

SENATE, No. 385

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator McNAMARA

1 AN ACT concerning water pollution, amending and supplementing
2 P.L.1977, c.74, amending and supplementing Title 2A and repealing
3 section 12 of P.L.1990. c.28.

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

7
8 1. Section 4 of P.L. 1977, c.74 (C.58:10A-3) is amended to read
9 as follows:

10 4. As used in this act, unless the context clearly requires a different
11 meaning, the following words and terms shall have the following
12 meanings:

13 a. "Administrator" means the Administrator of the United States
14 Environmental Protection Agency or his authorized representative;

15 b. "Areawide plan" means any plan prepared pursuant to section
16 208 of the Federal Act;

17 c. "Commissioner" means the Commissioner of Environmental
18 Protection or his authorized representative;

19 d. "Department" means the Department of Environmental
20 Protection;

21 e. "Discharge" means an intentional or unintentional action or
22 omission resulting in the releasing, spilling, leaking, pumping, pouring,
23 emitting, emptying, or dumping of a pollutant into the waters of the
24 State, onto land or into wells from which it might flow or drain into
25 [said] those waters or into waters or onto lands outside the
26 jurisdiction of the State, which pollutant enters the waters of the State.
27 "Discharge" includes the release of any pollutant into a municipal
28 treatment works;

29 f. "Effluent limitation" means any restriction on quantities, quality,
30 rates and concentration of chemical, physical, thermal, biological, and
31 other constituents of pollutants established by permit, or imposed as
32 an interim enforcement limit pursuant to an administrative order,
33 including an administrative consent order;

34 g. "Federal Act" means the "Federal Water Pollution Control Act

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 Amendments of 1972" (Public Law 92-500; 33 U.S.C.§1251 et seq.);
- 2 h. "Municipal treatment works" means the treatment works of any
- 3 municipal, county, or State agency or any agency or subdivision
- 4 created by one or more municipal, county or State governments and
- 5 the treatment works of any public utility as defined in R.S.48:2-13;
- 6 i. "National Pollutant Discharge Elimination System" or "NPDES"
- 7 means the national system for the issuance of permits under the
- 8 Federal Act;
- 9 j. "New Jersey Pollutant Discharge Elimination System" or
- 10 "NJPDES" means the New Jersey system for the issuance of permits
- 11 under this act;
- 12 k. "Permit" means a NJPDES permit issued pursuant to section 6
- 13 of [this act] P.L.1977, c.74 (C.58:10A-6). "Permit" includes a letter
- 14 of agreement entered into between a delegated local agency and a user
- 15 of its municipal treatment works, setting effluent limitations and other
- 16 conditions on the user of the agency's municipal treatment works;
- 17 l. "Person" means any individual, corporation, company,
- 18 partnership, firm, association, owner or operator of a treatment works,
- 19 political subdivision of this State and any state or interstate agency.
- 20 "Person" shall also mean any responsible corporate official for the
- 21 purpose of enforcement action under section 10 of this act;
- 22 m. "Point source" means any discernible, confined and discrete
- 23 conveyance, including but not limited to, any pipe, ditch, channel,
- 24 tunnel, conduit, well, discrete fissure, container, rolling stock,
- 25 concentrated animal feeding operation, or vessel or other floating
- 26 craft, from which pollutants are or may be discharged;
- 27 n. "Pollutant" means any dredged spoil, solid waste, incinerator
- 28 residue, sewage, garbage, refuse, oil, grease, sewage sludge,
- 29 munitions, chemical wastes, biological materials, radioactive
- 30 substance, thermal waste, wrecked or discarded equipment, rock,
- 31 sand, cellar dirt, and industrial, municipal or agricultural waste or
- 32 other residue discharged into the waters of the State. "Pollutant"
- 33 includes both hazardous and nonhazardous pollutants;
- 34 o. "Pretreatment standards" means any restriction on quantities,
- 35 quality, rates, or concentrations of pollutants discharged into
- 36 municipal or privately owned treatment works adopted pursuant to
- 37 P.L.1972, c.42 (C.58:11-49 et seq.);
- 38 p. "Schedule of compliance" means a schedule of remedial
- 39 measures including an enforceable sequence of actions or operations
- 40 leading to compliance with water quality standards, an effluent
- 41 limitation or other limitation, prohibition or standard;
- 42 q. "Substantial modification of a permit" means any significant
- 43 change in any effluent limitation, schedule of compliance, compliance
- 44 monitoring requirement, or any other provision in any permit which
- 45 permits, allows, or requires more or less stringent or more or less
- 46 timely compliance by the permittee;

- 1 r. "Toxic pollutant" means any pollutant identified pursuant to the
2 Federal Act, or any pollutant or combination of pollutants, including
3 disease causing agents, which after discharge and upon exposure,
4 ingestion, inhalation or assimilation into any organism, either directly
5 or indirectly by ingestion through food chains, will, on the basis of
6 information available to the commissioner, cause death, disease,
7 behavioral abnormalities, cancer, genetic mutations, physiological
8 malfunctions, including malfunctions in reproduction, or physical
9 deformation, in such organisms or their offspring;
- 10 s. "Treatment works" means any device or systems, whether public
11 or private, used in the storage, treatment, recycling, or reclamation of
12 municipal or industrial waste of a liquid nature including intercepting
13 sewers, outfall sewers, sewage collection systems, cooling towers and
14 ponds, pumping, power and other equipment and their appurtenances;
15 extensions, improvements, remodeling, additions, and alterations
16 thereof; elements essential to provide a reliable recycled supply such
17 as standby treatment units and clear well facilities; and any other
18 works including sites for the treatment process or for ultimate disposal
19 of residues resulting from such treatment. "Treatment works" includes
20 any other method or system for preventing, abating, reducing, storing,
21 treating, separating, or disposing of pollutants, including storm water
22 runoff, or industrial waste in combined or separate storm water and
23 sanitary sewer systems;
- 24 t. "Waters of the State" means the ocean and its estuaries, all
25 springs, streams and bodies of surface or ground water, whether
26 natural or artificial, within the boundaries of this State or subject to its
27 jurisdiction;
- 28 u. "Hazardous pollutant" means:
- 29 (1) Any toxic pollutant;
- 30 (2) Any substance regulated as a pesticide under the Federal
31 Insecticide, Fungicide, and Rodenticide Act, Pub.L.92-516 (7 U.S.C.
32 §136 et seq.);
- 33 (3) Any substance the use or manufacture of which is prohibited
34 under the federal Toxic Substances Control Act, Pub.L.94-469 (15
35 U.S.C.§2601 et seq.);
- 36 (4) Any substance identified as a known carcinogen by the
37 International Agency for Research on Cancer;
- 38 (5) Any hazardous waste as designated pursuant to section 3 of
39 P.L.1981, c.279 (C.13:1E-51) or the "Resource Conservation and
40 Recovery Act," Pub.L.94-580 (42 U.S.C.§6901 et seq.); or
- 41 (6) Any hazardous substance as defined pursuant to section 3 of
42 P.L.1976, c.141 (C.58:10-23.11b);
- 43 v. "Serious violation" means an exceedance of an effluent limitation
44 for a discharge point source set forth in a permit, administrative order,
45 or administrative consent agreement, including interim enforcement
46 limits, by 20 percent or more for a hazardous pollutant, or by 40

1 percent or more for a nonhazardous pollutant, calculated on the basis
2 of the monthly average for a pollutant for which the effluent limitation
3 is expressed as a monthly average, or, in the case of an effluent
4 limitation expressed as a daily maximum and without a monthly
5 average, on the basis of the monthly average of all maximum daily test
6 results for that pollutant in any month; in the case of an effluent
7 limitation for a pollutant that is not measured by mass or
8 concentration, the department shall prescribe an equivalent exceedance
9 factor therefor. The department may utilize, on a case-by-case basis,
10 a more stringent factor of exceedance to determine a serious violation
11 if the department states the specific reasons therefor, which may
12 include the potential for harm to human health or the environment.
13 "Serious violation" shall not include a violation of a permit limitation
14 for color;

15 w. "Significant noncomplier" means any person who commits a
16 serious violation for the same hazardous pollutant or the same
17 nonhazardous pollutant, at the same discharge point source, in any two
18 months of any six month period, or who exceeds the monthly average
19 or, in a case of a pollutant for which no monthly average has been
20 established, the monthly average of the daily maximums for an effluent
21 limitation for the same pollutant at the same discharge point source by
22 any amount in any four months of any six month period[, or who fails
23 to submit a completed discharge monitoring report in any two months
24 of any six month period]. The department may utilize, on a
25 case-by-case basis, a more stringent frequency or factor of exceedance
26 to determine a significant noncomplier, if the department states the
27 specific reasons therefor, which may include the potential for harm to
28 human health or the environment. A local agency shall not be deemed
29 a "significant noncomplier" due to an exceedance of an effluent
30 limitation established in a permit for flow. A person shall not be
31 deemed a "significant noncomplier" due to an exceedance of an
32 effluent limitation or other requirement established in a permit for
33 stormwater;

34 x. "Local agency" means a political subdivision of the State, or an
35 agency or instrumentality thereof, that owns or operates a municipal
36 treatment works;

37 y. "Delegated local agency" means a local agency with an industrial
38 pretreatment program approved by the department;

39 z. "Upset" means an exceptional incident in which there is
40 unintentional and temporary noncompliance with an effluent limitation
41 because of an event beyond the reasonable control of the permittee,
42 including fire, riot, sabotage, or a flood, storm event, natural cause, or
43 other act of God, or other similar circumstance, which is the cause of
44 the violation. "Upset" also includes noncompliance consequent to the
45 performance of maintenance operations for which a prior exception
46 has been granted by the department or a delegated local agency;

- 1 aa. "Bypass" means the anticipated or unanticipated intentional
2 diversion of waste streams from any portion of a treatment works;
- 3 bb. "Major facility" means any facility or activity classified as such
4 by the Administrator of the United States Environmental Protection
5 Agency, or his representative, in conjunction with the department, and
6 includes industrial facilities and municipal treatment works;
- 7 cc. "Significant indirect user" means a discharger of industrial or
8 other pollutants into a municipal treatment works, as defined by the
9 department, including, but not limited to, industrial dischargers, but
10 excluding the collection system of a municipal treatment works;
- 11 dd. "Violation of this act" means a violation of any provisions of
12 this act, and shall include a violation of any rule or regulation, water
13 quality standard, effluent limitation or other condition of a permit, or
14 order adopted, issued, or entered into pursuant to this act[.];
- 15 ee. "Environmental audit program" means a voluntary, internal
16 evaluation of one or more facilities or an activity at one or more
17 facilities, or of management systems related to that facility or activity,
18 that is designed to identify and prevent noncompliance and to improve
19 compliance with the provisions of P.L.1977, c. 74 (C.58:10A-1 et
20 seq.), or any rules, regulations, or permit requirements, or to improve
21 the quality of the waters of this State, and that is conducted by the
22 owner or operator of the facility or facilities, by the owner's or
23 operator's employees, or by independent contractors. An
24 environmental audit program shall substantially include at least the
25 following elements:
- 26 (1) A written policy articulating upper management support for the
27 environmental auditing program, and for compliance with P.L.1977,
28 c.74, or any rules, regulations, or permit requirements, as well as a
29 commitment to follow up on, correct and prevent recurrence of
30 identified problems;
- 31 (2) Articulated objectives, scope, frequency, and dedicated
32 resources;
- 33 (3) The auditing function shall be sufficiently free of interference
34 with inquiry and observation or fear of potential retribution to ensure
35 objectivity;
- 36 (4) Explicit written audit procedures; and
- 37 (5) Specific procedures to promptly prepare candid and appropriate
38 written reports on audit findings, corrective actions, schedules for
39 implementation, and for reporting of violations.
- 40 ff. "Environmental audit report" means a set of documents, each
41 labeled "Environmental Audit Report" and prepared as part of an
42 environmental audit, and which shall include a statement setting forth
43 the scope of the environmental audit, a certified index identifying the
44 documents in the report, and the calender dates on which the
45 environmental audit was initiated and completed. The environmental
46 audit report may include exhibits, appendices, conclusions, and

1 recommendations; memoranda and documents analyzing part or all of
2 the audit report and discussing implementation issues; an audit
3 implementation plan that addresses correcting past noncompliance,
4 improving current compliance, and preventing future noncompliance;
5 documentation associated with the tracking of corrective actions for
6 non-compliance audit findings; and supporting information including
7 field notes and records of observations, findings, suggestions,
8 conclusions, drafts, memoranda, drawings, photographs,
9 environmental sampling results, computer-generated or electronically
10 recorded information, maps, charts, graphs, and surveys, provided,
11 however, that the supporting information is collected or developed for
12 the purpose of and in the course of an environmental audit;

13 gg. "Enforcement agency" means the State and any of its
14 departments, offices, bureaus, agencies, or authorities, and any
15 political subdivision of the State, including local health agencies or
16 authorities, empowered with the ability to enforce the provisions of
17 P.L.1977, c.74 (C.58:10A-1 et seq.) in its own name or on behalf of
18 the State;

19 hh. "Voluntary" means not required by statute, regulation, permit,
20 order, or agreement.

21 (cf: P.L.1990, c.28, s.1)

22

23 2. Section 4 of P.L.1977, c.74 (C.58:10A-4) is amended to read as
24 follows:

25 4. The commissioner shall have power to prepare, adopt, amend,
26 repeal and enforce, pursuant to the "Administrative Procedure Act,"
27 P.L.1968, c.410 (C.52:14B-1 et seq.), reasonable codes, rules and
28 regulations to prevent, control or abate water pollution and to carry
29 out the intent of this act, either throughout the State or in certain areas
30 of the State affected by a particular water pollution problem. The
31 department shall provide interested parties the opportunity to provide
32 information and advice during the development of proposed rules and
33 regulations. Such codes, rules and regulations may include, but shall
34 not be limited to, provisions concerning:

35 a. The storage of any liquid or solid pollutant in a manner designed
36 to keep it from entering the waters of the State;

37 b. The prior submission and approval of plans and specifications
38 for the construction or modification of any treatment work or part
39 thereof;

40 c. The classification of the surface and ground waters of the State
41 and the determination of water quality standards for each such
42 classification;

43 d. The limitation of effluents, including toxic effluents as indicated
44 herein;

45 e. The determination of pretreatment standards;

46 f. The establishment of user charges and cost recovery

1 requirements in conformance with the Federal Act;

2 g. The establishment of a civil penalty policy governing the uniform
3 assessment of civil penalties in accordance with section 10 of
4 P.L.1977, c.74 (C.58:10A-10).

5 (cf: P.L.1990, c.28, s.2)

6

7 3. Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended to read as
8 follows:

9 6. a. It shall be unlawful for any person to discharge any pollutant,
10 except as provided pursuant to subsections d. and p. of this section, or
11 when the discharge conforms with a valid New Jersey Pollutant
12 Discharge Elimination System permit that has been issued by the
13 commissioner pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.) or a
14 valid National Pollutant Discharge Elimination System permit issued
15 by the administrator pursuant to the Federal Act, as the case may be.

16 b. It shall be unlawful for any person to build, install, modify or
17 operate any facility for the collection, treatment or discharge of any
18 pollutant, except after approval by the department pursuant to
19 regulations adopted by the commissioner.

20 c. The commissioner is hereby authorized to grant, deny, modify,
21 suspend, revoke, and reissue NJPDES permits in accordance with
22 P.L.1977, c.74, and with regulations to be adopted by him. The
23 commissioner may reissue, with or without modifications, [an] a
24 NPDES permit duly issued by the federal government as the NJPDES
25 permit required by P.L.1977, c.74 .

26 d. The commissioner may, by regulation, exempt the following
27 categories of discharge, in whole or in part, from the requirement of
28 obtaining a permit under P.L.1977, c.74; provided, however, that an
29 exemption afforded under this section shall not limit the civil or
30 criminal liability of any discharger nor exempt any discharger from
31 approval or permit requirements under any other provision of law:

32 (1) Additions of sewage, industrial wastes or other materials into
33 a publicly owned sewage treatment works which is regulated by
34 pretreatment standards;

35 (2) Discharges of any pollutant from a marine vessel or other
36 discharges incidental to the normal operation of marine vessels;

37 (3) Discharges from septic tanks, or other individual waste disposal
38 systems, sanitary landfills, and other means of land disposal of wastes;

39 (4) Discharges of dredged or fill materials into waters for which
40 the State could not be authorized to administer the section 404
41 program under section 404(g) of the "Federal Water Pollution Control
42 Act Amendments of 1972," as amended by the "Clean Water Act of
43 1977" (33 U.S.C. § 1344) and implementing regulations;

44 (5) Nonpoint source discharges;

45 (6) Uncontrolled nonpoint source discharges composed entirely of
46 storm water runoff when these discharges are uncontaminated by any

1 industrial or commercial activity unless these particular storm water
2 runoff discharges have been identified by the administrator or the
3 department as a significant contributor of pollution;

4 (7) Discharges conforming to a national contingency plan for
5 removal of oil and hazardous substances, published pursuant to section
6 311(c)(2) of the Federal Act.

7 e. The commissioner shall not issue any permit for:

8 (1) The discharge of any radiological, chemical or biological
9 warfare agent or high-level radioactive waste into the waters of this
10 State;

11 (2) Any discharge which the United States Secretary of the Army,
12 acting through the Chief of Engineers, finds would substantially impair
13 anchorage or navigation;

14 (3) Any discharge to which the administrator has objected in
15 writing pursuant to the Federal Act;

16 (4) Any discharge which conflicts with an areawide plan adopted
17 pursuant to law.

18 f. A permit issued by the department or a delegated local agency
19 pursuant to P.L.1977, c.74 shall require the permittee:

20 (1) To achieve effluent limitations based upon guidelines or
21 standards established pursuant to the Federal Act or to P.L.1977, c.74,
22 together with such further discharge restrictions and safeguards
23 against unauthorized discharge as may be necessary to meet water
24 quality standards, areawide plans adopted pursuant to law, or other
25 legally applicable requirements;

26 (2) Where appropriate, to meet schedules for compliance with the
27 terms of the permit and interim deadlines for progress or reports of
28 progress towards compliance;

29 (3) To insure that all discharges are consistent at all times with the
30 terms and conditions of the permit and that no pollutant will be
31 discharged more frequently than authorized or at a level in excess of
32 that which is authorized by the permit;

33 (4) To submit application for a new permit in the event of any
34 contemplated facility expansion or process modification that would
35 result in new or increased discharges or, if these would not violate
36 effluent limitations or other restrictions specified in the permit, to
37 notify the commissioner, or delegated local agency, of such new or
38 increased discharges;

39 (5) To install, use and maintain such monitoring equipment and
40 methods, to sample in accordance with such methods, to maintain and
41 retain such records of information from monitoring activities, and to
42 submit to the commissioner, or to the delegated local agency, reports
43 of monitoring results for surface waters, as may be stipulated in the
44 permit, or required by the commissioner or delegated local agency
45 pursuant to paragraph (9) of this subsection, or as the commissioner
46 or the delegated local agency may prescribe for ground water.

1 Significant indirect users, major industrial dischargers, and local
2 agencies, other than those discharging only stormwater or noncontact
3 cooling water, shall, however, report their monitoring results for
4 discharges to surface waters monthly to the commissioner, or the
5 delegated local agency. Discharge monitoring reports for discharges
6 to surface waters shall be signed by the highest ranking official having
7 day-to-day managerial and operational responsibilities for the
8 discharging facility, who may, in his absence, authorize another
9 responsible high ranking official to sign a monthly monitoring report
10 if a report is required to be filed during that period of time. The
11 highest ranking official shall, however, be liable in all instances for the
12 accuracy of all the information provided in the monitoring report;
13 provided, however, that the highest ranking official may file, within
14 seven days of his return, amendments to the monitoring report to
15 which he was not a signatory. The highest ranking official having
16 day-to-day managerial and operational responsibilities for the
17 discharging facility of a local agency shall be the highest ranking
18 licensed operator of the municipal treatment works in those instances
19 where a licensed operator is required by law to operate the facility. In
20 those instances where a local agency has contracted with another
21 entity to operate a municipal treatment works, the highest ranking
22 official who signs the discharge monitoring report shall be an
23 employee of the contract operator and not of the local agency.
24 Notwithstanding that an employee of a contract operator is the official
25 who signs the discharge monitoring report, the local agency, as the
26 permittee, shall remain liable for compliance with all permit conditions.
27 In those instances where the highest ranking official having day-to-day
28 managerial and operational responsibilities for a discharging facility of
29 a local agency does not have the responsibility to authorize capital
30 expenditures and hire personnel, a person having that responsibility,
31 or a person designated by that person, shall submit to the department,
32 along with the discharge monitoring report, a certification that that
33 person has received and reviewed the discharge monitoring report. The
34 person submitting the certification to the department shall not be liable
35 for the accuracy of the information on the discharge monitoring report
36 due to the submittal of the certification. Whenever a local agency has
37 contracted with another entity to operate the municipal treatment
38 works, the person submitting the certification shall be an employee of
39 the permittee and not of the contract operator[. The filing of
40 amendments to a monitoring report in accordance with this paragraph
41 shall not be considered a late filing of a report for purposes of
42 subsection d. of section 6 of P.L.1990, c.28 (C.58:10A-10.1), or for
43 purposes of determining a significant noncomplier];

44 (6) At all times, to maintain in good working order and operate as
45 effectively as possible, any facilities or systems of control installed to
46 achieve compliance with the terms and conditions of the permit;

1 (7) To limit concentrations of heavy metal, pesticides, organic
2 chemicals and other contaminants in the sludge in conformance with
3 the land-based sludge management criteria established by the
4 department in the Statewide Sludge Management Plan adopted
5 pursuant to the "Solid Waste Management Act," P.L.1970, c.39
6 (C.13:1E-1 et seq.) or established pursuant to the Federal Water
7 Pollution Control Act Amendments of 1972 (33 U.S.C.§1251 et seq.),
8 or any regulations adopted pursuant thereto;

9 (8) To report to the department or delegated local agency, as
10 appropriate, any exceedance of an effluent limitation that causes injury
11 to persons, or damage to the environment, or poses a threat to human
12 health or the environment, within two hours of its occurrence, or of
13 the permittee becoming aware of the occurrence. Within 24 hours
14 thereof, or of an exceedance, or of becoming aware of an exceedance,
15 of an effluent limitation for a toxic pollutant, a permittee shall provide
16 the department or delegated local agency with such additional
17 information on the discharge as may be required by the department or
18 delegated local agency, including an estimate of the danger posed by
19 the discharge to the environment, whether the discharge is continuing,
20 and the measures taken, or being taken, to remediate the problem and
21 any damage to the environment, and to avoid a repetition of the
22 problem;

23 (9) Notwithstanding the reporting requirements stipulated in a
24 permit for discharges to surface waters, a permittee shall be required
25 to file monthly reports with the commissioner or delegated local
26 agency if the permittee:

27 (a) in any month commits a serious violation or fails to submit a
28 completed discharge monitoring report and does not contest, or
29 unsuccessfully contests, [the] any assessment of a civil administrative
30 penalty therefor; or

31 (b) exceeds an effluent limitation for the same pollutant at the same
32 discharge point source by any amount for four out of six consecutive
33 months.

34 The commissioner or delegated local agency may restore the
35 reporting requirements stipulated in the permit if the permittee has not
36 committed any of the violations identified in this paragraph for six
37 consecutive months;

38 (10) To report to the department or delegated local agency, as
39 appropriate, any serious violation within 30 days of the violation,
40 together with a statement indicating that the permittee understands the
41 definition of a significant noncomplier and the civil administrative
42 penalties required to be assessed [for serious violations] against
43 significant noncompliers, and explaining the nature of the serious
44 violation and the measures taken to remedy the cause or prevent a
45 recurrence of the serious violation. g. The commissioner and a local
46 agency shall have a right of entry to all premises in which a discharge

1 source is or might be located or in which monitoring equipment or
2 records required by a permit are kept, for purposes of inspection,
3 sampling, copying or photographing.

4 h. In addition, any permit issued for a discharge from a municipal
5 treatment works shall require the permittee:

6 (1) To notify the commissioner or local agency in advance of the
7 quality and quantity of all new introductions of pollutants into a
8 facility and of any substantial change in the pollutants introduced into
9 a facility by an existing user of the facility, except for such
10 introductions of nonindustrial pollutants as the commissioner or local
11 agency may exempt from this notification requirement when ample
12 capacity remains in the facility to accommodate new inflows. The
13 notification shall estimate the effects of the changes on the effluents to
14 be discharged into the facility.

15 (2) To establish an effective regulatory program, alone or in
16 conjunction with the operators of sewage collection systems, that will
17 assure compliance and monitor progress toward compliance by
18 industrial users of the facilities with user charge and cost recovery
19 requirements of the Federal Act or State law and toxicity standards
20 adopted pursuant to P.L.1977, c.74 and pretreatment standards.

21 (3) As actual flows to the facility approach design flow or design
22 loading limits, to submit to the commissioner or local agency for
23 approval, a program which the permittee and the persons responsible
24 for building and maintaining the contributory collection system shall
25 pursue in order to prevent overload of the facilities.

26 i. (1) All local agencies shall prescribe terms and conditions,
27 consistent with applicable State and federal law, or requirements
28 adopted pursuant thereto by the department, upon which pollutants
29 may be introduced into treatment works, and shall have the authority
30 to exercise the same right of entry, inspection, sampling, and copying,
31 and to impose the same remedies, fines and penalties, and to recover
32 costs and compensatory damages as authorized pursuant to
33 [subsection a. of] section 10 of P.L.1977, c.74 (C.58:10A-10) [and
34 section 6 of P.L.1990, c.28 (C.58:10A-10.1)], with respect to users of
35 such works, as are vested in the commissioner by P.L.1977, c.74, or
36 by any other provision of State law, except that a local agency, except
37 as provided in P.L.1991, c.8 (C.58:10-10.4 et seq.), may not impose
38 civil administrative penalties, and shall petition the county prosecutor
39 or the Attorney General for a criminal prosecution under that section.
40 Terms and conditions shall include limits for heavy metals, pesticides,
41 organic chemicals and other contaminants in industrial wastewater
42 discharges based upon the attainment of land-based sludge
43 management criteria established by the department in the Statewide
44 Sludge Management Plan adopted pursuant to the "Solid Waste
45 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or established
46 pursuant to the Federal Water Pollution Control Act Amendments of

1 1972 (33 U.S.C.§1251 et seq.), or any regulations adopted pursuant
2 thereto.

3 (2) Of the amount of any penalty assessed and collected pursuant
4 to an action brought by a local agency in accordance with section 10
5 of P.L.1977, c.74 [or section 6 of P.L.1990, c.28 (C.58:10A-10.1)],
6 10% shall be deposited in the "Wastewater Treatment Operators'
7 Training Account," established in accordance with section 13 of
8 P.L.1990, c.28 (C.58:10A-14.5), and used to finance the cost of
9 training operators of municipal treatment works. The remainder shall
10 be used by the local agency solely for enforcement purposes, and for
11 upgrading municipal treatment works.

12 j. In reviewing permits submitted in compliance with P.L.1977,
13 c.74 and in determining conditions under which such permits may be
14 approved, the commissioner shall encourage the development of
15 comprehensive regional sewerage planning or facilities, which serve
16 the needs of the regional community, conform to the adopted
17 area-wide water quality management plan for that region, and protect
18 the needs of the regional community for water quality, aquifer storage,
19 aquifer recharge, and dry weather based stream flows.

20 k. No permit may be issued, renewed, or modified by the
21 department or a delegated local agency so as to relax any water quality
22 standard or effluent limitation until the applicant, or permit holder, as
23 the case may be, has paid all fees, penalties or fines due and owing
24 pursuant to P.L.1977, c.74, or has entered into an agreement with the
25 department establishing a payment schedule therefor; except that if a
26 penalty or fine is contested, the applicant or permit holder shall
27 [satisfy the provisions of this section by posting financial security as
28 required pursuant to paragraph (5) of subsection d. of section 10 of
29 P.L.1977, c.74 (C.58:10A-10). The provisions of this subsection with
30 respect to penalties or fines shall not apply to a local agency
31 contesting a penalty or fine.] not be subject to the provisions of this
32 subsection until such time as a final decision is rendered.

33 1. [Each] The department and each delegated local agency shall
34 develop an inspection protocol for the inspection of each permitted
35 facility or municipal treatment works, other than one discharging only
36 stormwater or non-contact cooling water. [, shall to be inspected by
37 the department at least once a year; except that each permitted facility
38 discharging into the municipal treatment works of a delegated local
39 agency, other than a facility discharging only stormwater or
40 non-contact cooling water, shall be inspected by the delegated local
41 agency at least once a year. Except as hereinafter provided, an
42 inspection required under this subsection shall be conducted within six
43 months following a permittee's submission of an application for a
44 permit, permit renewal, or, in the case of a new facility or municipal
45 treatment works, issuance of a permit therefor, except that if for any
46 reason, a scheduled inspection cannot be made the inspection shall be

1 rescheduled to be performed within 30 days of the originally scheduled
2 inspection or, in the case of a temporary shutdown, of resumed
3 operation.] Exemption of stormwater facilities from the provisions of
4 this subsection shall not apply to any permitted facility or municipal
5 treatment works discharging or receiving stormwater runoff having
6 come into contact with a hazardous discharge site on the federal
7 National Priorities List adopted by the United States Environmental
8 Protection Agency pursuant to the "Comprehensive Environmental
9 Response, Compensation, and Liability Act," Pub.L.96-510 (42
10 U.S.C.A. §9601 et seq.), or any other hazardous discharge site
11 included by the department on the master list for hazardous discharge
12 site cleanups adopted pursuant to section 2 of P.L.1982, c.202
13 (C.58:10-23.16). The inspection protocol of the department shall
14 provide for the inspection of permitted facilities and municipal
15 treatment works other than those who discharge into treatment works
16 of a delegated local agency. The inspection protocol of each delegated
17 local agency shall provide for the inspection of permitted facilities who
18 discharge into its treatment works. The inspection protocols
19 developed by the department and each delegated local agency shall
20 provide for the type and frequency of inspections to be performed
21 taking into account the type of facility or municipal treatment works
22 to be inspected, the nature of the discharge and receiving waters, and
23 the environmental compliance history of the facility or municipal
24 treatment works. The department and each delegated local agency
25 shall allocate sufficient resources each year to perform at least a
26 minimum number of inspections which shall be equal to the number of
27 permitted facilities, in the case of the department, or the number of
28 permitted facilities discharging into its treatment works, in the case of
29 a delegated local agency. Notwithstanding this resource allocation,
30 there is no requirement that the department or a delegated local
31 agency perform a minimum amount of inspections at any facility in any
32 year. The department or a delegated local agency may perform more
33 than one inspection at a particular facility or a municipal treatment
34 works each year or may perform an inspection at a particular facility
35 or municipal treatment works on a less frequent basis based upon the
36 criteria established in the inspection protocol. In setting priorities for
37 the frequency of inspections at a particular facility or municipal
38 treatment works, the department and the delegated local agency shall
39 give a lower priority to facilities and municipal treatment works who
40 have established an environmental auditing program. Those facilities
41 and municipal treatment works who have committed one or more
42 serious violations during the preceding 24 months, or who have had
43 a series of permit violations, shall be given a higher priority for
44 inspection and shall be inspected at least once each year. Inspections
45 shall include:

46 (1) [A representative sampling of the effluent for each permitted

1 facility or municipal treatment works, except that in the case of
2 facilities or works that are not major facilities or significant indirect
3 users, sampling pursuant to this paragraph shall be conducted at least
4 once every three years;] (Deleted by amendment, P.L. , c.)
5 (before the Legislature as this bill)

6 (2) An analysis of all collected samples by a State owned and
7 operated laboratory, or a certified laboratory other than one that has
8 been or is being used by the permittee, or that is directly or indirectly
9 owned, operated or managed by the permittee;

10 (3) An evaluation of the maintenance record of the permittee's
11 treatment equipment;

12 (4) An evaluation of the permittee's sampling techniques;

13 (5) A random check of written summaries of test results, prepared
14 by the certified laboratory providing the test results, for the
15 immediately preceding 12-month period, signed by a responsible
16 official of the certified laboratory, certifying the accuracy of the test
17 results; and

18 (6) An inspection of the permittee's sample storage facilities and
19 techniques if the sampling is normally performed by the permittee.

20 The department may inspect a facility required to be inspected by
21 a delegated local agency pursuant to this subsection. [Nothing in this
22 subsection shall require the department to conduct more than one
23 inspection per year.]

24 m. [The facility or municipal treatment works of a permittee
25 identified as a significant noncomplier shall be subject to an inspection
26 by the department, or the delegated local agency, as the case may be,
27 which inspection shall be in addition to the requirements of subsection
28 l. of this section. The inspection shall be conducted within 60 days of
29 receipt of the discharge monitoring report that initially results in the
30 permittee being identified as a significant noncomplier. The inspection
31 shall include a random check of written summaries of test results,
32 prepared by the certified laboratory providing the test results, for the
33 immediately preceding 12-month period, signed by a responsible
34 official of the certified laboratory, certifying the accuracy of the test
35 results. A copy of each summary shall be maintained by the permittee.
36 The inspection shall be for the purpose of determining compliance.
37 The department or delegated local agency is required to conduct only
38 one inspection per year pursuant to this subsection, and is not required
39 to make an inspection hereunder if an inspection has been made
40 pursuant to subsection l. of this section within six months of the period
41 within which an inspection is required to be conducted under this
42 subsection]. (Deleted by amendment, P.L. , c.)(before the
43 Legislature as this bill)

44 n. To assist the commissioner in assessing a municipal treatment
45 works' NJPDES permit in accordance with paragraph (3) of subsection
46 b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a delegated local

1 agency shall perform a complete analysis that includes a complete
2 priority pollutant analysis of the discharge from, and inflow to, the
3 municipal treatment works. The analysis shall be performed by a
4 delegated local agency as often as the priority pollutant scan is
5 required under the permit, but not less than once a year, and shall be
6 based upon data acquired in the priority pollutant scan and from
7 applicable sludge quality analysis reports. The results of the analysis
8 shall be included in a report to be attached to the annual report
9 required to be submitted to the commissioner by the delegated local
10 agency.

11 o. Except as otherwise provided in section 3 of P.L.1963, c.73
12 (C.47:1A-3), any records, reports or other information obtained by the
13 commissioner or a local agency pursuant to this section or section 5
14 of P.L.1972, c.42 (C.58:11-53), including any correspondence relating
15 thereto, shall be available to the public; however, upon a showing
16 satisfactory to the commissioner by any person that the making public
17 of any record, report or information, or a part thereof, other than
18 effluent data, would divulge methods or processes entitled to
19 protection as trade secrets, the commissioner or local agency shall
20 consider such record, report, or information, or part thereof, to be
21 confidential, and access thereto shall be limited to authorized officers
22 or employees of the department, the local agency, and the federal
23 government.

24 p. The provisions of this section shall not apply to a discharge of
25 petroleum to the surface waters of the State that occurs as a result of
26 the process of recovering, containing, cleaning up or removing a
27 discharge of petroleum in the surface waters of the State and that is
28 undertaken in compliance with the instructions of a federal on-scene
29 coordinator or of the commissioner or the commissioner's designee.
30 (cf: P.L.1995, c.16, s.3)

31
32 4. Section 8 of P.L.1990, c.28 (C.58:10A-6.1) is amended to read
33 as follows:

34 8. a. Every schedule of compliance of over 12 months shall require
35 the permittee to demonstrate to the commissioner the financial
36 assurance, including the ability to self guarantee, the ability to obtain
37 a loan, line of credit, or other financing, the procurement of an
38 environmental insurance policy, the creation of a trust, or the posting
39 of a bond or other security approved by the commissioner, necessary
40 to carry out the remedial measures required by the schedule of
41 compliance; except that a local agency shall not be required to post
42 financial [security] assurance as a condition of a schedule of
43 compliance. The permittee may access and use the funds available in
44 the financial assurance instrument as the funding source for
45 implementing the schedule of compliance. The amount of the financial
46 assurance required to be secured may be adjusted periodically, at the

1 request of the permittee or of the department, to reflect the current
2 balance of moneys needed to implement the schedule of compliance.

3 b. The department or a delegated local agency shall afford an
4 opportunity to the public to comment on [a proposed] an executed
5 administrative consent order [prior to] upon its final adoption if the
6 administrative consent order would establish interim enforcement
7 limits that would relax effluent limitations established in a permit or a
8 prior administrative order. The department or a delegated local
9 agency shall provide public notice of the [proposed] administrative
10 consent order, and announce the length of the comment period, which
11 shall be not less than 30 days, commencing from the date of
12 publication of the notice. A notice shall also include a summary
13 statement describing the nature of the violation necessitating the
14 administrative consent order and its terms or conditions; shall specify
15 how additional information on the administrative consent order may be
16 obtained; and shall identify to whom written comments are to be
17 submitted. At least three days prior to publication of the notice, a
18 written notice, containing the same information to be provided in the
19 published notice, shall be mailed to the mayor or chief executive
20 officer and governing body of the municipality and county in which the
21 violation occurred, and to any other interested persons, including any
22 other governmental agencies. The department or delegated local
23 agency shall consider the written comments received during the
24 comment period [prior to final adoption of the administrative consent
25 order. Not later than the date that final action is taken on the
26 proposed order, the] . The department or delegated agency shall
27 notify each person or group having submitted written comments of the
28 main provisions of the [approved] administrative consent order and
29 respond to the comments received therefrom.

30 c. The commissioner or delegated local agency, on his or its own
31 initiative or at the request of any person submitting written comments
32 pursuant to subsection b. of this section, may hold a public hearing on
33 [a proposed administrative order or] the administrative consent[,
34 prior to final adoption if the order would establish interim enforcement
35 limits that would relax for more than 24 months effluent limitations
36 established in a permit or a prior administrative order or administrative
37 consent order]. Public notice for the public hearing to be held
38 pursuant to this subsection shall be published not more than 30 and not
39 less than 15 days prior to the holding of the hearing. The hearing shall
40 be held in the municipality in which the violation, necessitating the
41 order, occurred. The department or delegated local agency may
42 recover all reasonable costs directly incurred in scheduling and holding
43 the public hearing from the person requesting or requiring the interim
44 enforcement limits.

45 d. Notwithstanding that the administrative consent order had been
46 executed, the department or delegated local agency may void the

1 administrative consent order or amend its terms based upon comments
2 or testimony received during the comment period or public hearing.
3 Where the department voids or amends the administrative consent
4 order the permittee shall only be liable prospectively for compliance
5 with the new administrative consent order.

6 (cf: P.L.1990, c.28, s.8)

7

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

10 9. a. Applications for permits shall be submitted within such times,
11 on such forms, and with such signatures as may be prescribed by the
12 commissioner and shall contain such information as he may require.
13 The commissioner shall, in accordance with a fee schedule adopted by
14 regulation, establish and charge reasonable annual administrative fees,
15 which fees shall be based upon, and shall not exceed, the estimated
16 cost of processing, monitoring and administering the NJPDES permits.
17 Said fees shall be deposited to the credit of the State and be deemed
18 as part of the General State Fund. [The Legislature shall annually
19 appropriate an amount equivalent to the amount anticipated to be
20 collected as fees charged under this section in support of NJPDES
21 program.] For fiscal years 1997 through 2003 inclusive, the fees
22 charged and collected for permits, except those issued pursuant to a
23 remediation of a contaminated site, shall not exceed \$11.2 million per
24 year. The fees charged and collected for permits issued pursuant to a
25 remediation of a contaminated site shall not be subject to the above
26 limitation but shall not exceed the estimated cost of processing,
27 monitoring and administering those permits.

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

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

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

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

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

27 (cf: P.L.1977, c.74, s.9)

28

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

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

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

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

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

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

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

43 (6) Issue a notice of violation and take the actions prescribed in
44 section 3. of P.L.1995, c.296 (C.) (now before the Legislature as
45 this bill).

46 Use of any of the remedies specified under this section shall not

1 preclude use of any other remedy specified.

2 In the case of one or more pollutants for which interim enforcement
3 limits have been established pursuant to an administrative order,
4 including an administrative consent order, by the department or a local
5 agency, the permittee shall be liable for the enforcement limits
6 stipulated therein.

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

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

19 (1) A temporary or permanent injunction;

20 (2) Assessment of the violator for the reasonable costs of any
21 investigation, inspection, or monitoring survey which led to the
22 establishment of the violation, and for the reasonable costs of
23 preparing and litigating the case under this subsection;

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

29 (4) Assessment against the violator of compensatory damages for
30 any loss or destruction of wildlife, fish or aquatic life, or other natural
31 resources, and for any other actual damages caused by an unauthorized
32 discharge;

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

41 Assessments under paragraph (4) of this subsection shall be paid to
42 the State Treasurer, except that compensatory damages shall be paid
43 by specific order of the court to any persons who have been aggrieved
44 by the unauthorized discharge. [Assessments pursuant to actions
45 brought by the commissioner under paragraphs (2), (3) and (5) of this
46 subsection shall be paid to the "Clean Water Enforcement Fund,"

1 established pursuant to section 12 of P.L.1990, c.28
2 (C.58:10A-14.4).]

3 d. (1) (a) The commissioner is authorized to assess, in accordance
4 with a uniform policy adopted therefor, a civil administrative penalty
5 of not more than \$50,000.00 for each violation and each day during
6 which such violation continues shall constitute an additional, separate,
7 and distinct offense. Any amount assessed under this subsection shall
8 fall within a range established by regulation by the commissioner for
9 violations of similar type, seriousness, and duration. The
10 commissioner shall adopt, by regulation, a uniform assessment of civil
11 penalties policy by [January 1, 1992] January 1, 1997.

12 (b) In adopting rules for a uniform penalty policy for determining
13 when to assess a penalty and the amount of a penalty to be assessed,
14 the commissioner shall take into account the type, seriousness,
15 including extent, toxicity, and frequency of a violation based upon the
16 harm to public health or the environment resulting from the violation,
17 the economic benefits from the violation gained by the violator, the
18 intent of the violator, the degree of cooperation or recalcitrance of the
19 violator in remedying the violation, the extent to which the violator
20 took efforts to avoid the violation including the implementation of a
21 environmental audit program, any measures taken by the violator to
22 avoid a repetition of the violation, the compliance history of the
23 violator, any unusual or extraordinary costs directly or indirectly
24 imposed on the public by the violation other than costs recoverable
25 pursuant to paragraph (3) or (4) of subsection c. of this section, and
26 any other pertinent factors that the commissioner determines measure
27 the seriousness or frequency of the violation, or conduct of the
28 violator. In adopting the uniform penalty policy the department shall
29 establish a minimum penalty not to exceed \$100 which shall be
30 assessed when a violation has caused no environmental harm, when the
31 violator has acted reasonably and has attempted to comply with the
32 provisions of P.L.1977, c.74, where the violator has taken measures
33 to ensure that the violation will not be repeated, and where the
34 violator has not been responsible for the same or a similar violation
35 within the previous 12 month period. The uniform penalty policy shall
36 provide for progressively higher monetary penalties, up to the
37 maximum provided by law, based on the conduct of the violator, the
38 duration of the violation, and the environmental harm caused or
39 potentially caused by the violation. If the department establishes a
40 range of penalties for violations with a specific intent and harm, it shall
41 provide that a violator who has established an environmental auditing
42 program or who has exhibited one or more of the other mitigating
43 factors enumerated in this paragraph not be automatically placed into
44 a mid-point of a penalty assessment range.

45 (c) In addition to the assessment of a civil administrative penalty,
46 the commissioner may, by administrative order and upon an

1 appropriate finding, assess a violator for costs authorized pursuant to
2 paragraphs (2) and (3) of subsection c. of this section.

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

19 (3) If a civil administrative penalty imposed pursuant to this
20 subsection is not paid within 30 days of the date that the penalty is
21 due [and owing], and the penalty is not contested by the person
22 against whom the penalty has been assessed, or the person fails to
23 make a payment pursuant to a payment schedule entered into with the
24 department, an interest charge shall accrue on the amount of the
25 penalty due and owing from the 30th day after the date on which the
26 penalty was due [and owing]. 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.

30 (4) The authority to levy a civil administrative penalty is in addition
31 to all other enforcement provisions in this act, and the payment of any
32 assessment shall not be deemed to affect the availability of any other
33 enforcement provisions in connection with the violation for which the
34 assessment is levied. Any civil administrative penalty assessed under
35 this section may be compromised by the commissioner [upon the
36 posting of a performance bond by the violator, or] upon such terms
37 and conditions as the commissioner may establish by regulation, except
38 that the amount compromised shall not be more than [50%] 90% of
39 the assessed penalty, and in no instance shall the amount of that
40 compromised penalty be less than the statutory minimum amount, if
41 applicable, prescribed in section 6 of P.L.1990, c.28 (C.58:10A-10.1).
42 In determining whether to compromise a penalty the commissioner
43 shall consider the intent of the violator, any actions taken or agreed to
44 be taken to achieve compliance, to remedy environmental harm, or to
45 prevent future violations, the cost of pursuing the enforcement action,
46 and the sufficiency of evidence against the violator. In the case of a

1 violator who is a local agency that enters into an administrative
2 consent order, the terms of which require the local agency to take
3 prescribed measures to comply with its permit, the commissioner shall
4 have full discretion to compromise the amount of penalties assessed or
5 due for violations occurring during a period up to 24 months
6 preceding the entering into the administrative consent order; except
7 that the amount of the compromised penalty may not be less than the
8 statutory minimum amount, if applicable, prescribed in section 6 of
9 P.L.1990, c.28 (C.58:10A-10.1). A civil administrative penalty
10 assessed against a local agency for a violation of an administrative
11 consent order may not be compromised by more than ~~[50%]~~90% of
12 the assessed penalty. In no instance shall the amount of a
13 compromised penalty assessed against a local agency be less than the
14 statutory minimum amount, if applicable, prescribed in section 6 of
15 P.L.1990, c.28 (C.58:10A-10.1). ~~[The commissioner shall not~~
16 ~~compromise the amount of any component of a civil administrative~~
17 ~~penalty which represents the economic benefit gained by the violator~~
18 ~~from the violation].~~ The commissioner may only compromise a civil
19 administrative penalty more than 50% of the assessed penalty pursuant
20 this paragraph upon a finding by the commissioner that (1) the violator
21 instituted or agrees to institute an environmental auditing program, or
22 in the case of a small business or local agency that serves 10,000
23 people or less, seeks compliance assistance pursuant to section 13 of
24 P.L. , c. (C.)(before the Legislature as this bill), efforts are
25 taken to prevent the violation or to immediately prevent its
26 reoccurrence, the conditions that caused the violation are fully
27 disclosed to the department, and measures are taken to ensure that any
28 damage caused by the violation is remediated; or (2) the violation
29 would not be a violation under current rules or regulations of the
30 department. Whenever the commissioner compromises a civil
31 administrative penalty by more than 50% of the assessed penalty, the
32 commissioner shall make a written finding setting forth the basis for
33 that action. A copy of the written finding shall be published in the
34 annual report required to be prepared pursuant to section 9 of P.L.
35 1990, c. 28 (C.58:10A-14.1).

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

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

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

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

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

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

30 (8) Notwithstanding any provision of this subsection, the
31 commissioner may amend any civil administrative penalty that had
32 previously been assessed prior to the penalty being assessed in a final
33 order if the commissioner learns of any aggravating or mitigating
34 factors concerning the violation after the initial civil administrative
35 penalty had been imposed. Any amendment to the civil administrative
36 penalty shall be made pursuant to the process provided in this
37 subsection for the initial assessment. For the purposes of
38 compromising on penalty pursuant to paragraph (4) of this subsection,
39 the limitations on the commissioner's authority to compromise shall be
40 based on the amount of the amended civil administrative penalty
41 assessment.

42 e. Any person who violates this act or an administrative order
43 issued pursuant to subsection b. or a court order issued pursuant to
44 subsection c., or who fails to pay a civil administrative penalty in full
45 pursuant to subsection d., or to make a payment pursuant to a payment
46 schedule entered into with the department, shall be subject upon order

1 of a court to a civil penalty not to exceed \$50,000.00 per day of such
2 violation, and each day's continuance of the violation shall constitute
3 a separate violation. Any penalty incurred under this subsection may
4 be recovered with costs, and, if applicable, interest charges, in a
5 summary proceeding pursuant to "the penalty enforcement law"
6 (N.J.S.2A:58-1 et seq.). In addition to any civil penalties, costs or
7 interest charges, the court, in accordance with paragraph (5) of
8 subsection c. of this section, may assess against a violator the amount
9 of any actual economic benefits accruing to the violator from the
10 violation. The Superior Court shall have jurisdiction to enforce "the
11 penalty enforcement law" in conjunction with this act.

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

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

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

40 (3) Any person who negligently violates this act, including making
41 a false statement, representation, or certification in any application,
42 record, or other document filed or required to be maintained under this
43 act, or by falsifying, tampering with, or rendering inaccurate any
44 monitoring device or method required to be maintained pursuant to
45 this act, or by failing to submit a discharge monitoring report, or any
46 portion thereof, required pursuant to this act, shall, upon conviction,

1 be guilty of a crime of the fourth degree, and shall, notwithstanding
2 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
3 of not less than \$5,000 nor more than \$50,000 per day of violation, or
4 by imprisonment, or by both.

5 (4) Any person who purposely or knowingly violates an effluent
6 limitation or other condition of a permit, or who discharges without a
7 permit, and who knows at that time that he thereby places another
8 person in imminent danger of death or serious bodily injury, as defined
9 in subsection b. of N.J.S.2C:11-1, shall, upon conviction, be guilty of
10 a crime of the first degree, and shall, notwithstanding the provisions
11 of subsection a. of N.J.S.2C:43-3, be subject of a fine of not less than
12 \$50,000 nor more than \$250,000, or, in the case of a corporation, a
13 fine of not less than \$200,000 nor more than \$1,000,000, or by
14 imprisonment or by both.

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

18 (6) The Department of Law and Public Safety may maintain its
19 current policy guideline for State and county prosecutors in the use of
20 their discretion in pursuing criminal enforcement of any environmental
21 law whereby the existence of an environmental auditing program is a
22 mitigating factor.

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

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

32
33 7. Section 6 of P.L. 1990, c. 28 (C.58:10A-10.1) is amended to
34 read as follows:

35 6. a. The provisions of section 10 of P.L.1977, c.74
36 (C.58:10A-10), or any rule or regulation adopted pursuant thereto to
37 the contrary notwithstanding, the department shall assess, with no
38 discretion, a mandatory minimum civil administrative penalty for the
39 violations enumerated in [subsections b., c. and d.] subsection c. of
40 this section.

41 b. [The department shall assess a minimum mandatory civil
42 administrative penalty of \$1,000 against a violator for each serious
43 violation, which assessment shall be made within six months of the
44 serious violation.](Deleted by amendment, P.L. .c.)(before the
45 Legislature as this bill)

46 c. The department shall assess a minimum mandatory civil

1 administrative penalty of [~~\$5,000~~] \$1,000 against a violator for the
2 violation that causes the violator to be, or to continue to be, a
3 significant noncomplier.

4 d. [The department shall assess a minimum mandatory civil
5 administrative penalty of \$100 for each effluent parameter omitted on
6 a discharge monitoring report required to be submitted to the
7 department, and each day during which the effluent parameter
8 information is overdue shall constitute an additional, separate, and
9 distinct offense, except that in no instance shall the total civil
10 administrative penalty assessed pursuant to this subsection exceed
11 \$50,000 per month for any one discharge monitoring report. The civil
12 administrative penalty assessed pursuant to this subsection shall accrue
13 as of the fifth day following the date on which the discharge
14 monitoring report was due and shall continue to accrue for 30 days.
15 The commissioner may continue to assess civil administrative penalties
16 beyond the 30-day period until submission of the overdue discharge
17 monitoring report or overdue information. A permittee may contest
18 the assessment of the civil administrative penalty required to be
19 assessed pursuant to this subsection by notifying the commissioner in
20 writing, within 30 days of the date on which the effluent parameter
21 information was required to be submitted to the department, of the
22 existence of extenuating circumstances beyond the control of the
23 permittee, including circumstances that prevented timely submission
24 of the discharge monitoring report, or portion thereof, or, if the civil
25 administrative penalty is imposed because of an inadvertent omission
26 of one or more effluent parameters, the permittee may submit, without
27 liability for a civil administrative penalty assessed pursuant to this
28 subsection or subsection c. of this section, the omitted information
29 within 10 days of receipt by the permittee of notice of omission of the
30 parameter or parameters.] (~~Deleted by amendment, P.L. , c.~~)(~~before~~
31 the Legislature the Legislature as this bill)

32 e. If a violator establishes, to the satisfaction of the department,
33 that a single operational occurrence has resulted in the simultaneous
34 violation of more than one pollutant parameter, the department may
35 consider, for purposes of calculating the mandatory civil administrative
36 penalties to be assessed pursuant to [~~subsections b. and~~] subsection c.
37 of this section, the violation of the interrelated permit parameters to
38 be a single violation. For the purposes of this subsection, daily,
39 monthly, or periodic permit parameter limits for the same pollutant at
40 the same discharge point shall be considered interrelated permit
41 parameters.

42 f. The requirement that the department assess a minimum civil
43 administrative penalty pursuant to this section shall in no way be
44 construed to limit the authority of the department to assess a civil
45 administrative penalty or bring an action for a civil penalty for a
46 violation at any time after a violation occurred or to assess a more

1 stringent civil administrative penalty or civil penalty against a person
2 pursuant to section 10 of P.L.1977, c.74 (C.58:10A-10).

3 g. The provisions of this section shall not apply to violations
4 occurring prior to the effective date of this section.
5 (cf: P.L.1990, c.28, s.6)

6
7 8. Section 7 of P.L. 1990, c.28 (C.58:10A-10.2.) is amended to
8 read as follows:

9 7. a. A person may be entitled to an affirmative defense to liability
10 [for a mandatory assessment of a civil administrative penalty] pursuant
11 to [section 6 of] P.L.1977, c.74 (C.58:10A-1 et seq.) and P.L.1990,
12 c.28 (C.58:10A-10.1 et al.) for a violation of an effluent limitation
13 occurring as a result of an upset, an anticipated or unanticipated
14 bypass, or a testing or laboratory error. A person shall be entitled to
15 an affirmative defense only if, in the determination of the department
16 or delegated local agency, the person satisfies the provisions of
17 subsection b., c., e. or f., as applicable, of this section.

18 b. A person asserting an upset as an affirmative defense pursuant
19 to this section, except in the case of an approved maintenance
20 operation, shall notify the department or the local agency of an upset
21 within [24 hours] five days of the occurrence, or of becoming aware
22 of the occurrence, and, [within five days thereof] at the same time,
23 shall submit written documentation, including properly signed,
24 contemporaneous operating logs, or other relevant evidence, on the
25 circumstances of the violation, and demonstrating, as applicable, that:

26 (1) the upset occurred, including the cause of the upset and, as
27 necessary, the identity of the person causing the upset, except that, in
28 the case of a treatment works, the local agency may certify that despite
29 a good faith effort it is unable to identify the cause of the upset, or the
30 person causing the upset;

31 (2) the permitted facility was at the time being properly operated;

32 (3) [the person submitted notice of the upset as required pursuant
33 to this section, or,]in the case of an upset resulting from the
34 performance by the permittee of maintenance operations, the permittee
35 provided prior notice and received an approval therefor from the
36 department or the delegated local agency; and

37 (4) the person complied with any remedial measures required by
38 the department or delegated local agency.

39 Notwithstanding that a person asserting an affirmative defense
40 pursuant to this subsection failed to provide the five days notice, the
41 department or the local agency may determine that a person is entitled
42 to the affirmative defense.

43 c. A person asserting an unanticipated bypass as an affirmative
44 defense pursuant to this section shall notify the department or the local
45 agency of the unanticipated bypass within [24 hours] five days of its
46 occurrence, and, [within five days thereof] at the same time, shall

1 submit written documentation, including properly signed,
2 contemporaneous operating logs, or other relevant evidence, on the
3 circumstances of the violation, and demonstrating that:

4 (1) the unanticipated bypass occurred, including the circumstances
5 leading to the bypass;

6 (2) the permitted facility was at the time being properly operated;

7 (3) the person submitted notice of the upset as required pursuant
8 to this section; [and]

9 (4) the person complied with any remedial measures required by
10 the department or delegated local agency;

11 (5) the bypass was unavoidable to prevent loss of life, personal
12 injury, or severe property damage; and

13 (6) there was no feasible alternative to the bypass such as the use
14 of auxiliary treatment facilities, retention of untreated wastes, or
15 maintenance during normal periods of downtime, except that the
16 provisions of this paragraph shall not apply to a bypass occurring
17 during normal periods of equipment downtime or preventive
18 maintenance if, on the basis of the reasonable engineering judgment of
19 the department or delegated local agency, back-up equipment should
20 have been installed to avoid the need for a bypass.

21 Notwithstanding that a person asserting an affirmative defense
22 pursuant to this subsection failed to provide the five days notice, the
23 department or the local agency may determine that a person is entitled
24 to the affirmative defense.

25 d. Nothing contained in subsection b. or c. of this section shall be
26 construed to limit the requirement to comply with the provisions of
27 paragraph (8) of subsection f. of section 6 of P.L.1977, c.74
28 (C.58:10A-6).

29 e. A person may assert an anticipated bypass as an affirmative
30 defense pursuant to this section only if the person provided prior
31 notice to the department or delegated local agency, if possible, at least
32 10 days prior to the date of the bypass, and the department or
33 delegated local agency approved the bypass, and if the person is able
34 to demonstrate that:

35 (1) the bypass was unavoidable to prevent loss of life, personal
36 injury, or severe property damage; and

37 (2) there was no feasible alternative to the bypass such as the use
38 of auxiliary treatment facilities, retention of untreated wastes, or
39 maintenance during normal periods of downtime, except that the
40 provisions of this paragraph shall not apply to a bypass occurring
41 during normal periods of equipment downtime or preventive
42 maintenance if, on the basis of the reasonable engineering judgment of
43 the department or delegated local agency, back-up equipment should
44 have been installed to avoid the need for a bypass.

45 f. A person asserting a testing or laboratory error as an affirmative
46 defense pursuant to this section shall have the burden to demonstrate,

1 to the satisfaction of the department, that a [serious] violation
2 involving the exceedance of an effluent limitation was the result of
3 unanticipated test interferences, sample contamination, analytical
4 defects or procedural deficiencies in sampling or other similar
5 circumstances beyond the control of the permittee.

6 g. A determination by the department on a claim that a violation of
7 an effluent limitation was caused by an upset, a bypass or a testing or
8 laboratory error shall be considered final agency action on the matter
9 for the purposes of the "Administrative Procedure Act," P.L.1968,
10 c.410 (C.52:14B-1 et seq.), and shall be subject only to review by a
11 court of competent jurisdiction.

12 h. An assertion of an upset, a bypass or a testing or laboratory
13 error as an affirmative defense pursuant to this section may not include
14 noncompliance to the extent caused by operational error, improperly
15 designed treatment facilities, inadequate treatment facilities, lack of
16 preventive maintenance, or careless or improper operation.

17 i. If the department determines, pursuant to the provisions of this
18 section, that a violation of an effluent limitation was caused by an
19 upset, a bypass or a testing or laboratory error, the commissioner shall
20 waive any [mandatory] civil administrative penalty [required to be]
21 assessed pursuant to section 10 of P.L.1977, c.74 (C.58:10A-10) or
22 section 6 of P.L.1990, c.28 (C.58:10A-10.1), and the violation shall
23 not be considered a serious violation or violation causing a person to
24 be designated a significant noncomplier.

25 j. [The affirmative defense for an upset, a bypass or a testing or
26 laboratory error provided in this section shall only apply to the
27 imposition of mandatory penalties pursuant to section 6 of P.L.1990,
28 c.28 (C.58:10A-10.1) for serious violations and for determining a
29 significant noncomplier. Nothing in this act shall be construed to limit
30 the authority of the department, or a delegated local agency, to adopt
31 regulations or permit conditions that include or do not include an
32 upset, a bypass or a testing or laboratory error, using different
33 standards, as a defense for any other exceedance of an effluent
34 limitation.](Deleted by amendment P.L. , c.)(now before the
35 Legislature as this bill)
36 (cf: P.L.1990, c.28, s.7)

37
38 9. Section 10 of P.L.1990, c.28 (C.58:10A-14.2) is amended to
39 read as follows:

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

43 (1) the number of facilities permitted by the department [or
44 delegated local agencies] pursuant to P.L.1977, c.74 (C.58:10A-1 et
45 seq.) as of the end of the [calendar] fiscal year, by surface water
46 discharge permits;

- 1 (2) the number of new permits or permit renewals issued;
- 2 (3) the number of permit approvals contested by a permittee or
3 other party;
- 4 (4) the number of permit modifications, other than permit renewals;
- 5 (5) the number of schedules of compliance adopted pursuant to
6 administrative orders or administrative consent agreements involving
7 interim enforcement limits that relax permit limitations;
- 8 (6) the number of facilities, including publicly owned treatment
9 works, inspected at least once by the department or local agencies;
- 10 (7) the number of enforcement actions resulting from facility
11 inspections;
- 12 (8) the number of actual permit violations;
- 13 (9) the number of actual effluent violations constituting serious
14 violations, including violations that are being contested;
- 15 (10) the number of defenses for upsets, bypasses or testing or
16 laboratory errors granted pursuant to section 7 of P.L.1990, c.28
17 (C.58:10A-10.2) that involved a serious violation;
- 18 (11) the number of permittees qualifying as significant
19 noncompliers, including permittees contesting such designation;
- 20 (12) the number of unpermitted discharges;
- 21 (13) the number of pass throughs of pollutants;
- 22 (14) the number of enforcement orders--administrative and
23 judicial--issued for violations;
- 24 (15) the number of violations for which civil penalties or civil
25 administrative penalties have been assessed;
- 26 (16) the number of violations of administrative orders or
27 administrative consent orders, including violations of interim
28 enforcement limits, or of schedule of compliance milestones for
29 starting or completing construction, or for failing to attain full
30 compliance;
- 31 (17) the number of violations of schedules of compliance
32 milestones for starting or completing construction, or attaining full
33 compliance, that are out of compliance by 90 days or more from the
34 date established in the compliance schedule;
- 35 (18) the dollar amount of all assessed civil penalties and civil
36 administrative penalties;
- 37 (19) the dollar amount of enforcement costs recovered in a civil
38 action or civil administrative action from a violator;
- 39 (20) the dollar amount of civil administrative penalties and civil
40 penalties collected, including penalties for which a penalty schedule
41 has been agreed to by the violator; and
- 42 (21) [The specific purposes for which penalty monies collected
43 have been expended, displayed in line-item format by type of
44 expenditure and including, but not limited to, position numbers and
45 titles funded in whole or in part from these penalty monies; and]
46 (Deleted by amendment P.L. c.)(now before the Legislature as this

1 bill)

2 (22) the number of criminal actions filed by the Attorney General
3 or county prosecutors pursuant to section 10 of P.L.1977, c.74
4 (C.58:10A-10).

5 b. In addition to the information required pursuant to subsection
6 a. of this section, the report shall:

7 (1) list the trade name of each permittee determined to be a
8 significant noncomplier by the department or delegated local agency,
9 and the address and permit number of the facility at which the
10 violations occurred, and provide a brief description and the date of
11 each violation, and the date that the violation was resolved, as well as
12 the total number of violations committed by the permittee during the
13 year;

14 (2) list the trade name of each permittee who is at least six months
15 behind in the construction phase of a compliance schedule, as well as
16 the address and permit number of the facility, and provide a brief
17 description of the conditions violated and the cause of delay;

18 (3) list the trade name, address and permit number, of each
19 permittee who has been convicted of criminal conduct pursuant to
20 subsection f. of section 10 of P.L.1977, c.74 (C.58:10A-10), or who
21 has had any officer or employee convicted thereunder, and provide a
22 brief description and the date of the violation or violations for which
23 convicted; and

24 (4) list the name and location of any local agency that has failed to
25 file with the department information required by section 11 of
26 P.L.1990, c.28 (C.58:10A-14.3)[; and].

27 (5) [provide a summary assessment of the water quality of surface
28 and ground waters affected by discharges subject to regulation
29 pursuant to P.L.1977, c.74 to the extent that such information is not
30 otherwise required to be submitted to the United States Environmental
31 Protection Agency.](Deleted by amendment P.L. c.)(now before
32 the Legislature as this bill)

33 c. The department may include in the report any other information
34 it determines would provide a fuller profile of the implementation and
35 enforcement of P.L.1977, c.74. The department shall also include in
36 the report any information that may be requested, in writing, not later
37 than [November] May 30 of the preceding fiscal year, for inclusion in
38 the annual report, by the Assembly [Environmental Quality]
39 Environment and Energy Committee or the Senate [Environmental
40 Quality] Environment Committee, or their successors.

41 d. The report shall also contain copies of the written findings
42 required to be prepared to compromise a penalty by more than 50% as
43 provided in paragraph (4) of subsection d. of section 10 of P.L.1977,
44 c.74 (C.58:10A-10).

45 e. The department shall make available, at the cost of reproduction,
46 copies of the annual reports that delegated local agencies are required

1 to submit to the department pursuant to 40 CFR §403.
2 (cf: P.L.1990, c.28, s.10)

3
4 10. Section 5 of P.L.1991, c.8 (C.58:10A-10.8) is amended to read
5 as follows:

6 5. a. [A person appealing a] If a civil administrative penalty or
7 assessment levied in accordance with section 2 of P.L.1991, c.8
8 (C.58:10A-10.5), [whether] is contested as a contested case pursuant
9 to P.L.1968, c.410 (C.52:14B-1 et seq.) or [by appeal] is appealed to
10 a court of competent jurisdiction, [shall, as a condition of filing the
11 appeal, post with the delegated local agency a refundable bond, or
12 other security approved by the delegated local agency, in the amount
13 of the civil administrative penalty or assessment levied pursuant to a
14 civil administrative hearing. If] and the civil administrative penalty or
15 assessment is upheld in whole or in part, the delegated local agency
16 shall be entitled to a daily interest charge on the amount of the
17 [judgment] penalty or assessment that was upheld from the [date of
18 the posting of the security with the commissioner until that amount is
19 paid in full] 30th day after the penalty or assessment would have been
20 due and payable had the levy not been contested or appealed. The
21 rate of interest shall be that established by the New Jersey Supreme
22 Court for interest rates on judgments, as set forth in the Rules
23 Governing the Courts of the State of New Jersey.

24 b. A person who is assessed a civil administrative penalty, or is
25 subject to an assessment levied pursuant to section 2 of P.L.1991, c.8
26 (C.58:10A-10.5), and fails to contest, appeal, or to pay the penalty or
27 assessment, or fails to enter into a payment schedule with the
28 delegated local agency within 30 days of the date that the penalty or
29 assessment is due and [owing] payable, shall be subject to an interest
30 charge on the amount of the penalty or assessment from the date that
31 the 30th day after the amount was due and [owing] payable. The rate
32 of interest shall be that authorized pursuant to subsection a. of this
33 section.

34 c. Any person who fails to pay a civil administrative penalty or
35 assessment, in whole or in part, when due and [owing] payable, or
36 who fails to agree to a payment schedule therefor, shall be subject to
37 the civil penalty provisions of subsection e. of section 10 of P.L.1977,
38 c.74 (C.58:10A-10).

39 d. A civil administrative penalty or assessment imposed pursuant
40 to a final order:

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

44 (2) shall constitute a debt of the violator, and the civil
45 administrative penalty may be docketed with the clerk of the Superior
46 Court, and shall have the same standing as any judgment docketed

1 pursuant to N.J.S.2A:16-1.
2 (cf: P. L.1991, c.8, s.5)

3
4 11. Section 4 of P.L.1974, c.169 (C.2A:35A-4) is amended to read
5 as follows:

6 4. a. Any person may commence a civil action in a court of
7 competent jurisdiction against any other person alleged to be in
8 violation of any statute, regulation or ordinance which is designed to
9 prevent or minimize pollution, impairment or destruction of the
10 environment. The action may be for injunctive or other equitable relief
11 to compel compliance with a statute, regulation or ordinance, or to
12 assess civil penalties for the violation as provided by law. The action
13 may be commenced upon an allegation that a person is in violation,
14 either continuously or intermittently, of a statute, regulation or
15 ordinance, and that there is a likelihood that the violation will recur in
16 the future.

17 b. Except in those instances where the conduct complained of
18 constitutes a violation of a statute, regulation or ordinance which
19 establishes a more specific standard for the control of pollution,
20 impairment or destruction of the environment, any person may
21 commence a civil action in any court of competent jurisdiction for
22 declaratory and equitable relief against any other person for the
23 protection of the environment, or the interest of the public therein,
24 from pollution, impairment or destruction.

25 c. The court may, on the motion of any party, or on its own
26 motion, dismiss any action brought pursuant to this act which on its
27 face appears to be patently frivolous, harassing or wholly lacking in
28 merit.

29 d. No person may commence or maintain a civil action pursuant to
30 this section if the Department of Environmental Protection, or any
31 other governmental agency or authority having regulatory control over
32 the actions being challenged, has taken an enforcement action against
33 that person to stop or modify the challenged actions. For the purposes
34 of this subsection, an enforcement action may be the filing of a civil or
35 criminal complaint in a court of competent jurisdiction, the issuance of
36 an administrative order, the imposition of an administrative consent
37 order, the imposition of a civil administrative penalty, the entering into
38 an agreement which agreement is intended to stop or modify the
39 challenged actions or prevent its recurrence, or a determination by the
40 department after notice to the person committing the action that no
41 further action is required to be taken either because of a lack of
42 environmental harm or because the department determines that any
43 action is unnecessary under the policies of the department.

44 e. If a person discovers a violation of P.L.1977, c.74 (C.58:10A-1
45 et seq.), or any rule, regulation, or permit issued thereunder, as a
46 result of an environmental audit and discloses the violation as provided

1 in section 18. of P.L. , c. (C.)(before the Legislature as this
2 bill), such action shall preclude an action by any person against that
3 person pursuant to the provisions of P.L.1974, c.169 (C.2A:35A-1 et
4 seq.), relating to the conduct that constituted the violation.

5 (cf: P.L.1990, c.28, s.16)

6
7 12. (New section) Within 180 days after the enactment of
8 P.L.1977, c.74, the department shall adopt, pursuant to the provisions
9 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1),
10 rules and regulations that establish an effluent trading and banking
11 program to achieve higher water quality in watersheds at lower costs
12 to persons permitted pursuant to P.L.1977, c.74. The rules and
13 regulations shall be designed to allow a permittee to reduce its
14 discharge below the minimum levels required in its permit and sell the
15 excess reductions to other dischargers within the same watershed, to
16 earn credits by reducing the discharge within the watershed of a
17 nonpermitted discharger, and to purchase or use credits it has earned
18 or obtained to comply with an established permit level. The rules and
19 regulations shall also ensure that the use of banking and earning
20 effluent credits result in earlier or increased reductions in the discharge
21 of pollutants within a watershed than what would otherwise be
22 achieved in accordance with applicable permit requirements, so that
23 permit compliance can be achieved with greater flexibility and lower
24 cost. The rules and regulations shall establish criteria for the banking
25 and purchase of effluent credits, and for earning and using credits by
26 a permittee by reducing a discharge from a source of water pollution
27 within the same watershed by a discharger for which a permit is not
28 required pursuant to P.L.1977, c.74. The department shall require that
29 10% of effluent credits purchased or earned be permanently retired for
30 the public benefit when a trade occurs.

31
32 13. (New section) a. There is created in the Department of
33 Environmental Protection, an Office of Water Discharge Compliance
34 Assistance. The Commissioner of Environmental Protection shall
35 ensure that the Office is provided with sufficient personnel and
36 resources to carry out the functions required of it pursuant to this
37 section. The financial resources to fund the Office shall be provided
38 from fees imposed pursuant to section 9 of P.L.1977, c.74 (C.58:10A-
39 9) and from such other sums as may be appropriated by the Legislature
40 or otherwise made available for this purpose.

41 b. The Office shall assist small businesses and local agencies
42 serving 10,000 or fewer people in complying with the provisions of
43 P.L.1977, c.74 (C.58:10A-1 et seq.). The Office shall provide
44 assistance, both on-site and off-site, with regard to engineering,
45 planning, financing, the preparation of paperwork and other
46 documents, facility operation, the selection of professionals, the

1 acquisition of materials, and other self-help strategies designed to allow
2 the small business or local agency to comply with the provisions of
3 P.L.1977, c.74, by using its own or existing resources, to the extent
4 practicable, and at the lowest possible cost.

5 c. The department shall not charge any fees for providing
6 assistance pursuant to this section. To the extent that the department
7 does not have sufficient resources to adequately provide assistance to
8 all small businesses and local agencies that seek assistance, the
9 department may prioritize the allocation of that assistance based on
10 criteria to be established by the department.

11 d. The department may contract with a public institute of higher
12 education in New Jersey, to work in conjunction with the department,
13 to staff, operate, and provide the assistance required of the Office of
14 Water Discharge Compliance Assistance.

15
16 14. (New section) Within 12 months of the enactment of P.L. ,
17 c. (C.) (now in the Legislature as this bill), the department shall
18 issue a report, along with any recommendations for legislative or
19 regulatory action, that details methods that will achieve a 25%
20 reduction in the amount of paperwork required to be submitted by
21 persons who are required to obtain a permit pursuant to the provisions
22 of P.L.1977, c.74, of at least 25%. In preparing the report, the
23 department shall review the provisions of P.L.1977, c.74 and any
24 regulations implementing the provisions of the act and identify any
25 record keeping, monitoring or reporting requirements performed
26 pursuant to P.L.1977, c.74 that are duplicative or no longer necessary
27 for the continued compliance with the goals of that act. The
28 department shall review and evaluate any method that will enable
29 persons who hold permits issued pursuant to P.L.1977, c.74 to
30 electronically submit reports and data. In preparing the report, the
31 department shall consult representatives of persons required to obtain
32 a permit pursuant to P.L.1977, c.74, including, but not limited to,
33 representatives of local agencies, small businesses, significant indirect
34 users, and large industrial direct dischargers.

35
36 15. (New section) Within 12 months of the enactment of P.L. ,
37 c. (C.) (before the Legislature as this bill), the department shall
38 prescribe the format for the electronic submission of permit
39 applications, discharge monitoring reports, compliance schedule
40 progress reports, and any other reports or data submitted to the
41 department pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.). The
42 department shall authorize the submission of such reports in the
43 prescribed electronic format and shall make all data submitted
44 available to the public in electronic form.

45
46 16. (New Section) There is created in the Department of the

1 Treasury a special nonlapsing fund, to be known as the "Watershed
2 Protection Reimbursement Fund". All monies from penalties, fines or
3 recoveries of costs or improper economic benefits collected by the
4 department pursuant to section 10 of P.L.1977, c.74 (C.58:10A-10)
5 or section 6 of P.L.1990, c.28 (C.58:10A-10.1), on or after the
6 effective date of this section shall be deposited in the fund. Monies in
7 the fund shall be utilized exclusively by the Department of the
8 Treasury to reimburse municipalities for any property tax losses
9 resulting from the implementation of P.L. , c. (C.).

10
11 17. (New Section) a. An enforcement agency shall not seek to
12 obtain an environmental audit report except when: (1) the enforcement
13 agency has reasonable grounds to believe a violation of P.L.1977, c.74
14 (C.58:10A-1 et seq.) has been committed; (2) the violation may result
15 in serious harm to human health or the environment; (3) the
16 enforcement agency made the determination in paragraph (1) of this
17 subsection through means independent of an environmental audit
18 report; (4) a substantial need exists to obtain the environmental audit
19 report; and (5) the information sought to be obtained is either not
20 otherwise available to the enforcement agency or the enforcement
21 agency is unable to obtain the substantial equivalent of the information
22 by any means without incurring unreasonable cost or delay.

23 b. If the conditions of paragraphs (1), (2), (3), (4), and (5) of
24 subsection a. of this section are met, the enforcement agency may only
25 seek to obtain those portions of the environmental audit report that are
26 relevant to the specific violation. An enforcement agency may only
27 seek to obtain portions of an environmental audit report pursuant to
28 subsection a. of this section through the following methods: (1) the
29 issuance of an administrative subpoena signed by the commissioner;
30 (2) the issuance of an administrative search warrant issued by a court
31 of competent jurisdiction; or (3) through discovery by an enforcement
32 agency pursuant to a civil enforcement action or administrative
33 enforcement action.

34 c. Those portions of an environmental audit report obtained
35 pursuant to this section shall be admissible as evidence in a civil
36 enforcement action or a civil administrative enforcement action to the
37 extent permitted by law and the rules of procedure and evidence
38 applicable to the administrative or civil proceeding.

39 d. Nothing in this section is intended or shall be construed to in any
40 way modify, limit or impair the authority of an enforcement agency to
41 seek, obtain, or admit into evidence environmental audit reports for
42 purposes of a criminal investigation or prosecution pursuant to grand
43 jury subpoena, search warrant issued by a court of competent
44 jurisdiction, and applicable rules of discovery, procedure, and
45 evidence. Any portion of an environmental audit report obtained
46 pursuant to a grand jury subpoena may not be disclosed to an

1 enforcement agency for the purposes of a civil action unless the grand
2 jury returns an indictment.

3 e. The limitations imposed on enforcement agencies in seeking to
4 obtain environmental audit reports pursuant to this section shall not
5 apply to:

6 (1) Documents, communications, data, reports, or other
7 information required to be collected, developed, maintained, reported,
8 or made available to a governmental entity pursuant to any federal,
9 State or local law, ordinance, regulation, permit or order;

10 (2) Information obtained by observation, sampling, or monitoring
11 by any enforcement agency;

12 (3) Information obtained from a source independent of the
13 environmental audit;

14 (4) Documents existing prior to the commencement of and
15 independent of the environmental audit;

16 (5) Documents prepared subsequent to the completion of and
17 independent of the environmental audit; and

18 (6) The underlying factual information upon which an
19 environmental audit report is based.

20

21 18. (New Section) a. Notwithstanding the provisions of any other
22 law to the contrary, if a person discovers a violation of P.L.1977, c.74,
23 or any rule, regulation, or permit issued thereunder, as a result of an
24 environmental audit the enforcement agency shall waive civil and civil
25 administrative penalties, provided the following conditions are
26 satisfied:

27 (1) The violation is discovered by the person through an
28 environmental audit and not as the result of any testing or sampling
29 required to be performed pursuant to law or pursuant to any
30 information, report, or communication required to be made available
31 to an enforcement agency pursuant to law;

32 (2) The person voluntarily discloses the violation to the department
33 and any other relevant enforcement agency in writing within a
34 reasonable time upon discovery of the violation. Disclosure of a
35 violation shall include, at a minimum, all information available to the
36 person at the time disclosure is made concerning the cause of the
37 violation, and any actual harm to human health or the environment, or
38 imminent and substantial threat to human health and safety caused by
39 the violation. Disclosure shall not be considered voluntary unless it
40 occurs prior to: (a) the discovery or knowledge of the violation by the
41 department; (b) the commencement of a judicial or administrative
42 enforcement action by the State, the United States Environmental
43 Protection Agency, or an enforcement agency acting on behalf of the
44 department; (c) the regulated entity's knowledge that the discovery of
45 the violation by a regulatory agency or a third party was imminent;

46 (3) The person corrected the condition or activity constituting the

1 violation and achieves compliance within a reasonable period of time
2 following the discovery of the violation. If compliance cannot be
3 achieved within 60 days following its discovery, the violation shall be
4 corrected in accordance with a reasonable schedule approved or
5 ordered by the department;

6 (4) The person expeditiously remedies any condition that has
7 created or may create an imminent and substantial endangerment to
8 human health, safety or natural resources;

9 (5) The person takes appropriate, documented, steps to prevent the
10 recurrence of the violation, and implements appropriate measures to
11 mitigate any harm caused by the violation; and

12 (6) The person cooperates with the department or other relevant
13 enforcement agency in the further investigation of the violation,
14 including the department's efforts to ensure that the condition or
15 activity constituting the violation is properly corrected, and any
16 damage caused by the violation is fully remediated.

17 b. This section shall not apply to violations that involve purposeful,
18 knowing, reckless, or criminally negligent conduct.

19 c. Nothing in this section is intended nor shall be construed to in
20 any way modify, limit or impair the authority of an enforcement
21 agency to undertake any criminal investigation or prosecution, or
22 obtain criminal penalties, restitution, and any other sanction available
23 pursuant to the criminal laws of the State.

24 d. Nothing in this section is intended or shall be construed to in any
25 way modify, limit or impair the authority of an enforcement agency to
26 obtain damages, declaratory, injunctive or other equitable relief, or any
27 other form of relief available by law.

28 e. Information contained within an environmental audit report and
29 disclosed to an enforcement agency as part of an action to achieve
30 compliance pursuant to this section shall not be disclosed by the
31 enforcement agency.

32
33 19. (New Section) An environmental audit report shall be
34 privileged and shall not be admissible or discoverable as evidence in
35 any civil or administrative proceeding or review, except as provided
36 in sections 20, 21, or 22 of P.L. , c. (C.)(before the
37 Legislature as this bill). Nothing in this section shall be construed to
38 prevent an enforcement agency from seeking, obtaining or admitting
39 an environmental audit report in the manner provided in section 17 of
40 P.L. , c. (C.)(before the Legislature as this bill) or in the
41 manner provided in sections 20 through 22 of P.L. , c. (C.)
42 (before the Legislature as this bill).

1 20. (New Section) The privilege established in section 19 of
2 P.L. , c. (C.)(before the Legislature as this bill) shall not
3 apply if:

4 a. The regulated entity for whom the environmental audit report
5 was prepared, waives the privilege, regardless of whether the
6 environmental audit report was prepared by the owner or operator of
7 the entity, by the owner's or operator's employees, or by an
8 independent contractor hired by an owner or operator;

9 b. A court or administrative law judge determines that the privilege
10 is being asserted for a criminal or fraudulent purpose;

11 c. A court or administrative law judge determines that (1) the
12 public's interest in obtaining the information outweighs the person's
13 legitimate expectation of confidentiality and (2) the information
14 contained in the environmental audit report could not be secured from
15 any less intrusive source. The exception to the privilege provided in
16 this subsection shall not apply to an enforcement agency seeking to
17 obtain an environmental audit report unless the enforcement agency is
18 seeking injunctive relief to prevent serious harm to human health or
19 the environment;

20 d. The environmental audit report shows evidence that the person
21 for which the environmental audit report was prepared is not or was
22 not in compliance with P.L.1977, c.74 (C.58:10A-1 et seq.) or any
23 rule, regulation, order or permit issued thereunder and the person did
24 not initiate appropriate efforts to achieve compliance or complete any
25 necessary permit application promptly after noncompliance was
26 discovered and, as a result, the person did not or will not achieve
27 compliance or complete the necessary permit application within a
28 reasonable amount of time; or

29 e. A court or administrative law judge determines that the material
30 for which the privilege is claimed is not subject to the privilege as
31 provided in section 22 of P.L. , c. (C.).
32

33 21. a. No person shall use any privileged information to discover
34 any other information and any information so discovered shall be
35 inadmissible in any action or proceeding. Nothing in this section shall
36 be construed to limit the authority of an enforcement agency to
37 conduct an investigation or for any information or documents so
38 discovered to be admitted into evidence.
39

40 22. The privilege established in section 19 of P.L. , c. (C.)
41 (now before the Legislature as this bill) shall not extend to:

42 a. Documents, communications, data, reports, or other information
43 required to be collected, developed, maintained, reported, or made
44 available to a governmental entity pursuant to any federal, State or
45 local law, ordinance, regulation, permit or order;

46 b. Information obtained by observation, sampling, or monitoring by

1 any enforcement agency;

2 c. Information obtained from a source independent of the
3 environmental audit;

4 d. Documents existing prior to the commencement of and
5 independent of the environmental audit;

6 e. Documents prepared subsequent to the completion of and
7 independent of the environmental audit; and

8 f. The underlying factual information upon which an environmental
9 audit report is based.

10

11 23. Section 12 of P.L. 1990, c.28 (C.58:10A-14.4) is repealed.

12

13 24. This act shall take effect immediately.

14

15

16

STATEMENT

17

18 This bill makes various changes to the "Water Pollution Control
19 Act," P.L.1977, c.74 (C.58:10A-1 et seq.) and to various other laws
20 to promote compliance with these laws, to simplify the process of
21 compliance, to lessen the cost of compliance, to simplify
22 administrative procedures, and to create a more rational and
23 predictable enforcement policy.

24 The bill provides that Environmental Rights Act citizens suits
25 will be precluded if an appropriate government agency has taken
26 action. The action taken may include administrative action as well
27 as a formal decision that no further action is necessary. Information
28 disclosed as part of an environmental audit would also not be
29 subject to a citizen suit.

30 The bill promotes environmental audits by providing that where a
31 person conducts an environmental audit related to its water
32 discharges, the audit information will be protected from
33 enforcement agencies in certain situations and a privilege will be
34 created to protect against disclosure in other legal actions.
35 Provisions include: a limitation when an enforcement agency can
36 seek or obtain information in an audit; support for the consideration
37 of audits in prosecutorial discretion; limited immunity from penalties
38 for violations found and corrected through an audit; considering the
39 existence of an audit when assessing or compromising penalties and
40 when waiving mandatory penalties; and the creation of a limited
41 privilege for audits from third party suits.

42 The bill gives additional direction to the department to impose
43 lower penalties for persons who have caused a violation but have
44 otherwise attempted to comply with the law and to remedy any
45 adverse environmental effects. When developing its penalty policy
46 the department is directed to consider the violator's intent and

1 efforts to prevent the violation, including doing an environmental
2 audit. The department is directed to establish a minimum penalty
3 that is not to exceed \$100 for minor violations. The existing
4 regulatory minimum penalty is \$1,000. The department is also
5 authorized to propose environmental audits as a condition to not
6 impose a penalty. Additionally, the department is directed to not
7 automatically use the mid-point of a penalty range if the violator
8 had no intent to violate.

9 The bill provides that the department may compromise a penalty
10 up to 90% of the assessment amount, including the economic
11 benefit portion, if the person has or agrees to conduct an
12 environmental audit, or if the violator is a small business or local
13 agency, seeks compliance assistance from the department, the
14 violator attempted to prevent the violation or its reoccurrence,
15 measures were taken to remedy any harm, and the conditions that
16 caused the violation were fully disclosed to the department. If the
17 department compromises a penalty beyond 50% it must make a
18 written finding which shall be published in the annual report.

19 The bill would delete language that requires the posting of a
20 bond as a condition of an administrative or judicial appeal of an
21 administrative penalty.

22 The requirement that the department impose mandatory penalties
23 for serious violations or for failure to submit a discharge monitoring
24 report have been deleted. Instead, the department has discretion to
25 determine whether to impose a penalty for those violations. Daily,
26 monthly, and periodic limits are to be considered interrelated permit
27 parameters for the purposes of imposing penalties so that a single
28 occurrence will not result in multiple penalties. Penalties are still
29 mandatory for serious noncompliers but the bill would reduce the
30 minimum penalty for such violators from \$5,000 to \$1,000.
31 Additionally, stormwater violations will not be considered for
32 determining noncompliance status.

33 The bill would allow the use of affirmative defenses for any
34 discharge violation, not just for violations that carry a mandatory
35 penalty. The bill would allow notice of the use of the affirmative
36 defense to be made within 5 days of the occurrence rather than
37 within 24 hours. If the 5 day notice is missed, the department or
38 local agency can still grant the affirmative defense in its discretion.

39 The bill would allow the department's annual report to be based
40 upon the fiscal, rather than the calendar year. Also, information
41 concerning the expenditure of penalty money and the water quality
42 assessment need not be included in the report. Instead, the
43 department will make available 40 CFR §403 reports.

44 Except for site remediation related fees, the NJPDES fees will be
45 capped at existing levels for 7 years, until 2003.

46 The department and delegated local agencies will be required to

1 develop inspection protocols whereby resources to inspect facilities
2 will be in place. Rather than require inspections to take place at
3 least once a year at all facilities, in addition to other required
4 inspections, the bill provides that less frequent inspections may be
5 performed at facilities that have environmental audit programs in
6 place. More frequent inspections would be performed at facilities
7 that have had a serious violation in the past 2 years or who have had
8 a series of violations. The significant violator mandatory inspection
9 has been deleted.

10 Financial assurance will only be required for schedules of
11 compliance that will last over 12 months. A self guarantee, ability
12 to obtain a loan, line of credit, an environmental insurance policy,
13 and the creation of a trust will be additional acceptable methods for
14 financial assurance. The financial assurance funds will be available
15 for the actual work performed. The level of financial assurance may
16 be adjusted.

17 Public comment on an administrative consent order will be
18 limited to an executed, and not a proposed, document. The
19 executed order may, however, be rescinded or modified by the
20 department based upon any comments received or the public hearing
21 that is held.

22 The bill repeals the Clean Water Enforcement Fund and provides
23 that "Water Pollution Control Act" penalty monies will be put into a
24 fund to compensate municipalities for tax loss revenue due to the
25 watershed moratorium.

26 The bill directs the department to promulgate regulations for an
27 effluent trading system within a watershed. Effluent trading will be
28 allowed for both point and nonpoint sources within a watershed.
29 Effluent trading is permissive and will not require any additional
30 controls or regulations on any person.

31 The department is directed to establish criteria for the uniform
32 electronic submission of monitoring and other relevant data which
33 could then be made available to the public.

34 Prior to the department proposing any regulation, the bill directs
35 the department to provide interested all interested parties the
36 opportunity to provide information and advice concerning that
37 regulation.

38 The department will be required to undertake a study to identify
39 obsolete, duplicative, and unnecessary monitoring, record keeping
40 and reporting requirements with the goal of a 25% paperwork
41 reduction.

42 The bill establishes an Office of Water Discharge Compliance
43 Assistance. The Office is directed to provide technical, engineering,
44 financial, administrative, and other types of assistance to small
45 businesses and delegated local agencies that serve 10,000 or fewer
46 people. The assistance will be provided without any charge and is

1 intended to make it easier and less costly for small businesses and
2 local agencies to comply with the Water Pollution Control Act.

3

4

5

6

7 Makes various changes to water pollution laws.

WITHDRAWN

WITHDRAWN