

SENATE, No. 151

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators LaROSSA and INVERSO

1 AN ACT eliminating the authority of the Department of Environmental
2 Protection to impose civil administrative penalties, and amending
3 and repealing parts of the statutory law.

4

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

7

8 1. Section 15 of P.L.1991, c.235 (C.13:1D-49) is amended to read
9 as follows:

10 15. a. Whenever, on the basis of information available to the
11 commissioner, the commissioner finds that a person is in violation of
12 this act, the commissioner shall:

13 (1) Issue an order in accordance with subsection b. of this section
14 requiring the person to comply;

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

17 (3) [Levy a civil administrative penalty in accordance with
18 subsection d. of this section; or] (~~Deleted by amendment, P.L. , c.)~~
19 (pending in the Legislature as this bill)

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

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

24 b. Whenever, on the basis of information available to the
25 commissioner, the commissioner finds that a person is in violation of
26 this act, the commissioner may issue an order (1) specifying the
27 provision or provisions of this act, or the rule or regulation adopted
28 pursuant thereto, of which the person is in violation; (2) citing the
29 action that caused the violation; (3) requiring compliance with the
30 provision of this act or the rule or regulation adopted pursuant thereto
31 of which the person is in violation; and (4) giving notice to the person
32 of his right to a hearing on the matters contained in the order.

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 c. The commissioner is authorized to commence a civil action in
2 Superior Court for appropriate relief from a violation of this act. This
3 relief may include an assessment against the violator for the costs of
4 any investigation, inspection, or monitoring survey that led to the
5 discovery and establishment of the violation, and for the reasonable
6 costs of preparing and litigating the case under this subsection.

7 d. (1) The commissioner is authorized to impose a civil
8 administrative penalty of not more than \$15,000 for each violation,
9 and each day during which each violation continues shall constitute an
10 additional, separate, and distinct offense. Any amount imposed under
11 this subsection shall be assessed pursuant to rules and regulations
12 adopted by the commissioner for violations of similar type,
13 seriousness, and duration. The commissioner shall have the authority
14 to assess penalties prior to the establishment of rules and regulations
15 governing penalties to the extent that such penalties are reasonable and
16 based on other violations of a similar type, seriousness, and duration.
17 No civil administrative penalty shall be imposed until after the person
18 has been notified by certified mail or personal service. The notice shall
19 include: a reference to the section of the act, rule, regulation, order,
20 or permit violated; a concise statement of the facts alleged to
21 constitute a violation; a statement of the amount of the civil
22 administrative penalties to be imposed; and a statement of the person's
23 right to a hearing. The person shall have 20 days from receipt of the
24 notice within which to deliver to the commissioner a written request
25 for a hearing. Subsequent to the hearing and upon finding that a
26 violation has occurred, the commissioner may issue a final order or
27 civil administrative penalty after imposing the amount of the fine
28 specified in the notice. If no hearing is requested, the notice shall
29 become a final order or a final civil administrative penalty upon the
30 expiration of the 20-day period. Payment of the penalty is due when
31 a final order is issued or when the notice becomes a final order or a
32 final civil administrative penalty. The authority to levy a civil
33 administrative penalty is in addition to all other enforcement provisions
34 in this act, and the payment of a civil administrative penalty shall not
35 be deemed to affect the availability of any other enforcement provision
36 in connection with the violation for which the penalty is levied. A civil
37 administrative penalty imposed under this subsection may be
38 compromised by the commissioner upon the posting of a performance
39 bond by the violator, or upon terms and conditions the commissioner
40 may establish by rule or regulation.

41 (2) In addition to the assessment of a civil administrative penalty,
42 the commissioner may, by administrative order and upon an
43 appropriate finding, assess a violator for the reasonable costs of any
44 investigation, inspection, or monitoring survey which led to the
45 establishment of the violation. ~~(Deleted by amendment, P.L. , c.~~
46 ~~)(pending in the Legislature as this bill)~~

1 e. Any person who violates this act, an order issued pursuant to
2 subsection b. of this section, or a court order issued pursuant to
3 subsection c. of this section, [or who fails to pay in full a civil
4 administrative penalty levied pursuant to subsection d. of this
5 section,] shall be subject, upon order of a court, to a civil penalty not
6 to exceed \$15,000 for each day during which the violation continues.
7 Any penalty imposed pursuant to this subsection may be collected, and
8 any costs incurred in connection therewith may be recovered, in a
9 summary proceeding pursuant to "the penalty enforcement law"
10 (N.J.S.2A:58-1 et seq.). The Superior Court and the municipal court
11 shall have jurisdiction to enforce "the penalty enforcement law."

12 f. Any violation of a pollution prevention condition of a
13 facility-wide permit issued pursuant to this act shall be considered a
14 violation of P.L.1970, c.33 (C.13:1D-1 et seq.), P.L.1970, c.39
15 (C.13:1E-1 et seq.), P.L.1977, c.74 (C.58:10A-1 et seq.), or P.L.1954,
16 c.212 (C.26:2C-1 et seq.), as the department deems appropriate.
17 (cf: P.L.1991, c.235, s.15)

18

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

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

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

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

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

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

1 utilized exclusively to fund [such] the enforcement activities.

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

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

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

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

14 (3) [Levy a civil administrative penalty in accordance with
15 subsection e. of this section;] (~~Deleted by amendment, P.L. _____, c.~~
16 ~~)(pending in the Legislature as this bill)~~

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

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

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

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

44 Such relief may include, singly or in combination:

45 (1) A temporary or permanent injunction;

46 (2) Assessment of the violator for the costs of any investigation,

1 inspection, or monitoring survey which led to the establishment of the
2 violation, and for the reasonable costs of preparing and litigating the
3 case under this subsection;

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

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

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

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

1 request for a hearing. After the hearing and upon finding that a
2 violation has occurred, the commissioner may issue a final order after
3 assessing the amount of the fine specified in the notice. If no hearing
4 is requested, the notice shall become a final order after the expiration
5 of the 20-day period. Payment of the assessment is due when a final
6 order is issued or the notice becomes a final order. The authority to
7 levy a civil administrative penalty is in addition to all other
8 enforcement provisions in P.L.1970, c.39, and the payment of any
9 assessment shall not be deemed to affect the availability of any other
10 enforcement provisions in connection with the violation for which the
11 assessment is levied. The department may compromise any civil
12 administrative penalty assessed under this section in an amount the
13 department determines appropriate. ~~](Deleted by amendment, P.L. __, c. __)~~
14](pending in the Legislature as this bill)

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

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

26 Of the penalty imposed pursuant to this subsection, 10% or
27 \$250.00, whichever is greater, shall be paid to the department from the
28 General Fund if the Attorney General determines that a person is
29 entitled to a reward pursuant to section 2 of P.L.1987, c.158
30 (C.13:1E-9.2).

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

36 g. Any person who knowingly:

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

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

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

45 (4) Makes any false or misleading statement to any person who
46 prepares any hazardous waste application, label, manifest, record,

1 report, design or other document required to be submitted to the
2 department; or

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

12 h. Any person who recklessly:

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

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

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

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

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

29 i. Any person who, regardless of intent, generates and causes or
30 permits any hazardous waste to be transported, transports, or receives
31 transported hazardous waste without completing and submitting to the
32 department a hazardous waste manifest in accordance with the
33 provisions of this act or any rule or regulation adopted pursuant hereto
34 shall, upon conviction, be guilty of a crime of the fourth degree.

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

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

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

1 pursued simultaneously.
2 (cf: P.L.1990, c.70, s.1)

3
4 3. Section 20 of P.L.1989, c.34 (C.13:1E-48.20) is amended to
5 read as follows:

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

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

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

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

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

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

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

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

31 (3) [levy a civil administrative penalty in accordance with
32 subsection e. of this section;] (Deleted by amendment, P.L. ____, c.
33)(pending in the Legislature as this bill)

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

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

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

40 c. Whenever the Commissioner of Environmental Protection or the
41 Commissioner of Health finds that a person has violated this act, or
42 any rule or regulation adopted pursuant thereto, that commissioner
43 may issue an order specifying the provision or provisions of this act,
44 or the rule or regulation adopted pursuant thereto, of which the person
45 is in violation, citing the action that constituted the violation, ordering
46 abatement of the violation, and giving notice to the person of the

1 person's right to a hearing on the matters contained in the order. The
2 ordered party shall have 20 days from receipt of the order within
3 which to deliver to the commissioner a written request for a hearing.
4 After the hearing and upon finding that a violation has occurred, the
5 commissioner may issue a final order. If no hearing is requested, the
6 order shall become final after the expiration of the 20-day period. A
7 request for hearing shall not automatically stay the effect of the order.

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

16 Such relief may include, singly or in combination:

17 (1) a temporary or permanent injunction;

18 (2) assessment of the violator for the costs of any investigation,
19 inspection, or monitoring survey that led to the establishment of the
20 violation, and for the reasonable costs of preparing and litigating the
21 case under this subsection;

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

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

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

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

43 e. [Either of the commissioners, as the case may be, may assess a
44 civil administrative penalty of not more than \$50,000 for each
45 violation. Each day that a violation continues shall constitute an
46 additional, separate, and distinct offense. A commissioner may not

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

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

37 A person who violates an administrative order issued pursuant to
38 subsection c. of this section, or a court order issued pursuant to
39 subsection d. of this section[, or who fails to pay an administrative
40 assessment in full pursuant to subsection e. of this section] is subject
41 upon order of a court to a civil penalty not to exceed \$100,000 per
42 day of each violation.

43 Of the penalty imposed pursuant to this subsection, 10% or \$250,
44 whichever is greater, shall be paid to the appropriate department from
45 the General Fund if the Attorney General determines that a person is
46 entitled to a reward pursuant to section 24 of [this act] P.L.1989, c.34

1 (C.13:1E-48.24).

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

7 g. A person who purposely or knowingly:

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

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

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

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

29 h. A person who recklessly or negligently:

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

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

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

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

1 i. A person who, regardless of intent:

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

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

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

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

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

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

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

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

32

33 4. Section 11 of P.L.1991, c.520 (C.13:1E-99.54) is amended to
34 read as follows:

35 11. a. Whenever the commissioner finds that a person has violated
36 any provision of this act, or any rule or regulation adopted pursuant
37 thereto, the commissioner may:

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

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

42 (3) [levy a civil administrative penalty in accordance with
43 subsection d. of this section;] (~~Deleted by amendment, P.L. , c.)~~
44 (pending in the Legislature as this bill)

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

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

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

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

19 c. The commissioner may institute an action or proceeding in the
20 Superior Court for injunctive and other relief to enforce the provisions
21 of this act and to prohibit and prevent a violation of this act, or of any
22 rule or regulation adopted pursuant thereto, and the court may
23 proceed in the action in a summary manner. In any such proceeding the
24 court may grant temporary or interlocutory relief.

25 Such relief may include, singly or in combination:

26 (1) a temporary or permanent injunction;

27 (2) assessment of the violator for the reasonable costs of any
28 inspection, including the costs of any sampling or testing of packages
29 or packaging components that led to the establishment of the violation,
30 and for the reasonable costs of preparing and litigating the case under
31 this subsection.

32 d. [(1) The commissioner may assess a civil administrative penalty
33 of not more than \$7,500.00 for a first offense, not more than
34 \$10,000.00 for a second offense and not more than \$25,000.00 for a
35 third and every subsequent offense. Each day that a violation continues
36 shall constitute an additional, separate, and distinct offense.

37 No assessment may be levied pursuant to this section until after the
38 violator has been notified by certified mail or personal service. The
39 notice shall include a reference to the section of the statute, rule,
40 regulation, or order violated, a concise statement of the facts alleged
41 to constitute a violation, a statement of the amount of the civil
42 administrative penalties to be imposed, and a statement of the person's
43 right to a hearing. The ordered person shall have 20 calendar days
44 from receipt of the notice within which to deliver to the commissioner
45 a written request for a hearing.

46 After the hearing and upon finding that a violation has occurred, the

1 commissioner may issue a final order after assessing the amount of the
2 fine specified in the notice. If no hearing is requested, the notice shall
3 become a final order after the expiration of the 20-day period.
4 Payment of the assessment is due when a final order is issued or the
5 notice becomes a final order. The authority to levy a civil
6 administrative penalty is in addition to all other enforcement provisions
7 in this act, and the payment of any assessment shall not be deemed to
8 affect the availability of any other enforcement provisions in
9 connection with the violation for which the assessment is levied. The
10 department may compromise any civil administrative penalty assessed
11 under this section in an amount the department determines
12 appropriate.

13 (2) The commissioner may not assess a civil administrative penalty
14 for a first offense for any violation of the provisions of this act, or of
15 any rule or regulation adopted pursuant thereto, except in those
16 instances where an ordered person violates an administrative order
17 issued pursuant to subsection b. of section 10 of this act. ~~(Deleted by~~
18 amendment, P.L. , c.) (pending in the Legislature as this bill)

19 e. (1) A person who violates this act, or any rule or regulation
20 adopted pursuant thereto, shall be liable for a penalty of not more than
21 \$7,500.00 per day, to be collected in a civil action commenced by the
22 commissioner.

23 (2) The commissioner may not bring an action for a civil penalty
24 for a first offense for any violation of the provisions of this act, or of
25 any rule or regulation adopted pursuant thereto, except in those
26 instances where an ordered person violates an administrative order
27 issued pursuant to subsection b. of section 10 of this act.

28 A person who violates an administrative order issued pursuant to
29 subsection b. of this section, or a court order issued pursuant to
30 subsection c. of this section[, or who fails to pay an administrative
31 assessment in full pursuant to subsection d. of this section] is subject
32 upon order of a court to a civil penalty not to exceed \$50,000.00 per
33 day of each violation.

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

39 f. Assessments and penalties under this section shall be paid to the
40 department and deposited into the "Toxic Packaging Reduction Fund"
41 established pursuant to section 12 of [this act] P.L.1991, c.520
42 (C.13:1E-99.55).

43 g. Any person who purposely or knowingly:

44 (1) sells, offers for sale, or offers for promotional purposes any
45 package or packaging component in violation of subsection a. of
46 section 4 of [this act] P.L.1991, c.520 (C.13:1E-99.47), or of any rule

1 or regulation adopted pursuant thereto;

2 (2) sells, offers for sale, or offers for promotional purposes any
3 product in violation of subsection b. of section 4 of [this act]
4 P.L.1991, c.520 (C.13:1E-99.47), or of any rule or regulation adopted
5 pursuant thereto; or

6 (3) sells, offers for sale, or offers for promotional purposes any
7 package or packaging component that exceeds the maximum
8 contaminant levels set forth in subsection c. of section 4 of [this act]
9 P.L.1991, c.520 (C.13:1E-99.47); shall, upon conviction, be guilty of
10 a crime of the third degree and, notwithstanding the provisions of
11 N.J.S.2C:43-3, shall be subject to a fine of not less than \$7,500.00 for
12 a first offense, not more than \$10,000.00 for a second offense and not
13 more than \$25,000.00 for a third and every subsequent offense. Each
14 day during which the violation continues constitutes an additional,
15 separate and distinct offense.

16 h. The provisions of N.J.S.2C:1-6 to the contrary notwithstanding,
17 a prosecution for a violation of the provisions of subsection g. of this
18 section shall be commenced within five years of the date of discovery
19 of the violation.

20 i. No retailer shall be deemed to have violated the provisions of
21 section 4 of [this act] P.L.1991, c.520 (C.13:1E-99.47), if the
22 commissioner finds that the retailer can demonstrate that, in the
23 purchase of a specified package or packaging component, the retailer
24 relied in good faith on the written assurance of the product
25 manufacturer or distributor that the package or packaging component
26 complied with the provisions of this act. The written assurance shall
27 state that a specified package or packaging component is in
28 compliance with the provisions of this act, and shall be signed by an
29 authorized representative of the package manufacturer or distributor.
30 If an exemption is claimed for the package or packaging component
31 pursuant to subsection b. of section 5 of [this act] P.L.1991, c.520
32 (C.13:1E-99.48), the written assurance shall state the specific basis
33 upon which the exemption is claimed.

34 (cf: P.L.1991, c.520, s.11)

35

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

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

44 b. [Any person who violates the provisions of sections 4 through
45 8 of this act or any rule, regulation or order promulgated pursuant
46 thereto is liable to a civil administrative penalty of not more than

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

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

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

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

44

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

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

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

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

9 (3) [Levy a civil administrative penalty in accordance with
10 subsection d. of this section] (~~Deleted by amendment, P.L. , c.)~~
11 (~~pending in the Legislature as this bill~~); or

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

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

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

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

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

34 (1) A temporary or permanent injunction;

35 (2) Assessment of the violator for the costs of any investigation,
36 inspection, or monitoring survey which led to the establishment of the
37 violation, and for the reasonable costs of preparing and bringing legal
38 action under this subsection;

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

43 (4) Assessment against the violator for compensatory damages for
44 any loss or destruction of wildlife, fish or aquatic life, and for any
45 other actual damages caused by an unauthorized regulated activity.

46 Assessments under this subsection shall be paid to the State Treasurer,

1 except that compensatory damages shall be paid by specific order of
2 the court to any persons who have been aggrieved by the unauthorized
3 regulated activity;

4 (5) A requirement that the violator restore the site of the violation
5 to the maximum extent practicable and feasible.

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

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

46 f. A person who willfully or negligently violates this act shall be

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

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

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

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

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

43 k. The department shall make available without restriction any
44 information obtained or used in the implementation of this act to the
45 United States Environmental Protection Agency upon a request
46 therefor.

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

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

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

10

11 7. Section 14 of P.L.1954, c.212 (C.26:2C-14) is amended to read
12 as follows:

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

17 If upon inspection the department discovers a condition which is in
18 violation of the provisions of this act or any code, rule or regulation
19 promulgated pursuant thereto, it shall be authorized to order such
20 violation to cease and to take such steps necessary to enforce such an
21 order. The order to cease the violation issued by the commissioner
22 and sent to the violator by certified mail or personal service shall
23 include a reference to the section of the statute, regulation, order, or
24 permit condition violated; [the amount of the fine which shall be
25 imposed;]a concise statement of the facts alleged to constitute the
26 violation; and a statement of the right of the violator to a hearing.

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

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

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

35

36 8. Section 9 of P.L.1962, c.215 (C.26:2C-14.1) is amended to read
37 as follows:

38 9. Any person aggrieved by an order of the department has 20 days
39 from receipt of the order within which to deliver to the commissioner
40 a written request for a hearing. Subsequent to the hearing, if
41 requested, and upon a finding that a violation has occurred, the
42 commissioner may issue a final order to cease the violation [and
43 assessing the amount of the fine specified in the order]. If no hearing
44 is requested, the order is a final order upon the expiration of the 20
45 day period. [Payment of the penalty is due when a final order is issued
46 or when the order becomes a final order. The authority to levy a civil

1 administrative penalty is in addition to all other enforcement provisions
2 in P.L.1954, c.212 (C. 26:2C-1 et seq.), and the payment of a civil
3 administrative penalty does not affect the availability of any other
4 enforcement provision in connection with the violation for which the
5 penalty is levied.]Pending the determination by the department and
6 upon application therefor the department may stay the operation of
7 such order upon such terms and conditions as it may deem proper.
8 (cf: P.L.1985, c.12, s.3)

9

10 9. Section 19 of P.L.1954, c.212 (C.26:2C-19) is amended to read
11 as follows:

12 19. a. If any person violates any of the provisions of P.L.1954,
13 c.212 (C.26:2C-1 et seq.) or any code, rule, regulation or order
14 adopted or issued pursuant thereto, the department may institute a
15 civil action in a court of competent jurisdiction for injunctive or any
16 other appropriate relief to prohibit and prevent such violation or
17 violations and the court may proceed in the action in a summary
18 manner.

19 b. [Any person who violates the provisions of P.L.1954, c.212
20 (C.26:2C-1 et seq.) or any code, rule, regulation or order adopted or
21 issued pursuant thereto shall be liable to a civil administrative penalty
22 of not more than \$10,000 for the first offense, not more than \$25,000
23 for the second offense, and not more than \$50,000 for the third and
24 each subsequent offense. If the violation is of a continuing nature,
25 each day during which it continues shall constitute an additional,
26 separate and distinct offense. No civil administrative penalty shall be
27 levied except upon an administrative order issued pursuant to section
28 14 of P.L.1954, c.212 (C.26:2C-14).]~~(Deleted by amendment, P.L.~~
29 ~~, c.) (pending in the Legislature as this bill)~~

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

34 d. Any person who violates the provisions of P.L.1954, c.212
35 (C.26:2C-1 et seq.) or any code, rule, regulation, or order adopted or
36 issued pursuant thereto, or a court order issued pursuant to subsection
37 a. of this section, [or who fails to pay a civil administrative penalty in
38 full pursuant to section 9 of P.L.1962, c.215 (C.26:2C-14.1),]is
39 subject, upon order of the court, to a civil penalty of not more than
40 \$10,000 for the first offense, not more than \$25,000 for the second
41 offense, and not more than \$50,000 for the third and each subsequent
42 offense. If the violation is of a continuing nature, each day during
43 which the violation continues, [or each day in which the civil
44 administrative penalty is not paid in full,]constitutes an additional,
45 separate and distinct offense. Any penalty imposed under this
46 subsection may be recovered with costs in a summary proceeding

1 pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).
2 The Law Division of the Superior Court has jurisdiction to enforce
3 "the penalty enforcement law."

4 e. A person who causes a release of air contaminants in a quantity
5 or concentration which poses a potential threat to public health,
6 welfare or the environment or which might reasonably result in citizen
7 complaints shall immediately notify the department. A person who
8 fails to so notify the department is liable to the penalties and
9 procedures prescribed in this section.

10 f. Any person who:

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

15 (2) purposely or knowingly violates any federally mandated air
16 pollution control requirement, any operating permit condition, or any
17 fee or filing requirement imposed in connection with an operating
18 permit is guilty of a crime of the third degree, the sentence for which
19 may include, notwithstanding the provisions of subsection b. of
20 N.J.S.2C:43-3, an enhanced fine of \$10,000 per day per violation;

21 (3) purposely or knowingly makes any false material statement,
22 representation, or certification in any form, notice, statement, or
23 report required in connection with an operating permit, or who
24 purposely or knowingly renders inaccurate any monitoring device or
25 method required by an operating permit, is guilty of a crime of the
26 third degree, the sentence for which may include, notwithstanding the
27 provisions of subsection b. of N.J.S.2C:43-3, an enhanced fine of
28 \$10,000 per day per violation;

29 (4) recklessly violates the provisions of P.L.1954, c.212
30 (C.26:2C-1 et seq.), or any code, rule, regulation, administrative
31 order, or court order adopted or issued pursuant thereto, is guilty of
32 a crime of the fourth degree.

33 g. In determining whether an odor unreasonably interferes with the
34 enjoyment of life or property in violation of P.L.1954, c.212
35 (C.26:2C-1 et seq.) or any code, rule, regulation or order adopted or
36 issued pursuant thereto, the department shall consider all of the
37 relevant facts and circumstances, including, but not limited to, the
38 character, severity, frequency, and duration of the odor, and the
39 number of persons affected thereby. In considering these and other
40 relevant facts and circumstances, no one factor shall be dispositive, but
41 each shall be considered relevant in determining whether an odor
42 interferes with the enjoyment of life or property, and, if so, whether
43 such interference is unreasonable considering all of the circumstances.

44 The department shall publish in the New Jersey Register the
45 guidelines and procedures utilized by the department for the
46 investigation of citizen complaints regarding odors.

1 h. The department shall establish procedures for alternative dispute
2 resolution as an option for settlement of contested cases. Alternative
3 dispute resolution shall be voluntary and shall not be mandated by the
4 department.

5 (cf: P.L.1995,c. 188, s.9)

6

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

9 33. a. Whenever, on the basis of information available to him, the
10 Commissioner of Environmental Protection finds that an employer is
11 in violation of subsection b. of section 7, or of subsection b. or c. of
12 section 9 of this act, or any rule and regulation adopted pursuant
13 thereto, or the Commissioner of Health finds that an employer is in
14 violation of subsection a. of section 7, or of section 10, 11, 12, 13, or
15 14 of this act, or any rule and regulation adopted pursuant thereto, the
16 Commissioner of Environmental Protection, or the Commissioner of
17 Health, as the case may be, shall:

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

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

22 (3) [Levy a civil administrative penalty in accordance with
23 subsection d. of this section; or] (Deleted by amendment, P.L. , c.
24)(pending in the Legislature as this bill)

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

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

29 b. Whenever, on the basis of information available to him, the
30 Commissioner of Environmental Protection finds that an employer is
31 in violation of subsection b. of section 7, or of subsection b. or c. of
32 section 9 of this act or any rule or regulation adopted pursuant
33 thereto, or the Commissioner of Health finds that an employer is in
34 violation of subsection a. of section 7, or of section 10, 11, 12, 13, or
35 14 of this act, or any rule or regulation adopted pursuant thereto, the
36 Commissioner of Environmental Protection or the Commissioner of
37 Health, as the case may be, may issue an order (1) specifying the
38 provision or provisions of this act, or the rule or regulation adopted
39 pursuant thereto of which the employer is in violation; (2) citing the
40 action which caused the violation; (3) requiring compliance with the
41 provision of this act or the rules and regulations adopted pursuant
42 thereto of which he is in violation; and (4) giving notice to the
43 employer of his right to a hearing on the matters contained in the
44 order.

45 c. The Commissioner of Environmental Protection or the
46 Commissioner of Health, as appropriate, is authorized to commence

1 a civil action in Superior Court for appropriate relief from a violation
2 of this act. This relief may include an assessment against the violator
3 for the costs of any investigation, inspection, or monitoring survey
4 which led to the discovery and establishment of the violation, and for
5 the reasonable costs of preparing and litigating the case under this
6 subsection.

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

39 e. An employer who violates this act, an order issued pursuant to
40 subsection b. of this section, or a court order issued pursuant to
41 subsection c. of this section, [or who fails to pay in full a civil
42 administrative penalty levied pursuant to subsection d. of this
43 section,]shall be subject, upon order of a court, to a civil penalty not
44 to exceed \$2,500.00 for each day during which the violation continues.
45 An employer who willfully or knowingly violates this act, or who
46 willfully or knowingly makes a false statement, representation, or

1 certification in any document filed or required to be maintained under
2 this act, or who falsifies, tampers with, or knowingly renders
3 inaccurate any monitoring device required to be maintained pursuant
4 to this act, is subject upon order of a court, to a civil penalty of not
5 less than \$10,000.00, nor more than \$5,000.00 per day of violation.
6 Any penalty imposed pursuant to this subsection may be collected, and
7 any costs incurred in connection therewith may be recovered, in a
8 summary proceeding pursuant to "the penalty enforcement law"
9 (N.J.S.2A:58-1 et seq.). The Superior Court shall have jurisdiction to
10 enforce "the penalty enforcement law."
11 (cf: P.L.1991,c.91,s.345)

12

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

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

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

24 [(b) levy a civil administrative penalty in accordance with
25 subsection c. of this section; or] (Deleted by amendment, P.L. , c.
26) (pending in the Legislature as this bill)

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

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

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

34 (1) a temporary or permanent injunction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 order, the costs of any investigation, cleanup or removal, and the
2 reasonable costs of preparing and successfully enforcing a civil
3 administrative penalty pursuant to this subsection. The assessment may
4 be recovered at the same time as a civil administrative penalty, and
5 shall be in addition to the penalty assessment.] (Deleted by
6 amendment, P.L. , c.) (pending in the Legislature as this bill)

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

16 e. All conveyances used or intended for use in the willful discharge
17 of any hazardous substance are subject to forfeiture to the State
18 pursuant to the provisions of P.L.1981, c.387 (C.13:1K-1 et seq.).
19 (cf: P.L.1990, c.75, s.1.)
20

21 12. Section 2 of P.L.1990, c. 75 (C.58:10-23.11u1) is amended to
22 read as follows:

23 2. In addition to the penalties, charges, or other liabilities imposed
24 pursuant to the provisions of P.L.1976, c.141 (C.58:10-23.11 et seq.),
25 any person whose intentional or unintentional act or omission
26 proximately results in an unauthorized releasing, spilling, pumping,
27 pouring, emitting, emptying, or dumping of 100,000 gallons or more
28 of a hazardous substance, or combination of hazardous substances, into
29 the waters or onto the lands of the State, or entering the lands or
30 waters of the State from a discharge occurring outside the jurisdiction
31 of the State, is liable to a [civil administrative penalty or] civil penalty
32 of not more than \$10,000,000, to be collected in accordance with the
33 procedures set forth in section 22 of P.L.1976, c.141
34 (C.58:10-23.11u). The penalty provisions of this section are in
35 addition to assessments authorized by law for costs incurred by
36 the State or local governmental agencies in the cleanup and removal of
37 an unauthorized release or discharge, including supervision or
38 oversight of the violator's cleanup activities, or compensation or
39 damages recoverable for the loss of wildlife or destruction of
40 the environment, and the restoration thereof. In assessing a penalty
41 pursuant to this section, the [department] court shall take into account
42 the circumstances of the discharge, the conduct and culpability of the
43 discharger, or both, prior to, during, and after the discharge, and the
44 extent of the harm resulting from the discharge to persons, property,
45 wildlife, or natural resources.

46 The provisions of this section shall not apply to any discharge

1 which is contained in a containment area or areas approved by, or
2 otherwise meeting the requirements of, the department, or which
3 containment area is designed to, and reasonably capable of preventing
4 the hazardous substance from entering the waters of the State or
5 otherwise entering the lands of the State, except where 100,000 or
6 more gallons of one or more hazardous substances escape beyond the
7 containment area.

8 (cf: P.L.1990, c.75, s.2)

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

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

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

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

18 (3) [Levy a civil administrative penalty in accordance with
19 subsection d. of this section; or] (Deleted by amendment, P.L. c.
20)(pending in the Legislature as this bill)

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

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

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

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

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

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

44 (1) A temporary or permanent injunction;

45 (2) Assessment of the violator for the reasonable costs of any
46 investigation, inspection, or monitoring survey which led to the

1 establishment of the violation, and for the reasonable costs of
2 preparing and litigating the case under this subsection;

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

8 (4) Assessment against the violator of compensatory damages for
9 any loss or destruction of wildlife, fish or aquatic life, or other natural
10 resources, and for any other actual damages caused by an unauthorized
11 discharge;

12 (5) Assessment against a violator of the actual amount of any
13 economic benefits accruing to the violator from a violation. Economic
14 benefits may include the amount of any savings realized from avoided
15 capital or noncapital costs resulting from the violation; the return
16 earned or that may be earned on the amount of avoided costs; any
17 benefits accruing to the violator as a result of a competitive market
18 advantage enjoyed by reason of the violation; or any other benefits
19 resulting from the violation.

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

27 d. (1) (a) The commissioner is authorized to assess, in accordance
28 with a uniform policy adopted therefor, a civil administrative penalty
29 of not more than \$50,000.00 for each violation and each day during
30 which such violation continues shall constitute an additional, separate,
31 and distinct offense. Any amount assessed under this subsection shall
32 fall within a range established by regulation by the commissioner for
33 violations of similar type, seriousness, and duration. The
34 commissioner shall adopt, by regulation, a uniform assessment of civil
35 penalties policy by January 1, 1992.

36 (b) In adopting rules for a uniform penalty policy for determining the
37 amount of a penalty to be assessed, the commissioner shall take into
38 account the type, seriousness, including extent, toxicity, and frequency
39 of a violation based upon the harm to public health or the environment
40 resulting from the violation, the economic benefits from the violation
41 gained by the violator, the degree of cooperation or recalcitrance of
42 the violator in remedying the violation, any measures taken by the
43 violator to avoid a repetition of the violation, any unusual or
44 extraordinary costs directly or indirectly imposed on the public by the
45 violation other than costs recoverable pursuant to paragraph (3) or (4)
46 of subsection c. of this section, and any other pertinent factors that the

1 commissioner determines measure the seriousness or frequency of the
2 violation, or conduct of the violator.

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

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

21 (3) If a civil administrative penalty imposed pursuant to this
22 subsection is not paid within 30 days of the date that the penalty is due
23 and owing, and the penalty is not contested by the person against
24 whom the penalty has been assessed, or the person fails to make a
25 payment pursuant to a payment schedule entered into with the
26 department, an interest charge shall accrue on the amount of the
27 penalty due and owing from the 30th day after the date on which the
28 penalty was due and owing. The rate of interest shall be that
29 established by the New Jersey Supreme Court for interest rates on
30 judgments, as set forth in the Rules Governing the Courts of the State
31 of New Jersey.

32 (4) The authority to levy a civil administrative penalty is in addition
33 to all other enforcement provisions in this act, and the payment of any
34 assessment shall not be deemed to affect the availability of any other
35 enforcement provisions in connection with the violation for which the
36 assessment is levied. Any civil administrative penalty assessed under
37 this section may be compromised by the commissioner upon the
38 posting of a performance bond by the violator, or upon such terms and
39 conditions as the commissioner may establish by regulation, except
40 that the amount compromised shall not be more than 50% of the
41 assessed penalty, and in no instance shall the amount of that
42 compromised penalty be less than the statutory minimum amount, if
43 applicable, prescribed in section 6 of P.L.1990, c.28 (C.58:10A-10.1).
44 In the case of a violator who is a local agency that enters into an
45 administrative consent order, the terms of which require the local
46 agency to take prescribed measures to comply with its permit, the

1 commissioner shall have full discretion to compromise the amount of
2 penalties assessed or due for violations occurring during a period up
3 to 24 months preceding the entering into the administrative consent
4 order; except that the amount of the compromised penalty may not be
5 less than the statutory minimum amount, if applicable, prescribed in
6 section 6 of P.L.1990, c.28 (C.58:10A-10.1). A civil administrative
7 penalty assessed against a local agency for a violation of an
8 administrative consent order may not be compromised by more than
9 50% of the assessed penalty. In no instance shall the amount of a
10 compromised penalty assessed against a local agency be less than the
11 statutory minimum amount, if applicable, prescribed in section 6 of
12 P.L.1990, c.28 (C.58:10A-10.1). The commissioner shall not
13 compromise the amount of any component of a civil administrative
14 penalty which represents the economic benefit gained by the violator
15 from the violation.

16 (5) A person, other than a local agency, appealing a penalty
17 assessed against that person in accordance with this subsection,
18 whether contested as a contested case pursuant to P.L.1968, c.410
19 (C.52:14B-1 et seq.) or by appeal to a court of competent jurisdiction,
20 shall, as a condition of filing the appeal, post with the commissioner
21 a refundable bond, or other security approved by the commissioner, in
22 the amount of the civil administrative penalty assessed. If the
23 department's assessed penalty is upheld in full or in part, the
24 department shall be entitled to a daily interest charge on the amount
25 of the judgment from the date of the posting of the security with the
26 commissioner and until paid in full. The rate of interest shall be that
27 established by the New Jersey Supreme Court for interest rates on
28 judgments, as set forth in the Rules Governing the Courts of the State
29 of New Jersey. In addition, if the amount of the penalty assessed by
30 the department is upheld in full in an appeal of the assessment at an
31 administrative hearing or at a court of competent jurisdiction, the
32 person appealing the penalty shall reimburse the department for all
33 reasonable costs incurred by the department in preparing and litigating
34 the imposition of the assessment, except that no litigation costs shall
35 be imposed where the appeal ultimately results in a reduction or
36 elimination of the assessed penalty.

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

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

41 (b) shall constitute a debt of the violator or discharger and the civil
42 administrative penalty may be docketed with the clerk of the Superior
43 Court, and shall have the same standing as any judgment docketed
44 pursuant to N.J.S.2A:16-1; except that no lien shall attach to the real
45 property of a violator pursuant to this subsection if the violator posts
46 a refundable bond or other security with the commissioner pursuant to

1 an appeal of a final order to the Appellate Division of the Superior
2 Court. No lien shall attach to the property of a local agency.

3 (7) The commissioner shall refer to the Attorney General and the
4 county prosecutor of the county in which the violations occurred the
5 record of violations of any permittee determined to be a significant
6 noncomplier. ~~(Deleted by amendment, P.L. , c.)~~ (pending in the
7 Legislature as this bill)

8 e. Any person who violates this act or an administrative order
9 issued pursuant to subsection b. or a court order issued pursuant to
10 subsection c., [or who fails to pay a civil administrative penalty in full
11 pursuant to subsection d.,] or to make a payment pursuant to a
12 payment schedule entered into with the department, shall be subject
13 upon order of a court to a civil penalty not to exceed \$50,000.00 per
14 day of such violation, and each day's continuance of the violation shall
15 constitute a separate violation. Any penalty incurred under this
16 subsection may be recovered with costs, and, if applicable, interest
17 charges, in a summary proceeding pursuant to "the penalty
18 enforcement law" (N.J.S.2A:58-1 et seq.). In addition to any civil
19 penalties, costs or interest charges, the court, in accordance with
20 paragraph (5) of subsection c. of this section, may assess against a
21 violator the amount of any actual economic benefits accruing to the
22 violator from the violation. The Superior Court shall have jurisdiction
23 to enforce "the penalty enforcement law" in conjunction with this act.

24 f. (1)(a) Any person who purposely, knowingly, or recklessly
25 violates this act, and the violation causes a significant adverse
26 environmental effect, shall, upon conviction, be guilty of a crime of the
27 second degree, and shall, notwithstanding the provisions of subsection
28 a. of N.J.S.2C:43-3, be subject to a fine of not less than \$25,000 nor
29 more than \$250,000 per day of violation, or by imprisonment, or by
30 both.

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

41 (2) Any person who purposely, knowingly, or recklessly violates
42 this act, including making a false statement, representation, or
43 certification in any application, record, or other document filed or
44 required to be maintained under this act, or by falsifying, tampering
45 with, or rendering inaccurate any monitoring device or method
46 required to be maintained pursuant to this act, or by failing to submit

1 a monitoring report, or any portion thereof, required pursuant to this
2 act, shall, upon conviction, be guilty of a crime of the third degree, and
3 shall, notwithstanding the provisions of subsection b. of
4 N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more
5 than \$75,000 per day of violation, or by imprisonment, or by both.

6 (3) Any person who negligently violates this act, including making
7 a false statement, representation, or certification in any application,
8 record, or other document filed or required to be maintained under this
9 act, or by falsifying, tampering with, or rendering inaccurate any
10 monitoring device or method required to be maintained pursuant to
11 this act, or by failing to submit a discharge monitoring report, or any
12 portion thereof, required pursuant to this act, shall, upon conviction,
13 be guilty of a crime of the fourth degree, and shall, notwithstanding
14 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
15 of not less than \$5,000 nor more than \$50,000 per day of violation, or
16 by imprisonment, or by both.

17 (4) Any person who purposely or knowingly violates an effluent
18 limitation or other condition of a permit, or who discharges without a
19 permit, and who knows at that time that he thereby places another
20 person in imminent danger of death or serious bodily injury, as defined
21 in subsection b. of N.J.S.2C:11-1, shall, upon conviction, be guilty of
22 a crime of the first degree, and shall, notwithstanding the provisions
23 of subsection a. of N.J.S.2C:43-3, be subject of a fine of not less than
24 \$50,000 nor more than \$250,000, or, in the case of a corporation, a
25 fine of not less than \$200,000 nor more than \$1,000,000, or by
26 imprisonment or by both.

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

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

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

39

40 14. Section 2 of P.L.1993, c.351 (C.58:10A-10.11) is amended to
41 read as follows:

42 2. a. A permittee shall be entitled to an affirmative defense against
43 liability for any penalty assessable pursuant to section 10 of P.L.1977,
44 c.74 (C.58:10A-10) [or section 6 of P.L.1990, c.28
45 (C.58:10A-10.1)]for a violation of an effluent limitation of a permit
46 issued pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), which

1 violation:

2 (1) occurs in the course of a permitted groundwater remedial
3 action;

4 (2) is the first violation of that permit limitation; and

5 (3) involves an exceedance of a permit limitation that could not
6 reasonably have been anticipated by the permittee, unless it is
7 established by a preponderance of the evidence that the violation was
8 the result of a negligent act or omission of the permittee.

9 Demonstration that an act or omission of a person performing
10 groundwater remedial action accorded with generally accepted
11 remedial action practices, and utilized the best technology reasonably
12 available to the permittee for the approved remedial action at the time
13 of the action, shall create a rebuttable presumption that the act or
14 omission was not negligent.

15 b. An affirmative defense claim filed pursuant to subsection a. of
16 this section shall be denied by the Department of Environmental
17 Protection or a delegated local agency, as defined in section 3 of
18 P.L.1977, c.74 (C.58:10A-3), as appropriate, if:

19 (1) the equipment used in the remedial action had not been
20 properly maintained or was not being properly operated at the time of
21 the violation, and the failure to properly maintain or operate the
22 equipment was the proximate cause of the exceedance;

23 (2) the permittee fails, as required by law or rule or regulation, to
24 provide in a prompt manner to the department or a delegated local
25 agency:

26 (a) notification of the violation; and

27 (b) written information on the nature and extent of the permit
28 exceedance and, if known, the reasons therefor;

29 (3) the permittee fails to take immediate measures, upon first
30 becoming aware of the violation, to terminate the violation and to
31 abate any adverse consequences therefrom; or

32 (4) the permittee fails to file with the department or delegated local
33 agency a remedial action protocol, setting forth the procedures to be
34 followed to prevent a recurrence of the exceedance.

35 c. A determination by the department or delegated local agency on
36 an affirmative defense claim made pursuant to subsection a. of this
37 section shall be considered final agency action on the matter for
38 purposes of the "Administrative Procedure Act," P.L.1968, c.410
39 (C.52:14B-1 et seq.) and paragraph (5) of subsection d. of section 10
40 of P.L.1977, c.74 (C.58:10A-10).

41 d. [If the department approves an affirmative defense claim filed
42 pursuant to subsection a. of this section, the permit exceedance shall
43 not be considered a violation for the purposes of designating a person
44 as a significant noncomplier under section 6 of P.L.1990, c.28
45 (C.58:10A-10.1).]~~(Deleted by amendment, P.L. , c.)~~ (pending the
46 Legislature as this bill)

1 e. Nothing in this section shall be construed to limit the authority
2 of the department to adopt regulations or permit conditions for
3 groundwater remedial actions that exempt a violation for which an
4 affirmative defense claim may be filed pursuant to the provisions of
5 this section, or for exceedances of one or more permit parameters
6 occurring during the start-up phase of a remedial action, as defined in
7 a permit.

8 As used in this section "groundwater remedial action" means the
9 removal or abatement of one or more pollutants in a groundwater
10 source.

11 (cf: P.L.1993, c.351, s.2)

12

13 15. Section 10 of P.L.1990, c.28 (C.58:10A-14.2) is amended to
14 read as follows:

15 10. a. The annual report provided pursuant to section 9 of
16 P.L.1990, c.28 (C.58:10A-14.1) shall include, but need not be limited
17 to, the following information for the preceding calendar year:

18 (1) the number of facilities permitted by the department or
19 delegated local agencies pursuant to P.L.1977, c.74 (C.58:10A-1 et
20 seq.) as of the end of the calendar year, by surface water discharge
21 permits;

22 (2) the number of new permits or permit renewals issued;

23 (3) the number of permit approvals contested by a permittee or
24 other party;

25 (4) the number of permit modifications, other than permit renewals;

26 (5) the number of schedules of compliance adopted pursuant to
27 administrative orders or administrative consent agreements involving
28 interim enforcement limits that relax permit limitations;

29 (6) the number of facilities, including publicly owned treatment
30 works, inspected at least once by the department or local agencies;

31 (7) the number of enforcement actions resulting from facility
32 inspections;

33 (8) the number of actual permit violations;

34 (9) the number of actual effluent violations constituting serious
35 violations, including violations that are being contested;

36 (10) [the number of defenses for upsets, bypasses or testing or
37 laboratory errors granted pursuant to section 7 of P.L.1990, c.28
38 (C.58:10A-10.2) that involved a serious violation;] ~~(Deleted by~~
39 ~~amendment, P.L. , c.) (pending in the Legislature as this bill)~~

40 (11) the number of permittees qualifying as significant
41 noncompliers, including permittees contesting such designation;

42 (12) the number of unpermitted discharges;

43 (13) the number of pass throughs of pollutants;

44 (14) the number of enforcement orders--administrative and
45 judicial--issued for violations;

46 (15) the number of violations for which civil penalties [or civil

- 1 administrative penalties] have been assessed;
- 2 (16) the number of violations of administrative orders or
3 administrative consent orders, including violations of interim
4 enforcement limits, or of schedule of compliance milestones for
5 starting or completing construction, or for failing to attain full
6 compliance;
- 7 (17) the number of violations of schedules of compliance
8 milestones for starting or completing construction, or attaining full
9 compliance, that are out of compliance by 90 days or more from the
10 date established in the compliance schedule;
- 11 (18) the dollar amount of all assessed civil penalties [and civil
12 administrative penalties];
- 13 (19) the dollar amount of enforcement costs recovered in a civil
14 action [or civil administrative action] from a violator;
- 15 (20) the dollar amount of [civil administrative penalties and] civil
16 penalties collected, including penalties for which a penalty schedule
17 has been agreed to by the violator;
- 18 (21) The specific purposes for which penalty monies collected
19 have been expended, displayed in line-item format by type of
20 expenditure and including, but not limited to, position numbers and
21 titles funded in whole or in part from these penalty monies; and
- 22 (22) the number of criminal actions filed by the Attorney General
23 or county prosecutors pursuant to section 10 of P.L.1977, c.74
24 (C.58:10A-10).
- 25 b. In addition to the information required pursuant to subsection
26 a. of this section, the report shall:
- 27 (1) list the trade name of each permittee determined to be a
28 significant noncomplier by the department or delegated local agency,
29 and the address and permit number of the facility at which the
30 violations occurred, and provide a brief description and the date of
31 each violation, and the date that the violation was resolved, as well as
32 the total number of violations committed by the permittee during the
33 year;
- 34 (2) list the trade name of each permittee who is at least six months
35 behind in the construction phase of a compliance schedule, as well as
36 the address and permit number of the facility, and provide a brief
37 description of the conditions violated and the cause of delay;
- 38 (3) list the trade name, address and permit number, of each
39 permittee who has been convicted of criminal conduct pursuant to
40 subsection f. of section 10 of P.L.1977, c.74 (C.58:10A-10), or who
41 has had any officer or employee convicted thereunder, and provide a
42 brief description and the date of the violation or violations for which
43 convicted;
- 44 (4) list the name and location of any local agency that has failed to
45 file with the department information required by section 11 of
46 P.L.1990, c.28 (C.58:10A-14.3; and

1 (5) provide a summary assessment of the water quality of surface
2 and ground waters affected by discharges subject to regulation
3 pursuant to P.L.1977, c.74 to the extent that such information is not
4 otherwise required to be submitted to the United States Environmental
5 Protection Agency.

6 c. The department may include in the report any other information
7 it determines would provide a fuller profile of the implementation and
8 enforcement of P.L.1977, c.74. The department shall also include in
9 the report any information that may be requested, in writing, not later
10 than November 30 of the preceding year, for inclusion in the annual
11 report, by the Assembly [Environmental Quality] Environment and
12 Energy Committee or the Senate [Environmental Quality]
13 Environment Committee, or their successors.

14 (cf: P.L.1990, c.28, s.10)

15
16 16. Section 12 of P.L.1990, c.28 (C.58:10A-14.4) is amended to
17 read as follows:

18 12. There is created, in the Department of Environmental
19 Protection, a special nonlapsing fund, to be known as the "Clean
20 Water Enforcement Fund." Except as otherwise provided in P.L.1989,
21 c.122, all monies from penalties, fines, or recoveries of costs or
22 improper economic benefits collected by the department pursuant to
23 section 10 of P.L.1977, c.74 (C.58:10A-10) on and after the effective
24 date of this section[, or section 6 of P.L.1990, c.28
25 (C.58:10A-10.1)]shall be deposited in the fund. Unless otherwise
26 specifically provided by law, monies in the fund shall be utilized
27 exclusively by the department for enforcement and implementation of
28 the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et
29 seq.) and P.L.1990, c.28 (C.58:10A-10.1 et al.). Any unobligated
30 monies in the fund at the end of each fiscal year or monies not required
31 for enforcement purposes in the next fiscal year shall be transferred to
32 the "Wastewater Treatment Fund" established pursuant to subsection
33 a. of section 15 of P.L.1985, c.329, for use in accordance with the
34 provisions of that act.

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

36
37 17. Section 13 of P.L.1990, c.28 (C.58:10A-14.5) is amended to
38 read as follows:

39 13. There is created in the Department of Environmental
40 Protection a special nonlapsing account, to be known as the
41 "Wastewater Treatment Operators' Training Account." Monies
42 deposited in the account shall be used to provide training, including
43 continuing education, courses for wastewater treatment operators. A
44 court shall order to be deposited into the account 10% of the amount
45 of any penalty assessed and collected in an action brought by a local
46 agency pursuant to section 10 of P.L.1977, c.74 (C.58:10A-10) [or

1 section 6 of P.L.1990, c.28 (C.58:10A-10.1),]or by a public entity
2 pursuant to section 7 of P.L.1972, c.42 (C.58:11-55).
3 (cf: P.L.1990, c.28, s.13)

4
5 18. Section 6 of P.L.1991, c.123 (C.58:10A-24.6) is amended to
6 read as follows:

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

13 b. [Any person who violates the provisions of this act, or any rule
14 or regulation adopted, or order issued, hereunder, is liable to a civil
15 administrative penalty of not more than \$5,000 for the first offense,
16 not more than \$10,000 for the second offense, and \$25,000 for the
17 third and each subsequent offense. If the violation is of a continuing
18 nature, each day of violation subsequent to receipt of an order to cease
19 the violation constitutes an additional, separate and distinct offense.
20 No civil administrative penalty shall be levied except subsequent to the
21 notification of the violator by certified mail or personal service. The
22 notice shall include a reference to the section of the statute, regulation,
23 order or permit condition violated; a concise statement of the facts
24 alleged to constitute the violation; a statement of the amount of the
25 civil penalty to be imposed; and a statement of the violator's right to
26 a hearing. The violator shall have 20 days from receipt of notice
27 within which to deliver to the department a written request for a
28 hearing. Subsequent to the hearing and upon a finding that a violation
29 has occurred, the department may issue a final order assessing the
30 amount of the penalty. If no hearing is requested, the notice shall
31 become a final order upon the expiration of the 20-day period.
32 Payment of the penalty is due when a final order is issued or when the
33 notice becomes a final order. Agreement to, or payment of a civil
34 administrative penalty shall not be deemed to affect the availability of
35 any other enforcement provision in connection with the violation for
36 which the penalty is levied.](Deleted by amendment, P.L. , c.)
37 (pending in the Legislature as this bill)

38 c. Any person who violates the provisions of this act, is liable to a
39 civil penalty of not more than \$5,000 for the first offense, not more
40 than \$10,000 for the second offense, and \$25,000 for the third and
41 each subsequent offense. Any person violating [an administrative
42 order issued pursuant to subsection b. of this section, or] a court order
43 issued pursuant to subsection a. of this section[, or who fails to pay a
44 civil administrative penalty when due and owing as provided in
45 subsection b. of this section,]is subject to a civil penalty not to exceed
46 \$25,000 per day of the violation. Each day's continuance of a violation

1 constitutes a separate and distinct violation. Any penalty imposed
2 under this subsection may be recovered with costs in a summary
3 proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1
4 et seq.). The Law Division of the Superior Court shall have
5 jurisdiction to enforce "the penalty enforcement law."

6 d. The department may compromise and settle any claim for a
7 penalty under this section in such amount as the department may
8 determine to be appropriate and equitable under all of the
9 circumstances.

10 e. Any person who fails to contest or to pay, in whole or in part,
11 a penalty imposed pursuant to this section, or who fails to agree to a
12 payment schedule therefor, within 30 days of the date that the penalty
13 is due and owing, shall be subject to an interest charge on the amount
14 of the penalty from the date that the amount was due and owing. The
15 rate of interest shall be that established by the New Jersey Supreme
16 Court for interest rates on judgments, as set forth in the Rules
17 Governing the Courts of the State of New Jersey.

18 f. The penalty provisions of this section shall be in addition to such
19 penalties as may be assessable pursuant to section 12 of P.L.1986,
20 c.102 (C.58:10A-32) for violations of that act.

21 g. All penalties, monies, and any interest thereon, assessed and
22 collected pursuant to this section shall be deposited into the "New
23 Jersey Spill Compensation Fund," established pursuant to section 10
24 of P.L.1976, c.141 (C.58:10-23.11i) for use for any of the authorized
25 purposes of the fund. The provisions of this subsection shall not apply
26 to penalties assessed and collected pursuant to section 12 of P.L.1986,
27 c.102 (C.58:10A-32).

28 (cf: P.L.1991, c.123, s.6)

29

30 19. Section 7 of P.L.1972, c.42 (C.58:11-55) is amended to read
31 as follows:

32 7. a. Any person, corporation, or municipality who shall violate
33 any of the provisions of this act or any rules or regulations
34 promulgated thereunder shall be subject to the applicable provisions
35 of section 10 of P.L.1977, c.74 (C.58:10A-10) [and section 6 of
36 P.L.1990, c.28 (C. 58:10A-10.1)], to be collected in a civil action by
37 a summary proceeding under "the penalty enforcement law"
38 (N.J.S.2A:58-1 et seq.), or in any case before a court of competent
39 jurisdiction wherein injunctive relief has been requested. The Superior
40 Court shall have jurisdiction to enforce "the penalty enforcement law".

41 b. A public entity operating and controlling a public sewage
42 treatment plant shall, in accordance with subsection a. of this section,
43 enforce any applicable pretreatment standard adopted by the public
44 entity pursuant to section 9 of P.L.1972, c.42 (C.58:11-57), or shall
45 obtain injunctive relief against a violation or threatened violation of a
46 pretreatment standard. A public entity operating and controlling a

1 public sewage treatment plant with pretreatment standards adopted by
2 the commissioner pursuant to section 3 of P.L.1972, c.42
3 (C.58:11-51), may enforce applicable pretreatment standards in
4 accordance with subsection a. of this section, or obtain injunctive relief
5 as provided in this subsection. The action shall be brought in the name
6 of the local public entity. Of the amount of any penalty assessed and
7 collected pursuant to subsection a. of this section, 10% shall be
8 deposited in the "Wastewater Treatment Operators' Training
9 Account," established in accordance with section 13 of P.L.1990, c.28
10 (C.58:10A-14.5), and used to finance the cost of training operators of
11 public sewage treatment plants. The remainder shall be used by the
12 local agency solely for enforcement purposes, and for upgrading
13 treatment works.

14 (cf: P.L.1990, c.28, s.18.)

15

16 20. Section 8 of P.L.1983, c.230 (C.58:11-71) is amended to read
17 as follows:

18 8. a. If any person violates any of the provisions of this act, or any
19 operating requirements, the department may institute a civil action in
20 a court of competent jurisdiction for injunctive relief to enforce said
21 provisions and to prohibit and prevent that violation and the court may
22 proceed in the action in a summary manner.

23 b. [Any person who violates or causes the violation of any of the
24 provisions of this act or any operating requirements shall be liable to
25 a civil administrative penalty of not more than \$5,000.00 for each
26 offense to be imposed by the department pursuant to standards
27 adopted in regulations, or a civil penalty of not more than \$5,000.00
28 for each offense. If the violation is of a continuing nature, each day
29 during which it continues shall constitute an additional, separate and
30 distinct offense.](Deleted by amendment, P.L. , c.) (pending in the
31 Legislature as this bill)

32 c. The department may recover in any civil action the State's
33 reasonable costs of preparing and litigating the civil action pursuant to
34 this act.

35 d. Any and all penalties prescribed by any provisions of this act
36 may be recovered in a civil action by a summary proceeding under "the
37 penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court
38 shall have jurisdiction to enforce the penalty enforcement law.

39 e. The department is authorized and empowered to compromise
40 and settle any penalty imposed under this section in such amount in the
41 discretion of the department as may appear appropriate and equitable
42 under all of the circumstances.

43 f. All penalties received pursuant to the provisions of this act shall
44 be paid into the "Environmental Services Fund" created by P.L.1975,
45 c.232 (C.13:1D-29 et seq.), and expended for the functions authorized
46 herein.

1 (cf: P.L.1991, c.91, s.530)

2

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

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

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

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

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

13

14 22. The following are repealed:

15 Section 6 of P.L.1990, c.28 (C.58:10A-10.1);

16 Section 7 of P.L.1990, c.28 (C.58:10A-10.2);

17 Section 2 of P.L.1991, c.8 (C.58:10A-10.5);

18 Section 3 of P.L.1991, c.8 (C.58:10A-10.6);

19 Section 4 of P.L.1991, c.8 (C.58:10A-10.7);

20 Section 5 of P.L.1991, c.8 (C.58:10A-10.8);

21 Section 6 of P.L.1991, c.8 (C.58:10A-10.9).

22

23 23. This act shall take effect immediately, except that any civil
24 administrative penalty assessed by the Department of Environmental
25 Protection prior to the effective date of this act pursuant to any act or
26 provision of any act amended or repealed in this act shall be due and
27 payable in the manner provided by law at the time the civil
28 administrative penalty was assessed.

29

30

31

STATEMENT

32

33 This bill would eliminate the authority of the Department of
34 Environmental Protection to assess civil administrative penalties
35 pursuant to the following environmental laws: the "Pollution
36 Prevention Act," P.L.1991, c.235 (C.13:1D-35 et seq.); the "Solid
37 Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.), the
38 "Comprehensive Regulated Medical Waste Management Act,"
39 P.L.1989, c.34 (C.13:1E-48.1 et al.); the "Toxic Packaging Reduction
40 Act," P.L.1991, c.520 (C.13:1E-99.44 et seq.); the "Toxic Catastrophe
41 Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.); the
42 "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1
43 et seq.); the "Air Pollution Control Act (1954)," P.L.1954, c.212
44 (C.26:2C-1 et seq.); the "Worker and Community Right To Know
45 Act," P.L.1983, c.315 (C.34:5A-1 et al.); the "Spill Compensation and
46 Control Act," P.L.1976, c.141 (C.58:10-23.11 et seq.); the "Water

1 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) and by
2 reference, P.L.1981, c.253 (regulating the sale and use of sewage
3 system cleaners), P.L.1986, c.102 (regulating underground storage
4 tanks), and P.L.1954, c.199 ("The Realty Improvement Sewerage and
5 Facilities Act (1954)"); P.L.1990, c.28 (the "Clean Water Enforcement
6 Act"); P.L.1991, c.8 (C.58:10A-10.4 et seq.); P.L.1991, c.123
7 (C.58:10A-24.1 et seq.); P.L.1972, c.42 (C.58:11-49 et seq.); the
8 "Water Supply and Wastewater Operators' Licensing Act," P.L.1983,
9 c.230 (C.58:11-64 et seq.); and the "Safe Drinking Water Act,"
10 P.L.1977, c.224 (C.58:12A-1 et seq.). The effect of this bill would be
11 to require the department to seek a civil penalty in Superior or
12 municipal court, as provided in the statute, for a civil violation of any
13 of these environmental statutes. This bill would not affect the
14 enforcement of criminal violations of these statutes. The bill also
15 prohibits delegated local agencies from imposing civil administrative
16 penalties pursuant to the "Water Pollution Control Act."

17

18

19

20

21 Eliminates authority of DEP to impose civil administrative penalties.