

ASSEMBLY, No. 2667

STATE OF NEW JERSEY

INTRODUCED JANUARY 23, 1997

By Assemblymen **HOLZAPFEL, Moran and Connors**

1 **AN ACT** concerning the statute of limitations for certain environmental
2 criminal offenses and amending N.J.S.2C:1-6, N.J.S.2C:17-2, and
3 P.L.1970, c.39.

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

7
8 1. N.J.S.2C:1-6 is amended to read as follows:

9 2C:1-6. Time Limitations. a. (1) A prosecution for any offense set
10 forth in N.J.S.2C:11-3, N.J.S.2C:11-4 or N.J.S.2C:14-2 may be
11 commenced at any time.

12 (2) A prosecution for any offense set forth in paragraph (2) of
13 subsection a. of N.J.S.2C:17-2, section 9 of P.L.1970, c.39
14 (C.13:1E-9), section 19 of P.L.1954, c.212 (C.26:2C-19), or section
15 10 of P.L.1977, c.74 (C.58:10A-10) may be commenced at any time.

16 b. Except as otherwise provided in this section, prosecutions for
17 other offenses are subject to the following periods of limitations:

18 (1) A prosecution for a crime must be commenced within five years
19 after it is committed;

20 (2) A prosecution for a disorderly persons offense or petty
21 disorderly persons offense must be commenced within one year after
22 it is committed;

23 (3) A prosecution for any offense set forth in N.J.S.2C:27-2,
24 N.J.S.2C:27-4, N.J.S.2C:27-6, N.J.S.2C:27-7, N.J.S.2C:29-4,
25 N.J.S.2C:30-2, N.J.S.2C:30-3, or any attempt or conspiracy to commit
26 such an offense, must be commenced within seven years after the
27 commission of the offense;

28 (4) A prosecution for an offense set forth in N.J.S.2C:14-3 or
29 N.J.S.2C:24-4, when the victim at the time of the offense is below the
30 age of 18 years, must be commenced within five years of the victim's
31 attaining the age of 18 or within two years of the discovery of the
32 offense by the victim, whichever is later.

33 c. An offense is committed either when every element occurs or,
34 if a legislative purpose to prohibit a continuing course of conduct

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 plainly appears, at the time when the course of conduct or the
2 defendant's complicity therein is terminated. Time starts to run on the
3 day after the offense is committed.

4 d. A prosecution is commenced for a crime when an indictment is
5 found and for a nonindictable offense when a warrant or other process
6 is issued, provided that such warrant or process is executed without
7 unreasonable delay. Nothing contained in this section, however, shall
8 be deemed to prohibit the downgrading of an indictable offense to a
9 nonindictable offense at any time if the indictable offense was filed
10 within the statute of limitations applicable to indictable offenses.

11 e. The period of limitation does not run during any time when a
12 prosecution against the accused for the same conduct is pending in this
13 State.

14 f. The limitations in this section shall not apply to any person
15 fleeing from justice.

16 g. Except as otherwise provided in this code, no civil action shall
17 be brought pursuant to this code more than five years after such action
18 accrues.

19 (cf: P.L.1996, c.22, s.1)

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21 2. N.J.S. 2C:17-2 is amended to read as follows:

22 2C:17-2. Causing or Risking Widespread Injury or Damage.

23 a. (1) A person who, purposely or knowingly, unlawfully causes
24 an explosion, flood, avalanche, collapse of a building, release or
25 abandonment of poison gas, radioactive material or any other harmful
26 or destructive substance commits a crime of the second degree. A
27 person who, purposely or knowingly, unlawfully causes widespread
28 injury or damage in any manner commits a crime of the second degree.

29 (2) A person who, purposely or knowingly, unlawfully causes a
30 hazardous discharge required to be reported pursuant to the "Spill
31 Compensation and Control Act," P.L.1976, c.141 (C.58:10-23.11 et
32 seq.) or any rules and regulations adopted pursuant thereto, or who,
33 purposely or knowingly, unlawfully causes a release or abandonment
34 of hazardous waste as defined in section 1 of P.L.1976, c.99
35 (C.13:1E-38) or a toxic pollutant as defined in section 3 of P.L.1977,
36 c.74 (C.58:10A-3) commits a crime of the second degree. Any person
37 who recklessly violates the provisions of this paragraph is guilty of a
38 crime of the third degree. [The provisions of N.J.S.2C:1-6 to the
39 contrary notwithstanding, a prosecution for a violation of the
40 provisions of this paragraph shall be commenced within five years of
41 the date of the discovery of the violation.]

42 b. A person who recklessly causes widespread injury or damage is
43 guilty of a crime of the third degree.

44 c. A person who recklessly creates a risk of widespread injury or
45 damage commits a crime of the fourth degree, even if no such injury
46 or damage occurs.

1 d. A person who knowingly or recklessly fails to take reasonable
2 measures to prevent or mitigate widespread injury or damage commits
3 a crime of the fourth degree, if:

4 (1) He knows that he is under an official, contractual or other legal
5 duty to take such measures; or

6 (2) He did or assented to the act causing or threatening the injury
7 or damage.

8 e. For purposes of this section, widespread injury or damage means
9 serious bodily injury to 10 or more people or damage to 10 or more
10 habitations or to a building which would normally have contained 50
11 or more persons at the time of the offense.

12 (cf: P.L.1985, c.348, s.1)

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

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

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

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

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

36 Any county health department may charge and collect from the
37 owner or operator of any sanitary landfill facility within its jurisdiction
38 such fees for enforcement activities as may be established by ordinance
39 or resolution adopted by the governing body of any such county. The
40 fees shall be established in accordance with a fee schedule regulation
41 adopted by the department, pursuant to law, and shall be utilized
42 exclusively to fund such enforcement activities.

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

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

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

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

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

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

13 (5) Petition the Attorney General to bring a criminal action in
14 accordance with subsection g. of this section.

15 c. Whenever the commissioner finds that a person has violated any
16 provision of P.L.1970, c.39, or any rule or regulation adopted, permit
17 issued, or district solid waste management plan adopted pursuant to
18 P.L.1970, c.39, he may issue an order specifying the provision or
19 provisions of P.L.1970, c.39, or the rule, regulation, permit or district
20 solid waste management plan of which the person is in violation, citing
21 the action which constituted the violation, ordering abatement of the
22 violation, and giving notice to the person of his right to a hearing on
23 the matters contained in the order. The ordered party shall have 20
24 calendar days from receipt of the order within which to deliver to the
25 commissioner a written request for a hearing. Such order shall be
26 effective upon receipt and any person to whom such order is directed
27 shall comply with the order immediately. A request for hearing shall
28 not automatically stay the effect of the order.

29 d. The commissioner, a local board of health or county health
30 department may institute an action or proceeding in the Superior Court
31 for injunctive and other relief, including the appointment of a receiver
32 for any violation of this act, or of any code, rule or regulation adopted,
33 permit issued, district solid waste management plan adopted or order
34 issued pursuant to this act and said court may proceed in the action in
35 a summary manner. In any such proceeding the court may grant
36 temporary or interlocutory relief, notwithstanding the provisions of
37 R.S.48:2-24.

38 Such relief may include, singly or in combination:

39 (1) A temporary or permanent injunction;

40 (2) Assessment of the violator for the costs of any investigation,
41 inspection, or monitoring survey which led to the establishment of the
42 violation, and for the reasonable costs of preparing and litigating the
43 case under this subsection;

44 (3) Assessment of the violator for any cost incurred by the State in
45 removing, correcting or terminating the adverse effects upon water
46 and air quality resulting from any violation of any provision of this act

1 or any rule, regulation or condition of approval for which the action
2 under this subsection may have been brought;

3 (4) Assessment against the violator of compensatory damages for
4 any loss or destruction of wildlife, fish or aquatic life, and for any
5 other actual damages caused by any violation of this act or any rule,
6 regulation or condition of approval established pursuant to this act for
7 which the action under this subsection may have been brought.
8 Assessments under this subsection shall be paid to the State Treasurer,
9 or to the local board of health, or to the county health department, as
10 the case may be, except that compensatory damages may be paid by
11 specific order of the court to any persons who have been aggrieved by
12 the violation.

13 If a proceeding is instituted by a local board of health or county
14 health department, notice thereof shall be served upon the
15 commissioner in the same manner as if the commissioner were a named
16 party to the action or proceeding. The department may intervene as a
17 matter of right in any proceeding brought by a local board of health or
18 county health department.

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

1 levy a civil administrative penalty is in addition to all other
2 enforcement provisions in P.L.1970, c.39, and the payment of any
3 assessment shall not be deemed to affect the availability of any other
4 enforcement provisions in connection with the violation for which the
5 assessment is levied. The department may compromise any civil
6 administrative penalty assessed under this section in an amount the
7 department determines appropriate.

8 f. Any person who violates the provisions of P.L.1970, c.39, or any
9 code, rule or regulation adopted pursuant thereto shall be liable to a
10 penalty of not more than \$50,000.00 per day, to be collected in a civil
11 action commenced by a local board of health, a county health
12 department, or the commissioner.

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

19 Of the penalty imposed pursuant to this subsection, 10% or
20 \$250.00, whichever is greater, shall be paid to the department from the
21 General Fund if the Attorney General determines that a person is
22 entitled to a reward pursuant to section 2 of P.L.1987, c.158
23 (C.13:1E-9.2).

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

29 g. Any person who knowingly:

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

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

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

38 (4) Makes any false or misleading statement to any person who
39 prepares any hazardous waste application, label, manifest, record,
40 report, design or other document required to be submitted to the
41 department; or

42 (5) Makes any false or misleading statement on any hazardous
43 waste application, label, manifest, record, report, design or other
44 document required to be submitted to the department shall, upon
45 conviction, be guilty of a crime of the third degree and,
46 notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a

1 fine of not more than \$50,000.00 for the first offense and not more
2 than \$100,000.00 for the second and each subsequent offense and
3 restitution, in addition to any other appropriate disposition authorized
4 by subsection b. of N.J.S.2C:43-2.

5 h. Any person who recklessly:

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

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

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

14 (4) Makes any false or misleading statement to any person who
15 prepares any hazardous waste application, label, manifest, record,
16 report, design or other document required to be submitted to the
17 department; or

18 (5) Makes any false or misleading statement on any hazardous
19 waste application, label, manifest, record, report, design or other
20 document required to be submitted to the department, shall, upon
21 conviction, be guilty of a crime of the fourth degree.

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

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

33 k. [The provisions of N.J.S.2C:1-6 to the contrary
34 notwithstanding, a prosecution for a violation of the provisions of
35 subsection g., subsection h. or subsection i. of this section shall be
36 commenced within five years of the date of discovery of the violation.]
37 (Deleted by amendment, P.L. , c. (before the Legislature as this
38 bill))

39 l. Pursuit of any remedy specified in this section shall not preclude
40 the pursuit of any other remedy provided by any other law.
41 Administrative and judicial remedies provided in this section may be
42 pursued simultaneously.
43 (cf: P.L.1990, c.70, s.1)

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45 4. This act shall take effect immediately and shall apply to any
46 offense committed for which the time limitation for bringing a

1 prosecution against the person who committed the offense has not
2 expired.

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STATEMENT

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7 This bill would eliminate the statute of limitations for criminal
8 offenses under several of the State's major environmental laws. This
9 bill would apply to violations of the "Solid Waste Management Act,"
10 P.L.1970, c.39 (C.13:1E-1 et seq.), the "Air Pollution Control Act
11 (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), the hazardous waste
12 discharge provisions of N.J.S.2C:17-2, and the "Water Pollution
13 Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.).

14 Under current law, criminal offenses under the "Solid Waste
15 Management Act" and the discharge provisions of N.J.S.2C:17-2 are
16 subject to a statute of limitations that is set at five years from the date
17 of discovery of the violation. Criminal offenses under the "Air
18 Pollution Control Act (1954)" and the "Water Pollution Control Act"
19 are set at five years from the commission of the offense.

20 Because of the potential long term impacts from criminal violations
21 of these environmental laws, there is a need to be able to prosecute
22 those criminal actions even many years after an offense has been
23 committed and in certain instances even many years after it has been
24 discovered. This is especially so because it is often difficult to
25 determine who committed environmental crimes and the damage that
26 occurs is often not perceptible until many years after the violation is
27 discovered. These unique aspects of environmental crimes necessitate
28 that they not be subject to the artificial and constraining conditions of
29 a statute of limitations.

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34 Eliminates statute of limitations for certain environmental criminal
35 offenses.