

ASSEMBLY, No. 712

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 imposition of interest charges on certain
2 unpaid fees and penalties and revising various parts of the statutory
3 law.

4

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

7

8 1. (New section) a. Whenever a law authorizes the collection of
9 an interest charge for the failure to pay to the Department of
10 Environmental Protection, the Department of Health, or the Board of
11 Regulatory Commissioners, a civil administrative penalty, or a fee or
12 other charge when due and payable, the interest charge shall be
13 assessed and collected in accordance with the provisions of this
14 section. Nothing in this section shall be construed to authorize the
15 imposition of an interest charge unless the law providing for the
16 penalty, fee, or charge so provides.

17 b. A civil administrative penalty assessed, or a fee or charge
18 collectible by the department, the Attorney General, or the board,
19 including a portion thereof required to be paid pursuant to a payment
20 schedule approved by the department, the Attorney General, or the
21 board, which is not paid within 30 days of the date that payment of the
22 penalty, fee or charge, or portion thereof, is due, shall be subject to an
23 interest charge on the amount of the penalty, fee or charge, or portion
24 thereof, which shall accrue as of the date payment is due, unless the
25 penalty or the amount of the fee or charge is contested by the person
26 responsible for the payment thereof.

27 c. If the penalty or the amount of the fee or charge is contested:

28 (1) and the amount of the penalty, fee or charge is upheld in whole
29 or in part, an interest charge shall accrue and be collectible on the
30 amount of the penalty, fee or charge upheld as of the date that
31 payment was originally due on the penalty, fee or charge that was
32 contested;

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 (2) no interest charge shall be assessed on the amount of any
2 penalty, fee or charge that was paid prior to or within 30 days from the
3 date payment of the contested penalty, or amount of the fee or charge
4 was originally due, and if the amount paid to the department, the
5 Attorney General, or the board, was in excess of the amount that is
6 subsequently upheld, the department, the Attorney General, or the
7 board, as the case may be, shall be liable to payment of an interest
8 charge for such excess amount, which interest charge shall accrue as
9 of the date that the penalty, fee or charge was received by the
10 department, the Attorney General, or the board.

11 d. Interest charges assessed and collectible pursuant to this section,
12 shall be based on the rate of interest on judgments provided in the
13 New Jersey Rules of Court.

14 e. Interest charges collected pursuant to this section shall be
15 deposited in the same accounts and dedicated and appropriated for
16 the same purposes to which the underlying penalty, fee or charge is
17 dedicated or appropriated.

18 f. For the purpose of this section, the date that a fee or charge is
19 due is the date that written notice of the fee or charge is received by
20 the person responsible for payment thereof, or such later date as may
21 be specified in the notice.

22

23 2. Section 5 of P.L.1975, c.232 (C.13:1D-33) is amended to read
24 as follows:

25 5. The commissioner shall adopt, amend and repeal rules and
26 regulations to implement the provisions of this act. The commissioner
27 shall in accordance with a fee schedule adopted as a rule or regulation
28 establish and charge reasonable fees for the filing and review of any
29 application for a construction permit. The fees and any interest
30 imposed hereunder, except as may otherwise be provided by law, shall
31 be deposited in a fund to be known as the "Environmental Services
32 Fund," kept separate and apart from all other State receipts and
33 appropriated only as provided herein. There shall be appropriated
34 annually to the department revenue from such fund sufficient to defray
35 in full the costs incurred in the processing and review of applications
36 for construction permits. If a fee imposed pursuant to this section is
37 not paid within 30 days of the date that the fee is due, an interest
38 charge shall accrue on the amount of the fee due and shall be
39 collectible in accordance with the provisions of section 1 of P.L. .
40 c. (C.) (pending in the Legislature as this bill).

41 (cf: P.L.1975, c.232, s.5)

42

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

45 9. a. All codes, rules and regulations adopted by the department
46 related to solid waste collection and disposal shall have the force and

1 effect of law. These codes, rules and regulations shall be observed
2 throughout the State and shall be enforced by the department and by
3 every local board of health, or county health department, as the case
4 may be.

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

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

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

19 Any county health department may charge and collect from the
20 owner or operator of any sanitary landfill facility within its jurisdiction
21 such fees for enforcement activities as may be established by ordinance
22 or resolution adopted by the governing body of any such county.
23 [Such] The fees shall be established in accordance with a fee schedule
24 regulation [to be] adopted by the department, pursuant to law, [within
25 60 days of the effective date of the amendatory act] and shall be
26 utilized exclusively to fund such enforcement activities.

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

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

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

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

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

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

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

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

1 c. Whenever the commissioner finds that a person has violated any
2 provision of P.L.1970, c.39, or any rule or regulation adopted, permit
3 issued, or district solid waste management plan adopted pursuant to
4 P.L.1970, c.39, he may issue an order specifying the provision or
5 provisions of P.L.1970, c.39, or the rule, regulation, permit or district
6 solid waste management plan of which the person is in violation, citing
7 the action which constituted the violation, ordering abatement of the
8 violation, and giving notice to the person of his right to a hearing on
9 the matters contained in the order. The ordered party shall have 20
10 calendar days from receipt of the order within which to deliver to the
11 commissioner a written request for a hearing. [After the hearing and
12 upon finding that a violation has occurred, the commissioner may issue
13 a final order. If no hearing is requested, then the order shall become
14 final after the expiration of the 20 day period.] Such order shall be
15 effective upon receipt and any person to whom such order is directed
16 shall comply with the order immediately. A request for hearing shall
17 not automatically stay the effect of the order.

18 d. The commissioner, a local board of health or county health
19 department may institute an action or proceeding in the Superior Court
20 for injunctive and other relief, including the appointment of a receiver
21 for any violation of this act, or of any code, rule or regulation
22 [promulgated] adopted, permit issued [or], district solid waste
23 management plan adopted or order issued pursuant to this act and said
24 court may proceed in the action in a summary manner. In any such
25 proceeding the court may grant temporary or interlocutory relief,
26 notwithstanding the provisions of R.S.48:2-24.

27 Such relief may include, singly or in combination:

28 (1) A temporary or permanent injunction;

29 (2) Assessment of the violator for the costs of any investigation,
30 inspection, or monitoring survey which led to the establishment of the
31 violation, and for the reasonable costs of preparing and litigating the
32 case under this subsection;

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

38 (4) Assessment against the violator of compensatory damages for
39 any loss or destruction of wildlife, fish or aquatic life, and for any
40 other actual damages caused by any violation of this act or any rule,
41 regulation or condition of approval established pursuant to this act for
42 which the action under this subsection may have been brought.
43 Assessments under this subsection shall be paid to the State Treasurer,
44 or to the local board of health, or to the county health department, as
45 the case may be, except that compensatory damages may be paid by
46 specific order of the court to any persons who have been aggrieved by

1 the violation.

2 If a proceeding is instituted by a local board of health or county
3 health department, notice thereof shall be served upon the
4 commissioner in the same manner as if the commissioner were a named
5 party to the action or proceeding. The department may intervene as a
6 matter of right in any proceeding brought by a local board of health or
7 county health department.

8 e. The commissioner is authorized to assess a civil administrative
9 penalty of not more than \$50,000.00 for each violation provided that
10 each day during which the violation continues shall constitute an
11 additional, separate and distinct offense. The commission shall not
12 assess a civil administrative penalty in excess of \$25,000.00 for a
13 single violation, or in excess of \$2,500.00 for each day during which
14 a violation continues, until the department has adopted, pursuant to
15 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
16 seq.), regulations requiring the commissioner, in assessing a civil
17 administrative penalty, to consider the operational history of the solid
18 waste facility at which the violation occurred, the severity of the
19 violation, the measures taken to mitigate or prevent further violations,
20 and whether the penalty will maintain an appropriate deterrent. No
21 assessment shall be levied pursuant to this section until after the
22 violator has been notified by certified mail or personal service. The
23 notice shall include a reference to the section of the statute, rule,
24 regulation, order, permit condition or district solid waste management
25 plan violated, a concise statement of the facts alleged to constitute a
26 violation, a statement of the amount of the civil administrative
27 penalties to be imposed, a statement of the amount of interest to be
28 charged if the penalty is not paid when due, and a statement of the
29 party's right to a hearing. The ordered party shall have 20 calendar
30 days from receipt of the notice within which to deliver to the
31 commissioner a written request for a hearing. After the hearing and
32 upon finding that a violation has occurred, the commissioner may issue
33 a final order after assessing the amount of the fine specified in the
34 notice. If no hearing is requested, the notice shall become a final order
35 after the expiration of the 20-day period. Payment of the assessment
36 is due when a final order is issued or the notice becomes a final order.
37 If a civil administrative penalty imposed hereunder is not paid within
38 30 days of the date that the penalty is due, an interest charge shall
39 accrue on the amount of the penalty due and shall be collectible in
40 accordance with the provisions of section 1 of P.L. _____, c.
41 (C. _____)(pending in the Legislature as this bill). The authority to levy
42 a civil administrative penalty is in addition to all other enforcement
43 provisions in P.L.1970, c.39, and the payment of any assessment shall
44 not be deemed to affect the availability of any other enforcement
45 provisions in connection with the violation for which the assessment
46 is levied. The department may compromise any civil administrative

1 penalty assessed under this section in an amount the department
2 determines appropriate.

3 f. Any person who violates the provisions of [this act] P.L.1970,
4 c.39, or any code, rule or regulation [promulgated] adopted pursuant
5 [to this act] thereto shall be liable to a penalty of not more than
6 \$50,000.00 per day, to be collected in a civil action commenced by a
7 local board of health, a county health department, or the
8 commissioner.

9 Any person who violates an administrative order issued pursuant to
10 subsection c. of this section, or a court order issued pursuant to
11 subsection d. of this section, or who fails to pay an administrative
12 assessment in full pursuant to subsection e. of this section is subject
13 upon order of a court to a civil penalty not to exceed \$100,000.00 per
14 day of such violations.

15 Of the penalty imposed pursuant to this subsection, 10% or
16 \$250.00, whichever is greater, shall be paid to the department from the
17 General Fund if the Attorney General determines that a person is
18 entitled to a reward pursuant to section 2 of P.L.1987, c.158
19 (C.13:1E-9.2).

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

25 g. Any person who knowingly:

26 (1) Transports any hazardous waste to a facility or any other place
27 which does not have authorization from the department to accept such
28 waste;

29 (2) Generates and causes or permits to be transported any
30 hazardous waste to a facility or any other place which does not have
31 authorization from the department to accept such waste;

32 (3) Disposes, treats, stores or transports hazardous waste without
33 authorization from the department;

34 (4) Makes any false or misleading statement to any person who
35 prepares any hazardous waste application, label, manifest, record,
36 report, design or other document required to be submitted to the
37 department; or

38 (5) Makes any false or misleading statement on any hazardous
39 waste application, label, manifest, record, report, design or other
40 document required to be submitted to the department shall, upon
41 conviction, be guilty of a crime of the third degree and,
42 notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a
43 fine of not more than \$50,000.00 for the first offense and not more
44 than \$100,000.00 for the second and each subsequent offense and
45 restitution, in addition to any other appropriate disposition authorized
46 by subsection b. of N.J.S.2C:43-2.

1 h. Any person who recklessly:

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 fourth degree.

18 i. Any person who, regardless of intent, generates and causes or
19 permits any hazardous waste to be transported, transports, or receives
20 transported hazardous waste without completing and submitting to the
21 department a hazardous waste manifest in accordance with the
22 provisions of this act or any rule or regulation adopted pursuant hereto
23 shall, upon conviction, be guilty of a crime of the fourth degree.

24 j. All conveyances used or intended for use in the willful discharge,
25 in violation of the provisions of P.L.1970, c.39 (C.13:1E-1 et seq.), of
26 any solid waste, or hazardous waste as defined in P.L.1976, c.99
27 (C.13:1E-38 et seq.) are subject to forfeiture to the State pursuant to
28 the provisions of P.L.1981, c.387 (C.13:1K-1 et seq.).

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

33 l. Pursuit of any remedy specified in this section shall not preclude
34 the pursuit of any other remedy provided by any other law.
35 Administrative and judicial remedies provided in this section may be
36 pursued simultaneously.

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

38

39 4. Section 3 of P.L.1971, c.461 (C.13:1E-18) is amended to read
40 as follows:

41 3. a. The department may in accordance with a fee schedule
42 adopted as a rule or regulation establish and charge annual or periodic
43 fees for any of the services to be performed in connection with the
44 "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.),
45 except that the annual or periodic fees charged by the department to
46 cover the costs incurred by any State agency relevant to pre-licensing

1 investigations, post-licensing compliance monitoring or related
2 activities under the provisions of P.L.1983, c.392 (C.13:1E-126 et
3 seq.) shall be based upon the size of the business concern. For the
4 purposes of this subsection, "business concern" means any
5 corporation, association, firm, partnership, sole proprietorship, trust
6 or other form of commercial organization; "size" means the number of
7 key employees or persons required to be listed in the disclosure
8 statement, or otherwise shown to have a beneficial interest in the
9 business of the applicant, permittee or licensee as defined in section 2
10 of P.L.1983, c.392 (C.13:1E-127); and "State agency" means any
11 State department, division, agency, commission or authority.

12 The department, upon receipt of standard billing, shall provide
13 reimbursement in full to the Attorney General or any other State
14 agency for all expenses incurred by that State agency in the
15 performance of pre-licensing investigations, post-licensing compliance
16 monitoring or any other related activities consistent with the
17 provisions of P.L.1983, c.392 (C.13:1E-126 et seq.).

18 b. The fee schedule shall reasonably reflect the duration or
19 complexity of the specific service rendered, permit application
20 reviewed, or registration statement or engineering design application
21 approval sought.

22 c. If a fee imposed pursuant to the schedule adopted in accordance
23 with this section is not paid within 30 days of the date that the fee is
24 due, an interest charge shall accrue on the amount of the fee due and
25 shall be collectible in accordance with the provisions of section 1 of
26 P.L. , c. (C.)(pending in the Legislature as this bill.

27 cf: P.L.1991, c.269, s.15)

28

29 5. Section 2 of P.L.1979, c.186 (C.13:1E-42.2) is amended to read
30 as follows:

31 2. The Department of Environmental Protection is hereby
32 authorized to make an assessment against any major hazardous waste
33 facility that handles or disposes of hazardous wastes in an amount
34 sufficient to cover the costs of the inspections required pursuant to
35 section 1 of this act (C.13:1E-42.1). Any such assessment shall be
36 charged and collected in accordance with a fee schedule adopted by
37 the department as a rule and regulation pursuant to the provisions of
38 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
39 seq.).

40 If an assessment imposed pursuant to this section is not paid within
41 30 days of the date that the assessment is due, an interest charge shall
42 accrue on the assessment amount due and shall be collectible in
43 accordance with the provisions of section 1 of P.L. , c.
44 (C.)(pending in the Legislature as this bill).

45 (cf: P.L.1981, c.279, s.46)

1 6. Section 7 of P.L.1989, c.34 (C.13:1E-48.7) is amended to read
2 as follows:

3 7. Every generator shall register with the Department of
4 Environmental Protection on a form prescribed by the department, and
5 pay an annual fee therefor in an amount set by the department pursuant
6 to a rule or regulation adopted in accordance with the "Administrative
7 Procedure Act." The department shall set annual fees based upon the
8 volume of the regulated medical waste produced by the generator.
9 The annual fees shall not exceed the following limitations:

- 10 I. Uner 50 pounds per year \$100.00
11 II. 50 - 200 pounds per year \$300.00
12 III. Over 200 - 300 pounds per year \$500.00
13 IV. Over 300 - 1000 pounds per year \$1,000.00
14 V. Over 1000 pounds per year \$3,500.00

15 The generator shall indicate on the registration form the name of
16 every transporter retained by the generator to collect the generator's
17 regulated medical waste.

18 If a fee imposed pursuant to this section is not paid within 30 days
19 of the date that the fee is due, an interest charge shall accrue on the
20 amount of the fee due and shall be collectible in accordance with the
21 provisions of section 1 of P.L. , c. (C.) (pending in the
22 Legislature as this bill).

23 (cf: P.L.1989, c.240, s.1)

24

25 7. Section 9 of P.L.1989, c.34 (C.13:1E-48.9) is amended to read
26 as follows:

27 9. Every transporter shall submit an application for a certificate of
28 public convenience and necessity to the Board of Public Utilities on a
29 form prescribed by the board, and pay an initial and annual renewal fee
30 in an amount set by the board as may be necessary to cover the costs
31 of reviewing the qualifications of applicants, including background
32 investigations, and the costs of compliance monitoring and
33 administration.

34 If a fee imposed pursuant to this section is not paid within 30 days
35 of the date that the fee is due, an interest charge shall accrue on the
36 amount of the fee due and shall be collectible in accordance with the
37 provisions of section 1 of P.L. , c. (C.) (pending in the
38 Legislature as this bill).

39 (cf: P.L.1989, c.34, s.9)

40

41 8. Section 10 of P.L.1989, c.34 (C.13:1E-48.10) is amended to
42 read as follows:

43 10. No person, including generators, may accept regulated medical
44 waste for disposal within the State or for transfer to an in-state or
45 out-of-state disposal site except upon authorization of the Department
46 of Environmental Protection and payment of an annual registration fee

1 in an amount set by the Department of Environmental Protection
2 pursuant to a rule or regulation adopted in accordance with the
3 "Administrative Procedure Act."

4 If a fee imposed pursuant to this section is not paid within 30 days
5 of the date that the fee is due, an interest charge shall accrue on the
6 amount of the fee due and shall be collectible in accordance with the
7 provisions of section 1 of P.L. , c. (C.) (pending in the
8 Legislature as this bill).

9 (cf: P.L.1989, c.34, s.10)

10

11 9. Section 20 of P.L.1989 c.34 (C.13:1E-48.20) is amended to
12 read as follows:

13 20. a. This act, and any rule or regulation adopted pursuant
14 thereto, shall be enforced by the departments and by every local board
15 of health, or county health department, as the case may be.

16 The departments and the local board of health, or the county health
17 department, as the case may be, shall have the right to enter the
18 premises of a generator, transporter, or facility at any time in order to
19 determine compliance with this act.

20 The municipal attorney or an attorney retained by a municipality in
21 which a violation of this act is alleged to have occurred shall act as
22 counsel to a local board of health.

23 The county counsel or an attorney retained by a county in which a
24 violation of this act is alleged to have occurred shall act as counsel to
25 the county health department.

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

30 b. Whenever the Commissioner of Environmental Protection or the
31 Commissioner of Health finds that a person has violated this act, or
32 any rule or regulation adopted pursuant thereto, that commissioner
33 shall:

34 (1) issue an order requiring the person found to be in violation to
35 comply in accordance with subsection c. of this section;

36 (2) bring a civil action in accordance with subsection d. of this
37 section;

38 (3) levy a civil administrative penalty in accordance with subsection
39 e. of this section;

40 (4) bring an action for a civil penalty in accordance with subsection
41 f. of this section; or

42 (5) petition the Attorney General to bring a criminal action in
43 accordance with subsections g. through l. of this section.

44 Pursuit of any of the remedies specified under this section shall not
45 preclude the seeking of any other remedy specified.

46 c. Whenever the Commissioner of Environmental Protection or the

1 Commissioner of Health finds that a person has violated this act, or
2 any rule or regulation adopted pursuant thereto, that commissioner
3 may issue an order specifying the provision or provisions of this act,
4 or the rule or regulation adopted pursuant thereto, of which the person
5 is in violation, citing the action that constituted the violation, ordering
6 abatement of the violation, and giving notice to the person of the
7 person's right to a hearing on the matters contained in the order. The
8 ordered party shall have 20 days from receipt of the order within
9 which to deliver to the commissioner a written request for a hearing.
10 After the hearing and upon finding that a violation has occurred, the
11 commissioner may issue a final order. If no hearing is requested, the
12 order shall become final after the expiration of the 20-day period. A
13 request for hearing shall not automatically stay the effect of the order.

14 d. The Commissioner of Environmental Protection, the
15 Commissioner of Health, a local board of health, or a county health
16 department may institute an action or proceeding in the Superior Court
17 for injunctive and other relief, including the appointment of a receiver
18 for any violation of this act, or of any rule or regulation adopted
19 pursuant thereto, and the court may proceed in the action in a
20 summary manner. In any such proceeding the court may grant
21 temporary or interlocutory relief.

22 Such relief may include, singly or in combination:

23 (1) a temporary or permanent injunction;

24 (2) assessment of the violator for the costs of any investigation,
25 inspection, or monitoring survey that led to the establishment of the
26 violation, and for the reasonable costs of preparing and litigating the
27 case under this subsection;

28 (3) assessment of the violator for any cost incurred by the State in
29 removing, correcting, or terminating the adverse effects upon
30 environmental quality or public health resulting from any violation of
31 this act, or any rule or regulation adopted pursuant thereto, for which
32 the action under this subsection may have been brought;

33 (4) assessment against the violator of compensatory damages for
34 any loss or destruction of wildlife, fish or aquatic life, and for any
35 other actual damages caused by any violation of this act, or any rule
36 or regulation adopted pursuant thereto, for which the action under this
37 subsection may have been brought.

38 Assessments under this subsection shall be paid to the State
39 Treasurer, or to the local board of health, or to the county health
40 department, as the case may be, except that compensatory damages
41 may be paid by specific order of the court to any persons who have
42 been aggrieved by the violation.

43 If a proceeding is instituted by a local board of health or county
44 health department, notice thereof shall be served upon the
45 commissioners in the same manner as if the commissioners were named
46 parties to the action or proceeding. Either of the departments may

1 intervene as a matter of right in any proceeding brought by a local
2 board of health or county health department.

3 e. Either of the commissioners, as the case may be, may assess a
4 civil administrative penalty of not more than \$50,000 for each
5 violation. Each day that a violation continues shall constitute an
6 additional, separate, and distinct offense. A commissioner may not
7 assess a civil administrative penalty in excess of \$25,000 for a single
8 violation, or in excess of \$2,500 for each day during which a violation
9 continues, until the departments have respectively adopted, pursuant
10 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
11 et seq.), regulations requiring the appropriate commissioner, in
12 assessing a civil administrative penalty, to consider the operational
13 history of the violator, the severity of the violation, the measures taken
14 to mitigate or prevent further violations, and whether the penalty will
15 maintain an appropriate deterrent. No assessment may be levied
16 pursuant to this section until after the violator has been notified by
17 certified mail or personal service. The notice shall include a reference
18 to the section of the statute, rule, regulation, or order violated, a
19 concise statement of the facts alleged to constitute a violation, a
20 statement of the amount of the civil administrative penalties to be
21 imposed, a statement of the amount of interest to be charged if the
22 penalty is not paid when due, and a statement of the party's right to a
23 hearing. The ordered party shall have 20 calendar days from receipt of
24 the notice within which to deliver to the appropriate commissioner a
25 written request for a hearing. After the hearing and upon finding that
26 a violation has occurred, that commissioner may issue a final order
27 after assessing the amount of the fine specified in the notice. If no
28 hearing is requested, the notice shall become a final order after the
29 expiration of the 20-day period. Payment of the assessment is due
30 when a final order is issued or the notice becomes a final order. If a
31 civil administrative penalty imposed pursuant to this section is not paid
32 within 30 days of the date that the penalty is due, an interest charge
33 shall accrue on the amount of the penalty due and shall be collectible
34 in accordance with the provisions of section 1 of P.L. , c.
35 (C.) (pending in the Legislature as this bill). The authority to
36 levy a civil administrative penalty is in addition to all other
37 enforcement provisions in this act, and the payment of any assessment
38 shall not be deemed to affect the availability of any other enforcement
39 provisions in connection with the violation for which the assessment
40 is levied. Each department may compromise any civil administrative
41 penalty assessed under this section in an amount the department
42 determines appropriate.

43 f. A person who violates this act, or any rule or regulation adopted
44 pursuant thereto, shall be liable for a penalty of not more than \$50,000
45 per day, to be collected in a civil action commenced by the
46 Commissioner of Environmental Protection, the Commissioner of

1 Health, a local board of health, or a county health department.

2 A person who violates an administrative order issued pursuant to
3 subsection c. of this section, or a court order issued pursuant to
4 subsection d. of this section, or who fails to pay an administrative
5 assessment in full pursuant to subsection e. of this section is subject
6 upon order of a court to a civil penalty not to exceed \$100,000 per
7 day of each violation.

8 Of the penalty imposed pursuant to this subsection, 10% or \$250,
9 whichever is greater, shall be paid to the appropriate department from
10 the General Fund if the Attorney General determines that a person is
11 entitled to a reward pursuant to section 24 of this act.

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

17 g. A person who purposely or knowingly:

18 (1) disposes or stores regulated medical waste without
19 authorization from either the Department of Environmental Protection
20 or the Department of Health, as appropriate, or in violation of this act,
21 or any rule or regulation adopted pursuant thereto;

22 (2) makes any false or misleading statement to any person who
23 prepares any regulated medical waste application, registration, form,
24 label, certification, manifest, record, report, or other document
25 required by this act, or any rule or regulation adopted pursuant
26 thereto;

27 (3) makes any false or misleading statement on any regulated
28 medical waste application, registration, form, label, certification,
29 manifest, record, report, or other document required by this act, or any
30 rule or regulation adopted pursuant thereto; or

31 (4) fails to properly treat certain types of regulated medical waste
32 designated by the Department of Health in a prescribed manner; shall,
33 upon conviction, be guilty of a crime of the third degree and,
34 notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a
35 fine of not more than \$50,000 for the first offense, and not more than
36 \$100,000 for each subsequent offense, and restitution, in addition to
37 any other appropriate disposition authorized by subsection b. of
38 N.J.S.2C:43-2.

39 h. A person who recklessly or negligently:

40 (1) disposes or stores regulated medical waste without
41 authorization from either the Department of Environmental Protection
42 or the Department of Health, as appropriate, or in violation of this act,
43 or any rule or regulation adopted pursuant thereto;

44 (2) makes any false or misleading statement to any person who
45 prepares any regulated medical waste application, registration, form,
46 label, certification, manifest, record, report, or other document

1 required by this act, or any rule or regulation adopted pursuant
2 thereto;

3 (3) makes any false or misleading statement on any regulated
4 medical waste application, registration, form, label, certification,
5 manifest, record, report, or other document required by this act, or any
6 rule or regulation adopted pursuant thereto; or

7 (4) fails to properly treat certain types of regulated medical waste
8 designated by the Department of Health in a manner prescribed
9 thereby; shall, upon conviction, be guilty of a crime of the fourth
10 degree.

11 i. A person who, regardless of intent:

12 (1) transports any regulated medical waste to a facility or any other
13 place in the State that does not have authorization from the
14 Department of Environmental Protection and the Board of Public
15 Utilities to accept such waste, or in violation of this act, or any rule or
16 regulation adopted pursuant thereto; or

17 (2) transports, or receives transported, regulated medical waste
18 without completing and submitting a manifest in accordance with this
19 act, or any rule or regulation adopted pursuant thereto; shall, upon
20 conviction, be guilty of a crime of the fourth degree.

21 j. A person who purposely, knowingly, or recklessly:

22 (1) generates and causes or permits to be transported any
23 regulated medical waste to a facility or any other place in the State
24 that does not have authorization from the Department of
25 Environmental Protection and the Board of Public Utilities to accept
26 such waste, or in violation of this act, or any rule or regulation
27 adopted pursuant thereto; or

28 (2) violates any other provision of this act, or any rule or
29 regulation adopted pursuant thereto, for which no other criminal
30 penalty has been specifically provided for; shall, upon conviction, be
31 guilty of a crime of the fourth degree.

32 k. All conveyances used or intended for use in the willful
33 discharge, in violation of this act, or any rule or regulation adopted
34 pursuant thereto, of regulated medical waste are subject to forfeiture
35 to the State pursuant to P.L.1981, c.387 (C.13:1K-1 et seq.).

36 l. The provisions of N.J.S.2C:1-6 to the contrary notwithstanding,
37 a prosecution for violation of subsection g., subsection h., subsection
38 i., or subsection j. of this section shall be commenced within five years
39 of the date of discovery of the violation.

40 m. No prosecution for a violation under this act shall be deemed to
41 preclude a prosecution for the violation of any other applicable statute.
42 (cf: P.L.1989, c.34, s.20)

43

44 10. Section 12 of P.L.1981, c.279 (C.13:1E-60) is amended to
45 read as follows:

46 12. a. No person shall commence construction of any major

1 hazardous waste facility on or after the effective date of this act unless
2 that person shall have obtained the approval of the department for the
3 registration statement and engineering design for such facility prior to
4 construction thereof.

5 b. The department shall review all applications for registration
6 statements and engineering designs for new major hazardous waste
7 facilities in consultation with the council. The review shall include the
8 evaluation of an environmental and health impact statement, which
9 statement shall be prepared by the commission at the applicant's
10 expense.

11 In addition to all other standards and conditions pertaining to an
12 application for registration and engineering design approval, no such
13 approval shall be granted by the department for a new major hazardous
14 waste facility unless the department finds that:

15 (1) (Deleted by amendment, P.L.1983, c.392)

16 (2) The environmental and health impact statement shows that the
17 location and design of the proposed facility will pose no significant
18 threat to human health or to the environment if properly managed in
19 accordance with all relevant Federal and State laws and all rules and
20 regulations adopted pursuant thereto; and

21 (3) The proposed facility would be operated by the proposed
22 operator on a site designated by the commission for that particular
23 type of major hazardous waste facility.

24 c. The provisions of the "Administrative Procedure Act," P.L.1968,
25 c.410 (C.52:14B-1 et seq.), or any other law to the contrary
26 notwithstanding, the review of all applications for registration and
27 engineering design approval for new major hazardous waste facilities
28 shall be conducted in the following manner:

29 (1) Not less than 90 days prior to filing an application for
30 registration and engineering design approval, the applicant shall submit
31 to the department and the governing body of the affected municipality
32 a letter of intent to apply for registration and engineering design
33 approval, and a brief description of the nature of the proposed facility;

34 (2) (Deleted by amendment, P.L.1983, c.392)

35 (3) The department shall transmit, by certified mail, a complete
36 copy of any application submitted pursuant to this subsection to the
37 governing body, board of health, planning board and environmental
38 commission of the affected municipality;

39 (4) Within 6 months of the receipt of such notice, the affected
40 municipality shall conduct and transmit to the department a review of
41 the proposed facility and operator, including a site plan review
42 conducted in the manner provided by the "Municipal Land Use Law,"
43 P.L.1975, c.291 (C.40:55D-1 et seq.). The cost of the municipal
44 review shall be borne by the applicant, except that such cost shall not
45 exceed \$15,000.00 per application. In preparing this review, the
46 affected municipality may request and receive any reasonable and

1 relevant information from the applicant or the department;

2 (5) Within 8 months of the receipt of a complete application, the
3 department shall reject the application or grant tentative approval
4 thereof, which tentative approval shall establish design and operating
5 conditions for the proposed major hazardous waste facility,
6 requirements for the monitoring thereof, and any other conditions
7 required under State rules and regulations;

8 (6) All tentative approvals of applications granted pursuant to this
9 subsection shall be transmitted to the applicant and to the affected
10 municipality and shall be accompanied by a fact sheet setting forth the
11 principal facts and the significant factual, legal, methodological, and
12 policy questions considered in granting the tentative approval. The
13 fact sheet shall include a description of the type of facility or activity
14 which is the subject of the tentative approval; the types and quantities
15 of wastes which are proposed to be treated, stored, or disposed of at
16 the proposed facility; a brief summary of the basis for the conditions
17 of the tentative approval; the environmental and health impact
18 statement prepared for the proposed facility and a summary as to how
19 the statement demonstrates that the proposed facility, subject to such
20 conditions as may have been imposed, would not create a significant
21 adverse impact upon the public health or the environment, and, in the
22 event that the granting of the tentative approval is contrary to the
23 findings of the municipal review of the application, the department's
24 reasons for the rejection of those findings;

25 (7) Within 45 days of the granting of a tentative approval of an
26 application, an adjudicatory hearing on the proposed facility and
27 operator shall be conducted by an administrative law judge. The
28 affected municipality shall be a party of interest to such hearing, and
29 shall have the right to present testimony and cross-examine witnesses.
30 Intervention in this hearing by any other person shall be as provided
31 in the "Administrative Procedure Act";

32 (8) Within 30 days of the close of such hearing, the administrative
33 law judge shall transmit his recommendations for action on the
34 application to the department. The judge shall not recommend
35 approval of an application unless he finds clear and convincing
36 evidence that the disclosure statement and application for a
37 registration statement establish that the owner and operator of the
38 proposed facility possess sufficient financial resources to construct,
39 operate, and guarantee maintenance and closure of the facility, and
40 that the facility will not constitute a substantial detriment to the public
41 health, safety and welfare of the affected municipality; and

42 (9) Within 60 days of the receipt thereof, the department shall
43 affirm, conditionally affirm or reject the recommendations of the
44 administrative law judge and grant final approval to or deny the
45 application. Such approval or denial of an application by the
46 department shall be considered to be final agency action thereon for

1 the purposes of the "Administrative Procedure Act," and shall be
2 subject only to judicial review as provided in the Rules of Court.

3 If the department fails to act upon the recommendations of the
4 administrative law judge as required by this subsection, the failure shall
5 constitute departmental affirmance of the recommendations.

6 d. The department may charge and collect, in accordance with a fee
7 schedule adopted as a rule and regulation pursuant to the
8 "Administrative Procedure Act," such reasonable fees as may be
9 necessary to cover the costs of reviewing applications pursuant to this
10 section. If a fee imposed pursuant to this section is not paid within 30
11 days of the date that the fee is due, an interest charge shall accrue on
12 the amount of the fee due and shall be collectible in accordance with
13 the provisions of section 1 of P.L. , c. (C.) (pending in
14 the Legislature as this bill).

15 e. The department may, upon request of an owner or operator and
16 after public hearing, exempt a major hazardous waste facility below a
17 certain size or of a particular type from being considered a major
18 hazardous waste facility for the purposes of this section, provided that
19 such exemption is consistent with the eligibility standards contained in
20 rules and regulations adopted by the commission.

21 f. In the event that any application reviewed by the department
22 pursuant to this section is for a registration statement and engineering
23 design approval for a proposed major hazardous waste facility on a
24 site located in more than one municipality, the notices required herein
25 shall be transmitted to each affected municipality or agency thereof,
26 the municipal review of the proposed facility and operator shall be
27 conducted jointly by all of the affected municipalities, and all of the
28 affected municipalities shall be considered a single party for the
29 purposes of the adjudicatory hearing held pursuant to this section.
30 (cf: P.L.1983, c.392, s.12)

31

32 11. Section 9 of P.L.1971, c.176 (C.13:1F-9) is amended to read
33 as follows:

34 9. The department shall have power, in addition to those granted
35 by any other law, to

36 a. Conduct and supervise research programs for the purpose of
37 determining the effects and hazards of the use and application of
38 pesticides on man and his environment; and in furtherance of this
39 research effort the commissioner shall consider the School of
40 Agriculture of Rutgers, The State University, as a primary source of
41 assistance;

42 b. Conduct and supervise Statewide programs of pesticide control
43 education including the preparation and distribution of information
44 relating to pesticide control;

45 c. Enter and inspect any building or place, except private
46 residences, for the purpose of investigating an actual or suspected

- 1 violation of law relating to pesticides and ascertaining compliance or
2 noncompliance with any rules, regulations or orders of the department;
- 3 d. Receive or initiate complaints of violations of applicable laws,
4 rules, regulations and orders relating to pesticides and institute legal
5 proceedings for the prevention of such violations and for the recovery
6 of penalties, in accordance with law;
- 7 e. With the approval of the Governor, cooperate with, and receive
8 money from, the Federal Government, the State Government, or any
9 county or municipal government or from private sources for the study
10 and control of pesticides;
- 11 f. Declare as a pest any form of plant or animal life or virus which
12 is injurious to plants, man, domestic animals, articles, or substances;
- 13 g. Determine whether pesticides are highly toxic to man;
- 14 h. Determine standards of coloring or discoloring for pesticides;
- 15 i. Subject pesticides to the requirements of section 11 of P.L.1971,
16 c.176 (C.13:1F-11);
- 17 j. Cooperate with, and enter into agreement with, any other agency
18 of this State, or the United States, and any other state or agency
19 thereof for the purpose of carrying out the provisions of this act and
20 securing uniformity of regulations, in order to avoid confusion
21 endangering the public health, resulting from diverse requirements,
22 particularly as to the labeling and coloring of pesticides, and to avoid
23 increased costs due to the necessity of complying with such diverse
24 requirements in the manufacture and sale of such pesticides;
- 25 k. Have the power, in accordance with a fee schedule adopted as
26 a rule or regulation in accordance with the "Administrative Procedure
27 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to establish and charge
28 fees for any of the services it performs, which fees shall be annual or
29 periodic as the department shall determine. The fees charged by the
30 department pursuant to this section shall reflect the actual or projected
31 expense incurred by the department in the performance of the service
32 for which the fee is charged. All fees collected pursuant to this section
33 shall be deposited in the Environmental Services Fund created
34 pursuant to P.L.1975, c.232 and kept separate from other receipts
35 deposited therein and appropriated for the operation of the Pesticide
36 Control Program in the Department of Environmental Protection. If
37 a fee imposed pursuant to this section is not paid within 30 days of
38 the date that the fee is due, an interest charge shall accrue on the
39 amount of the fee due and shall be collectible in accordance with the
40 provisions of section 1 of P.L. , c. (C.) (pending in the
41 Legislature as this bill).
42 (cf: P.L.1981, c.538, s.1)
- 43
- 44 12. Section 5 of P.L.1971, c.418 (C.13:1G-5) is amended to read
45 as follows:
- 46 5. The department, in addition to its power to make and enforce

- 1 codes, rules or regulations promulgated by it, and in furtherance of
2 said power, shall also have the power to:
- 3 a. Conduct and supervise research programs for the purpose of
4 determining the causes, effects and hazards of noise.
- 5 b. Conduct and supervise Statewide programs of noise control
6 education, including the preparation and distribution of information
7 relating to noise control.
- 8 c. Require the registration of persons involved in operations which
9 may result in noise and the filing of reports by them containing
10 information relating to the sources of said noise and such other
11 information as the department shall prescribe. Such registration may
12 be revoked or suspended or renewal withheld, for any violation of this
13 act or of any codes, rules, regulations or orders promulgated
14 hereunder. The department may in accordance with a fee schedule
15 adopted as a rule or regulation establish and charge nonrefundable fees
16 for registration which may be annual or periodic as the department
17 shall determine. The registration fee shall not be less than \$10.00 nor
18 more than \$250.00 based on criteria contained in the fee schedule. If
19 a fee imposed pursuant to this section is not paid within 30 days of the
20 date that the fee is due, an interest charge shall accrue on the amount
21 of the fee due and shall be collectible in accordance with the
22 provisions of section 1 of P.L. , c. (C.) (pending in the
23 Legislature as this bill).
- 24 d. Enter and inspect any building or place, except private
25 residences, for the purpose of investigating an actual or suspected
26 source of noise and ascertaining compliance or noncompliance of any
27 code, rule and regulation of the department. Any information relating
28 to secret processes or methods of manufacture or production obtained
29 in the course of such inspection, investigation or determination shall
30 be kept confidential and shall not be admissible in evidence in any
31 court or in any other proceeding except to the extent herein provided.
32 If tests of any type are made for the purpose of determining whether
33 or not a violation has occurred, or for any other purpose in connection
34 with such entry and inspection, a duplicate of the results of the tests
35 shall be furnished promptly to the person suspected of violating the
36 code, rule or regulation.
- 37 e. With the approval of the Governor, cooperate with and receive
38 money from the Federal Government, the State Government or any
39 county or municipal government or from private sources for the study
40 and control of noise.
- 41 f. Receive or initiate complaints of noise, hold hearings in
42 connection therewith and institute legal proceedings for the prevention
43 of noise and for the recovery of penalties, in accordance with this act.
44 (cf: P.L.1971, c.418, s.5)

1 13. Section 5 of P.L.1983, c.330 (C.13:1K-10) is amended to read
2 as follows:

3 5. a. The department shall, pursuant to the "Administrative
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and
5 regulations establishing: minimum standards for soil, groundwater and
6 surface water quality necessary for the detoxification of the site of an
7 industrial establishment, including buildings and equipment, to ensure
8 that the potential for harm to public health and safety is minimized to
9 the maximum extent practicable, taking into consideration the location
10 of the site and surrounding ambient conditions; criteria necessary for
11 the evaluation and approval of cleanup plans; a fee schedule, as
12 necessary, reflecting the actual costs associated with the review of
13 negative declarations and cleanup plans; and any other provisions or
14 procedures necessary to implement this act. If a fee imposed pursuant
15 to a fee schedule adopted in accordance with this section is not paid
16 within 30 days of the date that the fee is due, an interest charge shall
17 accrue on the amount of the fee due and shall be collectible in
18 accordance with the provisions of section 1 of P.L. _____
19 (C. _____) (pending in the Legislature as this bill). Until the minimum
20 standards described herein are adopted, the department shall review,
21 approve or disapprove negative declarations and cleanup plans on a
22 case by case basis.

23 b. The department shall, within 45 days of submission, approve the
24 negative declaration, or inform the industrial establishment that a
25 cleanup plan shall be submitted.

26 c. The department shall, in accordance with the schedule contained
27 in an approved cleanup plan, inspect the premises to determine
28 conformance with the minimum standards for soil, groundwater and
29 surface water quality and shall certify that the cleanup plan has been
30 executed and that the site has been detoxified.

31 (cf: P.L.1983, c.330, s.5)

32

33 14. Section 7 of P.L.1985, c.403 (C.13:1K-25) is amended to read
34 as follows:

35 7. The owner or operator of every facility registered with the
36 department pursuant to section 4 of this act shall submit those
37 operations in the facility concerned with the generation, storage,
38 handling or safeguarding of any extraordinarily hazardous substance
39 to an Extraordinarily Hazardous Substance Accident Risk Assessment,
40 except as provided for in section 5 with respect to facilities with an
41 established risk management program. The EHSARA shall be
42 conducted in conformity with the work plan for the facility developed
43 by the department pursuant to section 6 of this act by an independent
44 consultant selected by the department from a list of three candidates
45 submitted by the owner of the subject facility or, at the option of the
46 department, by the department or by an independent consultant

1 contracted for directly by the department; except that the department,
2 with respect to the former option, may request the owner of the
3 subject facility to provide three additional candidate consultants if it
4 finds all three originally submitted by the facility owner unacceptable.

5 The owner of the subject facility shall be assessed a fee established
6 in accordance with a schedule, established as a regulation by the
7 department, which reflects all the costs of the risk assessment of that
8 facility conducted by, or on behalf of, the department. If a fee
9 imposed pursuant to this section is not paid within 30 days of the date
10 that the fee is due, an interest charge shall accrue on the amount of the
11 fee due and shall be collectible in accordance with the provisions of
12 section 1 of P.L. , c. (C.) (pending in the Legislature as
13 this bill).

14 (cf: P.L.1985, c.403, s.7)

15
16 15. Section 12 of P.L.1985, c.403 (C.13:1K-30) is amended to
17 read as follows:

18 12. a. If any person violates any of the provisions of sections 4
19 through 8 of this act or any rule, regulation or order promulgated or
20 issued pursuant thereto, the department may institute a civil action in
21 a court of competent jurisdiction for injunctive or any other
22 appropriate relief to prohibit and prevent this violation and the court
23 may proceed in the action in a summary manner.

24 b. Any person who violates the provisions of sections 4 through 8
25 of this act or any rule, regulation or order promulgated pursuant
26 thereto is liable to a civil administrative penalty of not more than
27 \$10,000.00 for the first offense, not more than \$20,000.00 for the
28 second offense, and up to \$50,000.00 for the third and each
29 subsequent offense. If the violation is of a continuing nature, each day
30 during which it continues constitutes an additional, separate and
31 distinct offense. No civil administrative penalty shall be levied except
32 subsequent to the notification of the violator by certified mail or
33 personal service. The notice shall include a reference to the section of
34 the statute, regulation, order or permit condition violated; a concise
35 statement of the facts alleged to constitute the violation; a statement
36 of the amount of the civil penalties to be imposed; a statement of the
37 amount of interest to be charged if the penalty is not paid when due;
38 and a statement of the violator's right to a hearing. The violator shall
39 have 20 days from receipt of the notice within which to deliver to the
40 commissioner a written request for a hearing. Subsequent to the
41 hearing and upon a finding that a violation has occurred, the
42 commissioner may issue a final order after assessing the amount of the
43 fine specified in the notice. If no hearing is requested, the notice shall
44 become a final order upon the expiration of the 20-day period.
45 Payment of the penalty is due when a final order is issued or when the
46 notice becomes a final order. If a civil administrative penalty imposed

1 pursuant to this section is not paid within 30 days of the date that the
2 penalty is due, an interest charge shall accrue on the amount of the
3 penalty due and shall be collectible in accordance with the provisions
4 of section 1 of P.L. , c. (C.) (pending in the Legislature
5 as this bill). The authority to levy a civil administrative penalty is in
6 addition to all other enforcement provisions in this act, and the
7 payment of a civil administrative penalty shall not be deemed to affect
8 the availability of any other enforcement provision in connection with
9 the violation for which the penalty is levied.

10 c. The department is authorized and empowered to compromise
11 and settle any claim for a penalty under this section in such amount in
12 the discretion of the department as may appear appropriate and
13 equitable under all of the circumstances, including the posting of a
14 performance bond by the violator.

15 d. Any person who violates any of the provisions of sections 4
16 through 8 of this act, or any rule, regulation, or order promulgated or
17 issued pursuant thereto, or an administrative order issued pursuant to
18 subsection b. of this section or a court order issued pursuant to
19 subsection a. of this section or who fails to pay a civil administrative
20 penalty in full pursuant to subsection b. of this section is subject, upon
21 order of the court, to a civil penalty not to exceed \$10,000.00 per day
22 of the violation, and each day's continuance of the violation constitutes
23 a separate and distinct violation. Any penalty imposed under this
24 subsection may be recovered with costs in a summary proceeding
25 pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).
26 The Superior Court shall have jurisdiction to enforce "the penalty
27 enforcement law."

28 (cf: P.L.1985, c.403, s.12)

29
30 16. Section 13 of P.L.1985, c.403, s.13 (C.13:1K-31) is amended
31 to read as follows:

32 13. The department is authorized to charge and collect fees from
33 facility owners registered pursuant to section 4 of this act, in
34 accordance with a schedule adopted as a rule or regulation, which
35 schedule shall reflect the costs to the department of reviewing
36 individual facilities while enabling the department to continue to
37 administer the program on a self-supporting basis. If a fee imposed
38 pursuant to this section is not paid within 30 days of the date that the
39 fee is due, an interest charge shall accrue on the amount of the fee due
40 and shall be collectible in accordance with the provisions of section 1
41 of P.L. , c. (C.) (pending in the Legislature as this bill).

42 (cf: P.L.1985, c.403, s.13)

43
44 17. Section 4 of P.L.1985, c.432 (C.13:1M-4) is amended to read
45 as follows:

46 4. Each application for the permit required by section 2 of this act,

1 or renewal thereof, shall be accompanied by a fee, established in
2 accordance with a fee schedule adopted by the department by rule or
3 regulation, reflecting the costs of reviewing and processing the
4 application, and monitoring permitted activities as deemed necessary
5 by the department. If a fee imposed pursuant to this section is not
6 paid within 30 days of the date that the fee is due, an interest charge
7 shall accrue on the amount of the fee due and shall be collectible in
8 accordance with the provisions of section 1 of P.L. _____, c. _____
9 (C. _____) (pending in the Legislature as this bill). The permit holder
10 shall submit to the Department of Environmental Protection for
11 approval any transfer or sale of well ownership.

12 The original permit, or photostatic copy thereof, shall be
13 prominently displayed in a conspicuous location at the well site,
14 together with a document providing the name, current address, and
15 telephone number of the permit holder and the telephone numbers of
16 fire and emergency medical services. The permit or copy and the
17 emergency numbers shall remain prominently displayed at all times
18 during the course of all work authorized or required by the permit.

19 The department may, by rule or regulation, establish a period of
20 time during which, and the conditions under which, permits will be
21 valid.

22 Prior to the approval of any permit or amended permit, the
23 department shall provide timely and informative notice of the permit
24 application to the public in the affected area. The public shall be
25 afforded an opportunity to review the permit application. Any public
26 comment submitted to the department shall be made part of the record
27 and considered by the department in determining whether to approve
28 the permit. The department shall hold a public hearing on a permit
29 application upon request by any person.

30 (cf: P.L.1985, c.432, s.4)

31

32 18. Section 11 of P.L.1985, c.432 (C.13:1M-11) is amended to
33 read as follows:

34 11. No person shall plug and abandon an oil or gas well except in
35 accordance with a permit issued therefor by the Department of
36 Environmental Protection pursuant to this section. An application for
37 this permit shall be made on forms prescribed and supplied by the
38 department and shall contain at least the following information:

39 a. The name and address of the owner;

40 b. The signature of the owner or his authorized agent and when an
41 authorized agent signs an application it shall be accompanied by a
42 certified copy of his appointment as an agent of the owner;

43 c. The location of the well, as identified by the municipal tax map
44 by lot and block;

45 d. Designation of well by name and number;

46 e. The total depth of the well to be plugged;

- 1 f. The date and amount of last production from the well; and
2 g. Any other data the department may require.

3 An application for a permit to plug and abandon a well shall be
4 accompanied by a fee, established in accordance with a fee schedule
5 adopted by the department by rule or regulation, reflecting the costs
6 of reviewing and processing the application. If a fee imposed pursuant
7 to this section is not paid within 30 days of the date that the fee is due,
8 an interest charge shall accrue on the amount of the fee due and shall
9 be collectible in accordance with the provisions of section 1 of P.L. ,
10 c. (C.) (pending in the Legislature as this bill).

11 No well plugging or abandonment operation shall commence unless
12 the holder of a permit provides at least five days' notice to the State
13 Geologist, to the owner of the land upon which the well is located, to
14 the owners or agents of adjoining land, and to adjoining well owners
15 or agents of his intention to abandon the well, and of the time when
16 plugging operations will commence.

17 (cf: P.L.1985, c.432, s.11)

18

19 19. Section 17 of P.L.1985, c.432 (C.13:1M-17) is amended to
20 read as follows:

21 17. a. If any person violates any of the provisions of this act or
22 any rule, regulation or order promulgated or issued pursuant to the
23 provisions of this act, the department may institute a civil action in a
24 court of competent jurisdiction for injunctive or any other appropriate
25 relief to prohibit and prevent this violation and the court may proceed
26 in the action in a summary manner.

27 b. Any person who violates the provisions of this act or any rule,
28 regulation or order promulgated pursuant to this act is liable to a civil
29 administrative penalty of not more than \$10,000.00 for the first
30 offense, not more than \$20,000.00 for the second offense, and up to
31 \$50,000.00 for the third and each subsequent offense. If the violation
32 is of a continuing nature, each day during which it continues
33 subsequent to receipt of an order to cease the violation constitutes an
34 additional, separate and distinct offense. No civil administrative
35 penalty shall be levied except subsequent to the notification of the
36 violator by certified mail or personal service. The notice shall include
37 a reference to the section of the statute, regulation, order or permit
38 condition violated; a concise statement of the facts alleged to
39 constitute the violation; a statement of the amount of the civil penalties
40 to be imposed; a statement of the amount of interest to be charged if
41 the penalty is not paid when due; and a statement of the violator's right
42 to a hearing. The violator shall have 20 days from receipt of the
43 notice within which to deliver to the commissioner a written request
44 for a hearing. Subsequent to the hearing and upon a finding that a
45 violation has occurred, the commissioner may issue a final order, after
46 assessing the amount of the fine specified in the notice. If no hearing

1 is requested, the notice shall become a final order upon the expiration
2 of the 20-day period. Payment of the penalty is due when a final order
3 is issued or when the notice becomes a final order. If a civil
4 administrative penalty imposed pursuant to this section is not paid
5 within 30 days of the date that the penalty is due, an interest charge
6 shall accrue on the amount of the penalty due and shall be collectible
7 in accordance with the provisions of section 1 of P.L. , c. (C.) (pending in the Legislature as this bill). The authority to
8 levy a civil administrative penalty is in addition to all other
9 enforcement provisions in this act, and the payment of a civil
10 administrative penalty shall not be deemed to affect the availability of
11 any other enforcement provision in connection with the violation for
12 which the penalty is levied.

14 c. The department is authorized and empowered to compromise
15 and settle any claim for a penalty under this section in such amount in
16 the discretion of the department as may appear appropriate and
17 equitable under all of the circumstances, including the posting of a
18 performance bond by the violator.

19 d. Any person who violates this act or an administrative order
20 issued pursuant to subsection b. of this section or a court order issued
21 pursuant to subsection a. of this section or who fails to pay a civil
22 administrative penalty in full pursuant to subsection b. of this section
23 is subject, upon order of the court, to a civil penalty not to exceed
24 \$10,000.00 per day of the violation, and each day's continuance of the
25 violation constitutes a separate and distinct violation. Any penalty
26 imposed under this subsection may be recovered with costs in a
27 summary proceeding pursuant to "the penalty enforcement law"
28 (N.J.S.2A:58-1 et seq.). The Law Division of Superior Court shall
29 have jurisdiction to enforce "the penalty enforcement law."
30 (cf: P.L.1985, c.432, s.17)

31

32 20. Section 9 of P.L.1987, c.156 (C.13:9B-9) is amended to read
33 as follows:

34 9. a. A person proposing to engage in a regulated activity shall
35 apply to the department for a freshwater wetlands permit, for a fee not
36 to exceed the cost of reviewing and processing the application, and on
37 forms and in the manner prescribed by the commissioner pursuant to
38 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
39 seq.). If a fee imposed pursuant to this section is not paid within 30
40 days of the date that the fee is due, an interest charge shall accrue on
41 the amount of the fee due and shall be collectible in accordance with
42 the provisions of section 1 of P.L. , c. (C.) (pending in
43 the Legislature as this bill).

44 An agency of the State proposing to engage in a regulated activity
45 shall also apply to the department for a freshwater wetlands permit on
46 forms and in a manner prescribed by the commissioner, but shall not

1 be required to pay a fee therefor. The application shall include the
2 name and address of the applicant, the purpose of the project, the
3 names and addresses of all owners of property adjacent to the
4 proposed project, and at least the following:

5 (1) A preliminary site plan or subdivision map of the proposed
6 development activities, or another map of the site if no preliminary site
7 plan or subdivision map exists, and a written description of the
8 proposed regulated activity, the total area to be modified, and the total
9 area of the freshwater wetland potentially affected;

10 (2) Verification that a notice has been forwarded to the clerk,
11 environmental commission, and planning board of the municipality in
12 which the proposed regulated activity will occur, the planning board
13 of the county in which the proposed regulated activity will occur,
14 landowners within 200 feet of the site of the proposed regulated
15 activity, and to all persons who requested to be notified of proposed
16 regulated activities, which notice may be filed concurrently with
17 notices required pursuant to P.L.1975, c.291(C.40:55D-1 et seq.),
18 describing the proposed regulated activity and advising these parties
19 of their opportunity to submit comments thereon to the department;

20 (3) Verification that notice of the proposed activity has been
21 published in a newspaper of local circulation;

22 (4) A statement detailing any potential adverse environmental
23 effects of the regulated activity and any measures necessary to mitigate
24 those effects, and any information necessary for the department to
25 make a finding pursuant to subsection b. of this section.

26 b. The department, after considering the comments of the
27 environmental commission and planning boards of the county and
28 municipality wherein the regulated activity is to take place, federal and
29 State agencies of competent jurisdiction, other affected municipalities
30 and counties, and the general public, shall issue a freshwater wetlands
31 permit only if it finds that the regulated activity:

32 (1) Is water-dependent or requires access to the freshwater
33 wetlands as a central element of its basic function, and has no
34 practicable alternative which would not involve a freshwater wetland
35 or which would have a less adverse impact on the aquatic ecosystem,
36 and which would not have other significant adverse environmental
37 consequences, and also complies with the provisions of paragraphs
38 (3)-(9) of this subsection; or

39 (2) Is nonwater-dependent and has no practicable alternative as
40 demonstrated pursuant to section 10 of this act, which would not
41 involve a freshwater wetland or which would have a less adverse
42 impact on the aquatic ecosystem, and which would not have other
43 significant adverse environmental consequences; and

44 (3) Will result in minimum feasible alteration or impairment of the
45 aquatic ecosystem including existing contour, vegetation, fish and

1 wildlife resources, and aquatic circulation of the freshwater wetland;
2 and

3 (4) Will not jeopardize the continued existence of species listed
4 pursuant to "The Endangered and Nongame Species Conservation
5 Act," P.L.1973, c.309 (C.23:2A-1 et seq.) or which appear on the
6 federal endangered species list, and will not result in the likelihood of
7 the destruction or adverse modification of a habitat which is
8 determined by the Secretary of the United States Department of the
9 Interior or the Secretary of the United States Department of
10 Commerce as appropriate to be a critical habitat under the
11 "Endangered Species Act of 1973," (16 U.S.C. § 1531 et al.); and

12 (5) Will not cause or contribute to a violation of any applicable
13 State water quality standard; and

14 (6) Will not cause or contribute to a violation of any applicable
15 toxic effluent standard or prohibition imposed pursuant to the "Water
16 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.); and

17 (7) Will not violate any requirement imposed by the United States
18 government to protect any marine sanctuary designated pursuant to
19 the "Marine Protection, Research, and Sanctuaries Act of 1972," (33
20 U.S.C. § 1401 et al.); and

21 (8) Will not cause or contribute to a significant degradation of
22 ground or surface waters; and

23 (9) Is in the public interest as determined pursuant to section 11 of
24 this act, is necessary to realize the benefits derived from the activity,
25 and is otherwise lawful.

26 (cf: P.L.1987, c.156, s.9)

27

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

30 17. a. The following activities, except for normal property
31 maintenance or minor and temporary disturbances of the transition
32 area resulting from, and necessary for, normal construction activities
33 on land adjacent to the transition area, are prohibited in the transition
34 area, except in accordance with a transition area waiver approved by
35 the department pursuant to section 18 of this act:

36 (1) Removal, excavation, or disturbance of the soil;

37 (2) Dumping or filling with any materials;

38 (3) Erection of structures, except for temporary structures of 150
39 square feet or less;

40 (4) Placement of pavements;

41 (5) Destruction of plant life which would alter the existing pattern
42 of vegetation.

43 b. A person proposing to engage in an activity prohibited pursuant
44 to subsection a. of this section within 150 feet of a freshwater wetland
45 of exceptional resource value, or within 50 feet of a freshwater
46 wetland of intermediate resource value, shall apply to the department

1 for a transition area waiver, for a fee not to exceed the cost of
2 reviewing and processing the waiver application, and on forms and in
3 the manner prescribed by the commissioner pursuant to the
4 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
5 seq.). If a fee imposed pursuant to this section is not paid within
6 30 days of the date that the fee is due, an interest charge shall accrue
7 on the amount of the fee due and shall be collectible in accordance
8 with the provisions of section 1 of P.L. , c. (C.) (pending
9 in the Legislature as this bill).

10 An agency of the State proposing to engage in such an activity in
11 a transition area shall also apply to the department for a transition area
12 waiver on forms and in a manner prescribed by the commissioner but
13 shall not be required to pay a fee therefor. The waiver application
14 shall include at least the following:

15 (1) A preliminary site plan or subdivision map of the site, or
16 another map of the site if no preliminary site plan or subdivision map
17 exists, containing proposed activities and a written description of the
18 proposed activity, the total areas to be modified, and the total area of
19 the transition area potentially affected; and

20 (2) Verification that a notice has been forwarded to the clerk,
21 environmental commission, and planning board of the municipality,
22 and the planning board of the county wherein the activity is to occur,
23 which notice shall describe the activity and advise these
24 instrumentalities of local government of their opportunity to submit
25 comments thereon to the department; and

26 (3) A statement detailing any potential adverse environmental
27 effects of the activity on the freshwater wetlands and any measures
28 that may be necessary to mitigate those effects; and

29 (4) A transition area averaging plan, if an averaging plan is
30 required in connection with a transition area waiver requested
31 pursuant to section 18 of this act.

32 c. At the applicant's option, the maximum transition area distances
33 established in subsection b. of section 16 of this act, or a lesser
34 transition area distance established pursuant to a waiver approved
35 pursuant to section 18 of this act, shall be further reduced, or the
36 transition area adjacent to a portion of a wetlands shall be eliminated,
37 pursuant to a transition area averaging plan submitted by the applicant,
38 provided that the plan is consistent with the provisions of subsection
39 a. of section 16 of this act.

40 (cf: P.L.1987, c.156, s.17)

41
42 22. Section 21 of P.L.1987, c.156 (C.13:9B-21) is amended to
43 read as follows:

44 21. a. Whenever, on the basis of available information, the
45 commissioner finds that a person is in violation of any provision of this
46 act, or any rule or regulation adopted, or permit or order issued,

1 pursuant to this act, the commissioner may:

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

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

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

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

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

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

14 b. Whenever, on the basis of available information, the
15 commissioner finds a person in violation of any provision of this act,
16 or of any rule or regulation adopted, or permit or order issued,
17 pursuant to this act, the commissioner may issue an order: (1)
18 specifying the provision or provisions of this act, or the rule,
19 regulation, permit or order of which he is in violation; (2) citing the
20 action which constituted the violation; (3) requiring compliance with
21 the provision or provisions violated; (4) requiring the restoration of
22 the freshwater wetland or transition area which is the site of the
23 violation; and (5) providing notice to the person of his right to a
24 hearing on the matters contained in the order.

25 c. The commissioner is authorized to institute a civil action in
26 Superior Court for appropriate relief from any violation of any
27 provisions of this act, or any rule or regulation adopted, or permit or
28 order issued, pursuant to this act. Such relief may include, singly or
29 in combination:

30 (1) A temporary or permanent injunction;

31 (2) Assessment of the violator for the costs of any investigation,
32 inspection, or monitoring survey which led to the establishment of the
33 violation, and for the reasonable costs of preparing and bringing legal
34 action under this subsection;

35 (3) Assessment of the violator for any costs incurred by the State
36 in removing, correcting, or terminating the adverse effects upon the
37 freshwater wetland resulting from any unauthorized regulated activity
38 for which legal action under this subsection may have been brought;

39 (4) Assessment against the violator for compensatory damages for
40 any loss or destruction of wildlife, fish or aquatic life, and for any
41 other actual damages caused by an unauthorized regulated activity.
42 Assessments under this subsection shall be paid to the State Treasurer,
43 except that compensatory damages shall be paid by specific order of
44 the court to any persons who have been aggrieved by the unauthorized
45 regulated activity;

46 (5) A requirement that the violator restore the site of the violation

1 to the maximum extent practicable and feasible.

2 d. The commissioner is authorized to assess a civil administrative
3 penalty of not more than \$10,000.00 for each violation, and each day
4 during which each violation continues shall constitute an additional,
5 separate, and distinct offense. Any amount assessed under this
6 subsection shall fall within a range established by regulation by the
7 commissioner for violations of similar type, seriousness, and duration.
8 No assessment shall be levied pursuant to this section until after the
9 party has been notified by certified mail or personal service. The
10 notice shall identify the section of the statute, regulation, or order or
11 permit condition violated; recite the facts alleged to constitute a
12 violation; state the amount of the civil penalties to be imposed; state
13 the amount of interest to be charged if the penalty is not paid when
14 due; and affirm the rights of the alleged violator to a hearing. The
15 ordered party shall have 20 days from receipt of the notice within
16 which to deliver to the commissioner a written request for a hearing.
17 After the hearing and upon finding that a violation has occurred, the
18 commissioner may issue a final order after assessing the amount of the
19 fine specified in the notice. If no hearing is requested, the notice shall
20 become a final order after the expiration of the 20-day period.
21 Payment of the assessment is due when a final order is issued or the
22 notice becomes a final order. If a civil administrative penalty imposed
23 pursuant to this section is not paid within 30 days of the date that the
24 penalty is due, an interest charge shall accrue on the amount of the
25 penalty due and shall be collectible in accordance with the provisions
26 of section 1 of P.L. , c. (C.) (pending in the Legislature
27 as this bill). The authority to levy an administrative order is in
28 addition to all other enforcement provisions in this act, and the
29 payment of any assessment shall not be deemed to affect the
30 availability of any other enforcement provisions in connection with the
31 violation for which the assessment is levied. Any civil administrative
32 penalty assessed under this section may be compromised by the
33 commissioner upon the posting of a performance bond by the violator,
34 or upon such terms and conditions as the commissioner may establish
35 by regulation.

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

1 f. A person who [willfully] knowingly or negligently violates this
2 act shall be guilty, upon conviction, of a crime of the fourth degree
3 and shall be subject to a fine of not less than \$2,500.00 nor more than
4 \$25,000.00 per day of violation. A second offense under this
5 subsection shall subject the violator to a fine of not less than
6 \$5,000.00 nor more than \$50,000.00 per day of violation. A person
7 who knowingly makes a false statement, representation, or
8 certification in any application, record, or other document filed or
9 required to be maintained under this act, or who falsifies, tampers with
10 or knowingly renders inaccurate, any monitoring device or method
11 required to be maintained pursuant to this act, shall, upon conviction,
12 be subject to a fine of not more than \$10,000.00.

13 g. In addition to the penalties prescribed in this section, a notice of
14 violation of this act shall be recorded on the deed of the property
15 wherein the violation occurred, on order of the commissioner, by the
16 clerk or register of deeds and mortgages of the county wherein the
17 affected property is located and with the clerk of the Superior Court
18 and shall remain attached thereto until such time as the violation has
19 been remedied and the commissioner orders the notice of violation
20 removed.

21 h. If the violation is one in which the department has determined
22 that the restoration of the site to its previolation condition would
23 increase the harm to the freshwater wetland or its ecology, the
24 department may issue an "after the fact" permit for the regulated
25 activity that has already occurred; provided that assessment against the
26 violator for costs or damages enumerated in subsection c. of this
27 section has been made, the creation or restoration of freshwater
28 wetlands resources at another site has been required of the violator, an
29 opportunity has been afforded for public hearing and comment, and the
30 reasons for the issuance of the "after the fact" permit are published in
31 the New Jersey Register and in a newspaper of general circulation in
32 the geographical area of the violation. Any person violating an "after
33 the fact" permit issued pursuant to this subsection shall be subject to
34 the provisions of this section.

35 i. The burden of proof and degree of knowledge or intent required
36 to establish a violation of this act shall be no greater than the burden
37 of proof or degree of knowledge or intent which the United States
38 Environmental Protection Agency must meet in establishing a violation
39 of the Federal Act or implementing regulations.

40 j. The department shall establish and implement a program
41 designed to facilitate public participation in the enforcement of this act
42 which complies with the requirements of the Federal Act and
43 implementing regulations.

44 k. The department shall make available without restriction any
45 information obtained or used in the implementation of this act to the

1 United States Environmental Protection Agency upon a request
2 therefor.

3 1. The department may require an applicant or permittee to provide
4 any information the department requires to determine compliance with
5 the provisions of this act.

6 m. The department shall have the authority to enter any property,
7 facility, premises or site for the purpose of conducting inspections,
8 sampling of soil or water, copying or photocopying documents or
9 records, and for otherwise determining compliance with the provisions
10 of this act.

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

12

13 23. Section 9 of P.L.1954, c.212 (26:2C-9) is amended to read as
14 follows:

15 9. The department shall control air pollution in accordance with the
16 provisions of any applicable code, rule or regulation promulgated by
17 the department and for this purpose shall have power to--

18 (a) Conduct and supervise research programs for the purpose of
19 determining the causes, effects and hazards of air pollution;

20 (b) Conduct and supervise Statewide programs of air pollution
21 control education including the preparation and distribution of
22 information relating to air pollution control;

23 (c) Require the registration of persons engaged in operations which
24 may result in air pollution and the filing of reports by them containing
25 information relating to location, size of outlet, height of outlet, rate
26 and period of emission and composition of effluent, and such other
27 information as the department shall prescribe to be filed relative to air
28 pollution, all in accordance with applicable codes, rules or regulations
29 established by the department. Registration reports filed with the
30 department shall be privileged and not admissible in evidence in any
31 court;

32 (d) Enter and inspect any building or place, except private
33 residences, for the purpose of investigating an actual or suspected
34 source of air pollution and ascertaining compliance or noncompliance
35 with any code, rules and regulations of the department. Any
36 information relating to secret processes or methods of manufacture or
37 production obtained in the course of such inspection, investigation or
38 determination, shall be kept confidential and shall not be admissible in
39 evidence in any court or in any other proceeding except before the
40 department as herein defined. If samples are taken for analysis, a
41 duplicate of the analytical report shall be furnished promptly to the
42 person suspected of causing air pollution;

43 (e) Receive or initiate complaints of air pollution, hold hearings in
44 connection with air pollution and institute legal proceedings for the
45 prevention of air pollution and for the recovery of penalties, in
46 accordance with this act;

1 (f) With the approval of the Governor, cooperate with, and receive
2 money from, the Federal Government, the State Government, or any
3 county or municipal government or from private sources for the study
4 and control of air pollution;

5 (g) The department may in accordance with a fee schedule adopted
6 as a rule or regulation establish and charge fees for any of the services
7 it performs, which fees shall be annual or periodic as the department
8 shall determine. The fees charged by the department pursuant to this
9 section shall not be less than \$10.00 nor more than \$500.00 based on
10 criteria contained in the fee schedule. If a fee imposed pursuant to this
11 section is not paid within 30 days of the date that the fee is due, an
12 interest charge shall accrue on the amount of the fee due and shall be
13 collectible in accordance with the provisions of section 1 of P.L. .
14 c. (C.) (pending in the Legislature as this bill).

15 (cf: P.L.1971, c.155, s.1)

16
17 24. Section 14 of P.L.1954, c.212 (C.26:2C-14) is amended to
18 read as follows:

19 14. Whenever the department has cause to believe that any person
20 is violating any code, rule or regulation promulgated by the
21 department, the department shall cause a prompt investigation to be
22 made in connection therewith.

23 If upon inspection the department discovers a condition which is in
24 violation of the provisions of this act or any code, rule or regulation
25 promulgated pursuant thereto, it shall be authorized to order such
26 violation to cease and to take such steps necessary to enforce such an
27 order. The order to cease the violation issued by the commissioner
28 and sent to the violator by certified mail or personal service shall
29 include a reference to the section of the statute, regulation, order, or
30 permit condition violated; the amount of the [fine] penalty which shall
31 be imposed; a statement of the amount of interest to be charged if the
32 penalty is not paid when due; a concise statement of the facts alleged
33 to constitute the violation; and a statement of the right of the violator
34 to a hearing.

35 The person responsible shall make the corrections necessary to
36 comply with the requirements of this act or code, rule or regulation
37 promulgated pursuant thereto within the time specified in the order.

38 Nothing herein shall be deemed to prevent the department from
39 prosecuting any violation of this act or any code, rule or regulation
40 promulgated pursuant thereto, notwithstanding that such violation is
41 corrected in accordance with its order.

42 (cf: P.L.1985, c.12, s.2)

43
44 25. Section 19 of P.L.1954, c.212 (C.26:2C-19) is amended to
45 read as follows:

46 19. a. If any person violates any of the provisions of this act or

1 any code, rule, regulation or order promulgated or issued pursuant to
2 the provisions of this act, the department may institute a civil action
3 in a court of competent jurisdiction for injunctive or any other
4 appropriate relief to prohibit and prevent such violation or violations
5 and the said court may proceed in the action in a summary manner.

6 b. Any person who violates the provisions of this act or any code,
7 rule, regulation or order promulgated or issued pursuant to this act
8 shall be liable to a civil administrative penalty of not more than
9 \$10,000.00 for the first offense, not more than \$25,000.00 for the
10 second offense, and not more than \$50,000.00 for the third and each
11 subsequent offense. If the violation is of a continuing nature, each day
12 during which it continues shall constitute an additional, separate and
13 distinct offense. No civil administrative penalty shall be levied except
14 upon an administrative order issued pursuant to section 14 of
15 P.L.1954, c.212 (C.26:2C-14). If a civil administrative penalty
16 imposed pursuant to this section is not paid within 30 days of the date
17 that the penalty is due, an interest charge shall accrue on the amount
18 of the penalty due and shall be collectible in accordance with the
19 provisions of section 1 of P.L. , c. (C.) (pending in the
20 Legislature as this bill).

21 c. 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 d. Any person who violates the provisions of P.L.1954, c.212
26 (C.26:2C-1 et seq.) or any code, rule, regulation, or order
27 promulgated or issued pursuant to that act, or a court order issued
28 pursuant to subsection a. of this section, or who fails to pay a civil
29 administrative penalty in full pursuant to section 9 of P.L.1962, c.215
30 (C.26:2C-14.1), is subject, upon order of the court, to a civil penalty
31 of not more than \$10,000.00 for the first offense, not more than
32 \$25,000.00 for the second offense, and not more than \$50,000.00 for
33 the third and each subsequent offense. If the violation is of a
34 continuing nature, each day during which the violation continues, or
35 each day in which the civil administrative penalty is not paid in full,
36 constitutes an additional, separate and distinct offense. Any penalty
37 imposed under this subsection may be recovered with costs in a
38 summary proceeding pursuant to "the penalty enforcement law"
39 (N.J.S.2A:58-1 et seq.). The Law Division of the Superior Court has
40 jurisdiction to enforce "the penalty enforcement law."

41 e. A person who causes a release of air contaminants in a quantity
42 or concentration which poses a potential threat to public health,
43 welfare or the environment or which might reasonably result in citizen
44 complaints shall immediately notify the department. A person who
45 fails to so notify the department is liable to the penalties and
46 procedures prescribed in this section.

1 f. Any person who:

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

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

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

11

12 26. Section 6 of P.L.1986, c.83 (C.26:2D-75) is amended to read
13 as follows:

14 6. The department shall establish a fee schedule to cover the costs
15 of the certification programs established pursuant to sections 1 and 2
16 of this act. If a fee imposed pursuant to a schedule adopted in
17 accordance with this section is not paid within 30 days of the date that
18 the fee is due, an interest charge shall accrue on the amount of the fee
19 due and shall be collectible in accordance with the provisions of
20 section 1 of P.L. , c. (C.) (pending in the Legislature as
21 this bill).

22 (cf: P.L.1986, c.83, s.6)

23

24 27. Section 11 of P.L.1981, c.262 (C.58:1A-11) is amended to
25 read as follows:

26 11. The department shall in accordance with a fee schedule
27 adopted by rule and regulation, establish and charge reasonable
28 administrative fees, which fees shall be based upon, and not exceed,
29 the estimated cost of processing, monitoring, administering and
30 enforcing the diversion permits. The department shall deposit the fees
31 in the "Environmental Services Fund" created by P.L.1975, c.232
32 (C.13:1D-29 et seq.). There shall be annually appropriated an amount
33 equivalent to the amount anticipated to be collected as fees by the
34 department for the administration of the water supply management
35 program.

36 If a fee imposed pursuant to this section is not paid within 30 days
37 of the date that the fee is due, an interest charge shall accrue on the
38 amount of the fee due and shall be collectible in accordance with the
39 provisions of section 1 of P.L. , c. (C.) (pending in the
40 Legislature as this bill).

41 (cf: P.L.1981, c.262, s.11)

42

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

45 22. a. [(1)] Whenever, on the basis of available information, the
46 department determines that a person is in violation of a provision of

1 P.L.1976, c.141 (C.58:10-23.11 et seq.), including any rule,
2 regulation, plan, information request, access request, order or directive
3 promulgated or issued pursuant thereto, or that a person knowingly
4 has given false testimony, documents or information to the
5 department, the department may:

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

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

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

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

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

17 (1) a temporary or permanent injunction;

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

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

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

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

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

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

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

38 (b) the specific citation of the act or omission constituting the
39 violation;

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

41 (d) the right of the violator to a hearing on any matter contained
42 in the notice and the procedures for requesting a hearing; and

43 (e) a statement of the amount of interest to be charged if the
44 penalty is not paid when due.

45 (2) (a) A violator shall have 20 calendar days following receipt of
46 notice within which to request a hearing on any matter contained in the

1 notice, and shall comply with all procedures for requesting a hearing.
2 Failure to submit a timely request or to comply with all departmental
3 procedures shall constitute grounds for denial of a hearing request.
4 After a hearing and upon a finding that a violation has occurred, the
5 department shall issue a final order assessing the amount of the civil
6 administrative penalty specified in the notice. If a violator does not
7 request a hearing or fails to satisfy the statutory and administrative
8 requirements for requesting a hearing, the notice of assessment of a
9 civil administrative penalty shall become a final order on the 21st
10 calendar day following receipt of the notice by the violator. If the
11 department denies a hearing request, the notice of denial shall become
12 a final order upon receipt of the notice by the violator.

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

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

18 (3) If a civil administrative penalty imposed pursuant to this section
19 is not paid within 30 days of the date that the penalty is due [and
20 owing, and the penalty is not contested by the person against whom
21 the penalty has been assessed, or the person fails to make a payment
22 pursuant to a payment schedule entered into with the department], an
23 interest charge shall accrue on the amount of the penalty [from the
24 30th day that amount was due and owing. In the case of an appeal of
25 a civil administrative penalty, if the amount of the penalty is upheld, in
26 whole or in part, the rate of interest shall be calculated on that amount
27 as of the 30th day from the date the amount was due and owing under
28 the administrative order. The rate of interest shall be that established
29 by the New Jersey Supreme Court for interest rates on judgments, as
30 set forth in the Rules Governing the Courts of the State of New
31 Jersey] due and shall be collectible in accordance with the provisions
32 of section 1 of P.L. , c. (C.)(pending before the Legislature as this
33 bill).

34 (4) The department may assess and recover, by civil administrative
35 order, the costs of any investigation, cleanup or removal, and the
36 reasonable costs of preparing and successfully enforcing a civil
37 administrative penalty pursuant to this subsection. The assessment may
38 be recovered at the same time as a civil administrative penalty, and
39 shall be in addition to the penalty assessment.

40 d. Any person who violates a provision of P.L.1976, c.141
41 (C.58:10-23.11 et seq.), or a court order issued pursuant thereto, or
42 who fails to pay a civil administrative penalty in full or to agree to a
43 schedule of payments therefor, shall be subject to a civil penalty not to
44 exceed \$50,000.00 per day for each violation, and each day's
45 continuance of the violation shall constitute a separate violation. Any
46 penalty incurred under this subsection may be recovered with costs in

1 a summary proceeding pursuant to "the penalty enforcement law"
2 (N.J.S.2A:58-1 et seq.) in the Superior Court or a municipal court.

3 e. All conveyances used or intended for use in the willful discharge
4 of any hazardous substance are subject to forfeiture to the State
5 pursuant to the provisions of P.L.1981, c.387 (C.13:1K-1 et seq.).
6 (cf: P.L.1990, c.75, s.1)

7
8 29. Section 9 of P.L.1977, c.74 (C.58:10A-9) is amended to read
9 as follows:

10 9. a. Applications for permits shall be submitted within such times,
11 on such forms, and with such signatures as may be prescribed by the
12 commissioner and shall contain such information as he may require.
13 The commissioner shall, in accordance with a fee schedule adopted by
14 regulation, establish and charge reasonable annual administrative fees,
15 which fees shall be based upon, and shall not exceed, the estimated
16 cost of processing, monitoring and administering the NJPDES permits.
17 Said fees shall be deposited to the credit of the State and be deemed
18 as part of the General State Fund. The Legislature shall annually
19 appropriate an amount equivalent to the amount anticipated to be
20 collected as fees charged under this section in support of NJPDES
21 program.

22 If a fee imposed pursuant to this section is not paid within 30 days
23 of the date that the fee is due, an interest charge shall accrue on the
24 amount of the fee due and shall be collectible in accordance with the
25 provisions of section 1 of P.L. , c. (C.) (pending in the
26 Legislature as this bill).

27 b. The commissioner shall give public notice of every complete
28 application for a permit in a manner designed to inform interested and
29 potentially interested persons, affected states and appropriate
30 governmental agencies of his proposed determination to issue or deny
31 a permit. The notice shall announce a period of at least 30 days during
32 which the interested persons may request additional facts, submit
33 written views, and request a public hearing on the proposed discharge
34 or determination. All written comments so submitted shall be retained
35 and considered by the commissioner in formulating his final
36 determination with respect to the permit application. The
37 commissioner may give combined notice of two or more permit
38 applications and proposed determinations provided that the
39 requirements of this section are observed for each application.

40 c. All permit applications, documented information concerning
41 actual and proposed discharges, comments received from the public,
42 and draft and issued permits shall be made available to the public for
43 inspection and for duplication. At his discretion, the commissioner
44 may also make available any other records, reports, plans or
45 information pertaining to permit applicants or permittees, but he shall
46 protect from disclosure any information, other than effluent data, upon

1 a showing by any person that such information, if made public, would
2 divulge methods or processes entitled to protection as trade secrets of
3 such person. The commissioner may prescribe reasonable fees to
4 reimburse the department for duplication expenses under this section.

5 d. The commissioner shall hold a public hearing on a permit
6 application before a final determination, if a significant showing of
7 interest on the part of the public appears in favor of holding such a
8 hearing. At his discretion, the commissioner may also hold such a
9 hearing on his own motion or if requested to so do by any other
10 interested person. Public notices of every public hearing under this
11 subsection, including a concise statement of the issues to be
12 considered therein, shall be given at least 30 days in advance, and shall
13 be circulated at least as widely as was the notice of the permit
14 application. The commissioner may hold a single hearing on two or
15 more applications. To the extent feasible, he shall afford all persons
16 or representatives of all points of view an opportunity to appear, but
17 may so allocate hearing time as to exclude repetitious, redundant, or
18 irrelevant matter. All testimony and documentary material submitted
19 at the hearing shall be considered by the commissioner in formulating
20 his final determination.

21 e. The commissioner may appoint and employ such persons as he
22 deems necessary to enforce and administer the provisions of this act,
23 and determine their qualifications, term of office, duties and
24 compensation, all without regard to the provisions of Title [11, Civil
25 Service, of the Revised Statutes] 11A of the New Jersey Statutes.
26 (cf: P.L.1977, c.74, s.9)

27

28 30. Section 10 of P.L.1977, c.74 (C.58:10A-10) is amended to
29 read as follows:

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

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

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

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

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

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

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

44 In the case of one or more pollutants for which interim enforcement
45 limits have been established pursuant to an administrative order,
46 including an administrative consent order, by the department or a local

1 agency, the permittee shall be liable for the enforcement limits
2 stipulated therein.

3 b. Whenever the commissioner finds that any person is in violation
4 of any provision of this act, he may issue an order (1) specifying the
5 provision or provisions of this act, or the rule, regulation, water
6 quality standard, effluent limitation, or permit of which he is in
7 violation, (2) citing the action which caused such violation, (3)
8 requiring compliance with such provision or provisions, and (4) giving
9 notice to the person of his right to a hearing on the matters contained
10 in the order.

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

15 (1) A temporary or permanent injunction;

16 (2) Assessment of the violator for the reasonable costs of any
17 investigation, inspection, or monitoring survey which led to the
18 establishment of the violation, and for the reasonable costs of
19 preparing and litigating the case under this subsection;

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

25 (4) Assessment against the violator of compensatory damages for
26 any loss or destruction of wildlife, fish or aquatic life, or other natural
27 resources, and for any other actual damages caused by an unauthorized
28 discharge;

29 (5) Assessment against a violator of the actual amount of any
30 economic benefits accruing to the violator from a violation. Economic
31 benefits may include the amount of any savings realized from avoided
32 capital or noncapital costs resulting from the violation; the return
33 earned or that may be earned on the amount of avoided costs; any
34 benefits accruing to the violator as a result of a competitive market
35 advantage enjoyed by reason of the violation; or any other benefits
36 resulting from the violation.

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

44 d. (1) (a) The commissioner is authorized to assess, in accordance
45 with a uniform policy adopted therefor, a civil administrative penalty
46 of not more than \$50,000.00 for each violation and each day during

1 which such violation continues shall constitute an additional, separate,
2 and distinct offense. Any amount assessed under this subsection shall
3 fall within a range established by regulation by the commissioner for
4 violations of similar type, seriousness, and duration. The
5 commissioner shall adopt, by regulation, a uniform assessment of civil
6 penalties policy by January 1, 1992.

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

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

24 (2) No assessment shall be levied pursuant to this subsection until
25 after the discharger has been notified by certified mail or personal
26 service. The notice shall include a reference to the section of the
27 statute, regulation, order or permit condition violated; a concise
28 statement of the facts alleged to constitute a violation; a statement of
29 the amount of the civil penalties to be imposed; a statement of the
30 amount of interest to be charged if the penalty is not paid when due,
31 and a statement of the party's right to a hearing. The ordered party
32 shall have 20 days from receipt of the notice within which to deliver
33 to the commissioner a written request for a hearing. After the hearing
34 and upon finding that a violation has occurred, the commissioner may
35 issue a final order after assessing the amount of the fine specified in
36 the notice. If no hearing is requested, then the notice shall become a
37 final order after the expiration of the 20-day period. Payment of the
38 assessment is due when a final order is issued or the notice becomes
39 a final order.

40 (3) If a civil administrative penalty imposed pursuant to this
41 subsection is not paid within 30 days of the date that the penalty is due
42 [and owing, and the penalty is not contested by the person against
43 whom the penalty has been assessed, or the person fails to make a
44 payment pursuant to a payment schedule entered into with the
45 department, an interest charge shall accrue on the amount of the
46 penalty due and owing from the 30th day after the date on which the

1 penalty was due and owing. The rate of interest shall be that
2 established by the New Jersey Supreme Court for interest rates on
3 judgments, as set forth in the Rules Governing the Courts of the State
4 of New Jersey] . an interest charge shall accrue on the penalty amount
5 due and shall be collectible in accordance with the provisions of
6 section 1 of P.L. _____, c. _____ (C. _____) (C. _____) (pending in the
7 Legislature as this bill).

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

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

1 of the judgment from the date of the posting of the security with the
2 commissioner and until paid in full. The rate of interest shall be that
3 established by the New Jersey Supreme Court for interest rates on
4 judgments, as set forth in the Rules Governing the Courts of the State
5 of New Jersey. In addition, if the amount of the penalty assessed by
6 the department is upheld in full in an appeal of the assessment at an
7 administrative hearing or at a court of competent jurisdiction, the
8 person appealing the penalty shall reimburse the department for all
9 reasonable costs incurred by the department in preparing and litigating
10 the imposition of the assessment, except that no litigation costs shall
11 be imposed where the appeal ultimately results in a reduction or
12 elimination of the assessed penalty.

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

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

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

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

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

45 f. (1)(a) Any person who purposely, knowingly, or recklessly
46 violates this act, and the violation causes a significant adverse

1 environmental effect, shall, upon conviction, be guilty of a crime of the
2 second degree, and shall, notwithstanding the provisions of subsection
3 a. of N.J.S.2C:43-3, be subject to a fine of not less than \$25,000 nor
4 more than \$250,000 per day of violation, or by imprisonment, or by
5 both.

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

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

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

38 (4) Any person who purposely or knowingly violates an effluent
39 limitation or other condition of a permit, or who discharges without a
40 permit, and who knows at that time that he thereby places another
41 person in imminent danger of death or serious bodily injury, as defined
42 in subsection b. of N.J.S.2C:11-1, shall, upon conviction, be guilty of
43 a crime of the first degree, and shall, notwithstanding the provisions
44 of subsection a. of N.J.S.2C:43-3, be subject of a fine of not less than
45 \$50,000 nor more than \$250,000, or, in the case of a corporation, a
46 fine of not less than \$200,000 nor more than \$1,000,000, or by

1 imprisonment or by both.

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

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

10 h. The amendatory portions of this section, as set forth in
11 P.L.1990, c.28 (C.58:10A-10.1 et al.), except for subsection f. of this
12 section, shall not apply to violations occurring prior to July 1, 1991.
13 (cf: P.L.1990, c.28, s.5)

14

15 31. Section 11 of P.L.1986, c.102 (C.58:10A-31) is amended to
16 read as follows:

17 11. The commissioner may adopt, pursuant to the "Administrative
18 Procedure Act," any rules and regulations in addition to those required
19 pursuant to this act, necessary to carry out the provisions of this act,
20 including rules and regulations imposing fees for the processing of
21 initial registrations pursuant to section 3 of this act and for any
22 renewal thereof, and for processing permits required pursuant to
23 section 4 of this act.

24 Registration fees shall be established for subsequent registrations
25 and shall not exceed the estimated yearly cost of implementing the
26 provisions of this act. The commissioner may consider the size,
27 contents and the location of the underground storage tanks in
28 establishing these fees. The commissioner shall provide for the
29 recovery of the amount appropriated in section 19 of this act within
30 four years from the date these fees are first imposed. These fees shall
31 be deposited in the General Fund. The Legislature shall annually
32 appropriate to the department an amount equivalent to the amount
33 anticipated to be collected as fees charged under this section for the
34 purposes of administering the provisions of this act. No fee shall be
35 charged for six months after the effective date of this act.

36 If a fee imposed pursuant to this section is not paid within 30 days
37 of the date that the fee is due, an interest charge shall accrue on the
38 amount of the fee due and shall be collectible in accordance with the
39 provisions of section 1 of P.L. , c. (C.) (pending in the
40 Legislature as this bill).

41 (cf: P.L.1986, c.102, s.11)

42

43 32. Section 5 of P.L.1983, c.230 (C.58:11-68) is amended to read
44 as follows:

45 5. a. The commissioner is authorized to adopt a fee schedule
46 which shall reasonably cover the cost of examinations, licensing

1 procedures, and the administration and enforcement of this act. All
2 fees collected pursuant to the provisions of this act shall be deposited
3 into the "Environmental Services Fund" created by P.L.1975, c.232
4 (C.13:1D-29 et seq.). There shall be annually appropriated an amount
5 equivalent to the amount anticipated to be collected as fees by the
6 department for the administration of the licensing program. If a fee
7 imposed pursuant to this section is not paid within 30 days of the date
8 that the fee is due, an interest charge shall accrue on the amount of the
9 fee due and shall be collectible in accordance with the provisions of
10 section 1 of P.L. , c. (C.) (pending in the Legislature as
11 this bill).

12 b. The department shall issue or renew a license upon payment of
13 the appropriate license fee to any applicant who in the opinion of the
14 department has satisfactorily met all the appropriate requirements of
15 this act and rules and regulations adopted pursuant to this act.

16 c. The department shall renew licenses annually and shall establish
17 in its regulations the date on which licenses shall be renewed. Initial
18 licenses shall be valid from issue date to the next effective date for
19 license renewal. All other licenses shall be valid from the renewal date
20 of the license to the next annual renewal date. The department may
21 change the renewal date for all licenses. The department may charge
22 a delinquent fee to any licensee who fails to renew his license prior to
23 the renewal date. A licensee who fails to renew his license within 1
24 year following the renewal date of his license may not receive a new
25 license until he successfully completes another qualifying examination.
26 (cf: P.L.1983, c.230, s.5)

27

28 33. Section 9 of P.L.1977, c.224 (C.58:12A-9) is amended to read
29 as follows:

30 9. The commissioner is authorized, in order to carry out the
31 provisions and purposes of this act, to:

32 a. Perform any and all acts necessary to carry out the purposes and
33 requirements of this act relating to the adoption and enforcement of
34 any regulations authorized pursuant to this act;

35 b. Administer and enforce the provisions of this act and all rules,
36 regulations, and orders promulgated, issued, or effective hereunder;

37 c. Enter into agreements, contracts, or cooperative arrangements,
38 under such terms and conditions as he deems appropriate, with the
39 Department of Health and any other state agency, federal agencies,
40 municipalities, counties, educational institutions, municipal or county
41 health departments, or other organizations or individuals;

42 d. Receive financial and technical assistance from the federal
43 government and other public or private agencies;

44 e. Participate in related programs of the federal government, other
45 states, interstate agencies, or other public or private agencies or
46 organizations;

- 1 f. Establish adequate fiscal controls and accounting procedures to
2 assure proper disbursement of and accounting for funds appropriated
3 or otherwise provided for the purpose of carrying out the provisions
4 of this act;
- 5 g. Delegate those responsibilities and duties as deemed appropriate
6 for the purpose of administering the requirements of this act;
- 7 h. Establish and collect fees, in accordance with a fee schedule
8 adopted as a rule or regulation, for conducting inspections and
9 laboratory analyses and certifications as may be necessary.
- 10 i. Prescribe such regulations and issue such orders as are necessary
11 or appropriate to carry out his functions under this act;
- 12 j. Conduct research, investigations, experiments, demonstrations,
13 surveys, and studies relating to the causes, effects, extent, prevention,
14 and control of contaminants in drinking water;
- 15 k. Provide for the education of the public as to the causes, effects,
16 extent, prevention, and control of contaminants in drinking water;
- 17 l. Collect and make available, through publications, a data
18 management system and other appropriate means, the results of and
19 other information, including appropriate recommendations by the
20 institute in connection therewith, pertaining to such research and other
21 activities;
- 22 m. Cooperate with and contract with other public and private
23 agencies, institutions, and organizations and with any industries
24 involved, in the preparation and conduct of such research and other
25 activities;
- 26 n. Review treatment methods used for removal of contaminants
27 from drinking water;
- 28 o. Provide for the education and training of departmental personnel
29 in those areas relating to the causes, effects, extent, prevention and
30 control of contaminants in drinking water;
- 31 p. Establish and collect reasonable fees, in accordance with a fee
32 schedule adopted as a rule or regulation, for the estimated costs of
33 administering and enforcing the programs pursuant to this amendatory
34 and supplementary act, to the extent that the costs are not available
35 from the fund, including but not limited to conducting inspections,
36 laboratory analyses and certifications as may be necessary;
- 37 q. The authority to collect fees pursuant to this section may be
38 delegated by the commissioner to the appropriate county agency
39 consistent with a delegation, pursuant to the provisions of the "County
40 Environmental Health Act," P.L.1977, c.443, (C.26:3A2-21 et seq.),
41 of any authority to administer the provisions of this act;
- 42 r. If a fee imposed pursuant to this section is not paid within 30
43 days of the date that the fee is due, an interest charge shall accrue on
44 the amount of the fee due and shall be collectible in accordance with

1 the provisions of section 1 of P.L. , c. (C.) (pending in
2 the Legislature as this bill).

3 (cf: P.L.1983, c.443, s.16)

4

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

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

13 b. Any person who violates the provisions of this act or any rule,
14 regulation or order promulgated pursuant to this act shall be liable to
15 a civil administrative penalty of not more than \$5,000.00 for the first
16 offense, not less than \$5,000.00 nor more than \$10,000.00 for the
17 second offense, and up to \$25,000.00 for the third and each
18 subsequent offense, to be collected in a civil action by a summary
19 proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et
20 seq.), or in any case before a court of competent jurisdiction wherein
21 injunctive relief had been requested. If the violation is of a continuing
22 nature, each day during which it continues subsequent to receipt of an
23 order to cease the violation shall constitute an additional, separate and
24 distinct offense. No civil administrative penalty shall be levied, except
25 subsequent to the notification of the violator by certified mail or
26 personal service. The notice shall include a reference to the section of
27 the statute, regulation, order or permit condition violated; a concise
28 statement of the facts alleged to constitute the violation; a statement
29 of the amount of the civil penalties to be imposed; a statement of the
30 amount of interest to be charged if the penalty is not paid when due;
31 and a statement of the violator's right to a hearing. The violator shall
32 have 20 days from receipt of the notice within which to deliver to the
33 commissioner a written request for a hearing. Subsequent to the
34 hearing and upon a finding that a violation has occurred, the
35 commissioner may issue a final order after assessing the amount of the
36 fine specified in the notice. If no hearing is requested, the notice shall
37 become a final order upon the expiration of the 20-day period.
38 Payment of the penalty is due when a final order is issued or when the
39 notice becomes a final order. If a civil administrative penalty imposed
40 pursuant to this section is not paid within 30 days of the date that the
41 penalty is due, an interest charge shall accrue on the amount of the
42 penalty due and shall be collectible in accordance with the provisions
43 of section 1 of P.L. , c. (C.)(pending in the Legislature as this
44 bill). The authority to levy a civil administrative penalty is in addition
45 to all other enforcement provisions in this act, and the payment of a
46 civil administrative penalty shall not be deemed to affect the

1 availability of any other enforcement provision in connection with the
2 violation for which the penalty is levied.

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

8 d. Any person who violates this act, or an administrative order
9 issued pursuant to subsection b. of this section, or a court order issued
10 pursuant to subsection a. of this section, or who fails to pay a civil
11 administrative penalty in full pursuant to subsection b. of this section
12 shall be subject, upon order of the court, to a civil penalty not to
13 exceed \$10,000.00 per day of the violation, and each day's
14 continuance of the violation shall constitute a separate and distinct
15 violation. Any penalty imposed under this subsection may be recovered
16 with costs in a summary proceeding pursuant to "the penalty
17 enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court shall
18 have jurisdiction to enforce "the penalty enforcement law."
19 (cf: P.L.1991, c.91, s.531)

20

21 35. This act shall take effect immediately and shall apply to
22 penalties imposed and fees that become due after the effective date of
23 this act.

24

25

26

STATEMENT

27

28 This bill authorizes the imposition of an interest charge on certain
29 unpaid permit, license or other fees, and on civil administrative
30 penalties imposed by the Department of Environmental Protection
31 (DEP). The bill's provisions would also apply to administrative
32 penalties imposed by the Department of Health in its regulation of the
33 disposal of medical waste. An interest charge would accrue from the
34 30th day that payment of a fee or penalty, or portion thereof, is due.
35 The interest charge shall accrue on the penalty amount due as of the
36 date payment was due. If the penalty, fee or other charge is contested
37 and is subsequently upheld in whole or in part, an interest charge shall
38 accrue on the amount upheld as of the date that payment was
39 originally due on the contested civil administrative penalty, fee, or
40 charge. The interest charge shall be based on the rate of interest
41 authorized under the New Jersey Rules of Court. If the penalty, fee
42 or charge paid to the department is contested and subsequently
43 reduced, an interest charge shall be paid by the department on the
44 excess amount, which charge shall accrue from the date of the
45 payment of the penalty, fee or other charge.

46 The bill also provides that a fee or charge will be deemed due when

1 written notice is received by the person who is being assessed. All
2 interest charges collected are dedicated to the same accounts and for
3 the same purposes, if any, for which the underlying penalty, fee, or
4 charge is dedicated.

5 The provisions of this bill apply to:

6 (1) fees and penalties assessed pursuant to the "Solid Waste
7 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.);

8 (2) fees and penalties assessed pursuant to the "Comprehensive
9 Regulated Medical Waste Management Act," P.L.1989, c.34
10 (C.13:1E-48.1 et seq.);

11 (3) fees imposed for inspections of major hazardous waste facilities
12 pursuant to section 2 of P.L.1979, c.186 (C.13:1E-42.2);

13 (4) fees and penalties assessed pursuant to the "Major Hazardous
14 Waste Facilities Siting Act," P.L.1981, c.279 (C.13:1E-49 et seq.);

15 (5) fees assessed pursuant to the "Environmental Cleanup
16 Responsibility Act," P.L.1983, c.330 (C.13:1K-6 et seq.);

17 (6) fees and penalties assessed pursuant to the "Toxic Prevention
18 Catastrophe Act," P.L.1985, c.403 (C.13:1K-19 et seq.);

19 (7) fees and penalties assessed for oil and natural gas drilling
20 activities pursuant to P.L.1985, c.432 (C.13:1M-1 et seq.);

21 (8) fees and penalties assessed pursuant to the "Freshwater
22 Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.);

23 (9) fees and penalties assessed under the "Air Pollution Control
24 Act," P.L.1954, c.212 (C.26:2C-1 et seq.);

25 (10) radon testing certification fees assessed pursuant P.L.1986,
26 c.83 (C.26:2D-70 et seq.);

27 (11) diversion permit fees assessed pursuant to section 11 of
28 P.L.1981, c.262 (C.58:1A-11);

29 (12) fees and penalties assessed pursuant to sections 9 and 10 of
30 the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-9,
31 58:10A-10);

32 (13) penalties assessed pursuant to section 22 of the "Spill
33 Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11u);

34 (14) fees and penalties assessed pursuant to sections 9 and 10 of
35 the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-9,
36 58:12A-10);

37 (15) fees assessed pursuant to the underground storage tank act,
38 P.L.1986, c.102 (C.58:10A-21) et seq.);

39 (16) license fees for wastewater and water supply operators
40 assessed pursuant to section 5 of P.L.1983, c.230 (C.58:11-68);

41 (17) permit fees for construction in areas assessed pursuant to
42 section 5 of P.L.1975, c.232 (C.13:1D-33);

43 (18) fees assessed pursuant to section 9 of the "Pesticide Control
44 Act of 1971," P.L.1971, c.176 (C.13:1F-9); and

45 (19) fees assessed pursuant to section 12 of the "Noise Control Act
46 of 1971," P.L.1971, c.418 (C.13:1G-5).

1

2

3 Requires the imposition of interest charges on certain unpaid fees and
4 penalties imposed by the Department of Environmental Protection, the
5 Department of Health, or the Board of Regulatory Commissioners.