

SENATE, No. 1001

STATE OF NEW JERSEY

INTRODUCED MARCH 21, 1996

By Senators KYRILLOS and CIESLA

1 AN ACT concerning attorneys fees, and amending P.L.1970, c.39.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 Such relief may include, singly or in combination:

43 (1) A temporary or permanent injunction;

44 (2) Assessment of the violator for the costs incurred by the State,
45 a local board of health or county health department of any
46 investigation, inspection, or monitoring survey which led to the

1 establishment of the violation, and for the reasonable costs of
2 preparing and litigating the case under this subsection, including the
3 awarding of reasonable attorney's fees;

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

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

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

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

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

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

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

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

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

36 g. Any person who knowingly:

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

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

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

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

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

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

12 h. Any person who recklessly:

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

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

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

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

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

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

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

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

44 l. Pursuit of any remedy specified in this section shall not preclude
45 the pursuit of any other remedy provided by any other law.

1 Administrative and judicial remedies provided in this section may be
2 pursued simultaneously.
3 (cf: P.L.1990, c.70, s.1)

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5 2. This act shall take effect immediately.

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8 STATEMENT

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10 This bill authorizes the recovery of attorney's fees for litigation
11 undertaken under the "Solid Waste Management Act," P.L.1970, c.39
12 (C.13:1E-1 et seq.).

13 Specifically, the bill provides that, with respect to any civil action
14 brought by the Commissioner of the Department of Environmental
15 Protection, a local board of health or a county health department in
16 the Superior Court for injunctive relief pursuant to subsection d. of
17 section 9 of P.L.1970, c.39 (C.13:1E-9) for any alleged violation of
18 the "Solid Waste Management Act," or of any code, rule or regulation
19 adopted, permit issued, or district solid waste management plan
20 adopted pursuant thereto, the Court may assess the violator for the
21 costs incurred by the State, a local board of health or county health
22 department of any investigation, inspection, or monitoring survey
23 which led to the establishment of the violation, and for the reasonable
24 costs of preparing and litigating the case, including the awarding of
25 reasonable attorney's fees.

26 The bill also provides that, with respect to any penalty imposed
27 pursuant to subsection f. of section 9 of P.L.1970, c.39 (C.13:1E-9),
28 the Court may award reasonable attorney's fees to the enforcing
29 authority.

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34 Provides for recovery of counsel fees under "Solid Waste Management
35 Act."