

CHAPTER 325

AN ACT concerning the statute of limitations for certain environmental criminal offenses and amending N.J.S.2C:1-6, N.J.S.2C:17-2, P.L.1970, c.39, P.L.1989, c.34, and P.L.1984, c.173.

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

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

Time limitations.

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

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

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

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

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

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

(5) A prosecution for any offense set forth in paragraph (2) of subsection a. of N.J.S.2C:17-2, section 9 of P.L.1970, c.39 (C.13:1E-9), section 20 of P.L.1989, c.34 (C.13:1E-48.20), section 19 of P.L.1954, c.212 (C.26:2C-19), section 10 of P.L.1984, c.173 (C.34:5A-41), or section 10 of P.L.1977, c.74 (C.58:10A-10) must be commenced within 10 years after the date of discovery of the offense by a local law enforcement agency, a county prosecutor, or the Department of Environmental Protection either directly by any of those entities or indirectly by notice given to any of those entities.

c. An offense is committed either when every element occurs or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

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

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

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

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

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

Causing or risking widespread injury or damage.

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

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

(2) A person who, purposely or knowingly, unlawfully causes a hazardous discharge required to be reported pursuant to the "Spill Compensation and Control Act," P.L.1976, c.141

(C.58:10-23.11 et seq.) or any rules and regulations adopted pursuant thereto, or who, purposely or knowingly, unlawfully causes a release or abandonment of hazardous waste as defined in section 1 of P.L.1976, c.99 (C.13:1E-38) or a toxic pollutant as defined in section 3 of P.L.1977, c.74 (C.58:10A-3) commits a crime of the second degree. Any person who recklessly violates the provisions of this paragraph is guilty of a crime of the third degree.

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

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

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

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

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

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

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

C.13:1E-9 Codes, rules and regulations; enforcement; penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Such relief may include, singly or in combination:

- (1) A temporary or permanent injunction;
- (2) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection;
- (3) Assessment of the violator for any cost incurred by the State in removing, correcting or terminating the adverse effects upon water and air quality resulting from any violation of any provision of this act or any rule, regulation or condition of approval for which the action under this subsection may have been brought;
- (4) Assessment against the violator of compensatory damages for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by any violation of this act or any rule, regulation or condition of approval established pursuant to this act for which the action under this subsection may have been brought. Assessments under this subsection shall be paid to the State Treasurer, or to the local board of health, or to the county health department, as the case may be, except that compensatory damages may be paid by specific order of the court to any persons who have been aggrieved by the violation.

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

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

requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in P.L.1970, c.39, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate.

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

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

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

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

g. Any person who knowingly:

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

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

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

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

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

h. Any person who recklessly:

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

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

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

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

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

i. Any person who, regardless of intent, generates and causes or permits any hazardous waste to be transported, transports, or receives transported hazardous waste without completing and submitting to the department a hazardous waste manifest in accordance with the provisions

of this act or any rule or regulation adopted pursuant hereto shall, upon conviction, be guilty of a crime of the fourth degree.

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

k. (Deleted by amendment, P.L.1997, c.325.)

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

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

C.13:1E-48.20 Enforcement.

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, a local board of health, or a county health department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver for any violation of this act, or of any rule or regulation adopted pursuant thereto, and

the court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief.

Such relief may include, singly or in combination:

- (1) a temporary or permanent injunction;
- (2) assessment of the violator for the costs of any investigation, inspection, or monitoring survey that led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection;
- (3) assessment of the violator for any cost incurred by the State in removing, correcting, or terminating the adverse effects upon environmental quality or public health resulting from any violation of this act, or any rule or regulation adopted pursuant thereto, for which the action under this subsection may have been brought;
- (4) assessment against the violator of compensatory damages for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by any violation of this act, or any rule or regulation adopted pursuant thereto, for which the action under this subsection may have been brought.

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

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

e. Either of the commissioners, as the case may be, may assess a civil administrative penalty of not more than \$50,000 for each violation. Each day that a violation continues shall constitute an additional, separate, and distinct offense. A commissioner may not assess a civil administrative penalty in excess of \$25,000 for a single violation, or in excess of \$2,500 for each day during which a violation continues, until the departments have respectively adopted, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), regulations requiring the appropriate commissioner, in assessing a civil administrative penalty, to consider the operational history of the violator, the severity of the violation, the measures taken to mitigate or prevent further violations, and whether the penalty will maintain an appropriate deterrent. No assessment may be levied pursuant to this section until after the violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, regulation, or order violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of the civil administrative penalties to be imposed, and a statement of the party's right to a hearing. The ordered party shall have 20 calendar days from receipt of the notice within which to deliver to the appropriate commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, that commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Each department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate.

f. A person who violates this act, or any rule or regulation adopted pursuant thereto, shall be liable for a penalty of not more than \$50,000 per day, to be collected in a civil action commenced by the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, a local board of health, or a county health department.

A person who violates an administrative order issued pursuant to subsection c. of this section, or a court order issued pursuant to subsection d. of this section, or who fails to pay an administrative assessment in full pursuant to subsection e. of this section is subject upon order

of a court to a civil penalty not to exceed \$100,000 per day of each violation.

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

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

g. A person who purposely or knowingly:

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

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

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

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

h. A person who recklessly or negligently:

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

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

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

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

i. A person who, regardless of intent:

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

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

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

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

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

k. All conveyances used or intended for use in the willful discharge, in violation of this act, or any rule or regulation adopted pursuant thereto, of regulated medical waste are subject to

forfeiture to the State pursuant to P.L.1981, c.387 (C.13:1K-1 et seq.).

l. (Deleted by amendment, P.L.1997, c.325.)

m. No prosecution for a violation under this act shall be deemed to preclude a prosecution for the violation of any other applicable statute.

5. Section 10 of P.L.1984, c.173 (C.34:5A-41) is amended to read as follows:

C.34:5A-41 Violations; penalties.

10. Any person who knowingly hinders or delays the Commissioner of Labor or Health and Senior Services or the authorized representative thereof, in the performance of the duty to enforce this act, or knowingly submits false or misleading information on any license or permit application required by this act, or fails to obtain licenses or permits required by the provisions of this act, or refuses to make these licenses or permits accessible to either commissioner, or the authorized representative thereof, or otherwise violates any provision of this act or any regulation adopted under this act, shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a fine of not more than \$25,000 in addition to any other appropriate disposition authorized by subsection b. of N.J.S.2C:43-2.

6. This act shall take effect immediately and shall apply to any offense committed for which the time limitation for bringing a prosecution against the person who committed the offense has not expired.

Approved January 8, 1998.