 enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court shall
42 have jurisdiction to enforce "the penalty enforcement law."

43 e. Any person who violates the provisions of this act, or any rule or
44 regulation adopted pursuant thereto, shall publish, in at least two
45 newspapers in general circulation in the area where the violation
46 occurred, a notice of the violation. The notice shall include the name

1 and address of the person violating the provisions of this act, or any
2 rule or regulation adopted pursuant thereto, the specific provision of
3 this law, or any rule or regulation adopted pursuant thereto violated,
4 a brief description of the violation, and any fines or penalties paid or
5 agreed to by the person violating this law or any rule or regulation
6 adopted pursuant thereto. The notice shall be printed in a size and
7 format and in a section of the newspaper, as specified by the
8 department, so as to be prominently visible. This notice requirement
9 shall apply only to violations the fine for which exceeds \$2,000, for
10 which the alleged violator has exhausted, or has chosen not to pursue,
11 the available appeal process. Notice shall be published within 45 days
12 from the date of assessment of, or agreement to, the fine or, in the
13 case of an appeal, the rendering of a final decision on the appeal.
14 (cf: P.L.1991, c.91, s.531)

15

16 11. Section 12 of P.L.1972, c.185 (C.58:16A-63) is amended to
17 read as follows:

18 12. **[(a)]a.** Any person who knowingly violates a provision of this
19 act or a rule, regulation or order adopted pursuant to this act shall be
20 subject to a penalty of not more than \$2,500.00 for each offense and
21 any person who otherwise violates a provision of this act shall be
22 subject to a penalty of not more than \$1,500.00 for each offense, both
23 to be collected by the department in a summary proceeding under "the
24 penalty enforcement law" (N.J.S.2A:58-1 et seq.), and in any court of
25 competent jurisdiction wherein injunctive relief has been requested.
26 The Superior Court shall have jurisdiction to enforce said penalty
27 enforcement law. If the violation is of a continuing nature each day
28 which it continues shall constitute an additional, separate and distinct
29 offense. The department is hereby authorized and empowered to
30 compromise and settle any claim for a penalty under this section in
31 such amount in the discretion of the department as may appear
32 appropriate and equitable under all of the circumstances. All moneys
33 recovered in any such action, together with the costs recovered
34 therein, shall be paid to the Environmental Services Fund.

35 **[(b)]b.** If any person violates any of the provisions of this act or
36 any rule or regulation promulgated pursuant to the provisions of this
37 act, the department may institute an action in a court of competent
38 jurisdiction for injunctive relief to prohibit and prevent such violation
39 or violations and the said court may proceed in the action in a
40 summary manner.

41 **c.** Any person who violates the provisions of this act, or any rule
42 or regulation adopted pursuant thereto, shall publish, in at least two
43 newspapers in general circulation in the area where the violation
44 occurred, a notice of the violation. The notice shall include the name
45 and address of the person violating the provisions of this act, or any
46 rule or regulation adopted pursuant thereto, the specific provision of

1 this law, or any rule or regulation adopted pursuant thereto violated,
2 a brief description of the violation, and any fines or penalties paid or
3 agreed to by the person violating this law or any rule or regulation
4 adopted pursuant thereto. The notice shall be printed in a size and
5 format and in a section of the newspaper, as specified by the
6 department, so as to be prominently visible. This notice requirement
7 shall apply only to violations the fine for which exceeds \$2,000, for
8 which the alleged violator has exhausted, or has chosen not to pursue,
9 the available appeal process. Notice shall be published within 45 days
10 from the date of assessment of, or agreement to, the fine or, in the
11 case of an appeal, the rendering of a final decision on the appeal.
12 (cf: P.L.1991, c.91, s.532)

13

14 12. Section 22 of P.L.1976, c.141 (C.58:10-23.11u) is amended to
15 read as follows:

16 22. a. [(1)] Whenever, on the basis of available information, the
17 department determines that a person is in violation of a provision of
18 P.L.1976, c.141 (C.58:10-23.11 et seq.), including any rule,
19 regulation, plan, information request, access request, order or directive
20 promulgated or issued pursuant thereto, or that a person knowingly
21 has given false testimony, documents or information to the
22 department, the department may:

23 (a) bring a civil action in accordance with subsection b. of this
24 section;

25 (b) levy a civil administrative penalty in accordance with subsection
26 c. of this section; or

27 (c) bring an action for a civil penalty in accordance with subsection
28 d. of this section.

29 Use of any remedy specified in this section shall not preclude use
30 of any other remedy. The department may simultaneously pursue
31 administrative and judicial remedies provided in this section.

32 b. The department may commence a civil action in Superior Court
33 for, singly or in combination:

34 (1) a temporary or permanent injunction;

35 (2) the costs of any investigation, cleanup or removal, and for the
36 reasonable costs of preparing and successfully litigating an action
37 under this subsection;

38 (3) the cost of restoring, repairing, or replacing real or personal
39 property damaged or destroyed by a discharge, any income lost from
40 the time the property is damaged to the time it is restored, repaired or
41 replaced, and any reduction in value of the property caused by the
42 discharge by comparison with its value prior thereto;

43 (4) the cost of restoration and replacement, where practicable, of
44 any natural resource damaged or destroyed by a discharge; and

45 (5) any other costs incurred by the department pursuant to
46 P.L.1976, c.141.

1 Compensatory damages for damages awarded to a person other
2 than the State shall be paid to the person injured by the discharge.

3 c. (1) The department may assess a civil administrative penalty of
4 not more than \$50,000 for each violation, and each day of violation
5 shall constitute an additional, separate and distinct violation. A civil
6 administrative penalty shall not be levied until a violator has been
7 notified by certified mail or personal service of:

8 (a) the statutory or regulatory basis of the violation;

9 (b) the specific citation of the act or omission constituting the
10 violation;

11 (c) the amount of the civil administrative penalty to be imposed;

12 (d) the right of the violator to a hearing on any matter contained
13 in the notice and the procedures for requesting a hearing.

14 (2) (a) A violator shall have 20 calendar days following receipt of
15 notice within which to request a hearing on any matter contained in the
16 notice, and shall comply with all procedures for requesting a hearing.
17 Failure to submit a timely request or to comply with all departmental
18 procedures shall constitute grounds for denial of a hearing request.
19 After a hearing and upon a finding that a violation has occurred, the
20 department shall issue a final order assessing the amount of the civil
21 administrative penalty specified in the notice. If a violator does not
22 request a hearing or fails to satisfy the statutory and administrative
23 requirements for requesting a hearing, the notice of assessment of a
24 civil administrative penalty shall become a final order on the 21st
25 calendar day following receipt of the notice by the violator. If the
26 department denies a hearing request, the notice of denial shall become
27 a final order upon receipt of the notice by the violator.

28 (b) A civil administrative penalty may be settled by the department
29 on such terms and conditions as the department may determine.

30 (c) Payment of a civil administrative penalty shall not be deemed
31 to affect the availability of any other enforcement remedy in
32 connection with the violation for which the penalty was levied.

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

46 (4) The department may assess and recover, by civil administrative

1 order, the costs of any investigation, cleanup or removal, and the
2 reasonable costs of preparing and successfully enforcing a civil
3 administrative penalty pursuant to this subsection. The assessment may
4 be recovered at the same time as a civil administrative penalty, and
5 shall be in addition to the penalty assessment.

6 d. Any person who violates a provision of P.L.1976, c.141
7 (C.58:10-23.11 et seq.), or a court order issued pursuant thereto, or
8 who fails to pay a civil administrative penalty in full or to agree to a
9 schedule of payments therefor, shall be subject to a civil penalty not to
10 exceed \$50,000.00 per day for each violation, and each day's
11 continuance of the violation shall constitute a separate violation. Any
12 penalty incurred under this subsection may be recovered with costs in
13 a summary proceeding pursuant to "the penalty enforcement law"
14 (N.J.S.2A:58-1 et seq.) in the Superior Court or a municipal court.

15 e. All conveyances used or intended for use in the willful discharge
16 of any hazardous substance are subject to forfeiture to the State
17 pursuant to the provisions of P.L.1981, c.387 (C.13:1K-1 et seq.).

18 f. Any person who violates the provisions of this act, or any rule
19 or regulation adopted pursuant thereto, shall publish, in at least two
20 newspapers in general circulation in the area where the violation
21 occurred, a notice of the violation. The notice shall include the name
22 and address of the person violating the provisions of this act, or any
23 rule or regulation adopted pursuant thereto, the specific provision of
24 this law, or any rule or regulation adopted pursuant thereto violated,
25 a brief description of the violation, and any fines or penalties paid or
26 agreed to by the person violating this law or any rule or regulation
27 adopted pursuant thereto. The notice shall be printed in a size and
28 format and in a section of the newspaper, as specified by the
29 department, so as to be prominently visible. This notice requirement
30 shall apply only to violations the fine for which exceeds \$2,000, for
31 which the alleged violator has exhausted, or has chosen not to pursue,
32 the available appeal process. Notice shall be published within 45 days
33 from the date of assessment of, or agreement to, the fine or, in the
34 case of an appeal, the rendering of a final decision on the appeal.

35 (cf: P.L.1990, c.75, s.1)

36

37 13. Section 12 of P.L.1985, c.403 (C.13:1K-30) is amended to
38 read as follows:

39 12. a. If any person violates any of the provisions of sections 4
40 through 8 of this act or any rule, regulation or order promulgated or
41 issued pursuant thereto, the department may institute a civil action in
42 a court of competent jurisdiction for injunctive or any other
43 appropriate relief to prohibit and prevent this violation and the court
44 may proceed in the action in a summary manner.

45 b. Any person who violates the provisions of sections 4 through 8
46 of this act or any rule, regulation or order promulgated pursuant

1 thereto is liable to a civil administrative penalty of not more than
2 \$10,000.00 for the first offense, not more than \$20,000.00 for the
3 second offense, and up to \$50,000.00 for the third and each
4 subsequent offense. If the violation is of a continuing nature, each day
5 during which it continues constitutes an additional, separate and
6 distinct offense. No civil administrative penalty shall be levied except
7 subsequent to the notification of the violator by certified mail or
8 personal service. The notice shall include a reference to the section of
9 the statute, regulation, order or permit condition violated; a concise
10 statement of the facts alleged to constitute the violation; a statement
11 of the amount of the civil penalties to be imposed; and a statement of
12 the violator's right to a hearing. The violator shall have 20 days from
13 receipt of the notice within which to deliver to the commissioner a
14 written request for a hearing. Subsequent to the hearing and upon a
15 finding that a violation has occurred, the commissioner may issue a
16 final order after assessing the amount of the fine specified in the
17 notice. If no hearing is requested, the notice shall become a final order
18 upon the expiration of the 20-day period. Payment of the penalty is
19 due when a final order is issued or when the notice becomes a final
20 order. The authority to levy a civil administrative penalty is in
21 addition to all other enforcement provisions in this act, and the
22 payment of a civil administrative penalty shall not be deemed to affect
23 the availability of any other enforcement provision in connection with
24 the violation for which the penalty is levied.

25 c. The department is authorized and empowered to compromise
26 and settle any claim for a penalty under this section in such amount in
27 the discretion of the department as may appear appropriate and
28 equitable under all of the circumstances, including the posting of a
29 performance bond by the violator.

30 d. Any person who violates any of the provisions of sections 4
31 through 8 of this act, or any rule, regulation, or order promulgated or
32 issued pursuant thereto, or an administrative order issued pursuant to
33 subsection b. of this section or a court order issued pursuant to
34 subsection a. of this section or who fails to pay a civil administrative
35 penalty in full pursuant to subsection b. of this section is subject, upon
36 order of the court, to a civil penalty not to exceed \$10,000.00 per day
37 of the violation, and each day's continuance of the violation constitutes
38 a separate and distinct violation. Any penalty imposed under this
39 subsection may be recovered with costs in a summary proceeding
40 pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).
41 The Superior Court shall have jurisdiction to enforce "the penalty
42 enforcement law."

43 e. Any person who violates the provisions of this act, or any rule
44 or regulation adopted pursuant thereto, shall publish, in at least two
45 newspapers in general circulation in the area where the violation
46 occurred, a notice of the violation. The notice shall include the name

1 and address of the person violating the provisions of this act, or any
2 rule or regulation adopted pursuant thereto, the specific provision of
3 this law, or any rule or regulation adopted pursuant thereto violated,
4 a brief description of the violation, and any fines or penalties paid or
5 agreed to by the person violating this law or any rule or regulation
6 adopted pursuant thereto. The notice shall be printed in a size and
7 format and in a section of the newspaper, as specified by the
8 department, so as to be prominently visible. This notice requirement
9 shall apply only to violations the fine for which exceeds \$2,000, for
10 which the alleged violator has exhausted, or has chosen not to pursue,
11 the available appeal process. Notice shall be published within 45 days
12 from the date of assessment of, or agreement to, the fine or, in the
13 case of an appeal, the rendering of a final decision on the appeal.
14 (cf: P.L.1985, c.403, s.12)

15

16 14. There is appropriated from the General Fund to the
17 Department of Environmental Protection the sum of \$50,000 for the
18 purpose of implementing the provisions of this act.

19

20 15. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill requires persons violating designated State environmental
26 laws to publish a public notice of the violation. Publication is to be
27 made in at least two newspapers circulating within the area of the
28 violation, and shall include the name and address of the violator, the
29 provision of law, rule or regulation violated, a description of the
30 violation, and the fines or penalties paid or to which the violator has
31 agreed. Public notice shall be given only if the amount of the penalty
32 exceeds \$2,000.00. Notice shall be provided within 45 days of
33 imposition of the fine or, in the case, of an appeal, the rendering of a
34 final decision on the appeal. The Department of Environmental
35 Protection shall specify the size and format of the notice and section
36 of the newspaper in which it is to be published.

37 The provisions of the bill apply to violations of the Solid Waste
38 Management Act, the Pesticide Control Act of 1971, the
39 Environmental Cleanup Responsibility Act, the Wetlands Act of 1970,
40 the Freshwater Wetlands Protection Act, the Coastal Area Facility
41 Review Act, the Air Pollution Control Act (1954), the Worker and
42 Community Right to Know Act, the Safe Drinking Water Act, the
43 Flood Hazard Area Control Act, the Spill Compensation and Control
44 Act, and the Toxic Catastrophe Prevention Act. This bill does not
45 apply to the Water Pollution Control Act as amendments to that act
46 adopted in 1990 contained publication provisions.

- 1 _____
- 2
- 3 Requires publication of violations of designated environmental statutes
- 4 and makes an appropriation.